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Proclamation 10868 of December 3, 2024

The President

International Day of Persons With Disabilities, 2024

By the President of the United States of America

A Proclamation

The over one billion disabled people around the world have made incredible contributions—propelling us all forward in the pursuit of progress. This International Day of Persons with Disabilities, we recommit to ensuring that people with disabilities are treated with dignity and respect and have every opportunity to reach their full potential.

I remain proud that one of my earliest acts as a United States Senator was co-sponsoring the Rehabilitation Act, banning discrimination on the basis of disability by any entity funded by the Federal Government. And later, I co-sponsored the Americans with Disabilities Act, which banned discrimination against disabled people in workplaces, schools, public transit, and more—finally making a commitment to build an America for all Americans. Together, these laws declared what we have always known to be true: that Americans with disabilities deserve dignity, respect, and an equal chance at the American Dream.

Over 180 nations have passed similar laws in the years since, codifying their commitment to equal justice and opportunities for people with disabilities. Still, these laws have not brought an end to the work we need to do. Around the world, people with disabilities are subject to shameful discrimination, harassment, exploitation, abuse, and violence. And too often, they struggle to get by—whether it is finding an accommodating job, enjoying public spaces, receiving quality education, or getting to and from school or work.

That is why my Administration has worked to uplift people with disabilities in everything we do. My American Rescue Plan provided \$37 billion to strengthen home-based services so that more people with disabilities have the option to live independently at home. My Bipartisan Infrastructure Law makes historic investments in making transit, rail, and airports more accessible, so that people with disabilities can commute and travel with dignity. The Department of Justice issued a rule that ensures State and local governments make their web content and mobile apps more accessible to Americans with disabilities so they can more easily access local government services, emergency services, voting information, and publicly funded education. And today, the Department of Labor announced a proposed rule that would gradually phase out certificates that permit employers to pay workers with disabilities less than the full minimum wage.

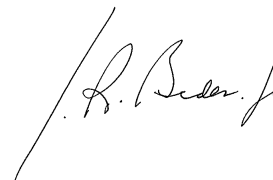
My Administration has also worked with partners around the world to secure the rights of people with disabilities. I released the first-ever Memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally, which is working to ensure that people with disabilities are represented in our work to promote labor rights. And I re-established the role of Special Advisor on International Disability Rights at the Department of State to ensure our foreign policy reflects our commitment to this community. In October, my Administration participated in the first-ever G7 Ministerial on Inclusion and Disability, joining leaders around the world to advance disability rights. Together with leaders from Central Asia, I launched a joint disability rights initiative to help make education and

infrastructure more accessible. And as a co-chair of the Global Action on Disability Network, the United States is continuing to advocate for disability rights on the world stage.

Today, I am thinking of a quote from disability rights activist Judy Heumann, who once wrote: “Change never happens at the pace we think it should. It happens over years of people joining together, strategizing, sharing, and pulling all the levers they possibly can.” On International Day of Persons with Disabilities, we show our gratitude for all the leaders and activists who have advocated and worked to make real our Nation’s founding promise—that every American has a right to be recognized and respected for who they are. And we recommit to building a world where we support disability pride and give everyone an equitable chance at achieving their highest aspirations.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 3, 2024, as International Day of Persons with Disabilities. I call on all Americans to observe this day with appropriate ceremonies, activities, and programs.

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

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Rules and Regulations

Federal Register

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Friday, December 6, 2024

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

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 1942, 3560, 3570, and 5001

[Docket Number: RHS–24–ADMIN–0040]

Multi-Family Housing and Community Facilities Updates to Federal Financial Assistance Guidance

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), an agency in the United States Department of Agriculture (USDA) Rural Development (RD) Mission area, is issuing a final rule to update the Multi-Family Housing (MFH) and Community Facility (CF) regulations by updating the audit and financial statement language to align with the Office of Management and Budget (OMB) 2024 revisions.

DATES: Effective December 6, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

RD is a mission area within USDA comprised of the RHS, the Rural Business-Cooperative Service, and Rural Utilities Service, that strives to increase economic opportunity and improve the quality of life for all rural Americans. RD invests in rural America with loan, grant, and loan guarantee programs to help drive economic security and prosperity.

USDA's RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. The Agency offers loans, grants and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more.

Multi-Family housing programs assist rural property owners through loans, loan guarantees, and grants that enable owners to develop and rehabilitate properties for low-income, elderly, and disabled individuals and families as well as domestic farm laborers.

Community Facilities Programs offer direct loans, loan guarantees and grants to develop or improve essential public services and facilities in communities across rural America. These amenities help increase the competitiveness of rural communities in attracting and retaining businesses that provide employment and services for their residents.

OMB revised several parts of OMB Guidance for Grants and Agreements which is now called OMB Guidance for Federal Financial Assistance which are applicable to all federal agencies. This guidance can be found in Title 2 of the Code of Federal Regulations (CFR) (2 CFR part 200). The revisions were published in the **Federal Register** on April 22, 2024, at 89 FR 30046, and are required to be implemented by October 1, 2024. This final rule is being published as a technical-administrative correction to ensure the Agency's audit and financial statement requirements align with the OMB revisions made to 2 CFR part 200.

II. Summary of Changes

This rulemaking makes the following changes:

- (1) Updates § 1942.17 to increase the \$750,000 audit threshold to \$1,000,000.
- (2) Updates § 3560.308 to increase the \$750,000 audit threshold to \$1,000,000.
- (3) Updates § 3570.51 to remove the 2 CFR issue date.
- (4) Updates § 3570.80 to replace the term “applicant” with “recipient” or “subrecipient.”

III. Executive Orders

Executive Order 12372—Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Executive Order 12866—Regulatory Planning and Review

This final rule is exempt from OMB review for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988—Civil Justice Reform

This final rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Executive Order 13132—Federalism

The policies contained in this final rule do not have any substantial direct effect on 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. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including

regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. Consultation is also required for any regulation that preempts tribal law or that imposes substantial direct compliance costs on Indian tribal governments and that is not required by statute.

The Agency has determined that this final rule does not, to its knowledge, have tribal implications that require formal tribal consultation under Executive Order 13175. If a Tribe requests consultation, the RHS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Congressional Review Act

This final rule is not subject to the Congressional Review Act (“CRA”) (5 U.S.C. 801 *et seq.*), as the CRA provides an exemption for any rule relating to agency management or personnel and for rules relating to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Assistance Listing Number

The Assistance Listing Numbers assigned to the programs affected by this final rule are 10.405—“Farm Labor Housing Loans and Grants,” 10.415—“Rural Rental Housing Loans,” 10.427—“Rural Rental Assistance Payments,” and 10.766—“Community Facilities Loans and Grants.” The Assistance Listings are available at [SAM.gov](https://www.sam.gov).

Paperwork Reduction Act

This final rule contains no reporting or recordkeeping provisions under OMB Control Numbers 0575–0015 and 0575–0089 requiring OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that: (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with

potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that this action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act Certification

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this final rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Administrative Pay-As-You-Go Act of 2023

Section 270 of the Administrative Pay-As-You-Go Act of 2023 (Pub. L. 118–5, div. B, title III, 137 Stat 31) amended 5 U.S.C. 801(a)(2)(A) to require U.S. Government Accountability Office (GAO) to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. The Act does not apply to this rule because it does not increase direct spending.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4 (2 U.S.C. 1501 *et seq.*), establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory

provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E-Government Act Compliance

RD is committed to the E-Government Act (44 U.S.C. 101 *et seq.*), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Rights Impact Analysis

RD has reviewed this final rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, or marital or familial status. Based on the review and analysis of this final rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes, or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the 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; or the 711 Relay Service.

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 www.usda.gov/sites/default/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.

List of Subjects

7 CFR Part 1942

Business and industry, Community facilities, Fire prevention, Grant programs—business, Grant programs—housing and community development, Grant programs—Indians, Indians, Loan programs—agriculture, Loan programs—housing and community development, Loan programs—Indians, Loan programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflicts of interest, Government property management, Grant programs—housing and community development, Insurance, Loan programs—agriculture, Loan programs—housing and community development, Low- and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3570

Administrative practice and procedure, Fair housing, Grant programs—housing and community development, Housing, Low- and

moderate-income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 5001

Business and industry, Community development, Community facilities, Energy conservation, Fees, Loan programs—natural resources, Renewable energy, Rural areas, Rural development, Water and waste disposal.

Accordingly, for the reasons set forth in the preamble, the Agency amends 7 CFR parts 1942, 3560, 3570, and 5001 as follows:

PART 1942—ASSOCIATIONS

- 1. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Facility Loans

§ 1942.17 Community facilities.

- 2. Revise and republish § 1942.17 paragraphs (q)(4) and (5) to read as follows:

* * * * *

(q) * * *

(4) *Audits.* Any applicant that expends \$1 million or more in Federal financial assistance during their fiscal year must submit an audit report conducted in accordance with 2 CFR part 200, subpart F, “Audit Requirements.” Applicants expending less than \$1 million in Federal financial assistance per fiscal year are exempt from 2 CFR part 200 audit requirements. All audits are to be performed in accordance with the latest revision of the Generally Accepted Government Accounting Standards (GAGAS), developed by the Comptroller General of the United States. Further guidance on preparing an acceptable audit can be obtained from any Agency office. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. Audits should be supplied to the Processing Official within the timeframes stated in paragraph (f) of this section. OMB Circulars and Agency Compliance Supplements are available in any USDA/Agency office or OMB's website. Any state, local government, or Indian tribe that is required by constitution or state statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(a). This requirement must still be in effect for the biennial period. Any nonprofit organization that

had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(b). All biennial audits must cover both years within the biennial period.

(5) *Exemption from audits.* Except as noted in 2 CFR 200.503, “Relation to other audit requirement,” public bodies or nonprofits expending less than \$1 million in Federal awards during its fiscal year, whose payments are current, and are having no signs of operational or financial difficulty may submit a management report. A management report, at a minimum, will include a balance sheet and income and expense statement. Financial information may be reported on Form RD 442-2, “Statement of Budget, Income and Equity” and RD Form 442-3, “Balance Sheet”, or similar. The following management data will be submitted by the borrower to the servicing office. Records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

* * * * *

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

- 3. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart G—Financial Management

- 4. Revise and republish § 3560.308 paragraphs (a)(2) and (3) to read as follows:

§ 3560.308 Annual financial reports.

* * * * *

(a) * * *

(2) Non-profit borrowers that receive \$1 million or more in combined Federal financial assistance must meet the audit requirements set forth by OMB, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at 2 CFR parts 200 and 400. Borrowers must provide a copy of this audit to RHS in compliance with these financial reporting requirements.

(3) Non-profit borrowers that receive less than \$1 million, and for-profit borrowers that receive less than \$500,000 in combined Federal financial assistance will submit annual owner certified prescribed forms on the accrual method of accounting in accordance with the Statements on Standards for Accounting and Review Services promulgated by the Accounting and

Review Services Committee of the American Institute of Certified Public Accountants (AICPA). Borrowers may use a CPA to prepare this compilation report of the prescribed forms.

* * * * *

PART 3570—COMMUNITY PROGRAMS

■ 5. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B—Community Facilities Grant Program

■ 6. Revise and republish § 3570.51 paragraph (j) to read as follows:

§ 3570.51 General.

* * * * *

(j) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200. In 2 CFR part 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

* * * * *

■ 8. Revise and republish § 3570.80 to read as follows:

§ 3570.80 Grant closing and delivery of funds.

(a) "Community Facilities Grant Agreement" will be used as the grant agreement between the Agency and the grantee and will be signed by the grantee before grant funds are advanced.

(b) Approval officials may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 2 CFR part 200, as subsequently modified.

(c) Approval officials may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 as subsequently modified.

(d) Grant funds will not be disbursed until they are actually needed by the recipient and all borrower or other funds are expended, except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged,

(2) All interim funds have been disbursed, and

(3) Agency grant funds are needed before RHS or other loans can be closed.

(e) If grant funds are available from other agencies and are transferred for disbursement by RHS, these grant funds will be disbursed in accordance with the agreement governing such other agencies' participation in the project.

PART 5001—GUARANTEED LOANS

■ 7. The authority citation for part 5001 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1926(a); 7 U.S.C. 1932(a); 7 U.S.C. 8107.

Subpart F—Servicing Provisions

■ 8. Revise and republish § 5001.504 paragraph (c) to read as follows:

§ 5001.504 Financial reports.

* * * * *

(c) Annual financial statements must be in accordance with accounting practices acceptable to the Agency as prescribed in § 5001.9 for all borrowers with a guaranteed loan balance in excess of \$600,000. The lender may determine the type and frequency of financial statements for borrowers with a total guaranteed loan balance below \$600,000 upon notification and justification to the Agency. This section does not supersede the borrower financial statement requirements of 2 CFR part 200, subpart F.

* * * * *

Joaquin Altoro,
Administrator, Rural Housing Service.

[FR Doc. 2024–28168 Filed 12–5–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[Docket No. RHS–24–MFH–0041]

Multi-Family Housing Simple Transfer Pilot Program

AGENCY: Rural Housing Service, USDA.

ACTION: Extension of pilot program.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United

States Department of Agriculture (USDA), is announcing the extension of a pilot program with updates for simple transfers of USDA Section 514 Farm Labor Housing & 515 Rural Rental Housing properties through December 9, 2025. The Agency's intention is to evaluate the existing regulations and remove regulatory barriers to reduce application requirements for certain types of transfers, resulting in lower transaction-related costs for applicants and improved processing times.

DATES: The effective date of the Simple Transfer Pilot Program is extended to December 9, 2025, at which time the RHS may extend the pilot program (with or without modifications) or terminate it depending on the workload, budget and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the pilot program is extended or terminated, the RHS will notify the public.

FOR FURTHER INFORMATION CONTACT: For general information about the pilot program, contact Jessica Long, Asset Management Division at jessica.long@usda.gov or at 270–392–4526.

Owners that are interested in participating in the pilot program should contact the project's assigned servicing specialist in the Field Operations Division. The assigned specialist can be found on the Agency's website at <https://www.sc.egov.usda.gov/data/MFH.html>. Select the file under the heading "Multi-Family Housing 514 & 515 Property Assignments." The servicing specialist is listed in the column labeled "Assigned To" and their email is in the column "Assigned To Email."

SUPPLEMENTARY INFORMATION:

Authority

Title V, Section 506(b) of the Housing Act of 1949, as amended; 42 U.S.C. 1476(b).

Background

RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs such as loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. RHS also provides technical assistance, loans, and grants by partnering with agricultural producers, cooperatives, Indian tribes, non-profits, and other local, state, and federal agencies.

The Multi-family Housing Program (MFH), an RHS program, assists rural property owners through loans, loan guarantees, and grants that enable owners to develop and rehabilitate

properties for low-income, elderly, and disabled individuals and families as well as domestic farm laborers. MFH works with the owners of its direct and farm labor housing loan properties to subsidize rents for low-income tenants who cannot afford to pay their full rent. These programs assist qualified applicants that cannot obtain commercial credit on terms that will allow them to charge rents that are affordable to low-income tenants.

Summary of Updates to the Pilot Program

1. The pilot program is extended by one year until December 9, 2025.
2. Section 514 properties are now included in the pilot program.
3. The RHS contact person is updated.
4. Under Option 1, an exception for extending terms for imminent maturing mortgages has been added.
5. The Agency has made clarifications to Option 2 by removing (iii) (c) which was repetitive of (iii)(a) and (b).

Transfer Types: Simple and Standard Transfers

MFH utilizes a variety of tools to revitalize and preserve the physical and financial health of more than 13,000 properties currently in USDA's rural rental portfolio. The Agency may authorize limited demonstration programs to test new approaches to offering housing under the statutory authority granted to the Secretary, as set forth in 42 U.S.C. 1476(b) and 7 CFR 3560.53(t). Such demonstration programs may authorize procedures and requirements that differ from those set forth in statute or regulation. However, any program requirements that are not expressly waived, whether statutory or regulatory, remain in effect.

There are two primary types of ownership changes that require approval by MFH which are (1) a change in the borrower entity's organizational structure or (2) a transfer of ownership to a new entity. Organizational changes that include changes in a borrower's current ownership entity structure are addressed in 42 U.S.C. 1485(h) and 7 CFR 3560.405. Transfers, which are sales of projects to new owners that continue to operate the projects in the 515 program, are detailed in 42 U.S.C. 1485(h) and 7 CFR 3560.406.

MFH has identified the need to simplify the transfer of ownership for certain types of transactions. The current process places the same submission requirements on applicants regardless of the complexity of the transaction, resulting in undue burdens for relatively uncomplicated transfers, thereby reducing potential transfer and

preservation activity in the portfolio. To address this issue, MFH is implementing the Simple Transfer Pilot Program which will offer three additional transfer options as a way to encourage preservation and revitalize its portfolio. MFH expects that by reducing application requirements for certain types of transfers, the result will be lower transaction-related costs for applicants and improved processing times. At the end of the pilot program, MFH will evaluate the findings with consideration towards, if successful, future regulatory changes that could be codified into 7 CFR part 3560 and applied program wide.

Discussion of the Transfer Pilot Program

(1) *Simple Transfer Pilot Program:* For a simple transfer, under certain conditions the Agency will process an application for an ownership change without requiring full rehabilitation financing and or reserve account funding typically needed to approve a standard transfer. Simple transfers include restrictions on new debt, equity payouts, and other limitations that are not included for standard transfers.

The Agency must determine that the new owner can operate the property successfully and that the ownership change will benefit the government and tenants even if there are remaining rehabilitation needs post-transfer. The property must meet the required conditions to be processed as a simple transfer. The Asset Management Division (AMD) will process simple transfers.

(2) *Standard Transfer:* All transfers that do not meet the requirements for a simple transfer are considered standard transfers. Standard transfers often include third-party financing, such as Low-Income Housing Tax Credits (LIHTC), and may include one property or multiple properties in a portfolio. Standard transfers follow the guidance in 7 CFR 3560.406. The Production and Preservation Division (P2) will continue to process standard transfers.

Implementation of the Simple Transfer Pilot Program

Eligible properties include Section 514 Farm Labor Housing and Section 515 Rural Rental Housing properties. Eligibility for the pilot program will be based on property conditions and the ability and willingness of the buyer and seller to meet required simple transfer conditions. Buyers must meet the eligibility criteria in 7 CFR 3560.406. Applicants must be able to clearly demonstrate that the property can operate successfully under new

ownership. Applicants must abide by the regulatory requirements set forth in 7 CFR part 3560 and the requirements set forth in applicable statutes, except for the exceptions made available through this pilot program, as detailed in this Notice.

Under the pilot program, three simple transfer options are available to address different property circumstances, which are outlined below:

Option 1: Simple Transfer With Expedited Ownership Change Required

Option 1 is the most streamlined transfer process. It is available in circumstances where the Agency determines that an expedited ownership change is in the best interest of the Government, property, and tenants.

(1) Requirements

(i) Property is in acceptable physical condition as determined by the Agency based on information submitted by the applicant, available in Agency files, or available from third parties, AND

(ii) Conditions exist that require an expedited transfer, including but not limited to: deceased borrower or general partner, hardship, insolvency, receivership, imminent loan maturity, or sale to nonprofit under prepayment, AND

(iii) No additional debt will be incurred by the Buyer or secured by the property as part of the transfer, AND

(iv) New owner (nonprofit or for-profit) will provide a plan for the long-term viability of the property, which may include recapitalization/rehabilitation or resetting of reserves. The Agency must determine that the proposed viability plan demonstrates the continued physical and financial viability of the property.

(2) Pilot Program Modification to Current Standard Transfer Requirements in 7 CFR 3560

(i) No Capital Needs Assessment (CNA) is required with the transfer application (the CNA requirement in 7 CFR 3560.406(d)(5) is waived for transfers qualifying for Option 1).

(ii) No new valuation of the property is required with the transfer application (the requirement in 3560.406(d)(3)(i) and (ii) that the security value of the housing project be determined at the time of transfer is waived for transfers qualifying for Option 1).

(iii) The maturity date and amortization period of the loan will not be changed or extended unless the Agency determines that an extension of the term is in the best interests of the Government, property and tenants.

(iv) No equity payout can be included as part of the transaction. Equity payout to transferor shall not be paid for by project funds and shall not be secured by the property. If agreed to by both parties, equity may be paid outside of the transaction.

(v) The project must meet minimum reserve account requirements as determined by the Agency. The Agency may require a post-transfer analysis to reset annual reserve deposits as a condition of the approved viability plan, which could include completion of a property conditions survey, a CNA, or another analysis acceptable to the Agency.

Option 2: Simple Transfer With Rehabilitation

Option 2 is designed for properties that require rehabilitation and or resetting of the annual deposit to the reserve account.

(1) Requirements

(i) Property is or will be fully subsidized post-transfer OR rents can be increased without adversely impacting occupancy and without a term extension, AND

(ii) No additional amortizing debt will be incurred by the Buyer or secured by the property as part of the transfer, AND

(iii) One of the following conditions applies:

(a) Based on a CNA, rehabilitation is needed that cannot be funded by the current reserve account, OR

(b) Property is in acceptable condition, with only minor upfront rehabilitation or repairs needed, as determined by the Agency based on information submitted by the applicant, available in Agency files, or available from third parties. Reserves are sufficient to meet any upfront rehabilitation needs but are inadequate to address future rehabilitation needs,

(2) Pilot Program Modification to Current Standard Transfer Requirements in 7 CFR 3560

(i) No new valuation of the property is required with the transfer application (the requirement in § 3560.406(d)(3)(i) and (ii) that the security value of the housing project be determined at the time of transfer is waived for transfers qualifying for Option 2).

(ii) The Agency may approve a junior lien for deferred financing as provided in 3560.409, except that: (a) deferred financing must at a minimum be coterminous with the Agency's loan(s), and (b) the Agency may set a maximum per unit limit on rehabilitation that can be approved under Option 2.

(iii) The maturity date and amortization period of the loan will not be changed or extended, except that a term extension may be permitted in accordance with 7 CFR 3560.409(j) if required by the deferred lender to preserve affordability for a longer period.

(iv) No equity payout can be included as part of the transaction. Equity payout to transferor shall not be paid for by project funds and shall not be secured by the property. If agreed to by both parties, equity may be paid outside of the transaction.

Option 3: Simple Transfer With Future Rehabilitation/Recapitalization Plan

Option 3 provides flexibility to nonprofits and government agencies to complete an acquisition of a preservation-worthy property even if resources for rehabilitation of the property are not available at the time of the transfer. An appraisal and CNA are required as part of the transfer application.

(1) Requirements

(i) Based on a CNA, rehabilitation is needed that cannot be fully funded by the current reserve account or resetting of the existing reserve deposits, AND

(ii) The purchaser is a nonprofit organization or government agency, AND

(iii) The new nonprofit or government agency owner will pursue a strategy to rehabilitate/recapitalize the property with Agency and or third-party funds within two years of the transfer closing date. The Agency must determine that the recapitalization plan will meet the physical and financial needs of the property, the new owner is likely to obtain the Agency and or third-party funds, and the property can function successfully until either rehabilitation or recapitalization is complete.

(2) Pilot Program Modification to Current Standard Transfer Requirements in 7 CFR 3560

(i) The Agency will waive the necessary reserve requirement adjustment under 7 CFR 3560.406(d)(5). The new owner must address the rehabilitation needs identified in the CNA over a period not to exceed two years after the closing date of the transfer. The Agency must approve the new owner's proposed rehabilitation plan and the new owner's plan to obtain funding for the rehabilitation prior to approval of the transfer.

(ii) The Agency will monitor the progress and implementation of the approved plan as part of routine project servicing. The new owner may propose

changes to the approved plan; however, RD must authorize in writing any changes before they are implemented.

For all simple transfer options, health, safety, environmental, civil rights, and applicable accessibility requirements must be resolved at the time of transfer. The property must be rated "performing" in the internal risk rating tool unless an exception is approved by the Agency.

In cases where MFH determines that none of the simple transfer options are viable for a project, the property owner should follow the standard transfer requirements in 7 CFR 3560.406. The Agency may also determine that other servicing actions are more appropriate based on the property's circumstances.

Standard transfer requirements have not changed and are outlined in 7 CFR 3560.406 (<https://ecfr.federalregister.gov/current/title-7/subtitle-B/chapter-XXXV/part-3560/subpart-I/section-3560.406>). A checklist and other information have been developed and are available by: (1) going to the MFH website at <https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-direct-loans> (click on the To Apply tab), (2) contacting the assigned servicing specialist, which can be found at USDA Service Center Agencies Online Services; or (3) refer to the **FOR FURTHER INFORMATION CONTACT** section in this Notice.

Transfer Processing Steps

A property owner should contact the assigned Field Operations Division (FOD) servicing specialist if interested in a transfer under the pilot program. The servicing specialist will take lead in intake of the information and in partnership with AMD and lead the concept call with the applicant. After the conversation with the applicant, the package will either be transferred to AMD for processing, or the servicing specialist will notify the applicant in writing of the decision to not proceed with the simple transfer process and the reasons.

Paperwork Reduction Act

The regulatory waivers for this pilot contain no new reporting or recordkeeping burdens under OMB control number 0575-0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the 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, audiotope, American Sign Language) should contact the responsible Mission Area, agency, staff office; or the 711 Relay Service.

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/default/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.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024-28299 Filed 12-5-24; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-2546; Project Identifier AD-2024-00574-A; Amendment 39-22902; AD 2024-24-11]

RIN 2120-AA64

Airworthiness Directives; Cirrus Design Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Cirrus Design Corporation (Cirrus) Model SR20, SR22, and SR22T airplanes. This AD was prompted by a report of failure of the upper power lever. This AD requires repetitively inspecting (visual) the upper power lever for any crack(s) and depending on the results of any visual inspection, either inspecting (fluorescent penetrant) or replacing the upper power lever. This AD also requires reporting all inspection results to the FAA. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 23, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 23, 2024.

The FAA must receive comments on this AD by January 21, 2025.

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

- *Federal eRulemaking Portal*: Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax*: (202) 493-2251.

- *Mail*: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery*: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2546; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Cirrus material identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811; phone: (218) 788-3000; fax: (218) 788-3525; email: fieldservice@cirrusaircraft.com; website: [cirrusaircraft.com](https://www.cirrusaircraft.com).

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2546.

FOR FURTHER INFORMATION CONTACT:

Gregory Koenig, Aviation Safety Engineer, FAA, 1801 S Airport Road, Wichita, KS 67209; phone: (847) 294-7127; email: gregory.l.koenig@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2024-2546; Project Identifier AD-2024-00574-A" at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as

confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Gregory Koenig, Aviation Safety Engineer, FAA, 1801 S Airport Road, Wichita, KS 67209. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA is issuing this AD to correct an unsafe condition on certain Cirrus Model SR20, SR22, and SR22T airplanes. The FAA received a report that a Cirrus Model SR20 airplane was involved in an incident where the upper power lever failed while advancing to full throttle in preparation for takeoff. The flight was successfully aborted by cutting fuel to the airplane. After the incident, an additional 26 upper power levers have been reported to have cracks. The available data indicates that the probability of visual inspection methods to detect cracks in the upper power levers are inadequate, and therefore a fluorescent penetrant inspection (FPI) is also necessary if cracks are not detected during the visual inspection. These cracks have only been discovered on upper power levers that include a takeoff/go-around switch. This condition, if not addressed, could result in loss of engine thrust control and reduced control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Cirrus SR2X Service Bulletin SB2X-76-05, dated October 29, 2024 (Cirrus SB2X-76-05). This material specifies procedures for inspecting the upper power lever and replacement of the upper power lever if cracks are found. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

AD Requirements

This AD requires accomplishing the actions specified in the material described previously, except as discussed under "Differences Between this AD and the Referenced Material."

This AD also requires sending all inspection results to the FAA.

Differences Between This AD and the Referenced Material

The effectivity in Cirrus SB2X-76-05 specifies certain airplane serial numbers through 9749, but this AD is applicable to Model SR20, SR22, and SR22T airplanes, certificated in any category, that are equipped with upper power lever part number (P/N) 19181-001, 19181-002, or 46505-001.

Cirrus SB2X-76-05 specifies that the compliance time is within 10 flight hours for airplanes with 2,000 flight hours or more, but this AD has a compliance time of before an upper power lever accumulates 1,200 hours time-in-service (TIS), within 10 hours TIS on the upper power lever after the effective date of this AD, or within 15 days after the effective date of this AD, whichever occurs later. This compliance time was developed based on data received from the 27 reported incidents, which indicated that an incident occurred as low as 2,948 hours TIS and that this unsafe condition could occur on airplanes with 1,200 hours TIS accumulated on the upper power lever. Based on this incident data, coupled with the fact that a large number of airplanes are either approaching or over 1,200 hours TIS and the propagation rate for this unsafe condition is unknown, the FAA's risk assessment was that the accumulation of 2,000 flight hours or more would not adequately mitigate the unsafe condition.

Cirrus SB2X-76-05 includes an action to revise the aircraft maintenance manual (AMM) by including a temporary revision that specifies repetitive inspections every 2,000 hours TIS, but this AD does not require this AMM revision. Instead, this AD requires repetitive inspections at intervals not to exceed 110 hours TIS. While Cirrus specifies a repetitive inspection every 2,000 hours TIS, the FAA is requiring a repetitive inspection at a frequency that considers the potential development and propagation of these cracks beyond 1,200 hours TIS.

Cirrus SB2X-76-05 does not specify reporting inspection results and this AD requires reporting inspection results to the FAA.

Cirrus SB2X-76-05 specifies to return cracked (damaged) upper power levers to Cirrus, but this AD does not require this action. This AD, instead, requires removing any cracked (damaged) upper power lever from service.

Replacing the upper power lever with P/N 19181-001, 19181-002, or 46505-001 does not terminate the requirements

of this AD. The inspection would be required before any affected upper power lever accumulates 1,200 hours TIS.

Interim Action

The FAA considers this AD to be an interim action. The manufacturer is currently developing a terminating action that will address the unsafe condition identified in this AD. Once the modification is developed, approved, and available, the FAA might consider additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because cracking in the upper power lever leads to failure of the upper power lever, which could result in loss of engine thrust control and reduced control of the airplane. The FAA's initial analysis based on crack data from the reported incidents shows that this condition could occur on airplanes with 1,200 hours TIS accumulated on the upper power lever. Since a large percentage of the Cirrus Model SR20, SR22, and SR22T airplanes have exceeded or are approaching 1,200 hours TIS and because the propagation rate for this unsafe condition is unknown, an inspection of the upper power lever is required within 10 hours TIS or 15 days after the effective date of this AD, whichever occurs later, for airplanes before accumulating 1,200 hours TIS to detect cracks in the upper power lever. These compliance times are shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b).

In addition, for the foregoing reason(s), the FAA finds that good cause

exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when

an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 6,811 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform visual inspection	2 work-hours × \$85 per hour = \$170 per inspection.	\$0	\$170 per inspection	\$1,157,870 per inspection.
Report inspection results	1 work-hour × \$85 per hour = \$85 per inspection.	0	\$85 per inspection	\$578,935 per inspection.

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection. The agency has no way of determining the number of

airplanes that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Perform FPI	2 work-hours × \$85 per hour = \$170 per inspection ...	\$0	\$170
Replace upper power lever	1 work-hour × \$85 per hour = \$85	50	135

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a 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. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a “significant regulatory action” under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–24–11 Cirrus Design Corporation:

Amendment 39–22902; Docket No. FAA–2024–2546; Project Identifier AD–2024–00574–A.

(a) Effective Date

This airworthiness directive (AD) is effective December 23, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Cirrus Design Corporation Model SR20, SR22, and SR22T airplanes, certificated in any category, that are equipped with upper power lever part number (P/N) 19181-001, 19181-002, or 46505-001.

(d) Subject

Joint Aircraft System Component (JASC) Code 7603, Power Lever.

(e) Unsafe Condition

This AD was prompted by a report of failure of the upper power lever. The FAA is issuing this AD to detect and address cracks in the upper power lever. The unsafe condition, if not addressed, could result in loss of engine thrust control and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Initially, at whichever time occurs latest in paragraphs (g)(1)(i) through (iii) of this AD and thereafter at intervals not to exceed 110 hours time-in-service (TIS), visually inspect the upper power lever in accordance with paragraphs A. through F. of the Accomplishment Instructions in Cirrus SR2X Service Bulletin SB2X-76-05, dated October 29, 2024 (Cirrus SB2X-76-05).

(i) Before any upper power lever identified in paragraph (c) of this AD accumulates 1,200 hours TIS,

Note 1 to paragraph (g)(1)(i): These parts are not serialized. If by checking the logbook, you cannot determine how many hours the upper power lever has since installation, then you may use the hours TIS of the airplane.

(ii) Within 10 hours TIS on the upper power lever after the effective date of this AD; or

(iii) Within 15 days after the effective date of this AD.

(2) If any crack(s) are found during any inspection required by paragraph (g)(1) of this AD, before further flight, replace the upper power lever with a new (zero hours TIS) upper power lever and do the actions in accordance with paragraphs L. through N. of the Accomplishment Instructions in Cirrus SB2X-76-05, as applicable.

(3) If no crack(s) are found during any inspection required by (g)(1) of this AD, before further flight, perform a fluorescent penetrant inspection in accordance with paragraphs G. through J. of the Accomplishment Instructions in Cirrus SB2X-76-05.

(i) If any crack(s) are found during any inspection required by paragraph (g)(3) of this AD, before further flight, replace the upper power lever with a new (zero hours TIS) upper power lever and do the actions in accordance with paragraphs L. through N. of the Accomplishment Instructions in Cirrus SB2X-76-05, as applicable.

(ii) If no crack(s) are found during any inspection required by paragraph (g)(3) of this AD, reinstall the existing upper power

lever and do the actions in accordance with paragraphs L. through N. of the Accomplishment Instructions in Cirrus SB2X-76-05, as applicable.

(4) Cirrus SB2X-76-05 specifies to return cracked (damaged) upper power levers to Cirrus, this AD does not require that action but requires removing any cracked (damaged) upper power lever from service.

(h) Reporting Requirement

Within 5 days after the inspections required by paragraphs (g)(1) and (3) of this AD or within 5 days after the effective date of this AD, whichever occurs later, report all inspection results to the FAA at the address specified in paragraph (j) of this AD. The report must include the airplane registration and serial number, results of each inspection, the airplane's hours TIS, and any additional operator/mechanic comments.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Central Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Central Certification Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

For more information about this AD, contact Gregory Koenig, Aviation Safety Engineer, FAA, 1801 S Airport Road, Wichita, KS 67209; phone: (847) 294-7127; email: gregory.l.koenig@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Cirrus SR2X Service Bulletin SB2X-76-05, dated October 29, 2024.

(ii) [Reserved]

(3) For Cirrus material identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811; phone: (218) 788-3000; fax: (218) 788-3525; email: fieldservice@cirrusaircraft.com; website: cirrusaircraft.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110.

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

Issued on November 27, 2024.

Steven W. Thompson,

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

[FR Doc. 2024-28552 Filed 12-3-24; 11:15 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2024-1396; Airspace Docket No. 24-AEA-3]

RIN 2120-AA66

Amendment of VOR Federal Airways V-258, V-519, and RNAV Route T-426; and Revocation of Jet Routes J-213 and J-526, and VOR Federal Airway V-59 in the Vicinity of Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency Omnidirectional Range (VOR) Federal Airways V-519 and Area Navigation (RNAV) Route T-426; and revokes Jet Routes J-213 and J-526, and VOR Federal Airways V-59 and V-258. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Beckley, WV (BKW), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Beckley VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, February 20, 2025. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11J, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT:

Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA-2024-1396 in the **Federal Register** (89 FR 42824; May 16, 2024), proposing to amend VOR Federal Airways V-258 and V-519, and RNAV Route T-426; and revoke Jet Routes J-213 and J-526, and VOR Federal Airway V-59. The FAA proposed this action due to the planned decommissioning of the VOR portion of the Beckley, WV, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

Subsequent to the NPRM, the FAA published a final rule for Docket No. FAA-2023-2314 in the **Federal Register** (89 FR 52357; June 24, 2024), amending VOR Federal Airway V-258 by removing the airway segment between the Roanoke, VA, VOR/DME and the Danville, VA, VOR. That airway amendment, effective September 5, 2024, is included in this rule.

Incorporation by Reference

Jet Routes are published in paragraph 2004, VOR Federal Airways are published in paragraph 6010(a), and United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This

document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11J lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending VOR Federal Airway V-519 and RNAV Route T-426; and revoking Jet Routes J-213 and J-526, and VOR Federal Airways V-59 and V-258 due to the planned decommissioning of the VOR portion of the Beckley, WV, VOR/DME NAVAID. The Air Traffic Service route actions are described below.

J-213: Prior to this final rule, J-213 extended between the Armel, VA, VOR/DME and the Beckley, WV, VOR/DME. The route is removed in its entirety.

J-526: Prior to this final rule, J-526 extended between the Beckley, WV, VOR/DME and the Louisville, KY, VOR/Tactical Air Navigation (VORTAC). The route is removed in its entirety.

V-59: Prior to this final rule, V-59 extended between the Pulaski, VA, VORTAC and the Parkersburg, WV, VOR/DME. The airway is removed in its entirety.

V-258: Prior to this final rule, V-258 extended between the Charleston, WV, VOR/DME and the Roanoke, VA, VOR/DME due to the final rule for Docket No. FAA-2023-2314 that published previously in the **Federal Register** (89 FR 52357; June 24, 2024). This action removes the airway segment between the Charleston VOR/DME and the Roanoke VOR/DME, resulting in the airway being removed in its entirety.

V-519: Prior to this final rule, V-519 extended between the Volunteer, TN, VORTAC and the Beckley, WV, VOR/DME. The airway segment between the Bluefield, WV, VOR/DME and the Beckley VOR/DME is removed. As amended, the airway is changed to now extend between the Volunteer VORTAC and the Bluefield VOR/DME.

T-426: Prior to this final rule, T-426 extended between the DANCO, WV, WP and the MCDON, VA, WP. The route is extended northward from the DANCO WP to the Parkersburg, WV, VOR/DME. As amended, T-426 is changed and now extends between the Parkersburg VOR/DME and the MCDON WP. The full T-426 route description is listed in the regulatory text of this final rule.

The NAVAID radials listed in the VOR Federal Airway V-519 description

in the regulatory text of this final rule are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action amending VOR Federal Airway V-519 and RNAV Route T-426; and revoking Jet Routes J-213 and J-526, and VOR Federal Airways V-59 and V-258, due to the planned decommissioning of the VOR portion of the Beckley, WV, VOR/DME NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5-6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In

accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

T–426 Parkersburg, WV (JPU) to MCDON, VA [Amended]

Parkersburg, WV (JPU)	VOR/DME	(Lat. 39°26′28.25″ N, long. 081°22′29.14″ W)
SITTR, WV	WP	(Lat. 37°46′49.13″ N, long. 081°07′23.70″ W)
DANCO, VA	WP	(Lat. 37°05′15.75″ N, long. 080°42′46.45″ W)
TABER, VA	FIX	(Lat. 37°02′55.04″ N, long. 080°02′55.66″ W)
PIGGS, VA	FIX	(Lat. 36°56′01.81″ N, long. 079°42′40.61″ W)
DUNCE, VA	FIX	(Lat. 36°50′52.00″ N, long. 079°29′18.20″ W)
MCDON, VA	WP	(Lat. 36°40′29.56″ N, long. 079°00′52.03″ W)

* * * * *

Issued in Washington, DC, on December 3, 2024.

Richard Lee Parks,
Manager (A), Rules and Regulations Group.
[FR Doc. 2024–28577 Filed 12–5–24; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2024–1934; Airspace
Docket No. 23–AAL–60

RIN 2120–AA66

Amendment of United States Area
Navigation Route Q–8 and Revocation
of United States Area Navigation Route
Q–18 in Alaska

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) Route Q–8 and revokes RNAV Route Q–18 in Alaska. The FAA is taking these actions to resolve an issue involving rejected automated flight plans.

DATES: Effective date 0901 UTC,
February 20, 2025. The Director of the
Federal Register approves this

PART 71—DESIGNATION OF CLASS A,
B, C, D, AND E AIRSPACE AREAS; AIR
TRAFFIC SERVICE ROUTES; AND
REPORTING POINTS

■ 1. The authority citation for 14 CFR
part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f); 40103, 40113,
40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–
1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in
14 CFR 71.1 of FAA Order JO 7400.11J,
Airspace Designations and Reporting
Points, dated July 31, 2024, and
effective September 15, 2024, is
amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

incorporation by reference action under
1 CFR part 51, subject to the annual
revision of FAA Order JO 7400.11 and
publication of conforming amendments.

ADDRESSES: A copy of the Notice of
Proposed Rulemaking (NPRM), all
comments received, this final rule, and
all background material may be viewed
online at www.regulations.gov using the
FAA Docket number. Electronic
retrieval help and guidelines are
available on the website. It is available
24 hours each day, 365 days each year.

FAA Order JO 7400.11J, Airspace
Designations and Reporting Points, and
subsequent amendments can be viewed
online at [www.faa.gov/air_traffic/](http://www.faa.gov/air_traffic/publications/)
[publications/](http://www.faa.gov/air_traffic/publications/). You may also contact the
Rules and Regulations Group, Office of
Policy, Federal Aviation
Administration, 600 Independence
Avenue SW, Washington, DC 20597;
telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT:
Steven Roff, Rules and Regulations
Group, Office of Policy, Federal
Aviation Administration, 600
Independence Avenue SW, Washington,
DC 20597; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules
regarding aviation safety is found in
Title 49 of the United States Code.
Subtitle I, Section 106 describes the

J–213 [Removed]

* * * * *

J–526 [Removed]

* * * * *

Paragraph 6010(a) Domestic VOR Federal
Airways.

* * * * *

V–59 [Removed]

* * * * *

V–258 [Removed]

* * * * *

V–519 [Amended]

From Volunteer, TN; INT Volunteer 050°
and Glade Spring, VA, 246° radials; Glade
Spring; to Bluefield, WV.

* * * * *

Paragraph 6011 United States Area
Navigation Routes.

* * * * *

authority of the FAA Administrator.
Subtitle VII, Aviation Programs,
describes in more detail the scope of the
agency’s authority. This rulemaking is
promulgated under the authority
described in Subtitle VII, Part A,
Subpart I, Section 40103. Under that
section, the FAA is charged with
prescribing regulations to assign the use
of the airspace necessary to ensure the
safety of aircraft and the efficient use of
airspace. This regulation is within the
scope of that authority as it modifies the
Air Traffic Service (ATS) route structure
as necessary to preserve the safe and
efficient flow of air traffic within the
National Airspace System.

History

The FAA published a NPRM for
Docket No. FAA 2024–1934 in the
Federal Register (89 FR 59862; July 24,
2024), proposing to amend Q–8 and
revoke Q–18 in Alaska. Interested
parties were invited to participate in
this rulemaking effort by submitting
written comments on the proposal to the
FAA. No comments were received.

Differences From the NPRM

The NPRM published for Docket No.
FAA–2024–1934 in the **Federal Register**
(89 FR 59862; July 24, 2024) listed the
route points for Q8 in the incorrect
order in the regulatory text.
Additionally, the route point
coordinates in the regulatory text for Q–

8 did not list the coordinates to the nearest 100th degree as required. This rule corrects these errors.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11J lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by amending RNAV Route Q–8 and revoking RNAV Route Q–18 in Alaska.

Q–8: This action amends RNAV Route Q–8 by extending it to overlie the track of Q–18 that is being revoked by this action. As amended, Q–8 extends between the Barrow, AK, VOR/DME and the Anchorage, AK, VOR/DME.

Q–18: This action revokes Q–18 in its entirety.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under

Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending Q–8 and revoking Q–18 in Alaska qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5k, which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance

with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–8 Anchorage, AK (TED) to Barrow, AK (BRW) [Amended]

Barrow, AK (BRW)	VOR/DME	(Lat. 71°16′24.33″ N, long. 156°47′17.22″ W)
Galena, AK (GAL)	VOR/DME	(Lat. 64°44′17.26″ N, long. 156°46′37.69″ W)
Anchorage, AK (TED)	VOR/DME	(Lat. 61°10′04.32″ N, long. 149°57′36.52″ W)

* * * * *

Q–18 Galena, AK (GAL) to Barrow, AK (BRW) [Removed]

* * * * *

Issued in Washington, DC, on December 3, 2024.

Richard Lee Parks,

Manager (A), Rules and Regulations Group.

[FR Doc. 2024–28575 Filed 12–5–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2024–2525; Airspace
Docket No. 24–AEA–13]

RIN 2120–AA66

**Amendment of United States Area
Navigation (RNAV) Routes Q–117 and
Q–135; Eastern United States**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) Routes Q–117 and Q–135 by changing the name of the “CUDLE”, NC, waypoint (WP) to “RREGG”. The FAA is taking this action due to a similarly pronounced and sounding route point (KALDA, VA) located 186 nautical miles (NM) northeast of the CUDLE WP. This action is an administrative change and does not affect the airspace boundaries or operating requirements.

DATES: Effective date 0901 UTC, February 20, 2025. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of this final rule and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11J, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Brian Vidis, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs,

describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Background

The FAA identified a safety issue with similar sounding route point names, the CUDLE, NC, WP and the KALDA, VA, WP located 186 NM to the northeast of the CUDLE WP which contributes to communications errors resulting from the similar-sounding route point names in radio communications. To remedy this, the FAA is changing the name of the CUDLE, NC, WP to the RREGG, NC, WP in RNAV Routes Q–117 and Q–135.

Incorporation by Reference

United States Area Navigation routes (Q-routes) are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11J lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by changing the name of the “CUDLE”, NC, WP to “RREGG” in RNAV Route Q–117 and Q–135 to overcome the similar-sounding pronunciation of the CUDLE, NC, WP and the KALDA, VA, WP which contributes to communications errors resulting from the similar-sounding route point names in radio communications. The amendment is described below.

Q–117: Prior to this final rule, Q–117 extended between the PRONI, NC, WP and the SAWED, VA, WP. The FAA replaces the CUDLE, NC, WP with the RREGG, NC, WP at the same location. As amended, the route continues to

extend between the PRONI WP and the SAWED WP.

Q–135: Prior to this final rule, Q–135 extended between the JROSS, SC, WP and the CUDLE, NC, WP. The FAA replaces the CUDLE, NC, WP with the RREGG, NC, WP at the same location. As amended, the route is changed to extend between the JROSS WP and the RREGG WP.

This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV Route Q–117 and Q–135 by changing the name of the “CUDLE”, NC, WP to “RREGG” qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review “Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .”. As such, this action is not expected to result in any potentially significant environmental

impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact statement.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Q-117 PRONI, NC to SAWED, VA [Amended]

PRONI, NC	WP	(Lat. 34°33′40.63″ N, long. 077°40′27.89″ W)
RREGG, NC	WP	(Lat. 35°08′19.48″ N, long. 077°32′36.22″ W)
KTEEE, NC	WP	(Lat. 35°54′55.66″ N, long. 076°57′30.45″ W)
SAWED, VA	WP	(Lat. 37°32′00.73″ N, long. 075°51′29.10″ W)

* * * * *

Q-135 JROSS, SC to RREGG, NC [Amended]

JROSS, SC	WP	(Lat. 32°42′40.00″ N, long. 080°37′38.00″ W)
PELIE, SC	WP	(Lat. 33°21′23.88″ N, long. 079°44′43.43″ W)
ELMSZ, SC	WP	(Lat. 33°40′36.61″ N, long. 079°17′59.56″ W)
RAPZZ, NC	WP	(Lat. 34°15′03.34″ N, long. 078°29′17.58″ W)
ZORDO, NC	WP	(Lat. 34°52′01.73″ N, long. 077°49′30.60″ W)
RREGG, NC	WP	(Lat. 35°08′19.48″ N, long. 077°32′36.22″ W)

* * * * *

Issued in Washington, DC, on December 3, 2024.

Richard Lee Parks,

Manager (A), Rules and Regulations Group.

[FR Doc. 2024–28560 Filed 12–5–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1364; Airspace Docket No. 24–ACE–1]

RIN 2120–AA66

Amendment of VOR Federal Airways V–216 and V–380, and Revocation of VOR Federal Airways V–549 and V–551 in the Vicinity of Mankato, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency Omnidirectional Range (VOR) Federal Airway V–216 and revokes VOR Federal Airways V–549 and V–551. VOR Federal Airway V–380 was revoked by a separate airspace docket and is removed from this action. The FAA is taking this action due to the planned decommissioning of the VOR

portion of the Mankato, KS (TKO), VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Mankato VOR is being decommissioned in support of the FAA’s VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, February 20, 2025. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments. **ADDRESSES:** A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11J, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600

Authority: 49 U.S.C. 106(f); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2024–1364 in the **Federal Register** (89 FR 42828; May 16, 2024), proposing to amend VOR Federal Airways V–216 and V–380, and revoke VOR Federal Airways V–549 and V–551 due to the planned decommissioning of the VOR portion of the Mankato, KS, VORTAC

NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

Subsequent to the NPRM, the FAA published a final rule for Docket No. FAA–2023–2483 in the **Federal Register** (89 FR 48504; June 7, 2024), amending VOR Federal Airway V–216 by removing the airway segment between the Lamoni VOR/Distance Measuring Equipment (VOR/DME) and the Iowa City, IA, VOR/DME. That airway amendment, effective September 5, 2024, is included in this rule.

Additionally, subsequent to the NPRM, the FAA published a final rule for Docket No. FAA–2023–2466 in the **Federal Register** (89 FR 48506; June 7, 2024), revoking VOR Federal Airway V–380 effective September 5, 2024. As a result, VOR Federal Airway V–380 is removed from this docket action.

Incorporation by Reference

VOR Federal Airways are published in paragraph 6010(a) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the ADDRESSES section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11J lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending VOR Federal Airway V–216 and revoking VOR Federal Airways V–549 and V–551. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Mankato, KS, VORTAC. The airway actions are described below.

V–216: Prior to this final rule, V–216 extended between the Lamar, IA, VOR/DME and the Mankato, KS, VORTAC; and between the Iowa City, IA, VOR/DME and the Janesville, WI, VOR/DME. The airway segment between the Hill City, KS, VORTAC and the Mankato VORTAC is removed. As amended, the airway is changed to now extend between the Lamar VOR/DME and the Hill City VORTAC, and between the Iowa City VOR/DME and the Janesville VOR/DME.

V–549: Prior to the final rule, V–549 extended between the Hays, KS,

VORTAC and the Mankato, KS, VORTAC. The airway is removed in its entirety.

V–551: Prior to this final rule, V–551 extended between the Salina, KS, VORTAC and the Mankato, KS, VORTAC. The airway is removed in its entirety.

The NAVAID radials listed in the V–216 description in the regulatory text of this final rule are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action amending VOR Federal Airway V–216 and revoking VOR Federal Airways V–549 and V–551, due to the planned decommissioning of the VOR portion of the Mankato, KS, VORTAC NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact

requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

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V–216 [Amended]

From Lamar, CO; to Hill City, KS. From Iowa City, IA; INT Iowa City 062° and Janesville, WI, 240° radials; to Janesville.

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V–549 [Removed]

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V–551 [Removed]

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Issued in Washington, DC, on December 3, 2024.

Richard Lee Parks,
Manager (A), Rules and Regulations Group.
[FR Doc. 2024–28576 Filed 12–5–24; 8:45 am]

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DEPARTMENT OF COMMERCE

15 CFR Part 791

[Docket No. 241112–0292]

RIN 0605–AA51

Securing the Information and Communications Technology and Services Supply Chain

AGENCY: U.S. Department of Commerce
ACTION: Final rule.

SUMMARY: On January 19, 2021, the Department of Commerce (Department) issued an interim final rule establishing procedures for its review of transactions involving information and communications technology and services (ICTS) designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary that may pose undue or unacceptable risk to the United States or U.S. persons. In the interim final rule, the Department solicited public comments and committed to promulgating a final rule. This final rule responds to public comments on the interim final rule and finalizes the practices guiding review of ICTS Transactions, amending and, in some cases, removing terms or concepts which experience has shown to be unnecessary, inefficient, or ineffective.

DATES: This rule is effective February 4, 2025.

ADDRESSES: Supporting documents:

- The Regulatory Impact Analysis/ Final Regulatory Flexibility Analysis (RIA/FRFA) prepared in support of this action is available at <https://www.regulations.gov> at docket number DOC-2019-0005;
- The **Federal Register** notice on the interim final rule (IFR) and public comments on the IFR are available at docket number DOC-2019-0005;
- The National Security Memorandum 22 on Critical Infrastructure Security and Resilience is available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/04/30/national-security-memorandum-on-critical-infrastructure-security-and-resilience/>;
- The Presidential Policy Directive—Critical Infrastructure Security and Resilience is available at <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil/>;
- The Federal Continuity Directive 2 is available at <https://www.fema.gov/emergency-managers/national-preparedness/continuity/toolkit/resources/>;
- The National Security Strategy of the United States is available at <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>;
- The Director of National Intelligence's Worldwide Threat Assessments of the U.S. Intelligence Community is available at <https://www.dni.gov/files/ODNI/documents/>

assessments/ATA-2024-Unclassified-Report.pdf;

- The National Cybersecurity Strategy of the United States is available at: <https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf>;
- The United States Government National Standards Strategy for Critical and Emerging Technology is available at <https://www.whitehouse.gov/wp-content/uploads/2023/05/US-Gov-National-Standards-Strategy-2023.pdf>; and
- The Office of Science and Technology Policy's list of Critical and Emerging Technologies is available at <https://www.whitehouse.gov/wp-content/uploads/2024/02/Critical-and-Emerging-Technologies-List-2024-Update.pdf>.

FOR FURTHER INFORMATION CONTACT:

Katelyn Christ, U.S. Department of Commerce, Telephone: (202) 482-3064, email: ICTsupplychain@doc.gov. For media inquiries: Katherine Schneider, Office of Congressional and Public Affairs, Bureau of Industry and Security, U.S. Department of Commerce: OCPA@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

In E.O. 13873, “Securing the Information and Communications Technology and Services Supply Chain,” the President delegated to the Secretary of Commerce (Secretary) pursuant to 3 U.S.C. 301, to the extent necessary to implement the order, the authority granted under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701, *et seq.*), “to deal with any unusual and extraordinary” foreign threat to the United States’ national security, foreign policy, or economy, if the President declares a national emergency with respect to such threat. 50 U.S.C. 1701(a). In E.O. 13873, the President declared a national emergency with respect to the “unusual and extraordinary” foreign threat posed to the ICTS supply chain and has, in accordance with the National Emergencies Act (NEA) (50 U.S.C. 1601, *et seq.*), extended the declaration of this national emergency in each year since E.O. 13873’s publication. *See* 85 FR 29321 (May 14, 2020); 86 FR 26339 (May 13, 2021); 87 FR 29645 (May 13, 2022); 88 FR 30635 (May 11, 2023); 89 FR 40353 (May 9, 2024).

Specifically, the President identified the “unrestricted acquisition or use in the United States of [ICTS] designed, developed, manufactured, or supplied

by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries” as “an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States” that “exists both in the case of individual acquisitions or uses of such technology or services, and when acquisitions or uses of such technologies are considered as a class.” E.O. 13873; *see also* 50 U.S.C. 1701(a) and (b).

Once the President declares a national emergency, IEEPA empowers the President to, among other acts, investigate, regulate, prevent, or prohibit, any “acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.” 50 U.S.C. 1702(a)(1)(B).

To address the identified risks to national security from ICTS transactions, the President in E.O. 13873 imposed a prohibition on transactions determined by the Secretary, in consultation with relevant agency heads, to involve foreign adversary ICTS and to pose certain risks to U.S. national security, technology, or critical infrastructure. Specifically, to fall within the scope of the prohibition, the Secretary, in consultation with relevant agency heads, must determine that any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology and services (an ICTS Transaction): (1) “involves [ICTS] designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary,” defined in E.O. 13873 as “any foreign government or foreign non-government person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons;” and (2):

A. “poses an undue risk of sabotage to or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of information and communications technology or services in the United States;”

B. “poses an undue risk of catastrophic effects on the security or resiliency of United States critical

infrastructure or the digital economy of the United States;" or

C. "otherwise poses an unacceptable risk to the national security of the United States or the security and safety of United States persons."

These factors are collectively referred to as "undue or unacceptable risks." Further, E.O. 13873 section 1(b) grants the Secretary the authority to design or negotiate mitigation measures that would allow an otherwise prohibited transaction to proceed.

B. ICTS Transaction Review Regulations

On November 27, 2019, the Department of Commerce (Department) published a proposed rule to implement the terms of E.O. 13873 (84 FR 65316). The proposed rule set forth processes for how: (1) the Secretary would evaluate and assess transactions involving ICTS with a nexus to foreign adversaries to determine whether they pose an undue risk of sabotage to or subversion of the ICTS supply chain, or an unacceptable risk to the national security of the United States or the security and safety of U.S. persons; (2) parties to transactions reviewed by the Secretary could comment on the Secretary's preliminary decisions; and (3) the Secretary would notify parties to transactions of the Secretary's decision regarding ICTS Transactions under review, including whether the Secretary would prohibit the transaction or mitigate the risks posed by the transaction. The proposed rule also provided that the Secretary could act without complying with the proposed procedures where required by national security. Finally, it provided that the Secretary would establish penalties for violations of mitigation agreements, the regulations, or E.O. 13873.

After receiving and reviewing comments to the proposed rule, on January 19, 2021, the Department published an interim final rule titled, "Securing the Information and Communications Technology and Services Supply Chain," (the interim final rule or the IFR; 86 FR 4909). The interim final rule responded to comments to the proposed rule, many of which requested greater specificity about what constitutes ICTS, an ICTS Transaction, or transactions that would be subject to the Department's review.

In response to these and other comments, the IFR defined "ICTS" as "any hardware, software, or other product or service, including cloud-computing services, primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means (including

electromagnetic, magnetic, and photonic), including through transmission, storage, or display" (86 FR at 4923). The interim final rule further defined an "ICTS Transaction" as "any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service, including ongoing activities, such as managed services, data transmission, software updates, repairs, or the platforming or data hosting of applications for consumer download . . . [t]he term ICTS Transaction includes a class of ICTS Transactions."

On November 26, 2021, the Department published a notice of proposed rulemaking (NPRM) (86 FR 67379), titled "Securing the Information and Communications Technology and Services Supply Chain; Connected Software Applications," seeking comments on amendments to Part 7 incorporating provisions of E.O. 14034, titled "Protecting Americans' Sensitive Data From Foreign Adversaries" (86 FR 31423). On June 21, 2023, the Department published a final rule implementing E.O. 14034. That final rule incorporated the term "connected software applications" into the regulations at 15 CFR part 7 and added specific factors for the Department to consider when reviewing ICTS Transactions involving connected software applications (88 FR 39353). However, that final rule included only the changes to the regulations that were necessary to implement E.O. 14034 and within the scope of the November 26, 2021, NPRM on connected software applications. The June 21, 2023, final rule for connected software applications was more limited in scope than the January 19, 2021, interim final rule and did not fully respond to public comments on the interim final rule.

On July 18, 2024, the Department published a procedural rule entitled "Redesignation of Regulations for Securing the Information and Communications Technology and Services Supply Chain" (89 FR 58263) moving the regulations implementing E.O. 13873 and E.O. 14034 from 15 CFR part 7 to 15 CFR part 791. Consistent with the placement of the Office of Information and Communications Technology and Services (OICTS) within the Bureau of Industry and Security (BIS) on March 15, 2022, following the Consolidated Appropriations Act for Fiscal Year 2022, the action moved OICTS regulations from subtitle A in the CFR, which is generally reserved for Secretarial actions and Department-wide activities and operations, to chapter VII in title 15 of

the CFR, where BIS regulations are located. Specifically, this action removed the regulations in title 15, subtitle A, part 7 (under the "Office of the Secretary of Commerce"), reserving that part, and redesignated them as title 15, subtitle B, chapter VII, subchapter E part 791 (under the "Bureau of Industry and Security, Department of Commerce"). This procedural rule also established Subchapter E entitled "Information and Communications Technology and Services Regulations." This rule was of a purely procedural nature and did not and does not affect, impact, or alter any of the rules or regulations discussed herein other than moving their location in the CFR. The Department issued the procedural rule to bring the OICTS regulations into the same location in the CFR as the other BIS regulations. The redesignation is reflected in this final rule—any citation to 15 CFR part 7 in the interim final rule is now revised to 15 CFR part 791.

C. Overview of the January 2021 Interim Final Rule

Sections 7.1 through 7.3 of the interim final rule explained the overall purpose of the rule, defined terms used in the regulatory text, and specified the types of ICTS and users of ICTS about which the regulations are primarily concerned, such as those in critical and emerging technologies or critical infrastructure. Sections 7.100 through 7.109 provided procedures for the Department's review of ICTS Transactions to determine whether the transactions pose "undue" or "unacceptable" risks as those terms are specified in E.O. 13873. Under the procedures set forth in the IFR, the Department could accept a referral of an ICTS Transaction from another agency or could undertake a review of an ICTS Transaction *sua sponte* based on information it possesses or receives. If the Department determined that an ICTS Transaction posed an "undue" or "unacceptable" risk, the Department could, after consulting with the appropriate agency heads about the potential risks posed by the ICTS Transaction under review, issue an Initial Determination that identifies the risks generally and contains a proposal to prohibit, mitigate, or allow such ICTS Transaction.

The IFR also required that the Initial Determination be followed by a period during which a party to the transaction that is the subject of the Initial Determination could provide the Department with additional information to respond to the Initial Determination or seek to negotiate with the Department to allow the ICTS Transaction, with modifications. Following that period,

and upon reviewing any information provided by parties, and seeking consensus from the appropriate agencies to determine whether to prohibit, mitigate, or allow the ICTS Transaction under review, the Department would issue a Final Determination. Under the IFR, the Final Determination provided information supporting a finding that an ICTS Transaction does or does not pose an undue or unacceptable risk, and assessed any information provided by the party to the transaction under review. Under the IFR, the results of Final Determinations to prohibit an ICTS Transaction were printed in the **Federal Register** without any confidential business information, and they were also provided to the appropriate agency heads as well as the party or parties to the transaction that was the subject of the Final Determination.

Violating orders under IEEPA could result in civil penalties, criminal penalties, or both. Section 7.200 of the IFR captured the authorized penalties for violating a Final Determination order or requirement (in the case of mitigation or prohibition). The penalties could be administrative or criminal in nature, and § 7.200 set out both the standards for when civil or criminal penalties may apply to a violation, as well as the nature and value or duration of any punishment applied for violating a Final Determination order.

II. Overview of Changes Implemented in This Final Rule

After the benefit of two years of implementation experience, the Department is amending some of the provisions of the IFR to improve and make more efficient the ICTS Transaction review process as outlined in 15 CFR part 791. In addition, the Department received and has considered the comments to the IFR and responds to those comments in this final rule.

This final rule specifically adds new definitions and revises existing definitions in § 791.2; amends § 791.3 to remove the requirement that a party must collect sensitive personal data from more than one million U.S. persons to be included in the scope of certain aspects of the regulations, as well as to reorganize and clarify the software, hardware, and other products and services that may be considered for review; adds the Special Administrative Region of Macau as part of the People's Republic of China to the foreign adversary list in § 791.4; clarifies procedures to initiate a review set forth in § 791.103; amends for additional clarity the requirements to notify and

consult with appropriate agency heads regarding the Secretary's assessment in §§ 791.104 and 791.108; clarifies who are considered parties to an ICTS Transaction and will be notified of an Initial Determination in § 791.105; clarifies certain procedures for parties' responses to Initial Determinations in § 791.107; lists prohibited activities in § 791.200; and makes clarifying changes to other provisions.

Many of the changes in this final rule are non-substantive in nature. For example, the Department is adding a definition for "Covered ICTS Transaction" to clearly distinguish in the rule text between ICTS Transactions generally and ICTS Transactions that meet specific criteria in § 791.3. This change is meant to clarify for the public and parties to ICTS Transactions the process the Department will follow after determining a transaction is a Covered ICTS Transaction.

Although this is a final action, the Department will continue to review its procedures and may consider future rulemakings to further clarify aspects of these regulations, which would involve additional opportunity for stakeholder input.

III. Response to Comments and Discussion of Changes From the Interim Final Rule

During the public comment period for the IFR, which closed on March 22, 2021, the Department received 33 comment letters from a variety of sources, including members of industry, commercial trade groups, and private individuals. All comments received by the end of the comment period are available on the public rulemaking docket for the IFR (see **ADDRESSES** above). Many commenters were generally supportive of the Department's efforts to clarify the scope of the regulations, but commenters believed that the IFR did not completely resolve concerns stakeholders had expressed about the proposed rule. Additionally, commenters expressed concerns about multiple sections of the IFR, including: definitions; the scope of covered ICTS Transactions; foreign adversary determinations; and certain aspects of the Department's process to review ICTS Transactions. The Department has carefully considered all comments and addresses them below. The Department's discussion of comments on the IFR and changes implemented by this final rule are organized in numerical order by section of the rule and comments are addressed in the section to which they pertain. Comments that are either no longer relevant or that are outside the scope of

this final rule are summarized at the end of the discussion section below.

Section 791.2—Definitions

The majority of comments the Department received to the IFR requested that the Department develop, amend, or clarify various definitions to provide the public with further clarity about the Department's specific concerns regarding ICTS Transactions and classes of ICTS Transactions and about what the Department intends to regulate. Commenters stated that the definitions in the IFR, which largely were adopted directly from E.O. 13873 without change, were vague and overly broad. In particular, commenters indicated that the terms "dealing in," "person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary," and "transfer," were not defined sufficiently to provide a reasonable understanding of which transactions are subject to prohibition or mitigation under the rule.

Commenters also noted that certain terms used within the definition of "ICTS Transaction" were undefined in the IFR. Commenters were concerned that the potential breadth of these terms could discourage U.S. and foreign entities from engaging in ICTS Transactions out of concern that any such transactions could be reviewed and prohibited. Other commenters expressed concerns that leaving undefined the term "ongoing activities" in the definition of ICTS Transactions might discourage beneficial activities such as software updates.

As described in detail below, although the Department does not believe it is necessary to provide new definitions for all the terms mentioned by commenters, the Department does agree that certain terms needed additional clarity and, accordingly, is revising and adding definitions for terms in § 791.2. The revised terms are: "party or parties to a transaction," "Secretary," "United States person," "person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary," and "appropriate agency heads." The newly defined terms are: "covered ICTS transaction," "dealing in," and "importation." These include definitions for some of the terms that were used but not defined in the IFR's definition of ICTS Transactions, discussed below. The Department believes that its chosen changes address commenters' concerns and clarify the scope of the definitions in the rule, and does not believe it is necessary to provide definitions for the other terms, for reasons that are discussed below.

(1) Terms within the definition of “ICTS Transaction.”

The IFR defined an ICTS Transaction as any acquisition, importation, transfer, installation, dealing in, or use of any ICTS, including ongoing activities, such as managed services, data transmission, software updates, repairs, or the platforming or data hosting of applications for consumer download. The IFR also clarified that an ICTS Transaction includes any other transaction designed or intended to evade or circumvent the application of E.O. 13873 and that the term ICTS Transaction includes a class of ICTS Transactions.

This final rule continues to use the definition of “ICTS Transaction,” consistent with the IFR, but the Department has clarified this definition by further defining the terms “dealing in” and “importation” that appear within the definition of ICTS Transaction, as discussed below.

(2) New definition of “Dealing in” as used within the definition of “ICTS Transaction.”

To clarify the definition of “ICTS Transaction” this final rule defines “dealing in,” as the “activity of buying, selling, reselling, receiving, licensing, or acquiring ICTS, or otherwise doing or engaging in business involving the conveyance of ICTS.” This change responds to commenters’ concerns that “dealing in” is a vague term that could have broad implications for ICTS importers, by emphasizing the provision of ICTS to or into the United States through sales, resales, licensing, or acquisition, rather than other means. Some commenters suggested that the term “dealing in” could be defined as “engaging directly in a financial transaction for the offering, buying, selling, or trading of prohibited ICTS,” consistent with the Securities and Exchange Act of 1934. However, the Department has not adopted the Securities Exchange Act of 1934 definition of “dealing in” because that definition would focus on the financial transaction resulting in a purchase, sale, or trade of ICTS. Because there may be instances in which ICTS is provided as a technology transfer or as a free service, such as some tax services or antivirus detection services, that definition would not capture the full scope of ICTS Transactions of concern in E.O. 13873.

Therefore, the definition of “dealing in” in this final rule, which also includes “receiving,” “acquiring,” or “licensing” ICTS, provides more clarity while remaining sufficiently broad to encompass the many ways in which ICTS enters the United States.

(3) New definition of “Importation” as used within the definition of “ICTS Transaction.”

To further clarify the definition of “ICTS Transaction,” this final rule adds a definition for the term “importation” as “the process or activity of bringing foreign ICTS to or into the United States, regardless of the means of conveyance, including via electronic transmission.” This definition is consistent with U.S. import laws, *see, e.g.*, 21 U.S.C. 951, and the generally understood meaning of the term. This change will clarify that the Department interprets the term “importation” as used in E.O. 13873 and the defined term “ICTS Transaction” to encompass ICTS Transactions in which ICTS is brought to or into the United States and does not include exports, as some commenters had suggested.

The Department notes that, in the execution of its authorities, the Department may, in the context of specific technologies addressed in regulations under this part, further specify the particular meaning of “importation” with respect to those technologies. For example, the Department may tailor the scope of “importation” for a specific class of ICTS or a specific industry covered by a regulation under this part. In this final rule, the definition of “importation” applies broadly to any ICTS, including ICTS transmitted electronically, that is subject to the Department’s jurisdiction under E.O. 13873.

(4) Other terms used in the definition of “ICTS Transaction.”

Some commenters requested that the Department remove the term “use” from the definition of “ICTS Transaction” or define “use” as “employing ICTS for its intended purpose.” Other commenters requested that the term “use” in “ICTS Transaction” apply only to the delivery of goods or services to U.S. consumers and not to research, testing, or standards development. The Department declines to remove “use” from the definition of “ICTS Transaction” because “use” is included in the description of prohibited ICTS Transactions in section 1 of E.O. 13873. Moreover, this final rule does not define “use” as suggested by commenters because the Department believes such change would define the term in a way to narrow the term beyond its ordinary meaning. Moreover, the Department does not interpret commenters’ proposed limitations of the term “use” to be consistent with the objective of E.O. 13873. The Department does not intend to exclude certain uses or misuses of ICTS that present undue or unacceptable risks. Therefore, consistent with E.O. 13873, the

Department declines to define “use” to avoid limiting the types of transactions that could fall within the definition of “ICTS Transaction.”

Commenters also noted that the terms “acquisition,” “transfer,” “installation,” and “ongoing activities” were not defined in the IFR and could have multiple meanings, resulting in confusion if left undefined. Some of these commenters suggested that the Department either remove these terms from the definition of ICTS Transaction, further elaborate on their meaning, or define these terms in a way that would impact the scope of the regulations. The Department will not remove these terms from the definition of “ICTS Transaction,” as removing the terms would be inconsistent with how E.O. 13873 describes ICTS Transactions that could pose undue or unacceptable risk. The Department is also not defining these terms in this final rule. Similar to the Department’s decision not to define “use,” the Department’s interpretation of each of these terms is consistent with their ordinary meanings and their use in E.O. 13873. Defining these terms inconsistently with their ordinary meanings could add unnecessary complexity to the regulatory text. The Department believes that providing definitions for the terms “acquisition” and “installation,” in particular, is unnecessary. Many comments requesting these definitions focused on the scope of the rule and how the terms “acquisition” or “installation” could impact the parties that may be subject to a transaction review. In this final rule, the Department is addressing such concerns, to the extent consistent with E.O. 13873, by revising the definition for “party or parties to a transaction” and implementing changes in other sections that more directly address the parties that may be subject to an ICTS Transaction review.

(5) Revised definition of “Party or parties to a transaction.”

As previewed above, the Department is revising the definition of “party or parties to a transaction.” The IFR defined this term as a person engaged in an ICTS Transaction, including the person acquiring the ICTS and the person from whom the ICTS is acquired. Party or parties to a transaction include entities designed, or otherwise used with the intention, to evade or circumvent application of the Executive Order. The IFR definition excluded common carriers, except to the extent that a common carrier knew or should have known (as the term “knowledge” is defined in 15 CFR 772.1) that it was providing transportation services of ICTS to one or more of the parties to a

transaction that has been prohibited in a final written determination made by the Secretary or, if permitted subject to mitigation measures, in violation of such mitigation measures.

Commenters stated that the definition of this term in the IFR was unclear in part because it included many undefined terms. Commenters requested that the Department narrow the scope of the definition to exclude certain groups or industries, such as telecommunications carriers and transportation entities not engaged in the direct sale or purchase of ICTS.

The revised definition of “party or parties to a transaction” in this final rule is intended to clarify the types of activities in which a person would engage to be considered a party to a transaction. Specifically, this final rule amends the definition to provide that a party to a transaction is “a person or persons engaged in an ICTS Transaction or class of ICTS Transactions, including but not limited to the following: designer, developer, provider, buyer, purchaser, seller, transferor, licensor, broker, acquirer, intermediary (including consignee), and end user.” The new definition retains the existing exclusion for common carriers who operate without knowledge that they are providing transportation services of ICTS in connection with an ICTS Transaction that is prohibited or in violation of mitigation measures.

These changes are consistent with the reality that many of the risks related to ICTS Transactions result from the fact that the designer, developer, manufacturer, or supplier of the ICTS is owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary. This change also recognizes that, as described in the IFR and E.O. 13873, regardless of who receives the ICTS, it is possible that a single ICTS provider or class of ICTS designed, developed, manufactured, or supplied by a person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary poses an undue or unacceptable risk to the United States or to U.S. persons. The change to the definition of “party or parties to a transaction,” in combination with changes to §§ 791.105 and 791.109 described below, is intended to better describe the parties the Department expects to identify in, and provide specific notice of, Initial and Final Determinations. These are the parties that have the greatest ability to control or address the risks identified in an Initial Determination, and therefore are the most appropriate parties for the Department’s focus.

Nevertheless, the Department is not precluded from notifying the public at large or a targeted group of consumers of an Initial Determination, though it expects to do so only when an ICTS Transaction or party or parties providing ICTS present a national security risk that the Department believes must be addressed immediately. Notably, these changes preserve parties’ ability to provide information to the Department about ICTS Transactions in which they engage.

(6) Definition of “Person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary.”

The Department is making clarifying edits to the definition of “person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary.” Many commenters requested that the Department revise or clarify the definition, or the terms within the definition, of “person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary,” noting the potential breadth of entities covered by the definition.

Commenters specifically requested that the Department remove from the definition the language, “any corporation, partnership, association, or other organization organized under the laws of a nation-state controlled by a foreign adversary” because it could be construed to include U.S. companies’ non-U.S. subsidiaries or operations located in foreign adversary countries. Commenters believed such a reading could cover intra-company transactions, and they did not view such subsidiaries and operations as posing any risk to U.S. national security or to the safety and security of U.S. persons.

This final rule retains the concept that an entity organized under the laws of a country controlled by a foreign adversary may be a person who is “owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary.” The Department understands commenters’ concerns that U.S. companies’ subsidiaries or operations located in foreign adversary countries may be considered subject to the jurisdiction or direction of a foreign adversary merely because of their location. However, the Department notes that the location of a U.S. entity’s foreign subsidiary in the jurisdiction of a foreign adversary could pose a risk in some circumstances because the subsidiary might be required to comply with the rules, laws, or other requirements of that foreign adversary.

The Department believes that these commenters’ concerns are addressed by

the Department’s procedures that require that the Secretary assess whether an ICTS Transaction falls within the scope of § 791.3(a) and § 791.103 before issuing an Initial Determination in connection with a transaction review. If the requirements of § 791.3(a) are met, the Secretary then assesses whether the ICTS Transaction:

- Involves ICTS designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary; and

- Poses an undue or unacceptable risk under § 791.103.

The Department emphasizes that a foreign subsidiary’s ICTS Transactions with its U.S. parent would be subject to further review only if those transactions present undue or unacceptable risks as identified in E.O. 13873 and under the criteria of § 791.103(c).

Other commenters expressed concern about the difficulty associated with determining whether a person is “directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part by a foreign adversary.” Some questioned, for example, whether an ICTS Transaction by a U.S. citizen who resides in a foreign adversary country could be subject to review, or whether employing individual nationals of a foreign adversary country might make a U.S. company or its foreign subsidiaries “subject to the jurisdiction or direction of a foreign adversary.” These factors, commenters argued, could significantly impact the business models and outcomes for U.S. entities that conduct business in foreign adversary countries.

The Department is revising the definition to clarify that a U.S. citizen or permanent resident would not be considered a “person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary” merely due to dual citizenship, or residency in a country controlled by a foreign adversary. Moreover, the Department will carefully review particular ICTS Transactions connected to “persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary” that may pose an undue or unacceptable risk as identified in E.O. 13873 to account for the unique operations and risks specific to foreign adversary activities. The Department notes that if the Secretary finds as part of the initial review of a potential ICTS Transaction that it does not involve “ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign

adversary,” the transaction would no longer be under review. Therefore, absent other factors, mere participation in an ICTS Transaction by a U.S. person located in a foreign adversary or country controlled by a foreign adversary or by any individual national of a foreign adversary or country controlled by a foreign adversary would not be sufficient for the Secretary to continue a review because an ICTS Transaction must also pose an undue or unacceptable risk. For example, if a U.S. person uses a software application in a foreign adversary country, the ICTS Transaction would not necessarily be subject to review under the regulation if the software application was designed, developed, manufactured or supplied by a company that is not owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary. Additionally, even if the software application were developed by a company that is owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, the Department would not continue its review of an ICTS Transaction if it determined that the transaction does not pose an undue or unacceptable risk to the United States or U.S. persons as described in E.O. 13873. However, if a U.S. person designed, developed, manufactured, or supplied a software application in collaboration with a foreign adversary-controlled entity and the Department found that the acquisition, importation, transfer, installation, dealing in, or use of the software application may pose an undue or unacceptable risk, ICTS Transactions involving that software application would be subject to review under these regulations.

Regarding commenters’ concern that a U.S. entity or foreign subsidiary of a U.S. entity might be considered “owned by, controlled by, or subject to the jurisdiction or direction of” a foreign adversary because it employs nationals of a foreign adversary country, the Department notes that, absent other indicia of ownership, control, or influence by a foreign adversary, solely employing nationals of a foreign adversary country would not independently trigger an ICTS Transaction review.

Several commenters noted that the IFR’s definition of “person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary” was overbroad and did not meaningfully clarify which ICTS Transactions might be subject to review. Based on this feedback, the Department has revised the definition of “person owned by, controlled by, or subject to

the jurisdiction or direction of a foreign adversary” in this final rule to align with its original intent for the term’s meaning. Specifically, the Department makes three clarifying edits to the definition. First, as noted above, the definition now makes clear that an individual would not be considered controlled by or subject to the jurisdiction of a foreign adversary solely due to their status as a citizen or resident of a foreign adversary or a country controlled by a foreign adversary, if that individual is also a U.S. citizen or permanent resident. Second, the Department clarifies that an entity may be subject to the jurisdiction of a foreign adversary if it has a principal place of business in, is headquartered in, is incorporated in, or is otherwise organized under the laws of a foreign adversary or a country controlled by a foreign adversary. Third, the definition now specifies that a person may be owned or controlled by a foreign adversary if another person that is owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary possesses the direct or indirect power, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity. This change more directly reflects the Department’s intent that, for example, foreign subsidiaries of U.S. companies or U.S. subsidiaries of foreign companies may in some cases be considered owned or controlled by a foreign adversary.

These edits address public comments expressing that the IFR’s definition was confusing and unclear regarding the individuals or entities that might be “owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary.” The revisions also better align the definition with the type of persons that the Department would consider to be “owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary,” though the Department notes that a determination of the persons who meet this definition will be fact specific and made on a case-by-case basis.

(7) Definition of “Appropriate agency heads.”

The Department received no comments on the definition of “appropriate agency heads” in the interim final rule but is revising the term in this final rule to make it clear

that “appropriate agency heads” may refer to the designees of the agency heads listed in E.O. 13873. This addition is meant to clarify which officials may participate in the interagency notification and consultation processes described in §§ 791.104 and 791.108. This revision does not imply that agency heads must delegate any authority under E.O. 13873, but reflects current practice and will have no practical effect on the public or parties to an ICTS Transaction under review.

(8) Definition of “Covered ICTS Transaction.”

This final rule adds a definition for the new term “Covered ICTS Transaction,” which was not defined in the IFR. This rule employs this new term to distinguish between transactions involving ICTS generally and ICTS Transactions that meet the criteria set forth in § 791.3. The new term “Covered ICTS Transaction” does not implement any substantive changes from the interim final rule, but is intended to clarify when the regulatory text refers to an ICTS Transaction, generally, and an ICTS Transaction that meets the criteria described in § 791.3 of the rule. For additional discussion of comments about defining terms used in § 791.3, see the preamble section below related to *Section 791.3 Scope of Covered ICTS Transactions*.

(9) Definition of “Secretary.”

The Department is revising the definition of “Secretary” to identify the Under Secretary of Commerce for Industry and Security and the Executive Director of the Office of Information and Communications Technology and Services (OICTS) as designees to whom the Secretary may delegate authority under this final rule. Section 2(c) of E.O. 13873 permits the Secretary to redelegate within the Department the authority conferred on the Secretary pursuant to the E.O. Similar to the Department’s revision of the term “appropriate agency heads,” this change reflects current practice and is meant to clarify which officials within the Department might be designated by the Secretary to take actions described in the regulation. This revision also addresses a question from commenters about which office within the Department will be primarily responsible for carrying out activities outlined in this final rule.

(10) Definition of “United States person.”

This final rule adds “any person in the United States” to the definition of “United States person” to correct an inadvertent omission in the IFR. E.O. 13873 specifically defines the term

“United States person” to mean “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any other jurisdiction within the United States (including foreign branches), or any person in the United States.” This addition does not change the Department’s practice, but it is intended to completely align the regulatory definition with the definition in E.O. 13873. Adding “or any person in the United States” ensures that persons who are not citizens or permanent resident aliens, but who are physically located in the United States, are considered “United States persons” as intended by E.O. 13873.

Section 791.3—Scope of Covered ICTS Transactions

The Department received many comments relating to the scope of the transactions covered by the interim final rule. Most of these commenters argued that the scope was too broad or not clearly defined, and commenters suggested that the rule could create burdens affecting technologies and ICTS Transactions that benefit the United States and chill routine and beneficial economic activity. Commenters also requested that the Department limit the scope of transactions covered by the rule to exclude activities already under review pursuant to existing regulations, and that the rule expand the existing exception for transactions reviewed by the Committee on Foreign Investment in the United States (CFIUS) to also include any ICTS Transaction by an individual or entity subject to a CFIUS mitigation agreement. Other commenters asked the Department to adopt a specific methodology for risk and threat analyses, and to review only those transactions with a “strong nexus” to the United States and that have the potential to have “significant” impacts on U.S. networks and infrastructure.

In this final rule, the Department declines to narrow the scope of transactions covered by the rule because it believes that the existing scope is appropriate and necessary to address undue or unacceptable risks as identified in E.O. 13873. E.O. 13873 describes the risk that certain ICTS Transactions could be used by malicious foreign actors to commit industrial or economic espionage, or that the unrestricted acquisition or use in the United States of ICTS with a foreign adversary nexus could be leveraged by foreign adversaries to find, create, and exploit vulnerabilities and undermine the resiliency of U.S. critical infrastructure or the safety and security of U.S. persons.

To protect U.S. ICTS supply chains from risks posed by malicious foreign actors’ ICTS, it is necessary that the scope of transactions covered by this final rule encompass critical and emerging technologies and industries throughout the ICTS supply chain. The risks posed by ICTS Transactions are not always correlated with the transaction’s scale and exist regardless of where or when the ICTS enters into the ICTS supply chain. The list of technologies in § 791.3 allows the Department to effectively address these risks by targeting different points of entry into the ICTS supply chain. The broad scope of § 791.3 gives the Department discretion to properly pinpoint and mitigate risks wherever they appear in the supply chain. The ICTS Transaction review process outlined in this final rule is consistent with the goals of E.O. 13873, while prioritizing the ICTS Transactions that pose the highest degree of undue or unacceptable risk, as identified in E.O. 13873, and minimizing the impact to digital and physical trade and commerce.

The Department notes that its reviews of transactions under the IFR have thus far been limited to the review of transactions involving all ICTS produced or provided by a single entity, rather than individual transactions between the entity and other parties, because the provision of ICTS by that entity was the basis of the undue or unacceptable risks. Therefore, the broad scope of the rule does not create undue burden but allows the Department to review ICTS Transactions to determine if an ICTS Transaction is in scope, pinpoint the source of the undue or unacceptable risk, and take action in the most efficient way to avoid tangential or unintended impacts on the U.S. economy or the ICTS supply chain.

In response to comments related to the CFIUS review exception, this final rule simplifies the language in § 791.3(b)(2) and consolidates the previous exception in § 791.3(b) and (c) of the IFR for CFIUS reviews, while preserving the safe harbor granted by CFIUS pursuant to its statute and regulations related to reviews of foreign investments into U.S. businesses and certain real estate transactions by foreign persons. ICTS Transaction reviews are limited to ICTS or classes of ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of one of the listed foreign adversaries, and the review of ICTS Transactions focuses on the undue or unacceptable risk posed by those ICTS Transactions. These reviews

differ in scope from the focus on national security risk arising from certain transactions by foreign persons with or involving U.S. businesses or real estate under CFIUS. The revised provision in § 791.3(b)(2) clarifies that the Department will not review an ICTS Transaction that is also a covered transaction or covered real estate transaction under review, investigation, or assessment by CFIUS, or for which all action has concluded under section 721 of the Defense Production Act of 1950, as amended. This approach avoids duplicative reviews while eliminating potential gaps in mechanisms to review or address undue or unacceptable risks posed by transactions that are not or have not been in the CFIUS process. For the exception to apply, the ICTS Transaction must be the same transaction that CFIUS has determined is a covered transaction or covered real estate transaction under its authorities; a separate transaction, even if involving the same transaction parties subject to a CFIUS mitigation agreement, would not be subject to this exception. The mere fact that an individual or entity has participated in a CFIUS filing or is a party to a CFIUS mitigation agreement would not restrict the Secretary in reviewing any ICTS Transaction to which the individual or entity is party if the ICTS Transaction is distinct from the CFIUS transaction giving rise to a mitigation agreement. Otherwise, a foreign person that has obtained safe harbor for its investment into a U.S. company could then use that company to conduct or engage in malicious activities using ICTS Transactions that were not reviewed by CFIUS. Where CFIUS does not provide safe harbor with regard to the specific ICTS Transaction, the Department may review that ICTS Transaction for potential risks.

Several commenters requested that the Department implement additional exemptions or exclusions so that specific industries or technologies would not be subject to review under the rule. One commenter requested that arrangements for interconnection and the exchange of communications traffic (such as through fiberoptic cables) be exempted from the rule, while another noted that the rule should not be limited to any particular segment of the optical fiber communications industry. Other commenters sought exclusions in the rule for transactions involving information in the public domain, data transmission by telecommunication carriers on behalf of the general public, or technical research or standards development efforts. Others suggested

express safe harbor provisions for transportation companies like common carriers that merely transport ICTS, or safe harbors to create incentives to achieve ICTS supply chain security. Finally, several commenters requested clarification of the statement in the preamble of the IFR that ICTS Transactions solely involving personal hardware devices would not warrant particular scrutiny.

This final rule does not adopt any further exceptions or exclusions to the ICTS Transactions that would fall under § 791.3 of the rule. The Department notes that § 791.3 now refines the ICTS Transactions subject to further review by listing broad technology categories to indicate that the Department is concerned about ICTS Transactions involving information and communications hardware and software; ICTS integral to data hosting, computing or storage that uses, processes or retains sensitive personal data; connected software applications; ICTS integral to critical infrastructure; and ICTS integral to critical and emerging technologies. Section 791.3 is tailored to ensure that the regulations address risks posed by transactions involving the most critical elements and functions of ICTS. Therefore, the rule does not categorically exclude technologies, such as software operating on personal devices listed in E.O. 14034. In addition, the Department believes that the broad technology categories now included in § 791.3 address risks involving ICTS Transactions in the fiber communications and other industries by not implying that technologies that are not specifically listed as part of a category are excluded from possible review. The Department remains open to considering exclusions if further experience with the rule demonstrates that certain types of ICTS Transactions do not pose an undue or unacceptable risk as described in E.O. 13873 to national security, critical infrastructure, or U.S. persons.

Although this final rule does not implement suggestions to revise § 791.3 to exclude additional ICTS Transactions from the scope of transactions subject to review for prohibition or mitigation determinations, the Department has, in response to comments, simplified the list of technologies in § 791.3. In addition to improving clarity about the types of ICTS Transactions the Department may review, this final rule revises the list to focus on ICTS Transactions most likely to pose undue or unacceptable risks due to their foreign adversary nexus. The Department describes below additional

changes in § 791.3 affecting the scope of transactions subject to review for prohibition or mitigation, broken out to provide clarity on each change and its corresponding rationale.

(1) Removal of One Million Unit or Person Threshold

This final rule removes the qualification that ICTS Transactions that involve the use, processing, or retention of sensitive personal data must include the data of more than one million U.S. persons to be subject to review. Additionally, this final rule removes the one-million-unit sales minimum for internet-enabled sensors, webcams, or other end-point surveillance or monitoring devices; routers, modems, or any other home networking device; or drones or other unmanned aerial systems. This final rule also removes the qualification that software designed primarily for connecting with and communicating via the internet be in use by over one million people to be considered ICTS for the purposes of the rule. The Department did not receive many comments regarding these provisions, except to note that it is common for multinational companies to collect and retain data on more than one million individuals and to request an explanation of how the Department would calculate whether a transaction met the numeric threshold.

The Department is removing these thresholds in § 791.3 because the use of a threshold to review an ICTS Transaction is not necessary. The numerical threshold served as a proxy for “undue or unacceptable risk” under the rationale that only transactions involving a large number of sales or users would constitute a true national security risk. However, numerical thresholds do not necessarily correlate with the risks presented by ICTS Transactions involving sensitive personal data. It is possible, for example, that an ICTS Transaction that results in the storage, retention, or use of sensitive personal data of relatively few U.S. persons (such as persons with restricted access to sensitive governmental information) could result in significant risks to U.S. national security or to the safety and security of U.S. persons. Furthermore, as one commenter pointed out; there is nothing inherently riskier about collecting, storing, or retaining data on a specific number of people, or of a certain number of sales. Put another way, the risks presented by ICTS Transactions involving sensitive personal data relate to the type of data collected and the identity of persons from whom that data is collected, rather than the volume of

transactions. Moreover, the Secretary, with other appropriate agency heads, is separately tasked with evaluating the national security risk. That evaluation may include, as one factor, the number of sales or users.

Limiting review of transactions to only those that involve a certain number of users, units, or sales, would be contrary to the objective articulated in E.O. 13873 to reduce, remove, or minimize the risks posed by certain ICTS Transactions, as it would fail to address significant risks posed by ICTS Transactions that fall below the existing thresholds, especially where those ICTS Transactions involve sensitive personal data. Furthermore, such thresholds could result in strategic circumventive behavior by malicious foreign actors who might attempt to limit ICTS Transactions involving sensitive personal data or otherwise posing risks under a particular threshold so as to evade review. For these reasons, the Department is eliminating the thresholds referencing one million persons, units, or sales.

(2) Connected Software Applications

In addition to the changes noted above, the Department is consolidating the examples of software applications from what was § 791.3(a)(4)(v)(A) through (D) into revised § 791.3(a)(4)(iii) to clarify that desktop, mobile, gaming, and web-based applications are all non-exclusive examples of connected software applications that are subject to this final rule, so as to not suggest that those applications are distinct from connected software applications. This revision is consistent with E.O. 14034 but is not a substantive change from the interim final rule.

(3) Definitions of Terms Related to Covered ICTS Transactions

Several commenters requested that the Department clarify the meaning of certain phrases used in § 791.3. First, some commenters proposed that the Department define the phrase “any person subject to the jurisdiction of the United States” in § 791.3(a)(1) to have the same meaning as “United States person,” which they argued would clarify the status of foreign subsidiaries of U.S. companies. Alternatively, commenters suggested the term be defined to include only transactions in which the ICTS enters the United States or is used in the United States.

This final rule uses the phrase “person subject to the jurisdiction of the United States” in § 791.3(a)(1) because that is the phrase used in E.O. 13873. Specifically, section 1 of the E.O. describes the scope of conduct subject

to prohibition as transactions “by any person, or with respect to any property, subject to the jurisdiction of the United States.” Therefore, this final rule does not change the phrase “person subject to the jurisdiction of the United States” in § 791.3(a)(1), which is meant to reflect the language and the requirements of E.O. 13873, to remain consistent with the Department’s authorities under E.O. 13873.

Additionally, some commenters requested an explanation of the meaning of the term “integral” as it was used in § 791.3(a)(4)(ii), (iii), and (vi). However, like the IFR, this final rule uses “integral” in § 791.3 consistent with the word’s common meaning as something that is important or necessary for the operation of ICTS. The Department believes it is not necessary to further define the term “integral” beyond its commonly understood meaning, because any such attempt might add to rather than reduce confusion and might widen or narrow the scope of the rule in ways detrimental to the Department’s ability to identify and address risks.

Finally, a commenter asked the Department to define the term “interest” in § 791.3(a)(2). That provision states that the rule applies to ICTS Transactions that involve “any property in which any foreign country or a national thereof has an interest (including through an interest in a contract for the provision of the technology or service).” The commenter stated that, without a definition, the term “interest” could make ICTS Transactions in which a foreign person has only a tangential, non-controlling interest subject to Departmental review. However, unless an ICTS Transaction also involves “ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary” under § 791.103(b), a foreign person’s tangential interest in property alone would not be sufficient to warrant review by the Secretary. The Department does not provide a general definition for the term “interest.” To explain the term as it is used in section 791.3, the Department is adding language in § 791.3(a)(2) to clarify that the Secretary may review any ICTS Transactions that involve any property in which a foreign national or foreign country has any direct or indirect interest of any nature whatsoever. In the context of § 791.3, the term “interest” includes any interest whatsoever, direct or indirect. This is similar to the term “interest” as defined by the Office of Foreign Assets Control, which also include any interest whatsoever, direct or indirect.

(4) Critical Infrastructure

One commenter requested that the Department provide guidance on the sectors that are included in the term “critical infrastructure” and suggested that the Department draw on definitions in CFIUS regulations for this definition. Like the IFR, this final rule continues to use an Executive Office of the President publication to identify critical infrastructure sectors. The IFR considered “critical infrastructure” sectors as those identified in Presidential Policy Directive 21—Critical Infrastructure Security and Resilience (PPD–21), and the final rule continues to identify the almost identical sectors that are listed in National Security Memorandum 22 on Critical Infrastructure Security and Resilience (NSM–22). However, whereas the IFR referred to the sectors designated as critical infrastructure by PPD–21, § 791.3 of this final rule specifically lists the individual critical infrastructure sectors identified in NSM–22 in § 791.3(a)(4)(iv) to provide additional clarity to the public. NSM–22 includes subsectors of the designated critical infrastructure sectors, and the Department may consider revising the list in § 791.3(a)(4)(iv) to conform to future changes related to critical infrastructure sectors identified in NSM–22. A further description of these sectors can be found here: <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/04/30/national-security-memorandum-on-critical-infrastructure-security-and-resilience/>. Additional details on critical infrastructure sectors are also available at the U.S. Department of Homeland Security’s Cybersecurity & Infrastructure Security Agency’s website, <https://www.cisa.gov/>. NSM–22 uses a similar definition of “critical infrastructure” as CFIUS, though the Department is not adopting the commenter’s suggestion to use the definition of the term “critical infrastructure” directly from CFIUS regulations. By listing the sixteen critical infrastructure sectors identified in NSM–22, the Department provides guidance to stakeholders about which sectors are of particular concern to the Department and represent the Department’s highest priority.

(5) List of Critical and Emerging Technologies

Certain commenters expressed concern that specific critical and emerging technology categories in § 791.3 were too broad, and recommended that only facets of particular critical and emerging technologies should be specifically

identified. In this final rule, the Department is not narrowing the scope of specific critical and emerging technologies but notes that the primary concern is with ICTS Transactions that pose undue or unacceptable risks related to critical and emerging technologies, as opposed to critical and emerging technology in general. The Department is amending the list of critical and emerging technologies in § 791.3(a)(4)(v) to indicate that the Department is not solely concerned about artificial intelligence and machine learning; quantum key distribution; quantum computing; drones; autonomous systems; or advanced robotics. Rather, the Department is concerned about potential situations where ICTS Transactions involving critical and emerging technologies with a foreign adversary nexus may pose undue or unacceptable risks to U.S. national and economic security. While quantum information and enabling technologies, artificial intelligence, autonomous systems, advanced robotics, and drones remain in scope, the critical and emerging technology list now includes eleven technology categories to reflect technological advancements and changes in the risk landscape since the Department issued the IFR. The list of eleven technologies is based on a comparison of common technologies between the 2023 United States Government National Standards Strategy for Critical and Emerging Technology and the White House’s Office of Science and Technology Policy 2024 list of Critical and Emerging Technologies.

(6) Retroactivity of Rule’s Applicability

Under § 791.3, the regulations apply to ICTS Transactions that were initiated, pending, or completed on or after January 19, 2021. Several commenters were concerned that an investigation could require parties to divest entities or “unwind” long closed transactions. These commenters asserted that review of closed transactions could increase uncertainty for industry, disrupt ongoing business relationships, and deter U.S. innovation and technology investment.

Some commenters raised concerns about the retroactive application of the regulations to services under contract prior to January 19, 2021. A common example cited by commenters was the potential investigation of a transaction involving services provided under a purchase order or statement of work pursuant to a master service agreement entered by the parties prior to January 19, 2021. Commenters were concerned that the Department’s review could

disrupt the underlying service contract and requested that such arrangements be excluded from review.

The Department reiterates that this final rule does not apply retroactively to transactions that were completed prior to January 19, 2021. Nevertheless, under this final rule, the Department may review ICTS Transactions initiated, pending, or completed on or after January 19, 2021, even if they are related to a contractual or other agreement established prior to January 19, 2021. While the regulations could change expectations about how parties' multi-year arrangements would operate relative to before the rule took effect, the regulations nevertheless only apply to ICTS Transactions initiated, pending, or completed on or after January 19, 2021.

To clarify, using an example provided by commenters: ICTS obtained using a purchase order dated on or after January 19, 2021, may be subject to review by the Secretary, even if an agreement regarding the provision of such ICTS was established prior to the purchase order date. This is because the provision of ICTS after January 19, 2021, is considered a new ICTS Transaction that is distinct from the underlying contract. If reviews were limited to only transactions with no connection to business arrangements entered into prior to January 19, 2021 the Department would be prevented from examining and mitigating or prohibiting ongoing risks arising from the current provision of ICTS. Thus, like the IFR, this final rule provides that new activity—for example, provision of ICTS, service updates, or operations—under contracts that existed on or prior to January 19, 2021, constitute new ICTS Transactions that may be subject to review.

The Department's experience to date has involved reviews focused on systemic risks posed by classes of ICTS Transactions involving a particular ICTS provider, rather than risks posed by individual ICTS Transactions. The risks arising from such ICTS Transactions exist regardless of when a contract may have been entered into, and in fact the risks might persist because of such contracts. Therefore, under this final rule, the Department may review ICTS Transactions that occur after January 19, 2021, even if they occur pursuant to a contract or agreement entered into prior to that date.

Some commenters explained that—even for contracts initially entered after January 19, 2021—an investigation initiated by the Department several years after an arrangement's effective date could require the termination of long-settled business relationships.

These commenters requested that the Department establish a statute of limitations of sorts, establishing a time limit beyond which the Department could not review an ICTS Transaction. However, the Department's reviews are focused on the timely elimination or mitigation of undue or unacceptable risks as identified in E.O. 13873, and changed circumstances over time may affect the risks posed by a closed transaction. Therefore, this final rule does not establish a limitations period separate from the statute of limitations for violations of IEEPA because the Department's experience with the procedures set out in the regulations has not suggested that implementing a fixed limitations period is necessary.

Section 791.4—Determination of Foreign Adversaries

Some commenters raised concerns about the process in § 791.4 by which the Secretary determines foreign adversaries. These commenters argued that the process is unclear and could potentially be overly broad. Some commenters requested that the Department provide additional information about the criteria used to determine foreign adversaries, publish unclassified information supporting the Secretary's determination of foreign adversaries, or provide prior notice before any revisions to the Secretary's determination of foreign adversaries under § 791.4 take effect. Others requested that the Secretary focus on specific entities or persons rather than foreign governments, and another commenter requested that the Department exclude governments with whom the United States has a defense treaty alliance from designation as a foreign adversary. The commenters stated that these suggested revisions would avoid disproportionate responses to potential risks and would allow stakeholders time to comply with new regulatory requirements.

This final rule does not revise or amend the provisions on determinations of foreign adversaries, nor is the Department proposing specific procedures for such determinations. Although the Department appreciates commenters' desire for clarity about the determination process, a requirement for the Secretary to follow specific procedures in making a determination could undermine the security and safety of the United States, as a foreign adversary determination indicates that those entities pose significant risks to U.S. national security. Nonetheless, any new foreign adversary determination would apply only to actions taken after such a determination.

Regarding commenters' request that certain governments be excluded from designation as foreign adversaries, such as those with whom the United States has a defensive treaty alliance, or that the Department not designate entire governments as foreign adversaries, the Department notes two points. First, that the definition of "foreign adversary" in E.O. 13873 includes foreign governments and foreign non-government persons and is not subject to revision by this final rule. Second, E.O. 13873 grants the Secretary discretion to consider all aspects of entities before determining whether they are a "foreign adversary" that should be listed in the regulation. The Department declines to categorically exclude certain types of entities from possible foreign adversary determinations because doing so could limit the Department's ability to address future risks facing the ICTS supply chain.

Although this final rule does not exclude any foreign governments or foreign non-government persons from § 791.4 in response to comments, it does correct the definition to include the "Macau Special Administrative Region" in § 791.4(a)(1) within the People's Republic of China in the list of foreign adversaries. Section 791.4(a)(1) is updated to read "The People's Republic of China, including the Hong Kong Special Administrative Region and the Macau Special Administrative Region (China)." Macau is a part of the People's Republic of China, just as is Hong Kong, and should be included in the definition to remove any uncertainty as to the geographic scope of the term.

Section 791.100—Information Available to the Secretary

Several commenters expressed concerns that the Department may initiate an ICTS Transaction review solely on the basis of a referral of information from industry, and that accepting such referrals may encourage anti-competitive behavior. In response, the Department has updated § 791.100(a)(8) and (9) in this final rule to distinguish between a referral from another U.S. Government agency and information from private industry provided voluntarily. This final rule uses the term "referral" to mean information from or a recommendation made by other U.S. Government agencies to the Department. In some cases, information provided by an industry entity may assist the Department in assessing an ICTS Transaction and the potential risks such transactions may pose to U.S. national security or U.S. persons, and the

Department would not reject that information. Even so, the Department emphasizes it does not encourage abuse of its processes for anti-competitive purposes. As with all information received by the Department, the Department will carefully vet information provided voluntarily by private industry pursuant to § 791.100(a)(9). This information will be treated holistically and will be used in the same ways as other information that is generally available to the U.S. Government.

Additionally, some commenters requested further explanation of how the Secretary will assess whether an ICTS Transaction involves ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary under § 791.100(c). Specifically, commenters requested that the Department define “ties between the person—including its officers, directors or similar officials, employees, consultants, or contractors—and a foreign adversary,” in § 791.100(c)(2). Some suggested that “ties” be defined to mean that a person is a business partner, close associate, or family member of a foreign adversary. The Department believes that § 791.100(c) currently captures the relationships that the Secretary may consider when assessing whether a transaction involves ICTS designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary and that limiting the Secretary’s consideration as suggested by commenters could hinder the Secretary’s ability to appropriately respond to risks in a given case.

Section 791.101—Information to be Furnished Upon Demand

The IFR specified that “persons involved in an ICTS Transaction” may be required to furnish information under oath. In this final rule, the Department updates § 791.101 to note that, pursuant to the authority granted to the Department by E.O. 13873 and IEEPA, the Department may require any person to furnish, under oath, complete information relative to a transaction involving ICTS. This revision is made to better reflect the authorities granted to the Department under IEEPA and E.O. 13873.

Section 791.102—Confidentiality of Information

While generally supportive of the interim final rule’s confidentiality provisions, a few commenters stressed

that confidential information provided to the Department should not be disclosed publicly. Other commenters requested that the rule clearly establish the obligations of any third-party contractors to protect confidential information.

The Department appreciates these comments and the need to protect business confidential information or other sensitive information from disclosure, particularly as such information may be necessary for the Department to assess potential or actual risks related to ICTS Transactions or classes of ICTS Transactions. The Department believes that these confidentiality concerns are addressed by the protections for such information already afforded in § 791.102, along with the applicable disclosure exemptions under the Freedom of Information Act and criminal penalties for Federal employees who disclose business confidential information (18 U.S.C. 1905).

This final rule implements a few changes to § 791.102. First, it removes duplication within § 791.102(b) to make clear that all potential disclosures pursuant to the regulations of information or documentary materials that are not otherwise publicly or commercially available would be “subject to appropriate confidentiality and classification requirements.” It also revises § 791.102(b)(4), correcting an inadvertent typographical error in the IFR to permit the Secretary to disclose confidential information in response to “a request by” a governmental entity or a foreign government entity of a U.S. ally or partner, but only to the extent such disclosure is necessary for national security purposes.

Second, this final rule amends § 791.102(b)(6) to provide that, when otherwise permitted by law, the Secretary may disclose information or documentary materials that are not otherwise publicly or commercially available if necessary to prevent imminent harm to U.S. national security or the security and safety of U.S. persons. The Department anticipates that disclosure of information under this paragraph would only occur in the exceptional case where public or commercially available information would not suffice to prevent an imminent and specifically identified harm.

Section 791.103—Review of ICTS Transactions

The Department received several comments about the Secretary’s review of ICTS Transactions under § 791.103. Commenters generally raised concerns

about the breadth of these provisions and sought greater clarity in the procedures the Secretary will follow when determining whether to initiate review of an ICTS Transaction. One commenter suggested that the initial review of the risks posed by an ICTS Transaction should include an analysis of the potential costs that would be required to remediate any identified risks. Several commenters questioned the circumstances under which the Secretary should be able to consider referrals for review of ICTS Transactions or classes of ICTS Transactions based on information received from private parties due to the potential for anti-competitive behavior. Those commenters provided multiple suggestions, including to eliminate the option for the Secretary to consider a transaction based on information submitted by private parties, implementation of a process for entities to review and respond to information from private parties that prompts review of a transaction, or a requirement that any private party submitting information that prompts a review also provide a sworn affirmation that the information supplied is true and correct.

As noted above in the discussion of *Section 791.100 “Information Available to the Secretary,”* the Department will consider all available information when reviewing an ICTS Transaction, including information received from private industry. The Secretary critically assesses all information received during a transaction review. Specifically, as outlined in § 791.103, the Secretary will assess whether an ICTS Transaction falls within the scope described in § 791.3, involves ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary as described in § 791.100(c), and poses an undue or unacceptable risk as described in §§ 791.100(d) and 791.103(c).

In response to commenters’ concerns about anti-competitive conduct in connection with ICTS Transaction reviews initiated following the receipt of information from industry, as discussed further below, this final rule amends § 791.105 to clarify that the Secretary will provide a party or parties to a transaction with information regarding the factual basis supporting the Secretary’s Initial Determination. Section 791.107 affords parties an opportunity to respond to the Initial Determination and identify potential errors in that document or argue that the circumstances leading to the Initial Determination no longer apply, prior to the Secretary taking any final action.

Accordingly, pursuant to § 791.107, if the parties believe that information used for the Initial Determination is incorrect, the parties can correct that information during the response period. Consistent with the approach outlined above to address commenters' concerns about anti-competitive acts by parties, the Department expects that § 791.200, which authorizes penalties for, among other acts, submitting false or fraudulent statements to the Department, will deter submissions of false information for anti-competitive purposes.

This final rule also includes several procedural changes to § 791.103. First, this final rule revises § 791.103(a) to clarify that the Secretary has the discretion to initiate review of an ICTS Transaction after considering any of the information described in § 791.100(a), including referrals from other U.S. Government agencies. Section 791.103(b) specifies that the Secretary will make determinations during this review about whether a transaction is a Covered ICTS Transaction as described in § 791.3, involves ICTS that is designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary as described in § 791.100(c), and poses an undue or unacceptable risk as identified in E.O. 13873 and described in §§ 791.100(d) and 791.103(c). In assessing whether an ICTS Transaction poses an undue or unacceptable risk, the Secretary may evaluate the criteria listed in § 791.103(c) and the materials described in § 791.100(d). These revisions to § 791.103(a) and (b) in this final rule do not reflect substantive changes from the IFR, but the revisions clarify that, consistent with E.O. 13873, the Secretary may commence a review on the Secretary's own initiative or following a referral from another U.S. Government agency.

In addition, this final rule revises § 791.103(c) regarding the criteria the Secretary may consider when evaluating whether a Covered ICTS Transaction poses an undue or unacceptable risk. To provide more detail and to acknowledge the potential economic impacts of actions under this rule, this final rule amends § 791.103(c)(7), which previously specified that the Secretary would consider the "nature of the vulnerability implicated by the ICTS Transaction," to state that the Secretary will consider the "nature and characteristics of the customer base, business relationships, and operating locations of the parties to the Covered ICTS Transaction." Additionally, to streamline criteria that the Secretary

will use to assess undue or unacceptable risks posed by covered ICTS Transactions, § 791.103(c) now combines certain aspects of the criteria for evaluating connected software applications listed in E.O. 14034 with the criteria for all other types of ICTS Transactions, when applicable. Under this final rule, the criteria previously listed in the IFR's § 791.103(d)(1), (3), and (4) related to connected software applications are now included in § 791.103(c)(2), streamlining the regulatory text and eliminating redundancies. Specifically, for all ICTS Transactions the Secretary may evaluate the ownership, control, or management by persons subject to the jurisdiction or direction of a foreign adversary, including connections to foreign adversary military and connections to persons involved in malicious cyber activities.

The criteria that specifically apply to connected software applications are now listed under § 791.103(c)(11), and the list consists of:

- The number and sensitivity of users;
- The scope and sensitivity of data that the application collects;
- Use of the connected software application to conduct surveillance that enables espionage;
- Regular, reliable third-party auditing of the application; and
- The extent to which identified risks can be mitigated and verified.

This reorganization clarifies the factors that the Secretary may evaluate when determining whether ICTS Transactions involving connected software applications pose undue or unacceptable risks pursuant to the authority granted by E.O. 14034, and it better integrates the criteria that may be relevant to reviews of ICTS Transactions involving connected software applications as well as to reviews of other ICTS Transactions.

Section 791.104—Interagency Notification

Several commenters expressed uncertainty about the interagency consultation requirements in the IFR. Some suggested that the Department should further explain the meaning of "interagency consultation" mentioned in §§ 791.104 and 791.108, noting that the IFR did not establish a formal consultative process. Other commenters recommended that the rule specifically reference other agency or executive department heads for inclusion in the consultation process to avoid duplicative reviews of ICTS Transactions, particularly in the context of government procurement.

Commenters also requested a definition of the term "consultation" to ensure it is more than a "mere notification" to other agencies, and that it require an interagency vote and interagency consensus on whether an ICTS Transaction is subject to the rule prior to elevating any disagreement to the President. Commenters argued that consensus-seeking would ensure a "whole of government" approach to addressing ICTS Transactions and avoid duplicate or conflicting actions taken by the agencies tasked with securing ICTS. In response, this final rule makes several changes to clarify the nature of the consultations with other agencies required prior to Initial Determinations and Final Determinations.

Consultations between agencies can take many forms and may have different meanings or requirements in specific contexts. Consultation may be "formal," or "informal," and result in a memorandum of agreement between agencies, written decisions, or more informal understandings or discussions between agencies. The IFR required consultation in certain circumstances but did not describe what such consultation would entail. In this final rule, the Department amends the consultation provisions to better describe the types of interagency consultation required prior to the production of the Initial Determination and the issuance of the Final Determination.

This final rule amends § 791.104 (Initial Determination) and § 791.108 (Final Determination) to clarify what is required of the Department and the appropriate agency heads during the processes prior to issuing Initial or Final Determinations. These changes are procedural in nature and will have a limited impact on the public or the parties to a transaction under review. The changes do not expand the list of agency heads included in the definition of "appropriate agency heads," because the list consists of agencies specifically identified in E.O. 13873. Both the E.O. and this final rule provide that, where the Secretary determines it to be appropriate, other agency heads may be consulted, which allows for sufficient latitude to avoid redundant regulatory efforts.

This final rule amends § 791.104 to describe the Secretary's process of notifying and receiving comments from appropriate agency heads if the Secretary assesses that an ICTS Transaction meets the criteria in § 791.103. If the Secretary assesses that an ICTS Transaction meets the criteria described in § 791.103(b), as part of the consultation process the Secretary will

notify the appropriate agency heads of such and provide each agency head the opportunity to submit to the Department, within 21 days, any comments in writing regarding the assessment. If an agency head does not provide written comments within that time, the Secretary may presume that the agency has no comments. Under this final rule, as under the IFR, if an agency head provides comments, the Secretary may use those comments to inform further assessment of whether the ICTS Transaction meets the criteria in § 791.103 and to inform the development of the Initial Determination issued under § 791.105. In such circumstances, if an agency head disagrees with the Secretary's assessment, the Secretary will carefully consider the agency head's position in determining how to proceed. The Department will notify appropriate agency heads of an Initial Determination at least twenty-one (21) calendar days prior to issuing and notifying a party or the parties to the Covered ICTS Transaction of the Initial Determination under § 791.105(b)(3).

E.O. 13873 does not require the Secretary to seek consensus from the appropriate agency heads prior to issuing an Initial Determination and this final rule does not add a consensus requirement to § 791.104. However, in all cases, the Secretary will carefully weigh the comments received from appropriate agency heads and will consult with the appropriate agency heads to avoid redundant regulatory efforts.

The amendments to § 791.108 in this final rule, covering the interagency consultation regarding the Final Determination, are discussed in more detail below in the discussion of *Section 791.108 "Interagency Consultation on the Final Determination."*

Section 791.105—Initial Determination

The interim final rule established a process for the Secretary to issue an Initial Determination in § 7.105. The Department received relatively few comments addressing this section of the rule, but some commenters requested that the Department amend §§ 791.105 and 791.109(f) to strike provisions authorizing publication of the Initial Determination or Final Determination in the **Federal Register**, to require the Department to omit from public notices information that would reveal the identities of the parties to an ICTS Transaction, or to require party consent before publication in the **Federal Register**. Commenters acknowledged that the rule does not generally permit public disclosure of confidential

information, but some argued that the Initial Determination and Final Determination should themselves be treated as confidential and noted that publication of the Secretary's determinations could lead to financial or reputational harm.

In consideration of the comments about publication of Initial Determinations, the Department is revising § 791.105(d) to note that the Secretary retains discretion to publish a notice of an Initial Determination—rather than the full text of an Initial Determination—in the **Federal Register**. The Department is committed to appropriately safeguarding confidential information in its possession and, when possible, mitigating unnecessary economic impact to parties to an ICTS Transaction. While some commenters asserted that, in all situations, Initial Determinations and Final Determinations should not be made public, the Department maintains its discretion to publish notices of Initial Determinations in the **Federal Register** when warranted; for example, to mitigate undue or unacceptable risks, or when an ICTS Transaction significantly impacts members of the public.

The Department disagrees with commenters who maintain that, if the Department publishes a notice of an Initial Determination in the **Federal Register**, the names of parties should be omitted from the notice. Because Initial Determinations do not represent final decisions, and because the Department recognizes that there may be an economic impact on parties named in those publications, the Department may choose not to publish notices of Initial Determinations in the **Federal Register**. However, the Department may choose to do so in certain situations, particularly when non-parties or parties that cannot be individually identified will be affected by a determination, such as when classes of ICTS Transactions are involved. The discretion to publish Initial Determinations, including the names of parties, allows the Department to address situations in which national security risks are significant or imminent and publication will assist the public, including U.S. businesses, in avoiding those risks.

In such cases, publishing a notice of an Initial Determination in the **Federal Register** allows for such persons to receive notice of a decision. In the circumstance in which the Department decides to publish a notice of an Initial Determination, the Department would also publish a notice of a Final Determination to inform the public of the final outcome of its review.

This final rule amends § 791.105(a) and (b) to reflect the new interagency notification procedures in § 791.104. These revisions explain that the Secretary will consider comments received from appropriate agency heads regarding the Secretary's assessment of whether an ICTS Transaction meets the criteria under § 791.103(b). However, the Secretary retains discretion to determine whether the transaction poses an undue or unacceptable risk and, therefore, the discretion to end review of an ICTS Transaction, amend the assessment, or proceed to making an Initial Determination.

This final rule also amends § 791.105(b)(1) to note that the Initial Determination will provide parties with information regarding the factual basis supporting the Secretary's decision to either prohibit an ICTS Transaction or permit the ICTS Transaction with mitigation measures. This clarification will ensure that parties receive notice of the material facts underlying the Secretary's Initial Determination and will help parties provide more specific and complete responses to the Secretary's Initial Determination under § 791.107. As discussed previously, this revision also responds to comments requesting that the rule provide parties an opportunity to respond to information that private parties submit to the Department. These changes allow for parties to review and respond to facts submitted by private parties when such information is part of the factual basis supporting an Initial Determination.

In addition, this final rule modifies § 791.105(b)(3) to clarify how the Department identifies parties to an ICTS Transaction that must be served with an Initial Determination. New § 791.105(b)(3)(i) addresses the situation in which the Department identifies a limited number of parties to a single or set of ICTS Transactions who would be served the Initial Determination. New § 791.105(b)(3)(ii) addresses situations, which the Department expects will be common, in which the Department reviews a class of ICTS Transactions involving a single person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, as well as unidentified U.S. persons or U.S. persons whom it is not practical to identify. These situations may involve a large number of U.S. consumers, many of whom cannot be individually identified or whom it would be impractical to individually identify. In such case, individual service of the Initial Determination on every party may not be feasible or may be unnecessary or inappropriate. The

unknown or unidentifiable U.S. parties in many cases will not have unique information that would affect the Final Determination or, for example, enable the Department to negotiate effective mitigation measures. New § 791.105(b)(3)(ii) therefore recognizes that seeking to notify all potential parties who have purchased or accessed ICTS that the Department deems to entail undue or unacceptable risk may not be possible or practical, nor would it help the Department to mitigate or eliminate risks associated with the ICTS.

The Department may still publish a notice of an Initial Determination in the **Federal Register**, pursuant to § 791.105(d), where, for example, notice would be beneficial to warn the public about an identified risk. These changes to § 791.105(b)(3) and (d) are procedural in nature. The Department will employ the method of service that is best suited to notifying the affected parties to an ICTS Transaction and provide them with an opportunity to respond to an Initial Determination.

Section 791.106—Recordkeeping Requirement

The Department received no comments about the recordkeeping requirements in § 791.106. This final rule revises § 791.106, based on the Department's experience, to provide examples of the types of notification that require notified individuals or entities to retain records related to an ICTS Transaction, and to implement a time limit for record retention. In addition to directly notifying a person that an ICTS Transaction is under review, the Department may notify a person through other means, such as a demand for information or documents under § 791.101. Under revised § 791.106, upon receipt of this notification, a person must promptly take steps to retain records related to the identified ICTS Transaction. Revised § 791.106 also clarifies that any records that a notified person must retain in connection with an ICTS Transaction must be retained for ten years following issuance of a Final Determination unless the Final Determination specifies otherwise. Instead of retaining the interim final rule's indefinite record retention requirement, the Department intends for the ten-year time limit to reduce any costs associated with record retention pursuant to the rule. If the Department does not issue an Initial Determination to a person within ten years of providing notice that an ICTS Transaction is under review, that person can assume their recordkeeping

obligation has been satisfied unless otherwise informed by the Department.

Section 791.107—Procedures Governing Response and Mitigation

The interim final rule provided that, after being notified of an Initial Determination, parties to an ICTS Transaction would have 30 days to respond to the Initial Determination or to assert that the circumstances resulting in the Initial Determination no longer apply. Several commenters expressed concern that the time provided in § 791.107 for a party's response to the Secretary's Initial Determination was not long enough. Commenters explained that it may take a party to an ICTS Transaction longer than 30 days to respond or propose mitigation measures if the issues or business relationships identified in an Initial Determination are particularly complex. Some commenters also requested a maximum timespan for imposed mitigations, or a periodic review of the mitigation measures to determine whether they should remain in effect.

This final rule does not establish a maximum timespan for imposed mitigations because the Department continues to believe that such an across-the-board maximum would hinder the Department in fully evaluating any implemented mitigations, resulting in national security vulnerabilities. Risks will be specific to each case, and because the rule provides that the Department may negotiate mitigation measures with the parties to an ICTS Transaction, the mitigation measures (when applicable) will also be specific to each case and tailored to address the identified risks. In some cases, a mitigation measure might be appropriate for a limited time; in other cases, a limited time frame might merely delay the realization of the identified risks or even increase them. Furthermore, under § 791.6, which states that "any determinations, prohibitions, or decisions issued under this part may be amended, modified, or revoked, in whole or in part, at any time," the Secretary is already permitted to modify mitigation measures when necessary or appropriate. Therefore, the Department believes that amending the rule as suggested by these comments is unnecessary.

However, this final rule does make several changes to the procedures governing response and mitigation in § 791.107, including some minor stylistic edits. Because 30 days may not always be sufficient time for a party to prepare a response to the Initial Determination or propose remedial

steps, this final rule amends § 791.107, in response to comments, to allow an initial 30 days to respond to an Initial Determination. Additionally, § 791.107 allows parties to seek, and the Secretary to allow for good cause shown, an extension of another 30 days. In total, parties may receive up to 60 days to respond to an Initial Determination (30 days initially with a potential 30-day extension). The Secretary retains discretion to grant an extension and may consider factors such as the complexity of the ICTS Transaction under review, the severity of the risks identified in the Initial Determination, and the impact that granting an extension might have on the overall timeframe for review.

Additionally, this final rule amends § 791.107(c) to clarify that all written submissions from a party in response to an Initial Determination may not exceed 50 pages unless a party obtains prior approval from the Secretary. The Department believes that a page limit will facilitate more efficient communications between the Department and the party or parties to an ICTS Transaction. The Department also clarifies in new § 791.107(c)(3) that parties may include business confidential information in written submissions to the Department, but that any business confidential information included in a submission must be clearly and specifically identified. The clear demarcation of business confidential information in parties' submissions will help the Department be responsive to concerns raised by commenters about protecting this type of information.

Section 791.108—Interagency Consultation on the Final Determination

In response to comments expressing uncertainty about the process the Secretary will use to consult with appropriate agency heads regarding a proposed Final Determination, this final rule amends § 791.108 to provide the public with more clarity about the procedures governing the interagency consultation on the Final Determination.

E.O. 13873 requires the Secretary to consult with appropriate agency heads when determining whether an ICTS Transaction involves ICTS designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, whether the ICTS Transaction poses an undue or unacceptable risk, and when designing or negotiating measures to mitigate the risks posed by an ICTS Transaction that would otherwise be prohibited. The IFR

implemented the directive in E.O. 13873 for the Secretary to make certain determinations “in consultation” with heads of agencies by specifying in § 791.108 that the Secretary would “consult with and seek the consensus of all appropriate agency heads prior to issuing a final determination as to whether the ICTS Transaction shall be prohibited, not prohibited, or permitted pursuant to the adoption of negotiated mitigation measures.” However, as commenters noted, the IFR did not clearly explain that consensus requirement.

This final rule clarifies the requirement for the Secretary to seek the concurrence of all appropriate agency heads before issuing a Final Determination. With this final rule, the Secretary may presume concurrence if no response is received within fourteen days from one of the appropriate agency heads or the designee of appropriate agency heads. This final rule also clarifies that if an agency objects to the Final Determination, the objection must be received by the Secretary within the 14 days, and the objection must come from the agency’s Deputy Secretary or equivalent level.

Under the final rule, the Secretary will consult with and seek concurrence of appropriate agency heads and will carefully consider views from the appropriate agency heads to inform a Final Determination. The Department has established procedures to ensure robust interagency participation in the process. Consultation will allow the Secretary to update Final Determinations based on interagency input.

Section—791.109 Final Determination

Section 791.109 sets forth the process the Secretary will follow when issuing a Final Determination and the information that must be included in the Final Determination. Section 791.109(b) of the interim final rule required the Secretary, absent a finding that additional time is necessary, to issue a Final Determination within 180 days of accepting a referral and commencing the initial review of a Transaction. One commenter suggested that transactions should be deemed approved if the Secretary does not reach an Initial Determination or Final Determination within a fixed period, with the option for extensions under narrow and defined circumstances. This approach, the commenter argued, would reduce uncertainty for parties to an ICTS Transaction and avoid costly delays. Other commenters asserted that the 180-day limit was too long, given

the fast pace of many commercial transactions.

After careful consideration, the Department believes that maintaining the interim final rule’s 180-day time limit to issue a Final Determination strikes an appropriate balance between reducing potentially costly delays and ensuring the Department has sufficient time to thoroughly review ICTS Transactions. Notably, to date the Department has not delayed or sought to delay any ICTS Transactions during the pendency of an investigation. However, the Department agrees with commenters that the timeline for reviews was unclear and could create confusion because, among other things, the IFR did not specify when a review is initiated. To improve clarity, this final rule revises the 180-day time limit so that it begins when a party or parties to a transaction are served a copy of an Initial Determination pursuant to § 791.105(b)(3) and grants the Secretary sole discretion to extend this timeline.

Some commenters also requested that the Department implement a formal appeal process following issuance of a Final Determination or a mechanism to allow parties to seek reconsideration based on a change in circumstances. As discussed in the preamble to the IFR, the Department continues to believe that an administrative appeals process is unnecessary in this final rule. The Department directly engages with each party to the ICTS Transaction under review concerning the Department’s finding that the party has engaged in a Covered ICTS Transaction, the Department’s risk assessment, and whether the Department has initially determined that an ICTS Transaction is prohibited or permitted subject to the adoption of mitigation measures, as described in § 791.107. Each party has an opportunity to respond to the Initial Determination pursuant to § 791.107, including by asserting that there is an insufficient factual or legal basis for the Initial Determination. The Department carefully considers each party’s arguments, evidence, or proposed remedial steps prior to making a Final Determination. The Department agrees that reconsideration of a Final Determination may be warranted in some cases, such as if there is a change of circumstances that materially alters the prior assessment. Section 791.6, which remains unchanged from the IFR, permits the Secretary to reconsider Final Determinations unless otherwise provided by law.

This final rule also revises § 791.109(c) in response to a comment which pointed out that the IFR implied that the Secretary has discretion to

direct prohibitions that are more restrictive than necessary to address the undue or unacceptable risk resulting from an ICTS Transaction because of the IFR text saying the Secretary has “discretion to direct the least restrictive means necessary to tailor the prohibition to address the undue or unacceptable risk.” The Department notes that, in most cases, what amounts to the least restrictive means to fully address the risks posed by a Covered ICTS Transaction could be open to different interpretations. Accordingly, this final rule revises § 791.109(c) to clarify that the Secretary will direct the means that the Secretary determines to be necessary to address the undue or unacceptable risk posed by the Covered ICTS Transaction. E.O. 13873 does not require the Secretary to implement the least restrictive means to address undue or unacceptable risk; it provides the Secretary certain discretion to craft mitigation measures that address the overall undue or unacceptable risks posed by ICTS Transactions or classes of ICTS Transactions.

This final rule also amends § 791.109(a) to provide that the Secretary must issue a Final Determination when the Secretary has previously issued an Initial Determination. The interim final rule required a Final Determination only following an Initial Determination that proposed to prohibit an ICTS Transaction. The Department believes that it is important to issue a Final Determination if it has issued an Initial Determination, regardless of whether the Initial Determination proposed to prohibit the ICTS Transaction or permit the ICTS Transaction with mitigation measures, to describe potential risks the Department has identified in connection with an ICTS Transaction, provide a record of decisions, and explain any changes from an Initial Determination.

In addition, this rule includes a new paragraph (9) to § 791.109(d) to clarify that, in cases where the Secretary determines to permit an ICTS Transaction subject to the implementation of measures to mitigate undue or unacceptable risk, the transaction may subsequently be prohibited if a party fails to comply with the terms or obligations of a mitigation agreement. This is not a substantive change from the IFR, but a clarification. Specific criteria for violations that would lead to prohibiting a previously mitigated transaction would be covered in the individual mitigation agreements implemented following the review of an ICTS Transaction or class of ICTS Transactions.

Finally, this action revises § 791.109(f) to clarify that the Secretary publishes notices of Final Determinations in the **Federal Register**, whereas under the IFR the Secretary published the results of Final Determinations to prohibit an ICTS Transaction in the **Federal Register**. This change more accurately represents the intention to publish the outcome of the determination proceedings, without necessarily sharing extensive details about those proceedings. The decision on whether to publish a notice of a Final Determination will vary based on the following new requirements.

The final rule continues to require publication of any Final Determination to prohibit an ICTS Transaction, but as a notice in the **Federal Register**. Publishing a notice of a Final Determination—especially in the case of a determination that a transaction will be prohibited—provides notice to persons about any steps they can take to reduce the risk associated with the ICTS Transaction or to comply with the Final Determination. Additionally, in some cases, the Department may need to inform members of the public about a Final Determination to mitigate risks with the parties to a transaction even if an ICTS Transaction is not prohibited. In those cases, the Secretary may publish a **Federal Register** notice of its Final Determination to mitigate the risk of an ICTS Transaction. Also, if the Department were to issue a **Federal Register** notice about its Initial Determination, the Department will also publish a notice of its Final Determination to inform the public of the Department's final decision to prohibit, mitigate, or permit an ICTS Transaction. In some cases, publication of notices of Final Determinations to prohibit, mitigate, or allow an ICTS Transaction may be valuable to warn the public about identified undue or unacceptable risks or to provide guidance to persons contemplating similar ICTS Transactions. Publication of a Final Determination in the **Federal Register** also provides notice of the Final Determination to persons that are not a party to an ICTS Transaction and who may also be subject to a prohibition in a Final Determination. This final rule also retains the protections for confidential information discussed above, and any published notice of a Final Determination will omit confidential business information under § 791.109(f).

Section 791.200—Penalties

The Department received a few comments on the penalty provisions of § 791.200. Citing the nuances of

subcontracting government contracts, some commenters requested that the rule employ an intentionality standard for any violations of the regulation that lead to civil penalties. These commenters argued that the current standard, especially regarding the authorization of penalties for causing any knowing violation, risks confusion and higher compliance costs for contractors with multiple layers of subcontractors. Another commenter suggested that only the parties to a transaction should be held liable for a violation of a Final Determination.

It is possible for a non-party to an ICTS Transaction reviewed by the Department to engage in activities that are contrary to a Final Determination to prohibit an ICTS Transaction, and for those persons to be held liable for violating a prohibition on an ICTS Transaction and therefore these regulations. Also, a person or entity does not need to be a party to an ICTS Transaction to have notice that certain activity is prohibited and to assist or seek to assist others to violate a Final Determination to prohibit an ICTS Transaction (such as by attempting to import a prohibited ICTS) or a Final Determination to mitigate the risk of an ICTS Transaction (for example, directing a party to a mitigation agreement to procure ICTS that does not comply with a mitigation agreement with knowledge that such a mitigation agreement exists). Generally, persons must comply with direction that the Department publishes in the **Federal Register** with regards to mitigating undue or unacceptable risk posed by foreign adversary-nexus ICTS Transactions. The purpose of these rules and of E.O. 13873 is to protect against risks to the ICTS supply chain. In that regard, the penalty provisions serve to encourage U.S. entities engaging in ICTS Transactions with entities with a nexus to a foreign adversary to conduct appropriate due diligence about those transactions or face potential liability.

Although this final rule continues to authorize penalties against persons who are not parties to a transaction, the Department has revised § 791.200 to address commenter concerns about the mental state requirement for a civil violation in certain instances as described in § 791.200(a). Under this final rule, persons can be held responsible for assisting a violation of a Final Determination to mitigate an ICTS Transaction through a mitigation agreement between the U.S. Government and identified parties to an ICTS Transaction, if they have knowledge (as defined at 15 CFR 772.1) that such a mitigation agreement exists.

Activities that are prohibited for those with knowledge of the existence of a mitigation agreement includes aiding and abetting violations, commanding a violation, procuring a product that is violative, and other prohibited activities. Finally, providing false information to the Department in connection with an ICTS Transaction under review is also prohibited.

This final rule also amends § 791.200 to clarify the conduct that may lead to penalties under the rule. Section 791.200(a) now provides a list of activities that may lead to civil or criminal penalties under the rule. This list provides more clarity and certainty about prohibited conduct. Section 791.200(b) adds references to the new list of prohibited activities in § 791.200(a) and consolidates and removes duplicative provisions covering civil penalties.

Other Comments

The Department received other comments, discussed below, that were not germane to the rulemaking and outside the scope of this action, or that, for the reasons explained below, the Department does not otherwise address in this final rule.

First, many commenters requested that the Department develop a variety of processes to provide stakeholders with licenses, and guidance about specific transactions that would not be subject to review, or “pre-clearance,” before commencing ICTS Transactions. Commenters explained that these processes would provide more certainty to businesses so that they can proactively develop compliance programs and avoid high-risk transactions. Several commenters addressed the potential licensing mechanism that the Department discussed in the preamble to the IFR, but without suggesting a framework for applying for or receiving licenses. Most commenters were in favor of a licensing process, either for parties to seek pre-approval of individual ICTS Transactions, or to exempt all transactions by vetted ICTS manufacturers or suppliers for a fixed period. These commenters stressed, however, that any licensing process should be entirely voluntary and non-duplicative of licensing regimes established by other regulations and should not unnecessarily delay contemplated transactions. Similarly, some commenters requested that the Department establish a list of restricted persons like the Entity List (Supplement No. 4 to Part 744 of the Export Administration Regulations) (15 CFR part 744, Supp.) or develop categories of

transactions that could receive a presumption of approval or denial.

More generally, commenters sought the creation of additional avenues for the Department to provide guidance about the application of the rule. For example, one commenter requested that the Department issue enforcement guidelines and create a mechanism for entities to voluntarily disclose potential violations, while other commenters requested that the Department create a process to issue advisory opinions at the request of entities contemplating ICTS Transactions.

Given the complexity of the issues, the Department appreciates commenters' thoughtful suggestions. The Department is still considering the concepts related to providing licenses, but this final rule does not include a licensing process. Additionally, while the Department anticipates that published Final Determinations will provide guidance to the public about applications of this final rule, the Department understands that additional guidance materials may be useful to those planning compliance with this rule. However, developing procedures to issue guidance or for parties to obtain advisory opinions is outside the scope of this rulemaking, and the Department will seek further comment prior to implementing any rule on that topic.

Second, several commenters asserted that the IFR generally lacked transparency and suggested a number of ways that the Department could assist industry with the interpretation and application of the interim final rule and provide context for the reviews it undertakes. For example, several commenters suggested creating ongoing opportunities for direct industry consultation and engagement such as by hosting industry roundtables. Other commenters suggested that the Department provide an avenue for formal industry comments on reviews before the Secretary issues a Final Determination. Taking a contrary view, other commenters expressed concerns about potential anti-competitive behavior that could result from consultation with industry. The Department appreciates these comments and commenters' willingness to engage with the Department on implementing this rule, but the Department is not adopting any formal avenues for industry and stakeholder engagement in this rule at this time.

IV. Classification

A. Executive Order 12866 (Regulatory Policies and Procedures)

This final rule has been determined to be a "significant regulatory action" under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. The Department has examined the expected impact of this final rule as required by those Executive Orders and has conducted a regulatory impact analysis (RIA).

B. Regulatory Flexibility Analysis

The Department has examined the economic implications of this final rule on small entities as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA requires an agency to describe the impact of a rule on small entities by providing a regulatory flexibility analysis. The Department published an initial regulatory flexibility analysis in the proposed rule issued on November 27, 2019 (84 FR 65316), published a final regulatory flexibility analysis (FRFA) for the interim final rule (86 FR 4909), and has posted an updated FRFA as part of the RIA for this final rule (see **ADDRESSES** above). The revised FRFA incorporates more recent datasets that have been published since the Department issued the interim final rule and updates the economic analysis to conform to the provisions in the final rule. A summary of the FRFA follows. The Department assesses that the changes in this final rule, relative to the interim final rule, will have a limited economic impact.

Statement of the Objectives of, and Legal Basis for, the Final Rule

A description of this final rule, why it is being implemented, the legal basis, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble, in the preamble to the Notice of Proposed Rulemaking issued on November 27, 2019, and in the preamble to the Interim Final Rule issued on January 19, 2021 (86 FR 4909) and are not repeated here.

A Statement of the Significant Issues Raised by Public Comments or by the Chief Counsel for Advocacy of the Small Business Administration in Response to the FRFA, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made to the Rule as a Result of Such Comments

Many commenters discussed the possibility that this rule would impose significant costs, both on businesses that

need to develop compliance plans and on the U.S. economy generally due to the rule's potential effect on corporate profits and viability. Commenters remarked on the RIA's wide range of estimated affected entities and cost to the U.S. economy but questioned whether the RIA included the full range of potential costs or adequately quantified the rule's benefits.

In particular, one commenter noted that the RIA identified, but did not quantify, the cost of the following potential harms: the restriction of imports from adversarial nations, which could increase production costs for many firms; the potential loss of producer profits and lower profits for persons in an industry impacted by a prohibition or mitigation of an ICTS Transaction; the possibility that those who do not engage in transactions affected by the rule may still face higher production costs; the impacts of the rule are not confined to the firms in the industries that produce the products subject to the rule; investors will likely take extra time to evaluate potential transactions, which could result in delays and impose costs on consumers; and higher prices and lower consumer and producer surplus that could arise among inter-related industries. Commenters also critiqued the RIA's failure to quantify the rule's expected benefits to national security and asked for examples of the types of transactions the rule is meant to address to demonstrate its anticipated benefits more clearly and provide a point of reference for the rule's potential scope.

The Department understands commenters' desire for greater certainty in the calculations of the rule's potential costs and benefits. The unquantified harms discussed in the RIA to the interim final rule and listed by a commenter were meant to transparently identify potential downstream effects of the rule. These are not direct costs imposed by the rule and, due to the uncertainty regarding the extent to which they might arise, if at all, the portion of such costs attributable to the rule cannot reasonably be quantified. None of the commenters identified data sources or methods that the Department could use to concretely estimate these costs. As a result, the Department is not changing its earlier analysis of these potential harms.

Regarding the potential benefits of the rule, as discussed in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble, two years of experience with the interim final rule has shown that the Department's reviews are primarily reviews of classes of transactions involving all or a subset of

all ICTS provided by a single person rather than individual transactions involving a single product or service. As a result, the Department anticipates that such reviews will have a greater impact on national security than would reviews of individual transactions, despite being more limited in number. The Department continues to assess that the actual benefits of this rule are incalculable because it is not possible to predict the type and extent of malicious actions that will be directed at the ICTS supply chain. Moreover, the Department is not providing examples of the types of transactions the rule is meant to address, as requested by commenters. The Department's experience to date has shown that ICTS Transactions present unique risks that would be difficult to describe in generic terms.

Additionally, two commenters asked the Department about the rule's potential impact on commercial items. These commenters asked whether commercial items are exempted from the rule and whether the Secretary has authority over all ICTS, even those with no impact on national security. As discussed in further detail below, the Department considered as an alternative to the rule whether to exclude ICTS Transactions that involve only the acquisition of commercial products as defined by Federal Acquisition Regulation Part 2.101. The Department decided against adopting this alternative to avoid creating an avenue that malicious actors could use to evade the rule. That said, the Secretary's reviews are targeted to ICTS Transactions or classes of Transactions that pose undue risks of sabotage or subversion to the ICTS supply chain and U.S. critical infrastructure or an unacceptable risk to the national security of the United States or the security and safety of U.S. persons. As such, the Department intends to devote its resources to reviewing ICTS Transactions with a potentially negative impact on national security. The Department's modifications to § 791.103 in the final rule to clarify the process that the Secretary will follow to determine which ICTS Transactions are within the scope of the rule are responsive to these comments.

A Description and, Where Feasible, Estimate of the Number of Small Entities to Which the Final Rule Applies

Small Business Administration (SBA) size standards for businesses are based on annual receipts and average employment. For this analysis, as for the analysis for the interim final rule, we define a small business as one employing fewer than 500 persons. This

definition allows us to use Census data on firm employment by NAICS industry to estimate the number of affected small entities.

In the RIA, the Department identified 4,533,000 firms in industries that imported significant amounts of goods and services potentially subject to review under the Rule. This formed our upper bound estimate for the total number of affected entities. By replicating this methodology with firm employment data, the Department finds that 4,516,000 of these firms, about 99.6 percent, have fewer than 500 employees. Assuming the lower bound estimate of 268,000 affected entities is also made up of 99.6 percent small businesses, the Department estimates that between 266,995 and 4,516,000 small businesses will be potentially affected by this Rule. The Department's estimate of the number of potentially affected small businesses remains unchanged from the interim final rule.

Federal Rules That May Duplicate, Overlap or Conflict With the Final Rule

The Department did not identify any Federal rule that duplicates, overlaps, or conflicts with this final rule.

Description and Estimate of Economic Effects on Entities, by Entity Size and Industry

In the Costs section of the RIA, the Department estimates that costs to all affected entities will range between approximately \$238 million and \$20.3 billion (annualized at 7%), or about \$2,800 to \$6,300 per entity. The Department estimated the costs to small entities using the same methodology, adjusting for changes in hourly wages of operations managers and lawyers over time. As a result of these adjustments, the Department estimates that costs to affected small entities will range between approximately \$112 million and \$11.1 billion, or about \$1,800 and \$4,000 per small entity.

Potential Economic Impact of the Rule on Small Entities

Small businesses, as opposed to larger firms, may not have the same ability to deal with the burdens, both direct and indirect, associated with the final rule. Faced with the various costs associated with compliance, firms will have to absorb those costs and/or pass them along to their consumers in the form of higher prices. Either action will reduce the profits of firms. Due to their lack of market power, and their lower profit margins, small firms may find it difficult to pursue either or both of those responses while remaining viable.

A similar situation will hold with respect to the indirect impacts of the final rule. Small firms downstream of impacted industries are likely to face increases in the prices of ICTS they use as inputs and either absorb the increase in cost and/or raise their prices. Given this situation, it is possible that the final rule will have a more substantial adverse impact on small firms relative to larger firms.

However, most of the changes in the final rule, relative to the interim final rule, affect the Department's internal procedures when implementing the rule and will have little impact on small businesses or the broader public. Additionally, many of the changes made from the interim final rule further clarify the scope of ICTS Transactions that the Department may review. These changes may benefit small businesses by reducing uncertainty and, therefore, compliance costs. For example, adding definitions for the terms used in the definition of "ICTS Transaction" and specifying who may be considered a "party or parties to a transaction" that will receive notice of, and an opportunity to respond to, an Initial Determination, may reduce the cost of learning about the final rule by making it easier to understand which entities and transactions are within the rule's scope.

Similarly, removing the requirement that certain ICTS needs to be in use by at least one million persons to be considered ICTS for purposes of the rule will not specifically increase costs to small entities. While eliminating this threshold means more ICTS Transactions could meet the criteria for review, as noted above, the reality is that most transactions reviewed involve the ICTS from one entity, so removal of the threshold will not increase the number of ICTS Transactions the Department reviews. It might, however, reduce the risk (and associated costs) of U.S. companies feeling pressure to track sales counts of ICTS they suspect or know to be connected to foreign adversaries. Again, the Department is removing the threshold not because the Department intends to or seeks to review more ICTS Transactions by small entities, but rather to indicate to the public that the risks associated with ICTS Transactions are not always related to the volume of or number of people involved in such transactions. The Department's reviews focus on risk posed by foreign adversaries and the ICTS involved.

The Department is also implementing changes to facilitate parties' responses to the Secretary's Initial Determination following an ICTS Transaction review

by, for example, explaining the factual basis supporting the Secretary's Initial Determination. Finally, the Secretary is retaining discretion to publish notices of Final Determinations in the **Federal Register** after determining to prohibit or permit an ICTS Transaction with mitigation measures. The Department's publication of notices of certain Final Determinations enables small business to determine whether their ICTS Transactions are substantially similar to those that have been prohibited or to assess, based on published mitigations, whether they can proactively take any steps to reduce the risks potentially associated with the ICTS Transactions in which they engage.

A Description of, and an Explanation of the Basis for, Assumptions Used

SBA size standards for businesses are based on annual receipts and average employment. For the purpose of this analysis, the Department defines a small business as one employing fewer than 500 persons. This definition allows the Department to use recent Census data on firm employment by NAICS industry to estimate the number of affected small entities. The Department does not have access to sufficiently detailed data on firm employment and receipts to make use of the full set of SBA size standard thresholds.

The Department notes, however, that 84% of SBA employee thresholds are above 500, and 91% of SBA receipt thresholds are above \$6 million. Census data show that average receipts for firms employing fewer than 500 employees are \$2.2 million. Thus, using our threshold of 500 employees we estimate that about 99.6% of affected entities are small businesses.

Description of Any Significant Alternatives to the Final Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Rule on Small Entities

This final rule allows the Secretary to review ICTS Transactions to determine whether they present an undue or unacceptable risk to national security, a function which is currently not performed by any other private or public entity. Private industry often lacks the incentive, information, or resources to review their ICTS purchases for malicious suppliers or other potentially bad actors in the ICTS supply chain. The U.S. Government is uniquely situated to determine threats and protect national security, including economic security.

The Department considered two regulatory alternatives to reduce the

burden on small entities: (1) excluding small entities with 5 or fewer employees, and (2) excluding certain industries and sectors. However, the Department determined that neither of these alternatives would achieve the goal of protecting national security, nor would they eliminate the Rule's significant economic impact on a substantial number of small entities.

- *No-action alternative:* Rescinding the interim final rule and, accordingly, not implementing a rule under the E.O. is not a viable alternative because E.O. 13873 expressly directs that the Secretary "shall publish rules or regulations implementing the authorities delegated to the Secretary by this order," to address the national security concerns associated with ICTS Transactions in the United States involving foreign adversaries that may create or exploit vulnerabilities in ICTS.

- *Alternative that would categorically exclude small entities or groups of small entities:* The Department considered providing an exemption for small entities that have 5 or fewer employees (smallest entities). According to Census Bureau data, about 6 in 10 employer firms have fewer than 5 employees. The Department also examined the feasibility of eliminating the application of the rule to certain small entities involved in specific industries or sectors by excluding: (a) ICTS Transactions that involve only the acquisition of commercial products as defined by Federal Acquisition Regulation Part 2.101; (b) ICTS Transactions that are used solely for the purpose of cybersecurity mitigation or legitimate cybersecurity research; or (c) ICTS Transactions under which a U.S. person is subject to a security control agreement, special security agreement, or proxy agreement approved by a cognizant security agency to offset foreign ownership, control, or influence pursuant to the National Industrial Security Program regulations (32 CFR part 2004). Ultimately, the Department decided against adopting these regulatory alternatives. Exempting certain industries or sectors or eliminating the application of the final rule to smallest entities could inadvertently allow potentially problematic transactions that are substantially similar to those conducted by non-exempt entities to avoid review, undermining the national security objectives of E.O. 13873. For example, a company that is headquartered in a foreign adversary country, regardless of its size or main industry sector, may be involved in legitimate cybersecurity research and development initiatives performed under the National

Cooperative Research and Production Act (15 U.S.C. 4301–06) and the foreign company may study foreign equipment to gain insights on new innovations or potential network security risks. However, that same company may also be conducting operations during other ICTS Transactions that could harm U.S. national security interests. By promulgating the chosen alternative for the rule, the Department sought to remove both the possibility for confusion as well as the ability for malicious actors to argue that some legitimate cybersecurity research performed by a company would exempt all cybersecurity research by a company, legitimate or otherwise. Thus, the rule applies to types of ICTS Transactions most affecting U.S. national security and does not exempt categories of industries, sectors, or entities from review.

- *Preferred alternative:* The final rule is the preferred alternative. It would achieve the objectives of E.O. 13873 by implementing procedures that will allow the Secretary to apply a case-by-case, fact-specific review of ICTS Transactions or classes of Transactions that may pose an undue or unacceptable risk to U.S. national security, critical infrastructure, or U.S. persons and address any identified risks by prohibiting transactions or requiring the implementation of mitigation measures.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The Department shall explain the actions a small entity is required to take to comply with a rule or group of rules.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number. This final rule does not contain a collection of information requirement subject to review and approval by OMB under the PRA.

D. Unfunded Mandates Reform Act of 1995

This rule would not create a Federal mandate (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector.

E. Executive Order 13132 (Federalism)

This rule does not contain policies having federalism implications requiring preparations of a Federalism Summary Impact Statement.

F. Executive Order 12630

(Governmental Actions and Interference With Constitutionally Protected Property Rights)

This rule does not contain policies that have unconstitutional takings implications.

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

The Department has analyzed this rule under Executive Order 13175 and has determined that the action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law.

H. National Environmental Policy Act

The Department has reviewed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). It has determined that this final rule would not have a significant impact on the quality of the human environment.

I. Congressional Review Act

This rule has been determined to be a “major rule” under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

List of Subjects in 15 CFR Part 791

Administrative practice and procedure, Business and industry, Communications, Computer technology, Critical infrastructure, Executive orders, Foreign persons, Investigations, National security, Penalties, Technology, Telecommunications.

For the reasons stated in the preamble, the Department amends 15 CFR part 791 as follows:

PART 791—SECURING THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AND SERVICES SUPPLY CHAIN

■ 1. The authority citation for 15 CFR Part 791 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; E.O. 13873, 84 FR 22689; E.O. 14034, 86 FR 31423.

■ 2. In Part 791, remove the text “initial determination” wherever it appears, and add, in its place, the text “Initial Determination”.

■ 3. In Part 791, remove the text “final determination” wherever it appears, and add, in its place, the text “Final Determination”.

■ 4. Amend § 791.1 by revising paragraph (a)(1) to read as follows:

§ 791.1 Purpose.

(a) * * *

(1) Determine whether any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service, including but not limited to connected software applications, (ICTS Transaction) that has been designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries poses certain undue or unacceptable risks as identified in the Executive Order 13873. For purposes of these regulations, the Secretary will consider information and communications technology and services (ICTS) to be designed, developed, manufactured, or supplied by a person owned by, controlled by, or subject to the jurisdiction of a foreign adversary where such a person operates, manages, maintains, repairs, updates, or services the ICTS;

* * * * *

■ 5. Amend § 791.2 by:

■ a. Revising the definition of “Appropriate agency heads”;

■ b. Adding in alphabetical order definitions for “Covered ICTS Transaction”, “Dealing in”, and “Importation”;

■ c. Revising the definitions of “Party or parties to a Transaction”, “Person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary”, “Secretary”, and “United States Person”.

The additions and revisions read as follows:

§ 791.2 Definitions.

Appropriate agency heads means the Secretary of the Treasury, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the United States Trade Representative, the Director of National Intelligence, the Administrator of General Services, the Chairman of the Federal Communications Commission, and the heads of any other executive departments and agencies the Secretary determines is appropriate, or their designees.

* * * * *

Covered ICTS Transaction means an ICTS Transaction or a class of ICTS Transactions that meets the criteria set forth in § 791.3.

Dealing in means the activity of buying, selling, reselling, receiving, licensing, or acquiring ICTS, or otherwise doing or engaging in business involving the conveyance of ICTS.

* * * * *

Importation means the process or activity of bringing foreign ICTS to or into the United States, regardless of the means of conveyance, including via electronic transmission.

* * * * *

Party or parties to a Transaction means a person or persons engaged in an ICTS Transaction or class of ICTS Transactions, including, but not limited to the following: designer, developer, provider, buyer, purchaser, seller, transferor, licensor, broker, acquirer, intermediary (including consignee), and end user. Party or parties to a Transaction include entities designed, or otherwise used with the intention, to evade or circumvent application of the Executive Order. For purposes of this rule, this definition does not include common carriers, except to the extent that a common carrier knew or should have known (as the term “knowledge” is defined in 15 CFR 772.1) that it was providing transportation services of ICTS to one or more of the parties to a Transaction that has been prohibited in a final written determination made by the Secretary or, if permitted subject to mitigation measures, in violation of such mitigation measures.

* * * * *

Person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary means:

(1) Any person, wherever located, who acts as an agent, representative, or employee, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign adversary or of a person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part by a foreign adversary;

(2) Any person, wherever located, who is a citizen or resident of a foreign adversary or a country controlled by a foreign adversary, and is not a United States citizen or permanent resident of the United States;

(3) Any corporation, partnership, association, or other organization with a principal place of business in, headquartered in, incorporated in, or otherwise organized under the laws of a foreign adversary or a country controlled by a foreign adversary; or

(4) Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by a foreign adversary, to include circumstances in which any person identified in paragraphs (1) through (3) of this definition possesses the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity.

Secretary means the Secretary of Commerce or the Secretary's designee, including for example the Under Secretary of Commerce for Industry and Security or the Executive Director of the Office of Information and Communications Technology and Services.

* * * * *

United States person means any United States citizen; any permanent resident alien; any entity organized under the laws of the United States or any jurisdiction within the United States (including such entity's foreign branches); or any person in the United States.

* * * * *

■ 6. Amend § 791.3 by revising paragraphs (a)(2), (4) and (b), and removing paragraph (c), to read as follows:

§ 791.3 Scope of Covered ICTS Transactions.

(a) The Secretary may continue review under § 791.103(b) of this part for any ICTS Transaction that:

* * * * *

(2) Involves any property in which any foreign country or a national thereof has any interest of any nature whatsoever, whether direct or indirect (including through an interest in a contract for the provision of the technology or service);

* * * * *

(4) Involves ICTS and software, hardware, or any other product or service integral to one of the following:

(i) Information and communications hardware and software, including

(A) Wireless local area networks;

(B) Mobile networks;

(C) Satellite payloads;

(D) Satellite operations and control;

(E) Internet-enabled sensors, cameras, and any other end-point surveillance or monitoring device, or any device that includes these components such as drones;

(F) Routers, modems, and any other networking devices;

(G) Cable access points;

(H) Wireline access points;

(I) Core networking systems;

(J) Long- and short-haul networks;

(ii) Data hosting, computing or storage, including software, hardware, or any other product or service integral to data hosting or computing services, including software-defined services such as virtual private servers, that uses, processes, or retains, or is expected to use, process, or retain, sensitive personal data of United States persons, including:

(A) Internet hosting services;

(B) Cloud-based or distributed computing and data storage;

(C) Managed services; and

(D) Content delivery services;

(iii) Connected software applications, including software designed primarily to enable connecting with and communicating via the internet, which is accessible through cable, telephone line, wireless, or satellite or other means, that is in use by United States persons at any point over the twelve (12) months preceding an ICTS Transaction, including connected software applications, such as but not limited to, desktop applications, mobile applications, gaming applications, and web-based applications;

(iv) Critical infrastructure, including any subsectors of the chemical, commercial facilities, communications, critical manufacturing, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government services and facilities, health care and public health, information technology, nuclear reactors, materials, and waste, transportation systems, and water and wastewater systems sectors, and

(v) Critical and emerging technologies, including advanced network sensing and signature management; advanced computing; artificial intelligence; clean energy generation and storage; data privacy, data security, and cybersecurity technologies; highly automated, autonomous, and uncrewed systems and robotics; integrated communication and networking technologies; positioning, navigation, and timing technologies; quantum information and enabling technologies; semiconductors and microelectronics; and biotechnology.

(b) The Secretary will not continue review of an ICTS Transaction under § 791.103 if the Secretary finds that:

(1) The ICTS Transaction involves the acquisition of ICTS items by a United States person as a party to a transaction

authorized under a U.S. government-industrial security program; or

(2) The Committee on Foreign Investment in the United States (CFIUS) is conducting a review, investigation, or assessment, or has concluded action on, the specific ICTS Transaction as a covered transaction under section 721(a)(4) of the Defense Production Act of 1950, as amended, and its implementing regulations.

■ 7. Amend § 791.4 by revising paragraphs (a)(1), (c) introductory text, (c)(2), (c)(3), and (d), and by removing the second parenthetical “(d)” from § 791.4(d) to read as follows:

§ 791.4 Determination of foreign adversaries.

(a) * * *

(1) The People's Republic of China, including the Hong Kong Special Administrative Region and the Macau Special Administrative Region (China);

* * * * *

(c) The Secretary's determination is based on multiple sources, including but not limited to:

* * * * *

(2) The Director of National Intelligence's Worldwide Threat Assessments of the U.S. Intelligence Community;

(3) The National Cyber Strategy of the United States of America; and

* * * * *

(d) The Secretary will periodically review this list in consultation with appropriate agency heads and may add to, subtract from, supplement, or otherwise amend this list. Any amendment to this list will apply to any ICTS Transaction that is initiated, pending, or completed on or after the date that the list is amended.

■ 8. Amend § 791.100 by revising paragraph (a) introductory text, (a)(6), (7), (8), and (9), paragraph (c) introductory text, paragraph (d) introductory text, (d)(5), and (e) to read as follows:

§ 791.100 General.

* * * * *

(a) Consider any and all relevant information held by, or otherwise made available to, the Federal Government that is not otherwise restricted by law for use for this purpose, including:

* * * * *

(6) Information obtained through the authority granted under sections 2(a) and (c) of the Executive Order and IEEPA, as set forth in § 791.101 of this part;

(7) Information provided by any other U.S. Government national security body, in each case only to the extent

necessary for national security purposes, and subject to applicable confidentiality and classification requirements, including the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector and the Federal Acquisitions Security Council and its designated information-sharing bodies;

(8) Information or referrals provided by any other U.S. Government agency, department, or other regulatory body; and

(9) Information provided voluntarily by private industry.

* * * * *

(c) Determine, in consultation with the appropriate agency heads, whether an ICTS Transaction involves ICTS designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, and in making a determination, the Department may consider the following:

* * * * *

(d) Determine, in consultation with the appropriate agency heads, whether a Covered ICTS Transaction poses an undue or unacceptable risk, considering the following:

* * * * *

(5) Actual or potential threats to execution of a "National Critical Function" identified by the Department of Homeland Security Cybersecurity and Infrastructure Security Agency;

* * * * *

(e) In the event the Secretary finds that unusual and extraordinary harm to the national security of the United States is likely to occur if all of the procedures specified herein are followed, deviate from these procedures in a manner tailored to protect against that harm.

■ 9. Revise paragraphs (a) and (b) of § 791.101 to read as follows:

§ 791.101 Information to be furnished on demand.

(a) Pursuant to the authority granted to the Secretary under sections 2(a), 2(b), and 2(c) of the Executive Order and IEEPA, the Secretary may require any person to furnish under oath, in the form of reports or otherwise, at any time as may be required by the Secretary, complete information relative to any act or transaction, subject to the provisions of this part. The Secretary may require that such reports include the production of any books, contracts, letters, papers, or other hard copy or electronic documents relating to any such act, transaction, or property, in the custody

or control of the persons required to make such reports. Reports with respect to transactions may be required from before, during, or after such transactions. The Secretary may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of any books, contracts, letters, papers, and other hard copy or documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

(b) For purposes of paragraph (a) of this section, the term "document" includes any written, recorded, or graphic matter or other means of preserving thought or expression (including in electronic format), and all tangible things stored in any medium from which information can be processed, transcribed, or obtained directly or indirectly, including correspondence, memoranda, notes, messages, contemporaneous communications such as text and instant messages, letters, emails, spreadsheets, metadata, contracts, bulletins, diaries, chronological data, minutes, books, reports, examinations, charts, ledgers, books of account, invoices, air waybills, bills of lading, worksheets, receipts, printouts, papers, schedules, affidavits, presentations, transcripts, surveys, graphic representations of any kind, drawings, photographs, images, graphs, video or sound recordings, and motion pictures or other media such as film.

* * * * *

■ 10. Amend § 791.102 by revising the introductory text of paragraph (b), (b)(4) through (6), and adding (b)(7) to read as follows:

§ 791.102 Confidentiality of information.

* * * * *

(b) The Secretary may, subject to appropriate confidentiality and classification requirements, disclose information or documentary materials that are not otherwise publicly or commercially available and referenced in paragraph (a) of this section in the following circumstances:

* * * * *

(4) Pursuant to a request from any domestic governmental entity or any foreign governmental entity of a United States ally or partner, but only to the extent necessary for national security purposes;

(5) Where the parties or a party to a transaction have consented, the

information or documentary material that is not otherwise publicly or commercially available may be disclosed to third parties;

(6) Where the Secretary has determined that at least one Covered ICTS Transaction related to the information or documents presents an undue or unacceptable risk, and disclosure to the public or to affected third parties is necessary to prevent or significantly reduce imminent harm to U.S. national security, or the security and safety of United States persons; and

(7) Any other purpose authorized by law.

* * * * *

■ 11. Revise § 791.103 to read as follows:

§ 791.103 Review of ICTS Transactions.

(a) After considering materials described in § 791.100(a), the Secretary may, at the Secretary's discretion, initiate a review of an ICTS Transaction.

(b) As part of the review, the Secretary will assess whether the transaction:

(1) Constitutes a Covered ICTS Transaction, as described in § 791.3;

(2) Involves ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, as described in § 791.100(c); and

(3) Poses an undue or unacceptable risk as described in §§ 791.100(d) and 791.103(c).

(c) In assessing whether the Covered ICTS Transaction poses an undue or unacceptable risk, the Secretary may evaluate, among other relevant factors, the following criteria:

(1) The nature and characteristics of the ICTS at issue in the Covered ICTS Transaction, including technical capabilities, applications, and market share considerations;

(2) The nature and degree of the ownership, control, direction, or jurisdiction exercised by the foreign adversary or foreign adversary persons over the design, development, manufacture, or supply at issue in the Covered ICTS Transaction, to include:

(i) The ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities; and

(ii) The ownership, control, or management by persons involved in malicious cyber-enabled activities;

(3) The statements and actions of the foreign adversary at issue in the Covered ICTS Transaction;

(4) The statements and actions of the persons involved in the design,

development, manufacture, or supply of the ICTS at issue in the Covered ICTS Transaction;

(5) The statements and actions of the parties to the Covered ICTS Transaction;

(6) Whether the Covered ICTS Transaction poses a discrete or persistent threat;

(7) The nature and characteristics of the customer base, business relationships, and operating locations of the parties to the Covered ICTS Transaction;

(8) Whether there is an ability to otherwise mitigate the risks posed by the Covered ICTS Transaction;

(9) The severity of the harm posed by the Covered ICTS Transaction on at least one of the following:

- (i) Health, safety, and security;
- (ii) Critical infrastructure;
- (iii) Sensitive data;
- (iv) The economy;
- (v) Foreign policy;
- (vi) The natural environment; and
- (vii) National Essential Functions (as defined by Federal Continuity Directive-2 (FCD-2));

(10) The likelihood that the Covered ICTS Transaction will result in the threatened harm; and

(11) For ICTS Transactions involving connected software applications:

(i) the number and sensitivity of the users with access to the connected software application;

(ii) the scope and sensitivity of any data collected by the connected software application;

(iii) any use of the connected software application to conduct surveillance that enables espionage, including through a foreign adversary's access to sensitive or confidential government or business information, or sensitive personal data;

(iv) whether there is regular, thorough, and reliable third-party auditing of the connected software application; and

(v) the extent to which identified risks have been or can be mitigated using measures that can be verified by independent third parties.

(d) If the Secretary finds that an ICTS Transaction does not meet the criteria of paragraph (b) of this section:

(1) The transaction shall no longer be under review; and

(2) Future review of the transaction shall not be precluded, where additional information becomes available to the Secretary.

■ 12. Revise § 791.104 to read as follows:

§ 791.104 First interagency notification.

(a) If the Secretary assesses that an ICTS Transaction meets the criteria under § 791.103(b), the Secretary shall

memorialize that assessment, provide the assessment to the appropriate agency heads, and offer the appropriate agency heads twenty-one (21) days to comment in writing on the Secretary's assessment.

(b) If the Secretary does not receive written comments on the assessment from an appropriate agency head within twenty-one (21) days of notification, the Secretary may presume that agency has no comments.

(c) The Secretary may, at the Secretary's discretion, modify or revise the assessment based on comments received from the appropriate agency heads. The Secretary retains discretion to make an Initial Determination, as provided in § 791.105, regardless of the comments received.

■ 13. Revise § 791.105 to read as follows:

§ 791.105 Initial Determination.

(a) If, after notifying the appropriate agency heads as required by § 791.104 and considering any comments received, the Secretary determines that the Covered ICTS Transaction does not meet the criteria set forth in § 791.103:

(1) The transaction shall no longer be under review; and

(2) Future review of the transaction shall not be precluded, where additional information becomes available to the Secretary.

(b) If, after notifying the appropriate agency heads as required by § 791.104 and considering any comments received, the Secretary determines that the Covered ICTS Transaction meets the criteria set forth in § 791.103, the Secretary shall:

(1) Make a written Initial Determination, which shall be dated and signed by the Secretary, that:

(i) Explains why the ICTS Transaction meets the criteria set forth in § 791.103;

(ii) Sets forth whether the Secretary proposes to prohibit the Covered ICTS Transaction or to impose mitigation measures, by which the Covered ICTS Transaction may be permitted; and

(iii) Provides information regarding the factual basis supporting the decision that is set forth pursuant to subparagraph (ii) above;

(2) Provide at least twenty-one (21) calendar days' notice to the appropriate agency heads of the proposed Initial Determination prior to taking any action under 791.105(b)(3); and

(3) Notify a party or the parties to the Covered ICTS Transaction by:

(i) Serving a copy of the Initial Determination to the identified parties to the Covered ICTS Transaction when the Covered ICTS Transaction under review consists of a single transaction or

a set of transactions between a limited number of parties (for example, the sale of ICTS by a company with a foreign nexus to an identified United States person); or

(ii) Serving a copy of the Initial Determination to the person whose ICTS the Secretary determines constitutes the Covered ICTS Transactions under review when the number of U.S. parties or users acquiring, importing, transferring, installing, dealing in, or using the ICTS is unknown or unidentified, or notice to such U.S. parties or users is not feasible or appropriate (for example, when individual consumers purchase the ICTS through an online service or at a retail location).

(c) Notwithstanding the fact that the Initial Determination to prohibit or propose mitigation measures on an ICTS Transaction may, in whole or in part, rely upon classified national security information, or sensitive but unclassified information, the Initial Determination will contain no classified national security information, nor reference thereto, and, at the Secretary's discretion, may not contain controlled unclassified information.

(d) Notwithstanding paragraph (b)(3) of this section, the Secretary may, at the Secretary's discretion, determine to publish any notice of an Initial Determination in the **Federal Register**.

■ 14. Revise § 791.106 to read as follows:

§ 791.106 Recordkeeping requirement.

Upon notification that an ICTS Transaction is under review, such as, though not limited to, through a demand for information or documents related to an ICTS Transaction under § 791.101 or a notification that an Initial Determination concerning an ICTS Transaction has been made, a notified person must immediately take steps to retain any and all records relating to such Transaction and must retain such records for no less than ten (10) years following a Final Determination made under § 791.109 or as otherwise indicated in the Final Determination. If a notified person receives no notification that an Initial Determination concerning an ICTS Transaction has been made within ten (10) years of notification that an ICTS Transaction is under review, then the recordkeeping obligation will extend for ten (10) years following the initial notification of an ICTS Transaction review unless the notified person is informed otherwise by the Secretary.

■ 15. Amend § 791.107 by revising the introductory text, paragraphs (c), (e), (f) to read as follows:

§ 791.107 Procedures governing response and mitigation.

Within 30 days of service of the Secretary's Initial Determination pursuant to § 791.105, a party to a transaction may respond to the Initial Determination or assert that the circumstances resulting in the Initial Determination no longer apply, and thus seek to have the Initial Determination rescinded or mitigated pursuant to the following administrative procedures:

* * * * *

(c) All submissions under this section must be made in writing.

(1) The Secretary may, for good cause, extend the time to provide a written submission pursuant to this section.

(2) Any extensions granted pursuant to this section shall not exceed thirty (30) days.

(3) A written submission to the Secretary pursuant to this section may not exceed fifty (50) pages without approval from the Secretary prior to the expiration of time for a party's response.

(4) A written submission to the Secretary may include business confidential information. Any business confidential information must be clearly and specifically demarcated. Publicly available information should not be marked business confidential.

* * * * *

(e) This rule creates no right in any person to obtain access to information in the possession of the U.S. Government that was considered in making the Initial Determination, to include classified national security information or sensitive but unclassified information; and

(f) If the Department receives no response from the parties within 30 days after service of the Initial Determination to the parties, the Secretary may issue a Final Determination without the need to engage in the consultation process provided in section 791.108 of this rule.

■ 16. Revise § 791.108 to read as follows:

§ 791.108 Interagency consultation on the Final Determination.

(a) Upon receipt of any submission by a party to a transaction under § 791.107, the Secretary shall consider whether and how the information provided—including proposed mitigation measures—affects an Initial Determination.

(b) After considering the effect of any submission by a party to a transaction under § 791.107 consistent with paragraph (a) of this section, the Secretary shall provide notice in writing of the proposed Final Determination

and consult with and seek concurrence from all appropriate agency heads prior to issuing a Final Determination as to whether the Covered ICTS Transaction shall be prohibited, not prohibited, or permitted pursuant to the adoption of negotiated mitigation measures.

(c) If the appropriate agency heads under paragraph (b) of this section concur, the Secretary shall issue a Final Determination pursuant to § 791.109. If an appropriate agency head provides no response within fourteen (14) days of the agency receiving the notice in writing of the proposed Final Determination, the Secretary may presume concurrence. If an agency objects to the Final Determination, such objection must be submitted by the agency's Deputy Secretary or equivalent or higher level within the 14 days.

■ 17. Revise § 791.109 to read as follows:

§ 791.109 Final Determination.

(a) For each Covered ICTS Transaction for which the Secretary issues an Initial Determination, the Secretary shall issue a Final Determination as to whether the Covered ICTS Transaction is:

- (1) Prohibited;
- (2) Not prohibited; or
- (3) Permitted, at the Secretary's

discretion, pursuant to the adoption of mitigation measures.

(b) Unless the Secretary, at the Secretary's sole discretion, determines in writing that additional time is necessary, the Secretary shall issue the Final Determination within 180 days of serving the Initial Determination pursuant to § 791.105(b)(3).

(c) If the Secretary determines that a Covered ICTS Transaction is prohibited, the Secretary shall direct the means that the Secretary assesses to be necessary to address the undue or unacceptable risk posed by the Covered ICTS Transaction.

(d) The Final Determination shall:

- (1) Be written, signed, and dated;
- (2) Describe the Secretary's

determination;

(3) Be unclassified and contain no reference to classified national security information;

(4) Consider and address any information received from a party or parties to the transaction;

(5) Direct, if applicable, the timing and manner of the cessation of the Covered ICTS Transaction;

(6) Explain, if applicable, that a Final Determination that the Covered ICTS Transaction is not prohibited does not preclude the future review of transactions related in any way to the Covered ICTS Transaction;

(7) Include, if applicable, a description of the mitigation measures

agreed upon by the party or parties to the transaction and the Secretary;

(8) State the penalties a party will face if it fails to comply fully with any mitigation agreement or direction, including violations of IEEPA, or other violations of law; and

(9) Include, if applicable, how the Department may transition a mitigation agreement to a prohibition should a party or parties fail to comply with any mitigation agreement or obligations, or violate IEEPA or other law.

(e) The written, signed, and dated Final Determination shall be sent to:

(1) The party or parties to the transaction that are identified in the Final Determination via registered U.S. mail and electronic mail; and

(2) The appropriate agency heads.

(f) The Secretary shall publish a notice of any Final Determination to prohibit an ICTS Transaction in the **Federal Register**. The Secretary shall also publish a notice of Final Determination for any ICTS Transaction for which the Secretary published a notice of an Initial Determination. The Secretary may publish a notice of a Final Determination to mitigate an ICTS Transaction in the **Federal Register**. Any notice of a Final Determination that is published in the **Federal Register** shall omit any confidential business information.

■ 18. Revise § 791.200 to read as follows:

§ 791.200 Penalties.

(a) *Prohibited activities.* (1) No person shall be a party to an ICTS Transaction that is prohibited by a Final Determination issued under this part, unless authorized by the Secretary.

(2) No person shall aid, abet, counsel, command, induce, facilitate, procure, or otherwise engage in conduct with knowledge that such conduct is prohibited by, or contrary to a Final Determination issued under this part, unless authorized by the Secretary.

(3) No person shall be a party to an ICTS Transaction in a manner that is contrary to any direction, regulation, or condition published under this part.

(4) No person shall aid, abet, counsel, command, induce, facilitate, procure, or otherwise engage in conduct with knowledge that such conduct is contrary to the terms of a mitigation agreement under this part.

(5) Any ICTS Transaction that has the purpose of evading or avoiding, causes a violation of, or attempts to violate, any of the prohibitions set forth in this section is prohibited.

(6) Any conspiracy formed to violate any of the prohibitions set forth in this section is prohibited.

(7) Any approval, financing, facilitation, or guarantee by a United States person, wherever located, of an ICTS Transaction by a foreign person where the ICTS Transaction by that foreign person would be prohibited by this order if performed by a United States person or within the United States, is prohibited.

(8) No person may, whether directly or indirectly through any other person, make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, to the Department:

(i) In the course of an ICTS Transaction review, in order to secure a benefit or avoid a prohibition, including in proposing and agreeing to mitigation measures; or

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any report filed or required to be filed pursuant to this part.

(9) Additional requirements:

(i) For purposes of paragraph (a)(8), any representation, statement, or certification made by any person shall be deemed to be continuing in effect until the person notifies the Department in accordance with paragraph (a)(9)(ii).

(ii) Any person who makes a representation, statement, or certification to the Department relating to any ICTS Transaction review shall notify the Department, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention had occurred or may occur in the future.

(b) *Maximum penalties*—(1) *Civil penalty*. A civil penalty not to exceed the amount set forth in Section 206 of IEEPA, 50 U.S.C. 1705, may be imposed on any person who violates, attempts to violate, conspires to violate, or causes any knowing violation of paragraph (a) of this section. IEEPA provides for a maximum civil penalty not to exceed the greater of \$250,000 per violation, subject to inflationary adjustment, or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(i) Notice of the penalty, including a written explanation of the penalized conduct specifying the laws and regulations allegedly violated and the amount of the proposed penalty, and notifying the recipient of a right to make a written petition within 30 days as to why a penalty should not be imposed, shall be served on the person.

(ii) The Secretary shall review any presentation and issue a final administrative decision within 30 days of receipt of the petition.

(2) *Criminal penalty*. A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets in the commission of a violation of paragraph (a) of this section shall, upon conviction of a violation of IEEPA, be fined not more than \$1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(3) Any civil penalties authorized in this section may be recovered in a civil action brought by the United States in U.S. district court.

(c) *Adjustments to penalty amounts*.

(1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(d) *Available penalties*. The penalties available under this section are without prejudice to other penalties, civil or criminal, available under law. Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency in the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

Elizabeth L.D. Cannon,

Executive Director, Office of Information and Communications Technology and Services.

[FR Doc. 2024–28335 Filed 12–5–24; 8:45 am]

BILLING CODE 3510–20–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

RIN 3038–AF28

Provisions Common to Registered Entities; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: The Commodity Futures Trading Commission (Commission) is

correcting a final rule that appeared in the **Federal Register** on November 7, 2024. The document clarified, simplified and enhanced the utility of certain regulations for registered entities, market participants and the Commission that govern how registered entities submit self-certifications, and requests for approval, of their rules, rule amendments, and new products for trading and clearing, as well as the Commission's review and processing of such submissions.

DATES: Effective December 9, 2024.

FOR FURTHER INFORMATION CONTACT:

Rachel Kaplan, Senior Special Counsel, rkaplan@cftc.gov, 202–418–6233, Steven Benton, Industry Economist, sbenton@cftc.gov, 202–418–5617, and Nancy Markowitz, Deputy Director, nmarkowitz@cftc.gov, 202–418–5453, Division of Market Oversight, and Eileen Chotiner, Senior Compliance Analyst, echotiner@cftc.gov, 202–418–5467, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In FR Doc. 2024–24388 appearing on page 88594 in the **Federal Register** of Thursday, November 7, 2024, the following corrections are made:

§ 40.2 [Corrected]

■ 1. On page 88623 in the second column, in § 40.2, before the first sentence in paragraph (a) introductory text, add the paragraph heading “*Submission requirements*.”.

§ 40.5 [Corrected]

■ 2. On page 88625 in the first column, in § 40.5, in amendment 9h, the instruction “Revising paragraph (d) introductory text and (d)(1);” is corrected to read “Revising paragraph (d) introductory text and adding new paragraph (d)(1);”

■ 3. On page 88625 in the second column, in § 40.5, in amendment 9m, the instruction “Redesignating paragraphs (f)(1) and (2) as paragraphs (e)(1) and (2) respectively; and” is corrected to read “Redesignating paragraph (f) as paragraph (e) and revising newly redesignated paragraph (e); and”

■ 4. On page 88625 in the second column, in § 40.5, remove amendment 9n.

■ 5. On page 88625 in the third column, in § 40.5, “(c) * * *” is corrected to read “(c) *Commission review*.”.

Dated: December 3, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–28742 Filed 12–5–24; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Termination of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within Rwanda

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of termination of arrival restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security to terminate arrival restrictions applicable to flights to the United States carrying persons who have recently traveled from, or were otherwise present within, Rwanda. These restrictions directed such flights to arrive at one of the U.S. airports where the U.S. government had focused public health resources to implement enhanced public health measures.

DATES: The arrival restrictions applicable to flights to the United States carrying persons who have recently traveled from, or were otherwise present within, Rwanda are terminated for flights departing after 11:59 p.m. Eastern Standard Time on December 4, 2024.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations, U.S. Customs and Border Protection at 202–255–7018.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2024, the Secretary of Homeland Security announced arrival restrictions applicable to flights to the United States carrying persons who have recently traveled from, or were otherwise present within, Rwanda due to an outbreak of Marburg Virus Disease (MVD) in Rwanda. (89 FR 83620). These restrictions directed such flights to arrive at one of the U.S. airports where the U.S. government focused public health resources to implement enhanced public health measures. For purposes of that document, a person had recently traveled from Rwanda if that person had departed from, or was otherwise present within, Rwanda within 21 days of the

date of the person's entry or attempted entry into the United States. Also, for purposes of that document, crew and flights carrying only cargo (*i.e.*, no passengers or non-crew) were excluded from those measures.

The Secretary has decided to terminate the above arrival restrictions. The last unlinked case of MVD was isolated in Rwanda on October 24, 2024, and 42 days (two 21-day incubation periods) will have passed by the time the termination takes effect. Additionally, since October 30, 2024, there have been no new confirmed MVD cases reported in Rwanda, no new chains of transmission, and no new districts reporting local case transmissions. Therefore, arrival restrictions are no longer required for flights to the United States carrying persons who have recently traveled from, or were otherwise present within, Rwanda.

Notice of Termination of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within Rwanda

Pursuant to 6 U.S.C. 112(a), 19 U.S.C. 1433(c), and 19 CFR 122.32, for flights departing after 11:59 p.m. Eastern Standard Time on December 4, 2024, I hereby terminate the arrival restrictions applicable to flights to the United States carrying persons who have recently traveled from, or were otherwise present within, Rwanda announced in the Arrival Restrictions document published at 89 FR 83620 (Oct. 17, 2024).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2024–28582 Filed 12–4–24; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–6464–F–02]

RIN 2501–AE11

Adoption of 2020 Core Based Statistical Area Standards

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule adopts the 2020 Core Based Statistical Area (CBSA) standards as determined by the Office of Management and Budget's July 16, 2021,

Federal Register notice for all HUD use of CBSAs. HUD uses CBSAs throughout its programs and is updating the standards to ensure accuracy of data and program administration.

DATES: Effective January 6, 2025.

FOR FURTHER INFORMATION CONTACT: Kurt Usowski, Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research (PD&R), Department of Housing and Urban Development, 451 7th St. SW, Washington, DC 20410, telephone number 202–402–5899 (this is not a toll-free number) or via email to Kurt.G.Usowski@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech 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>.

SUPPLEMENTARY INFORMATION:

I. Background

In its role as coordinator of the Federal statistical system, the Office of Management and Budget (OMB) establishes and maintains the CBSA program. CBSAs are geographic areas containing a large population center, or urban area, and adjacent communities that have a high degree of integration with that population center measured by commuting ties. OMB maintains CBSAs solely for statistical purposes. Every decade, OMB reviews and updates the Standards for Delineating CBSAs (CBSA standards), which describe the data sources and methods OMB uses to determine which geographic areas are to be designated CBSAs, prior to their application to new decennial census data. OMB updated CBSA standards on July 16, 2021 (86 FR 37770) prior to applying them to 2020 Census data.

The Metropolitan Areas Protection and Standardization Act of 2021, or the MAPS Act, (31 U.S.C. 6102, *et seq.*) prohibits agencies from automatically propagating OMB's CBSA standards for non-statistical use by any domestic assistance program unless the agency determines that the propagation: (1) supports the purpose of the program; and (2) is in the public interest. (31 U.S.C. 6309(a)(2)(A)). Propagation of the CBSA standards for non-statistical use by domestic assistance programs must be done through a notice and comment rulemaking. (31 U.S.C. 6309(a)(2)(B)).

II. The Proposed Rule

On September 6, 2024, HUD published a proposed rule for public comment (89 FR 72766) to add new

subpart M to 24 CFR part 5 adopting the 2020 CBSA standards as determined by OMB in 86 FR 37770 (July 16, 2021). The proposed rule described how HUD programs use CBSAs, as outlined in

Table 1. The proposed rule also described how adoption of the new CBSA standards support the purpose of these programs and is in the public interest.

TABLE 1—HUD USES OF CBSAS

Use	HUD office
Community Development Block Grant Program	Community Planning and Development (CPD).
Community Development Block Grant Disaster Recovery Program	CPD.
Housing Opportunities for Persons with AIDS Program	CPD.
HOME Investment Partnerships (HOME) Program	CPD.
Housing Trust Fund (HTF) Program	CPD.
Continuum of Care	CPD.
Emergency Solutions Grant (ESG)	CPD.
FHA's Title II Program (loan limits)	Housing.
Choice Neighborhoods Initiative	Public and Indian Housing (PIH).
Difficult Development Area (DDA) and Qualified Census Tract (QCT) Designations	PD&R.
Fair Market Rents (FMRs), HUD Area Median Family Incomes (HAMFIs), and Income Limits	PD&R.

III. This Final Rule

After considering comments received from the public, HUD adopts this final rule without changes from the proposed rule. HUD has determined that adoption of the 2020 CBSA standards, as determined by OMB in 86 FR 37770 (July 16, 2021), supports the purpose of HUD's programs and is in the public interest. The updated CBSA standards, and updated CBSA delineations based on the 2020 CBSA standards, will make calculation of Fair Market Rents, Area Median Family Income, and Income Limits more accurate. The accuracy of these program parameters is in the public interest as it most appropriately will direct resources governed by these parameters to recipients in the most appropriate amounts.

The new CBSA standards support HUD's designation of DDAs and QCTs as well as PIH, CPD, and Housing's programs because they more accurately reflect the current housing markets, which have changed significantly since the 2010 census. Furthermore, adopting the new standards will not be disruptive to the programs as program participants are expecting HUD to regularly update the metropolitan area standards and delineations to reflect current market conditions as HUD has done historically.

IV. Public Comments

HUD received three relevant comments in response to the proposed rule. Two comments were from interested individuals and one was from a real estate association. Commenters were generally supportive of the proposed rule. This section includes a summary of the issues raised by commenters.

Policy Suggestions

One commenter urged HUD to minimize disruptions for program participants. To do so, the commenter suggested that HUD adopt a “hold harmless” policy that keeps income limits constant rather than allowing them to decline. Specifically, the commenter noted that the exception should not merge a high-income county with an MSA that has a lower HAMFI but instead allow the high-income county to become its own HUD Metropolitan Fair Market Rent Area (HMFA). It would also hold harmless any county detached from an MSA, meaning that when a relatively lower-income county is detached from an MSA with a higher HAMFI, income limits in the detached county should be kept at the same level as they were when part of the MSA, rather than allowed to decline. The commenter noted that downward changes are difficult for program participants to predict and stated that this exception would avoid disruptive changes. The commenter recommended that this exception be available for all income limits, including Section 8 limits.

Additionally, the commenter asked that HUD allow reasonable “grandfathering” for uses of CBSAs beyond FMR/HAMFI/Income Limits such that any area, property or individual currently receiving assistance, or in the process of applying for assistance, should be grandfathered in for a reasonable period of time, rather than lose eligibility instantly due to the change in geographic definitions.

HUD Response: This rule allows HUD to use CBSA delineations based on OMB's latest standards for CBSA delineation in its program administration. It does not otherwise set

policy for HUD program eligibility such as generally defining the methods by which HUD sets program eligibility income limits derived from the HAMFI or determining program eligibility in cases where income limits decline due to geographic change caused by adopting new CBSA delineations or for other reasons. HUD's FMR, Income Limit and HAMFI policies allow for various exceptions to the CBSA delineations HUD uses in the estimation processes for these program operating parameters. This rule allows HUD to include the latest CBSA delineations in the computation process for FMRs, Income Limits, and HAMFIs, but does not otherwise affect that process or the rules of program administration.

ZIP Codes

One commenter suggested that HUD use a zip-codes based system rather than a county-based system because zip codes are a more concise and accurate measure of populations and will help ensure taxes are going to the intended beneficiaries of these programs. The commenter also noted that there has been a change in commuting habits since 2020 and a decline in urban populations in 2020–2021 which is not reflected in the 2020 census data.

One commenter reflected that FMRs are poor indicators of the housing market and noted the move away from the regional standard to a zip code standard. The commenter asked whether the zip code standard will allow for more resources for enforcement and rent control to be directed towards lower-income areas. The commenter also asked whether tying large areas around a metropolitan area to the metropolitan area would turn the smaller areas into large areas again.

HUD Response: OMB determines the geographic units (counties and county equivalents) that form the basis of CBSAs in the process of setting the standards for CBSA delineation. HUD interprets its statutes and regulations referencing “metropolitan areas” as referring to the metropolitan CBSAs delineated by OMB. Thus, in HUD’s program administration activities based on “metropolitan areas”, HUD is required to use the county-based metropolitan CBSAs delineated by OMB and cannot establish separate metropolitan areas based on ZIP-Codes or other alternative geographic units. Regarding changes in population since 2020, while OMB updates the standards for CBSA delineation approximately every 10 years, OMB generally updates the delineations annually based on changes in the underlying data as measured by the Census Bureau through the American Community Survey.

HUD produces the FMRs to help Public Housing Agencies (PHAs) that administer Housing Choice Vouchers to set payment standards that determine the amount the vouchers pay to participating landlords. Some PHAs in certain FMR areas are required to use “Small Area FMRs” estimated at the ZIP-code level to set all their payment standards, and other PHAs may opt into using Small Area FMRs to set some or all payment standards. Use of Small Area FMRs has no effect on the resources available to the PHAs for voucher administration. FMRs are not a mechanism for rent control, but rather a measure of the 40th percentile rent paid by recent movers into standard quality rental housing located in the applicable area. In estimating FMRs, HUD generally does not add new counties to metropolitan areas for purposes of the overall FMR unless the added county has rental data quality deficiencies.

Fair Market Rent Calculation

One commenter noted that Fair Market Rents are calculated based on home-to-work interactions and asked how far out the standard reaches and if it is calculated on a case-by-case decisions for every metropolitan area.

HUD Response: CBSAs are delineated based on the commuting interchange between counties, and the larger are the counties, the larger is the CBSA. In estimating FMRs, HUD generally does not add new counties to metropolitan areas for purposes of the overall FMR unless the added county has rental data quality deficiencies. HUD may use the full CBSA delineation including newly added counties for some parts of the calculation, such as recent mover adjustments, inflation factors, and trend

factors, but HUD uses the most local data allowed under data quality standards for setting base rents and making other adjustments in the FMR calculation process.

VII. Findings and Certifications

Regulatory Review (Executive Orders 12866, 13563, and 14094)

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The order also directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 further directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 entitled “Modernizing Regulatory Review” (hereinafter referred to as the “Modernizing E.O.”) amends section 3(f) of Executive Order 12866, among other things.

As discussed above, this rule adopts updated standards for CBSA delineations that HUD programs use for program administrative purposes. It is statistical and administrative in nature with the purpose of maintaining past administrative practices. This rule was determined not to be a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 and is not an economically significant regulatory action.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of UMRA.

Environmental Review

This rule establishes discretionary review of loan limits, fair market rent schedules, income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, and similar rate and cost determinations and related external administrative or fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19 (c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule adopts updated standards for the delineation of CBSA geographic areas that affected HUD programs use for various administrative purposes. The adoption is statistical and administrative in nature and consistent with longstanding HUD policy and practice. Therefore, this final rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance,

Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

- 1. The authority for part 5 continues to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.*; 34 U.S.C. 12471 *et seq.*; Sec. 327, Pub. L. 109–115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

- 2. Add subpart M, consisting of § 5.3001, to read as follows:

Subpart M—Core Based Statistical Areas

§ 5.3001 Automatic propagation of OMB's Core Based Statistical Area Standards.

When using Core Based Statistical Areas (CBSAs), HUD shall use the 2020 CBSA standards adopted by the Office of Management and Budget and published in the **Federal Register** on July 16, 2021, as well as any subsequent updates to the CBSA delineations based on these standards made by the Office of Management and Budget. Purposes and programs that use the CBSA standards include, but are not limited to:

- (a) The Community Development Block Grant Program (24 CFR part 570);
- (b) The Community Development Block Grant Disaster Recovery funds (applicable appropriations and **Federal Register** notices);
- (c) The Housing Opportunities for Persons with AIDS Program (24 CFR part 574);
- (d) The HOME Investment Partnerships Program (24 CFR part 92);
- (e) The Continuum of Care Program (24 CFR part 578);
- (f) The Emergency Solutions Grants Program (24 CFR part 576);
- (e) The FHA Title II Program (National Housing Act of 1934 Title II);
- (f) The Choice Neighborhoods Initiative Program (42 U.S.C. 1437v, as applied by the applicable annual appropriations act(s); 24 CFR 905.602(d));
- (g) The Housing Trust Fund Program (24 CFR part 93); and
- (h) The calculation of: Fair Market Rents (24 CFR part 888); HUD Area Median Family Income (this part); Income Limits (this part); Difficult

Development Areas; and Qualified Census Tracts.

Damon Smith,
General Counsel.

[FR Doc. 2024–28450 Filed 12–5–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 26 and 31

[Docket No. TTB–2024–0006; T.D. TTB–196A; T.D. TTB–196]

RIN 1513–AB93

Technical Corrections to the TTB Regulations; Corrections

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision; correction.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) recently published a final rule in the **Federal Register** of November 6, 2024, making technical corrections to certain of its regulations. This document corrects two minor, non-substantive errors in the amendatory instructions in that final rule.

DATES: This final rule correction is effective December 6, 2024.

FOR FURTHER INFORMATION CONTACT: Michael D. Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 135.

SUPPLEMENTARY INFORMATION: The Alcohol and Tobacco Tax and Trade Bureau (TTB) recently published a final rule making technical corrections to certain of its regulations in 27 CFR chapter I. That final rule appeared in the **Federal Register** of November 6, 2024 (89 FR 87931). This document corrects two non-substantive errors in the amendatory instructions in that final rule. The errors described below were inadvertent, and their correction does not alter the intended meaning of any regulatory section contained in the final rule.

Corrections

In the final rule document numbered FR Doc. 2024–23662 appearing on pages 87931 through 87953 in the **Federal Register** issue of Wednesday, November 6, 2024, make the following corrections:

§ 26.87 [Corrected]

- 1. On page 87944, in amendatory instruction 71, in the table, in the first entry for § 26.87, in the third column, “they shall.” is corrected to read “they shall”.

§ 31.11 [Corrected]

- 2. On page 87946, in amendatory instruction 90, in the table, in the second entry for § 31.11(b), in the second column, “Room 1516” is corrected to read “Suite 8002”.

Signed: December 3, 2024.

Mary G. Ryan,
Administrator.

[FR Doc. 2024–28566 Filed 12–5–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 588

Publication of Western Balkans Stabilization Regulations Web General License 5A

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a general license issued pursuant to the Western Balkans Stabilization Regulations: GL 5A, which was previously made available on OFAC's website.

DATES: GL 5A was issued on November 6, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov>.

Background

On November 6, 2024, OFAC issued GL 5A to authorize certain transactions otherwise prohibited by the Western Balkans Stabilization Regulations, 31 CFR part 588. GL 5A superseded GL 5. GL 5A was made available on OFAC's

website (<https://ofac.treasury.gov>) when it was issued. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Western Balkans Stabilization Regulations

31 CFR Part 588

GENERAL LICENSE NO. 5A

Authorizing Certain Transactions Involving Pumps Manufactured or Distributed by Kaldera Company EL PGP d.o.o. or Elpring d.o.o. Laktasi for the Treatment or Distribution of Drinking Water

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the Western Balkans Stabilization Regulations, 31 CFR part 588 (WBSR), that are ordinarily incident and necessary to the manufacture, distribution, operation, installation, or maintenance and repair of pumps manufactured or distributed by Kaldera Company EL PGP d.o.o. (Kaldera), Elpring d.o.o. Laktasi (Elpring), or any entity in which Kaldera or Elpring owns, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest, that are currently or are intended solely for use in the treatment or distribution of drinking water, are authorized.

(b) This general license does not authorize any transactions otherwise prohibited by the WBSR, including transactions involving any person blocked pursuant to the WBSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(c) Effective November 6, 2024, General License No. 5, dated June 18, 2024, is replaced and superseded in its entirety by this General License No. 5A.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

Dated: November 6, 2024

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–28470 Filed 12–5–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–1050]

RIN 1625–AA00

Safety Zone; Sandusky Tree Lighting, Sandusky Bay, Sandusky, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Sandusky Bay in

vicinity of the Jackson Street Pier in Sandusky, OH. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from potential hazards associated with firework displays created by the City of Sandusky. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Detroit, or his designated representative.

DATES: This rule is effective from 5:30 p.m. through 6:30 p.m. on December 14, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–1050 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MST1 Thomas Harp, Waterways Management Division, Marine Safety Unit Toledo, Coast Guard; telephone 419–418–6040, email Thomas.L.Harp@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor notified the Coast Guard with insufficient time to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment on the Sandusky Bay in Sandusky, OH. It is also impracticable and contrary to the public to publish a NPRM because we must establish this safety zone by December 14, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than

30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a firework display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP Detroit has determined that potential hazards associated with a firework display will be a safety concern for anyone within a 560-foot radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and firework debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the firework display.

IV. Discussion of the Rule

This rule establishes a safety zone from 5:30 p.m. through 6:30 p.m. on December 14, 2024. The safety zone will encompass all U.S. Navigable waters of Sandusky Bay within a 560-foot radius of the firework display launch site located at 41°27′32.27″ N, 82°42′52.15″ W, on the Jackson Street Pier in Sandusky, OH. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the firework display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP Detroit or his representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16 or call 313–568–9560.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094

(Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of Sandusky Bay for one hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners (BNM) via VHF-FM Marine Channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately one hour that will prohibit entry within a 560-

foot radius where the firework display will be conducted. 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.T09–1050 to read as follows.

§ 165.T09–1050 Sandusky Tree Lighting, Sandusky Bay, Sandusky, OH

(a) *Location.* The following area is a temporary safety zone: all U.S. Navigable waters of Sandusky Bay within a 560-foot radius of the firework launch site located at position 41°27′32.27″ N, 82°42′52.15″ W, on the Jackson Street Pier in Sandusky, OH. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 5:30 p.m. through 6:30 p.m. on December 14, 2024. The COTP Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *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 Detroit (COTP) in the enforcement of the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP Detroit or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

Dated: November 27, 2024.

Richard P. Armstrong,

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

[FR Doc. 2024–28557 Filed 12–5–24; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 19–CRB–0005–WR (2021–2025)
COLA (2025)]

Cost of Living Adjustment to Royalty Rates for Webcaster Statutory License

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) in the royalty rates that commercial and noncommercial noninteractive webcasters pay for eligible transmissions pursuant to the statutory licenses for the public performance of and for the making of ephemeral reproductions of sound recordings.

DATES:

Effective date: December 6, 2024.

Applicability dates: These rates are applicable to the period January 1, 2025, through December 31, 2025.

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707–7658, crb@loc.gov.

SUPPLEMENTARY INFORMATION: Sections 112(e) and 114(f) of the Copyright Act, title 17 of the United States Code, create statutory licenses for certain digital performances of sound recordings and the making of ephemeral reproductions to facilitate transmission of those sound recordings. On October 27, 2021, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under those licenses for the license period 2021–2025 for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. *See* 86 FR 59452.

Pursuant to those regulations, at least 25 days before January 1 of each year from 2022 to 2025, the Judges shall publish in the **Federal Register** notice of a cost of living adjustment (COLA) applicable to the royalty fees for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. 37 CFR 380.10.

The adjustment in the royalty fee shall be based on a calculation of the percentage increase in the CPI–U from the CPI–U published in November 2020 (260.229), according to the formula: for subscription performances, $(1 + (C_y - 260.229)/260.229) \times \$0.0026$; for nonsubscription performances, $(1 + (C_y - 260.229)/260.229) \times \$0.0021$; for performances by a noncommercial webcaster in excess of 159,140 ATH per month, $(1 + (C_y - 260.229)/260.229) \times \$0.0021$; where C_y is the CPI–U published by the Secretary of Labor before December 1 of the preceding year. The adjusted rate shall be rounded to the nearest fourth decimal place. 37 CFR 380.10(c). The CPI–U published by the Secretary of Labor from the most recent index published before December 1, 2024, is 315.664.¹ Applying the formula in 37 CFR 380.10(c) and rounding to the nearest fourth decimal place results in an increase for 2025 in the rate for subscription performances and no increase for 2025 in the rates for nonsubscription performances and performances by a noncommercial webcaster in excess of 159,140 ATH per month.

The 2025 rate for eligible transmissions of sound recordings by commercial webcasters is \$0.0032 per

¹ This CPI–U was announced on November 13, 2024, by the Bureau of Labor Statistics in its *Consumer Price Index News Release—Consumer Price Index*, available at <https://www.bls.gov/news.release/cpi.htm> at Table 1.

subscription performance and \$0.0025 per nonsubscription performance.

The 2025 rate for noncommercial webcasters is \$0.0025 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

As provided in 37 CFR 380.10(d), the royalty fee for making ephemeral recordings under section 112 of the Copyright Act to facilitate digital transmission of sound recordings under section 114 of the Copyright Act is included in the section 114 royalty fee and comprises 5% of the total fee.

List of Subjects in 37 CFR Part 380

Copyright; sound recordings.

Final Regulations

In consideration of the foregoing, the Judges amend part 380 of title 37 of the Code of Federal Regulations as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Section 380.10 is amended by revising paragraph (a) to read as follows:

§ 380.10 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) *Royalty fees.* For the year 2025, Licensees must pay royalty fees for all Eligible Transmissions of sound recordings at the following rates:

(1) *Commercial webcasters:* \$0.0032 per Performance for subscription services and \$0.0025 per Performance for nonsubscription services.

(2) *Noncommercial webcasters:* \$1,000 per year for each channel or station and \$0.0025 per Performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

* * * * *

Dated: November 22, 2024.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2024–27834 Filed 12–5–24; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R03–OAR–2024–0152; FRL–11858–02–R3]****Air Plan Approval; Maryland; Determination of Attainment by the Attainment Date for the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the Anne Arundel and Baltimore County sulfur dioxide (SO₂) nonattainment area attained the 2010 1-hour SO₂ primary national ambient air quality standard (2010 SO₂ NAAQS) by the applicable attainment date of September 12, 2021. This determination is based on certified ambient air quality data from the 2018–2020 monitoring period, relevant modeling analysis, and additional emissions inventory information. This action addresses the EPA's obligation under Clean Air Act (CAA) section 179(c) to determine whether the Anne Arundel and Baltimore County SO₂ nonattainment area (referred to hereafter as the Anne Arundel-Baltimore County Area, or simply the Area) attained the 2010 SO₂ NAAQS by the September 12, 2021 attainment date.

DATES: This final rule is effective on January 6, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2024–0152. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT:

Philip McGuire, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia,

Pennsylvania 19103. The telephone number is (215) 814–2251. Mr. McGuire can also be reached via electronic mail at mcguire.philip@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 6, 2024 (89 FR 72770), the EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, the EPA proposed to determine that the Anne Arundel-Baltimore County Area had attained the 2010 1-hour SO₂ primary NAAQS by the applicable attainment date of September 12, 2021. During the comment period for the EPA's NPRM, open from September 6, 2024 to October 7, 2024, the EPA received no comments.

This action addresses the EPA's obligation under CAA section 179(c) to determine whether the Anne Arundel-Baltimore County Area attained the 2010 SO₂ NAAQS by the September 12, 2021 attainment date. Notably, a determination of attainment by the attainment date does not constitute a redesignation of an area to attainment for the 2010 SO₂ NAAQS under section 107(d)(3) of the CAA. The area will remain designated nonattainment for the 2010 SO₂ NAAQS until the state formally requests redesignation of the area to attainment, the EPA takes formal action to determine that the area meets CAA requirements for redesignation, and the EPA approves an accompanying state-submitted maintenance plan that ensures the area will continue to meet the NAAQS for the successive 10-year period.

II. Summary of Determination and EPA Analysis

CAA section 179(c)(1) requires the EPA to “determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.” As discussed in the NPRM, the EPA used an integrated analysis based on SO₂ emissions data, ambient air quality monitoring data, and the EPA's 2022 clean data determination modeling analysis (based on 2019–2021 SO₂ emissions) in making this determination of attainment by the attainment date for the Anne-Arundel Baltimore County Area.

The EPA finds that the integrated analysis of multiple types of air-quality related information supports the determination and is consistent with CAA section 179(c)(1)'s direction to determine the area's air quality as of the attainment date. Specifically, reduced SO₂ emissions within the Area from 2012 to 2020, no exceedances of the 2010 1-hour SO₂ NAAQS at monitoring sites within the Area since 2012, and

the EPA's modeling analysis (based on 2019–2021 SO₂ emissions) predicting a maximum design value within the Area that is well below the NAAQS all provide supporting bases for the EPA's determination of attainment by the attainment date. Further details on the EPA's analysis are available in the NPRM related to this action. The comment period for this NPRM ended on October 7, 2024.

III. Final Action

The EPA conducted an analysis, described in detail in the NPRM related to this action, to determine if the Anne Arundel-Baltimore County Area attained the 2010 1-hour SO₂ NAAQS by the September 12, 2021 attainment date. Based on that analysis and the information presented in the NPRM, the EPA is determining that the Anne Arundel-Baltimore County Area attained the 2010 1-hour SO₂ NAAQS by the applicable attainment date of September 12, 2021, consistent with CAA section 179(c)(1).

On September 6, 2024 (89 FR 72770), the EPA published an NPRM proposing to determine that the Anne Arundel-Baltimore County Area attained the NAAQS by the September 12, 2021 attainment date. The EPA sought public comment on the proposed determination and received no comments.

This action does not constitute a redesignation of the Anne Arundel-Baltimore County Area to attainment for the 2010 1-hour SO₂ NAAQS under CAA section 107(d)(3). The classification and designation status in 40 CFR part 81 will remain nonattainment until the state formally requests redesignation of the area to attainment, the EPA takes formal action to determine that the area meets CAA requirements for redesignation under section 107(d)(3)(E), and the EPA approves an accompanying state-submitted maintenance plan pursuant to section 175A that ensures the area will continue to meet the NAAQS for the successive 10-year period.

IV. Statutory and Executive Order Reviews**A. General Requirements**

This action determines an area has attained the NAAQS by the relevant attainment date and does not impose additional or modify existing requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address

“disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and

commercial operations or programs and policies.”

The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, which finds that a nonattainment area attained the 2010 SO₂ NAAQS by the applicable attainment date, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, the determination of attainment by the attainment date for the Anne Arundel-Baltimore County SO₂ nonattainment area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Reporting and recordkeeping requirements, Sulfur oxides.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. Amend § 52.1082 by adding paragraph (m) to read as follows:

§ 52.1082 Determinations of attainment.

* * * * *

(m) The EPA has determined, as of January 6, 2025, that based on 2018–2020 monitoring data, relevant modeling analysis, and additional emissions inventory information, the Anne Arundel and Baltimore County SO₂ nonattainment area has attained the 2010 1-hour SO₂ primary NAAQS by the applicable attainment date of September 12, 2021.

[FR Doc. 2024–27865 Filed 12–5–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 241129–0306]

RIN 0648–BM70

International Fisheries; Pacific Tuna Fisheries; Fish Aggregating Device Design and Reporting Requirements in the Eastern Pacific Ocean

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

ACTION: Final rule.

SUMMARY: NMFS is issuing and modifying regulations under the Tuna Conventions Act (TCA) of 1950, as amended, to implement two Resolutions adopted at the 101st Meeting of the Inter-American Tropical Tuna Commission (IATTC) in August 2023. These Resolutions include Resolution C–23–03 (Amendment to Resolution C–99–07 on Fish Aggregating Devices) and Resolution C–23–04 (On the Design and

Biodegradability of Drifting Fish Aggregating Devices (DFADs) in the IATTC Area of Competence). This final rule modifies regulations for the design of fish aggregating devices (FADs) in the eastern Pacific Ocean (EPO) to require that they be designed with non-entangling and biodegradable materials. The rule also requires that vessel owners and operators collect data related to the recovery, disposal, or recycling of FADs and submit these data to the IATTC, unless the information is already collected and submitted to the IATTC by an observer.

DATES: This rule is effective January 6, 2025.

ADDRESSES: A plain language summary of this rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2023-0147>.

Copies of supporting documents that were prepared for this rule, including the regulatory impact review (RIR), are available via the Federal e-Rulemaking Portal: <https://www.regulations.gov>, docket NOAA–NMFS–2023–0147, or contact Highly Migratory Species Branch Staff, Karter Harmon, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, or Karter.Harmon@noaa.gov.

Written comments and recommendations for this information collection should be submitted at the following website: <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648–0148.

FOR FURTHER INFORMATION CONTACT: Karter Harmon, NMFS West Coast Region (WCR), at (562) 980–3248, or Karter.Harmon@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (1949 Convention). In 2003, the IATTC updated the 1949 Convention through the adoption of the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: <https://www.iatcc.org/>

PDFFiles2/Antigua_Convention_Jun_2003.pdf.

The United States implements binding decisions of the IATTC as domestic regulations under the Tuna Conventions Act of 1950, as amended, 16 U.S.C. 951 *et seq.* (Pub. L. 114–81). The TCA directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

IATTC Resolutions on Fish Aggregating Devices

The 101st Meeting of the IATTC was held in Victoria, Canada, in August 2023. At this meeting, the IATTC adopted Resolution C–23–03 (Amendment to Resolution C–99–07 on Fish Aggregating Devices) and Resolution C–23–04 (On the Design and Biodegradability of Drifting Fish Aggregating Devices (DFADs) in the IATTC Area of Competence).

Resolution C–23–03 amends Resolution C–99–07 and continues to recommend that tender vessels operating in support of vessels fishing on FADs in the EPO remain prohibited. The Resolution stipulates that vessels may engage in FAD recovery activities that are limited to the collection of FADs for final disposal, not maintenance or adjustment. The Resolution requires that Members and Cooperating Non-Members report all associated information on any such FAD recovery activities to the IATTC Secretariat. The Resolution encourages the initiation of FAD recovery programs through cooperative initiatives among fishing vessels and other vessels implementing recovery projects in the IATTC Convention Area. These measures are intended to improve FAD management and data collection for FAD-associated fishing sets and to reduce their impacts.

Resolution C–23–04 contains new requirements regarding materials that can be used in FADs that are deployed or redeployed in the IATTC Convention Area. These include biodegradable and non-entangling materials, which would be phased in between 2025 and 2029. Beginning on January 1, 2025, purse seine vessel owners and operators are required to meet non-entangling design requirements for FADs, and the use of mesh nets is prohibited for any part of

a FAD. The Resolution defines “non-entangling FAD” as “a FAD that does not include any netting materials for any part of the FAD including both the surface structure (e.g., raft) and subsurface structure (e.g., tail).” Beginning on January 1, 2026, purse seine vessel owners and operators are required to begin using biodegradable materials in either the surface or subsurface portion of FADs. By January 1, 2029, both the surface and subsurface portion of the FAD must be composed of biodegradable materials. These measures are intended to reduce marine pollution and other impacts associated with non-biodegradable FADs.

NMFS published a proposed rule on July 19, 2024 (89 FR 58698), for public review and comment. The comment period closed on August 19, 2024. The preamble to the proposed rule contains additional background information that is not repeated here.

Final Regulations

This rule is implemented under the TCA (16 U.S.C. 951 *et seq.*) and includes changes to part 300, subpart C of title 50 of the Code of Federal Regulations (CFR). This rule implements the following three provisions in Resolutions C–23–03 and C–23–04:

First, the rule establishes new requirements for vessels that choose to recover FADs in the IATTC Convention Area for the purpose of final disposal. Except for authorized tuna purse seine vessels, vessels engaged in recovery activities may not deploy FADs. Recovered FADs must be taken on board and brought to port for recycling or final disposal. The rule also implements a reporting requirement for information associated with all FADs recovered by vessel owners and operators in the IATTC Convention Area, unless that information is already reported by an observer. These data must be reported to the IATTC scientific staff for analysis using a format and address provided by NMFS. Because these data are routinely collected by observers, this reporting requirement will only apply in situations where a vessel engaged in FAD recovery does not have an observer on board.

Second, beginning on January 1, 2025, U.S. purse seine vessel owners and operators will be required to meet non-entangling design requirements for FADs deployed or redeployed in the IATTC Convention Area. A definition of “non-entangling FAD,” consistent with the definition adopted by the IATTC, is included in the regulations as follows: “Non-entangling FAD means a FAD that does not include any netting materials for any part of the FAD including both

the surface structure (e.g., raft) and subsurface structure (e.g., tail)."

Third, beginning on January 1, 2026, U.S. purse seine vessel owners and operators will be required to meet standards for biodegradable materials in either the surface or subsurface components of FADs in the IATTC Convention Area. A definition of "biodegradable," consistent with the definition adopted by the IATTC, is included in the regulations as follows: "Biodegradable means non-synthetic materials and/or bio-based alternatives that are consistent with approved international standards for materials that are biodegradable in marine environments. The components resulting from the degradation of these materials should not be damaging to the marine and coastal ecosystems or include heavy metals or plastics in their composition. Examples of non-synthetic materials include plant-based materials such as cotton, jute, manila hemp (abaca), bamboo, and natural rubber; and animal-based materials such as leather, wool, and lard. The approved international standards are ASTM D6691, ASTM D7881, and TUV Austria."

By January 1, 2026, FADs must be constructed according to one of three sets of specifications. Under option one, the surface part of the FAD must be made of fully biodegradable materials, except for flotation components, but the subsurface part may contain non-biodegradable materials (e.g., synthetic raffia, metallic frame, plastic floats, nylon ropes). Under option two, the subsurface part of the FAD must be made of fully biodegradable materials, but the surface part and any flotation components may be made of non-biodegradable materials. Under option three, the surface part, except for flotation components, and subsurface part must both be made of fully biodegradable materials. All three options would allow for plastic-based flotation components (e.g., plastic buoys, foam, purse-seine corks). The third option allows an exception for satellite buoys that are attached to FADs to track them, and for nylon ropes, which can be used exclusively to strengthen the structure of the floating or underwater component of the FAD.

By January 1, 2029, all FADs deployed or redeployed in the IATTC Convention Area must be designed and constructed such that the surface part and subsurface part are both made of fully biodegradable materials, except that any flotation component on the surface part may still be made of non-biodegradable materials. The exceptions

for satellite buoys and nylon ropes will continue to apply.

Public Comments and Responses

NMFS received two comments during the 30-day comment period on the proposed rule, which closed on August 19, 2024. One comment was from a member of the general public and was fully supportive of the proposed rule as written. The second comment was from American Tunaboat Association (ATA), which represents U.S. large purse seine vessels in the Pacific Ocean. This comment, while generally supportive, raised two issues with the proposed rule text which are addressed below.

Issue 1: The commenters noted that the length of time needed to comply with the collection of information requirements for the FAD recovery form is likely to be greater than the 5 minutes estimated in the proposed rule.

NMFS Response: NMFS acknowledges the experience of industry participants in providing an estimate of the time burden for filling out forms and reporting information to the IATTC. After considering this public comment, NMFS has updated the estimated average time burden for collection of information associated with this rule from 5 minutes to 15 minutes, if FADs are voluntarily retrieved for disposal. However, as the commenters pointed out, much of the relevant information would already be collected by IATTC observers aboard the U.S. large purse seine vessels and therefore the time burden is unlikely to fall upon vessel owners and operators except when extenuating circumstances preclude the collection of such information by observers.

Issue 2: The commenters noted that the projected impacts on the profitability of the fishery resulting from FAD design requirements in this action are uncertain and may be greater than the estimates offered in the proposed rule. In particular, the commenters stated that the data produced by the IATTC and the International Seafood Sustainability Foundation (ISSF) overestimate the average amount of tuna which can reliably be harvested from biodegradable FADs and underestimate the costs associated with transitioning from traditional to biodegradable FADs.

NMFS Response: NMFS appreciates the perspectives of industry participants regarding the economic burden of transitioning from traditional to biodegradable FADs. NMFS cited the publicly available information from ISSF and the IATTC to estimate costs and harvest potential, but also acknowledges the fishing industry may have additional experiences with

biodegradable FADs. NMFS also acknowledges there may be uncertainty and variation in harvest with biodegradable FADs between vessels as well.

However, the costs associated with the transition to the proposed FAD designs are not expected to reduce profitability or significantly impact the fleet because replacing and redeploying FADs has always been considered routine by large purse seine vessels, regardless of design type. Due to the routine nature of replacement and redeployment of FADs, large purse seine vessels already consider such operating costs. Based on available public information, NMFS does not predict that costs of replacement and redeployment of biodegradable FADs will vary so significantly from current estimates used by large purse seine vessels as to impact profitability. As such, the uncertainty highlighted by the commenter does not alter our determination, pursuant to the Regulatory Flexibility Act, that this action is not expected to have a significant economic impact on a substantial number of small entities.

Changes From the Proposed Rule

The Classification section of this final rule includes an adjustment to the estimated time burden of the collection-of-information requirements, in response to the information submitted by industry participants via public comment. No changes to the regulatory text were made between the proposed and final rule.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the TCA and other applicable laws.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This rule changes the existing requirements for the collection of information No. 0648–0148 (West Coast Region Pacific Tuna Fisheries Logbook, Fish Aggregating Device Form, and Observer Safety Reporting) by requiring U.S. vessel owners and operators who voluntarily recover FADs for disposal or recycling to report information to the IATTC, unless that information is already collected and submitted to the

IATTC by an observer onboard the vessel. Current FAD reporting requirements under that collection of information would continue to apply. Public reporting burden for reporting on recovered FADs is estimated to average 15 minutes per form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This public reporting burden will only be incurred in potential situations where an observer is either not present aboard the vessel, or is unable to collect the relevant information due to extenuating circumstances. Additionally, under existing regulations at 50 CFR 300.22(c), vessel owners and operators that do not have an observer on board are required to report detailed information on any interaction or activity with a deployed FAD, including information about the design of the FAD. The public reporting burden for this existing collection of information for FAD design will not change as a result of this final rule.

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. Written comments and recommendations for this information collection should be submitted at the following website: <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648–0148.

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 PRA, unless that collection of information displays a currently valid OMB Control Number.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that, for purposes of the Regulatory Flexibility Act, this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. Information received through public

comment highlights uncertainty in some of the costs which may be incurred by the action. This information does not alter the analysis of the action as described in the proposed rule. Therefore, the initial certification published with the proposed rule—that this rule is not expected to have a significant economic impact on a substantial number of small entities—remains unchanged. As a result, a regulatory flexibility analysis was not required and none was prepared.

Executive Order 13175

NMFS has determined that this action would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes; therefore, consultation with Tribal officials under Executive Order 13175 is not required, and the requirements of sections (5)(b) and (5)(c) of E.O. 13175 also do not apply. A Tribal summary impact statement under section (5)(b)(2)(B) and section (5)(c)(2)(B) of Executive Order 13175 is not required and has not been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: December 2, 2024.

Samuel D. Rauch, III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

■ 1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 2. Amend § 300.21 by adding definitions, in alphabetical order, for “Biodegradable” and “Non-entangling FAD” to read as follows:

§ 300.21 Definitions.

* * * * *

Biodegradable means non-synthetic materials and/or bio-based alternatives that are consistent with approved international standards for materials that are biodegradable in marine

environments. The components resulting from the degradation of these materials should not be damaging to the marine and coastal ecosystems or include heavy metals or plastics in their composition. Examples of non-synthetic materials include plant-based materials such as cotton, jute, manila hemp (abaca), bamboo, and natural rubber; and animal-based materials such as leather, wool, and lard. The approved international standards are ASTM D6691, ASTM D7881, and TUV Austria.

* * * * *

Non-entangling FAD means a FAD that does not include any netting materials for any part of the FAD including both the surface structure (*e.g.*, raft) and subsurface structure (*e.g.*, tail).

* * * * *

■ 3. Amend § 300.22 by adding paragraph (c)(5) to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

* * * * *

(c) * * *

(5) *Reporting on recovered FADs.* U.S. vessel owners and operators must report information on FADs that are recovered for disposal or recycling to the IATTC, unless that information is already reported to the IATTC by an observer. This information must be reported using a format and address provided by the HMS Branch. The owner and operator must ensure that the form is submitted within 30 days of each recovery to the address specified by the HMS Branch.

* * * * *

■ 4. Amend § 300.24 by adding paragraphs (rr) and (ss) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(rr) Except for tuna purse seine vessels, when recovering FADs, performing maintenance and adjustments on deployed FADs, or deploying a FAD.

(ss) Deploy or redeploy a FAD in the IATTC Convention Area that fails to comply with the FAD design requirements in § 300.28(g) and (h).

■ 5. Amend § 300.28 by:

■ a. Revising the heading to paragraph (f);

■ b. Adding paragraph (f)(3);

■ c. Revising paragraph (g); and

■ d. Adding paragraph (h).

The revisions and additions read as follows:

§ 300.28 FAD restrictions.

* * * * *

(f) *Restrictions on FAD deployments, removals, and recovery.*

* * * * *

(3) U.S. vessel owners and operators may recover FADs for final disposal or recycling. Recovery activities must be limited to the collection of FADs for final disposal or recycling and may not include any type of maintenance or adjustment on deployed FADs.

(g) *Non-entangling FAD materials.* Beginning January 1, 2025, U.S. purse seine vessel owners and operators must ensure that the design and construction of any FAD to be deployed or redeployed (*i.e.*, placed in the water) in the IATTC Convention Area uses only non-entangling FAD materials.

(h) *Biodegradable FAD materials.* In addition to complying with the requirement to use non-entangling materials specified in paragraph (g) of this section, vessel owners and operators must ensure that the design and construction of any FAD to be deployed or redeployed in the IATTC Convention Area meets the following specifications:

(1) Beginning January 1, 2026, all FADs deployed or redeployed in the IATTC Convention Area must be designed and constructed according to one of the following sets of specifications:

(i) The surface part of the FAD must be made of fully biodegradable materials, except for flotation components (*e.g.*, plastic buoys, foam, purse-seine corks), whereas the subsurface part of the FAD may contain non-biodegradable materials (*e.g.*, synthetic raffia, metallic frame, plastic floats, nylon ropes); or

(ii) The subsurface part of the FAD must be made of fully biodegradable materials, whereas the surface part and any flotation components (*e.g.*, plastic buoys, foam, purse-seine corks) of the FAD may contain non-biodegradable materials (*e.g.*, synthetic raffia, metallic frame, plastic floats, nylon ropes); or

(iii) The surface part, except for flotation components (*e.g.*, plastic buoys, foam, purse-seine corks), and subsurface part must be made of fully biodegradable materials. Non-biodegradable materials, in particular nylon ropes, can be used exclusively to strengthen the structure of the floating or underwater component of the FAD.

(2) Beginning January 1, 2029, all FADs deployed or redeployed in the IATTC Convention Area must be made of fully biodegradable materials, except for flotation components (*e.g.*, plastic buoys, foam, purse seine corks), which may be made of non-biodegradable material. Non-biodegradable materials,

in particular nylon ropes, can be used exclusively to strengthen the structure of the floating or underwater component of the FAD.

(3) Restrictions on biodegradable FAD materials set forth in paragraphs (h)(1) and (2) of this section do not apply to satellite buoys that are attached to FADs in order to track them.

[FR Doc. 2024-28466 Filed 12-5-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240405-0100; RTID 0648-XE509]

Fisheries of the Northeastern United States; Mackerel, Squid, and Butterfish Fishery; 2024 Commercial Atlantic Mackerel Fishery Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the commercial Atlantic mackerel fishery through December 31, 2024. This closure is required by regulation because NMFS projects that 80 percent of the mackerel domestic annual harvest is harvested. This action is necessary to comply with the regulations implementing the Mackerel, Squid, and Butterfish Fishery Management Plan and is intended to prevent overharvest of Atlantic mackerel.

DATES: Effective 0001 hours (hr) local time, December 6, 2024, through 2400 hr local time on December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Colette Tweeddale, Fishery Management Specialist, 978-281-9335.

SUPPLEMENTARY INFORMATION: The procedures for setting initial annual specifications for the species managed under the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) are described at 50 CFR 648.22. The regulations at § 648.22(a)(3) require annual catch limits, commercial annual catch targets (including research set-aside, domestic annual harvest (DAH), Tier 3 landings caps, and domestic annual processing), joint venture processing, total allowable levels of foreign fishing, and recreational annual catch targets (including research set-aside) to be specified for the Atlantic mackerel fishery for a period of up to 3 years.

The Regional Administrator monitors mackerel fishery catch based on dealer reports and other available information. When the Regional Administrator projects that 80 percent of the DAH is harvested, the regulations at § 648.24(b)(1)(i) require NMFS to close the commercial mackerel fishery in Federal waters for the remainder of the fishing year. The regulations at § 648.26(a)(2)(i) state that while such a closure is in effect, vessels issued a Tier 1, 2, or 3 limited access mackerel permit are prohibited from taking and retaining, possessing, or landing more than 10,000 lb (4.54 mt) of mackerel per trip at any time, and from landing mackerel more than once per calendar day. Additionally, the regulations at § 648.26(a)(2)(ii) state that while such a closure is in effect, vessels issued an open access mackerel permit are prohibited from taking and retaining, possessing, or landing more than 2,500 lb (1.13 mt) of mackerel per trip at any time, and from landing mackerel more than once per calendar day. The regulations at § 648.24(d) require that upon determining that a closure is necessary, NMFS must: Notify the Executive Directors of the relevant Fishery Management Councils; notify permit holders at least 72 hr before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**.

Based on dealer reports and other available information, the Regional Administrator projects that 100.06 percent of the mackerel DAH was harvested as of November 29, 2024. Therefore, effective 0001 local time on December 6, 2024, limited access mackerel vessels may not take and retain, possess, or land more than 10,000 lb (4.54 mt) of mackerel per trip at any time, and may only land mackerel once per calendar day, through 2400 hr local time on December 31, 2024. Limited access mackerel vessels that enter port before 0001 hr local time on December 6, 2024, may land and sell more than 10,000 lb (4.54 mt) of mackerel from that trip, consistent with possession restrictions at § 648.26(a)(1)(i). Additionally, open access mackerel vessels may not take and retain, possess, or land more than 2,500 lb (1.13 mt) of mackerel per trip at any time, and may only land mackerel once per calendar day, through 2400 hr local time on December 31, 2024. Open access mackerel vessels that enter port before 0001 hr local time on December 6, 2024, may land and sell more than 2,500 lb (1.13 mt) of mackerel

from that trip, consistent with possession restrictions at § 648.26(a)(1)(ii).

Also, effective 0001 hr local time on December 6, 2024, through 2400 hr local time on December 31, 2024, federally permitted dealers may not purchase more than 10,000 lb (4.54 mt) of mackerel from a limited access mackerel vessel unless the vessel enters port before 0001 hr local time on December 6, 2024. Federally permitted dealers may not purchase more than 2,500 lb (1.13 mt) of mackerel from an open access mackerel vessel unless the vessel enters port before 0001 hr local time on December 6, 2024. The possession limits for the mackerel fishery will reset to the amounts outlined at § 648.26(a)(1)(i) and (ii) on January 1, 2025.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The mackerel fishery opened for the 2024 fishing year on January 1, 2024. Data and other information indicating that 100 percent of the 2024 mackerel DAH was harvested have only recently become available. Landings data are updated on a weekly basis, and NMFS monitors catch data on a daily basis as catch increases toward the limit. Further, high-volume catch and landings in this fishery increase total catch relative to the DAH quickly. Atlantic mackerel is currently being managed under a rebuilding plan, and exceeding the DAH may harm the stock's rebuilding progress. The regulations at § 648.24(b)(1)(i) require NMFS to implement this action to ensure that mackerel vessels do not

exceed the DAH. If implementation of this action is delayed to solicit prior public comment, the 2024 mackerel DAH may be exceeded, thereby undermining the conservation objectives of the FMP. Furthermore, the public had prior notice and full opportunity to comment on this process when these provisions were put in place. Based on these considerations, NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: December 3, 2024.

Karen H. Abrams,

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

[FR Doc. 2024–28730 Filed 12–3–24; 4:15 pm]

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Proposed Rules

Federal Register

Vol. 89, No. 235

Friday, December 6, 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.

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS24–22]

RIN 3139–AA01

Appraisal Subcommittee Enforcement Authority Regarding the Effectiveness of State Appraiser and Appraisal Management Company Regulatory Programs

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council invites comment on a proposed rule to implement a framework to govern the ASC's enforcement authority regarding the effectiveness of Appraiser and Appraisal Management Company (AMC) Programs overseen by State Appraiser Regulatory Agencies. The proposed rule would codify the existing compliance review process with modifications. The proposed rule would require an analysis to assess program effectiveness, outline requirements for maintaining effective programs, and authorize the ASC to bring enforcement actions against such agencies that fail to maintain effective programs.

DATES: Send comments on or before February 4, 2025.

ADDRESSES: Commenters are strongly encouraged to submit comments through the Federal eRulemaking Portal or by email, if possible. You may submit comments, identified by Docket Number AS24–22, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* webmaster@asc.gov. Include the docket number in the subject line of the message.
- *Mail:* Address to Appraisal Subcommittee—FFIEC, Attn: Lori

Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.

- *Hand Delivery/Courier:* Address to Appraisal Subcommittee—FFIEC, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.

Instructions: All submissions must include the agency name and docket number for this document. All comments and any supporting materials or attachments received will be posted without change to <https://www.regulations.gov>, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Commenters should submit only information that the commenter wishes to make available publicly. Please do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Docket: To read comments regarding this proposed rulemaking, go to: <https://www.regulations.gov>, insert docket number AS24–22 in the “Search” box, and follow the prompts. You may also personally inspect comments at the Appraisal Subcommittee's office, 1325 G Street NW, Suite 500, Washington, DC 20005. To make an appointment, please contact Lori Schuster at (202) 595–7578 or lori@asc.gov.

FOR FURTHER INFORMATION CONTACT: Natalie Lutz, Attorney Advisor, 202–792–1217, natalie@asc.gov or Matt Ponzar, General Counsel, 202–595–7577, matt@asc.gov, Appraisal Subcommittee, 1325 G Street NW, Suite 500, Washington, DC 20005. The above phone numbers are not toll-free numbers. Persons with hearing or speech impairments may access these numbers by dialing 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Introduction

The following section discusses the proposed rule's objectives, the legal basis for this proposed rule, background information, the reasoning behind issuing this proposed rule, and a summary of the applicable recommendations made by the Appraisal Subcommittee Advisory Committee for the Development of Regulations (ASCAC).

A. Proposed Rule's Objectives

The proposed rule (proposal or proposed rulemaking) is intended to establish an effective and consistent enforcement approach to the Appraisal Subcommittee's (ASC) oversight of State Appraiser Regulatory Agencies.¹ The ASC believes that the proposal would significantly improve its effectiveness in monitoring and bringing enforcement actions against State Appraiser Regulatory Agencies that may not have effective Appraiser and Appraisal Management Company (AMC) Programs. The ASC also believes that the proposed rulemaking would be beneficial in clarifying requirements for State Appraiser Regulatory Agencies to promote the effectiveness of their Appraiser and AMC Programs. Finally, the proposed rule would provide additional transparency to State Appraiser Regulatory Agencies and other stakeholders regarding the ASC's procedures for monitoring Appraiser and AMC Programs and the potential for enforcement actions against State Appraiser Regulatory Agencies. In general, the proposed rule would codify the existing ASC compliance review process consistent with the ASC's current practices and processes for conducting compliance reviews, with some modifications and minor corrections.

B. Statutory Authority

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010 (Title XI).²

Section 1103(a)(1)(A)³ of Title XI requires the ASC to monitor requirements established by State Appraiser Regulatory Agencies for the certification and licensing of individuals qualified to perform appraisals in connection with federally related transactions,⁴ including a code

¹ 12 U.S.C. 3332(a)(5), uses the term “State Appraiser Regulatory Agencies.” As discussed further below, for purposes of the proposed rule, this term is synonymous with “State appraiser certifying and licensing agency” as defined in section 1121(1) of Title XI (12 U.S.C. 3350(1)).

² Public Law 111–203, sec. 1473, 124 Stat. 2190–2199 (2010).

³ 12 U.S.C. 3332(a)(1)(A).

⁴ Federally related transaction refers to any real estate-related financial transaction which: (a) a Federal financial institutions regulatory agency

of professional responsibility. Section 1103(a)(1)(B) also requires the ASC to monitor the requirements established by State Appraiser Regulatory Agencies for the registration and supervision of the operations and activities of AMCs.⁵

Additionally, section 1118(a) of Title XI requires the ASC to monitor State Appraiser Regulatory Agencies to determine whether each State Appraiser Regulatory Agency:

(1) has policies, practices, funding, staffing, and procedures that are consistent with Title XI;

(2) processes complaints and completes investigations in a reasonable time period;

(3) appropriately disciplines sanctioned appraisers and AMCs;

(4) maintains an effective regulatory program; and

(5) reports complaints and disciplinary actions on a timely basis to the national registries of appraisers and AMCs maintained by the ASC.⁶

Section 1118(a) of Title XI further provides that the ASC can impose certain sanctions against a State Appraiser Regulatory Agency that fails to have an effective appraiser regulatory program.⁷ For the purposes of the proposed rule, the term “enforcement actions” would be used instead of “sanctions.” In determining whether a program is effective, the ASC must include an analysis of (1) the licensing and certification of appraisers, (2) the registration of AMCs, (3) the issuance of temporary licenses and certifications for appraisers, (4) the receiving and tracking of submitted complaints against appraisers and AMCs, (5) the investigation of complaints, and (6) enforcement actions against appraisers and AMCs.⁸ Under the proposal, the evaluation criteria are referred to as “program functions.”

Section 1118(a) of Title XI also specifically authorizes the ASC to impose interim actions and suspensions against a State Appraiser Regulatory Agency as an alternative to, or in advance of, the non-recognition of a State Appraiser Regulatory Agency.⁹ Under the proposed rule, these “interim actions and suspensions” would be known as “interim enforcement actions.”

engages in, contracts for, or regulates; and (b) requires the services of an appraiser. See 12 U.S.C. 3350(4).

⁵ 12 U.S.C. 3332(a)(1)(B).

⁶ 12 U.S.C. 3347(a).

⁷ *Id.*

⁸ *Id.* (numbering of the program functions is added for emphasis).

⁹ *Id.*

Consistent with section 1118 of Title XI,¹⁰ the proposal would outline three types of enforcement actions: interim actions, suspensions, and non-recognition. Title XI refers to non-recognition as derecognition.¹¹ Under the proposed rule, the term “non-recognition” would be used instead of “derecognition” to be consistent with subpart B of 12 CFR part 1102, which sets forth the ASC rules of practice and procedure governing non-recognition proceedings for State Appraiser Regulatory Agencies.

Finally, section 1106 of Title XI provides that the ASC has, among other powers, the authority to promulgate regulations regarding certain specified areas, one of which is enforcement.¹² House Report 111–94 indicates that the term “enforcement” covers the actions the ASC may take in evaluating State Appraiser Regulatory Agencies and the gamut of sanctions that the ASC may impose against such agencies.¹³ For purposes of prescribing regulations, the ASC must establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies, and hold meetings as necessary to support the development of regulations.¹⁴

C. Background

Congress enacted Title XI in response to concerns that problematic appraisals played a major role in the savings and loan crisis of the 1980s.¹⁵ The purpose of Title XI is to provide that Federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.¹⁶ To help ensure that the purpose of Title XI was carried out, Congress established a regulatory framework to monitor and oversee the real estate appraisal industry, including establishing the ASC.¹⁷

¹⁰ 12 U.S.C. 3347.

¹¹ *Id.*

¹² 12 U.S.C. 3335.

¹³ See H. Rept. 111–94, at 96 (2009).

¹⁴ 12 U.S.C. 3335.

¹⁵ See Government Accountability Office, GAO–03–404, Regulatory Programs: Opportunities to Enhance Oversight of the Real Estate Appraisal Industry, at 1 and 6 (2003).

¹⁶ 12 U.S.C. 3331.

¹⁷ The ASC is composed of seven members, each designated by the head of a Federal agency (the Board of Governors of the Federal Reserve System (Board), the Consumer Financial Protection Bureau

Since the enactment of Title XI, one of the ASC’s functions has been to monitor the requirements established by State Appraiser Regulatory Agencies for the certification and licensing of real estate appraisers qualified to perform appraisals in connection with federally related transactions.¹⁸ The monitoring is accomplished through periodic or accelerated compliance reviews of Appraiser Programs of each State¹⁹ to assess whether the program is operating in a manner consistent with Title XI and to assess the implementation of minimum requirements for licensing and certifying appraisers as adopted by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation²⁰ pursuant to section 1116 of Title XI.²¹ The ASC also maintains a national registry of State licensed and certified appraisers eligible to perform appraisals in federally related transactions (Appraiser Registry).²²

In 2010, Title XI was amended by the Dodd-Frank Act.²³ Subsection 1473(f) of the Dodd-Frank Act expanded the ASC’s functions to include monitoring the requirements established by State Appraiser Regulatory Agencies for the registration and supervision of the operations and activities of AMCs.²⁴

(CFPB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), the Department of Housing and Urban Development (HUD), and the Federal Housing Finance Agency (FHFA)). See 12 U.S.C. 3310 and 12 U.S.C. 1708(g)(2).

¹⁸ 12 U.S.C. 3332(a)(1)(A).

¹⁹ All 50 States, the District of Columbia, and four U.S. territories have established Appraiser Programs to ensure the availability of licensed and certified appraisers and effective supervision of their activities. The four territories include Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. American Samoa does not have an Appraiser Program.

²⁰ The Appraiser Qualifications Board of the Appraisal Foundation adopts the “Real Property Appraiser Qualification Criteria” (AQB Criteria), which establishes the minimum education, experience, and examination requirements for the licensure and certification of real property appraisers and minimum requirements for trainee and supervisory appraisers. See AQB Criteria, available at https://www.appraisalfoundation.org/imis/TAF/Standards/Qualification_Criteria/Qualification_Criteria_RP_TAF/AQB_RPAQC.aspx.

²¹ 12 U.S.C. 3345.

²² 12 U.S.C. 3332(a)(3).

²³ See *supra* note 2.

²⁴ Public Law 111–203, sec. 1473(f), 124 Stat. 2191–2192; 12 U.S.C. 3332(a)(1)(B). See *supra* note 13 at 97. Presently, 50 States and the District of Columbia have AMC Programs. Hawaii’s AMC Program sunset on June 30, 2023. However, Hawaii House Bill 2641 was signed into law on June 21, 2024, to reenact the version of the AMC Program that was originally part of the Hawaii Department of Commerce and Consumer Affairs. The Hawaii AMC Program established pursuant to House Bill 2641 commenced on September 1, 2024. American

State Appraiser Regulatory Agencies with an AMC Program are evaluated through periodic or accelerated compliance reviews to assess whether the program is operating in a manner consistent with Title XI and to assess the implementation of the minimum requirements for State registration and supervision of AMCs.²⁵ Subsection 1473(f) also established a parallel Federal system of oversight for an AMC that operates as a subsidiary of a financial institution overseen by a Federal banking regulator.²⁶ These entities are referred to as “federally regulated AMCs” under this proposal. Federally regulated AMCs are not required to register with a State Appraiser Regulatory Agency.²⁷ Finally, subsection 1473(f) required the ASC to maintain a national registry of AMCs that are either registered with and subject to supervision of a State Appraiser Regulatory Agency or operating subsidiaries of a federally regulated financial institution (AMC Registry).²⁸

In addition to authorities related to AMCs, subsection 1473(k) of the Dodd-Frank Act improved the ASC’s ability to oversee State Appraiser Regulatory Agencies in several important ways.²⁹ First, subsection 1473(k) added funding and staffing to the list of criteria against which the ASC must evaluate a State Appraiser Regulatory Agency.³⁰ Second, subsection 1473(k) requires the ASC to evaluate whether a State Appraiser Regulatory Agency processes complaints and completes its investigations in a reasonable time period, whether a State Appraiser Regulatory Agency appropriately disciplines sanctioned appraisers and AMCs, whether a State Appraiser

Regulatory Agency maintains an effective regulatory program, and whether a State Appraiser Regulatory Agency reports complaints and disciplinary actions to the Appraiser and AMC Registries on a timely basis.³¹ Third, subsection 1473(k) permits the ASC to impose interim actions and suspensions against State Appraiser Regulatory Agencies under certain circumstances.³²

Finally, subsection 1473(d) of the Dodd-Frank Act added the authority to promulgate regulations concerning “temporary practice, national registry, information sharing, and enforcement.”³³ If the ASC decides to undertake rulemaking on any of the four areas identified above,³⁴ subsection 1473(d) further requires the ASC to establish an advisory committee of industry participants and hold meetings as necessary to support the development of regulations.³⁵

D. Reasons for Issuing This Proposed Rule

Title XI did not originally provide the ASC with the authority to issue legislative rulemaking, nor the authority to enforce its own standards and pursue incremental improvements in the regulatory performance of State Appraiser Regulatory Agencies through interim actions and suspensions (interim enforcement actions).³⁶

Instead of regulations, the ASC has issued and relied on Policy Statements with respect to monitoring State Appraiser Regulatory Agencies.³⁷ The Policy Statements address the requirements of Title XI and offer guidance to State Appraiser Regulatory Agencies regarding compliance with Title XI and the rules promulgated thereunder.³⁸ Additionally, prior to the Dodd-Frank Act, the only enforcement action that the ASC could take against a State Appraiser Regulatory Agency

was non-recognition, which would prohibit all licensed and certified appraisers from that State from performing appraisals in connection with federally related transactions.³⁹ Non-recognition is a severe enforcement action that could affect the real estate markets and financial institutions within the State. To date, the ASC has not imposed non-recognition against a State Appraiser Regulatory Agency.

As discussed above, the Dodd-Frank Act provided the ASC with additional enforcement authorities to take against State Appraiser Regulatory Agencies, when appropriate, along with related rulemaking authority.⁴⁰ The ASC is now issuing this proposed rule to implement these additional enforcement authorities included in the Dodd-Frank Act.

E. Recommendations by the ASCAC

On February 18, 2014, following the enactment of the Dodd-Frank Act, the ASC established the ASCAC in accordance with the Federal Advisory Committee Act.⁴¹ The purpose of the ASCAC was to provide independent advice and recommendations to the ASC regarding the development of regulations that may be prescribed by the ASC concerning temporary practice, the Appraiser and AMC Registries, information sharing, and enforcement.⁴² The ASCAC was comprised of eighteen members nominated by the ASC Executive Director and approved by the ASC Chairperson in consultation with the ASC Board members.⁴³ The ASCAC met four times: April 16–17, July 22–23, and October 15–16, 2014, and February

³⁹ Public Law 101–73, 103 Stat. 511–519 (1989). See *supra* note 13 at 58.

⁴⁰ See *supra* note 2.

⁴¹ 5 U.S.C. chapter 10. Membership in the ASCAC was determined in accordance with the Amended Balanced Membership Plan dated June 18, 2014. See Balanced Membership Plan, dated February 18, 2014, available at <https://www.asc.gov/sites/default/files/documents/GeneralCorrespondence/Balanced%20Membership%20Plan%20-%20Final%202014.02.12.pdf>. See also Amended Balanced Membership Plan, dated June 18, 2014, available at <https://www.asc.gov/sites/default/files/documents/GeneralCorrespondence/Amended%20Balanced%20Membership%20Plan%202014.06.18.pdf>.

⁴² 12 U.S.C. 3335.

⁴³ See ASCAC Member List, available at <https://www.asc.gov/sites/default/files/2023-03/2014.07.14%20Advisory%20Committee%20Member%20List%20-%20amended%201.21.15.pdf>. The ASCAC members represented a balance of expertise across a range of industry participants and stakeholders as contemplated by section 1106 of Title XI, 12 U.S.C. 3335, including appraisers, AMCs, lenders, consumer advocates, real estate agents, and government agencies. All ASCAC members had experience regarding the appraiser regulatory framework for federally related transactions.

Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands do not have AMC Programs.

²⁵ The Dodd-Frank Act added section 1124 to Title XI, Appraisal Management Company Minimum Requirements, which required the OCC, Board, FDIC, NCUA, FHFA, and CFPB to establish, by rule, minimum requirements for the registration and supervision of AMCs by State Appraiser Regulatory Agencies that elect to register and supervise AMCs pursuant to Title XI. See 12 U.S.C. 3353(a). The related final rule was published in the *Federal Register* on June 9, 2015, with an effective date of August 10, 2015. See 80 FR 32658 (June 9, 2015).

²⁶ Public Law 111–203, sec. 1473(f), 124 Stat. 2192; 12 U.S.C. 3353(c). See *supra* note 13 at 97.

²⁷ Public Law 111–203, sec. 1473(f), 124 Stat. 2192; 12 U.S.C. 3353(c).

²⁸ Public Law 111–203, sec. 1473(f), 124 Stat. 2192; 12 U.S.C. 3332(a)(6).

²⁹ Public Law 111–203, sec. 1473(k), 124 Stat. 2196; 12 U.S.C. 3347. See *supra* note 13 at 96–97.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Public Law 111–203, sec. 1473(d), 124 Stat. 2191; 12 U.S.C. 3335. See *supra* note 13 at 96.

³⁴ See Curtis W. Copeland, Cong. Research Serv., R41472, Rulemaking Requirements and Authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act, at 59 and 87 (Nov. 3, 2010).

³⁵ Public Law 111–203, sec. 1473(d), 124 Stat. 2191; 12 U.S.C. 3335.

³⁶ See *supra* note 13 at 58.

³⁷ *Id.* See also Government Accountability Office, GAO–12–147, Real estate Appraisals: Appraisal Subcommittee Needs to Improve Monitoring Procedures, at 11 and 30 (2012).

³⁸ 83 FR 9144 (Mar. 5, 2018). See also Policy Statements, available at <https://asc.gov/resources/governance>. (hereinafter Policy Statements).

12–13, 2015.⁴⁴ The ASCAC completed its recommendation report on April 30, 2015,⁴⁵ and presented its recommendations to the ASC on May 13, 2015.⁴⁶ The ASCAC's recommendation report stated that most members believed the ASC “must” codify the ASC Policy Statements through rulemaking.⁴⁷

Given the ASC's intent to promote effective and consistent oversight, the ASC is now prepared to implement its statutory authority to address the effectiveness of Appraiser and AMC Programs through rulemaking. The ASCAC recommendation report covers matters beyond enforcement actions against State Appraiser Regulatory Agencies and discusses the desirability of codifying all the Policy Statements. For this proposed rulemaking, the ASC is responding to only the ASCAC's recommendations that apply to its enforcement authority regarding the effectiveness of Appraiser and AMC Programs administered by State Appraiser Regulatory Agencies and is proposing to codify only portions of such Policy Statements pertaining to such enforcement authorities. The ASC considers the ASCAC's recommendation report regarding these enforcement authorities to be relevant. Some recommendations address ongoing issues and problems that the ASC has continued to face since the report was issued. Many of the report's underlying observations are concerns in the appraiser regulatory framework today. Thus, the ASC has considered the ASCAC's recommendations in developing this proposed rule.

1. ASCAC's Sanction Matrices

The ASCAC developed and recommended three sanction matrices to

be used by the ASC in sanctioning State Appraiser Regulatory Agencies.⁴⁸ The three sanction matrices covered temporary practice, Appraiser and AMC Registries, and enforcement, and proposed twelve potential types of enforcement actions.⁴⁹ However, the ASC proposes not to adopt the three sanction matrices recommended by the ASCAC for the following reasons.

Section 1118(a) of Title XI authorizes the ASC to impose enforcement actions against a State Appraiser Regulatory Agency that fails to have an effective regulatory program and includes six program functions relevant to making this determination.⁵⁰ The six applicable program functions include (1) the licensing and certification of appraisers, (2) the registration of AMCs, (3) the issuance of temporary licenses and certifications for appraisers, (4) the receiving and tracking of submitted complaints against appraisers and AMCs, (5) the investigation of complaints, and (6) enforcement actions against appraisers and AMCs.⁵¹ The ASC believes that the ASCAC-recommended sanction matrices do not incorporate all six applicable program functions, such as the licensing and certification of appraisers and the registration of AMCs, in determining whether an Appraiser or AMC Program is effective in accordance with section 1118(a) of Title XI.⁵² Therefore, the ASC views the matrices as partially incomplete and not effective in implementing all the program functions in section 1118(a).⁵³

2. ASCAC's Method of Addressing Deficiencies

The ASCAC recommended that enforcement actions be brought per individual deficiency against State Appraiser Regulatory Agencies using sanction matrices.⁵⁴ Under this ASCAC recommendation, an enforcement action would be imposed for each deficiency of a State Appraiser Regulatory Agency. For example, under the ASCAC-recommended temporary practice sanction matrix, a State Appraiser Regulatory Agency could receive a warning letter for not issuing temporary licenses or certifications on an assignment basis and could receive a separate suspension for not issuing

temporary licenses or certifications within five business days.

This enforcement approach recommended by the ASCAC would not permit the ASC to deviate from the matrices to consider the appropriate enforcement action based on the underlying facts of each compliance review. The ASC, however, believes that deficiencies should be addressed collectively rather than individually to allow for the ASC to consider significant variations in the underlying facts of each compliance review.

Therefore, under the proposal, the ASC would bring an enforcement action based on the aggregation of deficiencies identified during a compliance review. For example, under the proposed rule, the ASC would impose only one enforcement action against a State Appraiser Regulatory Agency for all deficiencies identified during a compliance review. The number of deficiencies, the State Appraiser Regulatory Agency's response to the preliminary report, and the presence of any relevant mitigating and aggravating factors would guide the ASC's consideration of the appropriate enforcement action.

3. ASCAC's Proposed Enforcement Actions

The ASCAC also recommended twelve potential types of enforcement actions to be incorporated into the three sanction matrices.⁵⁵ The twelve potential types of enforcement actions included: (1) a warning letter, (2) training for State Appraiser Regulatory Agency staff, (3) training for State Appraiser Regulatory Agency board members, (4) consultation with other State authorities, (5) meeting with affected parties, (6) a requirement for a State Appraiser Regulatory Agency to use a disciplinary sanction matrix for complaints, (7) expedited or follow-up reviews, (8) continuous monitoring, (9) interim removal of appraiser(s) from the Appraiser Registry or AMC(s) from the AMC Registry, (10) other removal of appraiser(s) from the Appraiser Registry or AMC(s) from the AMC Registry, (11) interim derecognition, and (12) derecognition.⁵⁶ The proposed rule would directly address three of the ASCAC's recommended enforcement actions: warning letters, suspension (interim derecognition), and non-recognition. The proposed rule would introduce and define a fourth enforcement action: a negotiated agreement.

⁴⁴ See April 16–17, 2014 ASCAC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/GeneralCorrespondence/April%202014%20ASCAC%20Meeting%20Minutes.pdf>; July 22–23, 2014 ASCAC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/GeneralCorrespondence/Meeting%20Minutes%20-%20July%202014.pdf>; October 15–16, 2014 ASCAC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/GeneralCorrespondence/October%202014%20ASCAC%20Meeting%20Minutes.pdf>; and February 12–13, 2015 ASCAC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/OtherCorrespondence/February%202015%20Advisory%20Committee%20Minutes.pdf>.

⁴⁵ See ASCAC Final Recommendation Report, available at <https://www.asc.gov/sites/default/files/2023-03/2015.04.30%20-%20ASCAC%20Recommendations%20-%20Final.pdf>.

⁴⁶ See May 13, 2015 ASC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/MeetingMinutes/05.13.15%20-%20Open%20Minutes.pdf>.

⁴⁷ See ASCAC Final Recommendation Report, *supra* note 45 at 3.

⁴⁸ *Id.* at 24 and 26–30. The sanction matrices start on page 26.

⁴⁹ *Id.*

⁵⁰ 12 U.S.C. 3347(a).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See ASCAC Final Recommendation Report, *supra* note 45 at 26–30.

⁵⁵ *Id.* at 24.

⁵⁶ *Id.*

For the reasons stated below, the ASC is not planning to explicitly include the other nine enforcement actions recommended by the ASCAC. The ASC believes some potential enforcement actions suggested by the ASCAC, such as training requirements for State Appraiser Regulatory Agency staff and board members and the use of a disciplinary sanction matrix for appraiser and AMC complaints,⁵⁷ would be implemented more effectively through a negotiated agreement, as appropriate, rather than as individual enforcement actions. For example, a negotiated agreement could specify terms and conditions for training State Appraiser Regulatory Agency staff and board members based on the deficiencies identified by the ASC.

Additionally, the ASC does not believe there is a need to include other potential enforcement actions recommended by the ASCAC, such as expedited reviews or follow-up reviews, continuous monitoring, and consultation with State officials or other stakeholders,⁵⁸ as explicit enforcement actions in the proposed rule. The ASC plans to codify its existing compliance review process consistent with its current practices and processes for conducting compliance reviews, such as accelerated reviews, follow-up reviews, and additional monitoring. Under the proposed rule, the ASC may conduct accelerated reviews, follow-up reviews within 6–12 months of the previous review, and additional monitoring as part of the compliance review process.⁵⁹ The ASC also currently informally consults with State officials and other stakeholders, when appropriate, to monitor Appraiser and AMC Programs.

With respect to the ASCAC's recommended enforcement actions of interim or other removal of an appraiser from the Appraiser Registry or an AMC from the AMC Registry, section 1118(a) of Title XI provides that the ASC has the authority to remove a State licensed or certified appraiser from the Appraiser Registry or a registered AMC from the AMC Registry on an interim basis, not to exceed 90 days pending State agency action on licensing, certification, registration, and disciplinary proceedings.⁶⁰ After careful

consideration, the ASC is not including in this proposed rulemaking the interim removal of an appraiser from the Appraiser Registry or an AMC from the AMC Registry as a potential enforcement action as suggested by the ASCAC.⁶¹

The scope of this proposed rulemaking is limited to the ASCAC's recommended potential enforcement actions that the ASC may take against a State Appraiser Regulatory Agency after a compliance review rather than actions against individual appraisers or AMCs. Therefore, this proposed rule does not address the ASC's authority under section 1118(a) of Title XI to remove a State licensed or certified appraiser from the Appraiser Registry or a registered AMC from the AMC Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings.⁶²

4. Policy Statements 7 and 10 Recommendations

The ASCAC also included specific recommendations related to the Policy Statements. Policy Statements 7 (State Agency Enforcement for Appraiser Programs) and 10 (State Agency Enforcement for AMC Programs) state that, absent special documented circumstances, final administrative decisions by a State Appraiser Regulatory Agency regarding complaints must occur within one year (twelve months) of the complaint filing date.⁶³ The ASCAC recommended clarifying the definition of “complaint filing date”⁶⁴ because States have different interpretations of this term. The ASCAC noted that some States consider the “complaint filing date” to be when the State Appraiser Regulatory Agency receives the original complaint, while others consider it to be when the complaint has been screened and approved for investigation.⁶⁵ To address this confusion, the ASCAC recommended that the term “complaint filing date” be defined as the date the State Appraiser Regulatory Agency receives the original complaint.⁶⁶ The proposed rule avoids using the term “complaint filing date” to prevent

removal on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings.

⁶¹ See ASCAC Final Recommendation Report, *supra* note 45 at 24.

⁶² 12 U.S.C. 3347(a).

⁶³ See Policy Statements, *supra* note 38 at 9155 and 9158.

⁶⁴ See ASCAC Final Recommendation Report, *supra* note 45 at 8 and 14.

⁶⁵ *Id.* at 14.

⁶⁶ *Id.* at 8 and 14.

confusion. Instead, to implement the ASCAC's recommendation, this proposed rule would specify that State Appraiser Regulatory Agencies must begin the time period for resolving complaints based on the date the complaint was received.

The ASCAC also recommended that “special documented circumstances,” as used in Policy Statement 7, should be more specifically defined.⁶⁷ Under this proposal, “special documented circumstances” would mean well-documented and monitored extenuating circumstances, evaluated by the ASC, that are beyond the control of the State Appraiser Regulatory Agency and result in a complaint processing delay. The ASC proposes not to implement a more specific definition of “special documented circumstances” as recommended by the ASCAC because a broad definition is more appropriate considering the variations in complaint processing among State Appraiser Regulatory Agencies. For example, some State Appraiser Regulatory Agencies may involve the State's Office of Attorney General in investigating complaints, while others may use staff investigators, contractors, or advisory committees. Therefore, the ASC proposes a definition of “special documented circumstances” similar to the one in Policy Statement 7.⁶⁸ The ASCAC recommended providing more examples of what constitutes “special documented circumstances” for resolving complaints within one year (12 months).⁶⁹ Specifically, the ASCAC recommended clarifying the example in Policy Statement 7 that describes those periods when State rules require referral of a complaint to another State entity for review, and the State Appraiser Regulatory Agency is precluded from further processing of the complaint until it is returned.⁷⁰ The ASCAC recommended that the example should be clarified to refer to a period of time when a case is referred to a separate State entity such as the State's Office of Attorney General for prosecution, or to an administrative law judge for a hearing.⁷¹ Another example recommended by the ASCAC was the time gap between the date the complaint was initially received and the receipt of

⁶⁷ *Id.* Policy Statement 7 defines “special documented circumstances” as extenuating circumstances (fully documented) beyond the control of the State Appraiser Regulatory Agency that delays normal processing of a complaint. See Policy Statements, *supra* note 38 at 9155.

⁶⁸ See Policy Statements, *supra* note 38 at 9155 and 9158.

⁶⁹ See ASCAC Final Recommendation Report, *supra* note 45 at 8 and 14.

⁷⁰ *Id.* at 14.

⁷¹ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Policy Statements, *supra* note 38 at 9161. The ASC may conduct accelerated reviews, follow-up reviews, and additional monitoring. A follow-up review focuses on specific areas identified during a previous review and typically occurs within 6–12 months of the previous review.

⁶⁰ 12 U.S.C. 3347(a). Note, as reflected by the statutory text found in section 1118(a) of Title XI, 12 U.S.C. 3347(a), the ASC's authority is limited to

all the necessary information to begin processing it.⁷²

The ASC does not plan to incorporate the examples recommended by the ASCAC in this proposal or in any revisions to the Policy Statements, nor to provide any further examples. The ASC holds the view that there must be a legitimate practical challenge limiting the State Appraiser Regulatory Agency's ability to resolve complaints within one year (12 months) from when the complaint was received, which will be evaluated on a case-by-case basis, and that further examples are, therefore, not necessary.

The ASCAC's last recommendation was to clarify what qualifies as an "investigation" of the merits of a complaint.⁷³ The ASCAC gave two examples from Policy Statement 7 that provide guidance on what qualifies as an "investigation" of the merits of a complaint. Consistent with the ASCAC's first referenced example from Policy Statement 7,⁷⁴ the proposed rule would require State Appraiser Regulatory Agencies to ensure that individuals analyzing complaints are knowledgeable about Title XI, the Uniform Standards of Professional Appraisal Practice (USPAP), and appraisal practices. Under the proposed rule, these individuals must be qualified and their qualifications must be documented, which will be evaluated by the ASC. The proposed rule would have a similar requirement for AMC Programs, where individuals who analyze complaints against AMCs are required to be knowledgeable about Title XI, the AMC Rule,⁷⁵ USPAP, and appraisal practices and their qualifications must be documented, which will be evaluated by the ASC.

The proposed rule would also make some modifications to the ASCAC's second referenced example from Policy Statement 7.⁷⁶ According to Policy Statement 7, State Appraiser Regulatory Agencies must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the

complaint.⁷⁷ The proposed rule would require State Appraiser Regulatory Agencies to consider whether any potential violations of USPAP should be investigated when examining an appraisal report in connection with a complaint, including complaints based solely on value.⁷⁸

Although the ASCAC interpreted "additional violations" to include violations of Federal and State law,⁷⁹ the proposed rule would only require State Appraiser Regulatory Agencies to consider whether any potential violations of USPAP should be investigated. This is because the ASC is responsible for ensuring that real estate appraisals used in federally related transactions are performed according to USPAP by State licensed and certified appraisers.⁸⁰ However, the ASC encourages State Appraiser Regulatory Agencies to consider whether to investigate any violations of Federal and State law not explicitly alleged in the complaint in accordance with State law or regulations.

The ASCAC also provided examples of how State Appraiser Regulatory Agencies have different definitions of what constitutes an "investigation." For some State Appraiser Regulatory Agencies, the "investigation" may consist simply of the screening of a complaint by a staff member.⁸¹ If the staff member decides that the complaint has no merit or that it needs only a telephone call or letter to the appraiser, it is either not opened or opened and closed immediately.⁸² For other State Appraiser Regulatory Agencies, a full field investigation is conducted on all complaints.⁸³ As a result of these different definitions, it is challenging to establish a standard definition of an investigation because the investigatory process is typically governed by State law or regulation. Additionally, each

investigation is contingent upon the specific facts of the complaint. During a compliance review, the ASC examines a sample of complaint files to assess whether the State Appraiser Regulatory Agency is following the investigatory process governed by State law to ensure timely and effective supervision of appraisers. Therefore, the ASC does not plan to further clarify what qualifies as an "investigation" of the merits of a complaint.

5. ASCAC's Mitigating and Aggravating Factors

The ASCAC also produced a list of mitigating and aggravating factors for the sanction matrices.⁸⁴ The ASCAC defined "a mitigating factor" as any information or evidence regarding the deficiency that might result in a decreased sanction.⁸⁵ The ASCAC defined "an aggravating factor" as any information or evidence regarding the deficiency that might result in an increased sanction.⁸⁶ Except as discussed below, the ASC has separately included, with some modifications, all of the mitigating and aggravating factors recommended by the ASCAC in this proposed rule.

The ASC proposes not to separately include the recommended mitigating and aggravating factors relating to a State Appraiser Regulatory Agency board member involved in a disciplinary decision who had a conflict of interest or bias because the ASC believes such circumstance would be

⁷² *Id.* at 25.

⁷³ *Id.* The mitigating factors recommended by the ASCAC include no prior deficiencies of any type; prior deficiencies of another type that were minor and have been corrected; understanding and acknowledging the deficiency; immediate steps taken to correct the issue; personnel issues such as illness or loss of a key staff member; change in leadership; the State Appraiser Regulatory Agency otherwise has an effective and efficient regulatory program; the occurrence of a natural disaster; and a State Appraiser Regulatory Agency board member who had a conflict of interest was cleared by a State ethics agency before participating in a matter (unless the ASC finds the conflict created a bias that affected the outcome).

⁷⁴ *Id.* The aggravating factors recommended by the ASCAC include a pattern of prior deficiencies of another type that have not been corrected; a pattern of prior deficiencies of the same type; numerous deficiencies of various types; refusal to acknowledge the deficiency; lack of cooperation with the ASC staff; a lack of willingness or lack of efforts to correct deficiencies; deficiencies are material and, if not corrected in a timely manner, will pose a potential risk to the program, licensees, financial institutions or agencies or to the public; submission of false statements or documents, or other deceptive practices; a State Appraiser Regulatory Agency board member involved in a decision who had a conflict of interest or bias that affected the outcome of a matter; other deficiencies in the program that might indicate systemic issues; risk of program failure; and systemic failure to exercise reasonable care toward equitable enforcement.

⁷⁵ See Policy Statements, *supra* note 38 at 9155.

⁷⁶ The ASCAC also recommended that complaints that only relate to value should not be dismissed solely on that basis, and State Appraiser Regulatory Agencies should be obligated to analyze all complaints for USPAP compliance, even if a USPAP violation is not explicitly alleged. See ASCAC Final Recommendation Report, *supra* note 45 at 14. The ASC believes that this proposal would address the ASCAC's recommendations described above. The proposed rule would require State Appraiser Regulatory Agencies to consider whether any potential violations of USPAP should be investigated when examining an appraisal report in connection with a complaint, including complaints based solely on value.

⁷⁷ See ASCAC Final Recommendation Report, *supra* note 45 at 14.

⁷⁸ See, e.g., 12 U.S.C. 3331 and 12 U.S.C. 3332(a)(1)(A).

⁷⁹ See ASCAC Final Recommendation Report, *supra* note 45 at 14.

⁸⁰ *Id.*

⁸¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 8 and 14–15.

⁷⁴ *Id.* at 14.

⁷⁵ Under the proposed rule, "AMC Rule" means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Housing Finance Agency regarding the minimum requirements for AMCs under section 1124 of Title XI (12 U.S.C. 3353). (12 CFR 34.210 through 34.216; 12 CFR 225.190 through 225.196; 12 CFR 323.8 through 323.14; 12 CFR 1222.20 through 1222.26).

⁷⁶ See ASCAC Final Recommendation Report, *supra* note 45 at 14.

covered under the proposed mitigating or aggravating factor of whether the State Appraiser Regulatory Agency failed to exercise reasonable care in equitable, consistent, and timely enforcement. The ASC also proposes to include other mitigating and aggravating factors, such as the number of State licensed and certified appraisers or registered AMCs under the jurisdiction of a State Appraiser Regulatory Agency and human-made disasters or emergencies or other government-declared orders.

The ASC believes these factors accurately capture the considerations that would allow the ASC to increase or decrease its initial assessment of an Appraiser or AMC Program's level of effectiveness. These factors would give State Appraiser Regulatory Agencies incentives to cooperate with the ASC and timely address any deficiencies while still recognizing that certain situations, outside of a State Appraiser Regulatory Agency's control, such as a natural disaster, can sometimes affect the effectiveness of an Appraiser or AMC Program.

II. Proposed Rule

The ASC is issuing this proposal to implement a framework to govern the ASC's enforcement authority regarding the effectiveness of Appraiser and AMC Programs overseen by State Appraiser Regulatory Agencies. The Dodd-Frank Act strengthened the ASC's oversight of State Appraiser Regulatory Agencies and authorized the ASC to impose interim enforcement actions against State Appraiser Regulatory Agencies before having to impose "non-recognition."

Under this proposal, the ASC would conduct an analysis of the applicable program functions, as required by section 1118(a) of Title XI,⁸⁷ to assess the effectiveness of an Appraiser or AMC Program. The proposed rule would outline the specified requirements for each program function that the ASC will examine for program effectiveness.⁸⁸ Additionally, the proposed rule would require State Appraiser Regulatory Agencies to demonstrate to the ASC's reasonable satisfaction that their Appraiser and AMC Programs are operating consistently with the specified requirements of each program function. If any deficiencies are identified, the ASC would be required to document

them in both the preliminary and final reports.

Under the proposal, the ASC would assess the initial effectiveness of an Appraiser or AMC Program based on the number of deficiencies per program function as identified in the preliminary report. The ASC proposes using the number of deficiencies for the initial assessment of effectiveness because this approach would provide transparency into the ASC's decision-making and help to provide consistent and fair treatment between similarly situated State Appraiser Regulatory Agencies.

The proposed rule would establish four levels of effectiveness: effective, moderately effective, slightly effective, and ineffective, each specifying the allowable number of deficiencies per program function. The effectiveness of Appraiser and AMC Programs would be assessed through the four levels mentioned above, which the ASC plans to incorporate into the ASC's overall rating criteria to emphasize further that a State Appraiser Regulatory Agency is maintaining an effective Appraiser or AMC Program.⁸⁹

Under the proposed rule, the ASC would consider whether the State Appraiser Regulatory Agency's response to the preliminary report and any relevant mitigating and aggravating factors justify an increase or decrease in the level of the regulatory program's effectiveness identified in the preliminary report for the final report.

If a State Appraiser Regulatory Agency fails to have an effective Appraiser or AMC Program, the ASC would have the authority, under the proposed rule, to impose an enforcement action. This approach would enable the ASC to evaluate the underlying facts of each compliance review and take appropriate enforcement action against the State Appraiser Regulatory Agency for not maintaining an effective Appraiser or AMC Program. The proposed rule would set forth four enforcement actions: warning letters, negotiated agreements, suspensions, and non-recognition. This section provides a section-by-section analysis of the proposed rule.

A. Key Definitions

This proposal would define several terms consistent with their use in Title

XI, Federal regulations promulgated thereunder, or the Policy Statements. For example, the proposed rule would include definitions from the AMC Rule in their entirety for the following terms: AMC, appraisal management services, appraiser panel, consumer credit, covered transaction, dwelling, federally regulated AMC, person, and USPAP. Therefore, this section highlights key definitions included in the proposal. *AQB Criteria.* Pursuant to section 1116 of Title XI,⁹⁰ the AQB establishes the minimum requirements for real estate appraisers to obtain a State license or certification as well as "Trainee Appraiser" and "Supervisory Appraiser" requirements. The proposed rule would define "AQB Criteria" as the minimum requirements for the licensure and certification of real estate appraisers and the minimum requirements for trainee and supervisory appraisers established by the AQB. The proposed definition is consistent with section 1116 of Title XI,⁹¹ as well as substantively similar to the AQB's Real Property Appraiser Qualification Criteria, which set forth the minimum education, experience, and examination requirements for real property appraisers.⁹²

Assignment. Section 1106 of Title XI confers rulemaking authority to the ASC in the area of temporary practice.⁹³ For purposes of issuing a temporary license or certification,⁹⁴ the proposal would define "assignment" as one or more real estate appraisals and written appraisal report(s) covered by a single contract. The proposed definition here is intended to be consistent with the use of the term "assignment" in the statutory definition of "AMC" but solely in the context of temporary practice.⁹⁵

⁹⁰ 12 U.S.C. 3345.

⁹¹ *Id.*

⁹² See AQB Criteria, *supra* note 20.

⁹³ 12 U.S.C. 3335.

⁹⁴ The term "license" as defined under the Administrative Procedure Act, 5 U.S.C. 551(8), encompasses a wide range of forms of permission, including agency permits, certificates, approvals, registrations, charters, memberships, statutory exemptions, and others. This definition under the Administrative Procedure Act, 5 U.S.C. 551(8), is consistent with many State Administrative Procedure Acts, such as the State Administrative Procedure Acts of Arizona (Ariz. Rev. Stat. Ann. § 41-1001(13) (2024)), Arkansas (Ark. Code Ann. § 25-15-202(4) (2024)), Colorado (Colo. Rev. Stat. § 24-4-102(7) (2024)), Delaware (Del. Code Ann. § 10102(5) (2023)), District of Columbia (D.C. Code § 2-502(12) (2024)), Indiana (Ind. Code § 4-21.5-1-8 (2024)), Iowa (Iowa Code § 17A.2(6) (2024)), Kansas (Kan. Stat. Ann. § 77-502(c) (2024)), Maine (Me. Rev. Stat. § 5 8002(5) (2023)), and Massachusetts (Mass. Gen. Laws. 30A § 13) (2024)). Furthermore, most State Appraiser Regulatory Agencies issue temporary practice permits.

⁹⁵ 12 U.S.C. 3350(11)(B) (defining AMC as any "external third party . . . [that, in part,] contract[s]

⁸⁷ 12 U.S.C. 3347(a).

⁸⁸ These requirements are currently outlined in the Policy Statements. See Policy Statements, *supra* note 45.

⁸⁹ See Policy Statements, *supra* note 38 at 9160-9161. Currently, the ASC evaluates overall Title XI compliance of a State Appraiser Regulatory Agency's Appraiser or AMC Program by assigning one of five ASC Findings at the end of the compliance review process. ⁸⁹ The ratings, known as ASC Findings, are classified as follows: Excellent, Good, Needs Improvement, Not Satisfactory, or Poor.

Deficiency. A State Appraiser Regulatory Agency would be deemed to have a deficiency if the State Appraiser Regulatory Agency's Appraiser or AMC Program is not in compliance with any specified requirements of the applicable program functions required by section 1118(a) of Title XI.⁹⁶ The ASC would analyze and consider the initial effectiveness of Appraiser or AMC Programs based on the number of deficiencies per program function as identified in the preliminary report to provide for a consistent and transparent enforcement approach. The ASC then would have the option to impose an enforcement action, such as a warning letter that describes the deficiency or deficiencies, or enter into a negotiated agreement with a State Appraiser Regulatory Agency if the agency fails to address the deficiency or deficiencies identified in a previously issued warning letter or the final report indicates that the regulatory program is slightly effective or ineffective.

Final order. The proposed rule would require the ASC to issue a final order to suspend a State Appraiser Regulatory Agency. The proposed definition of "final order" would include findings of fact, conclusions of law, and, if applicable, the terms of the enforcement action imposed against a State Appraiser Regulatory Agency for failing to have an effective Appraiser or AMC Program. A "final order" is one type of document that the ASC is required to make public via computer telecommunications.⁹⁷

Final report. After the State Appraiser Regulatory Agency has had an opportunity to respond to the preliminary report, it is current practice that the ASC prepares and issues a final report on its monitoring findings. The "final report" would, under the proposed rule, include the ASC's final analysis of the regulatory program's effectiveness, identifying any deficiencies. In preparing the final report, the ASC would consider whether the State Appraiser Regulatory Agency's response to the preliminary report and any relevant mitigating or aggravating factors support a change to the level of the regulatory program's effectiveness. A "final report" is considered one type

of record⁹⁸ that must be made publicly available.⁹⁹

Negotiated agreement. The proposal defines "negotiated agreement" to mean a written agreement signed between the ASC and a State Appraiser Regulatory Agency to correct deficiencies that negatively impact the regulatory program's effectiveness. The proposed definition would specify that the agreement may provide that the State Appraiser Regulatory Agency commits to taking a certain action or actions or refraining from a certain action or actions by a specified time. For example, these agreements could require mandatory training of State Appraiser Regulatory Agency staff and/or board members to address certain findings, weaknesses, and deficiencies or submission of a commitment letter or board resolution to take corrective action in response to the State Appraiser Regulatory Agency's deficiencies. A "negotiated agreement" is considered one type of record¹⁰⁰ that must be made publicly available.¹⁰¹

Non-recognition. Section 1118 of Title XI authorizes the ASC to impose non-recognition on a State Appraiser Regulatory Agency.¹⁰² Subpart B of 12 CFR part 1102 prescribes rules of practice and procedure governing non-recognition proceedings under section 1118 of Title XI.¹⁰³ The proposed definition of "non-recognition" reflects the statutory text of section 1118 of Title XI,¹⁰⁴ which states that the ASC and all agencies, instrumentalities, and federally recognized entities under Title XI shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with Title XI. The proposed rule would define "non-recognition" as the ASC and all agencies, instrumentalities, and federally recognized entities under Title XI shall not recognize or accept appraiser licenses and certifications

issued by a State Appraiser Regulatory Agency whose policies, practices, funding, staffing, or procedures are found to be inconsistent with Title XI and Federal regulations promulgated thereunder. "Non-recognition" is synonymous with "derecognition," which is referenced in section 1118 of Title XI.¹⁰⁵ Under the proposed rule, "non-recognition" would be used instead of "derecognition" to be consistent with the language of subpart B of 12 CFR part 1102.

*Preliminary report.*¹⁰⁶ After the examination of records and interviews with State Appraiser Regulatory Agency representatives, it is the current practice that the ASC provides a staff report or preliminary report to the State Appraiser Regulatory Agency detailing the initial monitoring findings. Under the proposed definition, the preliminary report would also include an initial analysis of the regulatory program's effectiveness, identifying any deficiencies, and the ASC's initial assessment of the level of effectiveness of the regulatory program.

Program functions. As previously discussed, section 1118(a) of Title XI specifies a list of criteria that the ASC must include in its analysis of a regulatory program's effectiveness.¹⁰⁷ The proposal would define "program functions" as those responsibilities of a State Appraiser Regulatory Agency that the ASC will examine and include in its analysis of the effectiveness of a State Appraiser Regulatory Agency's regulatory program consistent with section 1118(a) of Title XI (12 U.S.C. 3347(a)). The proposed rule would outline five program functions for Appraiser Programs that will be considered in the ASC's analysis: (1) licensing and certification of appraisers, (2) issuance of temporary licenses and certifications for appraisers, (3) receiving and tracking of submitted complaints against appraisers, (4) investigation of complaints against appraisers, and (5) enforcement actions against appraisers. For AMC Programs, the proposed rule would outline four program functions that will be considered in the ASC's analysis: (1) registration of AMCs, (2) receiving and tracking of submitted complaints against AMCs, (3) investigation of complaints against AMCs, and (4) enforcement actions against AMCs.

Special documented circumstances. The proposed rule would define

⁹⁸ 12 CFR 1102.301(i). A "record" includes "records, files, documents . . . or any portion thereof, in any form the ASC regularly maintains them."

⁹⁹ 12 CFR 1102.305(a)(2)(i)(D). One type of document that must be made publicly available is a copy of "all records (regardless of form or format), such as correspondence relating to field reviews or other regulatory subjects, released to any person under § 1102.306 [("Procedures for requesting records")] that, because of the nature of their subject matter, the ASC has determined are likely to be subject of subsequent requests." Under this proposal, field reviews are referred to as "compliance reviews."

¹⁰⁰ See *supra* note 98.

¹⁰¹ See *supra* note 99.

¹⁰² 12 U.S.C. 3347.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Note, section 1104(b) of Title XI, 12 U.S.C. 3333(b), refers to "preliminary State audit reports," which is synonymous with the term "preliminary report" under this proposal.

¹⁰⁷ 12 U.S.C. 3347(a).

with licensed and certified appraisers to perform appraisal assignments").

⁹⁶ 12 U.S.C. 3347(a).

⁹⁷ 12 CFR 1102.305(a)(2)(i)(A).

“special documented circumstances” as well-documented and monitored extenuating circumstances, evaluated by the ASC, that are beyond the control of the State Appraiser Regulatory Agency and result in a complaint processing delay. Special documented circumstances are relevant when considering the effectiveness of State Appraiser Regulatory Agencies’ supervision in resolving complaints filed against trainee appraisers, State licensed appraisers, State certified appraisers, and AMCs within one year from the date the complaint was received.

State Appraiser Regulatory Agency. Section 1103(a)(5) of Title XI uses the term “State Appraiser Regulatory Agencies.”¹⁰⁸ The proposed rule would define “State Appraiser Regulatory Agency” as a State agency that certifies and licenses real estate appraisers and registers and supervises AMCs or otherwise regulates real estate appraisers and AMCs who operate in that State, consistent with section 1121(1) of Title XI (12 U.S.C. 3350(1)). “State Appraiser Regulatory Agency” is synonymous with “State appraiser certifying and licensing agency” as defined in section 1121(1) of Title XI.¹⁰⁹ To the extent that the registration and supervision of AMCs is carried out by a separate and distinct agency or agencies within a State, each such agency is also a State Appraiser Regulatory Agency. For example, the District of Columbia has two separate and distinct agencies that administer the Appraiser and AMC Programs. The Department of Licensing and Consumer Protection administers the Appraiser Program, and the Department of Insurance, Securities and Banking administers the AMC Program. The Department of Licensing and Consumer Protection and the Department of Insurance, Securities and Banking in the District of Columbia would each be considered a State Appraiser Regulatory Agency under the proposed rule, and the ASC would monitor each of their respective regulatory programs.

Suspension. The proposed definition of “suspension” is that the State Appraiser Regulatory Agency would be prohibited from performing certain task(s) as part of the State Appraiser Regulatory Agency’s responsibilities under Title XI for a specified period of time. This definition is consistent with section 1118(a) of Title XI, which authorizes the ASC to impose “interim actions and suspensions,” against a State Appraiser Regulatory Agency as an

alternative to, or in advance of, the non-recognition of a State Appraiser Regulatory Agency.¹¹⁰ Some examples of possible prohibited tasks include adding appraisers to the Appraiser Registry or AMCs to the AMC Registry, renewing licenses or certifications, and issuing temporary licenses or certifications to appraisers. The proposed rule would provide that a suspension would be effective until the ASC lifts the suspension.

Warning letter. Section 1118(a)(4) of Title XI requires the ASC to monitor State Appraiser Regulatory Agencies to determine whether each State Appraiser Regulatory Agency maintains an effective regulatory program.¹¹¹ If a State Appraiser Regulatory Agency fails to have an effective appraiser regulatory program, section 1118(a) authorizes the ASC to impose enforcement actions.¹¹² One example of an enforcement action is a “warning letter,” which the proposed rule would define as a letter issued by the ASC informing a State Appraiser Regulatory Agency of a deficiency or deficiencies relating to its regulatory program. The proposed definition also provides that if the deficiency is not addressed, it could negatively impact the effectiveness of the State Appraiser Regulatory Agency’s regulatory program.

B. Compliance Reviews

One of the ASC’s functions is to monitor State Appraiser Regulatory Agencies’ Appraiser and AMC Programs for compliance with Title XI.¹¹³ Monitoring these programs is accomplished through periodic or accelerated compliance reviews of each State Appraiser Regulatory Agency’s Appraiser and AMC Programs.¹¹⁴ Proposed § 1102.602 would codify the existing compliance review process consistent with the ASC’s current practices and processes for conducting compliance reviews but would propose a few changes that are discussed below.

The ASC is proposing this approach because the ASC has generally found in its supervisory experience that these practices for conducting compliance

reviews are effective and efficient. Currently, the compliance review process is outlined in the Policy Statements.¹¹⁵ The ASC intends to revise the Policy Statements before the proposed implementation period, discussed in section III below, ends. These revisions would address any potential inconsistencies between the Policy Statements and any final rule based on this proposal.

1. Compliance Review Cycles

The proposal would provide that the ASC has two primary review cycles: two-year and one-year. This is the same standard frequency as the ASC’s current practice outlined in the Policy Statements.¹¹⁶ Most State Appraiser Regulatory Agencies are scheduled on a two-year review cycle, but some may be moved to a one-year review cycle if the ASC determines more frequent reviews are needed to ensure that the State Appraiser Regulatory Agency maintains an effective Appraiser or AMC Program. The ASC is proposing this frequency for compliance reviews because, based on its supervisory experience, the ASC has generally found that these two primary review cycles provide sufficient monitoring. The two review cycles would allow for early identification of deficiencies to prevent or minimize their impact on the effectiveness of Appraiser and AMC Programs. Additionally, the ASC has generally found that the two review cycles are not burdensome and do not strain the resources of the ASC or State Appraiser Regulatory Agencies. The proposed rule would also allow the ASC to use alternate compliance review cycles at its sole discretion. This discretion would allow the ASC to monitor the performance and effectiveness of the frequency of compliance reviews. After evaluation, the ASC could, for example, modify the standard frequency of the primary two review cycles to three years and two years.

In addition to the two primary review cycles, the proposal would provide that the ASC may conduct follow-up reviews and additional monitoring. Consistent with the ASC’s current practice, a follow-up review would focus only on specific areas identified during the previous review and would occur within 6 to 12 months of the previous review. Under the proposed rule, the ASC may also conduct accelerated compliance reviews when there are indications that an Appraiser or AMC Program might not be operating

¹¹⁰ 12 U.S.C. 3347(a).

¹¹¹ 12 U.S.C. 3347(a)(4).

¹¹² 12 U.S.C. 3347(a).

¹¹³ 12 U.S.C. 3332(a)(1) and 3347(a)(1)–(5).

¹¹⁴ Compliance reviews are conducted by the ASC, on a periodic or accelerated basis, to determine whether an Appraiser or AMC Program administered by a State Appraiser Regulatory Agency is operating in a manner consistent with Title XI and Federal regulations promulgated thereunder. The proposed rule does not specify that compliance reviews must occur on-site. Instead, the proposed rule would provide flexibility to the ASC to determine the most appropriate means of conducting a compliance review.

¹¹⁵ See Policy Statements, *supra* note 38 at 9160–9161.

¹¹⁶ *Id.*

¹⁰⁸ 12 U.S.C. 3332(a)(5).

¹⁰⁹ 12 U.S.C. 3350(1).

consistently with Title XI or Federal regulations promulgated thereunder. For example, an accelerated compliance review could be warranted when the ASC receives multiple complaints alleging inadequate enforcement by a State Appraiser Regulatory Agency. This is consistent with the ASC's current practice which is to identify potential Title XI compliance concerns before they occur and take appropriate action to prevent the occurrence or minimize the impact on the effectiveness of an Appraiser or AMC Program. The proposed rule would also provide that if a single State Appraiser Regulatory Agency oversees both Appraiser and AMC Programs, the compliance reviews for each regulatory program may have the same or different review cycles. This is also consistent with current practice, which has been proven to be effective based on the ASC's supervisory experience.

2. Compliance Review Process

Paragraph (c) of proposed § 1102.602 would set forth the general process of a compliance review. Similar to current practice, compliance reviews would consist of an examination of records and interviews with State Appraiser Regulatory Agency representatives. After completing the examination, the ASC would prepare a preliminary report that includes the initial monitoring findings, which is consistent with current practice.

However, the preliminary report would, under the proposed rule, include an initial analysis of the effectiveness of the regulatory program, as required in proposed § 1102.603, identifying any deficiencies. The preliminary report would also, under the proposed rule, include the ASC's initial assessment of the level of effectiveness of the regulatory program. This would be a modification of the ASC's current practice; under Policy Statement 12, this analysis of the regulatory program's effectiveness occurs after the ASC concludes the compliance review and issues an overall ASC Finding of Poor.¹¹⁷ The ASC believes that analyzing the effectiveness of the regulatory program earlier during the compliance review process would improve efficiency and streamline the process, so the ASC proposes to utilize this approach instead. Additionally, the proposed rule would include new interim enforcement actions that can be used if the ASC makes the assessment that an Appraiser or AMC Program is not effective. These interim enforcement actions are an additional tool that can be

used in conjunction with more frequent compliance reviews or additional monitoring.

Under the proposed rule, a State Appraiser Regulatory Agency may respond within 60 business days from the date of the preliminary report. This is consistent with the current practice, which has been proven to be effective, based on the ASC's supervisory experience, to give State Appraiser Regulatory Agencies adequate time to consider and respond with any relevant information showing the State Appraiser Regulatory Agency's efforts to remedy any deficiencies. After considering the State Appraiser Regulatory Agency's response along with any mitigating and aggravating factors, the final report would, under the proposed rule, include the final analysis of the effectiveness of the regulatory program, as required in proposed § 1102.603, identifying any deficiencies. The final report would also, under the proposed rule, include the ASC's final assessment of the level of effectiveness of the regulatory program in accordance with paragraph (b)(2) of proposed § 1102.603.

Similar to the current compliance review process, under the proposed rule, State Appraiser Regulatory Agencies would be required to maintain sufficient documentation to demonstrate that their Appraiser and AMC Programs operate consistently with Title XI. ASC staff reviews a representative sampling of documentation in each of the compliance areas to assess the efficiency of the State Appraiser Regulatory Agency's Appraiser or AMC Program. The proposed rule would further provide that documentation must be made available for inspection, as requested by the ASC, including access to the information stored in any electronic system or providing access to the electronic system itself. The electronic access requirement is not included in the Policy Statements, but it is consistent with current ASC practice.

C. Analysis of the Effectiveness of Appraiser and AMC Programs

To determine whether an Appraiser or AMC Program is effective, the amendments to section 1118(a) of Title XI by the Dodd-Frank Act require the ASC to perform an analysis of previously specified key program functions.¹¹⁸ The proposed rule would incorporate the analysis, as required by section 1118(a) of Title XI,¹¹⁹ earlier in the compliance review process and

provide the analysis in the preliminary and final reports. Under paragraph (a) of proposed § 1102.603, the ASC would examine whether the State Appraiser Regulatory Agency is complying with all specified requirements of each program function and, if not, document any identified deficiencies in the preliminary and final reports.

1. Assessment of Program Effectiveness

The deficiencies identified in the preliminary report would serve as the starting point for the ASC's initial assessment of the regulatory program's effectiveness. Under paragraph (b)(1) of proposed § 1102.603, the ASC would assess the regulatory program's initial effectiveness based on the corresponding number of deficiencies per program function identified in the preliminary report. The ASC proposes using the number of deficiencies for the initial assessment of effectiveness because this approach would provide transparency into the ASC's decision-making and help to provide consistent and fair treatment between similarly situated State Appraiser Regulatory Agencies.

Paragraph (b)(1) of proposed § 1102.603 would establish four levels of effectiveness: effective, moderately effective, slightly effective, and ineffective, each specifying the allowable number of deficiencies per program function. The effectiveness of Appraiser and AMC Programs will be assessed through the four levels mentioned above. Currently, the ASC evaluates overall Title XI compliance of a State Appraiser Regulatory Agency's Appraiser or AMC Program by assigning one of five ASC Findings at the end of the compliance review process.¹²⁰ The ratings, known as ASC Findings, are classified as follows: Excellent, Good, Needs Improvement, Not Satisfactory, or Poor.¹²¹ The ASC plans to incorporate the four levels of program effectiveness into the ASC's overall rating criteria of the ASC Findings to emphasize further that a State Appraiser Regulatory Agency is maintaining an effective Appraiser or AMC Program.

The following example illustrates how this approach would work. The ASC might identify three deficiencies under the same program function of licensing and certification of appraisers. The first deficiency could be that the licensing and certification requirements do not meet the minimum requirements in Title XI. The second deficiency could be that the State Appraiser Regulatory

¹²⁰ See Policy Statements, *supra* note 38 at 9160–9161.

¹²¹ *Id.*

¹¹⁸ 12 U.S.C. 3347(a).

¹¹⁹ *Id.*

¹¹⁷ *Id.* at 9159. See also *supra* note 89.

Agency does not have a reciprocity policy. The third deficiency could be that the State Appraiser Regulatory Agency fails to ensure that approved applicants meet the applicable minimum requirements of the AQB Criteria. The initial assessment of the Appraiser Program's level of effectiveness would be deemed "slightly effective" in the preliminary report under proposed § 1102.603(b)(1)(iii)(A) because the ASC found three deficiencies in one program function.

Due to the difference in the number of program functions between Appraiser and AMC Programs, the allowable number of deficiencies per program function for each level of effectiveness would be different for the Appraiser and AMC Programs under the proposed rule. However, this initial assessment would be performed in an equivalent manner for both program types.

Under paragraph (b)(2) of proposed § 1102.603, the ASC would consider whether the State Appraiser Regulatory Agency's response to the preliminary report and any relevant mitigating and aggravating factors in proposed § 1102.604 justify an increase or decrease in the level of the regulatory program's effectiveness for the final report. This analysis would allow the ASC to consider the totality of the circumstances for its final assessment of the regulatory program's level of effectiveness. The ASC has generally found from its supervisory experience that mitigating and aggravating factors could arise in each compliance review because there can be significant variations in the underlying facts of each compliance review. The ASC is proposing this approach because it would allow the ASC flexibility to ensure that the level of effectiveness is truly representative of the State Appraiser Regulatory Agency's regulatory program. If the ASC considers the regulatory program's level of effectiveness to be appropriately mitigated or aggravated, the relevant factors, including a description of how the factors were applied, will be documented in the final report.

2. Program Functions for Appraiser and AMC Programs

Paragraphs (c)(1) and (2) of proposed § 1102.603 would outline the specified requirements for each program function that the ASC will examine to assess the effectiveness of an Appraiser or AMC Program. The ASC proposes these requirements under paragraphs (c)(1) and (2) of proposed § 1102.603 because they are currently included in the Policy Statements and provide guidance to State Appraiser Regulatory Agencies in

complying with Title XI and the rules promulgated thereunder.¹²² The ASC believes that these requirements are fair and manageable because State Appraiser Regulatory Agencies are familiar with these requirements already and have been implementing them. Additionally, the ASC believes this approach should reduce any challenges that State Appraiser Regulatory Agencies may face in implementing any final rule based on this proposal. These requirements under paragraphs (c)(1) and (2) of proposed § 1102.603 are listed below, starting with the Appraiser Program under paragraph (c)(1) of proposed § 1102.603.

3. Specified Requirements for an Appraiser Program

Under paragraph (c)(1) of proposed § 1102.603, a State Appraiser Regulatory Agency must demonstrate to the ASC's reasonable satisfaction that its Appraiser Program is operating consistently with the specified requirements of each program function as listed below.

Paragraph (c)(1)(i) of proposed § 1102.603 would specify eleven requirements for the program function of licensing and certification of appraisers. These eleven requirements are:

(1) the State Appraiser Regulatory Agency's licensing and certification requirements must meet the minimum requirements set forth in section 1116 of Title XI (12 U.S.C. 3345);¹²³

(2) the State Appraiser Regulatory Agency's trainee and supervisory appraiser requirements, if applicable, must meet the minimum requirements set forth in section 1116 of Title XI (12 U.S.C. 3345);¹²⁴

(3) the State Appraiser Regulatory Agency must use the designations for trainee appraisers, State licensed appraisers, and State certified appraisers in accordance with section 1116 of Title XI (12 U.S.C. 3345);¹²⁵

(4) the State Appraiser Regulatory Agency must use permitted scopes of practice for State licensed and certified appraisers in accordance with sections 1113 and 1114 of Title XI (12 U.S.C. 3342 and 3343);¹²⁶

(5) the State Appraiser Regulatory Agency must process applications in a timely, consistent, equitable, and well-documented manner in accordance with Title XI;¹²⁷

¹²² See Policy Statements, *supra* note 38.

¹²³ See Policy Statement 1, *supra* note 38 at 9147–9149.

¹²⁴ *Id.* at 9148–9149.

¹²⁵ *Id.* at 9147–9149.

¹²⁶ *Id.*

¹²⁷ See Policy Statement 4, *supra* note 38 at 9151 and 9153.

(6) the State Appraiser Regulatory Agency must ensure that individuals who process applications are knowledgeable about section 1116 of Title XI (12 U.S.C. 3345) as evaluated by the ASC;¹²⁸

(7) the State Appraiser Regulatory Agency must have a reciprocity policy for issuing a reciprocal license or certification for an individual from another State in accordance with section 1122(b) of Title XI (12 U.S.C. 3351(b));¹²⁹

(8) the State Appraiser Regulatory Agency must ensure that all approved applicants meet the applicable minimum requirements of the AQB Criteria;¹³⁰

(9) the State Appraiser Regulatory Agency must ensure that appraiser education courses are consistent with the AQB Criteria;¹³¹

(10) the State Appraiser Regulatory Agency must obtain and maintain sufficient documentation pertaining to all applications, including initial licenses or certifications, upgrades, renewals, reinstatements, and supervisory approvals, to create a record of facts and determinations and the reasons for those determinations made by the State Appraiser Regulatory Agency;¹³² and

(11) the State Appraiser Regulatory Agency must report appraiser data on the issuance and renewal of licenses and certifications on a timely basis to the Appraiser Registry in accordance with section 1109(a)(2) of Title XI (12 U.S.C. 3338(a)(2)).¹³³

Paragraph (c)(1)(ii) of proposed § 1102.603 would specify nine requirements for the issuance of temporary licenses and certifications for appraisers. These nine requirements are:

(1) the State Appraiser Regulatory Agency must recognize the license or certification of an appraiser issued by another State Appraiser Regulatory Agency on a temporary basis in accordance with section 1122(a)(1) of Title XI (12 U.S.C. 3351(a)(1));¹³⁴

(2) the State Appraiser Regulatory Agency must not impose excessive fees for a temporary license or certification in accordance with section 1122(a)(2) of Title XI (12 U.S.C. 3351(a)(2));¹³⁵

¹²⁸ *Id.* at 9152–9153.

¹²⁹ See Policy Statement 5, *supra* note 38 at 9153–9154.

¹³⁰ See Policy Statements 4 and 6, *supra* note 38 at 9151–9153 and 9154.

¹³¹ See Policy Statement 6, *supra* note 38 at 9154.

¹³² See Policy Statements 4, 5 and 6, *supra* note 38 at 9151–9154.

¹³³ See Policy Statement 3, *supra* note 38 at 9150–9151.

¹³⁴ See Policy Statement 2, *supra* note 38 at 9149.

¹³⁵ *Id.*

(3) the State Appraiser Regulatory Agency must not impose burdensome requirements, as determined by the ASC, for temporary practice in accordance with section 1122(a)(2) of Title XI (12 U.S.C. 3351(a)(2));¹³⁶

(4) the State Appraiser Regulatory Agency must issue temporary licenses or certifications within five business days after receiving a complete application for such issuance in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a));¹³⁷

(5) the State Appraiser Regulatory Agency must issue temporary licenses or certifications on an assignment basis and must allow for at least one extension through a streamlined process in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a));¹³⁸

(6) the State Appraiser Regulatory Agency must issue temporary licenses or certifications designating the effective date in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a));¹³⁹

(7) the State Appraiser Regulatory Agency must track all temporary licenses or certifications using a permit log or system;¹⁴⁰

(8) the State Appraiser Regulatory Agency must supervise all individuals to whom the State Appraiser Regulatory Agency issues a temporary license or certification while performing

assignments in its State, must discipline such individuals, when appropriate, for misconduct or wrongdoing, and must report each disciplinary action to the ASC and other appropriate State Appraiser Regulatory Agencies to ensure effective supervision in accordance with sections 1117, 1118, and 1122(a) of Title XI (12 U.S.C. 3346, 3347, and 3351(a));¹⁴¹ and

(9) the State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the basis for the determinations made by the State Appraiser Regulatory Agency in processing and issuing temporary licenses or certifications.¹⁴²

Paragraph (c)(1)(iii) of proposed § 1102.603 would specify two requirements for the program function of receiving and tracking of submitted complaints against appraisers as follows:

(1) the State Appraiser Regulatory Agency must have a system for processing and investigating complaints and sanctioning trainee appraisers, State licensed appraisers, and State certified appraisers in a timely, effective, consistent, equitable, and well-documented manner;¹⁴³ and

(2) the State Appraiser Regulatory Agency must track and monitor all complaints using a complaint log or system.¹⁴⁴

Paragraph (c)(1)(iv) of proposed § 1102.603 would specify five requirements for the program function of investigations of complaints against appraisers. These five requirements are:

(1) the State Appraiser Regulatory Agency must require appraisals to be performed in accordance with the latest version of USPAP in accordance with sections 1101 and 1103(a)(1)(A) of Title XI (12 U.S.C. 3331 and 3332(a)(1)(A));¹⁴⁵

(2) when examining an appraisal report in connection with a complaint, including complaints based solely on value, the State Appraiser Regulatory Agency must consider whether any potential violations of USPAP should be investigated;¹⁴⁶

(3) to ensure effective supervision, the State Appraiser Regulatory Agency must resolve all complaints filed against trainee appraisers, State licensed appraisers, and State certified appraisers within one year (12 months) from the date the complaint was received except

in special documented circumstances;¹⁴⁷

(4) the State Appraiser Regulatory Agency must ensure that individuals who analyze complaints are knowledgeable about Title XI, USPAP, and appraisal practices and must document how such individuals are qualified, which will be evaluated by the ASC;¹⁴⁸ and

(5) the State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the facts and determinations made by the State Appraiser Regulatory Agency in processing and investigating a complaint and the reasons for its final disposition.¹⁴⁹

Paragraph (c)(1)(v) of proposed § 1102.603 would specify two requirements for the program function of enforcement actions against appraisers as follows:

(1) the State Appraiser Regulatory Agency must supervise trainee appraisers, State licensed appraisers, and State certified appraisers and must discipline such individuals, when appropriate, for misconduct and wrongdoing;¹⁵⁰ and

(2) the State Appraiser Regulatory Agency must report all disciplinary actions against State licensed and certified appraisers to the ASC within five business days after the disciplinary action is final as determined by State law.¹⁵¹

4. Specified Requirements for an AMC Program

Under paragraph (c)(2) of proposed § 1102.603, a State Appraiser Regulatory Agency must demonstrate to the ASC's reasonable satisfaction that its AMC Program is operating consistently with the specified requirements of each program function as listed below.

Paragraph (c)(2)(i) of proposed § 1102.603 would specify seven requirements for the program function of registration of AMCs. These seven requirements are:

(1) the State Appraiser Regulatory Agency must establish and maintain an

¹⁴⁷ *Id.* The requirement that all complaints be resolved within 12 months was determined based on the ASC's supervisory experience. This timeframe has been in place under Policy Statement 7. The ASC has generally found that the 12-month limit has provided adequate time for State Appraiser Regulatory Agencies to investigate and adjudicate complaints while still ensuring that appraisers are timely disciplined for misconduct or wrongdoing. Maintaining this 12-month requirement would help reduce the burden on State Appraiser Regulatory Agencies.

¹⁴⁸ *Id.* at 9155–9156.

¹⁴⁹ *Id.* at 9155.

¹⁵⁰ *Id.* at 9155–9156.

¹⁵¹ See Policy Statement 3, *supra* note 38 at 9150–9151.

¹³⁶ *Id.*

¹³⁷ *Id.* The requirement for temporary licenses or certifications to be issued within five business days was determined based on the ASC's supervisory experience. This timeframe has been in place under Policy Statement 2, and the ASC has generally found the requirement to be a fair balance. The requirement allows appraisers to quickly obtain temporary licenses or certifications for temporary assignments related to federally related transactions while also giving the State Appraiser Regulatory Agency sufficient time to review and process these temporary practice applications.

¹³⁸ *Id.* Title XI prohibits State Appraiser Regulatory Agencies from imposing excessive fees or burdensome requirements for temporary practice, as determined by the ASC. 12 U.S.C. 3351(a)(2). These practices for issuing temporary licenses or certifications are based on the ASC's supervisory experience and have been in place under Policy Statement 2. The ASC has generally found that when State Appraiser Regulatory Agencies adhere to these practices, it helps to avoid placing burdensome requirements on applicants for temporary practice.

¹³⁹ *Id.* Title XI requires that appraisers obtain a temporary license or certification from the State Appraiser Regulatory Agency in the State where they will temporarily conduct appraisal assignments related to federally related transactions. This requirement for issuing temporary licenses or certifications with an effective date was established based on the ASC's supervisory experience and has been in place under Policy Statement 2. The ASC considers this requirement to be a fair balance between the need for public protection from unauthorized appraisal practices and the necessity for appraisers to be aware of the validity period of their temporary licenses or certifications.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ See Policy Statement 7, *supra* note 38 at 9155.

¹⁴⁴ *Id.*

¹⁴⁵ See Policy Statement 1, *supra* note 38 at 9148.

¹⁴⁶ See Policy Statement 7, *supra* note 38 at 9155.

AMC regulatory program with legal authority and mechanisms consistent with Title XI, the AMC Rule, and the AMC Registry Fee Rule;¹⁵²

(2) the State Appraiser Regulatory Agency must impose requirements on AMCs that are consistent with Title XI and the AMC Rule;¹⁵³

(3) the State Appraiser Regulatory Agency must enforce and document ownership limitations for AMCs in a manner consistent with Title XI and the AMC Rule;¹⁵⁴

(4) the State Appraiser Regulatory Agency must process AMC applications in a timely, consistent, equitable, and well-documented manner in accordance with Title XI, the AMC Rule, and the AMC Registry Fee Rule;

(5) the State Appraiser Regulatory Agency must ensure that individuals who process applications are knowledgeable about Title XI and the AMC Rule as evaluated by the ASC;

(6) the State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the basis for its determinations for AMC eligibility for the AMC Registry, including the appraiser panel requirements, ownership limitations, and AMC Registry fee collection and submission to the ASC; and

(7) the State Appraiser Regulatory Agency must report AMCs eligible for the AMC Registry on a timely basis in accordance with section 1109(a)(3) of Title XI (12 U.S.C. 3338(a)(3)) and the AMC Registry Fee Rule.¹⁵⁵

Paragraph (c)(2)(ii) of proposed § 1102.603 would specify two requirements for the program function of receiving and tracking of submitted complaints against AMCs as follows:

(1) the State Appraiser Regulatory Agency must have a system for processing and investigating complaints and sanctioning AMCs (other than federally regulated AMCs) in a timely, effective, consistent, equitable, and well-documented manner;¹⁵⁶ and

(2) the State Appraiser Regulatory Agency must track and monitor all complaints against AMCs using a complaint log or system.¹⁵⁷

Paragraph (c)(2)(iii) of proposed § 1102.603 would specify three

requirements for the program function of investigation of complaints against AMCs. These three requirements are:

(1) to ensure effective supervision, the State Appraiser Regulatory Agency must resolve all complaints filed against AMCs (other than federally regulated AMCs) within one year (12 months) from the date the complaint was received except in special documented circumstances;¹⁵⁸

(2) the State Appraiser Regulatory Agency must ensure that individuals who analyze complaints are knowledgeable about Title XI, the AMC Rule, USPAP, and appraisal practices and must document how such individuals are qualified, which will be evaluated by the ASC; and

(3) the State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the facts and determinations made by the State Appraiser Regulatory Agency in processing and investigating a complaint and the reasons for its final disposition.¹⁵⁹

Paragraph (c)(2)(iv) of proposed § 1102.603 would specify two requirements for the program function of enforcement actions against AMCs as follows:

(1) the State Appraiser Regulatory Agency must supervise AMCs (other than federally regulated AMCs) and must discipline such entities, when appropriate, for misconduct and wrongdoing;¹⁶⁰ and

(2) the State Appraiser Regulatory Agency must report all disciplinary actions against AMCs (other than federally regulated AMCs) to the ASC within five business days after the disciplinary action is final as determined by State law.¹⁶¹

D. Mitigating and Aggravating Factors

Under proposed § 1102.604, the ASC would consider mitigating and aggravating factors as appropriate in adjusting the ASC's initial assessment of the regulatory program's level of effectiveness identified in the preliminary report for a State Appraiser Regulatory Agency. Proposed § 1102.604

would allow the ASC to increase or decrease its initial assessment of the level of effectiveness depending upon the presence of these individualized factors in this section.

As previously mentioned, the ASC believes it is not feasible to predetermine all the mitigating and aggravating factors that could arise in each compliance review because there can be significant variations in the underlying facts of each compliance review. Therefore, proposed § 1102.604 would include common factors to be considered when adjusting a regulatory program's level of effectiveness. The ASCAC recommended categorizing the factors as either solely mitigating or aggravating. The ASC believes from its supervisory experience that these factors should be classified into categories because they could have different effects depending on the specific circumstances, either mitigating or aggravating. Under proposed § 1102.604, the mitigating and aggravating factors would be classified together into four categories: (1) the nature and extent of the deficiency; (2) prior compliance history by the State Appraiser Regulatory Agency; (3) the structure, stability, and responsiveness of the State Appraiser Regulatory Agency; and (4) other situations or circumstances such as natural or human-made disasters or emergencies or other government-declared orders. The ASC has found in conducting compliance reviews, based on its supervisory experience, that most mitigating and aggravating factors could fit into one of the four categories under proposed § 1102.604.

Except as discussed below, the four categories would encompass almost all of the ASCAC's recommendations regarding mitigating and aggravating factors.¹⁶² Some changes would be made to the wording of certain mitigating and aggravating factors to enhance clarity and style and to avoid duplication. Further, the ASC proposes not to include the recommended mitigating and aggravating factors relating to a State Appraiser Regulatory Agency board member involved in a disciplinary decision who had a conflict of interest or bias because the ASC believes such circumstance would be covered under the proposed mitigating or aggravating factor of whether the State Appraiser Regulatory Agency failed to exercise reasonable care toward equitable, consistent, and timely enforcement.¹⁶³

¹⁵² See Policy Statement 8, *supra* note 38 at 9156–9157. Under the proposed rule, “AMC Registry Fee Rule” means the ASC's regulations on the collection and transmission of AMC Registry fees as codified in subpart E of this part.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See Policy Statement 9, *supra* note 38 at 9157–9158.

¹⁵⁶ See Policy Statement 10, *supra* note 38 at 9158.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* The requirement that all complaints be resolved within 12 months was determined based on the ASC's supervisory experience. This timeframe has been in place under Policy Statement 10. The ASC has generally found that the 12-month limit has provided adequate time for State Appraiser Regulatory Agencies to investigate and adjudicate complaints while still ensuring that AMCs are timely disciplined for misconduct or wrongdoing. Maintaining this 12-month requirement would help reduce the burden on State Appraiser Regulatory Agencies.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See Policy Statement 9, *supra* note 38 at 9157–9158.

¹⁶² See ASCAC Final Recommendation Report, *supra* note 45 at 25.

¹⁶³ *Id.*

Given the complexity of some events and significant variations in the underlying facts of each compliance review, it is not feasible to predetermine the outcome or the relative weights of potential mitigating and aggravating factors for every compliance review. The presence of mitigating or aggravating factors does not automatically lead to the conclusion that a departure from the ASC's initial assessment of the regulatory program's level of effectiveness identified in the preliminary report is justified. The factors must be weighed against each other and the facts and circumstances of the deficiency itself. The presence of one or more mitigating circumstances, along with one or more aggravating circumstances, may or may not offset each other. Where mitigating factors predominate, the ASC may consider increasing the regulatory program's level of effectiveness. Conversely, where aggravating factors predominate, the ASC may consider decreasing the regulatory program's level of effectiveness.

If the ASC considers the regulatory program's level of effectiveness to be appropriately mitigated or aggravated, the relevant factors, including a description of how the factors were applied, would be documented in the final report.

E. Enforcement Actions

As stated earlier, section 1118(a) of Title XI authorizes the ASC to impose certain specified enforcement actions against a State Appraiser Regulatory Agency that fails to have an effective appraiser regulatory program.¹⁶⁴ Proposed § 1102.605 would specify the enforcement actions that could be taken against State Appraiser Regulatory Agencies to establish an effective and consistent enforcement approach.

1. Interim Enforcement Actions

Section 1118(a) of Title XI specifically authorizes the ASC to impose interim actions and suspensions against a State Appraiser Regulatory Agency as an alternative to, or in advance of, the non-recognition of a State Appraiser Regulatory Agency.¹⁶⁵ Under paragraph (a) of proposed § 1102.605, the ASC would include three types of potential interim enforcement actions against State Appraiser Regulatory Agencies when the final report indicates that the level of the regulatory program is less than effective: warning letters, negotiated agreements, and suspensions.

Paragraph (a)(1) of proposed § 1102.605 would include a warning letter as a potential interim enforcement action against State Appraiser Regulatory Agencies. A warning letter would be the least severe form of an interim enforcement action and would communicate to a State Appraiser Regulatory Agency any deficiencies in its regulatory program. If the deficiencies are not addressed, the regulatory program's effectiveness could be negatively impacted. Under paragraph (a)(1) of proposed § 1102.605, the ASC could consider issuing a warning letter to a State Appraiser Regulatory Agency when the final report indicates that the level of the regulatory program's effectiveness is moderately effective or slightly effective.

The ASC would also include a negotiated agreement, under paragraph (a)(2) of proposed § 1102.605, as a potential interim enforcement action. A negotiated agreement would involve a State Appraiser Regulatory Agency agreeing to address deficiencies that hinder the effectiveness of the regulatory program by taking certain actions or refraining from certain actions within a specified timeframe. For example, a negotiated agreement could involve the State Appraiser Regulatory Agency preparing and submitting compliance plans, approved by the ASC, outlining the corrective actions to be taken, specifying the individuals responsible for the actions, and setting a timeframe for completion. Under paragraph (a)(2) of proposed § 1102.605, a negotiated agreement could be employed when the final report indicates that the regulatory program is slightly effective or ineffective. A negotiated agreement could also be employed, under paragraph (a)(2) of proposed § 1102.605, when the State Appraiser Regulatory Agency fails to rectify the identified deficiencies outlined in a previously issued warning letter. The ASC believes a negotiated agreement would provide the ASC with the flexibility to address and correct deficiencies while working cooperatively with the State Appraiser Regulatory Agency to rectify any deficiencies.

The last potential interim enforcement action included under paragraph (a)(3) of proposed § 1102.605 would be suspension, which would be the most severe form of an interim enforcement action. Under paragraph (a)(3) of proposed § 1102.605, the ASC could potentially prohibit a State Appraiser Regulatory Agency from performing certain task(s) as part of its responsibilities under Title XI for a specified time period. The tasks may

involve, but are not limited to: (1) the addition of State licensed or certified appraisers to the Appraiser Registry or AMCs to the AMC Registry; (2) the issuance of upgrades of individuals' level of licensure or certification to perform appraisals in connection with federally related transactions; (3) renewal of licenses or certifications of State licensed or certified appraisers for the performance of appraisals in connection with federally related transactions; or (4) the issuance of temporary licenses or certifications to individuals who are licensed or certified in another State to perform appraisals in connection with federally related transactions in the suspended State Appraiser Regulatory Agency's State, as set forth in section 1122(a) of Title XI (12 U.S.C. 3351(a)). Under paragraph (a)(3) of proposed § 1102.605, the ASC could apply a suspension when the final report indicates that the regulatory program is ineffective. The ASC could also apply a suspension, under proposed § 1102.605(a)(3), when a State Appraiser Regulatory Agency refuses to enter into a negotiated agreement or a State Appraiser Regulatory Agency fails to meet its obligations under the negotiated agreement. This interim enforcement action is supported by the statutory text found in section 1118(a) of Title XI that the ASC has the authority to impose suspensions of a State Appraiser Regulatory Agency as an alternative to, or in advance of, the non-recognition of a State Appraiser Regulatory Agency.¹⁶⁶ The proposed rule would also provide a cross-reference to the procedures governing suspension proceedings found at proposed § 1102.606.

2. Non-Recognition

As referenced above, prior to the Dodd-Frank Act, Title XI authorized the ASC to take only one enforcement action—non-recognition—against a State Appraiser Regulatory Agency not operating its Appraiser Program in a manner consistent with Title XI.¹⁶⁷ Non-recognition is the most severe enforcement action that the ASC could impose against a State Appraiser Regulatory Agency. As noted in the ASCAC meeting minutes dated April 17, 2014, the ASC should carefully consider the economic impact of non-recognition before imposing such action.¹⁶⁸ To date, the ASC has not imposed non-recognition against a State Appraiser Regulatory Agency.

¹⁶⁶ *Id.*

¹⁶⁷ See *supra* note 39.

¹⁶⁸ See *supra* note 44.

¹⁶⁴ 12 U.S.C. 3347(a).

¹⁶⁵ *Id.*

Under paragraph (b) of proposed § 1102.605, the ASC could impose non-recognition when the ASC issues a written finding under section 1118(b) of Title XI (12 U.S.C. 3347(b)) and a State Appraiser Regulatory Agency fails to comply with the final order of suspension. The ASC could also impose non-recognition under paragraph (b) of proposed § 1102.605 when the ASC issues a written finding pursuant to section 1118(b) of Title XI (12 U.S.C. 3347(b)) and the final report indicates that the regulatory program is ineffective.

F. Procedures Governing Suspension Proceedings

Proposed § 1102.606 would codify, with some modifications and minor non-substantive corrections, the procedures found in Policy Statement 12 for the procedures governing suspension proceedings.¹⁶⁹ Policy Statement 12 states the due process procedures that the ASC must follow to exercise its authority to impose interim sanctions on State Appraiser Regulatory Agencies.¹⁷⁰ Consistent with the ASC's current procedures in Policy Statement 12, the proposal would provide a written notice of intention to suspend that is published in the **Federal Register** and give the State Appraiser Regulatory Agency the opportunity to respond to the notice.¹⁷¹ Under paragraph (a) of proposed § 1102.606, the ASC would issue a written notice of intention (Notice) to suspend the State Appraiser Regulatory Agency, which would be published in the **Federal Register**. Policy Statement 12 states that the ASC would verify the State Appraiser Regulatory Agency's date of receipt of the Notice and publish the Notice in the **Federal Register** along with the State Appraiser Regulatory Agency's date of receipt of the Notice.¹⁷² The ASC recognizes that verifying a State Appraiser Regulatory Agency's date of receipt of the Notice could be problematic if a State Appraiser Regulatory Agency refuses to acknowledge receipt of the Notice. Therefore, paragraph (a)(2) of proposed § 1102.606 would alleviate this potential problem by requiring the ASC to serve notice upon the State Appraiser Regulatory Agency by sending a copy of the Notice to either the last known email or mailing address of the State Appraiser Regulatory Agency's office

and deeming the service complete upon sending.

To ensure timely enforcement decisions, proposed § 1102.606 would modify the procedural timeframes and deadlines applicable to a State Appraiser Regulatory Agency or the ASC in Policy Statement 12¹⁷³ for a suspension proceeding. The ASC believes the procedural timeframes and deadlines in proposed § 1102.606 are reasonable for several reasons. The proposal would permit the State Appraiser Regulatory Agency to receive advance notice of the deficiencies through the issuance of both preliminary and final reports. The proposed timeframes would also allow the State Appraiser Regulatory Agency to have approximately one month for each information-gathering phase of a suspension proceeding, based on an estimated 20 business days in a month. Finally, the proposed rule would authorize the ASC to grant a waiver extending any time limit in connection with a suspension proceeding on its own or for good cause shown.

Furthermore, the ASC believes that timely enforcement decisions will help build and maintain public confidence in the appraiser regulatory framework while promoting transparency and accountability. This approach would also enhance the ASC's reputation by fostering trust and credibility among State Appraiser Regulatory Agencies, appraisers, AMCs, financial institutions, and the public.

Under paragraph (b) of proposed § 1102.606, the State Appraiser Regulatory Agency would have the opportunity to respond to the Notice by submitting a response or a notice not to contest within 20 business days after publication of the Notice in the **Federal Register**. Currently, Policy Statement 12 states the State Appraiser Regulatory Agency may submit a response within 15 business days of receipt of the Notice.¹⁷⁴ The ASC is proposing to extend the response timeframe by an additional five business days, so the State Appraiser Regulatory Agency would effectively have a month to reply to the Notice. Consistent with the ASC's current procedures in Policy Statement 12, the ASC may consider the facts presented in the Notice to be true and issue a final order if a State Appraiser Regulatory Agency does not submit a response or a notice not to contest.¹⁷⁵

Under paragraph (c) of proposed § 1102.606, the State Appraiser Regulatory Agency may file a written

brief, memorandum, or other statement presenting factual data, as well as policy and legal arguments related to the matters outlined in the Notice. This submission, under the proposed rule, must occur within 40 business days following the publication of the Notice in the **Federal Register**. According to Policy Statement 12, the State Appraiser Regulatory Agency may file this documentation within 45 days after the date of receipt by the State Appraiser Regulatory Agency of the Notice as published in the **Federal Register**.¹⁷⁶ The ASC is proposing to shorten the timeframe for the reasons stated above.

The State Appraiser Regulatory Agency could also, under paragraph (d) of proposed § 1102.606, request an oral presentation to further present, emphasize, and clarify the facts, policies, and laws regarding the issues outlined in the Notice. Such a request must be made within 40 business days after publication of the Notice in the **Federal Register**. Policy Statement 12 states that a State Appraiser Regulatory Agency may request an oral presentation 45 business days after the date of receipt by the State Appraiser Regulatory Agency of the Notice as published in the **Federal Register**.¹⁷⁷ The ASC is proposing to shorten the timeframe for the reasons stated above.

Under paragraph (d) of proposed § 1102.606, if a State Appraiser Regulatory Agency requests an oral presentation, the ASC must hear the matter within 20 business days of receiving the request. Policy Statement 12 states the ASC must hear the matter within 45 business days of receiving the request.¹⁷⁸ However, the ASC believes that enforcement decisions should be made expeditiously to ensure the soundness and effectiveness of the appraiser regulatory framework, so the ASC is proposing a shorter 20-day timeframe to hear the oral presentation.

Under paragraph (f) of proposed § 1102.606, the ASC must make a final decision on the matter by issuing a final order, within 80 business days after publication of the Notice in the **Federal Register** or within 100 business days after publication of the Notice in the **Federal Register** if the ASC receives a timely request for an oral presentation. Policy Statement 12 states that the ASC must issue a final order within 90 business days after the date of receipt by the State Appraiser Regulatory Agency of the Notice as published in the **Federal Register** or in the case of oral presentation having been granted,

¹⁶⁹ See Policy Statement 12, *supra* note 38 at 9159–9160.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 9159.

¹⁷² *Id.*

¹⁷³ *Id.* at 9159–9160.

¹⁷⁴ *Id.* at 9159.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

within 30 days after presentation.¹⁷⁹ However, the ASC believes that enforcement decisions should be made expeditiously to ensure the soundness and effectiveness of the appraiser regulatory framework, so the ASC is proposing a shorter general 80-day timeframe. The ASC also believes a 100-day timeframe in the event of a timely submitted request for an oral presentation is reasonable because the timeframe would allow the ASC additional time to consider the State Appraiser Regulatory Agency's oral presentation in its deliberations.

Finally, paragraph (e)(3) of proposed § 1102.606 would authorize the ASC to grant a waiver extending any time limit in connection with a suspension proceeding if the ASC deems such a waiver to be appropriate. According to Policy Statement 12, the ASC may allow the filing of a response by the State Appraiser Regulatory Agency after the designated deadline for good cause shown.¹⁸⁰ The ASC believes that extending the timeframe for any part of a suspension proceeding—beyond just the State Appraiser Regulatory Agency's response timeframe—is fair and reasonable. The ASC would consider extensions justified in cases that are unanticipated, unforeseeable, and beyond the control of the State Appraiser Regulatory Agency or the ASC.

G. Procedures Governing Non-Recognition Proceedings

Proposed § 1102.607 would cross-reference the existing procedures governing non-recognition proceedings as set forth in subpart B of 12 CFR part 1102 to impose the enforcement action of non-recognition against a State Appraiser Regulatory Agency.

III. Proposed Implementation Period

The ASC proposes a 12-month implementation period from the effective date of any final rule based on this proposal. The ASC understands that, if finalized, the proposed rule would impact the Policy Statements. Accordingly, the ASC plans to revise the Policy Statements to be consistent with any final rule based on this proposal before the expiration of the proposed implementation period. However, during the proposed implementation period, the existing Policy Statements would continue to apply until revised. This compliance period would also give

State Appraiser Regulatory Agencies time to comply with the rule.

IV. Request for Comment

The ASC is requesting comments on all aspects of this proposal. In addition, the ASC requests comments on the following questions:

Question 1. What are the advantages and disadvantages of the ASC's plan to extend the review cycle for Appraiser or AMC Programs overseen by State Appraiser Regulatory Agencies from a two-year cycle to a three-year cycle, particularly for those State Appraiser Regulatory Agencies with an overall ASC Finding of Good or Excellent? What factors should the ASC consider when deciding whether to extend the review cycle to three years for Appraiser or AMC Programs overseen by State Appraiser Regulatory Agencies, particularly when there is an overall ASC Finding of Good or Excellent?

Question 2. Section 1118(a)(2) of Title XI¹⁸¹ requires the ASC to monitor State Appraiser Regulatory Agencies to ensure that the processing of complaints and completing investigations occurs in a reasonable time period. The proposed rule would require that State Appraiser Regulatory Agencies resolve all complaints against appraisers and AMCs within one year (12 months) from the date the complaint is received, except in special documented circumstances. What are the benefits and challenges of the ASC's plan to reduce the complaint resolution timeframe for State Appraiser Regulatory Agencies to a period of time between 8 and 11 months? What factors should the ASC consider when deciding whether to implement this reduction in the complaint resolution timeframe?

Question 3. Are there other mitigating or aggravating factors, such as a legitimate threat to the integrity of the appraiser regulatory framework, intentionally-caused unreasonable delays, or reasonable reliance on competent legal advice, that the ASC should consider when deciding whether to adjust the initial level of effectiveness of Appraiser and AMC Programs as determined by the number of deficiencies identified in the preliminary report?

Question 4. What barriers, if any, might prevent a State Appraiser Regulatory Agency from responding to a written notice of intention to suspend within 20 business days after its

publication in the **Federal Register**? If such barriers exist, what benefits or challenges could arise from extending the response timeframe to a period of time between 30 and 60 business days?

Question 5. What barriers, if any, might prevent a State Appraiser Regulatory Agency from submitting a written brief, memorandum, or other statement within 40 business days after the written notice of intention to suspend is published in the **Federal Register**? If such barriers exist, what benefits or challenges could result from extending the timeframe for filing a written brief, memorandum, or other statement to a period of time between 50 and 100 business days?

Question 6. What barriers, if any, might prevent a State Appraiser Regulatory Agency from requesting an oral presentation within 40 business days after the written notice of intention to suspend is published in the **Federal Register**? If such barriers exist, what benefits or challenges could result from extending the timeframe to a period of time between 50 and 100 business days?

Question 7. What factors should the ASC consider when deciding whether to extend the timeframe for issuing the final order from within 80 business days after the written notice of intention to suspend is published in the **Federal Register**? Additionally, what are the advantages and disadvantages of the ASC's plan to extend this timeframe to a period of time between 90 and 180 business days?

Question 8. What factors should the ASC consider when deciding whether to extend the timeframe for issuing the final order in response to a request for an oral presentation within 100 business days after the written notice of intention to suspend is published in the **Federal Register**? Additionally, what are the advantages and disadvantages of extending this timeframe to a period of time between 120 and 200 business days?

Question 9. What aspects of the proposed rule, if any, will be challenging for State Appraiser Regulatory Agencies to implement within 12 months? To the extent such challenges exist, what benefits or obstacles could result from extending the implementation period to a period of time between 15 and 18 months? What factors should the ASC consider when deciding whether to extend the implementation period to a period of time greater than 12 months?

¹⁷⁹ *Id.* at 9160.

¹⁸⁰ *Id.* at 9159.

¹⁸¹ 12 U.S.C. 3347(a)(2).

Question 10. In addition to providing time for implementation, in what other ways should the ASC facilitate implementation for State Appraiser Regulatory Agencies?

IV. Regulatory Requirements

A. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023¹⁸² requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002¹⁸³ (commonly known as *regulations.gov*).

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council invites comment on a proposed rule to implement a framework to govern the ASC's enforcement authority regarding the effectiveness of Appraiser and Appraisal Management Company (AMC) Programs overseen by State Appraiser Regulatory Agencies. The proposed rule would codify the existing compliance review process with modifications. The proposed rule would require an analysis to assess program effectiveness, outline requirements for maintaining effective programs, and authorize the ASC to bring enforcement actions against such agencies that fail to maintain effective programs. The proposed rule and summary are available at <https://www.regulations.gov>.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA),¹⁸⁴ and its implementing regulations,¹⁸⁵ the ASC has reviewed this proposed rule and has determined that the information collection required by this proposed rule is exempt from the coverage of the PRA. Each compliance review is an audit dependent on the specific facts involved because each State Appraiser Regulatory Agency has the flexibility to design its Appraiser or AMC Programs to meet its Title XI responsibilities. Each State Appraiser Regulatory Agency may face different legal, fiscal, regulatory, or other factors that can influence its governance structure. Under the proposed rule, the collection of information would occur during the

performance of an audit involving the ASC against specific entities.¹⁸⁶

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.¹⁸⁷ However, the regulatory flexibility analysis is not required if an agency certifies that the proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** with the proposed rule.¹⁸⁸ For the reasons stated below, the ASC believes that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Title XI requires the ASC to monitor the requirements established by States that (1) license, certify, and supervise appraisers qualified to perform appraisals in connection with federally related transactions and (2) register and supervise the operations and activities of AMCs.¹⁸⁹ The ASC monitors States that have established Appraiser and AMC Programs through periodic or accelerated compliance reviews. Under the proposal, the ASC would conduct an analysis as part of its compliance review process to assess the effectiveness of Appraiser and AMC Programs administered by State Appraiser Regulatory Agencies. The ASC would be authorized to bring an enforcement action against a State Appraiser Regulatory Agency if the agency fails to have an effective Appraiser or AMC Program.

This proposed rule would apply to all States that have established Appraiser and AMC Programs under Title XI. All 50 States and the District of Columbia have Appraiser and AMC Programs.¹⁹⁰ The District of Columbia has two separate and distinct agencies—the Department of Licensing and Consumer Protection and the Department of Insurance, Securities and Banking—that administer the Appraiser and AMC Programs. The Commonwealth of Puerto

Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands only have Appraiser Programs and not AMC Programs. American Samoa does not have a regulatory oversight structure for appraisers because real estate can only be inherited.¹⁹¹ As a result, 56 State Appraiser Regulatory Agencies would be subject to this proposed rule.

Given the definition of “small entities” under the RFA,¹⁹² the ASC analyzed the population data from the U.S. Census Bureau¹⁹³ for all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico to determine whether any State Appraiser Regulatory Agencies could be considered “small governmental jurisdictions.” Wyoming was the least populated.¹⁹⁴ Wyoming's population was estimated to be 576,850 on April 1, 2020, and has increased to 584,057 on July 1, 2023.¹⁹⁵ The ASC also analyzed the population data from the Central Intelligence Agency's (CIA) World Factbook website¹⁹⁶ for the U.S. territories of American Samoa,¹⁹⁷ Guam,¹⁹⁸ the Commonwealth of the Northern Mariana Islands,¹⁹⁹ and the U.S. Virgin Islands.²⁰⁰ American Samoa and the Commonwealth of the Northern Mariana Islands were the least populated. According to the CIA's World Factbook website, American Samoa's total population was 43,895, and the Commonwealth of the Northern

¹⁹¹ Government Accountability Office, GAO-03-404, *Regulatory Programs: Opportunities to Enhance Oversight of the Real Estate Appraisal Industry*, at 2 (2003).

¹⁹² The RFA defines “small entities” as small businesses, small not-for-profit organizations, and small government jurisdictions. See 5 U.S.C. 601(6). A “small business” is determined by applying Small Business Administration regulations and referencing the North American Industry Classification System (NAICS) classifications and size standards. See 5 U.S.C. 601(3). A “small organization” is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” See 5 U.S.C. 601(4). A “small governmental jurisdiction” means “governments of a city, county, town, township, village, school district, or special district with a population of less than 50,000.” See 5 U.S.C. 601(5).

¹⁹³ U.S. Census Bureau, Population Division, *Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: Apr. 1, 2020, to July 1, 2023 (NST-EST2023-POP)* (December 2023).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Central Intelligence Agency, *The World Factbook*, available at <https://www.cia.gov/the-world-factbook> (visited on Nov. 4, 2024).

¹⁹⁷ *Id.* American Samoa's total population was 43,895.

¹⁹⁸ *Id.* Guam's total population was 169,532.

¹⁹⁹ *Id.* The Commonwealth of the Northern Mariana Islands' total population was 51,118.

²⁰⁰ *Id.* The U.S. Virgin Island's total population was 104,377.

¹⁸² 5 U.S.C. 553(b)(4).

¹⁸³ 44 U.S.C. 3501 note.

¹⁸⁴ 44 U.S.C. 3501 *et seq.*

¹⁸⁵ 5 CFR part 1320.

¹⁸⁶ 5 CFR 1320.4(a)(2).

¹⁸⁷ 5 U.S.C. 601 *et seq.*

¹⁸⁸ *Id.*

¹⁸⁹ See, e.g., 12 U.S.C. 3331, 3332(a)(1), 3346 and 3347(a).

¹⁹⁰ Hawaii's AMC Program sunset on June 30, 2023. However, House Bill 2641 was signed into law on June 21, 2024, to reenact the version of the AMC Program that was originally part of the Hawaii Department of Commerce and Consumer Affairs. The AMC Program established pursuant to House Bill 2641 commenced September 1, 2024.

Mariana Islands' total population was 51,118.²⁰¹ Only American Samoa meets the definition of a "small governmental jurisdiction" under the RFA, with a population of less than 50,000.²⁰² However, American Samoa is not subject to the proposed rule because American Samoa has not established Appraiser and AMC Programs for the reasons stated above.²⁰³ Therefore, an analysis under the RFA is not required because the 56 State Appraiser Regulatory Agencies are not considered small entities²⁰⁴ under RFA.

Any economic impact of the proposed rule, if adopted, on State licensed and certified appraisers and registered AMCs would be indirect because real estate appraisers and AMCs are not subject to the proposed rule. The ASC does not also directly oversee or regulate the 91,670 State licensed and certified real estate appraisers listed on the Appraiser Registry²⁰⁵ reporting from 55 State Appraiser Regulatory Agencies, or 4,943 AMCs listed on the AMC Registry²⁰⁶ reporting from 50 State Appraiser Regulatory Agencies.²⁰⁷ California issues the most licenses and certifications for real estate appraisers (7,803), and the Commonwealth of the Northern Mariana Islands issues the fewest (5).²⁰⁸ As for AMC registrations, Florida registers the most (198), and Kentucky registers the fewest (28).²⁰⁹

Additionally, this proposed rule would not create additional recordkeeping, reporting, and compliance requirements on State licensed and certified appraisers and registered AMCs. Any recordkeeping, reporting, and compliance requirements are imposed by State law, not this proposed rule. The ASC regulates State licensed and certified appraisers and registered AMCs only indirectly by monitoring and enforcing the

requirements and practices of State Appraiser Regulatory Agencies.²¹⁰ In *American Trucking Associations, Inc., v. the United States Environmental Protection Agency*, the United States Court of Appeals stated, "[w]e have consistently interpreted the RFA, [. . .], to impose no obligation upon an agency [']to conduct a small entity impact analysis of effects on entities which it does not regulate.[']"²¹¹ The United States Court of Appeals further stated, "an agency may justify its certification under the RFA upon the [']factual basis['] that the rule does not directly regulate any small entities."²¹²

Based on this analysis, the ASC believes that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, the ASC certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required. The ASC requests comment on all aspects of this analysis.

D. The Unfunded Mandates Reform Act of 1995 Determination

Although the Unfunded Mandates Reform Act of 1995 (UMRA)²¹³ does not apply to independent agencies, the ASC voluntarily analyzed the proposed rule under the factors in the UMRA. Under this analysis, the ASC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). For the following reason, the ASC finds that the proposed rule does not trigger the \$100 million UMRA thresholds. First, the costs specifically related to requirements set forth in law are excluded from expenditures under the UMRA. Given that the proposed rule reflects requirements arising from section 1118 of Title XI,²¹⁴ the UMRA cost estimate for the proposal, if implemented, is zero. Second, such

costs to State, local, and Tribal governments may be paid with Federal financial assistance. Section 1109(b)(5) of Title XI²¹⁵ allows the ASC to make grants to State Appraiser Regulatory Agencies to support the efforts of such agencies to comply with Title XI, such as the complaint process, complaint investigations, appraiser enforcement activities, and the submission of data on State licensed and certified appraisers to the Appraiser Registry or AMCs to the AMC Registry. For these reasons, the ASC has determined that this proposed rule will not result in expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, this proposal is not subject to section 202 of the UMRA.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisal management companies, Appraisal management company registry fees, Appraisers, Banks, banking, Enforcement actions, Freedom of information, Investigations, Licensing and registration, Mortgages, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, and State and local governments.

Authority and Issuance

For the reasons set forth in the preamble, the Federal Financial Institutions Examination Council proposes to amend 12 CFR part 1102 as follows:

PART 1102—APPRAISER REGULATION

■ 1. The authority citation for part 1102 is revised to read as follows:

Authority: 12 U.S.C. 3332, 3335, 3338(a)(4)(B), 3347, 3348(a), 3348(b), 3348(c), 5 U.S.C. 552a, 553(e); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Subpart F to part 1102 is added to read as follows:

Subpart F—Appraisal Subcommittee Enforcement Authority Regarding the Effectiveness of State Appraiser and Appraisal Management Company Regulatory Programs

Sec.

- 1102.600 Authority, purpose, and scope.
- 1102.601 Definitions.
- 1102.602 Compliance reviews.
- 1102.603 Analysis of a regulatory program's effectiveness.
- 1102.604 Mitigating and aggravating factors.
- 1102.605 Enforcement actions.

²¹⁵ 12 U.S.C. 3338(b)(5).

²⁰¹ *Id.*

²⁰² See *supra* note 192.

²⁰³ See *supra* note 191.

²⁰⁴ See *supra* note 192.

²⁰⁵ The actual number of State licensed and certified real appraisers is probably less because it is not uncommon for the same appraiser to hold multiple licenses or certifications from the same State or different States. The total number of State licensed and certified appraisers was current as of November 1, 2024.

²⁰⁶ The actual number of AMCs is probably significantly less because most AMCs are registered in multiple States. The total number of registered AMCs was current as of November 1, 2024.

²⁰⁷ Since Hawaii's AMC Program sunset on June 30, 2023, Hawaii has not submitted data to the AMC Registry. The ASC anticipates that Hawaii will begin collecting registry fees and submitting data to the AMC Registry once Hawaii has completed its implementation phase to re-establish the process for collecting AMC registry fees and submitting data to the AMC Registry.

²⁰⁸ This data was current as of November 1, 2024.

²⁰⁹ *Id.*

²¹⁰ The ASC's authority under 12 U.S.C. 3347(a) regarding the interim removal of an appraiser or AMC from their respective registry is distinguishable because the ASC is only authorized to do so pending State agency action and State Appraiser Regulatory Agencies directly oversee and regulate such appraisers and AMCs. In addition, that authority is outside of the scope of this rulemaking.

²¹¹ *American Trucking Associations, Inc. v. U.S. E.P.A.*, 175 F.3d 1027, 1044 (1999) (quoting *Motor & Equipment Manufacturers Association v. Nichols*, 142 F.3d 449, 467 & n. 18 (1998)).

²¹² *Id.* at 1045.

²¹³ 2 U.S.C. 1532.

²¹⁴ 12 U.S.C. 3347.

1102.606 Procedures governing suspension proceedings.

1102.607 Procedures governing non-recognition proceedings.

§ 1102.600 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Appraisal Subcommittee (ASC) under sections 1103, 1106, and 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101–73, 103 Stat. 183 (1989)), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3332, 3335, and 3347 (Title XI).

(b) *Purpose and scope.* The purpose of this subpart is to implement the ASC's monitoring and enforcement authority pursuant to section 1118 of Title XI (12 U.S.C. 3347) regarding the effectiveness of appraiser and appraisal management company regulatory programs administered by State Appraiser Regulatory Agencies. This subpart applies to all State Appraiser Regulatory Agencies.

§ 1102.601 Definitions.

For the purposes of this subpart:

AMC Registry means the national registry maintained by the ASC of entities that meet the Federal definition of an AMC, as defined in 12 U.S.C. 3350(11), are either registered by a State or are federally regulated AMCs and have paid the annual AMC registry fee.

AMC Registry Fee Rule means the ASC's regulations on the collection and transmission of AMC Registry fees as codified in subpart E of this part.

AMC Rule means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Housing Finance Agency regarding the minimum requirements for AMCs under section 1124 of Title XI (12 U.S.C. 3353). (12 CFR 34.210 through 34.216; 12 CFR 225.190 through 225.196; 12 CFR 323.8 through 323.14; 12 CFR 1222.20 through 1222.26).

Appraisal management company (AMC) means:

(1) A person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates as defined in 12 U.S.C. 1841;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given 12-month period, oversees an appraiser panel of more

than 15 State certified or State licensed appraisers in a State or 25 or more State certified or State licensed appraisers in two or more States.

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

Appraisal management services mean one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State certified or State licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

Appraiser panel means a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC's "appraiser panel" under this subpart include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this subpart if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

Appraisal Subcommittee (ASC) means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 *et seq.*) as amended by section 1102 of Title XI (12 U.S.C. 3310).

Appraiser Registry means the national registry maintained by the ASC of State licensed and certified appraisers, as defined in 12 U.S.C. 3345, who are eligible to perform appraisals in federally related transactions and have paid the annual appraiser registry fee.

AQB Criteria means the minimum requirements for the licensure and certification of real estate appraisers and

the minimum requirements for trainee and supervisory appraisers established by the Appraiser Qualifications Board of the Appraisal Foundation as contemplated by 12 U.S.C. 3345.

Assignment means, for purposes of this subpart with respect to temporary practice, one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement.

Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes.

Covered transaction means any consumer credit transaction secured by the consumer's principal dwelling.

Days means business days. The date of the act, event, or default from which the designated period begins to run is omitted, and the last day is included.

Deficiency means the ASC's determination that a State Appraiser Regulatory Agency has not demonstrated to the ASC's reasonable satisfaction that its regulatory program is operating consistently with the specified requirements of a program function as set forth in § 1102.603(c).

Dwelling means:

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one "principal" dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this subpart.

Federally regulated AMC means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

Federally related transaction means any real estate-related financial transaction which:

(1) A Federal financial institutions regulatory agency engages in, contracts for, or regulates; and

(2) Requires the services of an appraiser under the appraisal rules (Title XI, section 1121(4), 12 U.S.C. 3350(4), implemented by the Office of the Comptroller of the Currency: 12 CFR part 34; Federal Reserve Board: 12 CFR

part 225; Federal Deposit Insurance Corporation: 12 CFR part 323; and National Credit Union Administration: 12 CFR part 722).

Final order means an order issued by the ASC that includes findings of fact, conclusions of law, and, if applicable, the terms of a related enforcement action imposed against a State Appraiser Regulatory Agency for failing to have an effective regulatory program.

Final report means a document that records the ASC's final monitoring findings and analysis of the regulatory program's effectiveness, as required in § 1102.603, identifying any deficiencies. The final report also includes the ASC's final assessment of the regulatory program's level of effectiveness, adjusted for the State Appraiser Regulatory Agency's response to the preliminary report and relevant mitigating and aggravating factors in § 1102.604.

Financial institution means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or an insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

Negotiated agreement means a written agreement signed between the ASC and a State Appraiser Regulatory Agency to correct deficiencies that negatively impact the regulatory program's effectiveness. The agreement may provide that the State Appraiser Regulatory Agency commits to taking a certain action or actions or to refraining from a certain action or actions by a specified time.

Non-recognition means the ASC and all agencies, instrumentalities, and federally recognized entities under Title XI shall not recognize or accept appraiser licenses and certifications issued by a State Appraiser Regulatory Agency whose policies, practices, funding, staffing, or procedures are found to be inconsistent with Title XI and Federal regulations promulgated thereunder. "Non-recognition" is synonymous with "derecognition," which is referenced in section 1118 of Title XI (12 U.S.C. 3347).

Person means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

Preliminary report means a document that records the initial monitoring findings and analysis of the regulatory program's effectiveness, as required in § 1102.603, identifying any deficiencies. The preliminary report also includes the ASC's initial assessment of the program's level of effectiveness.

Program functions mean those responsibilities of a State Appraiser Regulatory Agency that the ASC will examine and include in its analysis of the effectiveness of a State Appraiser Regulatory Agency's regulatory program, consistent with section 1118(a) of Title XI (12 U.S.C. 3347(a)).

(1) There are five program functions for State appraiser regulatory programs:

- (i) Licensing and certification of appraisers;
- (ii) Issuance of temporary licenses and certifications for appraisers;
- (iii) Receiving and tracking of submitted complaints against appraisers;
- (iv) Investigation of complaints against appraisers; and
- (v) Enforcement actions against appraisers.

(2) There are four program functions for State AMC regulatory programs:

- (i) Registration of AMCs;
- (ii) Receiving and tracking of submitted complaints against AMCs;
- (iii) Investigation of complaints against AMCs; and
- (iv) Enforcement actions against AMCs.

Secretary means the Secretary of the ASC under its Rules of Operation.

Special documented circumstances mean well-documented and monitored extenuating circumstances, evaluated by the ASC, that are beyond the control of the State Appraiser Regulatory Agency and result in a complaint processing delay.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and American Samoa.

State Appraiser Regulatory Agency means a State agency that certifies and licenses real estate appraisers and registers and supervises AMCs or otherwise regulates real estate appraisers and AMCs who operate in that State consistent with section 1121(1) of Title XI (12 U.S.C. 3350(1)). "State Appraiser Regulatory Agency" is synonymous with "State appraiser certifying and licensing agency" as defined in section 1121(1) of Title XI (12 U.S.C. 3350(1)). To the extent that the registration and supervision of AMCs is carried out by a separate and distinct agency or agencies within a State, each such agency is also a State Appraiser Regulatory Agency.

State certified appraiser means an individual who has satisfied the requirements for certification in a State whose criteria for certification as a real estate appraiser meet or exceed the applicable minimum AQB Criteria as

prescribed in section 1116(a) and (b) of Title XI (12 U.S.C. 3345(a) and (b)).

State licensed appraiser means an individual who has satisfied the requirements for licensing in a State whose criteria for the licensing of a real estate appraiser meet or exceed the applicable minimum AQB Criteria as prescribed in section 1116(c) of Title XI (12 U.S.C. 3345(c)).

Supervisory appraiser means an individual who has satisfied the requirements in a State whose applicable requirements for supervision of a trainee appraiser meet or exceed the applicable minimum AQB Criteria as prescribed in section 1116(e) of Title XI (12 U.S.C. 3345(e)).

Suspension means the State Appraiser Regulatory Agency is prohibited from performing a certain task or certain tasks as part of the State Appraiser Regulatory Agency's responsibilities under Title XI for a specified period of time as stated in the final order. The suspension remains in effect until the suspension is lifted by the ASC. The ASC may lift the suspension on the finding that the terms and conditions of the final order are satisfied.

Trainee appraiser means an individual who has satisfied the requirements in a State whose applicable requirements meet or exceed the applicable minimum AQB Criteria as prescribed in section 1116(e) of Title XI (12 U.S.C. 3345(e)).

Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Warning letter means a letter issued by the ASC informing a State Appraiser Regulatory Agency of a deficiency or deficiencies relating to its regulatory program that, if not addressed, could negatively impact the regulatory program's effectiveness.

§ 1102.602 Compliance reviews.

(a) *Monitoring of State appraiser and AMC regulatory programs.* The ASC shall monitor appraiser and AMC regulatory programs administered by State Appraiser Regulatory Agencies in accordance with sections 1103(a)(1) and 1118(a) of Title XI (12 U.S.C. 3332(a)(1) and 3347(a)).

(b) *Frequency of compliance reviews.* (1) The ASC will conduct compliance reviews on either a two-year cycle or one-year cycle as part of its routine monitoring but may use an alternate review schedule at its sole discretion.

(2) The ASC may conduct follow-up reviews and additional monitoring on specific areas identified during a compliance review. The ASC may

schedule a follow-up review within 6 to 12 months after the previous compliance review or at a time deemed appropriate by the ASC.

(3) The ASC may conduct accelerated compliance reviews when there are indications that a regulatory program might not be operating consistently with Title XI or Federal regulations promulgated thereunder.

(4) When a State Appraiser Regulatory Agency oversees both appraiser and AMC regulatory programs, the ASC may assign each regulatory program the same or different review cycles.

(c) *Performance of compliance reviews.* (1) During compliance reviews, the ASC will examine records and may conduct interviews with State Appraiser Regulatory Agency representatives.

(2) After completing the examination of records and interviews, the ASC will prepare the preliminary report that includes the ASC's initial determination of the level of effectiveness of the regulatory program as outlined in § 1102.603(b).

(3) A State Appraiser Regulatory Agency may respond within 60 days from the date of the preliminary report. The response may include additional documentation showing the State Appraiser Regulatory Agency's efforts to remedy any findings or deficiencies identified in the preliminary report. The ASC may, on its own initiative or for good cause shown, issue a waiver extending the 60-day time limit in connection with a State Appraiser Regulatory Agency's response to the preliminary report under this section.

(4) After receiving the State Appraiser Regulatory Agency's response to the preliminary report, the ASC will prepare a final report that includes the ASC's final determination of the level of effectiveness of the regulatory program as outlined in § 1102.603(b).

(d) *Responsibilities of State Appraiser Regulatory Agencies.* State Appraiser Regulatory Agencies must maintain sufficient documentation to demonstrate that their appraiser and AMC regulatory programs operate consistently with Title XI and Federal regulations promulgated thereunder. Documentation must be made available for inspection, as requested by the ASC, including access to the information stored in any electronic system or providing access to the electronic system itself.

§ 1102.603 Analysis of a regulatory program's effectiveness.

(a) *Analysis of the regulatory program's effectiveness.* The ASC will assess the effectiveness of a regulatory program, as required by section 1118 of Title XI (12 U.S.C. 3347), by conducting

an analysis of the applicable program functions. The ASC will examine whether the State Appraiser Regulatory Agency's regulatory program is operating consistently with the specified requirements of each program function in paragraph (c) of this section. If any deficiencies are found, the ASC will document the deficiencies in both the preliminary and final reports consistent with this subpart.

(b) *Assessment of the regulatory program's effectiveness—(1) Initial assessment of the regulatory program's effectiveness.* The ASC will assess the initial effectiveness of a State appraiser or AMC regulatory program on the basis of the number of deficiencies per program function as identified in the preliminary report as follows:

(i) *Effective regulatory program.* (A) A State appraiser regulatory program is considered "effective" if there is no more than one deficiency in each of not more than two separate program functions.

(B) A State AMC regulatory program is considered "effective" if there is no more than one deficiency in any single program function.

(ii) *Moderately effective regulatory program.* (A) A State appraiser regulatory program is considered "moderately effective" if there is no more than one deficiency in each of not more than three separate program functions or no more than two deficiencies in one program function.

(B) A State AMC regulatory program is considered "moderately effective" if there is no more than one deficiency in each of not more than two separate program functions.

(iii) *Slightly effective regulatory program.* (A) A State appraiser regulatory program is considered "slightly effective" if there is no more than one deficiency in each of not more than four separate program functions, no more than two deficiencies in each of two separate program functions, or no more than three deficiencies in one program function.

(B) A State AMC regulatory program is considered "slightly effective" if there is no more than one deficiency in each of not more than three separate program functions or no more than two deficiencies in one program function.

(iv) *Ineffective regulatory program.* (A) A State appraiser regulatory program is considered "ineffective" if there are one or more deficiencies in each of five separate program functions, two or more deficiencies in each of three or more separate program functions, or four or more deficiencies in one or more program functions.

(B) A State AMC regulatory program is considered "ineffective" if there are one or more deficiencies in each of four separate program functions, two or more deficiencies in each of two or more separate program functions, or three or more deficiencies in one or more program functions.

(2) *Final assessment of the regulatory program's effectiveness.* The ASC will consider whether the State Appraiser Regulatory Agency's response to the preliminary report and any relevant mitigating and aggravating factors in § 1102.604 justify an increase or decrease in the level of the regulatory program's effectiveness for the final report.

(c) *Specified requirements of the applicable program functions for State appraiser and AMC regulatory programs—(1) State appraiser regulatory program.* A State Appraiser Regulatory Agency must demonstrate to the ASC's reasonable satisfaction that its appraiser regulatory program is operating consistently with the specified requirements of each program function:

(i) *Licensing and certification of appraisers.* (A) The State Appraiser Regulatory Agency's licensing and certification requirements must meet the minimum requirements set forth in section 1116 of Title XI (12 U.S.C. 3345).

(B) The State Appraiser Regulatory Agency's trainee and supervisory appraiser requirements, if applicable, must meet the minimum requirements set forth in section 1116 of Title XI (12 U.S.C. 3345).

(C) The State Appraiser Regulatory Agency must use the designations for trainee appraisers, State licensed appraisers, and State certified appraisers in accordance with section 1116 of Title XI (12 U.S.C. 3345).

(D) The State Appraiser Regulatory Agency must use permitted scopes of practice for State licensed and certified appraisers in accordance with sections 1113 and 1114 of Title XI (12 U.S.C. 3342 and 3343).

(E) The State Appraiser Regulatory Agency must process applications in a timely, consistent, equitable, and well-documented manner in accordance with Title XI.

(F) The State Appraiser Regulatory Agency must ensure that individuals who process applications are knowledgeable about section 1116 of Title XI (12 U.S.C. 3345) as evaluated by the ASC.

(G) The State Appraiser Regulatory Agency must have a reciprocity policy for issuing a reciprocal license or certification for an individual from

another State in accordance with section 1122(b) of Title XI (12 U.S.C. 3351(b)).

(H) The State Appraiser Regulatory Agency must ensure that all approved applicants meet the applicable minimum requirements of the AQB Criteria.

(I) The State Appraiser Regulatory Agency must ensure that appraiser education courses are consistent with the AQB Criteria.

(J) The State Appraiser Regulatory Agency must obtain and maintain sufficient documentation pertaining to all applications, including initial licenses or certifications, upgrades, renewals, reinstatements, and supervisory approvals, to create a record of facts and determinations and the reasons for those determinations made by the State Appraiser Regulatory Agency.

(K) The State Appraiser Regulatory Agency must report appraiser data on the issuance and renewal of licenses and certifications on a timely basis to the Appraiser Registry in accordance with section 1109(a)(2) of Title XI (12 U.S.C. 3338(a)(2)).

(ii) *Issuance of temporary licenses and certifications for appraisers.* (A) The State Appraiser Regulatory Agency must recognize the license or certification of an appraiser issued by another State Appraiser Regulatory Agency on a temporary basis in accordance with section 1122(a)(1) of Title XI (12 U.S.C. 3351(a)(1)).

(B) The State Appraiser Regulatory Agency must not impose excessive fees for a temporary license or certification in accordance with section 1122(a)(2) of Title XI (12 U.S.C. 3351(a)(2)).

(C) The State Appraiser Regulatory Agency must not impose burdensome requirements, as determined by the ASC, for temporary practice in accordance with section 1122(a)(2) of Title XI (12 U.S.C. 3351(a)(2)).

(D) The State Appraiser Regulatory Agency must issue temporary licenses or certifications within five days after receiving a complete application for such issuance in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a)).

(E) The State Appraiser Regulatory Agency must issue temporary licenses or certifications on an assignment basis and must allow for at least one extension through a streamlined process in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a)).

(F) The State Appraiser Regulatory Agency must issue temporary licenses or certifications designating the effective date in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a)).

(G) The State Appraiser Regulatory Agency must track all temporary licenses or certifications using a permit log or system.

(H) The State Appraiser Regulatory Agency must supervise all individuals to whom the State Appraiser Regulatory Agency issues a temporary license or certification while performing assignments in its State, must discipline such individuals, when appropriate, for misconduct or wrongdoing, and must report each disciplinary action to the ASC and other appropriate State Appraiser Regulatory Agencies to ensure effective supervision in accordance with sections 1117, 1118, and 1122(a) of Title XI (12 U.S.C. 3346, 3347, and 3351(a)).

(I) The State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the basis for the determinations made by the State Appraiser Regulatory Agency in processing and issuing temporary licenses or certifications.

(iii) *Receiving and tracking of submitted complaints against appraisers.* (A) The State Appraiser Regulatory Agency must have a system for processing and investigating complaints and sanctioning trainee appraisers, State licensed appraisers, and State certified appraisers in a timely, effective, consistent, equitable, and well-documented manner.

(B) The State Appraiser Regulatory Agency must track and monitor all complaints using a complaint log or system.

(iv) *Investigation of complaints against appraisers.* (A) The State Appraiser Regulatory Agency must require appraisals to be performed in accordance with the latest version of USPAP in accordance with sections 1101 and 1103(a)(1)(A) of Title XI (12 U.S.C. 3331 and 3332(a)(1)(A)).

(B) When examining an appraisal report in connection with a complaint, including complaints based solely on value, the State Appraiser Regulatory Agency must consider whether any potential violations of USPAP should be investigated.

(C) To ensure effective supervision, the State Appraiser Regulatory Agency must resolve all complaints filed against trainee appraisers, State licensed appraisers, and State certified appraisers within one year (12 months) from the date the complaint was received except in special documented circumstances.

(D) The State Appraiser Regulatory Agency must ensure that individuals who analyze complaints are knowledgeable about Title XI, USPAP, and appraisal practices and must

document how such individuals are qualified, which will be evaluated by the ASC.

(E) The State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the facts and determinations made by the State Appraiser Regulatory Agency in processing and investigating a complaint and the reasons for its final disposition.

(v) *Enforcement actions against appraisers.* (A) The State Appraiser Regulatory Agency must supervise trainee appraisers, State licensed appraisers, and State certified appraisers and must discipline such individuals, when appropriate, for misconduct and wrongdoing.

(B) The State Appraiser Regulatory Agency must report all disciplinary actions against State licensed and certified appraisers to the ASC within five days after the disciplinary action is final as determined by State law.

(2) *State AMC regulatory program.* A State Appraiser Regulatory Agency must demonstrate to the ASC's reasonable satisfaction that its AMC regulatory program is operating consistently with the stated requirements of each program function:

(i) *Registration of AMCs.* (A) The State Appraiser Regulatory Agency must establish and maintain an AMC regulatory program with legal authority and mechanisms consistent with Title XI, the AMC Rule, and the AMC Registry Fee Rule.

(B) The State Appraiser Regulatory Agency must impose requirements on AMCs that are consistent with Title XI and the AMC Rule.

(C) The State Appraiser Regulatory Agency must enforce and document ownership limitations for AMCs in a manner consistent with Title XI and the AMC Rule.

(D) The State Appraiser Regulatory Agency must process AMC applications in a timely, consistent, equitable, and well-documented manner in accordance with Title XI, the AMC Rule, and the AMC Registry Fee Rule.

(E) The State Appraiser Regulatory Agency must ensure that individuals who process applications are knowledgeable about Title XI and the AMC Rule as evaluated by the ASC.

(F) The State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the basis for its determinations for AMC eligibility for the AMC Registry, including the appraiser panel requirements, ownership limitations, and AMC Registry fee collection and submission to the ASC.

(G) The State Appraiser Regulatory Agency must report AMCs eligible for the AMC Registry on a timely basis to the ASC in accordance with section 1109(a)(3) of Title XI (12 U.S.C. 3338(a)(3)) and the AMC Registry Fee Rule.

(ii) *Receiving and tracking of submitted complaints against AMCs.* (A) The State Appraiser Regulatory Agency must have a system for processing and investigating complaints and sanctioning AMCs (other than federally regulated AMCs) in a timely, effective, consistent, equitable, and well-documented manner.

(B) The State Appraiser Regulatory Agency must track and monitor all complaints against AMCs using a complaint log or system.

(iii) *Investigation of complaints against AMCs.* (A) To ensure effective supervision, the State Appraiser Regulatory Agency must resolve all complaints filed against AMCs (other than federally regulated AMCs) within one year (12 months) from the date the complaint was received except in special documented circumstances.

(B) The State Appraiser Regulatory Agency must ensure that individuals who analyze complaints are knowledgeable about Title XI, the AMC Rule, USPAP, and appraisal practices and must document how such individuals are qualified, which will be evaluated by the ASC.

(C) The State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the facts and determinations made by the State Appraiser Regulatory Agency in processing and investigating a complaint and the reasons for its final disposition.

(iv) *Enforcement actions against AMCs.* (A) The State Appraiser Regulatory Agency must supervise AMCs (other than federally regulated AMCs) and must discipline such entities, when appropriate, for misconduct and wrongdoing.

(B) The State Appraiser Regulatory Agency must report all disciplinary actions against AMCs (other than federally regulated AMCs) to the ASC within five days after the disciplinary action is final as determined by State law.

§ 1102.604 Mitigating and aggravating factors.

The ASC will consider the following factors, which may be mitigating or aggravating as appropriate, in adjusting the ASC's initial assessment of the level of effectiveness of the regulatory program identified in the preliminary

report. The mitigating or aggravating factors include:

(a) The nature and extent of the deficiency, which includes:

(1) The type of deficiency;
(2) Whether any deficiencies indicate systemic issues in the regulatory program; and

(3) The severity of the deficiency, and the extent to which the deficiency can be corrected or, if not corrected in a timely manner, whether the deficiency poses a potential risk to the regulatory program, appraisers, AMCs, financial institutions, or the public.

(b) Prior compliance history by the State Appraiser Regulatory Agency, which includes:

(1) Whether the regulatory program has had any prior deficiencies;

(2) Whether the deficiency is the same as or similar to prior deficiencies;

(3) Whether the State Appraiser Regulatory Agency's practices or actions indicate a pattern of similar prior deficiencies or a fundamental failure to understand the risks and controls that underlie a program function; and

(4) Whether, and to what extent, the State Appraiser Regulatory Agency attempted to correct prior deficiencies.

(c) The structure, stability, and responsiveness of the State Appraiser Regulatory Agency, which include:

(1) The level of cooperation with the ASC staff during a compliance review;

(2) The extent of understanding and acknowledgment of the deficiency;

(3) The level of responsiveness and willingness to correct the deficiency;

(4) Whether the regulatory program has undergone significant staffing or leadership changes;

(5) Any submission of false statements or documents, or deceptive practices by the State Appraiser Regulatory Agency;

(6) Whether the State Appraiser Regulatory Agency failed to exercise reasonable care toward equitable, consistent, and timely enforcement; and

(7) The number of State licensed and certified appraisers or registered AMCs under the jurisdiction of the State Appraiser Regulatory Agency; and

(8) The risk of program failure.

(d) Other situations or circumstances may include natural or human-made disasters or emergencies or other government-declared orders.

§ 1102.605 Enforcement actions.

(a) *Interim enforcement actions.* The ASC may undertake an interim enforcement action against a State Appraiser Regulatory Agency that fails to have an effective regulatory program as determined by the ASC as set forth in § 1102.603(b). Interim enforcement actions may consist of the following actions:

(1) *Warning letter.* The ASC may issue a warning letter to a State Appraiser Regulatory Agency when the final report indicates that the regulatory program is moderately effective or slightly effective.

(2) *Negotiated agreement.* The ASC may enter into a negotiated agreement with a State Appraiser Regulatory Agency if the State Appraiser Regulatory Agency fails to address the deficiency or deficiencies identified in a previously issued warning letter, or the final report indicates that the regulatory program is slightly effective or ineffective.

(3) *Suspension.* The ASC may suspend a State Appraiser Regulatory Agency for an interim period, as outlined in the procedures within § 1102.606, if the State Appraiser Regulatory Agency refuses to enter into a negotiated agreement, the State Appraiser Regulatory Agency fails to comply with the terms and conditions of a negotiated agreement, or the final report indicates that the regulatory program is ineffective. The suspension may involve, but is not limited to, the State Appraiser Regulatory Agency's ability to perform one or more of the following tasks:

(i) Addition of State licensed or certified appraisers to the Appraiser Registry or AMCs to the AMC Registry;

(ii) Issuance of upgrades of individuals' level of licensure or certification to perform appraisals in connection with federally related transactions;

(iii) Renewal of licenses or certifications of State licensed or certified appraisers for the performance of appraisals in connection with federally related transactions; or

(iv) Issuance of temporary licenses or certifications to individuals who are licensed or certified in another State to perform appraisals in connection with federally related transactions in the suspended State Appraiser Regulatory Agency's State, as set forth in section 1122(a) of Title XI (12 U.S.C. 3351(a)).

(b) *Non-recognition.* The ASC may undertake non-recognition, as prescribed in the procedures within subpart B of this part, if the ASC issues a written finding pursuant to section 1118(b) of Title XI (12 U.S.C. 3347(b)) that the State Appraiser Regulatory Agency's policies, practices, funding, staffing, or procedures are inconsistent with Title XI and Federal regulations promulgated thereunder and:

(1) a State Appraiser Regulatory Agency fails to comply with a final order of suspension; or

(2) the final report indicates the regulatory program is ineffective.

§ 1102.606 Procedures governing suspension proceedings.

The ASC must adhere to the following procedures to suspend a State Appraiser Regulatory Agency.

(a) *Notice.* (1) The ASC must provide the State Appraiser Regulatory Agency with a written notice of intention to suspend the State Appraiser Regulatory Agency from a task or tasks as provided in § 1102.605(a)(3). The notice must contain the ASC's final report.

(2) The Secretary must publish the notice in the **Federal Register** and must provide notice to the State Appraiser Regulatory Agency by sending a copy to the State Appraiser Regulatory Agency's last known email or mailing address. Service is complete upon sending.

(b) *State Appraiser Regulatory Agency's response.* (1) Within 20 days after publication of the notice in the **Federal Register**, the State Appraiser Regulatory Agency may submit a response or a notice not to contest to the Secretary.

(2) If a State Appraiser Regulatory Agency submits a notice not to contest, the ASC must issue the final order within 80 days after publication of the notice in the **Federal Register** as set forth in paragraph (f) of this section.

(3) If a State Appraiser Regulatory Agency does not submit a response or a notice not to contest within 20 days after publication of the notice in the **Federal Register**, the ASC may consider the facts presented in the notice to be true. The ASC must then issue the final order within 80 days after publication of the notice in the **Federal Register** as set forth in paragraph (f) of this section.

(c) *Briefs, memoranda, and statements.* After (or contemporaneously with) the State Appraiser Regulatory Agency's filing of its response, but in no event more than 40 days after publication of the notice in the **Federal Register**, the State Appraiser Regulatory Agency may file with the Secretary a written brief, memorandum, or other statement

providing factual data and policy and legal arguments regarding the matters set out in the notice.

(d) *Oral presentations to the ASC.* After (or contemporaneously with) the State Appraiser Regulatory Agency's filing of its response, but in no event more than 40 days after publication of the notice in the **Federal Register**, a State Appraiser Regulatory Agency may also request to make an oral presentation to the ASC. If a State Appraiser Regulatory Agency files a request for an oral presentation, the ASC must hear the matter within 20 days after the date the ASC received the request for an oral presentation. An oral presentation is an opportunity for the State Appraiser Regulatory Agency to offer, emphasize, and clarify the facts, policies, and laws concerning the matters set forth in the notice. The State Appraiser Regulatory Agency will make its oral presentation to the ASC on the date and time designated by the ASC. The ASC may ask questions relating to the contents of the notice, the response, the oral presentation, or any written briefs, memoranda, or statements submitted.

(e) *Conduct of suspension proceedings—(1) Written submissions.* All aspects of suspension proceedings will be conducted by written submissions, except for oral presentations allowed under paragraph (d) of this section.

(2) *Rules of evidence.* Except as is otherwise set forth in this section, relevant material and reliable evidence that is not unduly repetitive will be admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and other applicable laws.

(3) *Extensions of time.* The ASC may, on its own initiative or for good cause shown, issue a waiver extending any time limit in connection with a suspension proceeding under this section.

(f) *Decision of the ASC.* Within 80 days after publication of the notice in the **Federal Register**, or, in the case of the ASC's receipt of a timely request for an oral presentation within 100 days after publication of the notice in the **Federal Register**, the ASC must make a final decision on the matter by issuing a final order. The final order will be final and effective upon signature of the ASC Chairperson or their designee. The Secretary must promptly disseminate the final order to the State Appraiser Regulatory Agency and publish the final order in the **Federal Register**.

(g) *Documents and exhibits.* Unless otherwise provided by law, the Secretary must place all documents, papers, and exhibits submitted in connection with the suspension proceeding in the proceeding's file and make them available for public inspection, except those that may be withheld from disclosure under applicable law.

(h) *Opportunity for informal settlement.* The State Appraiser Regulatory Agency may submit written offers or proposals for settlement of the proceeding to the Secretary at any time for consideration by the ASC. This paragraph (h) shall not preclude settlement of any suspension proceeding by the filing of a notice not to contest as provided in paragraph (b)(1) of this section.

§ 1102.607 Procedures governing non-recognition proceedings.

To impose non-recognition against a State Appraiser Regulatory Agency, the ASC must adhere to the procedures governing a non-recognition proceeding, as set forth in subpart B of this part.

By the Appraisal Subcommittee.

Dated: November 21, 2024.

Zixta Martinez,
Chairperson.

[FR Doc. 2024-27698 Filed 12-5-24; 8:45 am]

BILLING CODE 6700-01-P

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

National Institute of Food and Agriculture

Notice of Intent To Extend and Revise a Previously Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to extend and revise a previously approved information collection, entitled *Organizational Information*.

DATES: Written comments on this notice must be received by February 4, 2025 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Laura Givens, 816-527-5379, Laura.Givens@usda.gov.

SUPPLEMENTARY INFORMATION:

Title of Collection: Organizational Information.

OMB Control Number: 0524-0026.

Expiration Date of Current Approval: 3/31/2025.

Type of Request: Notice of intent to extend for three years and revise a previously approved information collection.

Abstract: NIFA has primary responsibility for providing connection between the Federal and State

components of a broad-based, national agricultural research, extension, and education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and carry out the intent of Congress by administering capacity and grant funds appropriated for agricultural research, extension, and education. Before awards can be made, certain information is required from applicants to effectively assess the potential recipient's capacity to manage Federal funds.

The Organizational Information Form enables NIFA to determine that the applicants recommended for awards will be responsible recipients of Federal funds.

The information requested from the applicant pertains to the organizational and financial management of the potential grantee. This form and the attached applicant documents provide NIFA with information such as the legal name of the organization; certification that the organization has the legal authority to accept Federal funding; identification and signatures of the organization's key officials; the organization's policies for employee compensation and benefits; evidence of equipment insurance; the organization's policies on subcontracting with other organizations; evidence of the financial condition of the organization; and certification that the organization is not delinquent on Federal taxes. NIFA considers all this information prior to award, to determine the grantee is both managerially and fiscally responsible. This information is submitted to NIFA on a one-time basis and updated accordingly. If material changes occur within the organization, the grantee must submit revised information.

NIFA is proposing to update the form to ensure that it reflects the latest statutory and regulatory requirements, including updates to 2 CFR Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. NIFA also proposes to rename the form to the "Organizational Information Form," and update the format of the form itself to improve accessibility.

Estimate of Burden: The total annual estimated burden for this information collection is 945 hours.

Estimated Number of Respondents: 150.

Annual responses: 150.

Average time to complete each response: 6.3 hours.

Burden hours: 945.

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 will 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 to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Laura Givens as directed above.

Done at Washington, DC, this day of October 1, 2024.

Dionne Toombs,

Associate Director for Programs, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2024-28692 Filed 12-5-24; 8:45 am]

BILLING CODE 3410-22-P

CIVIL RIGHTS COLD CASE RECORDS REVIEW BOARD

[Agency Docket Number: CRCCRRB-2025-0004-N]

Notice of Formal Determination on Records Release

AGENCY: Civil Rights Cold Case Records Review Board.

ACTION: Notice.

SUMMARY: The Civil Rights Cold Case Records Review Board received 265 pages of records from the National Archives and Records Administration (NARA), the Department of Justice, and the Federal Bureau of Investigation (FBI) related to four civil rights cold case incidents. The Review Board assigned the unique identifiers 2023-002-007, 2024-003-025, 2024-003-040, and

2024-003-044 to the incidents. The Department of Justice and the FBI proposed postponements of disclosure for records related to incident 2023-002-007. No postponements of disclosure were proposed for records related to the other three incidents. On November 22, 2024, the Review Board determined that 238 pages in full and 27 pages in part should be publicly disclosed in the Civil Rights Cold Case

Records Collection. The Review Board approved 129 postponements proposed by the Department of Justice and the FBI. The Board is still considering 4 postponements proposed by the FBI. By issuing this notice, the Review Board complies with section 7(c)(4) of the Civil Rights Cold Case Records Collection Act of 2018 that requires the Review Board to publish in the **Federal Register** its determinations on the

disclosure or postponement of records in the Collection no more than 14 days after the date of its decision.

FOR FURTHER INFORMATION CONTACT: Stephannie Oriabure, Chief of Staff, Civil Rights Cold Case Records Review Board, 1800 F Street NW, Washington, DC 20405, (771) 221-0014, info@coldcaserecords.gov.

SUPPLEMENTARY INFORMATION:

Incident identifier	Postponement identifier	Review board decision
2023-002-007	2024-DOJ-02-0001 through 2024-DOJ-02-0007	Approve.
2023-002-007	2024-DOJ-02-0008 through 2024-DOJ-02-0011	Reject.
2023-002-007	2024-DOJ-02-0012 through 2024-DOJ-02-0034	Approve.
2023-002-007	2024-DOJ-02-0035 through 2024-DOJ-02-0039	Disapprove.
2023-002-007	2024-DOJ-02-0040 and 2024-DOJ-02-0041	Approve.
2023-002-007	2024-DOJ-02-0042	Reject.
2023-002-007	2024-DOJ-02-0043	Approve.
2023-002-007	2024-DOJ-02-0044 and 2024-DOJ-02-0045	Reject.
2023-002-007	2024-DOJ-02-0046 through 2024-DOJ-02-0048	Approve.
2023-002-007	2024-DOJ-02-0049	Approve with changes.
2023-002-007	2024-DOJ-02-0050 through 2024-DOJ-02-0052	Approve.
2023-002-007	2024-DOJ-02-0053	Approve with changes.
2023-002-007	2024-DOJ-02-0054 and 2024-DOJ-02-0055	Reject.
2023-002-007	2024-DOJ-02-0056	Approve.
2023-002-007	2024-DOJ-02-0057	Reject.
2023-002-007	2024-DOJ-02-0058	Approve.
2023-002-007	2024-DOJ-02-0059	Reject.
2023-002-007	2024-DOJ-02-0060 through 2024-DOJ-02-0067	Approve.
2023-002-007	2024-FBI-02-0001 and 2024-FBI-02-0002	Approve.
2023-002-007	2024-FBI-02-0003	Reject.
2023-002-007	2024-FBI-02-0004	Approve.
2023-002-007	2024-FBI-02-0005 through 2024-FBI-02-0008	Reject.
2023-002-007	2024-FBI-02-0009 and 2024-FBI-02-0010	Approve.
2023-002-007	2024-FBI-02-0011	Reject.
2023-002-007	2024-FBI-02-0012	Approve.
2023-002-007	2024-FBI-02-0013	Reject.
2023-002-007	2024-FBI-02-0014	Approve.
2023-002-007	2024-FBI-02-0015 through 2024-FBI-02-0035	Reject.
2023-002-007	2024-FBI-02-0036 through 2024-FBI-02-0039	Approve.
2023-002-007	2024-FBI-02-0040 and 2024-FBI-02-0041	Reject.
2023-002-007	2024-FBI-02-0042 through 2024-FBI-02-0047	Approve.
2023-002-007	2024-FBI-02-0048	Reject.
2023-002-007	2024-FBI-02-0049 through 2024-FBI-02-0053	Approve.
2023-002-007	2024-FBI-02-0054	Reject.
2023-002-007	2024-FBI-02-0055	Approve.
2023-002-007	2024-FBI-02-0056	Reject.
2023-002-007	2024-FBI-02-0057 and 2024-FBI-02-0058	Approve.
2023-002-007	2024-FBI-02-0059	Approve with changes.
2023-002-007	2024-FBI-02-0060 and 2024-FBI-02-0061	Approve.
2023-002-007	2024-FBI-02-0062	Approve with changes.
2023-002-007	2024-FBI-02-0063	Reject.
2023-002-007	2024-FBI-02-0064 and 2024-FBI-02-0065	Approve.
2023-002-007	2024-FBI-02-0066	Approve with changes.
2023-002-007	2024-FBI-02-0067	Reject.
2023-002-007	2024-FBI-02-0068 and 2024-FBI-02-0069	Approve.
2023-002-007	2024-FBI-02-0070	Approve with changes.
2023-002-007	2024-FBI-02-0071	Reject.
2023-002-007	2024-FBI-02-0072	Approve.
2023-002-007	2024-FBI-02-0073	Reject.
2023-002-007	2024-FBI-02-0074 and 2024-FBI-02-0075	Approve.
2023-002-007	2024-FBI-02-0076 through 2024-FBI-02-0078	Reject.
2023-002-007	2024-FBI-02-0079 and 2024-FBI-02-0080	Approve.
2023-002-007	2024-FBI-02-0081 and 2024-FBI-02-0082	Reject.
2023-002-007	2024-FBI-02-0083 and 2024-FBI-02-0084	Approve.
2023-002-007	2024-FBI-02-0085 through 2024-FBI-02-0090	Reject.
2023-002-007	2024-FBI-02-0091 through 2024-FBI-02-0121	Approve.
2023-002-007	2024-FBI-02-0122 through 2024-FBI-02-0126	Reject.
2023-002-007	2024-FBI-02-0128	Approve.
2023-002-007	2024-FBI-02-0129	Reject.
2023-002-007	2024-FBI-02-0132	Reject.
2023-002-007	2024-FBI-02-0133	Approve.

Incident identifier	Postponement identifier	Review board decision
2023-002-007	2024-FBI-02-0134 through 2024-FBI-02-0136	Reject.
2023-002-007	2024-FBI-02-0137 and 2024-FBI-02-0138	Approve.
2023-002-007	2024-FBI-02-0139	Reject.
2023-002-007	2024-FBI-02-0141 and 2024-FBI-02-0142	Reject.
2023-002-007	2024-FBI-02-0143	Accept.
2023-002-007	2024-FBI-02-0144 and 2024-FBI-02-0145	Reject.

Authority: Pub. L. 115-426, 132 Stat. 5489 (44 U.S.C. 2107).

Dated: December 3, 2024.

Stephannie Oriabure,
Chief of Staff.

[FR Doc. 2024-28702 Filed 12-5-24; 8:45 am]

BILLING CODE 6820-SY-P

CIVIL RIGHTS COLD CASE RECORDS REVIEW BOARD

[Agency Docket Number: CRCCRRB-2025-0005-N]

Notice of Formal Determination on Records Release

AGENCY: Civil Rights Cold Case Records Review Board.

ACTION: Notice.

SUMMARY: The Civil Rights Cold Case Records Review Board received 14 pages of records from the National Archives and Records Administration (NARA) related to a civil rights cold case incident to which the Review Board assigned the unique identifier 2024-003-027. NARA did not propose any postponements of disclosure. On November 1, 2024, the Review Board determined that the records should be publicly disclosed in the Civil Rights Cold Case Records Collection. By issuing this notice, the Review Board complies with section 7(c)(4) of the Civil Rights Cold Case Records Collection Act of 2018 that requires the Review Board to publish in the **Federal Register** its determinations on the disclosure or postponement of records in the Collection no more than 14 days after the date of its decision.

FOR FURTHER INFORMATION CONTACT: Stephannie Oriabure, Chief of Staff, Civil Rights Cold Case Records Review Board, 1800 F Street NW, Washington, DC 20405, (771) 221-0014, info@coldcaserecords.gov.

Authority: Pub. L. 115-426, 132 Stat. 5489 (44 U.S.C. 2107).

Dated: December 3, 2024.

Stephannie Oriabure,
Chief of Staff.

[FR Doc. 2024-28744 Filed 12-5-24; 8:45 am]

BILLING CODE 6820-SY-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee;
Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; update briefing agenda; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Friday, November 1, 2024, concerning a briefing of the New Mexico Advisory Committee. The briefing agenda has since changed.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, bpeery@usccr.gov. 202-701-1376.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** on Friday, November 1, 2024, in FR Document Number 2024-25473, at 87 FR 87327-28, third and first columns, the agenda is corrected to read as follows:

- I. Welcoming Opening Remarks
- II. Panelist Remarks
- III. Committee Q&A
- IV. Public Comment
- V. Business Meeting
- VI. Adjournment

The briefing time will remain the same: 1 p.m.-3 p.m. central time. In addition, the link to join will remain the same: <https://www.zoomgov.com/webinar/register/WN/p0x3OMwRQzGARKrRtkiE0tQ>.

Dated: November 19, 2024.

David Mussatt,
Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-27436 Filed 12-5-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Decennial Census Temporary, Intermittent Applicant Information Collection

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, 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 on the proposed new information collection, Decennial Census Temporary, Intermittent Applicant Information Collection, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before Monday, February 10, 2025.

ADDRESSES: Interested persons are invited to submit written comments by email to FLD.Decennial.Oversight@census.gov. Please reference Decennial Census Temporary, Intermittent Applicant Information Collection, in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2024-0030, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Anna Parikos, Chief, Decennial Administrative Branch, 301-763-7209,

and *FLD.Decennial.Oversight@census.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is implementing an electronic Decennial Census Temporary, Intermittent Applicant Information Collection to gather information from job seekers needed to fill temporary, intermittent Decennial Census Program positions, starting with the 2026 Census Test. Questions used to qualify and select applicants for positions are in the *job application information* section of the collection. This section collects Social Security number, date of birth, contact information, citizenship status, selective service and veteran's preference status and documentation, Federal employment/annuity status, access to transportation, hours of availability and related job experience. The *supplemental voluntary applicant information* section includes questions found on the Equal Employment Opportunity Commission's (EEOC's) common use form 3046-0046, Demographic Information on Applicants for Federal Employment, developed to support EEOC Management Directive (MD) 715-1. The voluntary questions also include recruiting source and education questions to help improve future recruiting efforts.

This collection gathers basic information needed for all temporary, intermittent decennial positions, streamlining the application process for both the applicant and the Census Bureau, by allowing applicants to be considered for several positions with one set of application data. To further evaluate each applicant's fit for positions, after completing the Decennial Census Temporary, Intermittent Applicant Information Collection, applicants will answer position related assessment questions.

The Census Bureau discontinued a similar collection for the Current Surveys, Special Census, and Decennial Census Programs under OMB No. 0607-0139.

II. Method of Collection

Data will be gathered electronically in a system called, Decennial Administrative, Recruiting, Hiring, and Training System (DARHTS). Applicants will visit *census.gov*, click on a link to access the DARHTS, create an account and proceed to complete the *job application information*, the *supplemental voluntary applicant information*, and then the position specific assessment questionnaires. The

DARHTS system will create an electronic PDF output of the *job application information* questions and the applicant respondent's answers as a record. If the applicant respondent makes subsequent changes to their *job application information*, the system will create additional PDF documents for each change submission. Each PDF created will include the OMB clearance number and the expiration date.

The Census Bureau is not including for clearance an online Spanish version of DARHTS or paper versions of the *job application information* or *supplemental voluntary applicant information* for the three-year period covered by this request. The current collection does not require these job application alternatives. Subsequent renewals will include the Spanish and paper versions, when the collection is rolled out to Puerto Rico and remote parts of Alaska.

III. Data

OMB Control Number: 0607-XXXX.
Form Number(s): None.

Type of Review: Regular submission, New Information Collection Request.

Affected Public: Individuals interested in being considered for temporary, intermittent decennial census jobs.

Estimated Number of Respondents: 12,000 over 3 years.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 1,333 average per year, 4,000 total over 3 years.

Estimated Total Annual Cost to Public: \$0

Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 23a and 23; EEOC Management Directive (MD) 715-1 and Executive Order 13548.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, 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 ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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,

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

[FR Doc. 2024-28703 Filed 12-5-24; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-930]

Certain High Chrome Cast Iron Grinding Media From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain high chrome cast iron grinding media (grinding media) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2023, through March 31, 2024. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 6, 2024.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, 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) 482-3797.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this

investigation on May 16, 2024.¹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.² On September 10, 2024, Commerce postponed the preliminary determination of this investigation until November 29, 2024.³ For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.⁴

A list of topics included in the Preliminary Decision Memorandum is provided in Appendix II of this notice. The Preliminary 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 <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The product covered by this investigation is grinding media from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce’s regulations,⁵ the *Initiation*

Notice set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁷ Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice. Pursuant to 19 CFR 351.309(c)(2), interested parties may submit additional comments on the scope of this investigation in scope case briefs, which may be submitted no later than 30 days after the issuance of the Preliminary Scope Decision Memorandum.⁸

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for AIA Engineering Limited (AIAEL) and its affiliates (collectively, AIA),⁹ the only individually examined exporter/producer¹⁰ in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis*, or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for AIA is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent) ¹¹
AIA Engineering Limited ¹²	7.18	4.30
All Others	7.18	4.30

¹ See *Certain High Chrome Cast Iron Grinding Media from India: Initiation of Less-Than-Fair-Value Investigation*, 89 FR 45630 (May 23, 2024) (*Initiation Notice*).

² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

³ See *Certain High Chrome Cast Iron Grinding Media from India: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 89 FR 73366 (September 10, 2024).

⁴ See Memorandum, “Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain High Chrome Cast Iron Grinding Media from India,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ See *Initiation Notice*, 89 FR at 45631.

⁷ See Memorandum, “Antidumping Duty and Countervailing Duty Investigations of Certain High

Chrome Cast Iron Grinding Media from India: Preliminary Scope Decision Memorandum,” dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

⁸ *Id.*

⁹ See Memorandum, “Preliminary Affiliation and Collapsing Memorandum for AIA Engineering Limited, Welcast Steel Limited, Vega Industries (Middle East) F.Z.C, and Vega Industries Ltd., USA,” dated concurrently with this memorandum (Collapsing Memorandum).

¹⁰ Commerce initially selected both Vega Industries and AIAEL as the two mandatory respondents for this investigation. *See* Respondent Selection Memorandum, dated June 11, 2024. However, AIA requested on behalf of itself and its affiliated companies, including Vega Industries, to submit only one set of responses to Commerce’s investigation. Therefore, AIAEL will have the sole calculated dumping margin in this investigation. For more information, *see* Preliminary Decision Memorandum and Collapsing Memorandum.

¹¹ Adjusted for export subsidies of 2.88 percent (comprised of 1.63 percent for the duty drawback program, 0.07 percent for the status holder incentive scheme, 0.18 percent for the interest equalization scheme, and 1.00 percent for the remission of duties and taxes on export products) for AIA. *See Certain High Chrome Cast Iron Grinding Media from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 89 FR 80865 (October 4, 2024), and accompanying Preliminary Decision Memorandum.

¹² Commerce preliminarily determines that AIAEL and Welcast Steel Limited (Welcast) are a single entity. In addition, Commerce preliminarily determines that AIAEL is affiliated with Vega Industries (Middle East) F.Z.C (Vega ME) and Vega Industries Ltd., USA (Vega USA). *See* Preliminary Decision Memorandum and Collapsing Memorandum.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the “Preliminary Determination” section above. Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹³ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁴

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations

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

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain 1) the party’s name, address, and telephone number; 2) the number of participants and whether any participant is a foreign national; and 3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce’s regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 15, 2024, pursuant to 19 CFR 351.210(e), AIA requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁷ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month

¹⁶ See *APO and Service Final Rule*.

¹⁷ See AIA’s Letter, “Request to Postpone Final Determination,” dated October 15, 2024.

period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, Commerce will notify the ITC of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 29, 2024.

Steven Presing,

Acting Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

Scope of the Investigation

The scope of this investigation covers chrome cast iron grinding media in spherical (ball) or ovoid shape, with an alloy composition of seven percent or more (≥ 7 percent of total mass) chromium (Cr) content and produced through the casting method, with a nominal diameter of up to 127 millimeters (mm) and tolerance of plus or minus 10 mm. The products covered by the scope are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7325.91.0000. This HTSUS subheading is provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Affiliation and Single Entity Treatment
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2024–28694 Filed 12–5–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–177]

Certain Low Speed Personal Transportation Vehicles From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain low speed personal transportation vehicles (LSPTVs) from the People's Republic of China (China). The period of investigation (POI) is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 6, 2024.

FOR FURTHER INFORMATION CONTACT: Dan Alexander, 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) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on July 16, 2024.¹ On July 25, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.² On September 10, 2024, Commerce postponed the preliminary determination until November 25, 2024.³

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary

Decision Memorandum.⁴ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are LSPTVs from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Certain interested parties commented on the scope of the less-than-fair-value (LTFV) and CVD investigations as it appeared in the *Initiation Notice*. Commerce preliminarily determined to modify the scope of this investigation to include one additional Harmonized Tariff Schedule of the United States Subheading (*i.e.* 8703.10.5060). *See* the scope in Appendix I to this notice. Additionally, Commerce is proposing certain modifications to the language of the scope of these LTFV and CVD investigations and invite interested parties to submit comments. For further discussion, *see* the Preliminary Scope Modification Memorandum.⁷

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines

⁴ *See* Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Certain Low Speed Personal Transportation Vehicles from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ *See* *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ *See* *Initiation Notice*, 89 FR at 49834.

⁷ *See* Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Low Speed Personal Transportation Vehicles from the People's Republic of China: Preliminary Scope Modification Memorandum," dated concurrently with this notice (Preliminary Scope Modification Memorandum).

¹ *See* *Certain Low Speed Personal Transportation Vehicles from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 89 FR 73371 (July 16, 2024) (*Initiation Notice*).

² *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 25, 2024.

³ *See* *Certain Low Speed Personal Transportation Vehicles from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 89 FR 73371 (September 10, 2024).

that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁸ For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available, and, because it finds that certain respondents and the Government of China did not act to the best of their ability to respond to Commerce’s requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁹ For further information, *see* the “Use of Facts Otherwise Available and Adverse Inferences” section in the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 703(e)(1) of the Act, we preliminarily find that critical circumstances exist with respect to imports of subject merchandise from Guangdong Lvtong New Energy Electric Vehicle Technology Co., Ltd. (Lvtong), and the companies who did not respond to our quantity and value (Q&V) questionnaire (*i.e.*, the non-responsive companies).¹⁰ We also preliminarily find that critical circumstances do not exist with respect to imports of subject merchandise from Xiamen Dalle New Energy Automobile Co., Ltd (Xiamen Dalle) and all other producers and/or exporters. For a full discussion of our preliminary critical circumstances determination, *see* the “Preliminary

Critical Circumstances” section of the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent LTFV investigation of LSPTVs from China, based on a request made by the petitioner.¹¹ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than April 8, 2025, unless postponed.¹²

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated total net subsidy rates for Xiamen Dalle and Lvtong that are not zero, *de minimis*, or based entirely on the facts otherwise available. Because Commerce calculated individual estimated countervailable subsidy rates for Xiamen Dalle and Lvtong that are not zero, *de minimis*, or based entirely on the facts otherwise available, we have preliminarily calculated the all-others rate using a

simple-average of the individual subsidy rates calculated for the examined respondents (*i.e.*, 22.04 percent).¹³

Rate for Non-Responsive Companies

Two potential exporters and/or producers of LSPTVs from China did not respond to Commerce’s Q&V questionnaire.¹⁴ We find that, by not responding to the Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the subsidy rate for the non-responsive companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce’s Q&V questionnaire, the non-responsive companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the non-responsive companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, *see* “Use of Facts Otherwise Available and Adverse Inferences” in the Preliminary Determination Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Guangdong Lvtong New Energy Electric Vehicle Technology Co., Ltd	22.84
Hebei Machinery Import and Export Co., LTD	* 515.37
Shandong Odes Industry Co. Ltd	* 515.37
Xiamen Dalle New Energy Automobile Co., Ltd	21.23
All Others	22.04

* Rate based on facts available with adverse inferences.

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in connection with this preliminary determination within

five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal**

Register, accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ See sections 776(a) and (b) of the Act.

¹⁰ The companies that failed to respond to Commerce’s Q&V questionnaire are: (1) Shandong Odes Industry Co. Ltd.; and (2) Hebei Machinery Import and Export Co., Ltd.

¹¹ See Petitioner’s Letter, “Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,” dated November 12, 2024.

¹² See *Low Speed Personal Transportation Vehicles from the People’s Republic of China: Postponement of Preliminary Determination in the*

Less-Than-Fair Value Investigation, 89 FR 89591 (November 13, 2024) (*LTFV Postponement*).

¹³ See Memorandum, “Calculation of Subsidy Rate for All Others,” dated concurrently with this notice.

¹⁴ As noted above, these companies are: (1) Shandong Odes Industry Co. Ltd.; and (2) Hebei Machinery Import and Export Co., Ltd.

allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Suspension of Liquidation

With the exception of Lvtong and the non-responsive companies, in accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in the scope of the investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and/or exported by Lvtong and the non-responsive companies (*i.e.*, Shandong Odes Industry Co. Ltd. and Hebei Machinery Import and Export Co., Ltd.). In accordance with section 703(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise from the exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

As discussed above, Commerce is proposing certain modifications to the language of the scope of these LTFV and

CVD investigations and invites interested parties to submit comments. Commerce intends to issue our preliminary decision regarding the proposed scope modifications no later than January 23, 2025, the date of the preliminary determination in the companion LTFV investigation.¹⁵ All interested parties will have the opportunity to submit scope case and rebuttal briefs, and we will establish a briefing schedule to allow interested parties to comment on our preliminary scope decision at that time. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing LTFV and CVD investigations of LSPTVs from China. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments regarding non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁶ Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁷

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public executive summary for each issue raised in their briefs.¹⁸ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that

¹⁵ See *LTFV Postponement*.

¹⁶ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁷ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁸ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS within 30 days after the date of publication of this notice. Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.²⁰ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed using ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

U.S. International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, Commerce will notify the ITC of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of LSPTVs from China are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 25, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain low speed personal transportation vehicles (LSPTV) and

¹⁹ See *APO and Service Final Rule*, 88 FR at 67069.

²⁰ See 19 CFR 351.310(d).

subassemblies thereof, whether finished or unfinished and whether assembled or unassembled, with or without tires, wheels, seats, steering columns and steering wheels, canopies, roofs, or batteries. LSPTVs meeting this description are generally open-air vehicles with a minimum of four wheels, a steering wheel, a traditional side-by-side or in-line row seating arrangement (*i.e.*, non-straddle), foot operated accelerator and brake pedals, and a gross vehicle weight of no greater than 5,500 pounds. The main power source for subject LSPTVs is either an electric motor and battery (including but not limited to lithium-ion batteries, lithium phosphate batteries, lead acid batteries, and absorbed glass mat batteries) or a gas-powered internal combustion engine. Subject LSPTVs may be described as golf carts, golf cars, low speed vehicles, personal transportation vehicles, or light utility vehicles.

LSPTVs subject to this investigation typically have a maximum top nameplate speed of no greater than 25 miles per hour as required by federal, state, and local laws and regulations. Subject LSPTVs with a maximum top nameplate speed greater than 20 miles per hour normally must comply with the U.S. Department of Transportation's Federal Motor Vehicle Safety Standards for Low-Speed Vehicles set forth in 49 CFR 571.500. LSPTVs that otherwise meet the physical description of this scope but are not certified under 49 CFR 571.500 and are not certified under other sections of subpart B of the Federal Motor Vehicle Safety Standards (49 CFR part 571), are not excluded from this investigation. LSPTVs that are certified under both 49 CFR 571.500 and other sections of subpart B of the Federal Motor Vehicle Safety Standards remain subject to the scope of this investigation. Subject LSPTVs that have a maximum top nameplate speed of less than 25 miles per hour may be certified to the SAE International (SAE) standards SAE J2258 and SAE J2358. LSPTVs that have a maximum top nameplate speed of less than 20 miles per hour may also be certified to the Outdoor Power Equipment Institute (OPEI) standards OPEI Z130.1 and OPEI Z135.

An unfinished and/or unassembled LSPTV subject to this investigation covers at a minimum a subassembly, also known as a "rolling chassis," which is typically comprised of, but not limited to, a frame or body with front and/or rear suspension components (such as arms, springs, axles, spindles, and shafts) installed and powertrain components (including either an electric motor or a gas-powered internal combustion engine) installed or ready for installation.

When imported together with a rolling chassis subject to this investigation, other LSPTV components, such as batteries, bumpers, wheel and tire assemblies, cowlings, fenders, grills, kick plates, steering column and steering wheel assemblies, dash assembly, seat assemblies, pedal assemblies, brake assemblies, canopy or roof assemblies, temporary rain enclosures, windshields, mirrors, headlights, taillights, lighting systems, or storage—whether assembled or unassembled, whether as part of a kit or not, and whether or not accompanied by

additional components—constitute part of an unfinished and/or unassembled LSPTV that is subject to this investigation. The inclusion of other products, components, or assemblies not described here does not remove the product from the scope.

Subject LSPTVs and subassemblies are covered by the scope of this investigation whether or not they are accompanied by other parts. This investigation covers all LSPTVs and subassemblies meeting the physical description of the scope, regardless of overall length, width, or height. Individual components that do not comprise a subject LSPTV or subassembly that are entered and sold by themselves are not subject to the investigation, but components entered with a LSPTV or subassembly, whether finished or unfinished and whether assembled or unassembled, are subject merchandise.

LSPTVs and subassemblies subject to this investigation include those that are produced in the subject country whether assembled with other components in the subject country or in a third country. Processing or completion of finished and unfinished LSPTVs and subassemblies either in the subject country or in a third country does not remove the product from the scope.

Specifically excluded from the scope of this investigation are all-terrain vehicles (which typically have straddle seating and are steered by handlebars), multipurpose off-highway utility vehicles (which typically have a maximum top nameplate speed of greater than 25 miles per hour), and recreational off-highway vehicles (which typically have a maximum top nameplate speed of greater than 30 miles per hour). Also excluded from the scope are go-karts, electric scooters, golf trolleys, and mobility aids (which include power wheelchairs and scooters which are used for the express purpose of enabling mobility for a person).

The LSPTVs subject to the investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8703.10.5030. LSPTVs subject to the investigation may also enter under HTSUS subheading 8703.10.5060 and 8703.90.0100. The LSPTV subassemblies that are subject to the investigation typically enter under HTSUS subheadings 8706.00.1540 and 8707.10.0040. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise subject to the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Alignment
- IV. Injury Test
- V. Preliminary Affirmative Determination of Critical Circumstances
- VI. Analysis of China's Financial System
- VII. Diversification of China's Economy
- VIII. Use of Facts Available and Adverse Inferences
- IX. Subsidies Valuation
- X. Benchmarks and Interest Rates
- XI. Analysis of Programs

XII. Recommendation

[FR Doc. 2024–28697 Filed 12–5–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–089]

Steel Racks and Parts Thereof From the People's Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on steel racks and parts thereof (steel racks) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the "Final Results of the Sunset Review" section of this notice.

DATES: Applicable December 6, 2024.

FOR FURTHER INFORMATION CONTACT: Stephanie Trejo, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4390.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 2019, Commerce published the *Order* on steels racks from China.¹ On August 1, 2024, Commerce published the notice of initiation of the first sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c).² On August 16, 2024, Commerce received a notice of intent to participate in this review from the Coalition for Fair Rack Imports (CFRI), the domestic interested party, within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).³ CFRI claimed interested party status within the meaning of section 771(9)(E) of the Act

¹ See *Certain Steel Racks and Parts Thereof From the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Countervailing Duty Order*, 84 FR 48584 (September 16, 2019) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 62717 (August 1, 2024).

³ See CFRI's Letter, "Notice of Intent to Participate in the First Five-Year Review of the Countervailing Duty Order on Certain Steel Racks and Parts Thereof from the People's Republic of China," dated August 16, 2024.

and 19 CFR 351.102(b)(17) as a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States.⁴

On September 3, 2024, Commerce received an adequate substantive response from CFRI, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive a substantive response from either the Government of China or any respondent interested party to this proceeding. On September 24, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from any respondent interested parties.⁶ As a result, Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the

Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The merchandise covered by this *Order* is steel racks. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁷

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization in the event of revocation of the *Order* and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an

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

Final Results of Sunset Review

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

Company	Subsidy rate (percent ad valorem)
Designa Inc	102.23
Dongguan Baike Electronic Co., Ltd	102.23
Ezidone Display Corp. Ltd	102.23
Fenghua Huige Metal Products Co., Ltd	102.23
Formost Plastic Metal Works (Jiaxing) Co., Ltd	102.23
Jiangsu Kingmore Storage Equipment Manufacturing Co., Ltd	102.23
Nanjing Dongsheng Shelf Manufacturing Co., Ltd	1.50
Nanjing Huade Storage Equipment Manufacture Co., Ltd	102.23
Ningbo Bocheng Home Products Co., Ltd	102.23
Ningbo Joys Imp. & Exp. Co., Ltd	102.23
Ningbo Li Zhan Import & Export Co	102.23
Qingdao Haineng Hardware Products Co., Ltd	102.23
Qingdao Huatian Hand Truck Co., Ltd	102.23
Qingdao Zeal-Line Stainless Steel Products Co., Ltd	102.23
Seven Seas Furniture Industrial (Xiamen) Co., Ltd	102.23
Shijiazhuang Wells Trading & Mfg. Co., Ltd	102.23
Tangshan Apollo Energy Equipment Company	102.23
All Others	1.50

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely 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 the terms of an APO is a sanctionable violation.

⁴ *Id.* at 2.

⁵ See CFRI’s Letter, “Certain Steel Racks and Parts Thereof from the People’s Republic of China: Domestic Interested Party’s Substantive Response to the Notice of Initiation,” dated September 3, 2024.

Notification to Interested Parties

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: November 29, 2024.

Steven Presing,
Acting Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*

⁶ See Commerce’s Letter, “Sunset Reviews Initiated August 1, 2024,” dated September 24, 2024.

⁷ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited

- V. Legal Framework
- VI. Discussion of the Issues
- 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 - 2. Net Countervailable Subsidy Rates Likely to Prevail
 - 3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation
- [FR Doc. 2024–28506 Filed 12–5–24; 8:45 am]
- BILLING CODE 3510–DS–P**

First Sunset Review of the Countervailing Duty Order on Steel Racks and Parts Thereof from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

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; Surveys for User Satisfaction, Impact and Needs**

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 via the **Federal Register** on September 10, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: International Trade Administration, Commerce.

Title: Surveys for User Satisfaction, Impact and Needs.

OMB Control Number: 0625–0275.

Form Number(s): None.

Type of Request: Renewal submission with revision to a currently approved collection.

Number of Respondents: 44,149.

Average Hours per Response: 30 minutes.

Burden Hours: 22,075.

Needs and Uses: The International Trade Administration provides a multitude of international trade related programs to help U.S. businesses. These programs include information products, services, and trade events. To accomplish its mission effectively, ITA needs ongoing feedback on its programs. This information collection instrument allows ITA to solicit customer opinions about their use of and engagement with ITA websites, programs, products, services, and events. To promote optimal use and provide focused and effective improvements to ITA programs, we are requesting approval for this clearance package; including: use of Comment Cards (*i.e.* transactional-based surveys) to collect feedback immediately after ITA assistance is provided to customers; use of annual surveys (*i.e.* relationship-based surveys) to gauge overall satisfaction, impact and needs for customers with ITA assistance provided over a period time. Without this

information, ITA is unable to systematically determine the actual and relative levels of performance for its programs and products/services and to provide clear, actionable insights for managerial intervention. This information will be aggregated as part of ITA's Voice of Customer (VOC) program, an enterprise approach to analyze, report and act on customer feedback captured across key touchpoints. ITA will use this data for continued evaluation and improvement, strategic planning, allocation of resources, stakeholder reporting, and to ultimately improve customer experiences.

Affected Public: Individuals or households; Business or other for-profit organizations, Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: 15 U.S.C. 1512 *et seq.* and 15 U.S.C. 171 *et seq.*

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 0625–0275.

Sheleen Dumas,

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

[FR Doc. 2024–28562 Filed 12–5–24; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A–570–088]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited first sunset review, the U.S. Department of Commerce (Commerce) finds that

revocation of the antidumping duty (AD) order on steel racks from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping at the level indicated in the "Final Results of Expedited Sunset Review" section of this notice.

DATES: Applicable December 6, 2024.

FOR FURTHER INFORMATION CONTACT: Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5193.

SUPPLEMENTARY INFORMATION:**Background**

After Commerce initiated this sunset review¹ of the *Order*,² pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), domestic interested parties³ timely submitted a notices of intent to participate in the sunset review,⁴ and an adequate substantive response regarding the sunset review.⁵ The domestic interested parties claimed interested party status under section 771(9)(E) of the Act as a trade association of domestic producers of steel racks.⁶ Commerce did not receive a substantive response from any respondent interested party, nor was a hearing requested. Consequently, on September 24, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from any respondent interested parties.⁷ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*. The

¹ See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 62717 (August 1, 2024).

² See *Certain Steel Racks and Parts Thereof from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order*, 84 FR 48584 (September 16, 2019) (*Order*).

³ The domestic interested parties are part of a coalition, Coalition for Fair Rack Imports ("CFRI"). The members of CFRI are Heartland Steel Products, Speed Rack Products Group, Ltd, Husky Rack and Wire, Steel King Industries Inc., Nucor Warehouse Systems, Tri-Boro Shelving & Partition Corp., Ridg-U-Rack, and UNARCO Material Handling, Inc.

⁴ See Coalition for Fair Rack Imports' Letter, "Notice of Intent to Participate in the First Five-Year Review," dated August 16, 2024, (Domestic Interested Parties' Intent to Participate).

⁵ See Domestic Interested Parties' Letter, "Substantive Response to Notice of Initiation," dated September 3, 2024 (Domestic Interested Parties' Substantive Response).

⁶ See Domestic Interested Parties' Intent to Participate.

⁷ See Commerce's Letter, "Sunset Reviews Initiated on August 1, 2024," dated September 24, 2024; see also 19 CFR 351.218(3)(1)(ii)(C)(1).

deadline for the final results of this expedited sunset review is now November 29, 2024.

Scope of the Order

The merchandise subject to the *Order* is steel racks from China. For a complete description of the scope of the *Order*, see the Issues and Decisions Memorandum.⁸

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.⁹ A list of the sections in the Issues and Decision Memorandum is 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 <https://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>.

Final Results of Expedited Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail are weighted-average dumping margins up to 144.50 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely 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.

⁸ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Steel Racks from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁹ *Id.*

Notification to Interested Parties

We are issuing, and publishing notice of, the results of this sunset review in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: November 29, 2024.

Steven Presing,

Acting Deputy Assistant Secretary for Policy and Negotiations.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2024–28505 Filed 12–5–24; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions and Correction

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List and correction to previous Notice.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, deletes product(s) and service(s) previously furnished by such agencies and correct a previous Notice.

DATES: Comments must be received on or before: January 05, 2025.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Mike Jurkowski, Telephone: (703) 489–1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

In accordance with 41 CFR 51–5.3(b), the Committee intends to add this services requirement to the Procurement List as a mandatory purchase only for the contracting activity and location listed below with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding the service to the Procurement List, the Committee will consider other pertinent information, including information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Custodial Service
Mandatory for: US Air Force, Goodfellow AFB, TX
Authorized Source of Supply: Work Services Corporation
Contracting Activity: US Air Force FA3030 17 CONS CC

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
 7510–01–579–9321—Binder, Removable Slant-D Rings, 100% Recyclable, Turned Edge, Blue, 1½" Capacity, Letter
Authorized Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

Service(s)

Service Type: Mail and Messenger Service
Mandatory for: US Army, Tobyhanna Army Depot, Tobyhanna, PA; 11 Hap Arnold Boulevard; Tobyhanna, PA
Authorized Source of Supply: The Burnley Workshop of the Poconos, Inc., Stroudsburg, PA
Contracting Activity: DEPT OF THE ARMY, WOML USA DEP TOBYHANNA

Correction

On November 8, 2024 the Committee announced in an initial **Federal Register**

Notice (89 FR 88738) the deletion of the products listed below. That Notice was incorrect, these items will not be deleted from the Procurement List.

NSN(s)—Product Name(s):

8415-01-623-5052—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS-XXS
 8415-01-623-5162—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS-XS
 8415-01-623-5165—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS-S
 8415-01-623-5166—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS-R
 8415-01-623-5169—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS-L
 8415-01-623-5170—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS-XL
 8415-01-623-5172—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S-XXS
 8415-01-623-5174—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S-XS
 8415-01-623-5178—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S-S
 8415-01-623-5180—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S-R
 8415-01-623-5182—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S-L
 8415-01-623-5236—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S-XL
 8415-01-623-5237—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M-XXS
 8415-01-623-5525—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M-XS
 8415-01-623-5526—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M-S
 8415-01-623-5528—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M-R
 8415-01-623-5529—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M-L
 8415-01-623-5534—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M-XL
 8415-01-623-5537—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M-XXL
 8415-01-623-5541—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L-XXS
 8415-01-623-5542—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L-XS
 8415-01-623-5543—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L-S
 8415-01-623-5552—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L-R

8415-01-623-5553—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L-L
 8415-01-623-5554—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L-XL
 8415-01-623-5557—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L-XXL
 8415-01-623-5740—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL-XXS
 8415-01-623-5742—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL-XS
 8415-01-623-5789—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL-S
 8415-01-623-5790—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL-R
 8415-01-623-5793—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL-L
 8415-01-623-5795—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL-XL
 8415-01-623-5796—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL-XXL
 8415-01-623-5797—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL-R
 8415-01-623-5801—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL-L
 8415-01-623-5803—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL-XL
 8415-01-623-5805—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL-XXL

Authorized Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Authorized Source of Supply: ReadyOne Industries, Inc., El Paso, TX

Authorized Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Authorized Source of Supply: MISSISSIPPI INDUSTRIES FOR THE BLIND (INC), Jackson, MS

Authorized Source of Supply: INDUSTRIES OF THE BLIND, INC, Greensboro, NC

Authorized Source of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX

Authorized Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-28569 Filed 12-5-24; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2024-SCC-0120]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Servicemembers Civil Relief Act (SCRA): Interest Rate Limitation Request

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 6, 2025.

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 Beth Grebeldinger, 202-570-8414.

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: Servicemembers Civil Relief Act (SCRA): Interest Rate Limitation Request.

OMB Control Number: 1845–0135.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 200.

Total Estimated Number of Annual Burden Hours: 67.

Abstract: The Servicemembers Civil Relief Act (SCRA) provides that those on active-duty military service are entitled to have an interest rate in excess of 6% be capped at 6% for the duration of their qualifying military service. The Department is requesting an extension of the currently approved information collection. These Federal Family Education Loan (FFEL) Program and Direct Loan Program regulations have not changed. The regulations require a loan holder to match its database against the Department of Defense's Defense Manpower Data Center (DMDC) and automatically apply the interest rate limitation, as appropriate, to borrowers under the Servicemembers Civil Relief Act. The form in this collection would only be used in limited cases where the borrower is not found in the Defense Manpower Data Center, or does not have a copy of military orders, but still wishes to receive benefits under the SCRA.

Dated: December 3, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–28574 Filed 12–5–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA invites public comment on the proposed three-year extension, with changes, to the Generic Clearance for Questionnaire Testing, Evaluation, and Research, as required under the Paperwork Reduction Act of 1995. EIA–882T, *Generic Clearance for*

Questionnaire Testing, Evaluation, and Research, provides EIA with the authority to utilize qualitative and quantitative methodologies to pretest questionnaires and validate the quality of data collected on EIA's surveys. EIA uses EIA–882T to meet its obligation to publish, and otherwise make available independent, high-quality statistical data to federal government agencies, state and local governments, the energy industry, researchers, and the general public.

DATES: EIA must receive all comments on this proposed information collection no later than February 4, 2025. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: You may submit comments, identified by OMB control number 1905–0186, by email at EIA-FRNcomments@eia.gov. Include the OMB control number listed in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Kenneth Pick, EIA Clearance Officer, at (202) 586–5562.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0186;

(2) *Information Collection Request*

Title: Generic Clearance for Questionnaire Testing, Evaluation, and Research;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The U.S. Energy Information Administration (EIA) is requesting a three-year approval from the Office of Management and Budget (OMB) to utilize qualitative and quantitative methodologies to pretest questionnaires and validate the quality of the data that are collected on EIA and DOE survey forms. Through the use of these methodologies, EIA will conduct research studies to improve the quality of energy data being collected, reduce or minimize survey respondent burden, and increase agency efficiency. This authority would also allow EIA to improve data collection in order to meet the needs of EIA's customers while also staying current in the evolving nature of the energy industry.

The specific methods EIA will continue to use for the coverage by this clearance are described below.

Pilot Surveys. Pilot surveys conducted under this clearance will generally be methodological studies and will always employ statistically representative samples. The pilot surveys will replicate all components of the methodological

design, sampling procedures (where possible), and questionnaires of the full-scale survey. Pilot surveys will normally be utilized when EIA undertakes a complete redesign of a particular data collection methodology or when EIA undertakes data collection in new energy areas of the energy sector where data collection would provide utility to EIA.

Cognitive Interviews. Cognitive interviews are typically one-on-one interviews in which the respondent is usually asked to “think aloud” or is asked “retrospective questions” as they answer questions, reads survey materials, defines terminology, or completes other activities as part of a typical survey process. A number of different techniques may be involved including asking respondents what specific words or phrases mean or asking respondents probing questions to determine how they estimate, calculate, or determine specific data elements on a survey. The objectives of these cognitive interviews are to identify problems of ambiguity or misunderstanding, examine the process that respondents follow for reporting information, assess survey respondents' ability to report new information, or identify other difficulties respondents have answering survey questions in order to reduce measurement error from estimates based on a survey.

Respondent Debriefings. Respondent debriefings conducted under this clearance will generally be methodological or cognitive research studies. The debriefing form is administered after a respondent completes a questionnaire either in paper format, electronically, or through personal interviews. The debriefings contain probing questions to determine how respondents interpret the survey questions, how much time and effort was spent completing the questionnaire, and whether they have problems in completing the survey/questionnaire. Respondent debriefings also are useful in determining potential issues with data quality and in estimating respondent burden.

Usability Testing. Usability tests are similar to cognitive interviews in which a respondent is typically asked to “think aloud” or asked “retrospective questions” as they review a survey questionnaire, related materials, or website. The objective of usability testing is to check that respondents can easily and intuitively navigate survey questionnaires, related materials, and websites to submit their data to EIA.

Focus Groups. Focus groups are a qualitative method used early in questionnaire development to gather

information about a topic that can later be used to write survey questions, such as specific terminology, definitions, sensitivity of topics, organizational processes, and burden associated with reporting. Information is collected by a moderator using a guided discussion with small groups of people (e.g., 8–10).

Field Techniques. Field techniques described in survey research and survey methodology literature will be employed as appropriate. These include follow-up probing, memory cue tasks, paraphrasing, confidence rating, response latency measurements, free and dimensional sort classification tasks, and vignette classifications. The objective of all of these techniques is to aid in the development of surveys that work with respondents' thought processes, thus reducing response error and burden. These techniques have also proven useful for studying and revising pre-existing questionnaires.

Behavior Coding. Behavior coding is a quantitative technique in which a standard set of codes is systematically applied to respondent/interviewer interactions in interviewer-administered surveys or respondent/questionnaire interactions in self-administered surveys.

Split Panel Test. Split panel tests refer to controlled experimental testing of alternative hypotheses. Thus, they allow one to choose from among competing questions, questionnaires, definitions, error messages or survey improvement methodologies with greater confidence than any of the other methods. Split panel tests conducted during the fielding of the survey are superior in that they can support both internal validity (controlled comparisons of the variable(s) under investigation) and external validity (represent the population under study). Most of the previously mentioned survey improvement methods can be strengthened when teamed with this method.

(4a) Proposed Changes to Information Collection:

EIA proposes to collect personally identifiable information (PII) only to the extent necessary to recruit participants for questionnaire testing, evaluation, and research. This PII would not be retained, with the exception of information needed to provide remuneration for participants of questionnaire testing, evaluation, and research and conduct associated data analysis.

(5) Annual Estimated Number of Respondents: 7,500;

(6) Annual Estimated Number of Total Responses: 7,500;

(7) Annual Estimated Number of Burden Hours: 7,500;

(8) Annual Estimated Reporting and Recordkeeping Cost Burden: \$683,700 (7,500 annual burden hours multiplied by \$91.16 per hour). EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on December 3, 2024.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2024–28585 Filed 12–5–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–251–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—12/1/2024 to be effective 12/1/2024.

Filed Date: 12/2/24.

Accession Number: 20241202–5022.

Comment Date: 5 p.m. ET 12/16/24.

Docket Numbers: RP25–252–000.

Applicants: Mountain Valley Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—12/1/2024 to be effective 12/1/2024.

Filed Date: 12/2/24.

Accession Number: 20241202–5075.

Comment Date: 5 p.m. ET 12/16/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–780–005.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Compliance filing: Maritimes & Northeast Pipeline, L.L.C. Rate Case Compliance Filing RP24–780 to be effective 12/1/2024.

Filed Date: 11/29/24.

Accession Number: 20241129–5038.

Comment Date: 5 p.m. ET 12/11/24.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <https://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: December 2, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–28573 Filed 12–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the commission received the following accounting Request filings:

Docket Numbers: AC25–26–000.
Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company, et al. submits final proposed accounting entries re a transaction consummated on 06/01/2024 with Wisconsin Electric Power Company in Docket No. EC24–30–000.
Filed Date: 11/27/24.

Accession Number: 20241127–5139.
Comment Date: 5 p.m. ET 12/20/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25–47–000.
Applicants: GB Arthur Kill Storage LLC.

Description: GB Arthur Kill Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/27/24.

Accession Number: 20241127–5298.
Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: EG25–48–000.
Applicants: Pier S Energy Storage LLC.

Description: Pier S Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/27/24.

Accession Number: 20241127–5303.
Comment Date: 5 p.m. ET 12/18/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2150–006.
Applicants: Shawville Power, LLC.
Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.
Accession Number: 20241129–5005.
Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER19–2151–006.
Applicants: New Castle Power, LLC.
Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.
Accession Number: 20241129–5000.
Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER19–2152–006.
Applicants: Brunot Island Power, LLC.

Description: Compliance filing: Informational Filing Regarding

Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/27/24.
Accession Number: 20241127–5311.

Comment Date: 5 p.m. ET 12/18/24.
Docket Numbers: ER19–2153–006.
Applicants: Gilbert Power, LLC.

Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/27/24.
Accession Number: 20241127–5316.
Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER19–2154–007.
Applicants: Sayreville Power, LLC.
Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.
Accession Number: 20241129–5003.
Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER19–2155–006.
Applicants: Portland Power, LLC.
Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.
Accession Number: 20241129–5002.
Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER19–2156–006.
Applicants: Warren Generation, LLC.
Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.
Accession Number: 20241129–5008.
Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER19–2157–006.
Applicants: Mountain Power, LLC.
Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/27/24.
Accession Number: 20241127–5320.
Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER19–2158–006.
Applicants: Orrtanna Power, LLC.
Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.
Accession Number: 20241129–5001.
Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER19–2159–006.
Applicants: Shawnee Power, LLC.
Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.
Accession Number: 20241129–5004.

Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER19–2160–006.

Applicants: Titus Power, LLC.

Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.

Accession Number: 20241129–5006.

Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER19–2161–006.

Applicants: Hamilton Power, LLC.

Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/27/24.

Accession Number: 20241127–5317.

Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER19–2162–006.

Applicants: Blossburg Power, LLC.

Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/27/24.

Accession Number: 20241127–5310.

Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER19–2163–006.

Applicants: Hunterstown Power, LLC.

Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/27/24.

Accession Number: 20241127–5319.

Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER19–2164–007.

Applicants: Tolna Power, LLC.

Description: Compliance filing:

Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 11/29/24.

Accession Number: 20241129–5007.

Comment Date: 5 p.m. ET 12/20/24.

Docket Numbers: ER24–2939–001.

Applicants: The United Illuminating Company.

Description: Tariff Amendment:

Response to October 29, 2024

Deficiency Letter to be effective 10/30/2024.

Filed Date: 11/27/24.

Accession Number: 20241127–5272.

Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER25–593–000.

Applicants: Entergy Louisiana, LLC.

Description: § 205(d) Rate Filing: ELL-to-ENOL ST CBR PPA to be effective 2/1/2025.

Filed Date: 11/27/24.

Accession Number: 20241127–5289.

Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER25–594–000.

Applicants: Entergy New Orleans, LLC.

Description: § 205(d) Rate Filing: ENOL-to-ELL ST CBR PPA to be effective 2/1/2025.

Filed Date: 11/27/24.

Accession Number: 20241127–5294.

Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER25–595–000.

Applicants: Northwest Power Pool.

Description: § 205(d) Rate Filing: Revisions to Western Resource Adequacy Program Tariff to be effective 1/27/2025.

Filed Date: 11/27/24.

Accession Number: 20241127–5309.

Comment Date: 5 p.m. ET 12/18/24.

Docket Numbers: ER25–596–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO 205: 2025–2029 ICAP Demand Curve Reset Proposal to be effective 1/29/2025.

Filed Date: 11/29/24.

Accession Number: 20241129–5009.

Comment Date: 5 p.m. ET 12/20/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <https://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: November 29, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–28534 Filed 12–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–10220–000]

Peters, Scott; Notice of Filing

Take notice that on November 26, 2024, Scott Peters submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the

Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on December 17, 2024.

Dated: November 29, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–28531 Filed 12–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL25–17–000]

Panther Creek Power Operating, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 2, 2024, the Commission issued an order in Docket No. EL25–17–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Panther Creek Power Operating, LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Panther Creek Power Operating, LLC*, 189 FERC ¶ 61,158 (2024).

The refund effective date in Docket No. EL25–17–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL25–17–000 must

file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2024), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: December 2, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-28610 Filed 12-5-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25-23-000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on November 22, 2024, Florida Gas Transmission Company, LLC (FGT), 1300 Main St., Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and FGT's blanket certificate issued in Docket No. CP82-553-000, for authorization to isolate and abandon FGT's existing 6-inch-diameter Lakeland delivery lateral facilities to avoid conflicts with a Florida Department of Transportation (FDOT) planned road improvement project to State Road 33 and the interchange with Interstate 4 (I-4/SR 33 Interchange) in Polk County, Florida (The 6-Inch Lakeland Lateral Abandonment Project). To meet the anticipated FDOT I-4/SR 33 Interchange Road work project schedule, FGT plans to commence Project abandonment activities during January 2025, isolating the Project facilities from FGT's pipeline system, and anticipates that all abandonment activities will be completed on or before February 28, 2025, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<https://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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Any questions concerning this request should be directed to Blair Lichtenwalter, Sr. Director, Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77210-4967, by phone at (713) 989-2605, or by email at Blair.Lichtenwalter@energytransfer.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on January 31, 2025. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is January 31, 2025. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is January 31, 2025. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission

considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 31, 2025. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP25–23–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP25–23–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Blair Lichtenwalter, Sr. Director, Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77210–4967, or by email (with a link to the document) at Blair.Lichtenwalter@energytransfer.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/subscription.asp.

Dated: December 2, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–28611 Filed 12–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25–25–000.

Applicants: Heritage Power, LLC, Blossburg Power, LLC, Brunot Island Power, LLC, Gilbert Power, LLC, Hamilton Power, LLC, Heritage Power Marketing, LLC, Hunterstown Power, LLC, Mountain Power, LLC, New Castle Power, LLC, Niles Power, LLC, Orrtanna Power, LLC, Portland Power, LLC, Sayreville Power, LLC, Shawnee Power, LLC, Shawville Power, LLC, Titus Power, LLC, Tolna Power, LLC, Warren Generation, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Heritage Power, LLC.

Filed Date: 11/27/24.

Accession Number: 20241127–5351.

Comment Date: 5 p.m. ET 12/18/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2082–003.

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

Applicants: Citizens S-Line Transmission LLC.

Description: Compliance filing: Clarification and Request for Expedited Consideration to be effective 12/31/9998.

Filed Date: 12/2/24.

Accession Number: 20241202–5223.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–599–000.

Applicants: Black Hills Colorado Electric, LLC.

Description: § 205(d) Rate Filing: Re-Filing of Jurisdictional Agreements to be effective 2/1/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5048.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–600–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 7029; Queue No. AD2–047 to be effective 2/1/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5054.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–601–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): West Atlanta Energy Storage LGIA Filing to be effective 11/19/2024.

Filed Date: 12/2/24.

Accession Number: 20241202–5093.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–602–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): GA Solar 5 (Hickory Solar) Second Amended and Restated LGIA Filing to be effective 11/15/2024.

Filed Date: 12/2/24.

Accession Number: 20241202–5096.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–603–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to GIA SA No. 7235; NQ212 to be effective 2/1/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5139.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–604–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 2 to be effective 2/1/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5142.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–605–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA SA No. 5472; Queue #AD2–194 to be effective 2/1/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5147.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–606–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5861; Queue No. AB2–070/AF2–305/AG1–398 to be effective 2/1/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5149.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–607–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Service Agreement No. 926 to be effective 12/31/9998.

Filed Date: 12/2/24.

Accession Number: 20241202–5151.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–608–000.

Applicants: Morongo Transmission LLC.

Description: § 205(d) Rate Filing: Annual TRBAA Filing 2025 to be effective 1/1/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5156.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–609–000.

Applicants: Morongo Transmission LLC.

Description: § 205(d) Rate Filing: Operating Cost True-Up 2025 to be effective 1/1/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5160.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: ER25–611–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7416; AD1–025 to be effective 2/3/2025.

Filed Date: 12/2/24.

Accession Number: 20241202–5184.

Comment Date: 5 p.m. ET 12/23/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206

of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: December 2, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–28572 Filed 12–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL25–19–000]

Evergy Kansas Central, Inc., Kansas Central, Inc., Evergy Kansas Central, Inc., Evergy Kansas South, Inc., Southwest Power Pool, Inc., Evergy Metro Inc., Southwest Power Pool, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On November 29, 2024, the Commission issued an order in Docket No. EL25–19–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether the depreciation rates proposed by Evergy Kansas Central, Inc., Evergy Kansas South, Inc. and Evergy Metro, Inc. are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Evergy Kansas Central, Inc.*, 189 FERC ¶ 61,153 (2024).

The refund effective date in Docket No. EL25–19–000 established pursuant to section 206(b) of the FPA, will be the

date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL25–19–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2024), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and

assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: November 29, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–28532 Filed 12–5–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–237–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: eTariff Filing.
Filed Date: 11/27/24.
Accession Number: 20241127–5189.
Comment Date: 5 p.m. ET 12/9/24.
Docket Numbers: RP25–238–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: § 4(d) Rate Filing: TC Quarterly FL&U Update Nov. 2024 to be effective 1/1/2025.
Filed Date: 11/27/24.
Accession Number: 20241127–5150.
Comment Date: 5 p.m. ET 12/9/24.
Docket Numbers: RP25–239–000.
Applicants: Mojave Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Annual Fuel and L&U Filing 2025 to be effective 1/1/2025.
Filed Date: 11/27/24.
Accession Number: 20241127–5153.
Comment Date: 5 p.m. ET 12/9/24.
Docket Numbers: RP25–240–000.
Applicants: Gillis Hub Pipeline, LLC.
Description: § 4(d) Rate Filing: Gillis Hub Pipeline—Baseline Tariff Filing to be effective 1/1/2025.
Filed Date: 11/27/24.
Accession Number: 20241127–5182.
Comment Date: 5 p.m. ET 12/9/24.
Docket Numbers: RP25–241–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement 12.27.24 to be effective 12/2/2024.
Filed Date: 11/27/24.
Accession Number: 20241127–5201.
Comment Date: 5 p.m. ET 12/9/24.
Docket Numbers: RP25–242–000.
Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Negotiated Rates—Releases—2024–12–01 to be effective 12/1/2024.

Filed Date: 11/27/24.

Accession Number: 20241127–5210.

Comment Date: 5 p.m. ET 12/9/24.

Docket Numbers: RP25–243–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: § 4(d) Rate Filing: Ca.m.eron Interstate Pipeline Fuel Retainage Percentage to be effective 1/1/2025.

Filed Date: 11/27/24.

Accession Number: 20241127–5211.

Comment Date: 5 p.m. ET 12/9/24.

Docket Numbers: RP25–246–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2024–11–27 Negotiated Rate Agreements and a.m.endment to be effective 12/1/2024.

Filed Date: 11/27/24.

Accession Number: 20241127–5249.

Comment Date: 5 p.m. ET 12/9/24.

Docket Numbers: RP25–247–000.

Applicants: Ruby Pipeline, L.L.C.

Description: § 4(d) Rate Filing: RP 2024–11–27 Negotiated Rate Agreements to be effective 12/1/2024.

Filed Date: 11/27/24.

Accession Number: 20241127–5259.

Comment Date: 5 p.m. ET 12/9/24.

Docket Numbers: RP25–248–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Negotiated Rates—Release Recall—2024–12–01 to be effective 12/1/2024.

Filed Date: 11/29/24.

Accession Number: 20241129–5010.

Comment Date: 5 p.m. ET 12/11/24.

Docket Numbers: RP25–249–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming—Rivervale South—NRG Superseding to be effective 1/1/2025.

Filed Date: 11/29/24.

Accession Number: 20241129–5011.

Comment Date: 5 p.m. ET 12/11/24.

Docket Numbers: RP25–250–000.

Applicants: MidAmerican Energy Services, LLC. Constellation Energy Generation, LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of MidAmerican Energy Services, LLC, et al.

Filed Date: 11/29/24.

Accession Number: 20241129–5032.

Comment Date: 5 p.m. ET 12/11/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18

CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–781–006.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing: Algonquin Gas Transmission, LLC Rate Case Compliance Filing RP24–781 to be effective 12/1/2024.

Filed Date: 11/27/24.

Accession Number: 20241127–5315.

Comment Date: 5 p.m. ET 12/9/24.

Docket Numbers: RP24–781–007.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing: Algonquin Gas Transmission, LLC Interim Rate Filing RP24–781 to be effective 12/1/2024.

Filed Date: 11/27/24.

Accession Number: 20241127–5318.

Comment Date: 5 p.m. ET 12/9/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: November 29, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–28533 Filed 12–5–24; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2931–046; 2932–053; 2941–048]

Presumpscot Hydro LLC, Dichotomy Power Maine LLC; Notice of Application for Non-Capacity Amendment of License Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity Amendment of License.

b. *Project Nos.:* 2931–046, 2932–053, and 2941–048.

c. *Date Filed:* June 30, 2023, and supplemented October 13, 2023, November 6, 2023, March 20, 2024, and July 1, 2024.

d. *Applicant:* Presumpscot Hydro LLC and Dichotomy Power Maine LLC¹ (co-licensees).

e. *Name of Project:* Gambo, Mallison Falls, and Little Falls, respectively.

f. *Location:* The projects are located on the Presumpscot River in Cumberland County, Maine, and do not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jonathan DiCesare, 230 Park Avenue, Suite 307, New York, NY 10017, 518–657–9012, info@elevatepower.com.

i. *FERC Contact:* Jeremy Jessup, (202) 502–6779, Jeremy.Jessup@ferc.gov.

j. *Cooperating agencies:* With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* January 2, 2025.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using

the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket numbers P–2931–046, P–2932–053, and P–2941–048. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The co-licensees propose to: (1) relocate the existing primary transmission line away from property retained by the former licensee within the vicinity of the Gambo Project and (2) affect a new interconnection with the neighboring electric utility. As a part of these modifications to the primary transmission line, the co-licensees propose to remove from the project boundaries for each of the projects the portion of the existing primary transmission line running to the S.D. Warren Paper Mill that would be obsolete upon completion of the new interconnection and to construct a new generator step-up (“GSU”) transformer within the current project boundary of the Mallison Falls Project. The proposed action would have minimal ground disturbance including the installation and removal of transmission lines poles, installation of the foundation for the transformer, and the installation of an approximately 1,400-foot-long underground cable.

¹ On July 8, 2024, and November 14, 2024, the licensee filed a notice that its name changed to Relevate Power Maine LLC.

m. *Locations of the Application*: This filing may be viewed on the Commission's website at <https://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/subscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission

processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: December 2, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-28609 Filed 12-5-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25-22-000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on November 21, 2024, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and National Fuel's blanket certificate issued in Docket No. CP83-4-000, for authorization for its Line UNY Westwood 2025 Modernization Project (Project) in Erie County, New York.

Specifically, National Fuel proposes to: (1) replace approximately 3,250 feet of 20-inch-diameter pipeline (Line UNY); (2) install approximately 10,500 feet of 20-inch-diameter pipeline that will be rerouted from the existing Line UNY right-of-way (ROW) to the Line XN ROW; (3) construct a measurement and regulation station (M&R Station); (4) abandon an existing M&R Station by removal; (5) abandon in-place 2.36 miles of 20-inch-diameter pipeline; and (6) install associated appurtenances. National Fuel estimates the cost of the project to be approximately \$14.4 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is

available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.reference@ferc.gov.

Any questions concerning this request should be directed to Meghan Emes, Senior Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857-7004 or by email at emesm@natfuel.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on January 31, 2025. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is January 31, 2025. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is January 31, 2025. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic)

of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 31, 2025. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP25–22–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP25–22–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Meghan Emes, Senior Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221 or (with a link to the document) by email at

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

emesm@natfuel.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: December 2, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–28612 Filed 12–5–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OP–OFA–155]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS)
Filed November 22, 2024 10 a.m. EST
Through December 2, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20240225, Draft Supplement, NRC, SC, NUREG–1437, Supplement 15, Second Renewal, Generic Environmental Impact Statement for License Renewal of Nuclear Plants:

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

Regarding Subsequent License Renewal of Virgil C. Summer Nuclear Station, Unit 1, Draft Report for Comment, Comment Period Ends: 01/21/2025, Contact: Kim Conway 301-415-1335.

EIS No. 20240226, Draft Supplement, OSM, MT, Rosebud Mine Area F, Comment Period Ends: 01/21/2025, Contact: Roberta MartÃ-nez HernÃndez 303-236-4705.

EIS No. 20240227, Final, APHIS, ID, Predator Damage Management in Idaho, Review Period Ends: 01/06/2025, Contact: Jared Hedelius 208-373-1630.

EIS No. 20240228, Final, USFS, ID, End of the World, Review Period Ends: 01/06/2025, Contact: Jeffrey Shinn 208-839-2103.

Dated: December 2, 2024.

Mark Austin,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024-28563 Filed 12-5-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2024-0058; FRL-11681-10-OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (October 2024)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 6, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2024-0058, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Madison H. Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566-1400, email address:

BPPDFRNotices@epa.gov; or Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566-1030, email address: RDFFRNotices@epa.gov. The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Registration Applications

EPA has received applications to register pesticide products containing

active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (<https://www.epa.gov/pesticide-registration/public-participation-process-registration-actions>).

Notice of Receipt—New Active Ingredients

1. *EPA Registration Number:* 100-1467, 100-1462, 100-1463, and 100-1465. *Docket ID number:* EPA-HQ-OPP-2024-0415. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419-8300. *Active ingredient:* Bicyclopyrone. *Product type:* Herbicide. *Proposed use:* Bicyclopyrone-resistant soybean. *Contact:* RD.

2. *File Symbol:* 279-OTRI. *Docket ID number:* EPA-HQ-OPP-2024-0486. *Applicant:* FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104. *Product name:* *Bacillus thuringiensis* strain RTI545 Technical. *Active ingredient:* Insecticide and nematicide—*Bacillus thuringiensis* strain RTI545 at 100%. *Proposed use:* For manufacturing into end-use pesticide products. *Contact:* BPPD.

3. *File Symbol:* 279-OTRT. *Docket ID number:* EPA-HQ-OPP-2024-0486. *Applicant:* FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104. *Product name:* VHW30-R001. *Active ingredient:* Insecticide and nematicide—*Bacillus thuringiensis* strain RTI545 at 9.59%. *Proposed use:* For use as a commercial and on-farm seed treatment. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 15, 2024.

Kimberly Smith,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2024-28737 Filed 12-5-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2024-0061; FRL-11680-10-OCSPF]

Pesticide Product Registration; Receipt of Applications for New Uses (October 2024)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 6, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2024-0061, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566-1030, email address: RD@EPA.gov. The mailing address is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

1. *EPA Registration Number:* 264-1220. *Docket ID number:* EPA-HQ-OPP-2024-0518. *Applicant:* Bayer CropScience, 800 N Lindbergh Blvd., St. Louis, MO 63167. *Active ingredient:* Mesotrione. *Product type:* Herbicide. *Proposed use:* Mesotrione-resistant Soybean. *Contact:* RD.

2. *EPA Registration Numbers:* 524-473, 524-591, and 66478-1. *Docket ID number:* EPA-HQ-OPP-2024-0491. *Applicant:* Bayer CropScience LP, 700 Chesterfield Parkway West, Chesterfield, MO 63017. *Active ingredient:* Acetochlor. *Product type:* Herbicide. *Proposed use:* Rapeseed Subgroup 20A and pennycress seed. *Contact:* RD.

3. *EPA Registration Numbers:* 62719-80, 62719-81, and 62719-747. *Docket ID number:* EPA-HQ-OPP-2024-0421. *Applicant:* Corteva Agriscience, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. *Active ingredient:* Clopyralid.

Product type: Herbicide. *Proposed use:* Hazelnut (filbert). *Contact:* RD.

4. *EPA Registration Number:* 71711-30, 71711-31, 71711-36, 71711-49, and 71711-56. *Docket ID number:* EPA-HQ-OPP-2024-0361. *Applicant:* Nichino America, Inc., 4550 Linden Hill Rd., Suite 501, Wilmington, DE 19808. *Active ingredient:* Tolfenpyrad. *Product type:* Insecticide. *Proposed use:* Vegetable, legume, bean, edible podded, subgroup 6-22A. *Contact:* RD.

5. *EPA Registration Numbers:* 7969-390 and 7969-391. *Docket ID number:* EPA-HQ-OPP-2024-0509. *Applicant:* BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. *Active Ingredient:* Afidopyropen. *Product type:* Insecticide. *Proposed Use:* Revision of existing afidopyropen tolerance in or on strawberry from 0.15 parts per million (ppm) to 0.3 ppm. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 18, 2024.

Kimberly Smith,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2024-28741 Filed 12-5-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12414-01-R9]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for Sundance Power Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated November 6, 2024, denying a petition dated June 27, 2024, from Sierra Club. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Pinal County Air Quality Control District (PACQCD) to the Arizona Public Service Company Sundance Power Plant ("APS Sundance"), an electricity generating station located in Casa Grande, Arizona.

FOR FURTHER INFORMATION CONTACT: Catherine Valladolid, EPA Region 9, (415) 947-4103, valladolid.catherine@epa.gov. The final Order and Petition are available electronically at: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

SUPPLEMENTARY INFORMATION: The EPA received a petition from Sierra Club

dated June 27, 2024, requesting that the EPA object to the issuance of operating permit number V20690.R02, issued by PCAQCD to APS Sundance in Casa Grande, Arizona. On November 6, 2024, the EPA Administrator issued an order denying the petition. The Order explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than February 4, 2025.

Dated: November 26, 2024.

Martha Guzman Aceves

Regional Administrator, Region IX.

[FR Doc. 2024-28530 Filed 12-5-24; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—proposed revision of State and Local Government Information Report (EEO-4).

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for a three-year PRA approval of revisions to the currently approved State and Local Government Information Report (EEO-4).

DATES: Written comments on this notice must be submitted on or before January 6, 2025.

ADDRESSES: Written comments should be sent within 30 days of publication of this final notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Paul Guerino, Director, Data Development and Information Products Division, Office of Enterprise Data and Analytics (OEDA), Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507; (202) 921-2928 (voice), (800) 669-6820 (TTY) or email at OEDA@eoc.gov. Requests for this notice in an alternative format

should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 921-3191 (voice), (800) 669-6820 (TTY), or (844) 234-5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: A notice that the EEOC would be submitting this request was published in the **Federal Register** on September 4, 2024, allowing for a 60-day public comment period which ended on November 4, 2024.¹ The EEOC received no comments during the public comment period.²

I. Background

A. The EEO-4 Report

Since 1973, the EEOC has required EEO-4 filers to submit workforce demographic data. All State and local governments that are covered by title VII of the Civil Rights Act of 1964, as amended (title VII)³ and that have 100 or more employees are required to file the workforce demographic data.

B. The 60-Day Notice: Request for Three-Year PRA Approval of Revisions to the EEO-4

Pursuant to the PRA and OMB regulations found at 5 CFR 1320.8(d)(1), the Commission published a Notice in the **Federal Register** on September 4, 2024, soliciting public comments during a 60-day period ("60-day Notice") on the Commission's intent to seek a three-year OMB approval of revisions to the currently approved EEO-4. In particular, in its 60-day Notice, the EEOC sought comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission'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; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The 60-day Notice comment period ended on November 4, 2024.

Based on data from the most recent EEO-4 data collection reporting year (i.e., 2023), as well as ongoing updates by the EEOC to the EEO-4 frame (i.e., filer roster or master list), the EEOC anticipates the total number of filers submitting an EEO-4 report may increase to 6,607 per biennial collection. Accordingly, the burden estimates in this Notice are based on this revised estimate of the number of filers.

II. The Public Comments on the 60-Day Notice

The 60-day Notice was published in the **Federal Register** on September 4, 2024.⁴ The EEOC received no comments during the public comment period.⁵

III. Commission Decisions and Final EEOC Proposals to OMB

The EEOC Will Seek Three-Year Approval of Revisions to the Currently Approved EEO-4 State and Local Government Information Report

The Commission has decided it will seek a three-year approval by OMB of revisions to the EEO-4 State and Local Government Information Report as described in this Notice.

IV. Formal Paperwork Reduction Act Statement

A. Overview of Information Collection

Collection Title: State and Local Government Information Report (EEO-4).

OMB Number: 3046-0008.

Frequency of Report: Biennial.

Type of Respondent: State and local governments that have 100 or more employees and meet certain criteria.

Description of Affected Public: State and local governments that have 100 or more employees and meet certain criteria.

Reporting Hours: 18,094 hours per biennial collection.

Respondent Burden Hour Cost: \$563,868.27 per biennial collection.

Federal Cost: \$327,440.12 per biennial collection.

Number of Filers: 6,607 per biennial collection.⁶

Number of Responses: 6,607 per biennial collection.

Number of Forms: 1.

Form Number: EEOC Form 164.

Abstract: Section 709(c) of title VII requires employers to make and keep

⁴ Available at <https://www.federalregister.gov/documents/2024/09/04/2024-19743/agency-information-collection-activities-existing-collection>.

⁵ Available at <https://www.regulations.gov/docket/EEOC-2024-0008>.

⁶ This figure is based on the expanded frame of potentially eligible respondents and the response rate for the most recently completed EEO-4 data collection (the 2023 EEO-4 data collection).

¹ See Notice of Information Collection 89 FR 71901 (Sept. 4, 2024) at <https://www.federalregister.gov/documents/2024/09/04/2024-19743/agency-information-collection-activities-existing-collection>.

² Available at <https://www.regulations.gov/docket/EEOC-2024-0008>.

³ 42 U.S.C. 2000e, et seq.

records relevant to the determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order.⁷ Pursuant to this statutory authority, the EEOC issued regulations prescribing the reporting and related record retention requirements for State and local governments.⁸ The regulations require State and local governments to make or keep all records necessary for completion of an EEO-4 submission and retain those records for three years, and also require EEO-4 filers to retain a copy of each filed EEO-4 report for three years. These recordkeeping requirements are part of standard administrative practices, and as a result, the EEOC believes that any impact on burden would be negligible and nearly impossible to quantify. Additionally, the regulations require State and local governments to file executed copies of the EEO-4 in conformity with the directions set forth in the form and accompanying instructions. Under this authority, State and local governments with 100 or more employees are required to report biennially⁹ the number of individuals they employ by job category and by sex, salary band, and race or ethnicity.

Please note that on March 28, 2024, OMB published revisions, the first since 1997, to its *Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity*. See <https://spd15revision.gov/>. The revisions include, for example, using a single combined race and ethnicity question and adding Middle Eastern or North African (MENA) as a new minimum reporting category. Federal agencies, including the EEOC, are required to bring their data collections into compliance with these standards by March 28, 2029. Because the EEOC's current EEO-4 PRA clearance expires January 31, 2025, the agency is not proposing updates to its collection of race and ethnicity data under this Notice in order to provide filers with sufficient notice of the revised standards

and to give the EEOC sufficient time to implement the revisions across its EEO collections.

The EEOC currently collects EEO-4 data electronically through a web-based data collection application (*i.e.*, portal) referred to as the *EEO-4 Online Filing System (OFS)*.¹⁰ Filers must submit their data electronically to the web-based portal by either manual entry or by uploading a data file. The individual EEO-4 reports are confidential.¹¹ The EEOC uses EEO-4 data to investigate charges of employment discrimination against State and local governments and to publish periodic reports on workforce demographics.¹²

B. Burden Statement

The EEOC's Office of Enterprise Data and Analytics (OEDA) administers the agency's data collections, including the EEO-4. Since OEDA's creation in 2018, the EEOC has undertaken several efforts to modernize the agency's data collections and improve the quality of

data collected. OEDA has also streamlined functions, such as providing additional self-service options, resource materials, and an online support message center.

As part of these ongoing modernization efforts, OEDA has undertaken measures to enhance the agency's existing EEO-4 data frame of potentially eligible filers and make the EEO-4 filing process more user-friendly and less burdensome. By comparing the EEOC's 2023 EEO-4 frame to the U.S. Census Bureau's Census of Governments,¹³ OEDA identified approximately 1,220 additional State and local governments that may be eligible to file during the next biennial data collection. With the addition of these filers to the EEO-4 frame and considering response rates during the 2023 EEO-4 data collection, OEDA now estimates 6,607 potential respondents to the agency's next EEO-4 data collection.¹⁴

Additionally, the EEOC proposes to update the salary bands in the next biennial EEO-4 data collection to keep pace with inflation and account for an increasing portion of employees falling into the highest salary bands. The EEOC reviewed several other Federal data collections of salaries and wages and determined that the Bureau of Labor Statistics' Occupational Employment and Wage Statistics (OEWS)¹⁵ program most closely aligns with the EEO-4. Therefore, the EEOC proposes adopting the OEWS salary bands and will periodically update them as appropriate. The EEOC recognizes there may be a one-time increase in burden as filers need to update their systems to produce reports in the new categories, but this increase is expected to be negligible. The proposed pay bands for the next biennial EEO-4 data collection are listed in the table below.

¹³ The Census of Governments is a three-phased program that collects State and local government data every five years in years ending in "2" and "7." See <https://www.census.gov/newsroom/press-releases/2023/census-of-governments.html>.

¹⁴ This estimate covers State and local governments with 100 or more employees within the 50 United States and the District of Columbia. Please note that 6,607 respondents may ultimately turn out to be an overestimate. Following the initial enhancement of the EEO-4 frame, collection data may yield an unknown number of ineligible filers.

¹⁵ The Occupational Employment and Wage Statistics (OEWS) program produces employment and wage estimates annually for approximately 830 occupations. See <https://www.bls.gov/oes/>.

⁷ 42 U.S.C. 2000e-8(c).

⁸ The regulatory sections covered by this notice are 29 CFR 1602.30 and 1602.32 through 1602.37. The EEOC is responsible for obtaining OMB's PRA approval for the EEO-4 report.

⁹ Beginning in 1993, the EEO-4 report has been collected biennially in odd-numbered years. Prior to 1993, the EEO-4 report was collected annually.

¹⁰ EEO-4 filers may access the OFS through the EEOC's dedicated EEO-4 website at www.eeocdata.org/eeo4.

¹¹ All reports and any information from individual reports are subject to the confidentiality provisions of section 709(e) of title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-8(e), as amended (title VII), and may not be made public by the EEOC prior to the institution of any proceeding under title VII involving the EEO-4 data. Any EEOC employee who violates this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned. The confidentiality requirements allow the EEOC to publish only aggregated data, and only in a manner that does not identify any particular filer or reveal any individual employee's personal information. With respect to other Federal agencies with a legitimate law enforcement purpose, the EEOC gives access to information collected under title VII only if the agencies agree in writing to comply with the confidentiality provisions of title VII. In addition, section 709(d) of title VII (42 U.S.C. 2000e-8(d)) provides that the EEOC shall furnish upon request and without cost to State or local civil rights agencies information about employers in their jurisdiction on the condition that they not make it public prior to starting a proceeding under State or local law involving such information. The EEOC shares EEO-4 data with Fair Employment Practices Agencies (FEPAs) pursuant to Worksharing Agreements that impose obligations on the contracted FEPA with respect to confidentiality, privacy, and data security. On a case-by-case basis, the EEOC may share EEO-4 data with a FEPA that does not have a Worksharing Agreement, but only if that FEPA agrees to comply with confidentiality, privacy, and data security obligations similar to those imposed on FEPAs with Worksharing Agreements.

¹² Any reports the EEOC publishes based on EEO-4 data include only aggregated data that protect the confidentiality of each employer's information, as well as the privacy of each employee's personal information.

TABLE 1—UPDATED SALARY BANDS FOR EEO–4

Interval	Wages	
	Annual	Hourly
Range A	Under \$19,240	Under \$9.25.
Range B	19,240 to 24,959	9.25 to 11.99.
Range C	24,960 to 32,239	12.00 to 15.49.
Range D	32,240 to 41,079	15.50 to 19.74.
Range E	41,080 to 53,039	19.75 to 25.49.
Range F	53,040 to 68,119	25.50 to 32.74.
Range G	68,120 to 87,359	32.75 to 41.99.
Range H	87,360 to 112,319	42.00 to 53.99.
Range I	112,320 to 144,559	54.00 to 69.49.
Range J	144,560 to 186,159	69.50 to 89.49.
Range K	186,160 to 239,199	89.50 to 114.99.
Range L	239,200 and over	115.00 and over.

The EEOC has also updated its methodology for calculating the biennial burden of the EEO–4 to better reflect the types of personnel responsible for preparing and filing these reports on behalf of their employers. Based upon job titles provided during the 2023 EEO–4 data collection by individuals completing the report within the *EEO–4 OFS*, the EEOC has identified six specific job categories which account for the largest amount of time spent

biennially on EEO–4 reporting. These job categories include: (1) Human Resource Specialists; (2) Executive-Level Staff; (3) Secretaries and Administrative Assistants; (4) Bookkeeping, Accounting, and Auditing Clerks; (5) Administrative Services and Facilities Managers; and (6) Database Administrators and Architects.¹⁶

Additionally, the *EEO–4 OFS* captures detailed information on when each filer starts and certifies its report. The EEOC

used this information from the most recent EEO–4 data collection to calculate more precise burden hour estimates.¹⁷ In Table 2 below, the estimated average hour burden per report is 2.7 hours. The total estimated biennial respondent burden for all filers is 18,094 hours. The estimated average burden hour cost per report is \$85.34, and the estimated total burden hour cost for all filers per biennial collection is \$563,868.27.

TABLE 2—PROJECTED BURDEN FOR EACH EEO–4 BIENNIAL REPORTING YEAR

[N=6,607]

Staff job category	Percent in job category	Median hourly wage rate	Hours per filer	Total burden hours	Cost per filer	Total burden hour cost
Human Resource Specialists	68.0	\$30.88	2.8	12,575	\$86.46	\$388,309.82
Executive-Level Staff	4.1	48.12	2.6	710	125.11	34,155.58
Secretaries and Administrative Assistants	8.1	21.19	2.4	1,289	50.86	827,309.67
Bookkeeping, Accounting, and Auditing Clerks	8.8	22.05	2.5	1,450	55.13	31,972.50
Administrative Services and Facilities Managers	4.5	48.98	3.4	1,003	166.53	49,126.94
Database Administrators and Architects	0.1	53.91	0.5	3	26.96	134.78
Other ^a	6.3	30.86	2.5	1,065	77.14	32,858.98
Average .....	.....	.....	2.7	.....	85.34	.....
Total ^b	100.0	.....	.....	18,094	.....	563,868.27

^a The average hourly wage rate for the “Other” category was derived by taking the weighted mean average of the hourly wage rates of the six BLS job categories listed in the above table.

^b These estimates are based upon filers’ use of the *EEO–4 OFS* to submit reports electronically because paper submissions are no longer accepted. Electronic filing remains the most efficient, accurate, and secure means of reporting for respondents required to submit the EEO–4 report.

Dated: December 2, 2024.

For the Commission.

Charlotte A. Burrows,
Chair.

[FR Doc. 2024–28580 Filed 12–5–24; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—proposed revision of Elementary-Secondary Staff Information Report (EEO–5).

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity

¹⁶ Hourly wage rates for these six job categories were obtained from the U.S. Department of Labor’s Bureau of Labor Statistics (BLS) Occupational Outlook Handbook. See <https://www.bls.gov/ooh/>. Please note that the actual job titles reported during

the 2023 EEO–4 data collection were collapsed into these six BLS occupational categories.

¹⁷ The time estimates are based on the average time elapsed among filers who completed their report during the same calendar day within the

EEO–4 OFS. This methodology was chosen because a single-session submission would also approximate the completion time over several, multi-day sessions.

Commission (EEOC or Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for a three-year PRA approval of revisions to the currently approved Elementary-Secondary Staff Information Report (EEO–5).

DATES: Written comments on this notice must be submitted on or before January 6, 2025.

ADDRESSES: Written comments should be sent within 30 days of publication of this final notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Paul Guerino, Director, Data Development and Information Products Division, Office of Enterprise Data and Analytics (OEDA), Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507; (202) 921–2928 (voice), (800) 669–6820 (TTY) or email at OEDA@eoc.gov. Requests for this notice in an alternative format should be made to the EEOC’s Office of Communications and Legislative Affairs at (202) 921–3191 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: A notice that the EEOC would be submitting this request was published in the **Federal Register** on August 16, 2024, allowing for a 60-day public comment period which ended on October 15, 2024.¹ The EEOC received no comments during the public comment period.²

I. Background

A. The EEO–5 Report

Since 1973, the EEOC has required EEO–5 filers to submit workforce demographic data. All public elementary and secondary school systems and districts that are covered by title VII of the Civil Rights Act of 1964, as amended (title VII)³ and that have 100 or more employees are required to file the workforce demographic data.

B. The 60-Day Notice: Request for Three-Year PRA Approval of Revisions to the EEO–5

Pursuant to the PRA and OMB regulations found at 5 CFR 1320.8(d)(1), the Commission published a Notice in

the **Federal Register** on August 16, 2024, soliciting public comments during a 60-day period (“60-day Notice”) on the Commission’s intent to seek a three-year OMB approval of revisions to the currently approved EEO–5. In particular, in its 60-day Notice, the EEOC sought comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission’s functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission’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; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The 60-day Notice comment period ended on October 15, 2024.

Based on data from the most recent EEO–5 data collection reporting year (i.e., 2022), as well as ongoing updates by the EEOC to the EEO–5 frame (i.e., filer roster or master list), the EEOC anticipates the total number of filers submitting an EEO–5 report may increase to 10,500 per biennial collection. Accordingly, the burden estimates in this Notice are based on this revised estimate of the number of filers.

II. The Public Comments on the 60-Day Notice

The 60-day Notice was published in the **Federal Register** on August 16, 2024.⁴ The EEOC received no comments during the public comment period.⁵

III. Commission Decisions and Final EEOC Proposals to OMB

The EEOC Will Seek Three-Year Approval of Revisions to the Currently Approved EEO–5 Elementary-Secondary Staff Information Report

The Commission has decided it will seek a three-year approval by OMB of revisions to the EEO–5 Elementary-Secondary Staff Information Report as described in this Notice.

IV. Formal Paperwork Reduction Act Statement

A. Overview of Information Collection

Collection Title: Elementary-Secondary Staff Information Report (EEO–5).

OMB Number: 3046–0003.

Frequency of Report: Biennial.

Type of Respondent: Public elementary and secondary school systems and districts that have 100 or more employees and meet certain criteria.

Description of Affected Public: Public elementary and secondary school systems and districts that have 100 or more employees and meet certain criteria.

Reporting Hours: 17,927 hours per biennial collection.

Respondent Burden Hour Cost: \$597,472.29 per biennial collection.

Federal Cost: \$492,635 per biennial collection.

Number of Filers: 10,500 per biennial collection.⁶

Number of Responses: 10,500 per biennial collection.

Number of Forms: 1.

Form Number: EEOC Form 168A.

Abstract: Section 709(c) of title VII requires employers to make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order.⁷ Pursuant to this statutory authority, the EEOC issued regulations prescribing the reporting and related record retention requirements for public elementary and secondary school systems and districts.⁸ The regulations require school systems or districts to make or keep all records necessary for completion of an EEO–5 submission and retain those records for three years, and require EEO–5 filers to retain a copy of each filed EEO–5 report for three years. These recordkeeping requirements are part of standard administrative practices, and as a result, the EEOC believes that any impact on burden would be negligible and nearly impossible to quantify. Additionally, the regulations require public elementary and secondary school systems and districts to file executed copies of the EEO–5 in conformity with

¹ See Notice of Information Collection 89 FR 66716 August 16, 2024) at <https://www.federalregister.gov/documents/2024/08/16/2024-18421/agency-information-collection-activities-existing-collection>.

² Available at <https://www.regulations.gov/docket/EEOC-2024-0007>.

³ 42 U.S.C. 2000e, et seq.

⁴ Available at <https://www.federalregister.gov/documents/2024/08/16/2024-18421/agency-information-collection-activities-existing-collection>.

⁵ Available at <https://www.regulations.gov/docket/EEOC-2024-0007>.

⁶ This figure is based on the expanded frame of potentially eligible respondents and the response rate for the most recently completed EEO–5 data collection (the 2022 EEO–5 data collection).

⁷ 42 U.S.C. 2000e–8(c).

⁸ The EEOC’s EEO–5 regulation is at 29 CFR part 1602 Subparts L and M. The EEOC is responsible for obtaining OMB’s PRA approval for the EEO–5 report.

the directions set forth in the form and accompanying instructions. Under this authority, public elementary and secondary school systems and districts with 100 or more employees are required to report biennially⁹ the number of individuals they employ by activity assignment classification (*i.e.*, job category) and by sex and race or ethnicity.

Please note that on March 28, 2024, OMB published revisions, the first since 1997, to its Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.¹⁰ See <https://spd15revision.gov/>. The revisions include, for example, using a single combined race and ethnicity question and adding Middle Eastern or North African (MENA) as a new minimum reporting category. Federal agencies, including the EEOC, are required to bring their data collections into compliance with these standards by March 28, 2029. Because the EEOC's current EEO-5 PRA clearance expires January 31, 2025, the agency is not proposing updates to its collection of race and ethnicity data under this Notice in order to provide filers with sufficient notice of the revised standards and to give the EEOC sufficient time to implement the revisions across its EEO collections.

These data are currently collected electronically by the EEOC through a web-based data collection application (*i.e.*, portal) referred to as the *EEO-5 Online Filing System (OFS)*.¹⁰ Filers must submit their data electronically to the web-based portal by either manual entry or by uploading a data file. The individual EEO-5 reports are confidential.¹¹ EEO-5 data are used by

the EEOC to investigate charges of employment discrimination against public elementary and secondary school systems and districts and to publish periodic reports on workforce demographics.¹²

B. Burden Statement

The EEOC's Office of Enterprise Data and Analytics (OEDA) administers the agency's data collections, including the EEO-5. Since OEDA's creation in 2018, the EEOC has undertaken several efforts to modernize the agency's data collections and improve the quality of data collected. OEDA has also streamlined functions, such as providing additional self-service options, resource materials, and an online support message center.

As part of these ongoing modernization efforts, OEDA has undertaken measures to enhance the agency's EEO-5 data frame of potentially eligible filers as well as changes that make the EEO-5 filing process more user-friendly and less burdensome. By comparing the EEOC's 2022 EEO-5 frame to the U.S. Department of Education's publicly available Common Core of Data (CCD) database,¹³ OEDA identified approximately 4,000 additional public elementary and secondary school systems and districts that may be eligible to file during the next biennial data collection. With the addition of these filers to the EEO-5 frame and

agencies agree in writing to comply with the confidentiality provisions of title VII. In addition, section 709(d) of title VII (42 U.S.C. 2000e-8(d)) provides that the EEOC shall furnish upon request and without cost to State or local civil rights agencies information about employers in their jurisdiction on the condition that they not make it public prior to starting a proceeding under State or local law involving such information. The EEOC shares EEO-5 data with Fair Employment Practices Agencies (FEPAs) pursuant to Worksharing Agreements that impose obligations on the contracted FEPA with respect to confidentiality, privacy, and data security. On a case-by-case basis, the EEOC may share EEO-5 data with a FEPA that does not have a Worksharing Agreement, but only if that FEPA agrees to comply with confidentiality, privacy, and data security obligations similar to those imposed on FEPAs with Worksharing Agreements.

¹² Any reports the EEOC publishes based on EEO-5 data include only aggregated data that protect the confidentiality of each employer's information, as well as the privacy of each employee's personal information.

¹³ According to the U.S. Department of Education, the CCD is the department's primary database on public elementary and secondary education in the United States. The CCD serves as a "comprehensive, annual, national database" of all public elementary and secondary schools and school districts. See <https://nces.ed.gov/ccd/>.

considering response rates during the 2022 EEO-5 data collection, OEDA now estimates 10,500 potential respondents (a 47% increase) to the agency's next EEO-5 data collection.¹⁴

The EEOC has also updated its methodology for calculating the biennial burden of the EEO-5 to better reflect the types of personnel responsible for preparing and filing these reports on behalf of their employers. Based upon job titles provided during the 2022 EEO-5 data collection by individuals completing the report within the *EEO-5 Online Filing System (OFS)*, the EEOC has identified six specific job categories which account for the largest amount of time spent biennially on EEO-5 reporting. These job categories include: (1) Human Resource Specialists; (2) Executive-Level Staff; (3) Secretaries and Administrative Assistants; (4) Bookkeeping, Accounting, and Auditing Clerks; (5) Administrative Services and Facilities Managers; and (6) Database Administrators and Architects.¹⁵

Additionally, the *EEO-5 OFS* captures detailed information on when each filer starts and certifies its report. The EEOC used this information from the most recent EEO-5 data collection to calculate more precise burden hour estimates.¹⁶ In Table 1 below, the estimated average hour burden per report is 1.7 hours. The total estimated biennial respondent burden for all filers is 17,927 hours. The estimated average burden hour cost per report is \$56.90, and the estimated total burden hour cost for all filers per biennial collection is \$597,472.29.

¹⁴ This estimate covers public elementary and secondary school systems or districts with 100 or more employees within the 50 United States and the District of Columbia as well as the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and the U.S. Possessions of American Samoa, Guam, Northern Mariana Islands, and Wake Island. Please note that 10,500 respondents may ultimately turn out to be an overestimate. Following the initial enhancement of the EEO-5 frame, collection data may yield an unknown number of ineligible filers.

¹⁵ Hourly wage rates for these six job categories were obtained from the U.S. Department of Labor's Bureau of Labor Statistics (BLS) Occupational Outlook Handbook. See <https://www.bls.gov/ooh/>. Please note that the actual job titles reported during the 2022 EEO-5 data collection were collapsed into these six BLS occupational categories.

¹⁶ The time estimates are based on the average time elapsed among filers who completed their reports during the same calendar day within the *EEO-5 OFS*. This methodology was chosen because a single-session submission would also approximate the completion time over several, multi-day sessions.

⁹ Beginning in 1982, the EEO-5 report has been collected biennially in even-numbered years. Prior to 1982, the EEO-5 report was collected annually.

¹⁰ EEO-5 filers may access the *EEO-5 Online Filing System (OFS)* through the EEOC's dedicated EEO-5 website at www.eeocdata.org/eeo5.

¹¹ All reports and any information from individual reports are subject to the confidentiality provisions of Section 709(e) of title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-8(e), as amended (title VII) and may not be made public by the EEOC prior to the institution of any proceeding under title VII involving the EEO-5 data. Any EEOC employee who violates this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned. The confidentiality requirements allow the EEOC to publish only aggregated data, and only in a manner that does not identify any particular filer or reveal any individual employee's personal information. With respect to other Federal agencies with a legitimate law enforcement purpose, the EEOC gives access to information collected under title VII only if the

TABLE 1—PROJECTED BURDEN FOR EACH EEO-5 BIENNIAL REPORTING YEAR
[N=10,500]

Staff job category	Percent in job category	Median hourly wage rate	Hours per report	Total burden hours	Cost per report	Total burden hour cost
Human Resource Specialists	39.1	\$30.88	1.9	7,807	\$58.67	\$241,078.65
Executive-Level Staff	15.9	48.12	1.7	2,829	81.80	136,153.91
Secretaries and Administrative Assistants	14.1	21.19	1.8	2,674	38.14	56,659.49
Bookkeeping, Accounting, and Auditing Clerks	14.0	22.05	1.3	1,904	28.67	41,993.03
Administrative Services and Facilities Managers	7.7	48.98	1.4	1,137	68.57	55,707.84
Database Administrators and Architects	3.0	53.91	1.3	414	70.08	22,301.40
Other ^a	6.1	37.52	1.8	1,161	67.54	43,577.97
Average .....	.....	.....	1.7	.....	56.90	.....
Total ^b	100.0	.....	.....	17,927	.....	597,472.29

^a The average hourly wage rate for the “Other” category was derived by taking the weighted mean average of the hourly wage rates of the six BLS job categories listed in the above table.

^b These estimates are based upon filers’ use of the *EEO-5 Online Filing System (OFS)* to submit reports electronically because paper submissions are no longer accepted. Electronic filing remains the most efficient, accurate, and secure means of reporting for respondents required to submit EEO-5 data.

Dated: December 2, 2024.

For the Commission.

Charlotte A. Burrows,
Chair.

[FR Doc. 2024–28581 Filed 12–5–24; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—proposed revision of Local Union Report (EEO-3).

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for a three-year PRA approval of revisions to the currently approved Local Union Report (EEO-3).

DATES: Written comments on this notice must be submitted on or before January 6, 2025.

ADDRESSES: Written comments should be sent within 30 days of publication of this final notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Paul Guerino, Director, Data Development and Information Products Division, Office of Enterprise Data and Analytics (OEDA), Equal Employment

Opportunity Commission, 131 M Street NE, Washington, DC 20507; (202) 921–2928 (voice), (800) 669–6820 (TTY) or email at OEDA@eeoc.gov. Requests for this notice in an alternative format should be made to the EEOC’s Office of Communications and Legislative Affairs at (202) 921–3191 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: A notice that the EEOC would be submitting this request was published in the **Federal Register** on August 16, 2024, allowing for a 60-day public comment period, which ended on October 15, 2024.¹ The EEOC received one non-substantive comment during the public comment period, which was published on the www.regulations.gov website.²

I. Background

A. The EEO-3 Report

Since 1967, the EEOC has required EEO-3 filers to submit workforce demographic data. Every labor organization subject to title VII of the Civil Rights Act of 1964, as amended (title VII)³ is required to file the EEO-3 report, provided it has 100 or more members at any time during the 12 months preceding the due date of the report and is a “local union” (as that term is commonly understood) or an independent or unaffiliated union. Labor organizations required to report are those which perform, in a specific

jurisdiction, the functions ordinarily performed by a local union, whether or not they are so designated.

B. The 60-Day Notice: Request for Three-Year PRA Approval of Revisions to the EEO-3

Pursuant to the PRA and OMB regulations found at 5 CFR 1320.8(d)(1), the Commission published a Notice in the **Federal Register** on August 16, 2024, soliciting public comments during a 60-day period (“60-day Notice”) on the Commission’s intent to seek three-year OMB approval of revisions to the currently approved EEO-3. In particular, in its 60-day Notice, the EEOC sought comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission’s functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission’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; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). The 60-day Notice comment period ended on October 15, 2024.

Based on data from the most recent EEO-3 data collection reporting year (i.e., 2022), as well as ongoing updates by the EEOC to the EEO-3 frame (i.e., filer roster or master list), the EEOC

¹ See Notice of Information Collection 89 FR 66714 (Aug. 16, 2024) at <https://www.federalregister.gov/documents/2024/08/16/2024-18420/agency-information-collection-activities-existing-collection>.

² Available at <https://www.regulations.gov/document/EEOC-2024-0006-0002>.

³ 42 U.S.C. 2000e, et seq.

anticipates the total number of filers submitting an EEO-3 report may increase to 5,999 per biennial collection. Accordingly, the burden estimates in this Notice are based on this revised estimate of the number of filers.

II. The Public Comments on the 60-Day Notice

The 60-day Notice was published in the **Federal Register** on August 16, 2024.⁴ The EEOC received one non-substantive comment during the public comment period, which was published on the www.regulations.gov website.⁵

III. Commission Decisions and Final EEOC Proposals to OMB

The EEOC Will Seek Three-Year Approval of Revisions to the Currently Approved EEO-3 Local Union Report

After evaluating the one non-substantive comment received from the public during the 60-day comment period, the Commission has decided it will seek a three-year approval by OMB of revisions to the EEO-3 Local Union Report as described in this Notice.

IV. Formal Paperwork Reduction Act Statement

A. Overview of Information Collection

Collection Title: Local Union Report (EEO-3).

OMB Number: 3046-0006.

Frequency of Report: Biennial.

Type of Respondent: Labor organizations with 100 or more members⁶ that are local unions or independent or unaffiliated unions and meet certain criteria.

Description of Affected Public: Labor organizations with 100 or more members⁷ that are local unions or independent or unaffiliated unions and meet certain criteria.

Reporting Hours: 8,922 per biennial collection.

Respondent Burden Hour Cost: \$359,091 per biennial collection.

Federal Cost: \$378,002 per biennial collection.

Number of Filers: 5,999 per biennial collection.⁸

Number of Responses: 5,999 per biennial collection.

Number of Forms: 1.

Form Number: EEOC Form 274.

Abstract: Section 709(c) of title VII requires labor organizations to make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order.⁹ Pursuant to this statutory authority, the EEOC issued regulations prescribing the reporting and related record retention requirements for labor organizations.¹⁰ The regulations require every local union to retain the most recent report filed, to make records necessary for completion of the EEO-3, and to preserve them for a year (or if a charge of discrimination is filed, relevant records must be retained until final disposition of the matter). These recordkeeping requirements are part of standard administrative practices, and as a result, the EEOC believes that any impact on burden would be negligible and nearly impossible to quantify. Additionally, the regulations require labor organizations with 100 or more members at any time during the 12 months preceding the due date of the report, and that are a "local union" (as that term is commonly understood)¹¹ or are independent or unaffiliated unions, to file executed copies of the EEO-3 report in conformity with the directions set forth in the form and accompanying instructions. Under this authority, such unions are required to report biennially¹² the number of their members and applicants for membership by sex and race or ethnicity.

Please note that on March 28, 2024, OMB published revisions, the first since 1997, to its Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity." See <https://spd15revision.gov/>. The revisions include, for example, using a single combined race and ethnicity question and adding Middle Eastern or North African (MENA) as a new minimum

reporting category. Federal agencies, including the EEOC, are required to bring their data collections into compliance with these standards by March 28, 2029. Because the EEOC's current EEO-3 PRA clearance expires January 31, 2025, the agency is not proposing updates to its collection of race and ethnicity data under this Notice in order to provide filers with sufficient notice of the revised standards and to give the EEOC sufficient time to implement the revisions across its EEO collections.

These data are currently collected electronically by the EEOC through a web-based data collection application (*i.e.*, portal) referred to as the *EEO-3 Online Filing System (OFS)*.¹³ Filers must submit their data electronically to the web-based portal. The individual EEO-3 reports are confidential.¹⁴ EEO-3 data are used by the EEOC to investigate charges of employment discrimination against local unions and to publish periodic reports on workforce demographics.¹⁵

B. Burden Statement

The EEOC's Office of Enterprise Data and Analytics (OEDA) administers the

¹³ EEO-3 filers may access the *OFS* through the EEOC's dedicated EEO-3 website at www.eeocdata.org/eeo3.

¹⁴ All reports and any information from individual reports are subject to the confidentiality provisions of Section 709(e) of title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-8(e), as amended (title VII), and may not be made public by the EEOC prior to the institution of any proceeding under title VII involving the EEO-3 data. Any EEOC employee who violates this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned. The confidentiality requirements allow the EEOC to publish only aggregated data, and only in a manner that does not identify any particular filer or reveal any individual member's personal information. With respect to other Federal agencies with a legitimate law enforcement purpose, the EEOC gives access to information collected under title VII only if the agencies agree in writing to comply with the confidentiality provisions of title VII. In addition, section 709(d) of title VII (42 U.S.C. 2000e-8(d)) provides that the EEOC shall furnish upon request and without cost to State or local civil rights agencies information about employers in their jurisdiction on the condition that they not make it public prior to starting a proceeding under State or local law involving such information. The EEOC shares EEO-3 data with Fair Employment Practices Agencies (FEPAs) pursuant to Worksharing Agreements that impose obligations on the contracted FEPA with respect to confidentiality, privacy, and data security. On a case-by-case basis, the EEOC may share EEO-3 data with a FEPA that does not have a Worksharing Agreement, but only if that FEPA agrees to comply with confidentiality, privacy, and data security obligations similar to those imposed on FEPAs with Worksharing Agreements.

¹⁵ Any reports the EEOC publishes based on EEO-3 data include only aggregated EEO-3 data that protect the confidentiality of each union's information, as well as the privacy of each member's personal information.

⁴ Available at <https://www.federalregister.gov/documents/2024/08/16/2024-18420/agency-information-collection-activities-existing-collection>.

⁵ Available at <https://www.regulations.gov/document/EEOC-2024-0006-0002>.

⁶ Labor organizations required to report are those which perform, in a specific jurisdiction, the functions ordinarily performed by a local union, whether or not they are so designated.

⁷ Labor organizations required to report are those which perform, in a specific jurisdiction, the functions ordinarily performed by a local union, whether or not they are so designated.

⁸ This figure is based on the expanded frame of potentially eligible respondents and the response

rate for the most recently completed EEO-3 data collection (the 2022 EEO-3 data collection).

⁹ 42 U.S.C. 2000e-8(c).

¹⁰ The EEOC's EEO-3 regulation is at 29 CFR part 1602 subparts F and G. The EEOC is responsible for obtaining OMB's PRA approval for the EEO-3 report.

¹¹ Labor organizations required to report are those which perform, in a specific jurisdiction, the functions ordinarily performed by a local union, whether or not they are so designated.

¹² Beginning in 1986, the EEO-3 report has been collected biennially in even-numbered years. Prior to 1986, the EEO-3 report was collected annually.

agency’s data collections, including the EEO–3 data collection. Since OEDA’s creation in 2018, the EEOC has undertaken several efforts to modernize the agency’s data collections and improve the quality of data collected. OEDA also has streamlined functions, such as providing additional self-service options, resource materials, and an online support message center.

As part of these ongoing modernization efforts, and in response to a recent GAO report¹⁶ which recommended that the EEOC improve its approach to routinely identify local unions required to file the EEO–3 report, OEDA has undertaken measures to enhance the agency’s EEO–3 frame (*i.e.*, filer roster or master list) of potentially eligible filers. By comparing the EEOC’s 2022 EEO–3 frame to a list of active unions from the U.S. Department of Labor’s Office of Labor

Management Standards (OLMS) Online Public Disclosure Room (OPDR) database,¹⁷ OEDA identified more than 5,000 local unions that may be eligible to file during the next biennial EEO–3 data collection. With the addition of these unions to the EEO–3 frame and considering response rates during the 2022 EEO–3 data collection, OEDA now estimates 5,999 potential respondents to the agency’s next EEO–3 data collection.¹⁸

The EEOC has also updated its methodology for calculating the biennial burden of the EEO–3 data collection to better reflect the types of personnel responsible for preparing and filing these reports on behalf of their unions. Based upon job titles provided during the 2022 EEO–3 data collection by individuals completing the report within the *OFS*, the EEOC has identified four specific job categories that account

for the largest amount of time spent biennially on EEO–3 reporting. These job categories include: (1) Secretaries and Administrative Assistants; (2) Administrative Services and Facilities Managers; (3) Bookkeeping, Accounting, and Auditing Clerks; and (4) Executive-Level Staff.¹⁹

Additionally, the *OFS* captures detailed information on when each filer starts and certifies their report. The EEOC used this information from the most recent EEO–3 data collection (*i.e.*, 2022) to calculate more precise burden hour estimates.²⁰ As shown in Table 1 below, the estimated average hour burden per report is 1.49 hours. The total estimated biennial respondent burden for all filers is 8,922 hours. The estimated average burden hour cost per report is \$59.90, and the estimated total burden hour cost for all filers per biennial collection is \$359,091.

TABLE 1—PROJECTED BURDEN FOR EACH EEO–3 BIENNIAL REPORTING YEAR
[N = 5,999]

Staff job category	Percent in job category	Median hourly wage rate	Hours per report	Cost per report	Total burden hours	Total burden hour cost
Secretaries and Administrative Assistants	21.4	\$21.19	0.33	\$6.99	1,958	\$41,490
Administrative Services and Facilities Managers	56.5	48.98	0.84	41.14	5,046	247,153
Bookkeeping, Accounting, and Auditing Clerks	5.1	22.05	0.09	1.98	546	12,039
Executive-Level Staff	4.4	48.12	0.06	2.89	365	17,564
Other ^a	12.6	40.56	0.17	6.90	1,007	40,845
Total ^b			1.49	59.90	8,922	359,091

^a The average hourly wage rate for the “Other” category was derived by taking the weighted mean average of the hourly wage rates of the four BLS job categories listed in the above table.
^b These estimates are based upon filers’ use of the *OFS* to submit reports electronically because paper submissions are no longer accepted. Electronic filing remains the most efficient, accurate, and secure means of reporting for respondents required to submit EEO–3 data.

Dated: December 2, 2024.
For the Commission.
Charlotte A. Burrows,
Chair.
[FR Doc. 2024–28579 Filed 12–5–24; 8:45 am]
BILLING CODE 6570–01–P

FARM CREDIT ADMINISTRATION
Sunshine Act Meetings

TIME AND DATE: 10 a.m., Thursday, December 12, 2024.
PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe,

at least 24 hours in advance, visit FCA.gov, select “Newsroom,” then select “Events.” From there, access the linked “Instructions for board meeting visitors” and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of Minutes for November 14, 2024
- Quarterly Report on Economic Conditions and Farm Credit System Condition and Performance
- Semiannual Report on Office of Examination Operations

as the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and the U.S. Possessions of American Samoa, Guam, Northern Mariana Islands, and Wake Island. Please note that 5,999 respondents may ultimately turn out to be an overestimate. Following the initial enhancement of the EEO–3 frame, collection data may yield an unknown number of ineligible filers.

¹⁹ Hourly wage rates for these four job categories were obtained from the U.S. Department of Labor’s Bureau of Labor Statistics (BLS) Occupational

CONTACT PERSON FOR MORE INFORMATION:

If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,
Secretary to the Board.
[FR Doc. 2024–28775 Filed 12–4–24; 11:15 am]
BILLING CODE 6705–01–P

Outlook Handbook. See <https://www.bls.gov/ooh/>. Please note that the actual job titles reported during the 2022 EEO–3 data collection were collapsed into these four BLS occupational categories.

²⁰ The time estimates are based on the average time elapsed among filers who completed their reports during the same calendar day within the *OFS*.

¹⁶ U.S. Government Accountability Office, “Workforce Diversity: Hispanic Workers Are Underrepresented in the Media, and More Data Are Needed for Federal Enforcement Efforts”, Government Accountability Office, Sept. 29, 2022, <https://www.gao.gov/products/gao-22-104669>.
¹⁷ The OPDR database contains information on approximately 20,000 unions in the United States. See <https://olmsapps.dol.gov/olpdr/>.
¹⁸ This estimate covers local unions within the 50 United States and the District of Columbia, as well

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1042; FR ID 266288]

Information Collection 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. 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 PRA comments should be submitted on or before February 4, 2025. 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 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.:* 3060–1042.*Title:* Request for Technical Support—Help Request Form.*Form No.:* N/A—Electronic only.*Type of Review:* Extension of currently approved collection.*Respondents:* Individuals or household; business or other for-profit; not-for-profit institutions; and state, local or tribal government.*Number of Respondents and Responses:* 36,300 respondents and 36,300 responses.*Estimated Time per Response:* 0.14 hours.*Frequency of Response:* On occasion reporting requirement and recordkeeping requirement.*Obligation to Respond:* Required to obtain or retain benefits. There is no statutory authority for this information collection. The Commission developed this information collection on its own motion to assist users of the Universal Licensing System (ULS) or other FCC electronic systems.*Total Annual Burden:* 5,082 hours.*Total Annual Cost:* \$609,840.*Needs and Uses:* The FCC maintains internet software used by the public to apply for licenses, participate in auctions for spectrum, and maintain license information. In this mission, FCC has a 'help desk' that answers questions related to these systems as well as resetting and/or issuing user passwords for access to these systems.

The form currently is available on the website <https://esupport.fcc.gov/request.htm> under OMB Control Number 3060–1042. This form will continue to substantially decrease public and staff burden since all the information needed to facilitate a support request will be submitted in a standard format but be available to a wider audience. This eliminates or at least minimizes the need to follow-up with the customers to obtain all the information necessary to respond to their request. This form also helps presort requests into previously defined categories to all staff to respond more quickly.

Federal Communications Commission.

Marlene Dortch,*Secretary.*

[FR Doc. 2024–28704 Filed 12–5–24; 8:45 am]

BILLING CODE 6712–01–P**FEDERAL COMMUNICATIONS COMMISSION**

[OMB 3060–1207; FR ID 266289]

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. 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 PRA comments should be submitted on or before February 4, 2025. 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 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:* 3060–1207.*Title:* Sections 25.701, Other DBS Public Interest Obligations, and 25.702, Other SDARS Public Interest Obligations.*Form Number:* None.*Type of Review:* Extension of an existing collection.*Respondents:* Business or other for profit entities.*Number of Respondents and Responses:* 3 respondents and 3 responses.

Estimated Hours per Response: 18 hrs.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Total Annual Burden: 54 hours.

Total Annual Cost: \$592.

Obligation to Respond: Required to be obtained or retained for benefits. The statutory authority for this information collection is contained in sections 154, 301, 302, 303, 307, 309, 319, 332, 605, and 721 of the Communications Act of 1934, as amended.

Needs and Uses: In 2012, the Commission replaced the decades-old requirement that commercial and noncommercial television stations maintain public files at their main studios with a requirement to post most of the documents in those files to a central, online public file hosted by the Commission. On January 28, 2016, the Commission adopted a Report and Order (“R&O”) in MB Docket No. 14–127, FCC 16–4, In the Matter of Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, expanding the requirement that public inspection files be posted to the FCC-hosted online public file database to satellite TV (also referred to as “Direct Broadcast Satellite” or “DBS”) providers and to satellite radio (also referred to as “satellite Digital Audio Radio Services” or “SDARS”) licensees, among other entities. The Commission stated that its goal is to make information that these entities are already required to make publicly available more accessible while also reducing costs both for the government and the public sector. The Commission took the same general approach to transitioning these entities to the online file that it took with television broadcasters in 2012, tailoring the requirements as necessary to the different services. The Commission also took similar measures to minimize the effort and cost entities must undertake to move their public files online. Specifically, the Commission required entities to upload to the online public file only documents that are not already on file with the Commission or that the Commission maintains in its own database. The Commission also exempted existing political file material from the online file requirement and required that political file documents be uploaded only on a going-forward basis.

The Commission first adopted a public inspection file requirement for broadcasters more than 40 years ago. The public file requirement grew out of Congress’ 1960 amendment of Sections

309 and 311 of the Communications Act of 1934. Finding that Congress, in enacting these provisions, was guarding “the right of the general public to be informed, not merely the rights of those who have special interests,” the Commission adopted the public inspection file requirement to “make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees.” The information provided in the public file enables citizens to engage in an informed dialog with their local video provider or to file complaints regarding provider operations. Satellite TV (also known as “Direct Broadcast Satellite” or “DBS”) providers and satellite radio (also referred to as “Satellite Digital Audio Radio Services” or “SDARS”) licensees have public and political file requirements modeled, in large part, on the longstanding broadcast requirements. With respect to DBS providers, the Commission adopted public and political inspection file requirements in 1998 in conjunction with the imposition of certain public interest obligations, including political broadcasting requirements, on those entities. DBS providers were required to “abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems” and were also required to maintain a public file with records relating to other DBS public interest obligations. The Commission imposed equal employment opportunity and political broadcast requirements on SDARS licensees in 1997, noting that the rationale behind imposing these requirements on broadcasters also applies to satellite radio.

The information collection requirements contained in 47 CFR 25.701(d) require each DBS provider to keep and permit public inspection of a complete and orderly record (political file) of all requests for DBS origination time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the provider of such requests, and the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes of time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file. All records required to be retained by this section must be placed in the political file as soon as possible and

retained for a period of two years. DBS providers must make available, by fax, email, or by mail upon telephone request, copies of documents in their political files and assist callers by answering questions about the contents of their political files. If a requester prefers access by mail, the DBS provider must pay for postage but may require individuals requesting documents to pay for photocopying. If a DBS provider places its political file on its website, it may refer the public to the website in lieu of mailing copies.

Any material required to be maintained in the political file must be made available to the public by either mailing or website access or both.

The information collection requirements contained in 47 CFR 25.701(d) require DBS providers to place all new political file material required to be retained by this section in the online file hosted by the Commission.

47 CFR 25.701(f)(6) information collection requirements require each DBS provider to maintain a public file containing a complete and orderly record of quarterly measurements of: Channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its responses to any capacity changes; a record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity; and a record of entities that have requested capacity, disposition of those requests and reasons for the disposition. All records required by this provision must be placed in a file available to the public as soon as possible and be retained for a period of two years.

47 CFR 25.701(f)(6) to require DBS providers to place all public file material required to be retained by this section in the online file hosted by the Commission. Each DBS provider must place in the online file the records required to be placed in the public inspection file by 47 CFR 25.701(e)(commercial limits in children’s programs) and by 47 CFR 25.601 and Part 76, Subpart E (equal employment opportunity requirements) and retain those records for the period required by those rules. In addition, each DBS provider is required to provide a link to the public inspection file hosted on the Commission’s website from the home page of its own website, if the provider has a website, and provide on its website contact information for a representative who can assist any person with disabilities

with issues related to the content of the public files. Each DBS provider is also required to include in the online public file the name, phone number, and email address of the licensee's designated contact for questions about the public file, and include in the online public file the address of the provider's local public file if the provider retains documents in the local public file that are not available in the Commission's online file.

47 CFR 25.702(b) requires each SDARS licensee to maintain a complete and orderly record (political file) of all requests for SDARS origination time made by or on behalf of candidates for public office, together with the disposition made by the provider of such requests, and the charges made, if any, if the request is granted. The disposition must include the schedule of time purchased, when the spots actually aired, the rates charged, and the classes of time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file. SDARS licensees are required to place all records required by this section in the political file as soon as possible and retain the record for a period of two years.

The information collection requirements contained in 47 CFR 25.702(c) require each SDARS applicant or licensee to place in the online file hosted by the Commission the records required to be placed in the public inspection file by 47 CFR 25.601 and 73.2080 (equal employment opportunities) and to retain those records for the period required by those rules. Each SDARS licensee must provide a link to the public inspection file hosted on the Commission's website from the home page of its own website, if the licensee has a website, and provide on its website contact information for a representative who can assist any person with disabilities with issues related to the content of the public files. Each SDARS licensee is also required to include in the online public file the name, phone number, and email address of the licensee's designated contact for questions about the public file, and include in the online public file the address of the provider's local public file if the provider retains documents in the local public file that are not available in the Commission's online file.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2024-28705 Filed 12-5-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

[Docket No. FMC-2024-0022]

Investigation Into Conditions Affecting Shipping in the Foreign Trade and Denial of Entry of Vessels Into Spanish Ports

AGENCY: Federal Maritime Commission.

ACTION: Notice of investigation and request for comments.

SUMMARY: The Federal Maritime Commission has initiated an investigation into reports that the Government of Spain (Spain) is creating conditions unfavorable to shipping in the foreign trade of the United States by denying entry to its ports to certain vessels, including those participating in the Maritime Security Program.

DATES: Submit comments on or before December 26, 2024.

ADDRESSES: You may submit comments, identified by Docket No. FMC-2024-0022, by the following method:

Federal eRulemaking Portal: Your comments must be written and in English. You may submit your comments electronically through the Federal eRulemaking Portal at www.regulations.gov. To submit comments on that site, search for Docket No. FMC-2024-0022 and follow the instructions provided.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of any confidential information, contact David Eng, Secretary; Phone: (202) 523-5725; Email: Secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 19, 2024, the Federal Maritime Commission (Commission) was informed that Spain had denied entry to its ports to at least three vessels, including some that are participants in the United States Maritime Administration's (MARAD) Maritime Security Program (MSP). The Commission is concerned that this apparent policy of denying entry to certain vessels will create conditions unfavorable to shipping in the foreign trade, whether in a particular route or in commerce generally. Chapter 421 of U.S. Code Title 46, section 42101, authorizes the Commission to investigate and, if necessary, adopt regulations to adjust or meet such conditions. Remedies under Chapter 421 include, but are not limited to, refusal of entry to vessels of a country that is named in the Commission's regulations and fines of up to

\$2,304,629 per voyage. 46 U.S.C. 42106(4), 42107(1)(a); 46 CFR part 506.

II. Summary of Investigation

The Commission's statutory authority includes the mandate to monitor and evaluate conditions that affect shipping in the foreign trade of the United States. 46 U.S.C. 42101(a).¹ Chapter 421 encourages the maintenance of a United States merchant marine for the national defense and the development of domestic and foreign commerce. 46 U.S.C. 50101(b). Under a separate statutory provision, the Commission can also investigate whether a foreign government is unduly impairing the access of a vessel documented under the laws of the United States to ocean trade between foreign ports and take any action it finds appropriate to remedy any such violation. 46 U.S.C. 41108(d).

The Commission has consistently held that its powers do not only protect United States flagged shipping, and that foreign governmental actions that are detrimental to third-flag carriers can create conditions unfavorable to shipping in the United States foreign trade within the meaning of Chapter 421. *Petition of Ace Line*, 19 S.R.R. 481, 482 (FMC 1979). In the past, the Commission has investigated port practices in Japan that included restrictive and discriminatory licensing practices and refusals to grant licenses to United States carriers. *Port Restrictions and Requirements in the United States/Japan Trade*, 62 FR 9696, 9699 (March 4, 1997). The Commission has also investigated conditions created in the United States-Korea, United States-Taiwan, and United States-Venezuela trades. See Randy L. Baldemor, Comment *Federal Maritime Commission Sanctions on Japanese Carriers: A Call for Fairer Methods of Resolving Disputes*, 8 Pac. Rim L & Pol'y J. 109, at 116 (1999).

The Commission received information on November 19, 2024, indicating that Spain is denying entry into Spanish ports to certain vessels. Spain appears to have denied docking privileges to the Maersk Denver in early November. *Maersk Line Vessel Diverts to Morocco Due to Allegations in Spain*, The Maritime Executive, November 11, 2024 (available at <https://maritime-executive.com/article/maersk-line-vessel-diverts-to-morocco-due-to>).

¹ The Commission may also investigate whether a foreign government or carrier's practices result in adverse impacts on United States carriers or United States oceanborne trade or creates conditions that do not exist for foreign carriers in the United States under the laws of the United States. 46 U.S. Code, Chapter 423. At this time, the Commission is not initiating an investigation pursuant to Chapter 423.

allegations-in-spain) (last visited November 20, 2024). That vessel was owned and operated by a participant in the MARAD MSP Fleet and the vessel appears to have been receiving a retainer from MARAD in exchange for availability during times of need. See Maritime Security Program | MARAD, (<https://www.maritime.dot.gov/national-security/strategic-sealift/maritime-security-program-msp>) (last visited November 20, 2024). Spain also appears to have denied entry to the Maersk Seletar, another MSP participant vessel, in early November.² Though not a participant in the MSP, another vessel appears to have been refused docking privileges in May. *Spain Denies Port of Call to Ship Carrying Arms to Israel*, The Guardian, May 16, 2024 (available at <https://www.theguardian.com/world/article/2024/may/16/spain-denies-port-of-call-to-ship-carrying-arms-to-israel>) (last accessed November 20, 2024).

MARAD's MSP maintains a fleet of commercially viable, militarily useful merchant ships active in international trade. The MSP fleet is available to support U.S. Department of Defense (DoD) sustainment sealift requirements during times of conflict or in other national emergencies. The program also provides DoD access to MSP participants' global intermodal transportation network of terminals, facilities, logistic management services, and U.S. citizen merchant mariners.

The Commission's statutory purposes include ensuring an efficient, competitive, and economical transportation system in the United States, encouraging the development of an economically sound and efficient liner fleet capable of meeting national security needs and supporting commerce, and promoting the growth and development of United States exports through competitive and efficient carriage of goods by water. 46 U.S.C. 40101. A law or policy by a foreign government that refuses entry to vessels documented under the laws of the United States is inconsistent with the Commission's goal of ensuring access to and supporting the complex and interdependent system for the common carriage of goods by water in foreign commerce. The Commission has therefore determined that it will investigate the apparent decision by Spain to deny entry to vessels participating in MARAD's MSP, as well as its apparent decision to deny entry to other vessels.

At this initial stage of the investigation, the Commission will focus on providing a route for interested parties, including the Government of Spain and common carriers that have been denied entry into Spanish ports, to provide information, perspectives, and proposed solutions.

III. Investigation and Initial Request for Comments

The Commission has determined that the above situation meets the threshold requirements for consideration under the relevant statutory and regulatory authority. See 46 U.S.C. 42101; 46 CFR part 550. The Commission therefore initiates an investigation into whether the situation has created conditions that are unfavorable to shipping in foreign trade, whether in a particular trade or on a particular route or in commerce generally. See 46 U.S.C. 42101(a); 46 CFR 550.301. To that end, the Commission has designated the General Counsel to lead an investigation into the conditions and to prepare a report on the investigation's findings and recommendations for Commission consideration. The Commission has further determined to ask interested persons to submit written comments containing arguments, experiences, and/or data relevant to denials of entry into Spanish ports. In particular, the Commission seeks information about when this has occurred, the vessels that have been denied entry, and any reason or reasons given for the denial.

The Commission's jurisdiction under 46 U.S.C. 42101 is broad, and the agency welcomes comments not only from the Government of Spain, but also from container shipping interests, vessel owners, individuals and groups with relevant information on commercial considerations, and anyone else with relevant information or perspectives on this matter.

As the Commission proceeds with this investigation, it may determine to request additional comment or gather information through other means as authorized under 46 U.S.C. 40104 and 42104, and 46 CFR part 550.

By the Commission.

David Eng,
Secretary.

[FR Doc. 2024-28709 Filed 12-5-24; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Tuesday, December 17, 2024.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Mallery v. El Segundo Coal Co., LLC*, Docket No. CENT 2024-0106. (Issues include whether the Judge erred in finding no adverse action, and whether the Judge erred in issuing show cause orders.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD. Relay/1-800-877-8339 for toll free.

Phone Number for Listening to Meeting: 1-(866) 236-7472. Passcode: 678-100.

Authority: 5 U.S.C. 552b.

Dated: December 4, 2024.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2024-28874 Filed 12-4-24; 4:15 pm]

BILLING CODE 6735-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Application to Become a Savings and Loan Holding Company or to Acquire a Savings Association or Savings and Loan Holding Company (FR LL-10(e); OMB No. 7100-0336).

DATES: Comments must be submitted on or before February 4, 2025.

ADDRESSES: You may submit comments, identified by FR LL-10(e), by any of the following methods:

² See also <https://www.maritime.dot.gov/sites/marad.dot.gov/files/2022-08/MSP%20Fleet%20%208-1-2022.pdf> for a list of vessels participating in the MSP.

- *Agency website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments, including attachments. *Preferred method.*

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

- *Hand Delivery/Courier:* Same as mailing address.

- *Other Means:* publiccomments@frb.gov. You must include the OMB number or the FR number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at <https://www.federalreserve.gov/apps/proposals/> 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 be not appropriate for public disclosure. Public comments may also be viewed electronically or in person in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA

OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR LL-10(e). Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

- The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, utility, and clarity of the information to be collected;

- Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

- Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Application to Become a Savings and Loan Holding Company or to Acquire a Savings Association or Savings and Loan Holding Company.

Collection identifier: FR LL-10(e).
OMB control number: 7100-0336.

General description of collection: This information collection must be filed in

connection with certain proposals involving the formation, acquisition, or merger of a savings and loan holding company (SLHC); the acquisition by an SLHC of a savings association or its assets; and the acquisition of control of a savings association by certain individuals associated with an SLHC. The Board requires the submission of this filing from an applicant for regulatory and supervisory purposes and to allow the Board to fulfill its statutory obligations to review these transactions under section 10(e) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*) and the Board's Regulation LL—Savings and Loan Holding Companies (12 CFR 238.11).

Frequency: Event generated.

Respondents: Entities seeking prior approval to become or acquire an SLHC or merge SLHCs; SLHCs seeking to acquire a savings association or all or substantially all of the assets of a savings association or SLHC; and directors or officers of an SLHC, or any individual who owns, controls, or holds the power to vote (or holds proxies representing) more than 25 percent of the voting shares of an SLHC seeking control of any savings association that is not a subsidiary of such SLHC.

Total estimated number of respondents: 7.

Total estimated annual burden hours: 428.

Board of Governors of the Federal Reserve System, December 2, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-28525 Filed 12-5-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Report of Institution-to-Aggregate Granular Data on Assets and Liabilities on an Immediate Counterparty Basis (FR 2510; OMB No. 7100-0376).

DATES: Comments must be submitted on or before February 4, 2025.

ADDRESSES: You may submit comments, identified by FR 2510, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the

instructions for submitting comments, including attachments. *Preferred method.*

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

- *Hand Delivery/Courier:* Same as mailing address.

- *Other Means:* publiccomments@frb.gov. You must include the OMB number or the FR number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at <https://www.federalreserve.gov/apps/proposals/> 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 be not appropriate for public disclosure. Public comments may also be viewed electronically or in person in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions,

supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2510. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

- The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, utility, and clarity of the information to be collected;

- Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

- Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Report of Institution-to-Aggregate Granular Data on Assets and Liabilities on an Immediate Counterparty Basis.

Collection identifier: FR 2510.

OMB control number: 7100-0376.

General description of collection: The FR 2510 collects granular exposure data on the assets, liabilities, and off-balance sheet holdings of certain large banking organizations, providing breakdowns by

country, instrument, currency, maturity, sector, and other factors. The FR 2510 also collects country exposure data on an immediate counterparty basis and detailed information on firms' derivatives exposures. The information collected by the FR 2510 supports the Board's supervision of global systemically important bank holding companies (BHCs) by allowing for a more complete balance sheet analysis of these firms and allows the Board to more closely monitor the systemic impacts of such firms' activities and investments.

The Board makes available on its public website the instructions for the FR 2510, Report of Institution-to-Aggregate Granular Data on Assets and Liabilities on an Immediate Counterparty Basis, which are currently in a two-column format. To improve readability on electronic devices, the Board is considering updating the instructions to a one-column format.

Frequency: Quarterly.

Respondents: Any BHC that is organized under the laws of the United States or any U.S. state and that is identified as a global systemically important BHC under the Board's Regulation Q.

Total estimated number of respondents: 8.

Total estimated annual burden hours: 18,528.

Board of Governors of the Federal Reserve System, December 2, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-28522 Filed 12-5-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal

Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than December 23, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414. Comments can also be sent electronically to

Comments.applications@chi.frb.org:

1. *The Gabrielse Joint Revocable Trust, Bruce J. Gabrielse and Barbara L. Gabrielse, as co-trustees, all of Fitchburg, Wisconsin; the Jack and Denise Gabrielse Revocable Trust, Jack L. Gabrielse and Denise L. Gabrielse, as co-trustees, all of Oregon, Wisconsin; and the Gabrielse Joint Revocable Trust, Brian J. Gabrielse and Jennifer K. Gabrielse, as co-trustees, all of Madison, Wisconsin; to join the Gabrielse Family Control Group, a group acting in concert, to retain voting shares of Oak Financial, Inc., and thereby indirectly retain voting shares of Oak Bank, both of Fitchburg, Wisconsin.*

B. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to

Comments.applications@stls.frb.org:

1. *Thomas Marion Frazer, Warren, Arkansas; to acquire additional voting shares of Warren Bank and Trust Company, also of Warren, Arkansas.*

C. Federal Reserve Bank of Minneapolis (Mark Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291. Comments can also be sent electronically to MA@mpls.frb.org:

1. *Victoria L. Holinka, Maple Grove, Minnesota, as Independent trustee, and John R. Spalj, Scottsdale, Arizona, as Family trustee, of the Nicole Spalj 2025*

Exempt Trust, the Bianca Spalj 2025 Exempt Trust, and the Chauntel Spalj 2025 Exempt Trust, all of Scottsdale, Arizona; and John Ohlin, Baxter, Minnesota, as trustee of the Nicole Spalj Escrow Trust, the Bianca Spalj Escrow Trust and the Chauntel Spalj Escrow Trust, all of Scottsdale, Arizona; to become members of the Spalj Family Control Group, a group acting in concert, to acquire voting shares of Deerwood Bancshares, Inc., Baxter, Minnesota, and thereby indirectly acquire voting shares of Deerwood Bank, Waite Park, Minnesota. John R. Spalj was previously permitted by the Federal Reserve System to acquire voting shares of Deerwood Bancshares, Inc., and to join the Spalj Family Control Group.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024-28731 Filed 12-5-24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to implement the Discrimination Complaint Forms (FR 1413; OMB No. 7100-NEW).

DATES: Comments must be submitted on or before February 4, 2025.

ADDRESSES: You may submit comments, identified by FR 1413, by any of the following methods:

- *Agency website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments, including attachments. *Preferred method.*
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.
- *Hand Delivery/Courier:* Same as mailing address.
- *Other Means:* publiccomments@frb.gov. You must include the OMB number or the FR number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at <https://www.federalreserve.gov/apps/>

proposals/ 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 be not appropriate for public disclosure. Public comments may also be viewed electronically or in person in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 1413. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Implement the Following Information Collection

Collection title: Discrimination Complaint Forms.

Collection identifier: FR 1413.

OMB control number: 7100-NEW.

General description of collection: The FR 1413 consists of two forms: the Pre-Complaint of Discrimination (FR 1413A) and the Formal Complaint of Discrimination (FR 1413B). These forms are used by individuals alleging discrimination by the Board while they were either applying for or had separated from employment with the Board.

Frequency: Event-generated.

Respondents: Individuals.

Total estimated number of respondents: FR 1413A, 1; FR 1413B, 3.

Total estimated annual burden hours: 3.

Board of Governors of the Federal Reserve System, December 2, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-28524 Filed 12-5-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Structure Reporting and Recordkeeping Requirements for Domestic and Foreign Banking Organizations (FR Y-6, FR Y-7, FR Y-10, and FR Y-10E; OMB No. 7100-0297).

DATES: The revisions for the option of electronic submission and the due date change are effective December 31, 2024; the standard templates is December 31, 2025; and the automation of the FR Y-7 report is December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier,

FR Y-6, FR Y-7, FR Y-10, and FR Y-10E.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Structure Reporting and Recordkeeping Requirements for Domestic and Foreign Banking Organizations.

Collection identifier: FR Y-6, FR Y-7, FR Y-10, and FR Y-10E.

OMB control number: 7100-0297.

General description of collection: This information collection comprises the following four reports:

Annual Report of Holding Companies (FR Y-6), which collects financial and organizational information from holding companies (HCs) and foreign banking organizations (FBOs) that are not "qualifying" FBOs under section 211.23 of the Board's Regulation K—International Banking Operations (12 CFR part 211),

Annual Report of Foreign Banking Organizations (FR Y-7), which collects financial and organizational information from qualifying FBOs,

Report of Changes in Organizational Structure (FR Y-10), which is an event-generated report that captures changes in organizational structure or regulated investments and activities of various Board-supervised entities, and

Supplement to the Report of Changes in Organizational Structure (FR Y-10E), which is a formless supplement to the FR Y-10 that the Board may use to collect additional structural information on an emergency basis.

Frequency: Annual, event-generated.

Respondents: The FR Y-6 panel comprises top-tier bank holding companies (BHCs), savings and loan holding companies (SLHCs), employee stock ownership plans (ESOPs) and employee share ownership trusts (ESOTs) or trusts that are BHCs or SLHCs, securities holding companies, intermediate holding companies (IHCs), and any FBO that does not meet the requirements of and is not treated as a qualifying FBO under Regulation K.

The FR Y-7 panel comprises all qualifying FBOs that engage in banking in the United States, either directly or indirectly.

The FR Y-10 and FR Y-10E panels comprise top-tier BHCs (including ESOPs or ESOTs that are BHCs and financial holding companies); top-tier SLHCs, including ESOPs, ESOTs, or trusts that are SLHCs pursuant to Regulation LL; FBOs; state member banks that are not controlled by an HC; Edge and agreement corporations that are not controlled by a member bank, a

domestic HC, or an FBO; and nationally chartered banks that are not controlled by a BHC or an FBO (with regard to their foreign investments only); and securities holding companies.

Total estimated number of respondents:

FR Y-6—3,760.

FR Y-7—205.

FR Y-10 and FR Y-10E—3,790.

Estimated average hours per response:

Reporting

FR Y-6—2.5.

FR Y-7 Initial—10.10.

FR Y-7 Ongoing—4.63.

FR Y-10—2.5.

FR Y-10E—0.5.

Recordkeeping

FR Y-6—0.5.

FR Y-10—0.5.

Total estimated change in burden:
1,284.

Total estimated annual burden hours:

Reporting

FR Y-6—9,400.

FR Y-7 Initial—2,071.

FR Y-7 Ongoing—949.

FR Y-10—33,153.

FR Y-10E—1,895.

Recordkeeping

FR Y-6—1,880.

FR Y-10—6,631.

Current actions: On March 29, 2024, the Board published a notice in the **Federal Register** (89 FR 22145) requesting public comment for 60 days on the extension, with revision, of the FR Y-6, FR Y-7, FR Y-10, and FR Y-10E reports. The Board proposed to revise the FR Y-7 report by adding an electronic submission option and adding standard templates for reporting (1) financial statements, (2) organizational charts, (3) information about shares and shareholders, (4) a firm's eligibility as a qualified FBO, and (5) a firm's compliance with prudential standards. The proposal would also make minor clarifications and conforming edits to the FR Y-7 forms and instructions. The proposal included no changes to the FR Y-6, FR Y-10, or FR Y-10E. The comment period for this notice expired on May 28, 2024. The Board received one comment letter from an individual.

Detailed Discussion of Public Comments

The commenter remarked that the FR Y-6 allows a bank holding company (BHC) to request confidential treatment regarding insider ownership information and asked that this ability be removed. A reporter may request

confidential treatment for any information submitted on the FR Y-6 that the reporter believes is exempt from disclosure under the Freedom of Information Act (FOIA). The Board may grant a request for confidential treatment if the institution clearly has provided a compelling justification for the request. It is the Board's practice to favor disclosure of principal securities holders' information, but have granted past requests for confidential treatment, consistent with FOIA exemptions, when there was evidence of a well-defined present threat to the liberty or personal security of individuals. For this reason, the Board is maintaining the current process used to fulfill our obligation to consider requests for confidential treatment.

The commenter also noted that individual Federal Reserve districts differ from each other on the ease of public access to FR Y-6 submissions and asks the Board to create a single, publicly accessible, nationwide FR Y-6 database. The Board will take this into consideration during future technology enhancements for the FR Y-6. Additionally, limited structural data from the information collection are published on the National Information Center's public website at <https://www.ffiec.gov/NPW>.

Lastly, the Board will delay the effective dates for the standard templates to December 31, 2025, and the automation changes to December 31, 2026. Delaying these effective dates will allow sufficient time for the development of the necessary technology to support the changes in the proposal. Aside from this change, the Board adopted the extension, with revision, of the FR Y-7 report as originally proposed.

Board of Governors of the Federal Reserve System, December 2, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-28526 Filed 12-5-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the

Computer-Security Incident Notification (FR 2231; OMB No. 7100-0384).

DATES: Comments must be submitted on or before February 4, 2025.

ADDRESSES: You may submit comments, identified by FR 2231, by any of the following methods:

- **Agency website:** <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at, including attachments. *Preferred method.*

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

- **Hand Delivery/Courier:** Same as mailing address.

- **Other Means:** publiccomments@frb.gov. You must include the OMB number or the FR number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at <https://www.federalreserve.gov/apps/proposals/> 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 be not appropriate for public disclosure. Public comments may also be viewed electronically or in person in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to

solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2231. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Computer-Security Incident Notification.

Collection identifier: FR 2231.

OMB control number: 7100-0384.

General description of collection: A banking organization is required to notify its primary Federal banking regulator of any "computer-security incident" that rises to the level of a "notification incident," as soon as possible and no later than 36 hours after the banking organization determines that a notification incident has occurred (see 12 CFR 225.301(b)). A bank service provider is required to notify each affected banking organization customer as soon as possible when the bank service provider determines that it has experienced a computer-security incident, that has caused, or is reasonably likely to cause, a material service disruption or degradation for four or more hours.

Frequency: Event generated.

Respondents: U.S. bank holding companies, U.S. savings and loan holding companies, state member banks, U.S. operations of foreign banking organizations, Edge or agreement corporations, and bank service providers.

Total estimated number of respondents: 95.

Total estimated annual burden hours: 285.

Board of Governors of the Federal Reserve System, December 2, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-28523 Filed 12-5-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 241 0082]

Guardian Service Industries, Inc.; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 6, 2025.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the

Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: "Guardian; File No. 241 0082" on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex H), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Erik Herron (202-326-3535), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: <https://www.ftc.gov/news-events/commission-actions>.

The public is invited to submit comments on this document. For the Commission to consider your comment, we must receive it on or before January 6, 2025. Write "Guardian; File No. 241 0082" on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write "Guardian; File No. 241 0082" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex H), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are

solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number; or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on <https://www.regulations.gov>—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before January 6, 2025. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") with Guardian Service Industries, Inc. ("Guardian" or "Respondent"). The proposed Decision and Order ("Order"), included in the Consent Agreement and subject to final Commission approval, is designed to remedy the anticompetitive effects that have resulted from Guardian's use of restrictive covenants in some of its contracts with building owners and managers that limit the ability of those building owners and managers to solicit or hire Respondent's employees ("No-Hire Agreements"). The term No-Hire Agreement refers to a term in an agreement between two or more companies that restricts, imposes conditions on, or otherwise limits a company's ability to solicit, recruit, or hire another company's employees, during employment or afterwards, directly or indirectly, including by imposing a fee or damages in connection with such conduct, or that otherwise inhibits competition between companies for each other's employees' services.

The Consent Agreement settles charges that Guardian has engaged in unfair methods of competition in violation of section 5 of the FTC Act, as amended, 15 U.S.C. 45, by entering into No-Hire Agreements with customers. Guardian's No-Hire Agreements constitute unreasonable restraints of trade that are unlawful under section 1 of the Sherman Act, 15 U.S.C. 1, and are thus unfair methods of competition in violation of section 5 of the FTC Act. Independent of the Sherman Act, Guardian's use of the No-Hire Agreements constitutes an unfair method of competition with a tendency or likelihood to harm competition, consumers, and employees in the building services industry, in violation of section 5. The proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement and take appropriate action or make the proposed Order final.

II. The Respondent

Guardian is a privately held business headquartered in New York, NY. Guardian provides facility maintenance services, including janitorial, security, engineering and operations, pest control, lighting and electric, window cleaning, concierge, front desk, and surface restoration services. Guardian employs approximately 2,800 employees throughout the Northeast, New England, and Mid-Atlantic regions. The complaint focuses on Guardian's conduct in New York City and Northern New Jersey.

III. The Complaint

The complaint alleges that Guardian sells building services to building owners and property management companies, primarily consisting of the labor of janitors, security guards, maintenance workers, and concierge desk workers who are directly employed by Guardian. These employees perform their work at residential and commercial buildings in various States, but predominantly in New York City and Northern New Jersey. The complaint also alleges that Guardian and its building owner and property manager customers are direct competitors in labor markets for building services workers. These include the markets for workers to perform concierge, security, janitorial, maintenance, and related services.

As alleged in the complaint, Guardian uses standard-form agreements with some of its customers that include No-Hire Agreements. The No-Hire Agreements restrict the ability of Guardian's customers to (1) directly hire workers employed by Guardian and (2) indirectly hire workers employed by Guardian through a competing building services contractor after the competitor wins the customers' business away from Guardian. These restrictions apply during the term of Guardian's contracts and for six months to one year thereafter. The No-Hire Agreements apply not just to those Guardian employees identified by Guardian and staffed to provide services for a customer, but to all Guardian building services employees.

The complaint alleges that Guardian's No-Hire Agreements are anticompetitive because they are horizontal agreements among competitors not to compete. Guardian and its customer building owners and property managers are competitors for the labor of building services workers like Guardian's employees. The No-Hire Agreements are horizontal agreements that prohibit buildings and property management

companies from hiring building services workers, thereby undermining competition for labor, reducing worker bargaining power, and suppressing wages. For these reasons, the complaint alleges that the No-Hire Agreements constitute unreasonable restraints of trade that are unlawful under section 1 of the Sherman Act, 15 U.S.C. 1, and are thus unfair methods of competition in violation of section 5 of the FTC Act, as amended, 15 U.S.C. 45.

Independent of the Sherman Act, the complaint alleges that Guardian's conduct constitutes an unfair method of competition with a tendency or likelihood to harm competition, consumers, and employees in the building services industry, in violation of section 5 of the FTC Act. According to the complaint, the No-Hire Agreements limit the ability of building owners and managers to hire Guardian's employees. This harms Guardian's employees because it limits their ability to negotiate for higher wages, better benefits, and improved working conditions. Employees may suffer further hardship if the building they work at brings services in-house because the No-Hire Agreements force them to leave their jobs in some circumstances. The complaint further alleges that the No-Hire Agreements harm building owners and managers because they may be foreclosed from bringing services in-house due to the prospect of losing long-serving workers with extensive, building-specific experience.

IV. The Proposed Order

The proposed Order seeks to remedy Guardian's unfair methods of competition. Section II of the proposed Order prohibits Guardian from entering or attempting to enter, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a No-Hire Agreement, or communicating to a customer or any other person that any Guardian Employee is subject to a No-Hire Agreement. Paragraph III.A of the proposed Order requires Guardian to provide written notice to customers that are subject to No-Hire Agreements that (i) the restriction is null and void, and (ii) any customer or a subsequent building services contractor for a customer is no longer subject to the restrictions or penalties related to the No-Hire Agreements in Guardian's contracts. Paragraph III.B of the proposed Order requires Guardian to provide various written notices to employees who are subject to a No-Hire Agreement. Paragraph III.C requires that Guardian post clear and conspicuous notice that employees are not subject to

No-Hire Agreements and may seek or accept a job with the building directly, or any company that wins the building's business. Paragraphs IV.A and IV.B of the proposed Order provide a timeline according to which the obligations enumerated in Section III must be met. Paragraphs IV.C–E set forth Guardian's ongoing compliance obligations.

Other paragraphs contain standard provisions regarding compliance reports, requirements for Guardian to provide notice to the FTC of material changes to its business, and access for the FTC to documents and personnel. The term of the proposed Order is ten years.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.

By direction of the Commission, Commissioners Holyoak and Ferguson dissenting.

April J. Tabor,
Secretary.

Dissenting Statement of Commissioner Melissa Holyoak

As I have previously explained,¹ the Commission cannot issue a complaint unless it has reason to believe that the law has been violated.² The same requirement applies equally to complaints headed toward litigation and to complaints that accompany a consent order that simultaneously resolves the matter. Today's Complaint against Guardian Service Industries, Inc. fails to provide sufficient allegations to establish a violation of section 1 of the Sherman Act or a violation of section 5 of the FTC Act. Because the restraint at issue is between a building services contractor and its clients, it would qualify as a vertical restraint, and "nearly every . . . vertical restraint" should be analyzed under the rule of reason.³ Further, this is a novel area, and the *per se* rule "is appropriate only after courts have had considerable experience with the type of restraint at issue, and only if courts can predict with confidence that it would be

invalidated in all or almost all instances under the rule of reason."⁴ Under the rule of reason, "the factfinder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition."⁵ To do so, the court conducts "an inquiry into market power and market structure designed to assess the combination's actual effect."⁶ Today's Complaint, however, does not plead sufficient facts to make a violation

⁴ *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886–87 (2007) (citation omitted). Chair Khan contends that "some no-poach or no-hire provisions may be analyzed as *per se* restraints under Section 1 of the Sherman Act." Statement of Chair Lina M. Khan, In the Matter of Guardian Service Industries, Inc., Matter Number 2410082 (Dec. 3, 2024). First, to be clear, the Complaint in today's action does *not* allege a *per se* violation. Second, the Seventh Circuit case upon which she relies, *Deslandes v. McDonald's USA, LLC*, 81 F.4th 699, 703 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 1057 (2024), does not stand for the proposition that today's conduct, or no-hire and no-poach provisions more generally, should be condemned as *per se* unlawful. To begin with, the no-poach provisions alleged in *Deslandes* were purely horizontal, *see id.* at 703, lacking the vertical component at issue in today's complaint against Guardian. Further, Judge Easterbrook, analyzing a motion for judgment on the pleadings, made clear that the district court had "jettisoned the *per se* rule too early." *Id.* He did not declare that such agreements were *per se* unlawful. In fact, he went on to explain a variety of questions that needed to be considered before such a determination could be made, including, *inter alia*: "So what was the no-poach clause doing? Was it protecting franchises' investments in training, or was it allowing them to appropriate the value of workers' own investments?" *Id.* at 704. He explained that "[t]hese are all potentially complex questions, which cannot be answered by looking at the language of the complaint. They require careful economic analysis. More than that: the classification of a restraint as ancillary is a defense, and complaints need not anticipate and plead around defenses." *Id.* at 705. Such considerations are a far cry from declaring no-poach agreements *per se* unlawful.

⁵ *Leegin*, 551 U.S. at 885; *see also Am. Express Co.*, 585 U.S. at 541.

⁶ *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 768 (1984).

¹ Dissenting Statement of Comm'r Melissa Holyoak, In the Matter of Chevron Corporation & Hess Corporation, Comm'n File No. 241-0008 (Sept. 30, 2024); Joint Dissenting Statement of Comm'r Melissa Holyoak and Comm'r Andrew N. Ferguson, In the Matter of ExxonMobil Corporation, No. 241-0004 (May 2, 2024).

² 15 U.S.C. 45(b).

³ *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018).

under the rule of reason plausible.⁷ For this reason, I dissent.⁸

Dissenting Statement of Commissioner Andrew N. Ferguson

The Commission today issues an administrative complaint and accepts a proposed consent agreement with Guardian Service Industries, Inc. (“Guardian”).¹ Guardian is a building services contractor operating throughout the Northeast, New England, and Mid-Atlantic regions.² It employs about 2,800 workers who provide concierge, security, custodial, maintenance, engineering, and related services at residential and commercial buildings.³ The Complaint alleges that some of Guardian’s contracts with building-management clients contain so called “no-hire” provisions, also sometimes referred to as “no-poach” provisions.⁴

⁷ The Commission’s 2022 Policy Statement states that under section 5 of the FTC Act, “the inquiry will not focus on the ‘rule of reason.’” See Fed. Trade Comm’n, *Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act*, Comm’n File No. P221202, at 10 (Nov. 10, 2022); *id.* at 2 (“Congress passed the FTC Act to push back against the judiciary’s adoption and use of the open-ended rule of reason for analyzing Sherman Act claims.”). I disagree with this conclusion and the 2022 Policy Statement in general. See Dissenting Statement of Comm’r Christine S. Wilson, *Regarding the Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act*, Comm’n File No. P221202 (Nov. 10, 2022). Among other problems with the statement, section 5 requires a showing of anticompetitive effects. See *Boise Cascade Corp. v. FTC*, 637 F.2d 573, 579 (9th Cir. 1980); *cf. E.I. du Pont de Nemours & Co. v. FTC*, 729 F.2d 128, 141 (2d Cir. 1984) (rejecting unfair method of competition claim because there was no “causal connection” between the challenged practices and adverse competitive effects); *FTC v. Raladam Co.*, 283 U.S. 643, 647–48 (1931).

⁸ Chair Khan somehow believes that just because she, as one agent of the American government, declares her choices as helpful to “American workers,” that it makes it so. Khan, *supra* note 4. Good intentions do not, however, translate into tangible results. And while her rhetoric may make for good PR, the facts and the law matter. The Chair’s decision to assert that the agreements are *per se* illegal in today’s statement but not in the actual Complaint is just one more example where the public should rely more on the Chair’s revealed preferences than her expressed preferences.

¹ *In re Guardian Serv. Indus., Inc.*, Complaint (“Complaint”) & Decision and Order (“Order”).

² Compl. ¶ 1; *In re Guardian Serv. Indus., Inc.*, Analysis of Agreement Containing Consent Order to Aid Public Comment (“AAPC”), at 1.

³ AAPC at 1.

⁴ Compl. ¶ 11. No-hire provisions are not non-compete clauses. No-hire provisions are agreements between two or more employers not to recruit, solicit, or hire each other’s employees. Non-compete clauses are agreements between an employer and its employee in which the employee promises not to work for the employer’s competitors after the termination of the employment relationship. No-hire provisions do not fall within the scope of the Commission’s failed Non-Compete Clause Rule. 89 FR 38,342 (May 7, 2024).

As written, these provisions forbid Guardian’s clients from hiring Guardian’s employees directly, or by hiring them from one of Guardian’s competitors.⁵ This restriction applies both during the contract term and for six to twelve months beyond it.⁶

The Commission is wise to focus its resources on protecting competition in labor markets. After all, the antitrust laws protect employees from unlawful restraints of the labor markets as much as they protect any output market.⁷ But, as I have warned before, we must always act within the boundaries Congress has imposed on our authority. For example, while I have no doubt that some noncompete agreements violate the Sherman Act,⁸ the now-enjoined

⁵ Compl. ¶¶ 10–11; AAPC at 2.

⁶ *Ibid.*

⁷ *NCAA v. Alston*, 594 U.S. 69, 86–87 (2021) (explaining that an employee challenging a labor-market restraint need show competitive injury only in the market for labor); *Anderson v. Shipowners Ass’n*, 272 U.S. 359, 361–65 (1926) (agreement among group of associations that “own[ed], operat[ed], or control[ed] substantially all the merchant vessels . . . [in] the ports of the Pacific Coast” to control employment of seamen violated the Sherman Act); *Todd v. Exxon Corp.*, 275 F.3d 191, 201 (2d Cir. 2001) (addressing labor market and explaining that “[t]he Sherman Act . . . applies . . . to abuse of market power on the buyer side—often taking the form of monopsony or oligopsony. . . . Plaintiff is correct to point out that a horizontal conspiracy among buyers to stifle competition is as unlawful as one among sellers.”); Phillip Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 352a (rev. ed. 2024) (“employees may challenge antitrust violations that are premised on restraining the employment market.”); *id.* at ¶ 352c (“Antitrust law addresses employer conspiracies controlling employment terms precisely because they tamper with the employment market and thereby impair the opportunities of those who sell their services there. Just as antitrust law seeks to preserve the free market opportunities of buyers and sellers of goods, so also it seeks to do the same for buyers and sellers of employment services.”); see also *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc.*, 549 U.S. 312, 322 (2007) (Thomas, J.) (“The kinship between monopoly and monopsony suggests that similar legal standards should apply to claims of monopolization and to claims of monopsonization.” (citing Roger Noll, “Buyer Power” and Economic Policy, 72 *Antitrust L.J.* 589, 591 (2005) (“[A]symmetric treatment of monopoly and monopsony has no basis in economic analysis.”)); *Mandeville Island Farms v. Am. Crystal Sugar Co.*, 334 U.S. 219, 235 (1948) (“It is clear that the agreement is the sort of combination condemned by the [Sherman] Act, even though the price-fixing was by purchasers, and the persons specially injured under the treble damage claim are sellers, not customers and consumers.”).

⁸ See Dissenting Statement of Comm’r Andrew N. Ferguson, Joined by Comm’r Melissa Holyoak, In the Matter of the Non-Compete Clause Rule, Matter No. P201200, at 18 n.142 (June 28, 2024) (hereinafter “Ferguson Non-Compete Dissent”), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-noncompete-dissent.pdf (“Noncompete agreements are contracts in restraint of trade, and therefore subject to the rule of reason under section 1 of the Sherman Act and section 5 of the FTC Act. But as is true of all agreements that do not implicate one of the few *per se* rules, whether a given

Non-Compete Clause Rule⁹ wildly exceeded our authority to address noncompete agreements.¹⁰ Today, we again exceed our authority by failing to comply with Congress’s procedural requirements for issuing an administrative complaint. I therefore respectfully dissent.

The Complaint charges that Guardian’s no-hire clauses are unreasonable restraints of trade under section 1 of the Sherman Act,¹¹ and are also therefore unfair methods of competition in violation of section 5 of the Federal Trade Commission Act.¹² The Complaint proceeds on a rule-of-reason theory, rather than a *per se* theory. That choice makes sense. The rule of reason “presumptively applies” to every restraint,¹³ especially when, as

noncompete agreement violates the antitrust laws will turn entirely on the particular circumstances and competitive effects of that agreement.” (internal citations omitted).

⁹ 89 FR 38342 (May 7, 2024).

¹⁰ Ferguson Non-Compete Dissent at 8–9; *Ryan LLC v. FTC*, No. 3:24–CV–00986–E, 2024 WL 3879954 (N.D. Tex. Aug. 20, 2024) (vacating the Commission’s Non-Compete Clause Rule); *Properties of the Villages, Inc. v. FTC*, 2024 WL 3870380 (M.D. Fla. Aug. 15, 2024) (issuing a preliminary injunction prohibiting enforcement of the Commission’s Non-Compete Clause Rule as to plaintiff). With the Presidential transition in full swing, the Chair has some parting shots. She argues that my dissent is part of a “trend in matters where the Commission is protecting American workers.” Statement of Chair Lina M. Khan, *In re Guardian Serv. Indus., Inc.*, Matter No. 2410082, at 2 (Dec. 3, 2024) (hereinafter “Chair’s Statement”). For the second time in a couple months, she cites as an example of this “trend” my dissent from the Non-Compete Clause Rule. *Id.* at 2 n.6; Statement of Chair Lina M. Khan, Joined by Comm’rs Rebecca Kelly Slaughter and Alvaro M. Bedoya, *In re Lyft, Inc.*, Matter No. 2223028, at 8–9 & n.35 (Oct. 25, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Statement-Chair-Khan-Joined-Comm-Slaughter-Comm-Bedoya-In-the-Matter-Lyft-Inc-10-25-2025.pdf. It bears repeating once more that this rule is enjoined nationwide as unlawful, and the Biden-Harris Administration will leave office without it ever having taken effect. *Ryan LLC*, 2024 WL 3879954; Statement of Comm’r Andrew N. Ferguson, Concurring in Part and Dissenting in Part, *United States v. Lyft*, Matter No. 2223028, at 14 (Oct. 25, 2024) (hereinafter “Ferguson Lyft Statement”), https://www.ftc.gov/system/files/ftc_gov/pdf/Ferguson-Lyft-Dissent-10-25-2024.pdf. As I said in *Lyft*, I strongly favor protecting workers to the fullest extent of our statutory authority. Ferguson Lyft Statement at 14. Promulgating failed rules and settling cases for pennies on the dollar does not protect workers, no matter how triumphant the Commission’s press releases are. *Ibid.*

¹¹ Compl. ¶ 16.

¹² *Id.* ¶ 17.

¹³ *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006); see also *Cont’l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 58–59 (1977) (“[D]eparture from the rule-of-reason standard must be based upon demonstrable economic effect rather than . . . upon formalistic line drawing.”); *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 899 (2007) (“Resort to *per se* rules is confined to restraints, . . . that would always or almost always tend to restrict competition and decrease output.” To justify a *per*

Continued

here, the restraint is ancillary to an otherwise lawful and primarily vertical agreement.¹⁴ Under the rule of reason, a restraint violates section 1 if the anticompetitive effects of the restraint outweigh its procompetitive effects.¹⁵ Put slightly differently, the rule of reason forbids restraints for which the procompetitive justifications for the restraint could have been achieved through “less anticompetitive means” than those imposed by the restraint.¹⁶

Here, the Complaint alleges that “[a]ny legitimate objectives of Guardian’s” use of the no-hire provisions “could have been achieved through significantly less restrictive means.”¹⁷ This certainly may be true of some no-hire agreements. And no-hire clauses undoubtedly can have anticompetitive effects.¹⁸ In some circumstances, those anticompetitive effects will outweigh the procompetitive justifications for a no-hire clause.¹⁹

se prohibition a restraint must have ‘manifestly anticompetitive’ effects and ‘lack . . . any redeeming virtue.’” (cleaned up)).

¹⁴ See, e.g., *Aya Healthcare Servs., Inc. v. AMN Healthcare, Inc.*, 9 F.4th 1102, 1109 (9th Cir. 2021) (citing *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 224 (D.C. Cir. 1986)). The Chair invokes *Deslandes v. McDonald’s USA, LLC* as “affirm[ing]” that “some no-poach or no-hire provisions may be analyzed as *per se* restraints under section 1 of the Sherman Act.” Chair’s Statement at 2 n.6. That is not quite right. *Deslandes* held only that a properly pleaded *per se* claim challenging no-hire clauses could survive a motion to dismiss because “the classification of a restraint as ancillary,” and therefore not subject to the *per se* standard, “is a defense, and complaints need not anticipate and plead around defenses.” 81 F.4th 699, 705 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 1057 (2024). Whether a restraint is ancillary, and therefore subject to the rule of reason, “requires discovery, economic analysis, and potentially a trial.” *Ibid.*

¹⁵ See, e.g., *GTE Sylvania Inc.*, 433 U.S. at 49 & n.15 (citing *Chi. Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918) (Brandeis, J.)); *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 342 (1990); *Ohio v. Am. Express Co.*, 585 U.S. 529, 541–42 (2018).

¹⁶ *Am. Express Co.*, 585 U.S. at 542; *Alston*, 594 U.S. at 100 (“[A]nticompetitive restraints of trade may wind up flunking the rule of reason to the extent the evidence shows that substantially less restrictive means exist to achieve any proven procompetitive benefits.”).

¹⁷ Compl. ¶ 14. Potential procompetitive justifications, *i.e.*, legitimate objectives, in these circumstances could include Guardian seeking to recoup any costs for the training of and investment in its workers or for screening and background checks to employ these workers, or to protect any relevant trade secrets.

¹⁸ Matthew Gibson, Employer Market Power in Silicon Valley, IZA Discussion Paper No. 14843 (Nov. 2021), <https://docs.iza.org/dp14843.pdf> (comparing workers’ salaries at Silicon Valley firms subject to DOJ’s no-poach investigation to worker salaries at other information-technology firms and concluding that the challenged no-poach agreements reduced salaries at colluding firms by 4.8%).

¹⁹ Cf. *Eichorn v. AT&T Corp.*, 248 F.3d 131 (3d Cir. 2001) (challenged no-hire agreement “not an antitrust violation under the rule of reason” where

When those facts obtain, the no-hire provision violates the Sherman Act.

But we cannot issue a Complaint against a company based solely on a theory about hypothetical effects of no-hire agreements. To lawfully invoke our enforcement authority, we must have a “reason to believe” that Guardian’s no-hire provisions violate section 5, not that no-hire provisions generally could violate section 5.²⁰ The Commission has a “reason to believe” the law has been violated only if it has evidence sufficient to make the “threshold determination that further inquiry is warranted.”²¹ That reason must be “well-grounded” in evidence that the Commission gleaned from its pre-filing investigation.²²

Had the Complaint plausibly alleged anticompetitive effects outweighing procompetitive justifications, I would have voted for it. But the Complaint alleges nothing about the no-hire provisions’ effects. It does not allege direct evidence of anticompetitive effects, or of indirect, economic evidence of anticompetitive effects, like market power and harm to competition. It does not even allege that Guardian has ever tried to enforce any of these agreements, nor does it allege that a single Guardian customer or worker believed Guardian would enforce any of these provisions.²³ Nor have I seen any

the particular provision at issue “did not have a significant anti-competitive effect on the plaintiffs’ ability to seek employment”); *Aya Healthcare Servs.*, 9 F.4th at 1110 (challenged non-solicitation agreement, involving employee outsourcing arrangement between healthcare staffing agencies collaborating to supply traveling nurses, not unlawful under rule of reason where restraint was reasonably necessary to ensure neither would lose personnel during collaboration); *Giordano v. Saks Inc.*, 654 F. Supp. 3d 174, 201 (E.D.N.Y. 2023) (challenged no-poach agreement involving collaborative business arrangement not unlawful under rule of reason where luxury brands agreed not to poach Saks employees who were trained to sell brand products unless current managers consented or the employee had left Saks at least six months prior).

²⁰ 15 U.S.C. 45(b).

²¹ *FTC v. Standard Oil of Cal.*, 449 U.S. 232, 241 (1980); *Boise Cascade Corp. v. FTC*, 498 F. Supp. 772, 779 (D. Del. 1980).

²² *Standard Oil*, 449 U.S. at 246 n.14; see also *AMREP Corp. v. FTC*, 768 F.2d 1171, 1177 (10th Cir. 1985).

²³ The Chair presents this case as a choice between Guardian’s no-hire provisions “remain[ing] in place,” ostensibly presuming anticompetitive effects from their very existence, or continuing the investigation. Chair’s Statement at 2. That is not correct. I have seen no evidence of actual or threatened enforcement of these clauses. And even if Guardian did threaten or attempt to enforce such provisions, I have seen no evidence that such threatened or actual enforcement would violate the antitrust laws—the question before the Commission when deciding whether to issue a Complaint. The Chair’s citation of public comments submitted in response to the Commission’s separate, unrelated Non-Compete Clause Rule, *id.* at 2 n.9, does not

such evidence that goes unmentioned in the Complaint. Indeed, I am at a loss about how my colleagues have formed their reason to believe that Guardian is violating the antitrust laws.

The Commission ought to protect competition in the labor markets, but it cannot bend the law to do so. We must form a “well-grounded reason to believe” that the law has been violated before issuing an administrative complaint. Because we have no evidence of the effects of the no-hire agreements in this case, the Commission should not have issued this Complaint.

I respectfully dissent.

[FR Doc. 2024–28720 Filed 12–5–24; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 232 3023]

IntelliVision Technologies Corp.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 6, 2025.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write “IntelliVision; File No. 232 3023” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex F), Washington, DC 20580.

change the facts, or lack thereof, in this matter. Moreover, I have no objection to the Commission agreeing not to bring an enforcement action so long as Guardian agrees not to enforce its no-hire provisions—akin to a non-prosecution agreement. But if the Commission invokes its power to issue a complaint, it must comply with the statute giving it that power—including the requirement that we have “reason to believe” that section 5 has been violated.

FOR FURTHER INFORMATION CONTACT:

Robin Rosen Spector (202–326–3740), Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 6, 2025. Write “IntelliVision; File No. 232 3023” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “IntelliVision; File No. 232 3023” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex F), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive

health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before January 6, 2025. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from IntelliVision Technologies Corp. (“IntelliVision” or “Respondent”). The proposed consent order (“Proposed Order”) has been placed on the public record for 30 days for receipt of public comments from interested persons. Comments received

during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with the comments received, and will decide whether it should make final the Proposed Order or withdraw from the agreement and take appropriate action.

IntelliVision is a Delaware corporation with its principal place of business in San Jose, California. Respondent advertises and sells an artificial intelligence-based facial recognition software product to original equipment manufacturers, large integrators, and large end users. Respondent’s facial recognition software has been incorporated into two consumer products sold by its parent corporation Nice North America, LLC: the 2GIG Edge, a home security system; and the Elan Intelligent Touch Panel, a smart home touch panel. The software allows consumers to register their face and then scan their face to gain access to the 2GIG Edge home security system. Similarly, the software allows consumers to register their face and then scan their face to gain access to the smart home features of the Elan Intelligent Touch Panel.

The Commission’s proposed three-count complaint alleges that Respondent represented that IntelliVision’s facial recognition software has one of the highest accuracy rates on the market and has been trained on millions of faces. The proposed complaint further alleges that Respondent represented that IntelliVision’s facial recognition software can detect faces of all ethnicities without racial bias, was developed with multi-ethnic and gender datasets to ensure no built-in bias and performs with zero gender or racial bias. In addition, the proposed complaint alleges that IntelliVision claimed its anti-spoofing technology ensures the system cannot be fooled by photo or video images. According to the proposed complaint, these claims are false or misleading or were not substantiated at the time the representations were made, in violation of section 5 of the FTC Act.

The Proposed Order contains injunctive relief designed to prevent Respondent from engaging in the same or similar acts or practices in the future. Provision I prohibits Respondent from making any misrepresentation (1) about the accuracy or efficacy of its Facial Recognition Technology; (2) about the comparative performance of its Facial Recognition Technology with respect to individuals of different genders, ethnicities, and skin tones, or reducing or eliminating differential performance

based on such factors; or (3) about the accuracy or efficacy of its Facial Recognition Technology with respect to detecting spoofing or otherwise determining Liveness. (Facial Recognition Technology and Liveness are defined in the Proposed Order.)

Provision II prohibits Respondent from making any representation about the effectiveness, accuracy, or lack of bias of Facial Recognition Technology, or about the effectiveness of such Facial Recognition Technology at detecting spoofing, unless Respondent possesses and relies upon competent and reliable testing that substantiates the representation at the time the representation is made. For the purposes of this Provision, competent and reliable testing means testing that is based on the expertise of professionals in the relevant area, and that (1) has been conducted and evaluated in an objective manner by qualified persons and (2) is generally accepted by experts in the profession to yield accurate and reliable results. Respondent also must document all such testing including: the dates and results of all tests; the method and methodology used; the source and number of images used; the source and number of different people in the images; whether such testing includes Liveness tests; any technique(s) used to modify the images to create different angles, different lighting conditions or other modifications; demographic information collected on images used in testing if applicable; information about the skin tone collected on images used in testing if applicable; and any information that supports, explains, qualifies, calls into question or contradicts the results. Provision III requires Respondent to obtain and submit acknowledgments of receipt of the Order.

Provisions IV–VI are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondent to provide information or documents necessary for the Commission to monitor compliance. Provision VII states the Proposed Order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the Proposed Order, and it is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify the Proposed Order's terms in any way.

By direction of the Commission.

April J. Tabor,
Secretary.

Concurring Statement of Commissioner Andrew N. Ferguson

Today, the Commission approves a complaint and settlement against IntelliVision, a developer of facial recognition software.¹ Count I charges IntelliVision with misrepresenting the efficacy of its software. IntelliVision claimed that its software had one of the highest accuracy rates in the world, but in reality it was not even among the top hundred best performing algorithms tested by the National Institute of Standards and Technology.² Count I further accuses IntelliVision of claiming that its software was trained on “millions” of faces, when the software was in fact trained on only 100,000 faces.³ Count III accuses IntelliVision of claiming that its software could not be fooled by photo or video images even though it had insufficient evidence to support that categorical claim.⁴ I support these counts without reservation.

I write briefly to explain why I also support Count II, which accuses IntelliVision of misrepresenting that its software performs with “zero gender or racial bias” when in fact its software exhibits substantially different false-negative and false-positive rates across sex and racial lines.⁵ Treating IntelliVision as having committed a deceptive act or practice in these circumstances could lead one to believe that the Commission is taking the position that to be “unbiased,” a software system must produce equal false-negative and false-positive rates across race and sex groups.

I do not read the complaint that way, and I today do not vote to fix the meaning of “bias.” Statistical disparity in false-positive and false-negative rates is not necessarily the only or best definition of what it means for an automated system to be “biased.” The question is open to philosophical and political dispute. Other definitions might consider the discriminatory intentions of the developers, the developers’ diligence in avoiding artificial disparities while training the automated system, or whether any statistical disparities reflect the underlying realities the system is designed to reflect or epistemological

limitations in that underlying reality that are impossible or uneconomical to overcome. This complaint does not choose from among these competing definitions and considerations.

But IntelliVision used the word “bias.” If it intended to invoke a specific definition of “bias,” it needed to say so. But it did not say so; it instead left the resolution of this ambiguity up to consumers. IntelliVision must therefore bear the burden of substantiating all reasonable interpretations that consumers may have given its claim that its software had “zero gender or racial bias.”⁶ A reasonable consumer could interpret “zero gender or racial bias” in this context to mean equal rates of false positives and false negatives across those lines. I therefore have reason to believe that IntelliVision’s claims were false or unsubstantiated because its software did not have equal false-positive and false-negative rates across those lines.

Pursuant to that understanding, I concur in the filing of the complaint and settlement.

[FR Doc. 2024–28716 Filed 12–5–24; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 212 3035]

Gravy Analytics, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 6, 2025.

⁶ FTC Policy Statement on Deception, 103 F.T.C. 174, 178 (1984) (“When a seller’s representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation”); FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 839, 840 (1984) (“Although firms are unlikely to possess substantiation for implied claims they do not believe the ad makes, they should generally be aware of reasonable interpretations and will be expected to have prior substantiation for such claims. The Commission will take care to assure that it only challenges reasonable interpretations of advertising claims.”).

¹ Complaint, *In re IntelliVision Technologies Corp.*

² *Id.* ¶ 11.

³ *Id.* ¶ 14.

⁴ *Id.* ¶ 13.

⁵ *Id.* ¶ 11.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write “Gravy Analytics; File No. 212 3035” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex G), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jennifer Rimm (202-326-2277), Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 6, 2025. Write “Gravy Analytics; File No. 212 3035” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “Gravy Analytics; File No. 212 3035” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex G), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before January 6, 2025. For information on the Commission’s

privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Gravy Analytics, Inc. (“Gravy Analytics”) and Venntel, Inc. (“Venntel,” and collectively with Gravy Analytics, “Respondents”). The proposed consent order (“Proposed Order”) has been placed on the public record for 30 days for receipt of public comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with the comments received, and will decide whether it should make final the Proposed Order or withdraw from the agreement and take appropriate action.

Gravy Analytics and Venntel are Delaware corporations with their headquarters in Virginia. Respondent Venntel is a subsidiary of Gravy Analytics. Gravy Analytics and Venntel are data brokers that collect and sell precise geolocation data about consumers’ mobile devices.

Gravy Analytics does not collect data directly from consumers. Rather, it purchases precise geolocation data and other personal data for its products from other data suppliers, including other data aggregators. Gravy Analytics offers several data products to its customers. These products include transfers of batch location data, consisting of a unique persistent identifier for the mobile device called a Mobile Advertiser ID (“MAID”) and timestamped latitude and longitude coordinates; audience segments, which are groupings of MAIDs that purportedly share similar traits based on the locations or events the mobile devices and MAIDs have visited; and an online application programming interface that, among other things, enables Gravy Analytics’ customers to geofence locations. Gravy Analytics makes its data products available to commercial customers, such as marketers, other data brokers, stores, and other commercial entities.

Venntel obtains mobile location data from Gravy Analytics exclusively. Venntel offers batch transfers of location data and allows customers to geofence specific locations. Venntel also offers its customers access to an online application programming interface through which its customers may search for devices that visited specific

locations, obtain device information about a particular mobile phone, or obtain location data for individual devices. Venntel sells its data products only to public sector customers, such as government contractors.

The Commission's proposed three-count complaint alleges Respondents violated section 5(a) of the FTC Act by (1) unfairly selling sensitive location data and (2) unfairly collecting, using, and transferring consumer location data without consent verification; and that Gravy Analytics violated section 5 of the FTC Act by (3) unfairly selling inferences about consumers' sensitive characteristics derived from location data.

With respect to the first count, the proposed complaint alleges Respondents sold location data associated with persistent identifiers, such as MAIDs, that could be used to track consumers to sensitive locations, such as medical facilities, places of religious worship, places that may be used to infer an LGBTQ+ identification, domestic abuse shelters, and welfare and homeless shelters. For example, by plotting timestamped latitude and longitude coordinates associated with mobile devices using publicly available map programs, it is possible to identify which consumers' mobile devices visited medical facilities and when.

With respect to the second count, the proposed complaint alleges Respondents failed to verify that their data suppliers obtained informed consent from consumers to have the consumers' location data collected, used, and sold. Respondents' primary mechanism for ensuring that consumers have provided appropriate consent is through contractual requirements with their suppliers. However, contractual provisions, without additional safeguards, are insufficient to protect consumers' privacy.

With respect to the third count, the proposed complaint alleges it was an unfair practice for Gravy Analytics to sell inferences about consumers' sensitive characteristics derived from their location data. Gravy Analytics created custom audience segments for customers based, for example, on consumers' attendance at a cancer charity run and based on consumers' church attendance, and has also offered standard audience segments based on medical decisions and political activities.

The proposed complaint alleges that Respondents could have addressed each of these failures by implementing certain safeguards at a reasonable cost and expenditure of resources. The proposed complaint alleges

Respondents' practices caused, or are likely to cause, substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers themselves. Such practices constitute unfair acts or practices under section 5 of the FTC Act.

The Proposed Order contains injunctive relief designed to prevent Respondents from engaging in the same or similar acts or practices in the future. Part I prohibits Respondents from misrepresenting the extent to which: (1) Respondents review data suppliers' compliance and consent frameworks, consumer disclosures, sample notices, and opt in controls; (2) Respondents collect, maintain, use, disclose, or delete any covered information, and (3) the location data that Respondents collect, use, maintain, or disclose is deidentified.

Part II prohibits Respondents from selling, licensing, transferring, sharing, disclosing, or using sensitive location data in any products or services. Sensitive locations are defined as those locations in the United States associated with (1) medical facilities (*e.g.*, family planning centers, general medical and surgical hospitals, offices of physicians, offices of mental health physicians and practitioners, residential mental health and substance abuse facilities, outpatient mental health and substance abuse centers, outpatient care centers, psychiatric and substance abuse hospitals, and specialty hospitals); (2) religious organizations; (3) correctional facilities; (4) labor union offices; (5) locations of entities held out to the public as predominantly providing education or childcare services to minors; (6) associations held out to the public as predominantly providing services based on racial or ethnic origin; (7) locations held out to the public as providing temporary shelter or social services to homeless, survivors of domestic violence, refugees, or immigrants; or (8) military installations, offices, or buildings. This prohibition does not apply to sensitive location data used to respond to or prevent data security incidents, for national security purposes conducted by Federal agencies or other Federal entities, or for response by a Federal law enforcement agency to an imminent risk of death or serious bodily harm to a person. Part III requires that Respondents implement and maintain a sensitive location data program to develop a comprehensive list of sensitive locations and to prevent the use, sale, license, transfer, sharing, or disclosure of sensitive location data.

Part IV requires that Respondents establish and implement policies, procedures, and technical measures designed to prevent recipients of Respondents' location data from associating consumers with locations predominantly providing services to LGBTQ+ individuals, locations of public gatherings of individuals during social demonstrations, marches, or protests, or using location data to determine the identity or location of an individual's home. Part V requires that Respondents notify the Commission any time Respondents determine that a third party shared Respondents' location data, in violation of a contractual requirement between Respondents and the third party.

Part VI requires that Respondents must not collect, use, maintain, and disclose location data: (1) when consumers have opted-out, or otherwise declined targeted advertising and (2) without a record documenting the consumer's consent obtained prior to the collection of location data. Part VII requires that Respondents implement a supplier assessment program designed to ensure that consumers have provided consent for the collection and use of all data obtained by Respondents that may reveal a consumer's precise location. Under this program, Respondents must conduct initial assessments of all their data suppliers within 30 days of entering into a data sharing agreement, or within 30 days of the initial date of data collection. The program also requires that Respondents confirm that consumers provided consent and create and maintain records of suppliers' assessment responses. Finally, Respondents must cease from using, selling, or disclosing location data for which consumers have not provided consent.

Part VIII requires that Respondents provide a clear and conspicuous means for consumers to request the identity of any entity, business, or individual to whom Respondents know their location data has been sold, transferred, licensed, or otherwise disclosed or a method to delete the consumers' location data from the databases of Respondents' customers. Respondents must also provide written confirmation to consumers that the deletion requests have been sent to Respondents' customers.

Part IX requires that Respondents provide a simple, easily-located means for consumers to withdraw any consent provided and Part X requires that Respondents cease collecting location data within 15 days after Respondents receive notice that the consumer withdraws their consent. Part XI also

requires that Respondents provide a simple, easily-located means for consumers to request that Respondents delete location data that Respondents previously collected and to delete the location data within 30 days of receipt of such request unless a shorter period for deletion is required by law.

Part XII requires that Respondents: (1) document and adhere to a retention schedule for the covered information they collect from consumers, including the purposes for which they collect such information, the specific business needs, and an established timeframe for its deletion, and (2) prior to collecting or using any new type of information related to consumers that was not previously collected, and is not described in its retention schedule, Respondents must update their retention schedules. Part XIII requires that Respondents delete or destroy all historic location data and all data products developed using this data. Respondents have the option to retain historic location data if they have records showing they obtained consent or if they ensure that the historic location data is deidentified or rendered non-sensitive. Respondents must inform all customers that received location data from Respondents within 3 years prior to the issuance date of this Order of the Commission's position that such data should be deleted, deidentified, or rendered non-sensitive. Part XIV requires Respondents to establish and implement, and thereafter maintain, a comprehensive privacy program that protects the privacy of consumers' personal information.

Parts XV–XVIII are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondents to provide information or documents necessary for the Commission to monitor compliance. Part XIX states that the Proposed Order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the Proposed Order, and it is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify the Proposed Order's terms in any way.

By direction of the Commission,
Commissioner Ferguson dissenting.

April J. Tabor,
Secretary.

Statement of Commissioner Alvaro M. Bedoya Joined by Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter in Full and Commissioner Melissa Holyoak in Part I

I. The Porous Line Between Government and Private Surveillance

Any first-year constitutional law student will tell you that the distinction between a government agent and private actor is paramount: the Fourth Amendment corrals the former but not the latter. For the people being watched, that line is porous if not irrelevant.

Governments have long relied on private citizens for work that would be impractical or illegal for law enforcement. Elizabeth I prided herself on seeing and hearing all in her realm, famously sitting for one of her final portraits in a gown embroidered with human eyes and ears.¹ Her ministers achieved that surveillance through a much-feared system of agents and spies,² as well as a quieter network of local clergy who tracked the weekly church attendance of converted Catholics and the Separatist Puritans we now know as Pilgrims.³ Her successor, James I, went further, offering bounties to any of his subjects who reported practicing Catholics.⁴

The governor of Plymouth Colony, William Bradford, would later recount what forced him and his fellow migrants to travel, first to the Netherlands and then to the New World. They were “hunted & persecuted on every side,” he

¹ See generally Daniel Fischlin, *Political Allegory, Absolutist Ideology, and the “Rainbow Portrait” of Queen Elizabeth I*, 50 *Renaissance Q.* 170, 175–83 (1997) (reflecting the view that the portrait was intended to convey that “[t]he Queen watches and listens vigilantly, seeing in all perspectives, hearing in all directions”).

² See generally John Coffey, *Persecution and Toleration in Protestant England, 1558–1689* (2000). See also *id.* at 95–96 (describing government agents loitering in St. Paul's courtyard “pretending to be sympathetic” to the Puritans' cause); Stephen Budiansky, *Sir Francis Walsingham*, Britannica, available at <https://www.britannica.com/biography/Francis-Walsingham> (last accessed Nov. 29, 2024).

³ See Act of Uniformity, 1 Eliz. 1, c. 2 (1559) (instituting a 12 shilling fine for absences, “to be levied by the churchwardens of the parish where such offence shall be done”); An Act to retain the Queen's Majesty's Subjects in their due Obedience, 23 Eliz. 1, c. 1 (1580) (raising the fine to 20 pounds); Act Against Puritans, 35 Eliz. 1, c. 1 (1593) (instituting penalties for Puritans who profess allegiance to the Church of England, only to subsequently fail to attend church services).

⁴ See An Act to Prevent and Avoid Dangers which Grow by Popish Recusants, 3 Jas. 1, c. 5 (1605) (immunizing informants and providing them one-third of the money seized from the offending individual).

wrote. While “some were taken & clapt up in prison, others had their houses besett & watcht night and day[.]”⁵

Four-hundred years later, those loose networks of citizen-informants have been succeeded by a digitized, automated, and highly profitable industry of commercial data brokers that “artfully dodge[] privacy laws.”⁶ In 2001, the Electronic Privacy Information Center used the Freedom of Information Act to survey Federal law enforcement agencies' reliance on those firms.⁷ They determined that this network of data brokers allows law enforcement to easily and warrantlessly “download comprehensive dossiers on almost any adult.”⁸ They warned that “[i]f we are ever unfortunate enough to have George Orwell's Big Brother in the United States, it will be made possible by the private sector.”⁹

This complaint and proposed settlement concern two contemporary peers of those data brokers, Gravy Analytics, Inc. and its subsidiary, Venntel, Inc. (“Respondents”). The Commission alleges these companies collect, aggregate, and sell precise geolocation data from roughly one billion mobile devices.¹⁰ According to public reporting, Venntel's customers have included American law enforcement.¹¹

⁵ See William Bradford, Of Plymouth Plantation 6 (c. 1630–1651). Professor Coffey explains that, while Catholics were the focus of government surveillance efforts at the time, Separatist Puritans were also targeted. See Coffey, *supra* note 2, at 103 (“The harsh repression of the Separatists in the 1580s and 90s was . . . out of all proportion to their threat. . . . Separatist congregations were hunted down and incarcerated, their ringleaders put to death.”).

⁶ See Chris J. Hoofnagle, *Big Brother's Little Helpers: How ChoicePoint and Other Commercial Data Brokers Collect and Package Your Data for Law Enforcement*, 29 *N.C. J. Int'l L.* 595, 595 (2003).

⁷ *Id.* at 597.

⁸ *Id.* at 595.

⁹ *Id.* at 633.

¹⁰ Complaint, *FTC v. Gravy Analytics, Inc. & Venntel, Inc.*, (Dec. 2, 2024), [hereinafter *Complaint*] at 2.

¹¹ See, e.g., Byron Tau and Michelle Hackman, *Federal Agencies Use Cellphone Location Data for Immigration Enforcement*, Wall Street Journal, (Feb. 7, 2020), <https://www.wsj.com/articles/federal-agencies-use-cellphone-location-data-for-immigration-enforcement-11581078600>; Joseph Cox, *The DEA Abruptly Cut Off Its App Location Data Contract*, Vice, (Dec. 7, 2020), <https://www.vice.com/en/article/dea-venntel-location-data/>; Lee Fang, *FBI Expands Ability to Collect Cellphone Location Data, Monitor Social Media, Recent Contracts Show*, The Intercept, (Jun. 24, 2020), <https://theintercept.com/2020/06/24/fbi-surveillance-social-media-cellphone-dataminr-venntel/>; Byron Tau, *IRS Used Cellphone Location Data to Try to Find Suspects*, Wall Street Journal, (Jun. 19, 2020), <https://www.wsj.com/articles/irs-used-cellphone-location-data-to-try-to-find-suspects-11592587815>.

II. The Respondents' Privacy Invasions Clearly Violate Section 5 of the FTC Act

You may not know anything about Gravy Analytics, but Gravy Analytics may know quite a bit about you.

Do you eat breakfast at McDonald's? Do you buy CBD oil? Did you recently buy lingerie? Are you pregnant? Are you a stay-at-home parent? Are you a Republican? A Democrat? Are you in the pews every Sunday in Charlotte? Or Atlanta? Have you recently attended an event for breast cancer? Are you a blue-collar Gen X parent and golf-lover who has recently been looking into Medicare?

These are just a few of the 1,100 labels that the Commission alleges that Gravy Analytics appended to individual consumers so as to sell their bundled data to private companies for targeted advertising—or to better understand the “persona” of any given individual whose data a company has requested.¹² According to our complaint, Respondents actively encouraged their customers to identify individual people using the data they sold.¹³

In the complaint, the Commission alleges that the Respondents' 1) sale of data tying consumers to sensitive locations, (2) collection and use of geolocation data without verifying that it was obtained with consumers' informed consent, and (3) the sale of sensitive inferences about those consumers' “medical conditions, political activities, and religious beliefs,” among other things, constitute unfair trade practices prohibited by section 5 of the Federal Trade Commission Act.

I agree with my colleague Commissioner Holyoak that the specific practices alleged in the complaint meet the threshold for “substantial injury” under section 5.¹⁴ More than a decade ago, the Commission issued a final report offering guidance to businesses on protecting the privacy of American consumers.¹⁵ That report classified “precise geolocation” as a type of “sensitive information,” and urged companies to obtain people's affirmative express consent before collecting it.¹⁶ As the District Court of Idaho affirmed last year, collection and disclosure of precise geolocation is a violation of

privacy—itself an injury.¹⁷ It can further lead to stigma, harassment, and even physical danger.¹⁸

This is the fourth recent Commission action and third settlement brought to stop the nonconsensual collection and sale of geolocation data.¹⁹ In my view, the illegality of this conduct is more than clear.

III. Venntel's Sales of Location Data Undermine Established Fourth Amendment Protections

According to our complaint, Respondent Venntel “markets to its public sector customers that the location data and these enhanced tools can be used for government purposes.”²⁰ Public reporting suggests that these government clients have included Federal law enforcement agencies like the Department of Homeland Security (DHS), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the Internal Revenue Service (IRS).²¹ This poses an important question: Can a collection of precise geolocation data that otherwise violates section 5 be cured by a potential future law enforcement use of that data?

I think the answer is “no.” Section 5 makes no mention of such a circumstance, but it does expressly call on the Commission to consider “countervailing benefits to consumers” from the practice in question, and further permits the Commission to weigh “established public policies as evidence to be considered with all other evidence” when declaring a practice unfair.²²

In 1928, Justice Louis Brandeis, one of the architects of this Commission, warned against formalistic interpretations of the Fourth Amendment. “Clauses guaranteeing to

the individual protection against specific abuses of power must have a . . . capacity of adaptation to a changing world,” he wrote.²³ For the last 60 years, since the *Katz* court's declaration that the Fourth Amendment “protects people, not places,” the Supreme Court has more or less heeded that call.²⁴

In *Kyllo*, the Court found that a thermal imaging device that allowed law enforcement to track activities inside a home constituted a search under the Fourth Amendment—even though it involved no trespass into the home.²⁵ In *Riley*, the Court refused to equate the search of someone's cellphone with searches of their purse or wallet or any other physical items people carry.²⁶ Most relevantly, in *Carpenter*, the Court held that citizens have a reasonable expectation of privacy in extended cell-site location records of their movements, irrespective of the fact that the data accessed by the government was disclosed to and held by a commercial third party, and further held that the government must generally obtain a warrant before acquiring such records.²⁷

Look at the cell-site location data in *Carpenter*; look at the data in question here. It's basically the same data. In some ways, the Respondents' data is more invasive.

The cell-site records in *Carpenter* could place an individual “within a wedge-shaped sector ranging from one-eighth to four square miles”;²⁸ Respondents' data locates people down to a meter.²⁹ Cellphone carriers maintain location records for five years, and Federal agents obtained a total of 129 days of geolocation data—although the Court held that accessing just seven days of data constitutes a Fourth Amendment search.³⁰ The Respondents can draw on three years of data, and Venntel offers its clients the ability to “continuously” track a person's phone for 90 days.³¹ The *Carpenter* court warned that cell-site geolocation records

¹⁷ See Order on Motion to Dismiss, *FTC v. Kochava, Inc.*, 2:22-cv-00377-BLW, (D. Idaho May 4, 2023) at 8–10, (“an invasion of privacy may constitute an injury that gives rise to liability under Section 5(a)”) https://www.ftc.gov/system/files/ftc_gov/pdf/71-OpiniononMTD.pdf.

¹⁸ *Id.* at 8–9.

¹⁹ Complaint, *FTC v. Kochava, Inc.*, 2:22-cv-00377-BLW, (D. Idaho Jul. 15, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/1.%20Complaint.pdf; Complaint, *FTC v. X-Mode Social, Inc.*, Docket No. 212–3038, (Jan. 9, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/X-Mode-Complaint.pdf; Complaint, *FTC v. InMarket Media, LLC*, Docket No. 202–3088, (Jan. 18, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint-InMarketMediaLLC.pdf.

²⁰ Complaint, *supra* note 10.

²¹ See *supra* note 11.

²² 15 U.S.C. 45(n). To be clear, I do not believe that an appeal to public policy is necessary to support this matter. Still, I believe it is useful exercise here, especially when considering the Commission's actions relative to other policy priorities.

²³ *Olmstead v. United States*, 277 U.S. 438, 472 (Brandeis, J., dissenting). The *Olmstead* majority held that a prolonged wiretap did not constitute a search or seizure for the purposes of the Fourth Amendment because the interception occurred along public phone lines leading to the home in question—“[t]here was no entry of the houses or offices of the defendants.” *Id.* at 464.

²⁴ *Katz v. United States*, 389 U.S. 347, 351 (1967).

²⁵ *Kyllo v. United States*, 533 U.S. 67 (2001).

²⁶ *Riley v. California*, 573 U.S. 373 (2014).

²⁷ See *Carpenter v. United States*, 585 U.S. 296, 306–321 (2018).

²⁸ See *Carpenter*, 585 U.S. at 312.

²⁹ Complaint, *supra* note 10, at 2.

³⁰ See *Carpenter*, 585 U.S. at 302 (129 days) & 310 n. 3 (seven days constitutes a Fourth Amendment search).

³¹ Complaint, *supra* note 10, at 3–4.

¹² See Complaint, *supra* note 10, at 9–10.

¹³ *Id.* at 5.

¹⁴ Statement of Commissioner Melissa Holyoak, In the Matter of Gravy Analytics, Inc. & Venntel, Inc. (Dec. 2, 2024).

¹⁵ Fed. Trade Comm'n, Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers, (2012).

¹⁶ *Id.* at 58.

can reveal a person's "familial, political, professional, and sexual associations"—a phrase that might as well be Respondents' marketing slogan.³²

To make this plain: *Carpenter* said that to get this data, you need a warrant; Venntel lets them get it without a warrant. I cannot see how this is a "countervailing benefit to consumers." It certainly contravenes "established public policy."

Looking beyond *Carpenter*, a panoply of statutes sets out a range of safeguards against the government's untrammeled collection of Americans' sensitive data. The Wiretap Act requires warrants to authorize wiretapping and interception of communications.³³ The Stored Communications Act protects the privacy of subscribers' information held by internet service providers and established procedures for government access by warrant, subpoena, court order, or written consent.³⁴

Both of those laws concern oral or written communications; one may assume that Congress would want to protect this data. Consider that if law enforcement wants YouTube to disclose the name of a single video that I have watched online, Federal statute requires that they get a warrant, grand jury subpoena, or a court order.³⁵ Similarly, the Cable Act provides that cable subscribers' personally identifiable information, such as their viewing habits, cannot be disclosed without their consent, except in the case of a court order.³⁶

³² See *Carpenter*, 585 U.S. at 311 (citing *United States v. Jones*, 565 U.S. 400, 415 (2011) (Sotomayor, J., concurring)). Furthermore, while it may be easier to refrain from using an app than to stop using a smartphone altogether, the complaint makes clear that the customers whose geolocation information has been collected by Venntel have in no way voluntarily "assume[d] the risk" of disclosing their geolocation information in this manner. See *id.* at 315; Complaint, *supra* note 10, at 5–9. In sum, it is easy to agree with my colleague Commissioner Holyoak, who wrote that our enforcement actions protecting precise geolocation "[correlate] with judicial recognition, in other contexts, of how significant such information is." See Concurring Statement of Comm'r Melissa Holyoak, Kochava, Inc., FTC Matter No. X230009, at 2 (July 15, 2024) ("The Commission's effort to protect the privacy of consumers' precise geolocation data in this case correlates to judicial recognition, in other contexts, of how significant such information is."), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-7-15-Commissioner-Holyoak-Statement-re-Kochava-final.pdf.

³³ 18 U.S.C. 2510 through 2522.

³⁴ 18 U.S.C. 2703(d).

³⁵ *Id.* 2710(b)(2)(C). Separately, while it cannot yet constitute "an established public policy," I would be remiss if I did not note that The Fourth Amendment Is Not For Sale Act, which would extend these Fourth Amendment protections to geolocation data held by data brokers, recently passed the House of Representatives. See H.R. 4639, 118th Cong. (2023).

³⁶ 47 U.S.C. 551(c).

Admittedly, there is active debate around whether these statutes impose the correct degree of protection in light of the Fourth Amendment. That said, the correct degree is clearly not zero.

IV. The Proposed Order

Speaking generally, the proposed order prohibits Respondents from disclosing sensitive location data in any of its products or services.³⁷ Sensitive location data includes, *inter alia*, medical facilities, religious buildings, schools and daycares, domestic violence shelters, and military facilities.³⁸ The order also directs Respondents to ensure that their clients do not use their data to track people to political protects, or to locate someone's home.³⁹ The order requires that Respondents not collect any data from consumers that have opted out of targeted advertising via their operating system, and will block them from collecting, using, or disclosing geolocation data without proof that people have agreed to that.⁴⁰

Like the Court in *Carpenter*, the proposed order recognizes that not all government uses of geolocation data are alike.⁴¹ It has exceptions for the disclosure of geolocation data for certain bona fide national security and data security purposes, including countering espionage and disrupting cyber threats from foreign "nation states, terrorists, or their agents or proxies."⁴² It also has exceptions for Federal law enforcement agencies responding "to an imminent risk of death or serious bodily harm to a person."⁴³

Unless one of these special exceptions applies, agencies like DHS, DEA, FBI, and IRS will not be able to use Venntel to warrantlessly track people to church, to the doctor, to school, to protests, or to their homes. And Venntel will soon not be able to trade in any geolocation data without the consent of the people being tracked.

³⁷ See Order, Gravy Analytics, Inc. & Venntel, Inc., FTC Docket No. 2123035 at 5 ("II. Prohibitions on the Use, Sale, or Disclosure of Sensitive Location Data").

³⁸ See *id.* at 4–5.

³⁹ See *id.* at 7–8 ("IV. Other Location Data Obligations").

⁴⁰ See *id.* at 9 ("VI. Limitations on Collection, Use, Maintenance, and Disclosure of Location Data"). These are just a few parts of the order, which includes various other provisions and exceptions.

⁴¹ See *Carpenter*, 585 U.S. at 319.

⁴² Order, *supra* note 37.

⁴³ See *id.* at 4. These should not be understood as "exceptions" to section 5, but rather a recognition that in this specific instance, these order provisions are appropriate.

Concurring Statement of Commissioner Melissa Holyoak Joined in Part by Commissioner Alvaro M. Bedoya (Section I Only)

I support today's settlement with two location data broker companies—Respondents Gravy Analytics, Inc. ("Gravy") and its subsidiary, Venntel, Inc. ("Venntel")—to resolve allegations that Respondents: packaged and sold consumers' precise geolocation data to third parties, revealing consumers' visits to places of worship, medical facilities, and political gatherings (Count I); failed to employ reasonable procedures to verify that geolocation data obtained from third parties had been collected with appropriate consumer consent (Count II); and created and sold "audience segments" based on consumers' religious beliefs, political leanings, and medical conditions that had been derived from precise geolocation data (Count III).¹ Staff are to be commended for their efforts and hard work in resolving this matter.

My statement proceeds in two parts: Section I discusses Respondents' collection and sale of consumers' precise geolocation data to third parties and the alleged direct and cognizable harms resulting from that conduct. Section II outlines my views on the necessity, efficacy, and scope of the Proposed Order's injunctive provisions and my interpretation of Count III of the Complaint.

I. The Alleged Harms From Respondents' Conduct

I start by recounting Respondents' alleged conduct here. The Complaint alleges that Respondents collected and purchased vast amounts of consumers' precise geolocation information from third-party data suppliers and mobile applications.² Through these various suppliers and applications, Respondents claimed to collect, process, and curate over 17 billion signals from approximately a billion mobile devices on a daily basis.³ Respondents allegedly packaged and sold this geolocation data—in both raw and enriched formats—along with other persistent identifiers to different commercial entities and government clients.⁴ The Complaint also alleges that Gravy separately offered commercial entities curated "audience segments" for targeted advertising, sometimes based on consumers' perceived religious beliefs, political leanings, and medical

¹ Compl. ¶¶ 76–81.

² *Id.* ¶¶ 7–9.

³ *Id.* ¶ 9.

⁴ *Id.* ¶¶ 7, 13–22.

conditions derived from insights about their geolocation data.⁵

I am gravely concerned about the potential harms stemming from the sale of consumers' geolocation data,⁶ and in certain instances, these harms may constitute a "substantial injury" under section 5 of the FTC Act.⁷ Here, the Complaint alleges that Respondents' sale of consumers' precise geolocation data in certain circumstances enabled their third-party clients to directly track individual consumers' movements at sensitive "geo-fenced" locations, such as places of worship, medical facilities, and political events, with no guardrails or oversight.⁸ The Complaint further alleges that this practice directly revealed consumers' political, religious, and medical activities, and thus, constitutes a "substantial injury" under section 5.⁹ I agree. As I explained in the *Kochava* action, selling "precise geolocation information revealing political, medical, or religious activities, without consumers' consent to willing purchasers, . . . breaches [consumers'] trust and jeopardizes Americans' freedoms."¹⁰ Thus, under these circumstances, the alleged sale of consumers' precise geolocation information—data obtained from third-party suppliers without consumers' knowledge and appropriate consent—meets the threshold for alleging "substantial injury" under section 5.¹¹

⁵ *Id.* ¶¶ 44–45, 50–53.

⁶ See, e.g., Dhruv Mehrotra & Dell Cameron, *Anyone Can Buy Data Tracking US Soldiers and Spies to Nuclear Vaults and Brothels in Germany*, *Wired* (Nov. 19, 2024) ("Experts caution that foreign governments could use [geolocation] data to identify individuals with access to sensitive areas; terrorists or criminals could decipher when [U.S.] nuclear weapons are least guarded; or spies or nefarious actors could leverage embarrassing information for blackmail."), <https://www.wired.com/story/phone-data-us-soldiers-spies-nuclear-germany/>.

⁷ See Concurring Statement of Comm'r Melissa Holyoak, *Kochava, Inc.*, FTC Matter No. X230009, at 2 (July 15, 2024) ("I agree that the complaint adequately alleges a likelihood of substantial injury, in the revelation of sensitive locations implicating political, medical, and religious activities. The Commission's effort to protect the privacy of consumers' precise geolocation data in this case correlates to judicial recognition, in other contexts, of how significant such information is."), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-7-15-Commissioner-Holyoak-Statement-re-Kochava-final.pdf.

⁸ *Compl.* ¶¶ 11–12, 16, 18–22, 25–26.

⁹ *Id.* ¶¶ 48, 50–53, 56–57, 59.

¹⁰ Holyoak Concurring Statement, *supra* note 7, at 3.

¹¹ The Complaint alleges several secondary (and indirect) harms that may arise from Respondents' conduct, including "stigma, discrimination, physical violence, emotional distress, and other harms." See *Compl.* ¶¶ 60–69. I have concerns about whether certain secondary harms are legally cognizable, and whether we could meet our burden of proof—at summary judgment or trial—that Respondents' practices raised a "significant risk of

In addition, consumers' precise geolocation data can be easily misused by law enforcement to impinge on basic freedoms under the United States Constitution, including Americans' Fourth Amendment rights against wrongful government surveillance.¹² I share Commissioner Bedoya's concerns about this practice and the harms it poses to Americans.¹³ The continued misuse of geolocation data by law enforcement is an ongoing and extant threat to Americans' civil liberties.¹⁴ Moreover, foreign actors can readily purchase precise geolocation data about Americans, including our active-duty military personnel, with no oversight or guardrails, which can pose serious national security and counterintelligence risks.¹⁵

Although I firmly believe that a comprehensive solution for the sale and

concrete harm" to consumers. *Cf. FTC v. Neovi, Inc.*, 604 F.3d 1150, 1157–58 (9th Cir. 2010) ("An act or practice can cause 'substantial injury' by doing a 'small harm to a large number of people, or if it raises a significant risk of concrete harm.'" (citation omitted)); *In re Soc. Media Adolescent Addiction/Pers. Inj. Prod. Liab. Litig.*, No. 4:23-CV-05448-YGR, 2024 WL 4532937, at *29 (N.D. Cal. Oct. 15, 2024) (concluding that the States plausibly alleged a "substantial injury" for Meta's alleged unfair conduct because: (1) "body image and eating disorders" are real medical conditions, (2) "knowingly developing tools that encourage youth addiction 'cannot fairly be classified as either trivial or speculative,'" and (3) the States' allegations present a "substantial risk of imposing at least a 'small harm to a large number of people,' . . . , given these practices are allegedly targeted at all minor users of Facebook and Instagram") (internal citations omitted). I await guidance from future court decisions, including in the Commission's ongoing *Kochava* litigation, about these harms.

¹² Holyoak Concurring Statement, *supra* note 7, at 2–3 (describing how "government officials can purchase precise geolocation data from commercial data brokers in ways that may circumvent Fourth Amendment protections," and how "[t]here are examples of public-private collaboration in other settings, too, suggesting that government and private-sector entities increasingly work together to leverage consumers' private information without compulsory or formal process, such as a warrant") (citations omitted); see also *id.* at 3 n.12 (citing Lee Fang, *FBI Expands Ability to Collect Cellphone Location Data, Monitor Social Media, Recent Contracts Show*, *The Intercept* (June 24, 2020), <https://theintercept.com/2020/06/24/fbi-surveillance-social-mediacellphone-dataminr-venntel/>).

¹³ See Concurring Statement of Comm'r Alvaro Bedoya, *In re Gravy Analytics, Inc.*, FTC Matter No. 2123035, at § III (Dec. 3, 2024).

¹⁴ See, e.g., H.R. Rep. No. 118–459, pt. 1, at 2 (Apr. 15, 2024) ("H.R. 4639, the Fourth Amendment Is Not For Sale Act . . . closes the legal loophole that allows data brokers to sell Americans' personal information to law enforcement, intelligence agencies, and other government agencies without the agency first acquiring a warrant. If the agency were to gather this information itself, it would be required to obtain a warrant, subpoena, or other legal order. By closing this loophole, the bill prevents government agencies from conducting an end-run around the protections of the Fourth Amendment.").

¹⁵ *Supra* note 6.

disclosure of consumers' geolocation information requires Congressional action,¹⁶ the Commission should not shy away from using all available enforcement tools in the interim to address the evolving practices in the location data broker industry. The Commission should also investigate how location data brokers share geolocation data about Americans with foreign or malign actors. And where the facts warrant it, the Commission should consider stronger injunctive remedies in those cases, including restrictions that prevent or impede the sale of geolocation data about Americans, especially our servicemembers and their families, to bad actors overseas.

II. The Proposed Order and Count III of the Complaint

I also write separately today to share my views on the Proposed Order's injunctive provisions and my interpretation of Count III of the Complaint (Unfair Sale of Sensitive Inferences Derived from Consumers' Location Data). To begin with, let me be clear: my vote for today's settlement should not be read as a full-throated endorsement of the Proposed Order in its entirety or every allegation in the Complaint. I have serious concerns about whether the Commission could obtain many of the Proposed Order's injunctive provisions in a contested litigation.¹⁷ Indeed, while the Federal district court in the *Kochava* litigation may address the propriety of various types of injunctive relief from the Proposed Order in the coming months, I will continue to reserve judgment here. I also have questions about the necessity and efficacy of the injunctive provisions found in Sections VI, VII, and IX.¹⁸

¹⁶ See generally H.R. 4639, Fourth Amendment Is Not For Sale Act, § 2 ("A law enforcement agency of a governmental entity and an element of the intelligence community may not obtain from a third party in exchange for anything of value a covered customer or subscriber record or any illegitimately obtained information."); H.R. 815, Public Law 118–50, Division I, Protecting Americans' Data from Foreign Adversaries Act of 2024, § 2 ("It shall be unlawful for a data broker to sell, license, rent, trade, transfer, release, disclose, provide access to, or otherwise make available personally identifiable sensitive data of a United States individual to—(1) any foreign adversary country; or (2) any entity that is controlled by a foreign adversary.").

¹⁷ See, e.g., Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In re Rytir, LLC*, FTC Matter No. 2323052, at 1 (Sept. 25, 2024) ("As I have suggested recently in other contexts, the Commission should steer clear of using settlements to advance claims or obtain orders that a court is highly unlikely to credit or grant in litigation."), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-rytir-statement.pdf.

¹⁸ For example, these injunctive provisions collectively require Respondents to ensure that consumers have affirmatively consented to all upstream uses of their location data, such as for

which first appeared in the *X-Mode Social* matter before my arrival at the Commission.¹⁹ As we turn the page on the last four years, the Commission should comprehensively examine the utility of the type of injunctive relief found in today's Proposed Order in the future and implement changes where warranted.²⁰

A. Proposed Order

While today's settlement is not perfect by any measure, several provisions in the Proposed Order will mitigate the harms resulting from Respondents' allegedly unlawful practices—*i.e.*, the disclosure of consumers' political, religious, and medical activities. Critically, the Proposed Order will prohibit the unauthorized sale or disclosure of “Sensitive Location Data”—geolocation data associated with military installations and buildings, medical facilities, religious organizations, childcare and education services, and many others—to third

targeted advertising, and provide opt-out mechanisms for consumers to withdraw consent directly with Respondents, even though Respondents “do not collect mobile location data directly from consumers” and consumers “have no interactions with Respondents and have no idea that Respondents have obtained their location data.” Compl. ¶ 8; *see generally* Proposed Decision and Order §§ VI (Limitations on Collection, Use, Maintenance, and Disclosure of Location Data), VII (Supplier Assessment Program), and IX (Withdrawing Consent). I question the efficacy of these provisions given their focus on Respondents, which are upstream from the initial collection of this data from consumers. While ensuring appropriate consent for all upstream uses of consumers' data is laudable goal, the Commission may be better served by focusing injunctive relief on the companies that collect this data in the first instance, not upstream data aggregators like Respondents.

¹⁹ Compare Proposed Decision and Order §§ VI (Limitations on Collection, Use, Maintenance, and Disclosure of Location Data), VII (Supplier Assessment Program), and IX (Withdrawing Consent) with *In re X-Mode Social, Inc. and Outlogic, LLC*, FTC Matter No. 212–3038, Proposed Decision and Order §§ VI–VII, IX (Jan. 9, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/X-Mode-D%26O.pdf.

²⁰ During the first Trump administration, the Commission held several public hearings on Competition and Consumer Protection in the 21st Century, including to solicit public and industry feedback on improvements to the Commission's data security orders. *See* Hearings on Competition & Consumer Protection in the 21st Century, Fed. Trade Comm'n (2018–19), <https://www.ftc.gov/enforcement-policy/hearings-competition-consumer-protection>. Following these public hearings, the Commission updated its data security orders, and FTC staff explained the key changes in public-facing guidance. *See* Andrew Smith, Former Director of the Bureau of Consumer Protection, *New and Improved FTC Data Security Orders: Better Guidance for Companies, Better Protection for Consumers*, FTC Business Blog (Jan. 6, 2020), <https://www.ftc.gov/business-guidance/blog/2020/01/new-and-improved-ftc-data-security-orders-better-guidance-companies-better-protection-consumers>.

parties.²¹ It also requires Respondents to implement a “Sensitive Data Location” program, as well as prophylactically avoid associating consumers' precise geolocation data with (1) political demonstrations, marches, and protests and (2) residences for individual consumers.²² The Proposed Order further requires Respondents to offer individual consumers the ability to request deletion of their geolocation data in Respondents' datasets.²³

I support Sections II, III, IV, and XI of the Proposed Order since they are directly tied to Respondents' alleged conduct, help mitigate the specific harms from disclosing consumers' political, religious, and medical activities, and properly balance the costs and benefits, as required by section 5 of the FTC Act. But today's settlement also has important limits, particularly with the sale and use of “Sensitive Location Data”. In my view, the Proposed Order strikes the proper balance under our unfairness authority. Permitting the use and disclosure of precise geolocation information to third parties for national security or data security purposes,²⁴ or to prevent imminent risk of death or serious bodily harm,²⁵ presents tangible benefits that appropriately fall within the confines of the Proposed Order's carefully negotiated definitions.

At the same time, the Proposed Order's restrictions on further disclosure of consumers' geolocation data help protect American citizens' constitutional rights under the Fourth Amendment of the United States Constitution. Fourth Amendment rights should not be for sale, under any circumstance. I agree with Commissioner Bedoya on this issue and the importance of the Proposed Order's

restrictions here.²⁶ Constitutionally appropriate process, such as warrants or subpoenas, exists for law enforcement to obtain information it needs, without resorting to purchasing consumers' precise geolocation data from unscrupulous location data brokers to circumvent judicial oversight.²⁷ Nor does the Proposed Order have a deleterious impact on law enforcement efforts. Law enforcement personnel can always avail themselves of the appropriate legal process to obtain such data in a manner that comports with Fourth Amendment requirements.

B. Count III (Unfair Sale of Sensitive Inferences)

The Complaint alleges that Gravy created and sold custom “audience segments” based on consumers' religious beliefs, political leanings, and medical conditions by geo-fencing sensitive locations, such as breast cancer events, specific churches, and “Republican focused political events.”²⁸ The sale of “audience segments” tied to consumers' religious beliefs, political leanings, and medical conditions qualifies as an unfair practice: it “causes or is likely to cause substantial injury” by revealing consumers' political, religious, and medical activities (as discussed *supra* in Section I), consumers cannot reasonably avoid the harm (they are not aware of Respondent and did not consent to the use), and it is not outweighed by any countervailing benefits to consumers or competition.²⁹ For these reasons, I support Count III.

However, my vote today does not entail broader support for the Majority's continued effort to deem targeted advertising an unfair practice under section 5. Nor should my vote be construed as endorsing the Complaint's theory about secondary harm to consumers.³⁰ As I have explained before, we must “tease out the complexity of the privacy debate” and “press for more empirical research” to ground our unfairness analysis.³¹ Our complaints cannot simply rely on politically charged buzzwords. For example, the Complaint here expresses concerns with Gravy's practice of creating general “audience segments”

²¹ Proposed Decision and Order § II; *see also id.* at 2 (Definitions).

²² *See id.* §§ III–IV. Indeed, I believe the Proposed Order's terms will prevent some of the unfortunate public-private partnerships we have seen recently in the context of political activity. *See, e.g.*, Holyoak Concurring Statement, *supra* note 7, at 3 n.13.

²³ Proposed Decision and Order § XI.

²⁴ *See* Proposed Decision and Order at 4 (defining “National Security” to mean “the national defense, foreign intelligence and counterintelligence, international and internal security, and foreign relations[.]” which “includes countering terrorism; combating espionage and economic espionage conducted for the benefit of any foreign government, foreign instrumentality, or foreign agent; enforcing export controls and sanctions; and disrupting cyber threats that are perpetrated by nation states, terrorists, or their agents or proxies”).

²⁵ *Id.* at 4 (defining “Location Data” to exclude data used for “National Security” purposes, “Security Purposes,” and “response by a federal law enforcement agency to an imminent risk of death or serious bodily harm to a person”).

²⁶ Bedoya Concurring Statement, *supra* note 13, at § IV.

²⁷ Holyoak Concurring Statement, *supra* note 7, at 2–3.

²⁸ Compl. ¶¶ 50–53.

²⁹ *Id.* ¶¶ 56–59.

³⁰ *Id.* ¶¶ 60–69.

³¹ Melissa Holyoak, Remarks at National Advertising Division, *A Path Forward on Privacy, Advertising, and AI*, at 7 (Sept. 17, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Holyoak-NAD-Speech-09-17-2024.pdf.

for targeted advertising—e.g., “Sports Betting Enthusiast[s],” “Early Risers,” “Healthy Dads,” “New Parents,” or “Parents with Young Kids”³² But the Complaint fails to confront how these audience segments create a “significant risk of concrete harm” and ignores the potential benefits to consumers and competition. Behaviorally targeted advertising may produce more relevant ads to consumers, reducing their search costs and allowing small businesses and new market entrants to connect with a broader consumer base.³³

Moreover, my vote should not be construed as support for deeming the use of sensitive data or the categorization of sensitive data as unlawful in every circumstance. Consumers may be deceived or harmed where their sensitive data is used without their knowledge or consent, contrary to their reasonable expectations. But context matters. For example, if a consumer searches online for nearby pediatricians close to their home, then serving ads in other contexts for pediatrician offices and groups based on the consumer’s location may be both reasonable and desirable. If a consumer subscribes to a podcast on a certain type of politics, advertisements for other political podcasts may be of interest to that consumer.

We also need to disentangle any objections to the content of an advertisement from the practices of categorization and targeting generally. Take, for example, the practice of categorizing consumers into the ad segment “women over 50 suffering from breast cancer.” An advertiser may use that segment to target ads for well-validated treatments, potentially connecting women with life-saving care. Or an advertiser could use that segment to target ads for bogus treatments. We should not conflate our concern about deceptive advertising (the bogus treatment) with the lawful act of categorizing and targeting based on sensitive data, lest we undermine the ability to connect women with life-saving care. This is just one example of the potentially beneficial or harmful content served to audience segments. Certain types of categorization and targeting may offer similar benefits to consumers and competition, if used properly and in a lawful manner.³⁴

As we consider these types of difficult privacy questions in the future, it is of paramount importance that we challenge only unfair or deceptive conduct, supported by specific facts and empirical research, rather than demonizing the entire digital advertising industry.³⁵ And until Congress acts to address privacy directly through legislation, it is vital we recognize and abide by the limited remit of the Commission’s statutory authority.

Concurring and Dissenting Statement of Commissioner Andrew N. Ferguson

Today the Commission approves complaints against, and proposed consent orders with, Gravy Analytics¹ (“Gravy”)² and Mobilewalla³ for various practices concerning the collection and dissemination of precise location data allegedly constituting unfair or deceptive acts or practices in violation of section 5 of the Federal Trade Commission Act.⁴ Gravy and Mobilewalla are data brokers that aggregate and sell consumer data, including location data.⁵ Gravy and Mobilewalla do not collect the data from consumers.⁶ Those data are collected from applications that consumers use on their smartphones, and Gravy and Mobilewalla purchase or otherwise acquire those data after they are collected.⁷ Gravy and Mobilewalla then sell those data to private firms for advertising, analytics, and other purposes, as well as to the government.⁸

Part I

I concur entirely in two of the counts the Commission brings against both firms, and one that we bring against Mobilewalla alone. These counts are sufficient to justify my vote in favor of

commissioner-holyoak-statement-social-media-6b.pdf.

³⁵ Commissioner Holyoak Remarks, *supra* note 31, at 5–7.

¹ Also named is Venntel, Inc., a wholly-owned subsidiary of Gravy Analytics.

² Complaint, *In re Gravy Analytics* (“Gravy Complaint”).

³ Complaint, *In re Mobilewalla* (“Mobilewalla Complaint”).

⁴ 15 U.S.C. 45.

⁵ Gravy Complaint ¶¶ 7; Mobilewalla Complaint ¶¶ 3, 18.

⁶ Gravy Complaint ¶ 8; Mobilewalla Complaint ¶ 4.

⁷ Gravy Complaint ¶¶ 9–10; Mobilewalla Complaint ¶¶ 4, 5.

⁸ Gravy Complaint ¶¶ 13–21; Mobilewalla Complaint ¶¶ 6, 19, 36. As my colleagues’ statements make clear, the sale of data to the government for law-enforcement, national-security, and immigration-enforcement purposes implicates different constitutional and statutory questions than the sale of those same data to private firms. I take no firm position on those questions except to say that I believe that the restrictions on sale to the government in the Gravy order are lawful.

submitting the complaints and proposed consent orders for public comment. First, the Commission alleges that Gravy and Mobilewalla sell consumers’ precise location data without taking sufficient measures to anonymize the information or filter out sensitive locations.⁹ This type of data—records of a person’s precise physical locations—is inherently intrusive and revealing of people’s most private affairs. The sale of such revealing information that can be linked directly to an individual consumer poses an obvious risk of substantial injury to that consumer.¹⁰ The theft or accidental dissemination of those data would be catastrophic to the consumer. The consumer cannot avoid the injury. Unless the consumer has consented to the sale of intimate data linked directly to him, the sale of the data happens entirely without his knowledge.¹¹ Finally, given that the anonymized data remain valuable to firms for advertising and analytics, the injury that the consumer suffers is not outweighed by any countervailing benefits for the consumer.¹² The sale of non-anonymized, precise location data without first obtaining the meaningfully informed consent of the consumer is therefore an unfair act or practice in violation of section 5.

Second, the Commission accuses both companies of collecting, using, and selling precise location information without sufficiently verifying that the consumers who generated the data consented to the collection of those data by the applications that collected it.¹³ Given that the failure to obtain meaningful consent to the collection of precise location data is widespread, data brokers that purchase sensitive information cannot avoid liability by turning a blind eye to the strong possibility that consumers did not consent to its collection and sale. The sale of precise location data collected without the consumer’s consent poses a similarly unavoidable and substantial risk of injury to the consumer as does the sale of the non-anonymized data. I therefore concur in these counts against Gravy and Mobilewalla.¹⁴

⁹ Gravy Complaint ¶¶ 73–75; Mobilewalla Complaint ¶¶ 66–67.

¹⁰ 15 U.S.C. 45(n); see *FTC v. Kochava, Inc.*, 715 F. Supp. 3d 1319, 1323–24 (D. Idaho 2024).

¹¹ 15 U.S.C. 45(n).

¹² *Ibid.*

¹³ Gravy Complaint ¶¶ 76–78; Mobilewalla Complaint ¶¶ 71–72.

¹⁴ Section 5 does not impose strict liability for the purchase of precise location data collected without the consumer’s consent, nor do I understand the complaints and orders as interpreting section 5 hold data brokers strictly liable for every purchase of precise location data that was collected without the consumer’s consent. Data brokers need only take

³² Compl. ¶¶ 47–49.

³³ See, e.g., Commissioner Holyoak Remarks, *supra* note 31, at 6.

³⁴ See generally Concurring and Dissenting Statement of Comm’r Melissa Holyoak, *Social Media and Video Streaming Services Staff Report*, Matter No. P205402, at 15–18 (Sept. 19, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/

I further concur in one additional count charged against Mobilewalla alone. The Commission accuses it of having committed an unfair act or practice for its conduct on real-time bidding exchanges (RTBs).¹⁵ An RTB is a marketplace where advertisers bid in real time on the opportunity to show an advertisement to a user as the user is visiting a website or using an application.¹⁶ The auctions take place in the blink of an eye, and the listings on which advertisers bid include information such as the user's mobile advertising ID (MAIDs) and current precise location.¹⁷ Advertisers crave these data because it allows them to maximize the value of each ad impression by displaying the ads only to the users most likely to find the advertisement useful. The Commission accuses Mobilewalla of sitting on the RTBs, submitting bids, collecting the MAIDs and location data for the bids, retaining those data even when it did not win the auction, and combining those data with data acquired from other sources to identify the user represented by the MAID.¹⁸ It aggregated and sold this combined identity and location information to its clients.¹⁹ This alleged practice violated Mobilewalla's legal contracts with the exchanges.²⁰

The violation of a private contract alone is not enough to establish a violation of section 5.²¹ But these agreements protected more than just Mobilewalla's contractual counterparties. They also protected large numbers of consumers from the risk of having their private data aggregated, linked to their identity, and sold without their consent, as Mobilewalla did. Mobilewalla's breach of its contractual obligations therefore exposed consumers to the same substantial risk of injury as collection of their data without consent, was not reasonably avoidable by consumers (as this conduct was far removed from their

knowledge and control), and was not outweighed by any countervailing benefits to consumers. It is therefore in the public interest to hold Mobilewalla liable for this conduct under section 5, as it would be even if no contract governed Mobilewalla's obligations regarding the unconsented collection and retention of these precise location data.²²

Part II

I dissent from the Commission's counts against both firms accusing them of unfairly categorizing consumers based on sensitive characteristics, and of selling those categorizations to third parties.²³ The FTC Act prohibits the collection and subsequent sale of precise location data for which the consumer has not consented to the collection or sale. It further requires data brokers to take reasonable steps to ensure that consumers originally consented to the collection of the data that the data brokers subsequently use and sell. If a company aggregates and categorizes data that were collected without the consumer's consent, and subsequently sells those categorizations, it violates section 5. But it does so only because the data were collected without consent for such use, not because the categories into which it divided the data might be on an indeterminate naughty categories list. The FTC Act imposes consent requirements in certain circumstances. It does not limit how someone who lawfully acquired those data might choose to analyze those data, or the conclusions that one might draw from them.²⁴

Consider an analogous context: the collection of data by private investigators. Private investigators do not violate the law if they follow someone on the public streets to his place of employment, observe him entering a church, observe him attending the meeting of a political

party, or watch him enter a hospital. These are all public acts that people carry out in the sight of their fellow citizens every day. Nor do private investigators violate the law by concluding from their lawful observations that the person works for that company, practices that religion, belongs to that political party, or suffers from an illness. Nor would the law prohibit the private investigator from selling his conclusions to a client. But the law would forbid private investigators from trespassing on the employer's property; from surreptitiously planting cameras inside the church sanctuary to observe the rites; from recording the proceedings of the political meeting without consent; or from extorting hospital staff for information about the person's condition. The law prohibits collecting data in unlawful ways; it does not prohibit drawing whatever conclusions one wants, or selling those conclusions to someone else, so long as the data from which the conclusions were drawn were lawfully obtained.

The same principle should apply to section 5. The added wrinkle is that in the information economy, private data are usually collected in the context of a commercial relationship between the user and the developer of an application or website. Just as we expect a merchant to disclose the material terms of a transaction before collecting payment, we expect that the user of an app or website be informed of how their private information—part, and often all, of the consideration they give in exchange for use of the app or website—will be collected and used, and given a chance to decline the transaction. Commercial fairness might also require more than vague hidden disclosures, especially when the loss of privacy is substantial, as is the case with collection of precise location data and its sale to third parties.

Rather than faulting these companies for disclosing data about users without adequate consent, these counts in the complaints focus instead on the inherent impropriety of categorizing users according to so-called "sensitive characteristics." Perhaps my colleagues are worried that advertisements targeted on the basis of these categories can cause emotional distress—the theory they advanced in the Commission's Social Media 6(b) Report earlier this year.²⁵ But as I argued then, it is folly

reasonable steps to ensure that the data they are acquiring were originally collected with the consumer's consent. Gravy Complaint ¶ 76 (faulting Gravy for not taking "reasonable steps to verify that consumers provide informed consent to Respondents' collection, use, or sale of the data for commercial and government purposes."); Mobilewalla Complaint ¶ 71 (similar).

¹⁵ Mobilewalla Complaint ¶ 70.

¹⁶ *Id.* ¶ 9.

¹⁷ *Ibid.*

¹⁸ *Id.* ¶¶ 12–15.

¹⁹ *Id.* ¶ 18.

²⁰ Mobilewalla Complaint ¶ 10.

²¹ See *FTC v. Klesner*, 280 U.S. 19, 28 (1929) (Section 5's requirement that enforcement "would be to the interest of the public" is not satisfied in the case of a purely private dispute, as "the mere fact that it is to the interest of the community that private rights shall be respected is not enough to support a finding of public interest.").

²² See *id.* at 27–28 (explaining that protection of private rights can be incident to the public interest, and that such cases might include those where the conduct threatens the existence of competition, involves the "flagrant oppression of the weak by the strong," or where the aggregate loss is sufficient to make the matter one of public consequence but incapable of vindication by individual private suits).

²³ Gravy Complaint ¶¶ 79–81; Mobilewalla Complaint ¶¶ 68–69.

²⁴ Of course, other laws might prohibit particular uses of data that were collected consistently with the requirements of section 5. Using lawfully obtained data to draw conclusions about a consumer's race alone would not violate section 5, but using those conclusions to make an employment or housing decision, for example, might violate the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, or the Fair Housing Act, 42 U.S.C. 3601 *et seq.* But merely drawing a conclusion from lawfully obtained data does not violate section 5.

²⁵ FTC, A Look Behind the Screens: Examining the Data Practices of Social Media and Video Streaming Services, An FTC Staff Report, at 44 (Sept. 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Social-Media-6b-Report-9-11-2024.pdf.

to try to identify which characteristics are sensitive and which are not. “[T]he list of things that can trigger each unique individual’s trauma is endless and would cover every imaginable” advertisement based on every possible categorization, so whatever lines we end up drawing will be “either arbitrary or highly politicized.”²⁶

We can already see this dysfunction in these complaints, which mention as sensitive characteristics race, ethnicity, gender, gender identity, sexual orientation, pregnancy, parenthood, health conditions, religion, and attendance of a political protest, among others.²⁷ While some of these characteristics often entail private facts, others are not usually considered private information. Attending a political protest, for example, is a public act. The public expression of dissatisfaction or support is the point of a protest. Treating attendance at a political protest as uniquely private and sensitive is an oxymoron. Moreover, there are no objective criteria on which to base this list.²⁸ The statute provides no guidance. The list is therefore a purely subjective creation of Commission bureaucrats. And it excludes categories that many would consider deeply private and sensitive.²⁹ And if we did a full accounting of characteristics that someone, somewhere might consider sensitive, no useful categorizations would remain. If what we are worried about is that the generation and sale of these categorizations will be a substitute for the sale of the user data from which they are derived, the correct approach is

to treat conclusions derived from user data as no different than the underlying data. In either case, adequate consent is required for their collection, use, and sale.

Finally, I have doubts about the viability of a final charge levied against Mobilewalla for indefinitely retaining consumer location information.³⁰ It is a truism that data stored indefinitely is at a greater risk of compromise than data stored for a short period of time. But nothing in section 5 forms the basis of standards for data retention. The difficulty is illustrated perfectly by the proposed order we approve today. Rather than impose any particular retention schedule, it merely requires that Mobilewalla:

. . . document, adhere to, and make publicly available . . . a retention schedule . . . setting forth: (1) the purpose or purposes for which each type of Covered Information is collected or used; (2) the specific business needs for retaining each type of Covered Information; and (3) an established timeframe for deletion of each type of Covered Information limited to the time reasonably necessary to fulfill the purpose for which the Covered Information was collected, and in no instance providing for the indefinite retention of any Covered Information . . .³¹

Given that Mobilewalla is in the business of selling user information, and that the marginal cost of data storage is low, the “specific business need” can be nothing more than the possible existence in the future of some buyer willing to pay more than the low cost of storage to acquire the data. I see no reason why Mobilewalla could not set a retention period of many decades based on this reasoning. In fact, while two-year-old location data is intuitively less valuable than one-year-old location data, it is quite plausible that twenty- or thirty-year-old location data is more valuable than location data that is only a few years old, as it may allow advertisers to tap into nostalgic sentiments.

The trouble with both the sensitive-categories count and the data-retention count is that the text of section 5 cannot bear the tremendous weight my colleagues place on it. My colleagues want the FTC Act to be a comprehensive privacy law. But it is not. Comprehensive privacy regulation involves difficult choices and expensive tradeoffs. Congress alone can make those choices and tradeoffs. It did not do so when it adopted the general prohibitions of section 5 nearly nine decades ago. And it has not adopted

comprehensive privacy legislation since then. We must respect that choice.

Until Congress acts, we should vigorously protect Americans’ privacy by enforcing the laws Congress has actually passed. But we must not stray from the bounds of the law. If we do, we will sow uncertainty among legitimate businesses, potentially disrupt the ongoing negotiations in Congress on privacy legislation, and risk damaging losses for the Commission in court.

[FR Doc. 2024–28738 Filed 12–5–24; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 202 3196]

Mobilewalla Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 6, 2025.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write “Mobilewalla; File No. 202 3196” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Walko (202–326–2775), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been

²⁶ Concurring and Dissenting Statement of Commissioner Andrew N. Ferguson, *A Look Behind the Screens: Examining the Data Practices of Social Media and Video Streaming Services*, at 5 (Sept. 19, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-statement-social-media-6b.pdf.

²⁷ Mobilewalla Complaint ¶¶ 27–32.

²⁸ See *Kyllo v. United States*, 533 U.S. 27, 38–39 (2001) (rejecting a Fourth Amendment rule that limited thermal-imaging data collection to only “intimate details” because of the impossibility of developing a principled distinction between intimate and nonintimate information).

²⁹ Gun ownership is an example. In many States, citizens are free to own guns without registering them. There is therefore no public record that a person owns a gun. And in constitutional-carry States, a citizen may carry his handgun in concealment without the government’s permission, which means that bearing a firearm outside the home remains a private act. I expect many Americans would be horrified if their sensitive location data were used to place them in a “gun owner” category, and that category were then sold to other firms or to the government—particularly banks have gotten in the habit of ejecting customers who engaged in disfavored activities. Yet gun ownership does not make the Commission’s list. But political protests do. It is hard to see this list as anything other than the product of arbitrary or political decision making.

³⁰ Mobilewalla Complaint ¶¶ 73–74.

³¹ Decision and Order, *In re Mobilewalla, Inc.*, at 13.

filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 6, 2025. Write “Mobilewalla; File No. 202 3196” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “Mobilewalla; File No. 202 3196” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before January 6, 2025. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Mobilewalla Inc. (“Mobilewalla”). The proposed consent order (“Proposed Order”) has been placed on the public record for 30 days for receipt of public comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with the comments received, and will decide whether it should make final the Proposed Order or withdraw from the agreement and take appropriate action.

Respondent Mobilewalla is a Delaware company with its headquarters in Georgia. Founded in 2008, Mobilewalla is a data broker that aggregates consumer information, including location data, to use and sell for its clients’ purposes, including

marketing, analytics, and non-commercial uses.

Mobilewalla does not collect information directly from consumers. Instead, Mobilewalla purchases consumers’ location data and other personal information, including consumers’ unhashed and hashed phone numbers from third-party data brokers. Mobilewalla has also collected data through real-time bidding (“RTB”) exchanges and other advertising platforms.

When Mobilewalla bid to place an advertisement for its clients through an RTB exchange, Mobilewalla collected and retained the information contained in the bid request, including the device’s mobile advertising identifier (“MAID”), a timestamp, and precise location data, if the consumer had location sharing turned on.

Mobilewalla has sold or licensed raw consumer data, including a device’s latitude and longitude coordinates paired with MAIDs, to its clients. Mobilewalla also analyzes the location data it obtains and, based on the locations and events visited by consumers’ mobile devices, categorizes MAIDs into “audience segments” based on interests or characteristics purportedly revealed by the locations or events. Mobilewalla has offered standard audience segments such as “Music Lovers” but has also created custom audience segments for clients, such as audience segments targeting pregnant women, Hispanic churchgoers, and members of the LGBTQ+ community.

Mobilewalla does not take sufficient steps to verify that consumers consent to its use of their data. Mobilewalla relies on its data suppliers to obtain consumer consent for the collection and use of their data. Mobilewalla’s contracts with its data suppliers include vague provisions requiring the suppliers to comply with applicable law when transferring consumer data to Mobilewalla but does not specifically require consumer consent. In addition, Mobilewalla has minimal procedures to verify whether its suppliers obtained consumer consent. Mobilewalla typically evaluates new data suppliers through a questionnaire and by reviewing the disclosures to consumers from three to five apps from which the supplier collects consumers’ data, even though some suppliers collect consumers’ data from thousands of apps. Mobilewalla does not subsequently or periodically check whether the apps have changed their disclosures.

In addition to failing to take sufficient steps to verify consumer consent,

Mobilewalla has retained the collected data indefinitely—far longer than necessary to accomplish the purpose of collection. This unreasonable retention period, combined with Mobilewalla's comprehensive data collection practices, significantly increases the risk that the sensitive location data would be disclosed or misused, causing harm to consumers.

The Commission's proposed five-count complaint alleges that Mobilewalla violated section 5(a) of the FTC Act by (1) unfairly selling consumers' sensitive location information, (2) unfairly targeting consumers based on sensitive characteristics, (3) unfairly collecting consumers' information from RTB exchanges, (4) unfairly collecting and using consumer location information without consent verification, and (5) unfairly retaining consumer location information.

With respect to the first count, the proposed complaint alleges that Mobilewalla sold consumers sensitive location information associated with unique persistent identifiers that reveal consumers' visits to sensitive locations. With respect to the second count, the proposed complaint alleges Mobilewalla has categorized consumers into audience segments based on sensitive characteristics, such as medical conditions and religious beliefs, derived from location data. Mobilewalla has sold or transferred these audience segments to third parties for marketing and other purposes, including identifying and targeting consumers who participate in political rallies and protests or attempting to identify and target consumers who participate in union organizing.

With respect to the third count, the proposed complaint alleges that Mobilewalla collected consumers' personal information, including location data, from RTB exchanges, when Mobilewalla had no winning bid. With respect to the fourth count, the proposed complaint alleges that Mobilewalla failed to take reasonable steps to verify that consumers consent to Mobilewalla's use of their location data to track them, develop audience segments, target them with advertising, and use and share their location information with clients for commercial, political, law enforcement, and other purposes. Despite collecting data from thousands of apps, Mobilewalla only checked a very small number of apps to determine whether the app disclosed that the app collected location information and shared it with third parties. Mobilewalla also did not periodically check apps' disclosures,

even though many apps change their disclosures over time.

With respect to the fifth count, the proposed complaint alleges that Mobilewalla retained detailed, sensitive information about consumers, including their location data, indefinitely, which is longer than reasonably necessary to fulfill the purpose for which that information was collected. This practice caused substantial injury in the form of a loss of privacy about the day-to-day movements of millions of consumers, including through the use of retroactive geofences, and an increased risk of disclosure and use of such sensitive information.

The proposed complaint alleges that Mobilewalla has caused or is likely to cause substantial injury in the form of loss of privacy about day-to-day movements of consumers and an increased risk of disclosure of such sensitive information. Additionally, with respect to the fourth count, the proposed complaint alleges that Mobilewalla has caused or is likely to cause substantial injury in the form of the chilling of consumers' First Amendment rights and an increased risk of public or harmful disclosure of sensitive information about consumers' private lives, including their fertility choices, religious worship, sexuality, and other such sensitive information.

Summary of Proposed Order With Respondent

The Proposed Order contains injunctive relief designed to prevent Mobilewalla from engaging in the same or similar acts or practices in the future. Geolocation data can vary significantly in its precision. The privacy concerns posed by the proposed complaint relate to more precise location data—that is, location data that could be used to identify specific locations a consumer visits. As a result, the Proposed Order is limited to location data that identifies consumers' locations in a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet.

Provision I prohibits Mobilewalla from misrepresenting (1) the extent to which it collects, maintains, uses, discloses, or deletes location data, and (2) the extent to which such data is deidentified. Provision II prohibits Mobilewalla from collecting or retaining consumer information that Mobilewalla accesses while participating in RTB exchanges for any other purpose than participating in the auctions that occur on the exchange.

Provision III prohibits Mobilewalla from selling, licensing, transferring, sharing, disclosing, or using sensitive

location data in any products or services.

Sensitive locations are defined as those locations associated with (1) medical facilities (e.g., family planning centers, general medical and surgical hospitals, offices of physicians, offices of mental health physicians and practitioners, residential mental health and substance abuse facilities, outpatient mental health and substance abuse centers, outpatient care centers, psychiatric and substance abuse hospitals, and specialty hospitals); (2) religious organizations; (3) correctional facilities; (4) labor union offices; (5) locations held out to the public as predominantly providing education or childcare services to minors; (6) locations held out to the public as predominantly providing services to LGBTQ+ individuals such as service organizations, bars and nightlife; (7) locations held out to the public as predominantly providing services based on racial or ethnic origin; or (8) locations held out to the public as predominantly providing temporary shelter or social services to homeless, survivors of domestic violence, refugees, or immigrants; (9) locations of public gatherings of individuals during political or social demonstrations, marches, and protests; or (10) military installations, offices, or buildings.

Provision IV requires that Mobilewalla implement and maintain a sensitive location data program to develop a comprehensive list of sensitive locations and to prevent the use, sale, license, transfer, or disclosure of sensitive location data. Provision V prohibits Mobilewalla from selling or disclosing Location Data that may determine the identity or location of an individual's private residence.

Provision VI requires Mobilewalla to implement a Supplier Assessment Program by which they assess their suppliers and help ensure that consumers have provided consent for the collection and use of Location Data obtained by Mobilewalla. Under this program, Mobilewalla must conduct initial assessments of all suppliers within 30 days of entering into a data sharing agreement. The program also requires that Mobilewalla confirm that consumers provide Affirmative Express Consent, if feasible, or confirm that consumers provide specific consent to the collection, use, and sale of their location data. Mobilewalla must also create and maintain records of its Suppliers' assessment responses. Finally, Mobilewalla must cease from using, selling, or disclosing location data for which consumers do not provide consent.

Provision VII requires Mobilewalla to provide a clear and conspicuous means for consumers to request the identities of any third parties to whom Respondent sold or otherwise disclosed their location data during the one-year period preceding the request. Provision VIII requires Mobilewalla to provide a simple, easily-located means for consumers to withdraw any consent provided and Provision IX requires Mobilewalla to delete and cease collecting location data after Mobilewalla receives notice that the consumer has withdrawn their consent. Provision X also requires Mobilewalla to provide a simple, easily-located means for consumers to request that Mobilewalla delete location data that Mobilewalla previously collected and to delete the location data within 30 days of receipt of such request.

Provision XI requires that Mobilewalla (1) document and adhere to a retention schedule for the covered information it collects from consumers, including the purposes for which it collects such information, the specific business needs, and an established timeframe for its deletion, and (2) prior to collecting or using new type of information related to consumers that was not previously collected, and is not described in its retention schedule, update its retention schedule. Provision XII requires Mobilewalla to delete any historic location data and consumers' unhashed and hashed phone numbers in their control and any work product created from this data and to instruct their customers to also delete this information, unless Mobilewalla contains a record in accordance with the Supplier Assessment Program (Provision VI) that consumers consented to the collection, use, and disclosure of their historic location data or the historic location data is deidentified or rendered non-sensitive. Provision XIII requires Mobilewalla to establish and implement, and thereafter maintain, a comprehensive privacy program that protects the privacy of consumers' personal information.

Provisions XIV–XVII are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Mobilewalla to provide information or documents necessary for the Commission to monitor compliance. Provision XVIII states that the Proposed Order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the Proposed Order, and it is not intended to constitute an official interpretation of the complaint or Proposed Order, or to

modify the Proposed Order's terms in any way.

By direction of the Commission,
Commissioner Holyoak dissenting.

April J. Tabor,
Secretary.

Statement of Chair Lina M. Khan Joined by Commissioner Alvaro M. Bedoya

Last year a new report revealed the relative ease with which foreign adversaries can gather sensitive data on Americans.¹ Foreign states could identify, for example, whether someone has a substance abuse problem, a gambling addiction, or major financial problems—a “torrent of blackmail data” ripe for abuse.² The report noted that people susceptible to this type of surveillance include active military personnel, defense officials, lawmakers, and judges. Beyond government employees, hundreds of millions of Americans are at risk. Precise location data, for example, can be harnessed by managers tracking employees suspected of workplace organizing, law enforcers monitoring protestors who oppose government policies, or stalkers keeping tabs on their victims.

The mechanism for this surveillance is shockingly commonplace: “real-time bidding” (RTB) exchanges, an advertising technology present on a huge swath of websites and apps. RTB exchanges host the online auctions that determine which advertisement gets served to a specific individual on a specific website or app. Because these ads are targeted, RTB technology captures reams of personal data, such as a person's browsing history and their location and movements over time—and then broadcasts this sensitive data to anyone seeking to bid on the ad slot. One report estimates that RTB technologies track and broadcast what every U.S. internet user does every 30 seconds they are online—or 747 times a day on average.³ Strikingly, a firm can capture and retain individuals' web browsing data, location data, and other sensitive details even when it does not

serve any ads to them. As lawmakers have noted, the exposure of this bidstream data creates an “outrageous privacy violation”⁴ as well as a major threat to national security.⁵

Today the FTC is bringing an enforcement action against surveillance practices that illegally harness RTB data—the first time the Commission has taken action against the use of this “bidstream” data. Specifically, our action against Mobilewalla charges that the data broker, among other things, unfairly collected people's sensitive data (including precise location) from real-time bidding exchanges—even when it did not place an ad through the bid.

This conduct was part of a broader set of practices that Mobilewalla undertook to unlawfully collect, sell, and retain sensitive information on millions of Americans. Our investigation uncovered that Mobilewalla gathered large swaths of people's personal information, including location data, and sold “audience segments” that third parties could use to target people based on sensitive characteristics. Mobilewalla's audience segments included, for example, Hispanic churchgoers, pregnant women, members of the LGBTQ+ community, workers participating in union organizing, and people who participate in political rallies. Mobilewalla built these profiles through a variety of mechanisms beyond its use of bidstream data, such as by creating “geo-fences” around places like pregnancy centers, political protests, and state capitols.⁶ Mobilewalla even began collecting people's phone numbers, which, paired with MAIDs, could be used to identify the person frequenting a specific location.

The Commission's complaint charges that Mobilewalla's practices constituted unfair conduct in violation of the FTC Act. Specifically, the complaint alleges that: (1) Mobilewalla's sale of people's sensitive location data is unfair; (2) Mobilewalla's sale and transfer of audience segments based on sensitive characteristics—like their medical conditions, religious beliefs,

¹ Irish Council for Civil Liberties, *America's Hidden Security Crisis: How Data About United States Defence Personnel & Political Leaders Flows to Foreign States & Non-State Actors* (2023), <https://www.iccl.ie/wp-content/uploads/2023/11/Americas-hidden-security-crisis.pdf>. See also Justin Sherman, et al., *Data Brokers and the Sale of Data on U.S. Military Personnel Risks to Privacy, Safety, and National Security* (Duke Univ. Sanford Sch. of Pub. Pol'y 2023), <https://techpolicy.sanford.duke.edu/data-brokers-and-the-sale-of-data-on-us-military-personnel/>; Joseph Cox, *The Hundreds of Little-Known Firms Getting Data on Americans*, *Vice* (June 28, 2021), <https://www.vice.com/en/article/hundreds-companies-bidstream-data-location-browsing/>.

² *Id.*

³ *Id.* at p. 7.

⁴ Letter from Sen. Wyden to Chair Simons (July 30, 2020), https://www.wyden.senate.gov/imo/media/doc/073120_Wyden_Cassidy_Led_FTC_Investigation_letter.pdf.

⁵ Joseph Cox, *Congress Says Foreign Intel Services Could Abuse Ad Networks for Spying*, *VICE* (Apr. 6, 2021), <https://www.vice.com/en/article/congress-foreign-intelligence-agencies-bidstream-real-time-bidding/>.

⁶ In one instance, one of Mobilewalla's clients used its data to “geo-fence the homes of individuals relevant to a private lawsuit and track where those individuals had traveled to over the preceding two years, including whether they visited federal law enforcement offices.” Complaint, *In re Mobilewalla, Inc.*, FTC File No. 2023196 (Dec. 3, 2024) at ¶ 50.

participation in workplace organizing, or attendance at political protests—is unfair; (3) Mobilewalla’s collection of people’s personal information, including geolocation data, from RTB exchanges even when Mobilewalla had no winning bid is unfair; (4) Mobilewalla’s failure to take reasonable steps to verify that users consent to its use of their location data to surveil them, develop audience segments based on sensitive characteristics, target them with advertising, and disseminate their location data with a host of clients is unfair, and (5) Mobilewalla’s indefinite retention of people’s sensitive location information is unfair.

The Commission’s action against Mobilewalla marks the FTC’s fifth case involving the illegal dissemination of geolocation information—all pursued in the last 28 months.⁷ This steady clip of cases reflects our recognition that location data is among the most sensitive of people’s data, revealing everything from where someone spends the night to what medical services they seek. Indeed, the District of Idaho last year recognized that invasions of privacy can substantially injure Americans, even without a showing of further harm.⁸ And noting that “location records hold for many Americans the ‘privacies of life,’ ” the Supreme Court has held that constitutional safeguards against unchecked government surveillance extend to digital location tracking—even when the data is originally collected by private companies.⁹

⁷ Press Release, Fed. Trade Comm’n, FTC Sues Kochava for Selling Data that Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations (Aug. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>; Press Release, Fed. Trade Comm’n, FTC Order Prohibits Data Broker X-Mode Social and Outlogic from Selling Sensitive Location Data (Jan. 9, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-prohibits-data-broker-x-mode-social-outlogic-selling-sensitive-location-data>; Press Release, Fed. Trade Comm’n, FTC Order Will Ban InMarket from Selling Precise Consumer Location Data (Jan. 18, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-will-ban-inmarket-selling-precise-consumer-location-data>; Press Release, Fed. Trade Comm’n, Gravy Analytics (Dec. 3, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/12/ftc-takes-action-against-gravy-analytics-venntel-unlawfully-selling-location-data-tracking-consumers>.

⁸ Memorandum Decision & Order, *FTC v. Kochava Inc.*, 2:22-cv-00377-BLW (D. Idaho May 4, 2023) (“Thus, under the plain language of the FTC Act, a defendant whose acts or practices violate consumer privacy may be said to inflict an ‘injury’ upon consumers within the meaning of Section 5(n).”).

⁹ *Carpenter v. United States*, 585 U.S. 296, 138 S. Ct. 2206, 2217 (2018) (quoting *Riley v. California*, 573 U.S. 373, 403 (2014)). See also Statement of

Today’s action highlights two areas meriting continued focus for the Commission and policymakers concerned about threats to Americans’ privacy. First, the ease with which real-time bidding technology can be exploited to surveil Americans should raise serious alarm. No real safeguards limit who can access, harness, or retain this data, meaning that the multi-billion-dollar industry built around targeted advertising leaves Americans’ sensitive data shockingly exposed.

Second, this matter further highlights the continued shortcomings of the “notice and consent” paradigm. Most people never interact with Mobilewalla and have no idea that Mobilewalla amasses data detailing their precise location and movements. In theory, Mobilewalla would rely on its data suppliers to obtain consumer consent for the collection and use of their data. But in practice, Mobilewalla has minimal procedures to verify whether its suppliers actually obtained consumer consent—and many disclosures are broad enough to render consent effectively meaningless. In recent years, the Commission’s orders have moved away from remedies and relief premised exclusively on consumer consent—and included greater reliance on presumptive bans and prohibitions.¹⁰ Continuing to ensure our orders reflect the realities of how people engage in today’s economy will be critical for Americans to enjoy real privacy.

I am grateful to the DPIP team for their excellent work on this matter.

Chair Lina M. Khan joined by Comm’r Rebecca Kelly Slaughter and Comm’r Alvaro Bedoya In the Matter of X-Mode Social, Inc. and Outlogic, LLC (Jan. 9, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-chair-lina-m-khan-joined-commissioner-rebecca-kelly-slaughter-commissioner-alvaro-bedoya-0>; Statement of Comm’r Alvaro Bedoya Joined By Chair Lina M. Khan In the Matter of Gravy Analytics (Dec. 3, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioner-alvaro-m-bedoya-joined-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-3>.

¹⁰ See, e.g., X-Mode, InMarket, *supra* note 7; Press Release, Fed. Trade Comm’n, FTC Order Will Ban Avast from Selling Browsing Data for Advertising Purposes, Require It to Pay \$16.5 Million Over Charges the Firm Sold Browsing Data After Claiming Its Products Would Block Online Tracking (Feb. 22, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-order-will-ban-avast-selling-browsing-data-advertising-purposes-require-it-pay-165-million-over>; Press Release, Fed. Trade Comm’n, FTC Enforcement Action to Bar GoodRx from Sharing Consumers’ Sensitive Health Info for Advertising (Feb. 1, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>.

Concurring and Dissenting Statement of Commissioner Andrew N. Ferguson

Today the Commission approves complaints against, and proposed consent orders with, Gravy Analytics¹ (“Gravy”)² and Mobilewalla³ for various practices concerning the collection and dissemination of precise location data allegedly constituting unfair or deceptive acts or practices in violation of section 5 of the Federal Trade Commission Act.⁴ Gravy and Mobilewalla are data brokers that aggregate and sell consumer data, including location data.⁵ Gravy and Mobilewalla do not collect the data from consumers.⁶ Those data are collected from applications that consumers use on their smartphones, and Gravy and Mobilewalla purchase or otherwise acquire those data after they are collected.⁷ Gravy and Mobilewalla then sell those data to private firms for advertising, analytics, and other purposes, as well as to the government.⁸

Part I

I concur entirely in two of the counts the Commission brings against both firms, and one that we bring against Mobilewalla alone. These counts are sufficient to justify my vote in favor of submitting the complaints and proposed consent orders for public comment. First, the Commission alleges that Gravy and Mobilewalla sell consumers’ precise location data without taking sufficient measures to anonymize the information or filter out sensitive locations.⁹ This type of data—records of a person’s precise physical locations—is inherently intrusive and revealing of people’s most private affairs. The sale of such revealing information that can be linked directly to an individual consumer poses an obvious risk of

¹ Also named is Venntel, Inc., a wholly-owned subsidiary of Gravy Analytics.

² Complaint, *In re Gravy Analytics* (“Gravy Complaint”).

³ Complaint, *In re Mobilewalla* (“Mobilewalla Complaint”).

⁴ 15 U.S.C. 45.

⁵ Gravy Complaint ¶¶ 7; Mobilewalla Complaint ¶¶ 3, 18.

⁶ Gravy Complaint ¶¶ 8; Mobilewalla Complaint ¶ 4.

⁷ Gravy Complaint ¶¶ 9–10; Mobilewalla Complaint ¶¶ 4, 5.

⁸ Gravy Complaint ¶¶ 13–21; Mobilewalla Complaint ¶¶ 6, 19, 36. As my colleagues’ statements make clear, the sale of data to the government for law-enforcement, national-security, and immigration-enforcement purposes implicates different constitutional and statutory questions than the sale of those same data to private firms. I take no firm position on those questions except to say that I believe that the restrictions on sale to the government in the Gravy order are lawful.

⁹ Gravy Complaint ¶¶ 73–75; Mobilewalla Complaint ¶¶ 66–67.

substantial injury to that consumer.¹⁰ The theft or accidental dissemination of those data would be catastrophic to the consumer. The consumer cannot avoid the injury. Unless the consumer has consented to the sale of intimate data linked directly to him, the sale of the data happens entirely without his knowledge.¹¹ Finally, given that the anonymized data remain valuable to firms for advertising and analytics, the injury that the consumer suffers is not outweighed by any countervailing benefits for the consumer.¹² The sale of non-anonymized, precise location data without first obtaining the meaningfully informed consent of the consumer is therefore an unfair act or practice in violation of section 5.

Second, the Commission accuses both companies of collecting, using, and selling precise location information without sufficiently verifying that the consumers who generated the data consented to the collection of those data by the applications that collected it.¹³ Given that the failure to obtain meaningful consent to the collection of precise location data is widespread, data brokers that purchase sensitive information cannot avoid liability by turning a blind eye to the strong possibility that consumers did not consent to its collection and sale. The sale of precise location data collected without the consumer's consent poses a similarly unavoidable and substantial risk of injury to the consumer as does the sale of the non-anonymized data. I therefore concur in these counts against Gravy and Mobilewalla.¹⁴

I further concur in one additional count charged against Mobilewalla alone. The Commission accuses it of having committed an unfair act or practice for its conduct on real-time bidding exchanges (RTBs).¹⁵ An RTB is a marketplace where advertisers bid in real time on the opportunity to show an

advertisement to a user as the user is visiting a website or using an application.¹⁶ The auctions take place in the blink of an eye, and the listings on which advertisers bid include information such as the user's mobile advertising ID (MAIDs) and current precise location.¹⁷ Advertisers crave these data because it allows them to maximize the value of each ad impression by displaying the ads only to the users most likely to find the advertisement useful. The Commission accuses Mobilewalla of sitting on the RTBs, submitting bids, collecting the MAIDs and location data for the bids, retaining those data even when it did not win the auction, and combining those data with data acquired from other sources to identify the user represented by the MAID.¹⁸ It aggregated and sold this combined identity and location information to its clients.¹⁹ This alleged practice violated Mobilewalla's legal contracts with the exchanges.²⁰

The violation of a private contract alone is not enough to establish a violation of section 5.²¹ But these agreements protected more than just Mobilewalla's contractual counterparties. They also protected large numbers of consumers from the risk of having their private data aggregated, linked to their identity, and sold without their consent, as Mobilewalla did. Mobilewalla's breach of its contractual obligations therefore exposed consumers to the same substantial risk of injury as collection of their data without consent, was not reasonably avoidable by consumers (as this conduct was far removed from their knowledge and control), and was not outweighed by any countervailing benefits to consumers. It is therefore in the public interest to hold Mobilewalla liable for this conduct under section 5, as it would be even if no contract governed Mobilewalla's obligations regarding the unconsented collection and retention of these precise location data.²²

Part II

I dissent from the Commission's counts against both firms accusing them of unfairly categorizing consumers based on sensitive characteristics, and of selling those categorizations to third parties.²³ The FTC Act prohibits the collection and subsequent sale of precise location data for which the consumer has not consented to the collection or sale. It further requires data brokers to take reasonable steps to ensure that consumers originally consented to the collection of the data that the data brokers subsequently use and sell. If a company aggregates and categorizes data that were collected without the consumer's consent, and subsequently sells those categorizations, it violates section 5. But it does so only because the data were collected without consent for such use, not because the categories into which it divided the data might be on an indeterminate naughty categories list. The FTC Act imposes consent requirements in certain circumstances. It does not limit how someone who lawfully acquired those data might choose to analyze those data, or the conclusions that one might draw from them.²⁴

Consider an analogous context: the collection of data by private investigators. Private investigators do not violate the law if they follow someone on the public streets to his place of employment, observe him entering a church, observe him attending the meeting of a political party, or watch him enter a hospital. These are all public acts that people carry out in the sight of their fellow citizens every day. Nor do private investigators violate the law by concluding from their lawful observations that the person works for that company, practices that religion, belongs to that political party, or suffers from an illness. Nor would the law prohibit the private investigator from selling his conclusions to a client. But the law would forbid private investigators from trespassing on the employer's property; from surreptitiously planting cameras inside

incapable of vindication by individual private suits).

²³ Gravy Complaint ¶¶ 79–81; Mobilewalla Complaint ¶¶ 68–69.

²⁴ Of course, other laws might prohibit particular uses of data that were collected consistently with the requirements of section 5. Using lawfully obtained data to draw conclusions about a consumer's race alone would not violate section 5, but using those conclusions to make an employment or housing decision, for example, might violate the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, or the Fair Housing Act, 42 U.S.C. 3601 *et seq.* But merely drawing a conclusion from lawfully obtained data does not violate section 5.

¹⁰ 15 U.S.C. 45(n); see *FTC v. Kochava, Inc.*, 715 F. Supp. 3d 1319, 1323–24 (D. Idaho 2024).

¹¹ 15 U.S.C. 45(n).

¹² *Ibid.*

¹³ Gravy Complaint ¶¶ 76–78; Mobilewalla Complaint ¶¶ 71–72.

¹⁴ Section 5 does not impose strict liability for the purchase of precise location data collected without the consumer's consent, nor do I understand the complaints and orders as interpreting section 5 to hold data brokers strictly liable for every purchase of precise location data that was collected without the consumer's consent. Data brokers need only take reasonable steps to ensure that the data they are acquiring were originally collected with the consumer's consent. Gravy Complaint ¶ 76 (faulting Gravy for not taking "reasonable steps to verify that consumers provide informed consent to Respondents' collection, use, or sale of the data for commercial and government purposes."); Mobilewalla Complaint ¶ 71 (similar).

¹⁵ Mobilewalla Complaint ¶ 70.

¹⁶ *Id.* ¶ 9.

¹⁷ *Ibid.*

¹⁸ *Id.* ¶¶ 12–15.

¹⁹ *Id.* ¶ 18.

²⁰ Mobilewalla Complaint ¶ 10.

²¹ See *FTC v. Klesner*, 280 U.S. 19, 28 (1929) (Section 5's requirement that enforcement "would be to the interest of the public" is not satisfied in the case of a purely private dispute, as "the mere fact that it is to the interest of the community that private rights shall be respected is not enough to support a finding of public interest.").

²² See *id.* at 27–28 (explaining that protection of private rights can be incident to the public interest, and that such cases might include those where the conduct threatens the existence of competition, involves the "flagrant oppression of the weak by the strong," or where the aggregate loss is sufficient to make the matter one of public consequence but

the church sanctuary to observe the rites; from recording the proceedings of the political meeting without consent; or from extorting hospital staff for information about the person's condition. The law prohibits collecting data in unlawful ways; it does not prohibit drawing whatever conclusions one wants, or selling those conclusions to someone else, so long as the data from which the conclusions were drawn were lawfully obtained.

The same principle should apply to section 5. The added wrinkle is that in the information economy, private data are usually collected in the context of a commercial relationship between the user and the developer of an application or website. Just as we expect a merchant to disclose the material terms of a transaction before collecting payment, we expect that the user of an app or website be informed of how their private information—part, and often all, of the consideration they give in exchange for use of the app or website—will be collected and used, and given a chance to decline the transaction. Commercial fairness might also require more than vague hidden disclosures, especially when the loss of privacy is substantial, as is the case with collection of precise location data and its sale to third parties.

Rather than faulting these companies for disclosing data about users without adequate consent, these counts in the complaints focus instead on the inherent impropriety of categorizing users according to so-called “sensitive characteristics.” Perhaps my colleagues are worried that advertisements targeted on the basis of these categories can cause emotional distress—the theory they advanced in the Commission’s Social Media 6(b) Report earlier this year.²⁵ But as I argued then, it is folly to try to identify which characteristics are sensitive and which are not. “[T]he list of things that can trigger each unique individual’s trauma is endless and would cover every imaginable” advertisement based on every possible categorization, so whatever lines we end up drawing will be “either arbitrary or highly politicized.”²⁶

We can already see this dysfunction in these complaints, which mention as sensitive characteristics race, ethnicity,

gender, gender identity, sexual orientation, pregnancy, parenthood, health conditions, religion, and attendance of a political protest, among others.²⁷ While some of these characteristics often entail private facts, others are not usually considered private information. Attending a political protest, for example, is a public act. The public expression of dissatisfaction or support is the point of a protest. Treating attendance at a political protest as uniquely private and sensitive is an oxymoron. Moreover, there are no objective criteria on which to base this list.²⁸ The statute provides no guidance. The list is therefore a purely subjective creation of Commission bureaucrats. And it excludes categories that many would consider deeply private and sensitive.²⁹ And if we did a full accounting of characteristics that someone, somewhere might consider sensitive, no useful categorizations would remain. If what we are worried about is that the generation and sale of these categorizations will be a substitute for the sale of the user data from which they are derived, the correct approach is to treat conclusions derived from user data as no different than the underlying data. In either case, adequate consent is required for their collection, use, and sale.

Finally, I have doubts about the viability of a final charge levied against Mobilewalla for indefinitely retaining consumer location information.³⁰ It is a truism that data stored indefinitely is at a greater risk of compromise than data stored for a short period of time. But nothing in section 5 forms the basis of standards for data retention. The difficulty is illustrated perfectly by the proposed order we approve today.

²⁷ Mobilewalla Complaint ¶¶ 27–32.

²⁸ See *Kyllo v. United States*, 533 U.S. 27, 38–39 (2001) (rejecting a Fourth Amendment rule that limited thermal-imaging data collection to only “intimate details” because of the impossibility of developing a principled distinction between intimate and nonintimate information).

²⁹ Gun ownership is an example. In many States, citizens are free to own guns without registering them. There is therefore no public record that a person owns a gun. And in constitutional-carry States, a citizen may carry his handgun in concealment without the government’s permission, which means that bearing a firearm outside the home remains a private act. I expect many Americans would be horrified if their sensitive location data were used to place them in a “gun owner” category, and that category were then sold to other firms or to the government—particularly banks have gotten in the habit of ejecting customers who engaged in disfavored activities. Yet gun ownership does not make the Commission’s list. But political protests do. It is hard to see this list as anything other than the product of arbitrary or political decision making.

³⁰ Mobilewalla Complaint ¶¶ 73–74.

Rather than impose any particular retention schedule, it merely requires that Mobilewalla:

. . . document, adhere to, and make publicly available . . . a retention schedule . . . setting forth: (1) the purpose or purposes for which each type of Covered Information is collected or used; (2) the specific business needs for retaining each type of Covered Information; and (3) an established timeframe for deletion of each type of Covered Information limited to the time reasonably necessary to fulfill the purpose for which the Covered Information was collected, and in no instance providing for the indefinite retention of any Covered Information . . .³¹

Given that Mobilewalla is in the business of selling user information, and that the marginal cost of data storage is low, the “specific business need” can be nothing more than the possible existence in the future of some buyer willing to pay more than the low cost of storage to acquire the data. I see no reason why Mobilewalla could not set a retention period of many decades based on this reasoning. In fact, while two-year-old location data is intuitively less valuable than one-year-old location data, it is quite plausible that twenty- or thirty-year-old location data is more valuable than location data that is only a few years old, as it may allow advertisers to tap into nostalgic sentiments.

The trouble with both the sensitive-categories count and the data-retention count is that the text of section 5 cannot bear the tremendous weight my colleagues place on it. My colleagues want the FTC Act to be a comprehensive privacy law. But it is not. Comprehensive privacy regulation involves difficult choices and expensive tradeoffs. Congress alone can make those choices and tradeoffs. It did not do so when it adopted the general prohibitions of section 5 nearly nine decades ago. And it has not adopted comprehensive privacy legislation since then. We must respect that choice.

Until Congress acts, we should vigorously protect Americans’ privacy by enforcing the laws Congress has actually passed. But we must not stray from the bounds of the law. If we do, we will sow uncertainty among legitimate businesses, potentially disrupt the ongoing negotiations in Congress on privacy legislation, and risk damaging losses for the Commission in court.

Dissenting Statement of Commissioner Melissa Holyoak

Since arriving at the Commission, I have supported law enforcement actions against data brokers that sold precise

³¹ Decision and Order, *In re Mobilewalla, Inc.*, at 13.

²⁵ FTC, A Look Behind the Screens: Examining the Data Practices of Social Media and Video Streaming Services, An FTC Staff Report, at 44 (Sept. 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Social-Media-6b-Report-9-11-2024.pdf.

²⁶ Concurring and Dissenting Statement of Commissioner Andrew N. Ferguson, A Look Behind the Screens: Examining the Data Practices of Social Media and Video Streaming Services, at 5 (Sept. 19, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-statement-social-media-6b.pdf.

geolocation data revealing consumers' religious beliefs, political leanings, and medical conditions.¹ Such enforcement actions have been particularly important where they help preserve Americans' freedoms and are consistent with the FTC Act, such as in a separate case the Commission brings against Gravy Analytics today. But the instant complaint and proposed settlement with Mobilewalla colors well outside the lines of the Commission's authority. Indeed, the Chair is seeking to effectuate legislative and policy goals that rest on novel legal theories well beyond what Congress has authorized. We should not use our enforcement powers this way.² Because core aspects of this case are misguided, I dissent. I briefly explain some of my concerns below. And I anticipate and welcome robust comment on the proposed order before it is finalized.

Several background considerations also inform my approach and dissent in this particular matter. First, this matter uses a settlement to effectuate policy objectives that political leadership at the Commission has sought for years but failed to achieve through regulation.³ No matter how much political pressure Chair Khan and the Bureau Director may feel with the shot-clock running out, the Commission should not use complaints and orders to score political

points that stem from misuse of our statutory authorities. Second and related: Chair Khan's decision to proceed runs directly afoul of recent Congressional oversight from several of the FTC's authorizing Committees that explicitly cautioned against this type of endeavor.⁴ Choosing to proceed undermines our institutional legitimacy and will engender even more distrust from Congress—trust that current leadership at the Commission has repeatedly broken.⁵

With that larger context in mind, I will briefly describe some of my concerns on the merits. According to the Complaint, Mobilewalla has relied primarily on information it collected from real-time bidding exchanges (RTB exchanges) to build its portfolio of consumers' geolocation data.⁶ These exchanges facilitate advertisers' bids to place content in front of specific consumers, whose information has been sent to the exchange to enable the bidding.⁷ Mobilewalla would retain information collected from RTB exchanges, including a consumer's "precise geolocation information, if the consumer had location sharing turned on," even if the bid were unsuccessful.⁸

The Majority erroneously declares Mobilewalla's collection of consumer information from the RTB exchanges is unfair. Specifically, the Complaint alleges that the practice of collecting data was unfair in part because it caused or is likely to cause substantial injury.⁹ But the Complaint's allegations are remarkably sparse when it comes to establishing how the collection itself

caused substantial injury, and its related allegations do not otherwise satisfy what section 5 requires for unfairness.¹⁰ For the Majority, the mere collection of data implausibly "causes or is likely to cause" substantial injury and lacks countervailing benefits that section 5's cost-benefit analysis requires assessing.¹¹ Such a theory of unfairness—assertions about a particular practice without facts alleged reflecting causation of injury to consumers—is contrary to black-letter unfairness law. Of course, none of these observations about the limits of our unfairness authority mean Mobilewalla had clean hands under contract law, where Mobilewalla's agreements with RTB exchanges barred collection and retention of consumer data for unsuccessful bids.¹² But—contrary to what those keeping score may conclude from this case and settlement—a business-to-business breach of contract that may have potential effects on consumers does not automatically give rise to an unfairness claim under section 5.¹³

Count II, for "Unfair Targeting Based on Sensitive Characteristics," is also misguided. The practice this Count alleges is unfair is the "categorization of consumers based on sensitive characteristics derived from location information."¹⁴ But there is nothing intrinsically unfair about such categorization, on its own. Instead, each unfairness claim needs to be assessed in a granular way for both substantial injury and countervailing benefits.¹⁵ For example, and contrary to any lop-sided framing of harms concerning abortion:¹⁶

¹ See, e.g., Concurring Statement of Comm'r Melissa Holyoak, *Kochava, Inc.*, FTC Matter No. X230009 (July 15, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-7-15-Commissioner-Holyoak-Statement-re-Kochava-final.pdf; Concurring Statement of Comm'r Melissa Holyoak, Joined In Part By Comm'r Alvaro M. Bedoya (Section I Only), *In re Gravy Analytics, Inc.*, FTC Matter No. 2123035 (Dec. 3, 2024).

² Cf., e.g., Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In re Rytr, LLC*, FTC Matter No. 2323052, at 1 (Sept. 25, 2024) ("As I have suggested recently in other contexts, the Commission should steer clear of using settlements to advance claims or obtain orders that a court is highly unlikely to credit or grant in litigation. Outside that crucible, the Commission may more readily advance questionable or misguided theories or cases. Nevertheless, private parties track such settlements and, fearing future enforcement, may alter how they act due to a complaint's statement of the alleged facts, its articulation of the law, or how a settlement order constrains a defendant's conduct. In all industries, but especially evolving ones . . . misguided enforcement can harm consumers by stifling innovation and competition. I fear that will happen after today's case, which is another effort by the Majority to misapply the Commission's unfairness authority under section 5 beyond what the text authorizes. Relatedly, I believe the scope of today's settlement is unwarranted based on the facts of this case." (citations omitted)), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-rytr-statement.pdf.

³ See Press Release, *FTC Explores Rules Cracking Down on Commercial Surveillance and Lax Data Security Practices* (Aug. 11, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-explores-rules-cracking-down-commercial-surveillance-lax-data-security-practices>.

⁴ See, e.g., Letter from Senator Ted Cruz, Ranking Member, Committee on Commerce, Science, and Transportation, to Lina Khan, Chairwoman, Fed. Trade Comm'n (Nov. 7, 2024) (cautioning that the FTC should "focus only on matters that are uncontroversial and would be approved unanimously by all Commissioners"); Letter from Representative Jim Jordan, Chairman, Committee on the Judiciary, to Lina Khan, Chair, Fed. Trade Comm'n, at 1 (Nov. 14, 2024) (the "FTC should also cease all partisan activity"); Letter from Representative Cathy McMorris Rodgers, Chair, Committee on Energy and Commerce, to Lina Khan, Chair, Fed. Trade Comm'n (Nov. 6, 2024) ("As a traditional part of the peaceful transfer of power, the FTC should immediately stop work on any partisan or controversial item under consideration . . .").

⁵ Accordingly, this case illustrates how leadership at the Commission has vocally claimed to be acting on consumers' behalf over the past several years, but then—where it has effectively usurped the legislative branch—has actually harmed the Commission's legitimacy and long-term ability to serve the American people.

⁶ See Compl. ¶¶ 9–10.

⁷ *Id.*

⁸ *Id.* ¶¶ 10, 33.

⁹ See *id.* ¶¶ 70–71. The factual predicate appears to be that if the data had never been collected in the first place, consumers could never have been harmed later through its alleged misuse.

¹⁰ See *id.* ¶¶ 7–16, 33–37.

¹¹ See 15 U.S.C. 45(n).

¹² Compl. ¶ 10.

¹³ Accordingly, the Commission should not seek to use a novel section 5 theory to support what looks like a remedy for breach of contract, as it does in Provision II of the Order. See Provision II ("Prohibition on Collection and Retention of Covered Information from Advertising Auctions").

¹⁴ Compl. ¶ 69 (emphasis added).

¹⁵ See, e.g., Concurring Statement, *In re Gravy Analytics*, *supra* note 1, at 6 ("We should not conflate our concern about deceptive advertising (the bogus treatment) with the lawful act of categorizing and targeting based on sensitive data, lest we undermine the ability to connect women with life-saving care." (emphasis added)). To the extent there is harm here, it could of course stem from wrongful disclosure of certain information in certain circumstances—for example, disclosure of location to government agencies circumventing Fourth Amendment protections. But the mere categorization of consumers does not necessarily violate section 5, and it may have significant countervailing benefits.

¹⁶ Cf. Compl. ¶¶ 56–57; see also Compl., *In re Gravy Analytics*, ¶¶ 67–68 (similar allegations); Compl., *Fed. Trade Comm'n v. Kochava, Inc.*, 2:22-cv-00377, ¶¶ 107–08 (D. Idaho, July 15, 2024), ECF No. 86 (similar allegations).

a mother considering her pregnancy may experience significant benefits if data analysis and categorization mean she ultimately receives tailored advertisements from crisis pregnancy centers offering prenatal and postnatal care for her and her child.¹⁷ And a significant benefit would accrue to the unborn child: her survival.¹⁸ Put simply, categorization does not automatically violate section 5. But today's case sends the opposite message.¹⁹

Count V, for "Unfair Retention of Consumer Location Information," also falls short of what Section 5 requires. The Complaint alleges that Mobilewalla "indefinitely retains detailed, sensitive information about consumers' movements, including consumers' location information."²⁰ But there is minimal analysis as to how the practice of indefinite retention lacks potential countervailing benefits.²¹ For example, as the Complaint makes clear, Mobilewalla facilitates advertising and data analytics.²² To the extent Mobilewalla's information enables building and optimizing predictive models, or better tailoring advertisements over time to particular consumers, it seems likely Mobilewalla's indefinite retention of data may mean consumers correspondingly experience higher benefits. We will never know whether the practice has net benefits or not, since the Majority simply ignores that step and summarily condemns the practice.

A final point today, about how my approach in this case relates to my support for *Kochava*, where I concurred in filing a second amended complaint. It is one thing to use our unfairness authority to directly address specific acts or practices of "disclosure" or "the revelation of sensitive locations

implicating political, medical, and religious activities," where there is an appropriate "focus[] on sales of precise geolocation data and related sensitive information,"²³ and where there has been a lack of consumer consent.²⁴ The facts pled in *Kochava* relating to disclosure and sale in that case led me to believe that the particular "act or practice" of selling precise geolocation data had a direct connection—caused or was likely to cause—substantial injury to consumers.²⁵

In contrast, and in focusing on other types of acts or practices—such as the relevant data's collection, its use for categorization, or its indefinite retention—that are analytically removed from and did not themselves necessarily cause any alleged injury based on the facts pled, today's complaint fails to show how these acts or practices themselves satisfy what section 5 requires.²⁶ On their own, the categorization, collection, or indefinite retention could certainly be factual predicates that precede substantial injury. But, at least as pled in this case, such practices themselves lack the causal connection to substantial injury. And, stepping back, there are certainly innocuous or beneficial instances of related data collection, its categorization, and its indefinite retention. Thus, this case's theories go far beyond the rationale that led me to support amending the complaint in *Kochava*.²⁷ In fact, the claims in this case seem designed to lead directly to minimizing access to data, limiting the practice of drawing inferences from it, and setting particular boundaries around data retention. This case's regulatory implications are therefore far broader than those in *Kochava*.

²³ See Concurring Statement, *Kochava*, *supra* note 1, at 2–3.

²⁴ *Id.* at 3.

²⁵ See 15 U.S.C. 45(n); see also Compl., *Fed. Trade Comm'n v. Kochava, Inc.*, *supra* note 16, ¶ 132 (bringing a single count for "Unfair Use and Sale of Sensitive Data," and alleging that Defendants "used and disclosed data" from consumers (emphasis added)). The framing of *Kochava*'s unfairness count resembles the framing of the first count in this Complaint against Mobilewalla, for "unfair sale of sensitive location information," related to how Mobilewalla "sells, licenses, or otherwise transfers precise location information . . . that reveal[s] consumers' visits to sensitive locations." See Compl. ¶¶ 66–67. But this Complaint's misguided use of the Commission's unfairness authority goes well beyond *Kochava*'s sole count.

²⁶ See 15 U.S.C. 45(n).

²⁷ Again, I "support[ed] filing the second amended complaint in *Kochava*" . . . because I agree[d] that the complaint adequately alleg[d] a likelihood of substantial injury in the revelation of sensitive locations implicating political, medical, and religious activities" Concurring Statement, *Kochava*, *supra* note 1, at 2.

Privacy is a vital policy topic. But unless and until the Commission receives new authorities, we must follow the law as Congress actually wrote it, not as some Commissioners or the Bureau Director might amend it if they were elected legislators.²⁸ Robust enforcement consistent with our statutory authorities can have salutary deterrent effects. But robust enforcement that is inconsistent with our statutory authorities can also have profound ramifications on how markets function, and how market actors proceed—including in ways that harm the American people. And it can undermine our legitimacy in the eyes of not just Congress, but the public.²⁹ Privacy's tradeoffs should be resolved by Congress, not unelected Commissioners. I do not believe section 5, as drafted, authorizes us to act as a roving legislator, writing law through complaints and settlement orders drafted to suit our purposes or political expediency. I dissent.

[FR Doc. 2024–28745 Filed 12–5–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007; Docket No. 2024–0053; Sequence No. 19]

Information Collection; Subcontracting Plans

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and

²⁸ See Concurring Statement, *In re Gravy Analytics*, *supra* note 1, at 6 ("As we consider these type of difficult privacy questions in the future, it is of paramount importance that we challenge only unfair or deceptive conduct, supported by specific facts and empirical research, rather than demonizing the entire digital advertising industry. And until Congress acts to address privacy directly through legislation, it is vital we recognize and abide by the limited remit of the Commission's statutory authority.").

²⁹ It is no coincidence that the number of constitutional challenges questioning our legitimacy has correlated with the Chair's general dismissal of the Commission's basic norms and integrity. See, e.g., Justin Wise, *FTC's Targets Take Cues From High Court in Tests of Agency Power*, Bloomberg Law (Sept. 26, 2024), <https://news.bloomberglaw.com/antitrust/ftcs-targets-take-cues-from-high-court-in-tests-of-agency-power>.

¹⁷ See Concurring Statement, *In re Gravy Analytics*, *supra* note 1, at 6 ("We also need to disentangle any objections to the content of an advertisement from the practices of categorization and targeting generally.").

¹⁸ This example illustrates the fraught nature of the Commission determining on its own—without Congressional authorization—what advertising content is harmful, discriminatory, and so on. Absent clear statutory authority, Commission enforcement on such matters becomes a tool driven by preferences of unelected officials.

¹⁹ Compl. ¶ 69 (alleging "categorization of consumers based on sensitive characteristics for marketing and other purposes is an unfair act or practice").

²⁰ *Id.* ¶ 74.

²¹ We should be considering such potential benefits, however. Cf. Melissa Holyoak, Remarks at National Advertising Division, *A Path Forward on Privacy, Advertising, and AI*, at 6–7, 9 (Sept. 17, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/Holyoak-NAD-Speech-09-17-2024.pdf.

²² Compl. ¶ 19.

the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning subcontracting plans. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through May 31, 2025. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by February 4, 2025.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through <https://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov.

Instructions: All items submitted must cite OMB Control No. 9000–0007, Subcontracting Plans. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or zenaida.delgado@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0007, Subcontracting Plans.

B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the requirements in Federal Acquisition Regulation (FAR)

52.219–9, Small Business Subcontracting Plans, regarding subcontracting plans as follows:

1. Subcontracting plan. In accordance with section 8(d) of the Small Business Act (15 U.S.C. 637(d)), contractors receiving a contract that is expected to exceed, or a contract modification that causes a contract to exceed, \$750,000 (\$1.5 million for construction of a public facility) and has subcontracting possibilities, shall submit an acceptable subcontracting plan that provides maximum practicable opportunities for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7 and the clause at FAR 52.219–9.

2. Summary Subcontract Report (SSR). In conjunction with the subcontracting plan requirements, contractors with subcontracting plans must submit an annual summary of subcontracts awarded as prime and subcontractors for each specific Federal Government agency. Contractors submit the information in an SSR through the Electronic Subcontracting Reporting System (eSRS). This is required for all contractors with subcontracting plans regardless of the type of plan (*i.e.*, commercial or individual).

3. Individual Subcontract Report (ISR). In conjunction with the subcontracting plan requirements, contractors with individual subcontracting plans must submit semi-annual reports of their small business subcontracting progress. Contractors submit the information through eSRS in an ISR, the electronic equivalent of the Standard Form (SF) 294, Subcontracting Report for Individual Contracts. Contracts that are not reported in the Federal Procurement Data System (FPDS) in accordance with FAR 4.606(c)(5) do not submit ISRs in eSRS; they will continue to use the SF 294 to submit the information to the agency.

4. Written explanation for not using a small business subcontractor as specified in the proposal or subcontracting plan. Section 1322 of the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240, amends the Small Business Act (15 U.S.C. 637(d)(6)) to require as part of a subcontracting plan that a prime contractor make good faith effort to utilize a small business subcontractor during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or

proposal. If a prime contractor does not utilize a small business subcontractor as described above, the prime contractor is required to explain, in writing, to the contracting officer the reasons why it is unable to do so.

C. Annual Burden

Respondents: 30,365.

Total Annual Responses: 49,296.

Total Burden Hours: 112,704.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 9000–0007, Subcontracting Plans.

Janet Fry,

*Director, Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy, Office of
Governmentwide Policy.*

[FR Doc. 2024–28708 Filed 12–5–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE25–028, Effectiveness Research to Prevent Polysubstance-Impaired Driving.

Dates: April 15–16, 2025.

Times: 10 a.m.–5 p.m., EDT.

Place: Web Conference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Carlisha Gentles, Pharm.D., B.C.P.S.,

C.D.C.E.S., Scientific Review Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S106-9, Atlanta, Georgia 30341. Telephone: (770) 488-1504; Email: CGentles@cdc.gov.

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. 2024-28510 Filed 12-5-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-25-1257; Docket No. CDC-2024-0101]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), 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 Outcomes Associated with the Preventive Health and Health Services Block Grant (PHHS BG). This data collection allows CDC to describe the improvements achieved by grantees with funding and technical assistance provided by the PHHS BG program.

DATES: CDC must receive written comments on or before February 4, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2024-0101 by any 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. CDC 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 Outcomes Associated with the Preventive Health and Health Services Block Grant (PHHS BG) (OMB Control No. 0920-1257, Exp. 6/30/2025)—Extension—National Center for STLT Public Health Infrastructure and Workforce (NCSTLTPHIW), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since 1981, CDC has collected information from grantees under the PHHS Block Grant (PHHS BG) (OMB Control No. 0920-0106). This information collection allows CDC to document and monitor the progress of activities supported with Block Grant funding. In 2019, in response to recommendations from governing and advisory entities, CDC obtained OMB approval for collection of additional information focusing on outcomes of PHHS BG funding (OMB Control No. 0920-1257, Exp. 6/30/2025). CDC requests OMB approval to continue collecting the information needed to assess the outcomes of PHHS Block Grant funding. Findings will be used to: (1) describe the outcomes and achievements of grantees' public health efforts and identify how the use of PHHS Block Grant funds contributed to those results; and (2) help assess how the grant advances work of the public health system and provide evidence to support future budgetary requests. Data will be used to describe the grant as a whole—not individual grantee activities or outcomes.

The data collection instrument will be administered online using Qualtrics®, a web-based data collection instrument. Participants will respond to the instrument from their respective work locations. All Health Departments funded by the PHHS BG will be asked to respond to the data collection instrument, but participation is voluntary. Specific respondents include 61 PHHS BG coordinators, or their designees, across 61 health departments funded under the PHHS BG, acting in their official capacities. These respondents represent 50 states, the District of Columbia, two tribes, five U.S. territories, and three freely associated states.

CDC requests OMB approval for three years and an estimated 46 annual

burden hours. There are no changes to the content of the information collection

instrument or the estimated burden per response.

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)
PHHS Block Grant Coordinator or Designee.	PHHS Block Grant Assessment	61	1	45/60	46
Total .....	.....	.....	.....	.....	46

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. 2024–28688 Filed 12–5–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE25–032, Formative Research and Pilot-Testing of Community-led Primary Prevention Approaches to Address Elevated Risk of Intimate Partner Violence & Sexual Violence.

Dates: April 1–2, 2025.

Times: 10 a.m.–5 p.m., EDT.

Place: Web Conference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Carlisha Gentles, Pharm.D., B.C.P.S., C.D.C.E.S., Scientific Review Officer, National Center for Injury Prevention and Control, Centers for Disease Control

and Prevention, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341. Telephone: (770) 488–1504; Email: CGentles@cdc.gov.

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. 2024–28512 Filed 12–5–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and

Control Special Emphasis Panel (SEP)—CE25–029, Grants to Support New Investigators in Conducting Research Related to Preventing Interpersonal Violence Impacting Children and Youth. *Dates:* March 11–12, 2025.

Times: 10 a.m.–5 p.m., EDT.

Place: Web Conference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341. Telephone: (404) 639–6473; Email: AWilkes@cdc.gov.

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. 2024–28511 Filed 12–5–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–25–23FN]

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 “Menthol-

Flavored Tobacco Product Policy Evaluation” 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 September 3, 2024 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

Menthol-Flavored Tobacco Product Policy Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is submitting this New information collection request (ICR) for an evaluation of local policies restricting the sale of menthol-flavored tobacco products (hereafter known as menthol tobacco products). This evaluation will assess the differences in outcomes of interest between cities with policies restricting the sale of menthol tobacco products and cities without these policies. Outcomes of interest include commercial tobacco product use and related behavior, perceived access to menthol tobacco products, and menthol tobacco product-related beliefs and perceptions. This study focuses on

the general population and groups who use commercial menthol tobacco products at higher rates including people who identify as lesbian, gay, bisexual, transgender, queer, or another sexual or gender minority (LGBTQ+) and racial and ethnic minority groups (persons identifying as American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Hispanic or Latino, or biracial). Understanding how policies restricting the sale of menthol tobacco products impact tobacco use, behavior, and attitudes may help to inform public health activities and decisions regarding tobacco control. Although local tobacco policies have been shown to be effective at limiting the availability of policy-restricted products, no study to date has collected this type of web panel and focus group data among disparately affected population groups across jurisdictions after policy implementation. There are no other evaluation data collection efforts conducted on this topic to date, nor does the information to be collected exist in any existing centralized data source. While some questions in the web panel survey were sourced from pre-existing validated survey questions, each data collection tool proposed within this package has been designed to understand the effect of local menthol tobacco sales restriction policies on both the general population and those disproportionately impacted by menthol tobacco product use.

CDC is requesting OMB approval for three years. The total estimated annualized burden is 1,750 hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults in the general population who currently use or formerly used tobacco living in the cities of interest.	Survey Screener Questionnaire	9,800	1	2/60
Adults in the general population who currently use or formerly used tobacco living in the cities of interest.	Community Web-Panel Survey	5,366	1	15/60
Adults in the general population who currently use or formerly used menthol tobacco living in the intervention cities of interest. Racial and ethnic minority adults and LGBTQ+ adults meeting the above criteria identified from the Qualtrics panel.	Focus Group Screener Questionnaire	200	1	2/60
Adults in the general population who currently use or formerly used menthol tobacco living in the intervention cities of interest. Racial and ethnic minority adults and LGBTQ+ adults meeting the above criteria identified from the Qualtrics panel.	Community Focus Group	75	1	1

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. 2024-28689 Filed 12-5-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10398 #84]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare &
Medicaid Services, Health and Human
Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the “generic” clearance process. Generally, this is an expedited process by which agencies may obtain OMB’s approval of collection of information requests that are “usually voluntary, low-burden, and uncontroversial collections,” do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit 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 December 20, 2024.

ADDRESSES: When commenting, please reference the applicable form number (CMS-10398 #84) and the OMB control number (0938-1148). 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: CMS-10398 #84/OMB control number: 0938-1148, 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/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pralisting>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at 410-786-4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection’s supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* PACE Medicaid Capitation Rate Setting Guide; *Type of Information Collection Request:* New information collection request information request; *Use:* The Program of All-inclusive Care for the Elderly (PACE) is a fully integrated Medicare program and Medicaid state plan option that provides community-based care and services to individuals aged 55 or older who meet a state’s nursing home level of care criteria. PACE organizations must provide all Medicare and Medicaid covered services. The financing of this model is accomplished through prospective capitation of both Medicare and Medicaid payments.

The PACE Medicaid Capitation Rate Setting Guide provides technical assistance to states for their PACE rate setting, and the information to include when submitting rate packages to CMS for review and approval. The guide also includes a template cover sheet to be used by states for their rate package submissions as streamlined submission forms which will improve the efficiency of CMS reviews.

Form Number: CMS-10398 #84 (OMB control number: 0938-1148); *Frequency:* Annual and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 34; *Total Annual Hours:* 17. (For policy questions regarding this collection contact: Angela Cimino at 410-786-2638.)

William N. Parham, III,

Director, Division of Information Collections
and Regulatory Impacts, Office of Strategic
Operations and Regulatory Affairs.

[FR Doc. 2024-28699 Filed 12-5-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10767]

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 January 6, 2025.

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:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Patient Access through Application Programming Interfaces (API); *Use:* This final rule is the first phase of policies centrally focused on advancing interoperability and patient access to health information using the authority available to the Centers for Medicare & Medicaid Services (CMS). We believe this is an important step in advancing interoperability, putting patients at the center of their health care, and ensuring they have electronic access to their health information. We are committed to working with stakeholders to solve the issue of interoperability and getting patients access to information about their health care, and we are taking an active approach to move participants in the health care market toward interoperability and the secure and

timely exchange of electronic health information by adopting policies for the Medicare and Medicaid programs, the Children’s Health Insurance Program (CHIP), and qualified health plan (QHP) issuers on the individual market Federally-facilitated Exchanges (FfEs). For purposes of this rule, references to QHP issuers on the FfEs excludes issuers offering only stand-alone dental plans (SADPs). Likewise, we are also excluding QHP issuers only offering QHPs in the Federally-facilitated Small Business Health Options Program Exchanges (FF–SHOPS) from the provisions of this rule. This rule requires these impacted payers to maintain and use standards-based APIs to make certain information available to enrollees. CMS regulations at 42 CFR 417.414, 417.416, 422.112(a)(1)(i), and 422.114(a)(3)(ii) require that all Medicare Advantage organizations (MAOs) offering coordinated care plans, network-based private fee-for-service (PFFS) plans, and as well as section 1876 cost organizations, maintain a network of appropriate providers that is sufficient to provide adequate access to covered services to meet the needs of the population served. To enforce this requirement, CMS regulations at § 422.116 outline network adequacy criteria which set forth the minimum number of providers and maximum travel time and distance from enrollees to providers, for required provider specialty types in each county in the United States and its territories. Organizations must be in compliance with the current CMS network adequacy criteria guidance, which is updated and published annually on CMS’s website. This collection of information is essential to appropriate and timely compliance monitoring by CMS, in order to ensure that all active contracts offering network-based plans maintain an adequate network.

This notice originally published on August 22, 2024 (89 FR 67943), but CMS was delayed in submitting it to OMB. For that reason, we are republishing this notice and the associated information collection request will be submitted upon to OMB upon publication of this notice. *Form Number:* CMS–10767 (OMB control number: 0938–1412); *Frequency:* Occasionally; *Affected Public:* Private sector; *Number of Respondents:* 345; *Number of Responses:* 345; *Total Annual Hours:* 589,950. (For policy questions regarding

this collection contact Lorraine Doo at 410–786–6597.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–28515 Filed 12–5–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Healthy Marriage and Responsible Fatherhood Local Evaluation Final Report (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services is requesting approval of the Healthy Marriage and Responsible Fatherhood (HMRF) Final Report Templates. HMRF grant programs are required to submit a final report describing their local evaluation analyses and findings. This request includes guidance for grant recipients in the form of templates. Information will inform technical assistance to support grantees in developing and submitting the final reports to ACF to fulfill a grant requirement.

DATES: *Comments due* January 6, 2025. OMB must decide about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of 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. You can also obtain copies of the proposed collection of information by emailing OPREinfocollection@acf.hhs.gov.

Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Since 2005, Congress has authorized dedicated funding for discretionary awards from ACF's Office of Family Assistance to support HMRF programs. Per the 2020 HMRF Notice of Funding Opportunities issued by ACF, HMRF grant recipients that are carrying out local evaluations are required to submit a final evaluation report to ACF at the end of their grant. The final reports must document the research questions, measures, study design, planned and actual implementation of the program, analytic methods for their evaluation, and evaluation findings.

OPRE is conducting the HMRF Local Evaluation Technical Assistance (LETA)

projects, jointly referred to as the HMRF-LETA projects, to support federally funded programs in evaluating their healthy relationship and family stability services to adult couples, adult individuals, fathers, and youth. As part of the HMRF-LETA project, grant recipients receive technical assistance to support planning and executing a local evaluation and analyzing and reporting local evaluation findings.

The purpose of the current information collection request is to provide standardized report templates and table shells to grant recipients to document their evaluation's analysis and findings. A structured final report template will facilitate grant recipients' efficient and consistent reporting of evaluation findings in their final

reports. The completed draft reports will be reviewed by the HMRF-LETA teams to determine whether the analysis and reports meet standards set by ACF, and to develop recommendations for grant recipients to improve the analysis and reports before final submission to ACF. Grant recipients will finalize and submit their final reports to ACF, as required. This request includes the time to develop and submit the reports.

Respondents: The respondents are HMRF grant recipients conducting a local evaluation. There are currently 79 grant recipients conducting local evaluations: 50 evaluations using descriptive designs ("descriptive evaluations") and 29 evaluations using impact designs ("impact evaluations").

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Descriptive Evaluation Final Report Template	50	1	40	2,000
Impact Evaluation Final Report Template	29	1	30	870
Impact Evaluation Final Report Table Shells	29	1	10	290

Estimated Total Annual Burden Hours: 3,160.

Authority: 42 U.S.C. 603(a)(2).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024-28555 Filed 12-5-24; 8:45 am]

BILLING CODE 4184-73-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-2033]

Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics." Accelerated approval is one of FDA's expedited programs intended to facilitate and expedite development and review of certain drugs and biological products for serious or life-threatening conditions.

This guidance provides information on FDA's policies and procedures for the accelerated approval program, including discussions of which products may be candidates for accelerated approval, the standards for granting accelerated approval, and the procedures for withdrawing accelerated approval. When finalized, this draft guidance will replace the accelerated approval-related content in the final guidance for industry entitled "Expedited Programs for Serious Conditions—Drugs and Biologics" issued on May 30, 2014 (the 2014 final guidance). Additional programs to expedite product development are covered in the 2014 final guidance as well as other guidances.

DATES: Submit either electronic or written comments on the draft guidance by February 4, 2025, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as

well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–D–2033 for “Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the

Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993–0002, 240–402–8926 or 301–796–2500, dat.doan@fda.hhs.gov; James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Paul Kluetz, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2223, Silver Spring, MD 20993, 301–796–9567, Paul.Kluetz@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics.” Accelerated approval allows drugs for serious conditions that fill an unmet medical need to be approved based on a surrogate endpoint or an intermediate clinical endpoint that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit. Accelerated approval is one of FDA’s expedited programs intended to facilitate and expedite development and review of new drugs to address an unmet medical need in the treatment of a serious or life-threatening condition.

In 1992, FDA issued accelerated approval regulations. In 1997, Congress codified the accelerated approval program in the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), adding section 506 to the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 356). In 2012, Congress amended section 506 of the FD&C Act via the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) to provide that FDA should consider the “severity, rarity, or prevalence of the

condition and the availability or lack of alternative treatments.” In 2014, FDA issued a final guidance for industry entitled “Expedited Programs for Serious Conditions—Drugs and Biologics,” which provides information on FDA’s policies and procedures for four expedited programs (fast track designation, breakthrough therapy designation, accelerated approval, and priority review designation), as well as threshold criteria applicable to concluding that a drug is a candidate for these expedited programs.

Section 506(c) of the FD&C Act was most recently amended by the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), which granted FDA additional authorities and imposed on FDA additional obligations regarding the accelerated approval pathway. Among other revisions, section 3210 of the Consolidated Appropriations Act, 2023 requires FDA to set forth conditions, not later than the date of accelerated approval, for confirmatory trials, which “may include enrollment targets, the study protocol, and milestones, including the target date of study completion.” Congress also revised the provisions in section 506(c) of the FD&C Act related to the expedited withdrawal of approval of a product approved under accelerated approval, including by adding new procedures for expedited withdrawal. Section V of this draft guidance describes these recently added procedures for the expedited withdrawal of approval of a product approved under accelerated approval.

This draft guidance addresses the accelerated approval process, including granting accelerated approval (e.g., discussion of endpoints, evidentiary criteria, confirmatory trials and other conditions of accelerated approval), and withdrawal of accelerated approval. Changes from the 2014 final guidance include early consultation on novel endpoints, timely conduct of confirmatory trials, other aspects of confirmatory trials, and the expedited withdrawal of accelerated approval. Other changes include a revised title and editorial changes for clarity, as well as updated references and contact information for FDA. When finalized, this guidance will replace the accelerated approval-related content contained in the 2014 final guidance issued on May 30, 2014 (79 FR 31117).

Additionally, via the Consolidated Appropriations Act, 2023, Congress gave FDA the authority to require, as appropriate, that a confirmatory trial be underway prior to accelerated approval or within a specified time period after the date of accelerated approval. The

Agency intends to address this authority in a separate guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This draft guidance contains proposed collections of information including information submitted to FDA in support of maintaining an accelerated approval. "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 60-day notice in the **Federal Register** soliciting public comment on each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA will publish a 60-day notice on the proposed collections of information in this draft guidance in a separate issue of the **Federal Register**. This notice will encompass the collection of information discussed in the guidance relating to expedited procedures for the withdrawal of accelerated approval of drugs and biologics. Those procedures include the sponsor's submission of their objections to withdrawal as well as their supporting data and evidence. This collection of information is not included in any currently approved information collection.

This draft guidance also refers to previously approved FDA collections of information. The collections of information in 21 CFR parts 10, 12–16, and 19 pertaining to administrative practice and procedures have been approved under OMB control number 0910–0191. The collections of information in 21 CFR part 312 relating to clinical trials associated with accelerated approval pathways have been approved under OMB control number 0910–0014. The collections of

information in 21 CFR part 314 relating to the submission of new drug applications, including accelerated approval of new drugs for serious or life-threatening conditions, have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 relating to the submission of biologics license applications have been approved under OMB control number 0910–0338. The collections of information pertaining to expedited programs for serious conditions for drugs and biologics and breakthrough therapy-designation for drugs and biologics have been approved under OMB control number 0910–0765.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: November 27, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–28392 Filed 12–5–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Public Comment Request: Request for Information Regarding HRSA Sickle Cell Disease Programs

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of request for public comment.

SUMMARY: HRSA's Maternal and Child Health Bureau Sickle Cell Disease (SCD) Programs are requesting input from the public to inform future SCD program development.

DATES: Submit comments no later than January 6, 2025.

ADDRESSES: Submit electronic comments to scdprograms@hrsa.gov. Please submit your response only one time.

FOR FURTHER INFORMATION CONTACT: Oriana Sanchez, Public Health Analyst, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Rockville,

Maryland 20857; scdprograms@hrsa.gov or call (347) 415–1458.

SUPPLEMENTARY INFORMATION: SCD is a group of inherited red blood cell disorders affecting an estimated 100,000 individuals in the United States. The Centers for Disease Control and Prevention report that SCD is a lifelong condition disproportionately affecting Black (1 of every 365 births) and Hispanic Americans (1 of every 16,300 births) with cases also occurring in individuals of Mediterranean, Middle Eastern, and Asian descent. SCD causes the body to produce red blood cells that are crescent shaped which impedes blood flow and cause anemia, severe pain, organ damage and other complications. Without access to comprehensive and routine services, life expectancy is greatly reduced for individuals with SCD. HRSA currently funds a portfolio of three coordinated programs with several recipients to improve outcomes of individuals with SCD and their families: the SCD Newborn Screening Follow-up Program (authorized by 42 U.S.C. 701(a)(2) (sec. 501(a)(2) of the Social Security Act)) funds 25 community-based organizations, the SCD Treatment Demonstration Program (authorized by 42 U.S.C. 300b–5(b) (sec. 1106(b) of the Public Health Service Act)) funds five regional organizations, and one Hemoglobinopathies National Coordinating Center (authorized by 42 U.S.C. 300b–5(b) (sec. 1106(b) of the Public Health Service Act)).

Together the programs strengthen the SCD system of care and support by (1) educating patients, families, and clinicians to improve knowledge and capacities; (2) linking individuals and families to evidence-based care; and (3) fostering partnerships between clinicians, community organizations, and other stakeholders to improve the ability to deliver coordinated, comprehensive care across the lifespan. HRSA's SCD portfolio seeks to support and strengthen regional networks of SCD care, education, and social services across the United States. More information about the HRSA SCD programs is available online at: <https://mchb.hrsa.gov/programs-impact/programs/sickle-cell>.

Responses

HRSA is seeking responses that address the following questions. A response to each question is not required. When drafting responses, highlight strategies that HRSA should consider or prioritize to meet the needs of individuals with SCD and their families within the United States.

1. What are the best ways to improve the *quality of life* of individuals living with SCD?

2. What strategies or best practices are needed to ensure individuals with SCD receive *comprehensive evidence-based health care*? If possible, describe different strategies needed for children and for adults in both healthcare (e.g., clinics, hospitals) and non-healthcare settings (e.g., education, housing, transportation).

3. What are the barriers to ensuring infants identified with SCD through *newborn screening* are receiving appropriate follow-up care? What strategies or practices best address these barriers?

4. What are the barriers to successful *transition from pediatric to adult* serving systems? What strategies are available for individuals with SCD to receive evidence-based, comprehensive care as they transition into adulthood (e.g., in clinics, hospitals)? What strategies or programs (e.g., community health worker programs) have successfully transitioned individuals with SCD in non-health settings (e.g., education, employment, and living situations)?

5. What are the challenges to improving the *systems of care* that support individuals with SCD and their families across the lifespan more broadly? Please share strategies that can bridge the gaps between systems that address healthcare (e.g., clinics, hospitals) and systems that address social determinants of health (e.g., education, housing, transportation)?

Respondents can also provide additional comments or recommendations that are not specifically linked to the questions above. All responses may, but are not required to, identify the individual's name, address, email, telephone number, professional or organizational affiliation, background or area of expertise (e.g., program participant, family member, clinician, public health worker, researcher, HRSA SCD grantee), and topic/subject matter. Information obtained as a result of this request for information (RFI) may be used by HRSA for program planning. Comments in

response to this RFI may be made publicly available, so respondents should bear this in mind when making comments. HRSA will not respond to any individual comments.

Special Note to Commenters

Whenever possible, respondents are asked to draw their responses from objective, empirical, and actionable evidence and to cite this evidence within their responses. The information obtained through this RFI may help inform the next iteration of the HRSA SCD portfolio of investments. This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal, applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant or cooperative agreement award. Further, HRSA is not seeking proposals through this RFI and will not accept unsolicited proposals. HRSA will not respond to questions about the policy issues raised in this RFI. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. Not responding to this RFI does not preclude participation in any future procurement or program, if conducted.

Maria G. Button,
Director, Executive Secretariat.
[FR Doc. 2024-28558 Filed 12-5-24; 8:45 am]
BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Strategic Preparedness and Response

Request for Information on Hospital Preparedness Program Funding Formula

AGENCY: Administration for Strategic Preparedness and Response (ASPR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with section 319C-2 of the Public Health Service (PHS) Act, the Administration for Strategic Preparedness and Response (ASPR) distributes Hospital Preparedness Program (HPP) cooperative agreement funding to recipients using a statutorily required formula. ASPR is seeking comment on the risk component of the HPP funding formula to inform potential future changes to the formula.

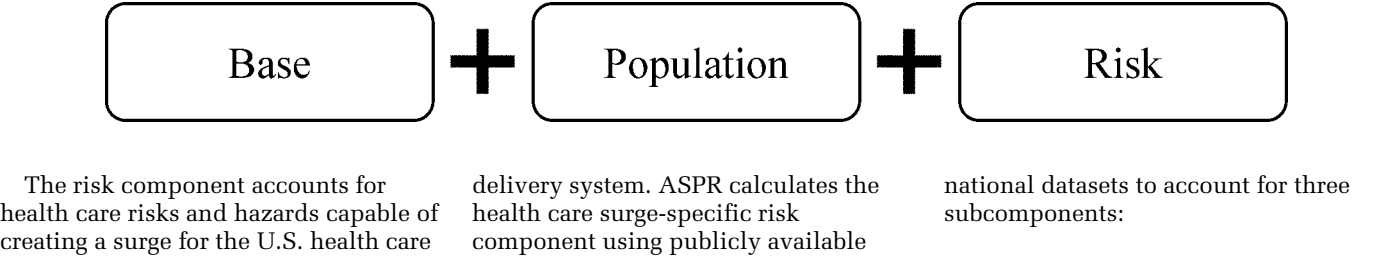
DATES: Comments on this notice must be received by December 20, 2024. ASPR will not reply individually to responders but will consider all comments submitted by the deadline.

ADDRESSES: Please submit all responses to the following email address: HPP@hhs.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Hannah, Director, Office of Health Care Readiness (OHCR) via Jennifer.Hannah@hhs.gov or call: 202-245-0722.

SUPPLEMENTARY INFORMATION: HPP is a cooperative agreement program that, through its support for health care coalitions, prepares the nation's health care delivery system to save lives during emergencies that exceed the day-to-day capacity of health care and emergency response systems. HPP is the primary source of federal funding for health care preparedness and response. HPP provides funding to 62 recipients, including the governments of all 50 states, eight U.S. territories and freely associated states, the District of Columbia, Chicago, New York City, and Los Angeles County. For the purposes of this Request for Information (RFI), "the health care delivery system" refers to all organizations and persons whose mission is to promote, restore, optimize, or maintain health.

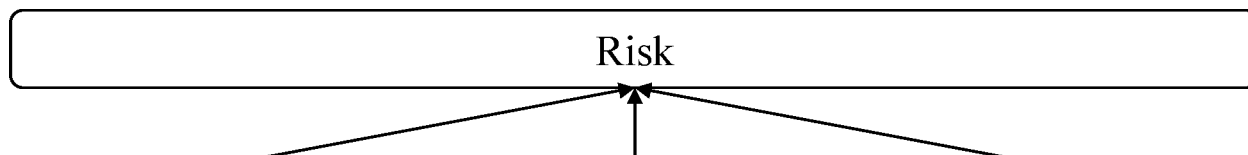
Section 319C-2 of the PHS Act requires ASPR to distribute HPP funding based on the following factors: a required base amount determined by the HHS Secretary, a required adjustment based on population, and an amount based on significant unmet need and degree of risk.



1. Threat, or the likelihood of a particular threat event occurring, quantified by the number of events occurring within a recipient's jurisdiction (e.g., the "flood" threat parameter is comprised of the number of flooding events occurring within a recipient's jurisdiction).

2. Vulnerability, or a community's or communities' access to health care services and surge capacity (or lack thereof), quantified by proportion-based public health metrics (e.g., the "health care access" vulnerability parameter is comprised of the number of staffed hospital beds per capita by recipient).

3. Consequence, or the potential negative impacts associated with a particular threat/hazard occurring, quantified by the historic number of casualties per event associated with each threat/hazard (e.g., the "flood" consequence parameter captures the expected number of casualties associated with a flooding event).



Information Requested

Please reference the tables found at <https://aspr.hhs.gov/HealthCareReadiness/HPP/Pages/rfi.aspx> to answer the following questions.

(1) What, if any, feedback do you have regarding the current datasets? For example, are there any current datasets you recommend retiring? Please specify why and if you would recommend any replacements.

(2) What, if any, additional datasets would you recommend including in the risk calculation? Please specify the data source and associated risk subcomponent (i.e., threat, vulnerability, consequence). You may recommend adding one of the "potential datasets" included in the tables found at <https://aspr.hhs.gov/HealthCareReadiness/HPP/Pages/rfi.aspx> and/or suggest new datasets for consideration.

(3) What, if any, additional considerations would you recommend including in the calculation of risk (e.g., threats that are not included in the current datasets)? Please also include datasets that can be used to measure these factors.

You may address as many or as few questions as you choose. You may provide additional feedback relevant to the HPP funding formula. When responding, please identify the corresponding question. Datasets used for the risk calculation must be national in scope and either publicly available or readily available to the federal government.

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the government to provide support for any ideas in response to it. ASPR will use the information submitted in response to this RFI at its discretion and will not provide comments to any of your submissions. The government is under

no obligation to acknowledge receipt of the information received or provide feedback with respect to any information submitted. No proprietary, classified, confidential, or sensitive information should be included in a response. The contents of all submissions may be made available to the public in the future. Submitted materials should therefore be publicly available or be able to be made public.

The Administrator and Assistant Secretary for Preparedness and Response of ASPR, Dawn O'Connell, having reviewed and approved this document, authorizes Adam DeVore, who is the Federal Register liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Adam DeVore,

Federal Register Liaison, Administration for Strategic Preparedness and Response.

[FR Doc. 2024-28740 Filed 12-5-24; 8:45 am]

BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, email the SAMHSA Reports Clearance Officer at samhsapra@samhsa.hhs.gov.

Project: SAMHSA Unified Client-Level Performance Reporting Tool (SUPRT)—(OMB No. 0930-NEW)

SAMHSA is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation. SAMHSA is seeking approval for the new SAMHSA Unified Performance Reporting Tool (SUPRT) which will (1) combine and align the existing client-level performance instrument for the SAMHSA Center for Substance Abuse Treatment (CSAT) and National Outcomes Measures (NOMS) instrument for the SAMHSA Center for Mental Health Services (CMHS), and (2) create a two-component tool that will allow for a client (or caregiver) self-administered questionnaire (called SAMHSA Unified Performance Reporting Tool (SUPRT)—C: Client or Caregiver Form or 'SUPRT-C') and a grantee completion of administrative data (called SAMHSA Unified Performance Reporting Tool (SUPRT)—A: Administrative Report or 'SUPRT-A'). The revisions also allow for the client portion to move from interviewer-administered to self-administered with the aim of potentially reducing burden and increasing reporting accuracy.

SUPRT will allow SAMHSA to (1) continue to meet Government Performance and Results Modernization Act (GPRAMA) of 2010 reporting requirements; (2) reduce the scope and associated burden of questions requiring responses directly from clients; (3) standardize questions across programs wherever possible; and, (4) elicit programmatic information that will help to assess the impact of discretionary grant programs on the achievement of SAMHSA's 2023-2026 Strategic Priority Area goals and objectives.

Furthermore, this effort is designed to align performance reporting requirements with other parts of the Federal Statistical System. For example,

to the extent possible, SAMHSA aims to align with measurement indicators used by the Centers for Medicare & Medicaid Services; the Centers for Disease Control and Prevention; the U.S. Census Bureau; and the Office of Management and Budget. For instance, the race and ethnicity question is aligned with the Office of Management and Budget's race and ethnicity standards.

Currently, over 7,500 grantees across a range of prevention, harm reduction, treatment, and recovery support discretionary grant programs have reported program performance data into SAMHSA's Performance Accountability and Reporting System (SPARS) that serves as a central data repository. SPARS functions as a performance management system that captures information on the substance use and mental health services delivered via the range of SAMHSA's discretionary grants.

The new SUPRT tool reflects diverse feedback SAMHSA obtained through multiple listening sessions conducted with key stakeholders, in addition to extensive deliberations conducted by different working groups within SAMHSA. Accordingly, SUPRT aligns with some prior questions and deletes other questions from the client-level performance reporting tools currently in use. SUPRT also incorporates select new

measures/questions into a multi-component client-level tool. SAMHSA will provide guidance about these changes, specifying which items grantees can complete using administrative data and which can be self-administered to clients. This new SUPRT will reduce client reporting burden and is projected to enhance the accuracy of the collected performance data.

SAMHSA will use the data collected through the new SUPRT for annual reporting required by GPRAMA, grantee monitoring, and continuous improvement of its discretionary grant programs. The SUPRT will also align with, and strengthen, SAMHSA's complementary evaluation activities of its discretionary grant programs providing client services.

The information collected through this process will allow SAMHSA to (1) monitor and report on implementation and overall performance of the associated grant programs; (2) advance SAMHSA's proposed performance goals; and (3) assess the accountability and performance of its discretionary grant programs, focused on efforts that promote mental health, prevent substance use, and provide treatments and supports to foster recovery.

The first component of SUPRT, the SUPRT-C, is to be completed by clients or caregivers. SUPRT-C is composed of

(1) standardized questions about demographic information (asked directly of clients at baseline only); (2) social determinants of health (asked directly of clients at baseline and at 3 or 6 months post baseline reassessment); and, (3) recovery, quality of life, and client goal measures as impacted by services received (asked of clients at baseline and reassessment during the client's first year of treatment, then annually). Therefore, not all questions are asked of each respondent (child/adult) or at each information collection period (*e.g.*, baseline, reassessment, annual).

The second component of SUPRT, SUPRT-A, is to be completed by grantees. SUPRT-A consists of a streamlined set of questions describing clients' behavioral health history, screening and diagnosis items, and services provided to clients. SUPRT-A is collected from client-records kept by the grantee, for example in paper or electronic health records (EHRs). Grantees may need to adjust their record keeping, intake or behavioral health history taking to ensure that they are able to complete the SUPRT-A. Question(s) about services provided to the client will only be required at reassessment and annually.

The chart below summarizes the annualized burden for this project.

SAMHSA tool	Included domains	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Hourly cost	Total cost
Client-level baseline assessment—SUPRT-C Adult.	Demographics, SDOH, Core Outcomes of Recovery, Goals.	488,775	1	488,775	0.250	122,194	\$28.9	\$3,530,177
Client-level baseline assessment—SUPRT-C Youth, Child, or Young Child.	Demographics, SDOH	91,225	1	91,225	0.133	12,163	28.9	351,399
Client-level baseline—SUPRT-A ...	Record Management, Behavioral Health History, Behavioral Health Screening, Behavioral Health Diagnoses.	2,125	314	668,250	0.280	187,110	28.9	5,405,608
Client-level 3- or 6-month reassessment—SUPRT-C Adult.	SDOH, Core Outcomes of Recovery, Goals.	329,212	1	329,212	0.167	54,869	28.9	1,585,156
Client-level 3- or 6-month reassessment—SUPRT-C Youth, Child, or Young Child.	SDOH	61,444	1	61,444	0.050	3,072	28.9	88,756
Client-level 3- or 6-month—SUPRT-A.	Record Management, Behavioral Health History, Behavioral Health Screening, Behavioral Health Diagnoses, Services Received.	2,125	212	450,097	0.330	148,532	28.9	4,291,086
Client-level close-out record—SUPRT-A.	Record Management, Services Received.	2,125	256	543,097	0.100	54,310	28.9	1,569,551
Client-level annual SUPRT-C Adult	Core Outcomes of Recovery, Goals.	91,540	1	91,540	0.117	10,680	28.9	308,535
Client-level annual—SUPRT-A	Record Management, Behavioral Health History, Behavioral Health Screening, Behavioral Health Diagnosis, Services Received.	2,125	59	125,153	0.330	41,300	28.9	1,193,170
Total .....	.....	1,070,696	.....	2,848,793	.....	634,230	.....	18,323,437

Written comments and recommendations concerning the

proposed information collection should be sent by January 6, 2025 to the

SAMHSA Desk Officer at the Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@omb.eop.gov. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to 202-395-7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2024-28556 Filed 12-5-24; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4712-DR; Docket ID FEMA-2024-0001]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA-4712-DR), dated May 17, 2023, and related determinations.

DATES: This change occurred on October 7, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-28633 Filed 12-5-24; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4832-DR; Docket ID FEMA-2024-0001]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA-4832-DR), dated October 2, 2024, and related determinations.

DATES: This amendment was issued November 4, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 2, 2024.

Hancock County for Public Assistance, including direct Federal assistance.

Sevier County for permanent work [Categories C-G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-28672 Filed 12-5-24; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3617-EM; Docket ID FEMA-2024-0001]

North Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North Carolina (FEMA-3617-EM), dated September 26, 2024, and related determinations.

DATES: The declaration was issued September 26, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 26, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of North Carolina resulting from Hurricane Helene beginning on September 25, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the State of North Carolina.

You are authorized to provide appropriate assistance for required emergency measures,

authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance in selected areas; emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas; and emergency protective measures (Category B), limited to direct Federal assistance in selected areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, E. Craig Levy, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of North Carolina have been designated as adversely affected by this declared emergency:

Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties and the Eastern Band of Cherokee Indians for emergency protective measures (Category B), including direct federal assistance under the Public Assistance program.

Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba, Cleveland, Gaston, Iredell, Lincoln, Watauga, and Wilkes Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Alamance, Anson, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren,

Washington, Wayne, Wilson, and Yadkin Counties for emergency protective measures (Category B), limited to direct federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28643 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4834–DR; Docket ID FEMA–2024–0001]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4834–DR), dated October 11, 2024, and related determinations.

DATES: The declaration was issued October 11, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 11, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Milton beginning on October 5, 2024, and continuing, is of sufficient

severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA’s Public Assistance Mitigation Cost Share Incentives Policy. For a 90-day period of the State’s choosing within the first 120 days from the start of the incident period, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Brevard, Charlotte, Citrus, Clay, Collier, DeSoto, Duval, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia Counties and the Miccosukee Tribe of Indians of Florida for Individual Assistance.

Brevard, Charlotte, Citrus, Clay, Collier, DeSoto, Duval, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia Counties and the Miccosukee Tribe of Indians of Florida for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Florida are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28680 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4830–DR; Docket ID FEMA–2024–0001]

Georgia; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4830–DR), dated September 30, 2024, and related determinations.

DATES: This amendment was issued November 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 30, 2024.

Stephens and Wilkes Counties for Individual Assistance (already designated for Public Assistance, including direct Federal assistance).

Baldwin, Crisp and Paulding Counties for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28665 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4829–DR; Docket ID FEMA–2024–0001]

South Carolina; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the South Carolina (FEMA–4829–DR), dated September 29, 2024, and related determinations.

DATES: This amendment was issued October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 7, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28658 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4822–DR; Docket ID FEMA–2024–0001]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska (FEMA–4822–DR), dated September 24, 2024, and related determinations.

DATES: This amendment was issued October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now June 19 to July 8, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28635 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4825–DR; Docket ID FEMA–2024–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4825–DR), dated September 24, 2024, and related determinations.

DATES: The declaration was issued September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of New York resulting from the remnants of Tropical Storm Debby during the period of August 8 to August 10, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will

be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Allegany, Broome, Delaware, Essex, Franklin, Jefferson, Ontario, Steuben, St. Lawrence, and Yates Counties for Public Assistance.

All areas within the State of New York are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28636 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4834–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4834–DR), dated October 11, 2024, and related determinations.

DATES: This amendment was issued November 4, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 11, 2024.

Palm Beach County for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28679 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4827–DR; Docket ID FEMA–2024–0001]

North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4827–DR), dated September 28, 2024, and related determinations.

DATES: This amendment was issued October 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 28, 2024.

Cabarrus, Cherokee, Forsyth, Graham, Iredell, Lee, Nash, Rowan, Stanly, Surry, Union, and Yadkin Counties for Individual Assistance.

Cabarrus, Cherokee, Forsyth, Graham, Iredell, Lee, Nash, Rowan, Stanly, Surry, Union, and Yadkin Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

Swain County for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28654 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4815–DR; Docket ID FEMA–2024–0001]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4815–DR), dated September 11, 2024, and related determinations.

DATES: This change occurred on October 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig Murphy, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Mark K. O'Hanlon as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28597 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4839–DR; Docket ID FEMA–2024–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York

(FEMA–4839–DR), dated October 21, 2024, and related determinations.

DATES: The declaration was issued October 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 21, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of New York resulting from a severe storm and flooding during the period of August 18 to August 19, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Lewis, Oswego, and Suffolk Counties for Public Assistance.

All areas within the State of New York are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28686 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4833–DR; Docket ID FEMA–2024–0001]

San Carlos Apache Tribe; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the San Carlos Apache Tribe (FEMA–4833–DR), dated October 4, 2024, and related determinations.

DATES: The declaration was issued October 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 4, 2024 the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage to the lands associated with the San Apache Tribe resulting from the Watch Fire during the period of July 10 to July 17, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the San Carlos Apache Tribe.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard

Mitigation for the San Carlos Apache Tribe. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA’s Public Assistance Mitigation Cost Share Incentives Policy.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benigno Bern Ruiz, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

San Carlos Apache Tribe for Individual Assistance.

San Carlos Apache Tribe for Public Assistance.

The San Carlos Apache Tribe is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28674 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4831–DR; Docket ID FEMA–2024–0001]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4831–DR), dated October 1, 2024, and related determinations.

DATES: The declaration was issued October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 1, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from Tropical Storm Helene beginning on September 25, 2024, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford

Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA's Public Assistance Mitigation Cost Share Incentives Policy.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy S. Pheil, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

Giles, Grayson, Smyth, Tazewell, Washington, and Wythe Counties and the independent city of Galax for Individual Assistance.

Bedford, Bland, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Montgomery, Pittsylvania, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties and the independent cities of Bristol, Covington, Danville, Galax, Norton, and Radford for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

All areas within the Commonwealth of Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28670 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4825–DR; Docket ID FEMA–2024–0001]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4825–DR), dated September 24, 2024, and related determinations.

DATES: This amendment was issued October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 24, 2024.

Chenango County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28623 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4797–DR; Docket ID FEMA–2024–0001]

Minnesota; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–4797–DR), dated June 28, 2024, and related determinations.

DATES: This amendment was issued October 30, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 28, 2024.

Dodge and Winona Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28593 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4828–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4828–DR), dated September 28, 2024, and related determinations.

DATES: This amendment was issued October 2, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 2, 2024, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Helene beginning on September 23, 2024, and continuing, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend my declaration of September 28, 2024, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance at 100 percent of the total eligible costs for a period of 90 days of the State’s choosing within the first 120 days from the start of the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28637 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4830–DR; Docket ID FEMA–2024–0001]

Georgia; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4830–DR), dated September 30, 2024, and related determinations.

DATES: This amendment was issued October 2, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 2, 2024, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from Hurricane Helene beginning on September 24, 2024, and continuing, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend my declaration of September 30, 2024, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance at 100 percent of the total eligible

costs for a period of 90 days of the State’s choosing within the first 120 days from the start of the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28663 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4831–DR; Docket ID FEMA–2024–0001]

Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4831–DR), dated October 1, 2024, and related determinations.

DATES: This amendment was issued October 25, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 1, 2024.

Lee County for Individual Assistance (already designated for Public Assistance, including direct Federal assistance).

Albemarle, Appomattox, Botetourt, Buckingham, Charlotte, Floyd, Greene,

Madison, Nelson, and Patrick Counties and the independent city of Roanoke for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28669 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4817–DR; Docket ID FEMA–2024–0001]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4817–DR), dated September 16, 2024, and related determinations.

DATES: The declaration was issued September 16, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 16, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from Hurricane Francine during the period of September 9 to September 12, 2024, is of sufficient severity and magnitude to

warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Sandra L. Eslinger, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

Ascension, Assumption, Lafourche, St. Charles, St. James, St. John the Baptist, St. Mary, and Terrebonne Parishes for Individual Assistance.

Ascension, Assumption, Lafourche, St. Charles, St. James, St. John the Baptist, St. Mary, and Terrebonne Parishes for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

All areas within the State of Louisiana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28603 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4819–DR; Docket ID FEMA–2024–0001]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–4819–DR), dated September 20, 2024, and related determinations.

DATES: The declaration was issued September 20, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 20, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of July 13 to July 16, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and

Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Darrin Ricketts, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Illinois have been designated as adversely affected by this major disaster:

Cook, Fulton, Henry, St. Clair, Washington, Will, and Winnebago Counties for Individual Assistance.

All areas within the State of Illinois are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28607 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3620–EM; Docket ID FEMA–2024–0001]

Tennessee; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Tennessee (FEMA–3620–EM), dated September 27, 2024, and related determinations.

DATES: The declaration was issued September 27, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Tennessee resulting from Tropical Storm Helene beginning on September 26, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Tennessee.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, in selected areas and emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support, in selected areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Tennessee have been designated as adversely affected by this declared emergency:

Carter, Johnson, and Unicoi Counties for emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program. Cocke, Hawkins, and Washington Counties for emergency protective measures (Category B), limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28649 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4828–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4828–DR),

dated September 28, 2024, and related determinations.

DATES: This amendment was issued October 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 28, 2024.

Bay, Calhoun, Holmes, Jackson, Walton, and Washington Counties for emergency protective measures (Category B), including direct federal assistance under the Public Assistance program.

Collier County for emergency protective measures (Category B), limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program (already designated for Individual Assistance).

Monroe County for emergency protective measures (Category B), limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Escambia, Marion, Okaloosa, Santa Rosa, and Sumter Counties for emergency protective measures (Category B), limited to direct federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28624 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3619–EM; Docket ID FEMA–2024–0001]

South Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of South Carolina (FEMA–3619–EM), dated September 26, 2024, and related determinations.

DATES: The declaration was issued September 26, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 26, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of South Carolina resulting from Hurricane Helene beginning on September 25, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of South Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance in selected areas; emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas; and emergency protective measures (Category B), limited to direct Federal assistance in selected areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby

authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Brett H. Howard, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of South Carolina have been designated as adversely affected by this declared emergency:

Abbeville, Anderson, Cherokee, Greenville, Laurens, Oconee, Pickens, and Spartanburg Counties for emergency protective measures (Category B), including direct federal assistance under the Public Assistance program.

Aiken, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Colleton, Edgefield, Fairfield, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Lexington, McCormick, Newberry, Orangeburg, Richland, Saluda, Sumter, Union, and York Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Berkeley, Charleston, Chesterfield, Clarendon, Darlington, Dillon, Dorchester, Florence, Georgetown, Horry, Lee, Marion, Marlboro, and Williamsburg Counties for emergency protective measures (Category B), limited to direct Federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28647 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–3622–EM; Docket ID FEMA–2024–0001]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3622–EM), dated October 7, 2024, and related determinations.

DATES: The declaration was issued October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida resulting from Hurricane Milton beginning on October 5, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance in selected areas and emergency protective measures (Category B), limited to direct Federal assistance in selected areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, John E. Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

Brevard, Broward, Charlotte, Citrus, Collier, Desoto, Dixie, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia Counties for emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

Alachua, Baker, Bradford, Clay, Columbia, Duval, Gilchrist, Hamilton, Lafayette, Madison, Nassau, Suwannee, Taylor, and Union Counties for emergency protective measures (Category B), limited to direct Federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28630 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–3620–EM; Docket ID FEMA–2024–0001]

Tennessee; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Tennessee (FEMA–3620–EM), dated September 27, 2024, and related determinations.

DATES: This amendment was issued October 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 30, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28648 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4838–DR; Docket ID FEMA–2024–0001]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA-4838-DR), dated October 21, 2024, and related determinations.

DATES: The declaration was issued October 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 21, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, straight-line winds, tornadoes, and flooding on July 31, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew P. Meyer, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Cass, Douglas, Lancaster, Sarpy, and Saunders Counties for Public Assistance.

All areas within the State of Nebraska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-28684 Filed 12-5-24; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA-2024-0002; Internal Agency Docket No. FEMA-B-2474]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required.

They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The

flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are

accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Goodyear (23-09-0729P).	The Honorable Joe Pizzillo, Mayor, City of Goodyear, 1900 North Civic Square, Goodyear, AZ 85395.	Engineering and Development Services, 14455 West Van Buren Street, Suite D101, Goodyear, AZ 85338.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	040046
Maricopa	City of Peoria (23-09-1280P).	The Honorable Jason Beck, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	040050
Maricopa	City of Surprise (24-09-0009P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Services Department, 16000 North Civic Center Plaza, Surprise, AZ 85374.	https://msc.fema.gov/portal/advanceSearch .	Dec. 6, 2024	040053
Maricopa	Unincorporated Areas of Maricopa County (22-09-1095P).	The Honorable Jack Sellers, Chair, Maricopa County, Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	040037
Maricopa	Unincorporated Areas of Maricopa County (23-09-1280P).	The Honorable Jack Sellers, Chair, Maricopa County, Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	040037
Maricopa	Unincorporated Areas of Maricopa County (24-09-0009P).	The Honorable Jack Sellers, Chair, Maricopa County, Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	https://msc.fema.gov/portal/advanceSearch .	Dec. 6, 2024	040037
Yavapai	City of Cottonwood (22-09-0848P).	The Honorable Tim Elinski, Mayor, City of Cottonwood, 827 North Main Street, Cottonwood, AZ 86326.	Public Works Department, 1490 West Mingus Avenue, Cottonwood, AZ 86326.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	040096
Yavapai	Town of Clarkdale (22-09-0848P).	The Honorable Robyn Prud'Homme-Bauer, Mayor, Town of Clarkdale, 39 North 9th Street, Clarkdale, AZ 86324.	Public Works Department, 890 Main Street, Clarkdale, AZ 86324.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	040095
Yavapai	Unincorporated Areas of Yavapai County (22-09-0848P).	The Honorable Craig L. Brown, Chair, Yavapai County, Board of Supervisors, 10 South 6th Street, Cottonwood, AZ 86326.	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	040093
California:						
Riverside	City of Perris (24-09-0210P).	The Honorable Michael Vargas, Mayor, City of Perris, 101 North D Street, Perris, CA 92570.	Engineering Department, 24 South D Street, Suite 100, Perris, CA 92570.	https://msc.fema.gov/portal/advanceSearch .	Dec. 9, 2024	060258
Riverside	Unincorporated Areas of Riverside County (24-09-0210P).	The Honorable Chuck Washington, Chair, Riverside County, Board of Supervisors, 4080 Lemon Street, 5th Floor Riverside, CA 92501.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	https://msc.fema.gov/portal/advanceSearch .	Dec. 9, 2024	060245
Idaho:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Lemhi	City of Salmon (23–10–0431P).	The Honorable Todd Nelson, Mayor, City of Salmon, 200 Main Street, Salmon, ID 83467.	City Hall, 200 Main Street, Salmon, ID 83467.	https://msc.fema.gov/portal/advanceSearch .	Dec. 13, 2024	160093
Indiana: Boone	Town of Zionsville (22–05–2053P).	The Honorable John Stehr, Mayor, Town of Zionsville, 1100 West Oak Street, Zionsville, IN 46077.	Planning Department, 1100 West Oak Street, Zionsville, IN 46077.	https://msc.fema.gov/portal/advanceSearch .	Nov. 27, 2024	180016
Hamilton	City of Carmel (22–05–2053P).	The Honorable Sue Finkam, Mayor, City of Carmel, 1 Civic Square, Carmel, IN 46032.	Department of Community Services, 1 Civic Square, Carmel, IN 46032.	https://msc.fema.gov/portal/advanceSearch .	Nov. 27, 2024	180081
Hamilton	City of Westfield (22–05–2053P).	The Honorable Scott Willis, Mayor, City of Westfield, 2728 East 171st Street, Westfield, IN 46074.	City Hall, 130 Penn Street, Westfield, IN 46074.	https://msc.fema.gov/portal/advanceSearch .	Nov. 27, 2024	180083
Hamilton	Unincorporated Areas of Hamilton County (22–05–2053P).	Mark Heirbrandt, President, Hamilton County Board of Commissioners, 1 Hamilton County Square, Suite 157, Noblesville, IN 46060.	Hamilton County Planning Commission, 1 Hamilton County Square, Noblesville, IN 46060.	https://msc.fema.gov/portal/advanceSearch .	Nov. 27, 2024	180080
Nevada: Washoe	City of Reno (24–09–0149P).	The Honorable Hillary Schieve, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	City Hall, 1 East 1st Street, Reno, NV 89501.	https://msc.fema.gov/portal/advanceSearch .	Dec. 3, 2024	320020
Washoe	Unincorporated Areas of Washoe County (24–09–0149P).	The Honorable Alexis Hill, Chair, Washoe County, Board of Commissioners, 1001 East 9th Street, Building A, Reno, NV 89512.	Washoe County, Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	https://msc.fema.gov/portal/advanceSearch .	Dec. 3, 2024	320019

[FR Doc. 2024–28587 Filed 12–5–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4814–DR; Docket ID FEMA–2024–0001]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4814–DR), dated August 29, 2024, and related determinations.**DATES:** This change occurred on October 22, 2024.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency

(FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Catharine O. Fan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Lai Sun Yee as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28596 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4822–DR; Docket ID FEMA–2024–0001]

Nebraska; Major Disaster and Related Determinations**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–4822–DR), dated September 24, 2024, and related determinations.**DATES:** The declaration was issued September 24, 2024.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 24, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of June 20 to July 8, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew P. Meyer, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Boyd, Clay, Dakota, Dawson, Douglas, Fillmore, Holt, Howard, Lincoln, McPherson, Nance, Nemaha, Saunders, Scotts Bluff, Thomas, and Washington Counties for Public Assistance.

All areas within the State of Nebraska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28653 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4818–DR; Docket ID FEMA–2024–0001]

Saint Regis Mohawk Tribe; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Saint Regis Mohawk Tribe (FEMA–4818–DR), dated September 20, 2024, and related determinations.

DATES: The declaration was issued September 20, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 20, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage to the lands associated with the Saint Regis Mohawk Tribe resulting from a severe storm and flooding during the period of August 8 to August 10, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the Saint Regis Mohawk Tribe.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Saint Regis Mohawk Tribe. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Catharine O. Fan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

The Saint Regis Mohawk Tribe for Public Assistance.

The Saint Regis Mohawk Tribe is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28605 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4834–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4834–DR), dated October 11, 2024, and related determinations.

DATES: This amendment was issued October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 11, 2024.

Nassau County for debris removal and permanent work [Categories A and C–G] (already designated for emergency protective measures [Category B], including direct federal assistance under the Public Assistance program).

Duval and St. Johns Counties for permanent work [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28677 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4831–DR; Docket ID FEMA–2024–0001]

Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4831–DR), dated October 1, 2024, and related determinations.

DATES: This amendment was issued October 25, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 3, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28668 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4815–DR; Docket ID FEMA–2024–0001]

Pennsylvania; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4815–DR), dated September 11, 2024, and related determinations.

DATES: This amendment was issued November 14, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following area among those areas

determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 11, 2024.

Union County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28599 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4828–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4828–DR), dated September 28, 2024, and related determinations.

DATES: This amendment was issued October 23, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 28, 2024.

DeSoto County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28621 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3616–EM; Docket ID FEMA–2024–0001]

Georgia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Georgia (FEMA–3616–EM), dated September 26, 2024, and related determinations.

DATES: This amendment was issued November 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 30, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28641 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3619–EM; Docket ID FEMA–2024–0001]

South Carolina; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the South Carolina (FEMA–3619–EM), dated September 26, 2024, and related determinations.

DATES: This amendment was issued October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 7, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28646 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4803–DR; Docket ID FEMA–2024–0001]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–4803–DR), dated July 23, 2024, and related determinations.

DATES: This change occurred on October 10, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew P. Meyer, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of David R. Gervino as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28594 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–4817–
DR; Docket ID FEMA–2024–0001]

**Louisiana; Amendment No. 3 to Notice
of a Major Disaster Declaration**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4817–DR), dated September 16, 2024, and related determinations.

DATES: This change occurred on October 29, 2024.

FOR FURTHER INFORMATION CONTACT:
Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Roland W. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Sandra L. Eslinger as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–28601 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–4818–
DR; Docket ID FEMA–2024–0001]

**Saint Regis Mohawk Tribe;
Amendment No. 1 to Notice of a Major
Disaster Declaration**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Saint Regis Mohawk Tribe (FEMA–4818–DR), dated September 20, 2024, and related determinations.

DATES: This amendment was issued November 1, 2024.

FOR FURTHER INFORMATION CONTACT:
Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Saint Regis Mohawk Tribe is hereby amended to include the Individual Assistance program for the following area adversely affected by the event declared a major disaster by the President in his declaration of September 20, 2024.

Saint Regis Mohawk Tribe for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–28604 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–4834–
DR; Docket ID FEMA–2024–0001]

**Florida; Amendment No. 1 to Notice of
a Major Disaster Declaration**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4834–DR), dated October 11, 2024, and related determinations.

DATES: This amendment was issued October 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 11, 2024.

Alachua, Baker, Bradford, Broward, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Madison, Miami-Dade, Monroe, Nassau, Suwannee, Taylor, and Union for emergency protective measures (Category B), including direct federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–28675 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4824–DR; Docket ID FEMA–2024–0001]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–4824–DR), dated September 24, 2024, and related determinations.

DATES: The declaration was issued September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of June 26 to July 7, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew P. Meyer, of FEMA is appointed to act as the

Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Chase, Clark, Comanche, Doniphan, Finney, Geary, Gray, Greeley, Hamilton, Kearny, Meade, Scott, Thomas, and Wabaunsee Counties for Public Assistance.

All areas within the State of Kansas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28625 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4829–DR; Docket ID FEMA–2024–0001]

South Carolina; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4829–DR), dated September 29, 2024, and related determinations.

DATES: This amendment was issued November 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following area among those areas determined to have

been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2024.

Beaufort County for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28659 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4825–DR; Docket ID FEMA–2024–0001]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4825–DR), dated September 24, 2024, and related determinations.

DATES: This change occurred on October 22, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Catharine O. Fan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Lai Sun Yee as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28620 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4829–DR; Docket ID FEMA–2024–0001]

South Carolina; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4829–DR), dated September 29, 2024, and related determinations.

DATES: This amendment was issued October 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 4, 2024, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of South Carolina

resulting from Hurricane Helene beginning on September 25, 2024, and continuing, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend my declaration of September 29, 2024, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs for a period of 90 days of the State’s choosing within the first 120 days from the start of the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28657 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency’s

(FEMA’s) National Flood Insurance Program (NFIP).

DATES: The date of April 9, 2025 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below. (Catalog of Federal Domestic Assistance No. 97.022, “Flood Insurance.”)

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Woodson County, Kansas and Incorporated Areas Docket No.: FEMA-B-2402	
City of Neosho Falls	Woodson County Courthouse, 105 West Rutledge Street, Yates Center, KS 66783.
City of Toronto	City Hall, 215 West Main Street, Toronto, KS 66777.
City of Yates Center	City Hall, 117 East Rutledge Street, Yates Center, KS 66783.
Unincorporated Areas of Woodson County	Woodson County Courthouse, 105 West Rutledge Street, Yates Center, KS 66783.
Dane County, Wisconsin and Incorporated Areas Docket No.: FEMA-B-2381	
City of Madison	City County Building, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.
City of Monona	City Hall, 5211 Schluter Road, Monona, WI 53716.
City of Sun Prairie	City Hall, 300 East Main Street, Sun Prairie, WI 53590.
Ho-Chunk Nation of Wisconsin	Ho-Chunk Nation of Wisconsin Tribal Office Building, W9814 Airport Road, Black River Falls, WI 54615.
Unincorporated Areas of Dane County	Dane County City County Building, 210 Martin Luther King Jr. Boulevard, Room 116, Madison, WI 53703.
Village of McFarland	Municipal Center, 5915 Milwaukee Street, McFarland, WI 53558.
Village of Windsor	Windsor Village Hall, 4084 Mueller Road, DeForest, WI 53532.

[FR Doc. 2024–28586 Filed 12–5–24; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4828–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4828–DR), dated September 28, 2024, and related determinations.

DATES: This amendment was issued November 1, 2024.

FOR FURTHER INFORMATION CONTACT:
Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 7, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28652 Filed 12–5–24; 8:45 am]
BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3615–EM; Docket ID FEMA–2024–0001]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3615–EM), dated September 24, 2024, and related determinations.

DATES: The declaration was issued September 24, 2024.

FOR FURTHER INFORMATION CONTACT:
Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida resulting from Tropical Storm Helene beginning on September 23, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas and emergency protective measures (Category B), limited to direct Federal assistance in the other designated areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, John E. Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

Bay, Calhoun, Charlotte, Citrus, Collier, Dixie, Franklin, Gadsden, Gilchrist, Gulf, Hernando, Hillsborough, Jackson, Jefferson, Lafayette, Lee, Leon, Levy, Liberty, Madison, Manatee, Monroe, Pasco, Pinellas, Sarasota, Suwannee, Taylor, and Wakulla Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Alachua, Bradford, Columbia, Escambia, Hamilton, Holmes, Marion, Okaloosa, Santa Rosa, Sumter, Union, Walton, and Washington Counties for emergency protective measures (Category B), limited to direct Federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28640 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4830–DR; Docket ID FEMA–2024–0001]

Georgia; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4830–DR), dated September 30, 2024, and related determinations.

DATES: This amendment was issued October 21, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 30, 2024.

Clinch, Echols, Lanier, Lincoln, Treutlen, and Washington Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

Banks, Bleckley, Dawson, Decatur, Franklin, Gilmer, Greene, Habersham, Hart, Jackson, Jasper, Lamar, Lumpkin, Madison, Morgan, Oglethorpe, Pike, Putnam, Stephens, White, and Wilkes Counties for Public Assistance, including direct Federal assistance.

Butts, Elbert, Hancock, and Rabun Counties for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28662 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3613–EM; Docket ID FEMA–2024–0001]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3613–EM), dated August 25, 2024, and related determinations.

DATES: The declaration was issued August 25, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 25, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York resulting from a severe storm and flooding during the period of August 18 to August 19, 2024, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New York have been designated as adversely affected by this declared emergency:

Suffolk County for emergency protective measures (Category B), limited to direct Federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28638 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3622–EM; Docket ID FEMA–2024–0001]

Florida; Amendment No. 2 to Notice of an Emergency Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–3622–EM), dated October 7, 2024, and related determinations.

DATES: This amendment was issued November 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective November 2, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28629 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4828–DR; Docket ID FEMA–2024–0001]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4828–DR), dated September 28, 2024, and related determinations.

DATES: The declaration was issued September 28, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 28, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Helene beginning on September 23, 2024, and continuing, is of

sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA’s Public Assistance Mitigation Cost Share Incentives Policy.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Charlotte, Citrus, Dixie, Franklin, Hernando, Hillsborough, Jefferson, Lafayette, Lee, Levy, Madison, Manatee, Pasco, Pinellas, Sarasota, Taylor, and Wakulla Counties for Individual Assistance.

Charlotte, Citrus, Dixie, Franklin, Hernando, Hillsborough, Jefferson, Lafayette, Lee, Levy, Madison, Manatee, Pasco, Pinellas, Sarasota, Taylor, and Wakulla Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

All areas within the State of Florida are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28618 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3616–EM; Docket ID FEMA–2024–0001]

Georgia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Georgia (FEMA–3616–EM), dated September 26, 2024, and related determinations.

DATES: The declaration was issued September 26, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 26, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Georgia resulting from Hurricane Helene beginning on September 24, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford

Act”). Therefore, I declare that such an emergency exists in the State of Georgia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance in selected areas; emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas; and emergency protective measures (Category B), limited to direct Federal assistance in selected areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kevin A. Wallace, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Georgia have been designated as adversely affected by this declared emergency:

Atkinson, Baker, Banks, Ben Hill, Berrien, Brooks, Calhoun, Cherokee, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Dawson, Decatur, Dooly, Dougherty, Early, Echols, Fannin, Forsyth, Franklin, Gilmer, Grady, Habersham, Hall, Irwin, Jackson, Lanier, Lee, Lowndes, Lumpkin, Macon, Miller, Mitchell, Pickens, Pulaski, Quitman, Rabun, Randolph, Schley, Seminole, Stephens, Stewart, Sumter, Terrell, Thomas, Tift, Towns, Turner, Union, Webster, White, Wilcox, and Worth Counties for emergency protective measures (Category B), including direct federal assistance under the Public Assistance program.

Appling, Bacon, Baldwin, Barrow, Bartow, Bibb, Bleckley, Brantley, Burke, Butts, Camden, Carroll, Catoosa, Charlton, Chattahoochee, Chattooga, Clarke, Clayton, Cobb, Columbia, Coweta, Crawford, Dade, DeKalb, Dodge, Douglas, Elbert, Emanuel, Fayette, Floyd, Fulton, Glascock, Glynn, Gordon, Greene, Gwinnett, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Laurens, Lincoln, Madison, Marion, McDuffie, Meriwether, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe,

Paulding, Peach, Pierce, Pike, Polk, Putnam, Richmond, Rockdale, Screven, Spalding, Talbot, Taliaferro, Taylor, Telfair, Toombs, Treutlen, Troup, Twiggs, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Wheeler, Whitfield, Wilkes, and Wilkinson for emergency protective measures (Category B), limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Bryan, Bulloch, Candler, Chatham, Effingham, Evans, Liberty, Long, McIntosh, Tattnall Counties for emergency protective measures (Category B), limited to direct federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28642 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4828–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4828–DR), dated September 28, 2024, and related determinations.

DATES: This amendment was issued November 1, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 28, 2024.

Collier County for Public Assistance (already designated for Individual Assistance and emergency protective measures [Category B], limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program).

Marion and Sumter Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct federal assistance under the Public Assistance program).

Lee County for permanent work [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28655 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4701–DR; Docket ID FEMA–2024–0001]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4701–DR), dated April 7, 2023, and related determinations.

DATES: This change occurred on October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28632 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4832–DR; Docket ID FEMA–2024–0001]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4832–DR), dated October 2, 2024, and related determinations.

DATES: This amendment was issued October 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 30, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28671 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4822–DR; Docket ID FEMA–2024–0001]

Nebraska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–4822–DR), dated September 24, 2024, and related determinations.

DATES: This amendment was issued October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 24, 2024.

Richardson County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28650 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4821–DR; Docket ID FEMA–2024–0001]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4821–DR), dated September 24, 2024, and related determinations.

DATES: The declaration was issued September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from Tropical Storm Debby during the period of August 4 to August 20, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin A. Wallace, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Georgia have been designated as adversely affected by this major disaster:

Bryan, Bulloch, Chatham, Effingham, Evans, Liberty, Long, and Screven Counties for Individual Assistance.

Appling, Atkinson, Bacon, Berrien, Brantley, Brooks, Bryan, Bulloch, Burke, Camden, Candler, Charlton, Chatham, Clinch, Coffee, Colquitt, Cook, Echols, Effingham, Evans, Jeff Davis, Jenkins, Lanier, Long, Lowndes, McIntosh, Pierce, Screven, Tattnall, Thomas, Tift, Toombs, Ware, and Wayne Counties for Public Assistance.

All areas within the State of Georgia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28619 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4820–DR; Docket ID FEMA–2024–0001]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4820–DR), dated September 20, 2024, and related determinations.

DATES: The declaration was issued September 20, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 20, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Connecticut resulting from a severe storm, flooding, landslides, and mudslides during the period of August 18 to August 19, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert V. Fogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Connecticut have been designated as adversely affected by this major disaster:

Fairfield, Litchfield, and New Haven Counties for Individual Assistance.

All areas within the State of Connecticut are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28622 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4823–DR; Docket ID FEMA–2024–0001]

Confederated Tribes and Bands of the Yakama Nation; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major

disaster for the Confederated Tribes and Bands of the Yakama Nation (FEMA–4823–DR), dated September 24, 2024, and related determinations.

DATES: The declaration was issued September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2024 the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage to the lands associated with the Confederated Tribes and Bands of the Yakama Nation resulting from wildfires during the period of June 22 to July 8, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the Confederated Tribes and Bands of the Yakama Nation.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation for the Confederated Tribes and Bands of the Yakama Nation. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tonia Pence, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

The Confederated Tribes and Bands of the Yakama Nation for Individual Assistance.

The Confederated Tribes and Bands of the Yakama Nation for Public Assistance.

The Confederated Tribes and Bands of the Yakama Nation is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28616 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4826–DR; Docket ID FEMA–2024–0001]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4826–DR), dated September 26, 2024, and related determinations.

DATES: The declaration was issued September 26, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 26, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from severe storms, flooding, landslides, and

mudslides during the period of July 29 to July 31, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William F. Roy, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Caledonia, Essex, and Orleans Counties for Individual Assistance.

Caledonia, Essex, and Orleans Counties for Public Assistance.

All areas within the State of Vermont are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28651 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4830–DR; Docket ID FEMA–2024–0001]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4830–DR), dated September 30, 2024, and related determinations.

DATES: The declaration was issued September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 30, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from Hurricane Helene beginning on September 24, 2024, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA’s Public Assistance Mitigation Cost Share Incentives Policy.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin A. Wallace, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Georgia have been designated as adversely affected by this major disaster:

Appling, Brooks, Coffee, Columbia, Jefferson, Liberty, Lowndes, Pierce, Richmond, Tattnall, and Toombs Counties for Individual Assistance.

Appling, Brooks, Coffee, Columbia, Jefferson, Liberty, Lowndes, Pierce, Richmond, Tattnall, and Toombs Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

All areas within the State of Georgia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28666 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4815–DR; Docket ID FEMA–2024–0001]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4815–DR), dated September 11, 2024, and related determinations.

DATES: This amendment was issued November 8, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 11, 2024.

Cambria, Cameron, Clearfield, Elk, Indiana, Sullivan, Susquehanna, Wayne, and Wyoming Counties for Public Assistance.

Lycoming, Potter, and Tioga Counties for Public Assistance (already designated for Individual Assistance).

All areas within the Commonwealth of Pennsylvania are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals

and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28598 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4830–DR; Docket ID FEMA–2024–0001]

Georgia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4830–DR), dated September 30, 2024, and related determinations.

DATES: This amendment was issued October 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 30, 2024.

Taliaferro County for Individual Assistance.

Ben Hill and Irwin Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

Taliaferro and Turner Counties for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28661 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4817–DR; Docket ID FEMA–2024–0001]

Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4817–DR), dated September 16, 2024, and related determinations.

DATES: This amendment was issued October 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 16, 2024.

Iberville, St. Bernard, and Tangipahoa Parishes for Public Assistance.

Jefferson Parish for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28600 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4834–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4834–DR), dated October 11, 2024, and related determinations.

DATES: This amendment was issued October 16, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include permanent work under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 11, 2024.

Brevard, Charlotte, Citrus, Clay, Collier, DeSoto, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Lucie, Sumter, and Volusia Counties and the Miccosukee Tribe of Indians of Florida for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28676 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4834–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4834–DR), dated October 11, 2024, and related determinations.

DATES: This amendment was issued November 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 2, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28678 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4792–DR; Docket ID FEMA–2024–0001]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4792–DR), dated June 17, 2024, and related determinations.

DATES: This change occurred on October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28592 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28608 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28687 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY Federal Emergency Management Agency [Internal Agency Docket No. FEMA–4820–DR; Docket ID FEMA–2024–0001] Connecticut; Amendment No. 1 to Notice of a Major Disaster Declaration AGENCY: Federal Emergency Management Agency, DHS. ACTION: Notice. SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA–4820–DR), dated September 20, 2024, and related determinations. DATES: This amendment was issued October 25, 2024. FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833. SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Connecticut is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 20, 2024. Fairfield, Litchfield, and New Haven Counties for Public Assistance (already designated for Individual Assistance). The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance	DEPARTMENT OF HOMELAND SECURITY Federal Emergency Management Agency [Internal Agency Docket No. FEMA–4841–DR; Docket ID FEMA–2024–0001] Virgin Islands; Amendment No. 1 to Notice of a Major Disaster Declaration AGENCY: Federal Emergency Management Agency, DHS. ACTION: Notice. SUMMARY: This notice amends the notice of a major disaster declaration for the territory of the U.S. Virgin Islands (FEMA–4841–DR), dated October 25, 2024, and related determinations. DATES: This change occurred on October 22, 2024. FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833. SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David Miller Jr., of FEMA is appointed to act as the Federal Coordinating Officer for this disaster. This action terminates the appointment of Lai Sun Yee as Federal Coordinating Officer for this disaster. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance	DEPARTMENT OF HOMELAND SECURITY Federal Emergency Management Agency [Internal Agency Docket No. FEMA–3621–EM; Docket ID FEMA–2024–0001] Virginia; Emergency and Related Determinations AGENCY: Federal Emergency Management Agency, DHS. ACTION: Notice. SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Virginia (FEMA–3621–EM), dated September 29, 2024, and related determinations. DATES: The declaration was issued September 29, 2024. FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833. SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 29, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows: I have determined that the emergency conditions in certain areas of the Commonwealth of Virginia resulting from Post-Tropical Cyclone Helene beginning on September 25, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 <i>et seq.</i> (“the Stafford Act”). Therefore, I declare that such an emergency exists in the Commonwealth of Virginia. You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. Consistent with the requirement that Federal assistance be supplemental, any

Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Timothy S. Pheil, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this declared emergency:

Grayson, Smyth, Tazewell, Washington, Wise, and Wythe Counties and the independent City of Galax for emergency protective measures (Category B), limited to direct Federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28628 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4839–DR; Docket ID FEMA–2024–0001]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4839–DR), dated October 21, 2024, and related determinations.

DATES: This change occurred on October 22, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Catharine O. Fan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Lai Sun Yee as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28685 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4837–DR; Docket ID FEMA–2024–0001]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4837–DR), dated October 19, 2024, and related determinations.

DATES: The declaration was issued October 19, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 19, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from Potential Tropical Cyclone Eight during the period of September 16 to September 20, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA’s Public Assistance Mitigation Cost Share Incentives Policy.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, E. Craig Levy, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Brunswick, Carteret, New Hanover, and Onslow Counties for Public Assistance.

All areas within the State of North Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28683 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4836–DR; Docket ID FEMA–2024–0001]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4836–DR), dated October 16, 2024, and related determinations.

DATES: The declaration was issued October 16, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 16, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from flooding during the period of August 5 to August 6, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA’s Public Assistance Mitigation Cost Share Incentives Policy.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lance E. Davis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

City and Borough of Juneau for Individual Assistance.

City and Borough of Juneau for Public Assistance.

All areas within the State of Alaska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28682 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4832–DR; Docket ID FEMA–2024–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4832–DR), dated October 2, 2024, and related determinations.

DATES: The declaration was issued October 2, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 2, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from Tropical Storm Helene beginning on September 26, 2024, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the

eligibility criteria for a higher Federal cost-sharing percentage in FEMA's Public Assistance Mitigation Cost Share Incentives Policy. For a 45-day period of the State's choosing within the first 120 days from the start of the incident period, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Carter, Cocke, Greene, Hamblen, Hawkins, Johnson, Unicoi, and Washington Counties for Individual Assistance.

Carter, Cocke, Greene, Hamblen, Hawkins, Johnson, Unicoi, and Washington Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28673 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4817–DR; Docket ID FEMA–2024–0001]

Louisiana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4817–DR), dated September 16, 2024, and related determinations.

DATES: This amendment was issued November 7, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 16, 2024.

St. James and St. John the Baptist Parishes for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28602 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4835–DR; Docket ID FEMA–2024–0001]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4835–DR), dated September 29, 2024, and related determinations.

DATES: The declaration was issued September 29, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 29, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of South Carolina resulting from Tropical Storm Debby during the period of August 4 to August 22, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the

Administrator, under Executive Order 12148, as amended, Brett H. Howard, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Carolina have been designated as adversely affected by this major disaster:

Bamberg, Barnwell, Berkeley, Colleton, Dillon, Dorchester, Georgetown, Hampton, Horry, Jasper, Orangeburg, and Union Counties for Public Assistance.

All areas within the State of South Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28681 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4830–DR; Docket ID FEMA–2024–0001]

Georgia; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4830–DR), dated September 30, 2024, and related determinations.

DATES: This amendment was issued November 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for

this disaster is closed effective October 30, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28664 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4827–DR; Docket ID FEMA–2024–0001]

North Carolina; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4827–DR), dated September 28, 2024, and related determinations.

DATES: This amendment was issued October 2, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 2, 2024, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from Tropical Storm Helene beginning on September 25, 2024, and continuing, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend my declaration of September 28, 2024, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance at 100 percent of the total eligible costs for 180 days from the start of the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28617 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4827–DR; Docket ID FEMA–2024–0001]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4827–DR), dated September 28, 2024, and related determinations.

DATES: The declaration was issued September 28, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 28, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from Tropical Storm Helene beginning on September 25, 2024, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA’s Public Assistance Mitigation Cost Share Incentives Policy.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Clay,

Cleveland, Gaston, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, Wilkes, and Yancey Counties and the Eastern Band of Cherokee Indians for Individual Assistance.

Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Clay, Cleveland, Gaston, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, Wilkes, and Yancey Counties and the Eastern Band of Cherokee Indians for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

All areas within the State of North Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28626 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3618–EM; Docket ID FEMA–2024–0001]

Alabama; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Alabama (FEMA–3618–EM), dated September 26, 2024, and related determinations.

DATES: The declaration was issued September 26, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 26, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Alabama resulting from Hurricane Helene beginning on September 22, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Alabama.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), including direct Federal assistance, in selected areas; emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support, in selected areas; and emergency protective measures (Category B), limited to direct Federal assistance, in selected areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Keith Denning, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Alabama have been designated as adversely affected by this declared emergency:

Houston County for emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

Barbour, Bullock, Calhoun, Chambers, Cherokee, Clay, Cleburne, Coffee, Covington, Crenshaw, Dale, DeKalb, Etowah, Geneva,

Henry, Jackson, Lauderdale, Lee, Limestone, Macon, Madison, Marshall, Morgan, Randolph, Russell, and Tallapoosa Counties for emergency protective measures (Category B), limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Baldwin, Butler, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington Counties for emergency protective measures (Category B), limited to direct federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28645 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4742–DR; Docket ID FEMA–2024–0001]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4742–DR), dated September 27, 2023, and related determinations.

DATES: This change occurred on October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the

Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28590 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4829–DR; Docket ID FEMA–2024–0001]

South Carolina; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4829–DR), dated September 29, 2024, and related determinations.

DATES: This amendment was issued October 21, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2024.

Kershaw County for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

Lancaster County for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28656 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4819–DR; Docket ID FEMA–2024–0001]

Illinois; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–4819–DR), dated September 20, 2024, and related determinations.

DATES: This change occurred on October 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Waddy Gonzalez, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Darrin Ricketts as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28606 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4691–DR; Docket ID FEMA–2024–0001]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4691–DR), dated March 8, 2023, and related determinations.

DATES: This change occurred on October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28631 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4735–DR; Docket ID FEMA–2024–0001]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4735–DR), dated September 4, 2023, and related determinations.

DATES: This change occurred on October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28589 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4829–DR; Docket ID FEMA–2024–0001]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4829–DR), dated September 29, 2024, and related determinations.

DATES: The declaration was issued September 29, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 29, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of South Carolina resulting from Hurricane Helene beginning on September 25, 2024, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures

(Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage in FEMA's Public Assistance Mitigation Cost Share Incentives Policy.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Brett H. Howard, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Carolina have been designated as adversely affected by this major disaster:

Aiken, Anderson, Bamberg, Barnwell, Cherokee, Greenville, Greenwood, Lexington, Newberry, Oconee, Pickens, Saluda, and Spartanburg Counties for Individual Assistance.

Aiken, Anderson, Bamberg, Barnwell, Cherokee, Greenville, Greenwood, Newberry, Oconee, Pickens, Saluda, and Spartanburg Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

All areas within the State of South Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28660 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3615–EM; Docket ID FEMA–2024–0001]

Florida; Amendment No. 2 to Notice of an Emergency Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency disaster declaration for the State of Florida (FEMA–3615–EM), dated September 24, 2024, and related determinations.

DATES: This amendment was issued October 31, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 7, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28639 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4751–DR; Docket ID FEMA–2024–0001]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4751–DR), dated December 13, 2023, and related determinations.

DATES: This change occurred on October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28591 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–3621–EM; Docket ID FEMA–2024–0001]

**Virginia; Amendment No. 2 to Notice of
an Emergency Declaration**

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Virginia (FEMA–3621–EM), dated September 29, 2024, and related determinations.

DATES: This amendment was issued November 1, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective October 3, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28627 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2476]

**Changes in Flood Hazard
Determinations**

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA

Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibt, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibt@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA

Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Gila	City of Globe (23-09-1282P).. ..	The Honorable Al Gameros, Mayor, City of Globe, 150 North Pine Street, Globe, AZ 85501.	City Hall, 150 North Pine Street, Globe, AZ 85501.	https://msc.fema.gov/portal/advanceSearch .	Dec. 12, 2024	040029
Gila	Unincorporated Areas of Gila County (23-09-1282P).. ..	Steve Christensen, Chair, Gila County Board of Supervisors, 1400 East Ash Street, Globe, AZ 85501.	Gila County Assessor's Office, 1400 East Ash Street, Globe, AZ 85501.	https://msc.fema.gov/portal/advanceSearch .	Dec. 12, 2024	040028
Maricopa	City of Buckeye (24-09-0106P).. ..	The Honorable Eric Orsborn, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Engineering Department, 530 East Monroe Avenue, Buckeye, AZ 85326.	https://msc.fema.gov/portal/advanceSearch .	Nov. 22, 2024	040039
Maricopa	City of Scottsdale (23-09-1134P).. ..	The Honorable David D. Ortega, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.	https://msc.fema.gov/portal/advanceSearch .	Nov. 22, 2024	045012
Maricopa	City of Scottsdale (23-09-1358P).. ..	The Honorable David D. Ortega, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.	https://msc.fema.gov/portal/advanceSearch .	Nov. 22, 2024	045012
Maricopa	Unincorporated Areas of Maricopa County (24-09-0106P).. ..	Jack Sellers, Chair, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	https://msc.fema.gov/portal/advanceSearch .	Nov. 22, 2024	040037
Mohave	City of Bullhead City (24-09-0373P).. ..	The Honorable Steve D'Amico, Mayor, City of Bullhead City, 2355 Trane Road, Bullhead City, AZ 86442.	Public Works Department, 2355 Trane Road, Bullhead City, AZ 86442.	https://msc.fema.gov/portal/advanceSearch .	Nov. 25, 2024	040125
California: Alameda	City of Alameda (23-09-1261P).. ..	The Honorable Marilyn Ezzy Ashcraft, Mayor, City of Alameda, 2263 Santa Clara Avenue, Alameda, CA 94501.	Public Works Department, 950 West Mall Square Suite 110, Alameda, CA 94501.	https://msc.fema.gov/portal/advanceSearch .	Nov. 20, 2024	060002
Connecticut: Fairfield.	City of Danbury (23-01-0686P).. ..	The Honorable Roberto Alves, Mayor, City of Danbury, 155 Deer Hill Avenue, Danbury, CT 06810.	City Hall, 155 Deer Hill Avenue, Danbury, CT 06810.	https://msc.fema.gov/portal/advanceSearch .	Nov. 20, 2024	090004
Florida:						
St. Johns	Unincorporated areas of St. Johns County (24-04-0172P).. ..	Joy Andrews, St. Johns County Administrator, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	https://msc.fema.gov/portal/advanceSearch .	Dec. 2, 2024	125147
Orange	City of Orlando (24-04-1166P).. ..	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Permitting Services, 400 South Orange Avenue, 1st Floor, Orlando, FL 32801.	https://msc.fema.gov/portal/advanceSearch .	Dec. 3, 2024	120186
Walton	Unincorporated areas of Walton County (24-04-1098P).. ..	Stan Sunday, Walton County Administrator, 76 North 6th Street, DeFuniak Springs, FL 32433.	Walton County Courthouse, 571 U.S. Highway 90 East, DeFuniak Springs, FL 32433.	https://msc.fema.gov/portal/advanceSearch .	Nov. 21, 2024	120317
Kansas: Johnson ..	City of Olathe (23-07-0892P).. ..	The Honorable John Bacon, Mayor, City of Olathe, 100 East Santa Fe Street, Olathe, KS 66061.	Planning Office, 100 East Santa Fe Street, Olathe, KS 66061.	https://msc.fema.gov/portal/advanceSearch .	Nov. 27, 2024	200173

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Minnesota: Le Sueur.	Unincorporated areas of Le Sueur County (24-05-0739P)..	Steven J. Rohlfing, Chair, Le Sueur County Board of Commissioners, 28020 Maple Lane, Madison Lake, MN 56063.	Le Sueur County Environmental Services Department, 515 South Maple Avenue, Le Center, MN 56057.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	120317
Missouri: St. Louis	City of University City (24-07-0245P)..	The Honorable Terry Crow, Mayor, City of University City, 6801 Delmar Boulevard, University City, MO 63130.	City Hall, 6801 Delmar Boulevard, University City, MO 63130.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	290390
Oregon: Washington	City of Beaverton (24-10-0181P)..	The Honorable Lacey Beaty, Mayor, City of Beaverton, 12725 Southwest Millikan Way, Beaverton, OR 97005.	Community Development Department, 12725 Southwest Millikan Way, Beaverton, OR 97005.	https://msc.fema.gov/portal/advanceSearch .	Nov. 22, 2024	410240
Washington	Unincorporated Areas of Washington County (24-10-0181P)..	Kathryn Harrington, Commissioner, Washington County Board of Commissioners, 155 North 1st Avenue, Hillsboro, OR 97124.	Washington County Public Services Building, 155 North 1st Avenue, Suite 350, Hillsboro, OR 97124.	https://msc.fema.gov/portal/advanceSearch .	Nov. 22, 2024	410238
Washington: King ..	City of Seattle (22-10-0801P)..	The Honorable Bruce Harrell, Mayor, City of Seattle, P.O. Box 94749, Seattle, WA 98124.	Department of Construction and Inspections, 700 5th Avenue, Suite 2000, Seattle, WA 98104.	https://msc.fema.gov/portal/advanceSearch .	Nov. 25, 2024	530089

[FR Doc. 2024-28588 Filed 12-5-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Internal Agency Docket No. FEMA-4831-DR; Docket ID FEMA-2024-0001]****Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA-4831-DR), dated October 1, 2024, and related determinations.

DATES: This amendment was issued October 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 4, 2024, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), in a letter to

Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from Tropical Storm Helene beginning on September 25, 2024, and continuing, is of sufficient severity and magnitude that special cost-sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act").

Therefore, I amend my declaration of October 1, 2024, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance at 100 percent of the total eligible costs for a period of 90 days of the Commonwealth's choosing within the first 120 days from the start of the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-28667 Filed 12-5-24; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Internal Agency Docket No. FEMA-4729-DR; Docket ID FEMA-2024-0001]****Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA-4729-DR), dated August 17, 2023, and related determinations.

DATES: This change occurred on October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the

Administrator, under Executive Order 12148, as amended, Darryl L. Dragoo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Leda M. Khoury as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28634 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4805–DR; Docket ID FEMA–2024–0001]

Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4805–DR), dated July 23, 2024, and related determinations.

DATES: This change occurred on October 22, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David Miller Jr., of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert Little III as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28595 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3618–EM; Docket ID FEMA–2024–0001]

Alabama; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Alabama (FEMA–3618–EM), dated September 26, 2024, and related determinations.

DATES: This amendment was issued October 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 29, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–28644 Filed 12–5–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: Federal Flight Deck Officer Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0011, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection requires interested volunteers to fill out an application to determine their suitability for participating in the Federal Flight Deck Officer (FFDO) Program, and deputized FFDOs to submit written reports of certain prescribed incidents.

DATES: Send your comments by January 6, 2025. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations 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 Review—Open for Public Comments” and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer Information Technology, TSA–11, Transportation Security Administration, 6595 Springfield Center Drive,

Springfield, VA 20598–6011; telephone (571) 227–2062; email TSAPRA@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 27, 2024, 89 FR79304. TSA did not receive any comments on the notice.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation will be available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Federal Flight Deck Officer Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0011.

Forms(s): N/A.

Affected Public: Volunteer pilots, flight engineers, and navigators.

Abstract: The FFDO Program enables TSA to screen, select, train, deputize, and supervise qualified pilots, flight engineers, and navigators who voluntarily agree to defend the flight decks of commercial passenger and all-cargo airliners against acts of criminal violence or air piracy. Information collected as the result of this proposal is used to assess the eligibility and suitability of prospective and current FFDOs, to ensure the readiness of every FFDO, to administer the program, and for security purposes. The program also includes the requirement for FFDOs to report prescribed incidents to TSA.

These reportable incidents include, but are not limited to, the discharge or drawing of a weapon, any attacks or attempted attacks on the flight deck, and the loss or damage of any weapon/ammunition. TSA is revising the collection by discontinuing the TSA verbal interview and enabling online submission of answers to certification questions.

Estimated Annual Respondents: 1,700.

Estimated Annual Burden Hours: 1,700.

Dated: December 2, 2024.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–28514 Filed 12–5–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–54]

30-Day Notice of Proposed Information Collection: Local Appeals to Single-Family Mortgage Limits; OMB Control No.: 2502–0302

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* January 6, 2025.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the 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;

email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone (202) 402–3400. 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.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 3, 2024 at 89 FR 47584.

A. Overview of Information Collection

Title of Information Collection: Local Appeals to Single-Family Mortgage Limits.

OMB Approval Number: 2502–0302.

Type of Request: Extension.

Form Number: N/A.

Description of the need for the information and proposed use: Any interested party may submit a request for the mortgage limits to be increased in a particular area if they believe that the present limit does not accurately reflect the higher sales prices in that area. Any request for an increase must be accompanied by sufficient housing sales price data to justify higher limits.

This allows HUD the opportunity to examine additional data to confirm or adjust the set loan limit for a particular area.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 1.

Estimated Number of Responses: 1.

Frequency of Response: 1.

Average Hours per Response: 7.

Total Estimated Burdens: 7.

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.

(5) 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.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.

[FR Doc. 2024-28695 Filed 12-5-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7086-N-31]

60-Day Notice of Proposed Information Collection: Management Review of Multifamily Housing Projects; OMB Control No.: 2502-0178

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:* February 4, 2025.

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.regulations.gov. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can 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 at Colette.Pollard@hud.gov, for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone (202) 402-3400. 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 and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

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: Management Review for Multifamily Housing Projects.

OMB Approval Number: 2502-0178.

Type of Request: Revision of a currently approved collection.

Form Number: HUD-9834.

Description of the need for the information collection and proposed use: This information collection is used by HUD, by Mortgagees and by Contract Administrators (CAs) to evaluate the quality of project management; determine the causes of project problems; devise corrective actions to stabilize projects and prevent defaults; and to ensure that fraud, waste and mismanagement are not problems for the community. The information collected also supports enforcement actions when owners fail to implement corrective actions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 27,127.

Estimated Number of Responses: 27,127.

Frequency of Response: Varies.
Average Hours per Response: 8.33
Total Estimated Burden: 27,127.

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.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office
of Housing.

[FR Doc. 2024-28564 Filed 12-5-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAK001030/
A0A501010.999900]

Public Meeting of the Advisory Board of Exceptional Children

AGENCY: Bureau of Indian Affairs,
Interior

ACTION: Notice of Meeting.

SUMMARY: The Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold a two day in-person and online meeting. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The BIE Advisory Board meeting will be held Thursday, January 16, 2025, from 8 a.m. to 4 p.m. MST, and Friday,

January 17, 2025, from 8 a.m. to 4 p.m. MST.

ADDRESSES: This onsite meeting location will be at the National Indian Programs Training Center (NIPTC), 1011 Indian School Rd. NW, Suite 254, Albuquerque, NM 87104. To attend virtually, participants may use this link to register: <https://www.zoomgov.com/meeting/register/vJltfumuqzMvElVjV-NK1xkRF77kIX1hDKI>. Attendees register once and can attend one or both meeting events. After registering, you will receive a confirmation email containing information about joining the meeting.

Comments: Public comments can be emailed to the DFO at Jennifer.davis@bie.edu; or faxed to (602) 265–0293 Attention: Jennifer Davis, DFO; or mailed or hand delivered to the Bureau of Indian Education, Attention: Jennifer Davis, DFO, 2600 N Central Ave., 12th floor, Suite 250, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis, Designated Federal Officer, Bureau of Indian Education, 2600 N. Central Ave., 12th floor, Suite 250, Phoenix, AZ 85004, Jennifer.Davis@bie.edu, or mobile phone (202) 860–7845.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (5 U.S.C. Ch. 10), the BIE is announcing the Advisory Board will hold its next meeting in-person and online. The Advisory Board was established under the Individuals with Disabilities Act of 2004 (20 U.S.C. 1400 *et seq.*) to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities. All meetings, including virtual sessions, are open to the public in their entirety.

Meeting Agenda Items

The following agenda items will be for January 16–17, 2025, meeting:

- A Panel Discussion: Early Childhood Transition; and A Panel Discussion: Secondary Transition.
- A Panel Discussion with Transition Specialist (Pre-Kindergarten through grade 12), to include Early Childhood Transition and Secondary Transition.
- BIE Special Education Program—Transition Updates
- BIE Behavior Wellness Program—Updates and overview about the program.
- The Committee will work on and finalize the next meeting agenda and logistics steps each meeting day.
- Public Commenting Sessions will be opened any time throughout both meeting days to encourage public input. Public comments can be provided verbally via webinar or in writing using

the chat box. Please use the online access codes as listed below.

○ Public comments can also be emailed to the DFO at Jennifer.Davis@bie.edu; or faxed to (602) 265–0293 Attention: Jennifer Davis, DFO; or mailed or hand delivered to the Bureau of Indian Education, Attention: Jennifer Davis, DFO, 2600 N Central Ave., 12th Floor, Suite 250, Phoenix, Arizona 85004.

Accessibility Request

Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. Please contact the person listed in the section **FOR FURTHER INFORMATION CONTACT** at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

Authority: 5 U.S.C. Ch. 10.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–28722 Filed 12–5–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN]

Filing of Plats of Survey: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing of plats of surveys.

SUMMARY: The plats and/or field notes of the survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Idaho State Office, Boise, Idaho, 30 days from the date of this publication. The surveys were conducted to meet administrative needs of various Federal agencies.

ADDRESSES: A copy of the survey record may be obtained from the Public Room at the Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, upon required payment.

FOR FURTHER INFORMATION CONTACT:

Daniel S. Young, Branch of Cadastral Survey, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657; (208) 373–3994; email: dsyoung@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 7–1–1 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Boise Meridian, Idaho

- T. 32 N., R. 3 E., Sections 14, 22, 24, 25, 27, 28, and 33, accepted September 27, 2024.
- T. 34 N., R. 3 E., Section 26, accepted September 18, 2024.
- T. 34 N., R. 2 E., Sections 1, 2, 10, 13, 15, and 24, accepted September 12, 2024.
- T. 3 S., R. 2 W., Sections 3, 4, 33, and 34, accepted September 17, 2024.
- T. 32 N., R. 4 E., Sections 30 and 31, accepted September 19, 2024.
- T. 35 N., R. 3 E., Sections 7, 30, 31, and 32, accepted November 15, 2024.
- T. 31 N., R. 3 E., Sections 11, 13, and 24, accepted November 18, 2024.

The plat, in one sheet, incorporating the field notes of the dependent resurvey of portions of the south and east boundaries, and a portion of the subdivisional lines, and the subdivision of sections 14, 22, 24, 25, 27, 28, and 33, T. 32 N., R. 3 E., Boise Meridian, Idaho, Group Number 1526, accepted September 27, 2024.

The plat, in one sheet, incorporating the field notes of the corrective dependent resurvey of a portion of the subdivisional lines, and the dependent resurvey of a portion of the subdivisional lines, the 1891 right bank meanders of the Clearwater River in section 26, and boundaries of Mineral Survey Number 2936, and the subdivision of section 26, T. 34 N., R. 3 E., Boise Meridian, Idaho, Group Number 1470, accepted September 18, 2024.

The plat, in one sheet, incorporating the field notes of the corrective dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 24, and the dependent resurvey of portions of the north and east boundaries, a portion of the subdivisional lines, and the original 1897 meanders of the Clearwater River in section 1, and the subdivision of sections 1, 2, 10, 13, and 15, T. 34 N., R. 2 E., Boise Meridian, Idaho, Group Number 1491, accepted September 12, 2024.

The field notes of the remonumentation of the corner of sections 3, 4, 33, and 34, on the south boundary of T. 3 S., R. 2 W, Boise Meridian, Idaho, Group Number 1500, accepted September 17, 2024.

The plat, in one sheet, incorporating the field notes of the dependent resurvey of portions of the south and west boundaries, and a portion of the subdivisional lines, and the subdivision of sections 30 and 31, Township 32 North, Range 4 East, Boise Meridian, Idaho, Group Number 1506, accepted September 19, 2024.

The plat, in two sheets, incorporating the field notes of the dependent resurvey of a portion of the East Boundary of the Nez Perce Indian Reservation, a portion of the south and west boundaries, and a portion of the subdivisional lines, and the subdivision of sections 7, 30, 31, and 32, Township 35 North, Range 3 East, Boise Meridian, Idaho, Group Number 1533, accepted November 15, 2024.

The plat, in one sheet, incorporating the field notes of the dependent resurvey of a portion of the South Boundary of the Nez Perce Indian Reservation, a portion of the east boundary, and a portion of the subdivisional lines, and the subdivision of sections 11, 13, and 24, Township 31 North, Range 3 East, Boise Meridian, Idaho Group Number 1514, accepted November 18, 2024.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Idaho, BLM within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. The protest must identify the plat(s) of survey that the person or party wishes to protest and contain all reasons and evidence in support of the protest. A protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Idaho during regular business hours; if received after regular business hours, a protest will be considered filed the next business day.

Before including your address, phone number, email address, or other personal identifying information in a protest, you should be aware that the documents you submit, including your personal identifying information, may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C., Chapter 3)

Michael L. Hart,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2024–28701 Filed 12–5–24; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0054]

Notice of Availability of a Record of Decision for Expected Wind Energy Development in the New York Bight

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability; record of decision.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the record of decision (ROD) based on the final programmatic environmental impact statement (PEIS) that analyzed the potential impacts of wind energy development in six lease areas of the New York (NY) Bight. The ROD outlines BOEM's decision to identify certain avoidance, minimization, mitigation, and monitoring (AMMM) measures that BOEM plans to apply as conditions of approval for activities proposed by NY Bight lessees in their construction and operations plans (COPs). This ROD concludes the programmatic National Environmental Policy Act (NEPA) process for the six NY Bight lease areas. **ADDRESSES:** The ROD and associated information are available on the NY Bight website at: <https://www.boem.gov/renewable-energy/state-activities/new-york-bight>.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, BOEM Office of Environmental Programs, 45600 Woodland Road, VAM–OEP, Sterling, Virginia 20166, (703) 787–1703 or jill.lewandowski@boem.gov.

SUPPLEMENTARY INFORMATION: The Proposed Action for the final PEIS was the identification of specific AMMM measures at the programmatic stage that could avoid, minimize, mitigate, or monitor impacts. The final PEIS analyzed the potential impacts of development in the NY Bight area and how those impacts can be avoided, minimized, or mitigated by AMMM measures. The Proposed Action does not itself require any actions by BOEM or lessees. A notice of availability for the final PEIS was published in the **Federal Register** on October 25, 2024 at 89 FR 85233.

Each lease holder is likely to submit at least one COP, as required under 30 CFR 585.600(a). The programmatic analysis in the final PEIS follows the execution of the six NY Bight leases and precedes the environmental analysis of the COPs. The PEIS serves as a first-tier document that the second-tier project-specific environmental analysis of each COP may tier from or incorporate by reference (40 CFR 1501.11–12).

This ROD identifies 58 AMMM measures that BOEM plans to apply as conditions of approval for activities proposed by the lessees in their COPs submitted for the six NY Bight lease areas. The subsequent project-specific NEPA analyses and consultations could also incorporate revised, additional, or different AMMM measures as needed.

After carefully considering public comments on the draft PEIS and the alternatives described and analyzed in the final PEIS, DOI selected Sub-alternative C1: Identification of AMMM Measures at the Programmatic Stage: Previously Applied Measures. This is the Preferred Alternative identified in the final PEIS. The AMMM measures are included in appendix B of the ROD, which is available at: <https://www.boem.gov/renewable-energy/state-activities/new-york-bight>.

Authority: National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*); 40 CFR 1505.2.

Karen Baker,

*Chief, Office of Renewable Energy Programs
Bureau of Ocean Energy Management.*

[FR Doc. 2024–28553 Filed 12–5–24; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
256S180110; S2D2S SS08011000
SX064A000 25XS501520; OMB Control
Number 1029–0043]

Submission to the Office of Management and Budget for Review and Approval; Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE),

are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 4, 2025.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 1544–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0043 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202–208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use 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 ICR. Before

including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that people planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Title of Collection: Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations under Regulatory Programs.
OMB Control Number: 1029–0043.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and state governments.

Total Estimated Number of Annual Respondents: 3,375.

Total Estimated Number of Annual Responses: 8,158.

Estimated Completion Time per Response: Varies from 2 hours to 35 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 66,440.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$521,735.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 2024–28736 Filed 12–5–24; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
256S180110; S2D2S SS08011000
SX064A000 25XS501520; OMB Control
Number 1029–0057]

Submission to the Office of Management and Budget for Review and Approval; Reclamation on Private Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 4, 2025.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 1544–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0057 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202–208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information

collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use 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 ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 408 of the Surface Mining Control and Reclamation Act of 1977 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Title of Collection: Reclamation on Private Lands.

OMB Control Number: 1029–0057.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 120 hours.

Total Estimated Number of Annual Burden Hours: 120.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$0.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 2024–28734 Filed 12–5–24; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000
256S180110; S2D2S SS08011000
SX064A000 25XS501520; OMB Control
Number 1029–0051]**

Submission to the Office of Management and Budget for Review and Approval; State Regulatory Authority: Inspection and Enforcement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 4, 2025.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 1544–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0051 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202–208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-

contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use 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 ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities and prepare and maintain inspection reports and other related documents for OSMRE and public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements of the Act and approved State regulatory program.

Title of Collection: State Regulatory Authority: Inspection and Enforcement.
OMB Control Number: 1029–0051.
Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments.

Total Estimated Number of Annual Respondents: 24.

Total Estimated Number of Annual Responses: 54,515.

Estimated Completion Time per Response: Varies from 1.5 hours to 10 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 441,795.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: \$625.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Office of Surface Mining Reclamation and
Enforcement.*

[FR Doc. 2024-28735 Filed 12-5-24; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
245S180110; S2D2S SS08011000
SX064A000 24XS501520]

Notice of Availability of the Draft Supplemental Environmental Impact Statement Federal Mining Plan Modification for Federal Coal Lease MTM 082186 at the Rosebud Mine Area F; Rosebud Mine Area F Mining Plan Modification SEIS

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of the draft supplemental environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) has prepared a Draft Supplemental Environmental Impact Statement (Draft SEIS) for the Federal Mining Plan Modification for Federal Coal Lease MTM 082186 at the Rosebud Mine Area F (Project), located in Treasure and Rosebud Counties, Montana. The proposed action would allow for continued mining operations in the Area F permit area, resulting in an estimated disturbance of up to 4,288

acres and the extraction of approximately 71.3 million tons of coal. The Draft SEIS was prepared in response to deficiencies identified by the United States District Court for the District of Montana in the 2018 Western Energy Area F Final Environmental Impact Statement. OSMRE invites public comments on the Draft SEIS during a 45-day public comment period, with a public meeting to be held to gather additional input.

DATES: OSMRE requests comments concerning the analyses in the Draft SEIS. All comments must be received by January 21, 2025. The public meeting will be held at the City of Colstrip City Hall, City Council Chambers, Colstrip Municipal Building located at 12 Cherry Street, Colstrip, Montana from 4:30 to 7:30 p.m. MST on January 8, 2025.

ADDRESSES: You may submit comments related to the Project by any of the following methods:

Email: rosebudmineareaofseis@erresources.com.

Be sure to send emails with the subject line: ATTN: Rosebud Mine Area F Mining Plan Modification SEIS.

Mail: ATTN: Rosebud Mine Area F Mining Plan Modification SEIS, C/O: Roberta Martínez Hernández, OSMRE Regions 5, 7-11, P.O. Box 25065, Denver, CO 80225-0065.

FOR FURTHER INFORMATION CONTACT:

Roberta Martínez Hernández, Project Coordinator by telephone: 303-236-4705, email at rmartinezhernandez@osmre.gov, or at the address provided in the **ADDRESSES** section.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: OSMRE has prepared a Draft SEIS for the Rosebud Mine Area F Project for inclusion in its mining plan decision document, which will also include a recommendation from OSMRE to the Assistant Secretary for Land and Minerals Management (ASLM) of the Department of the Interior on whether to approve, disapprove, or conditionally approve the Federal mining plan modification. This recommendation is made in accordance with 30 Code of Federal Regulations (CFR) 746.13. The Project involves Federal coal leased under MTM 082186 and, therefore, requires approval from the ASLM under the Mineral Leasing Act of 1920.

OSMRE initially published an EIS for Rosebud Area F in November 2018. That EIS was challenged, and the United States District Court for the District of

Montana held in *Montana Environmental Information Center v. Haaland*, No. CV 19-130-BLG-SPW (D. Mont. 2022) that the EIS failed to analyze a reasonable range of alternatives, failed to provide high-quality accurate scientific analysis on the economic costs of greenhouse gas emissions from Area F, and did not take a hard look at cumulative impacts on surface water. The Draft SEIS updates and expands on the environmental analysis in the 2018 EIS and provides the additional impacts analysis identified as deficient by the district court.

The Rosebud Mine is operated by Westmoreland Rosebud Mining LLC under Permit C2011003F, issued by the Montana Department of Environmental Quality (DEQ), in accordance with its State mine permit. As proposed, the Project would result in 4,288 acres of surface disturbance and recovery of 71.3 million tons of coal.

Purpose and Need for the Proposed Action

OSMRE's purpose in preparing the Draft SEIS is to fully analyze the environmental impacts associated with the proposed Federal mining plan modification for Rosebud Mine Area F. This analysis specifically addresses the deficiencies identified by the United States District Court for the District of Montana so that OSMRE can make an informed recommendation to the ASLM to approve, disapprove, or conditionally approve the proposed Federal mining plan modification for Rosebud Mine Area F. Westmoreland Rosebud Mining LLC, the current operator, will not be allowed to continue mining or recover the remaining Federal coal in Area F unless OSMRE completes its National Environmental Policy Act (NEPA) analysis and the ASLM approves the Federal mining plan modification.

Proposed Project

The proposed Project would result in 4,288 acres of surface disturbance and the recovery of 71.3 million tons of coal in the Rosebud Mine Area F.

Summary of Expected Impacts

Reasonably foreseeable effects of mining Federal coal have been evaluated for the following resources in the Draft SEIS:

- Air quality (measured as concentration of criteria air pollutants regulated under the National Ambient Air Quality Standards, Hazardous Air Pollutants, and Air Quality Related Values such as visibility (haze) and atmospheric deposition)

- Climate and climate change (emissions of greenhouse gases are quantified and analyzed as they relate to climate change, measured in terms of carbon dioxide equivalent for both 20-year and 100-year global warming potentials and characterized using the social cost of greenhouse gases)
- Surface water and groundwater quality and quantity
- Socioeconomic effects, including changes to State and local taxes, royalties, fees, lease bids, bonuses, payroll benefits, and effects on environmental justice populations
- Federally listed threatened and endangered species and their critical habitats
- Geology
- Soils
- Cultural resources
- Visual resources
- Wildlife
- Public health and safety
- Vegetation
- Wetlands and riparian zones
- Paleontology
- Access and transportation
- Solid and hazardous waste
- Noise
- Land use

Anticipated Permits and Authorizations

ASLM approval, disapproval, or approval with conditions of the Federal mining plan modification is required under the Mineral Leasing Act of 1920.

Public Comment Period

This Notice of Availability initiates the comment period, which allows OSMRE to gather input on the analyses included in the Draft SEIS. In addition to this notice and OSMRE's website at <https://www.osmre.gov/laws-and-regulations/nepa/projects>, interested stakeholders, agencies, and tribes will be notified of the 45-day comment period via mailed letters, and the OSMRE Office of Communications will coordinate a press release.

All public comments must be submitted by email or by hard copy mail to the address listed under **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made public at any time. While you may request in your comment to withhold your personal identifying information from public review, OSMRE cannot guarantee that this will occur.

The Project web page will include the description of the Project as submitted by Westmoreland Rosebud Mining LLC, a map of the proposed mining plan, and

information about how to submit public comments on issues or concerns related to the Project that are analyzed in the NEPA document.

OSMRE will review public comments and prepare formal responses to all substantive comments. OSMRE will make revisions as needed based on input from the public while preparing the Final SEIS.

Lead and Cooperating Agencies

OSMRE is the lead agency for the Draft SEIS. The Bureau of Land Management is a cooperating agency on the OSMRE Draft SEIS.

Decision Maker

The ASLM is the decision maker for the Draft SEIS.

Nature of Decision To Be Made

Informed by the NEPA analysis, OSMRE will make a recommendation to the ASLM about the Federal mining plan modification associated with development of the Rosebud Mine Area F. The ASLM will use OSMRE's recommendation to decide if the new Federal mining plan modification is approved, disapproved, or approved with conditions. OSMRE's recommendation to the ASLM is based, at a minimum, on the documentation specified at 30 CFR 746.13.

David Berry,

Regional Director, OSMRE Regions 5, 7–11.

[FR Doc. 2024–28354 Filed 12–5–24; 8:45 am]

BILLING CODE 4310–05-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1415]

Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor; Notice of a Commission Determination Not To Review Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 15) issued by the presiding chief administrative law judge (“CALJ”) granting complainant JBS Hair, Inc.’s (“JBS Hair”) motion for leave to amend the complaint and notice of investigation to add JMS Trading Corp. (“JMS Trading”) of Buena Park, CA as

a respondent to this investigation and to make several ministerial updates to the complaint.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On September 4, 2024, the Commission instituted this investigation based on a complaint filed by JBS Hair of Atlanta, GA. 89 FR 73123–24 (Sept. 9, 2024). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pre-stretched synthetic braiding hair and packaging therefor by reason of the infringement of certain claims of U.S. Patent Nos. 10,786,026 (“the ‘026 patent”); 10,945,478 (“the ‘478 patent”); and 10,980,301 (“the ‘301 patent”). The Commission's notice of investigation (“NOI”) named the following respondents: (1) Sun Taiyang Co., Ltd. d/b/a Outre® of Moonachie, NJ; (2) Beauty Elements Corporation d/b/a Bijouz® of Miami Gardens, FL; (3) Hair Zone, Inc. d/b/a Sensationnel® of Moonachie, NJ; (4) Beauty Essence, Inc. d/b/a Supreme™ Hair US of Moonachie, NJ; (5) SLI Production Corp. d/b/a It's a Wig! of Moonachie, NJ; (6) Royal Imex, Inc. d/b/a Zury® Hollywood of Santa Fe Springs, CA; (7) GS Imports, Inc. d/b/a Golden State Imports, Inc.' of Paramount, CA; (8) Eve Hair, Inc. of Lakewood, CA; (9) Kum Kang Trading USA, Inc. d/b/a BNGHAIR of Paramount, CA (“Kum Kang”); (10) Midway International, Inc. d/b/a BOBBI BOSS of Cerritos, CA; (11) Mayde Beauty Inc. of Port Washington, NY; (12) Hair Plus Trading Co., Inc. d/b/a Femi Collection of Suwanee, GA; (13) Optimum Solution Group LLC d/b/a Oh Yes Hair of Duluth, GA; (14) Choix International, Inc. of Norcross, GA; (15) Twin Peak International, Inc. d/b/a Dejavu Hair of Atlanta, GA; (16) Loc N

Products, LLC of Atlanta, Georgia; (17) Crown Pacific Group Inc. of Doraville, GA; (18) Vivace, Inc. d/b/a Dae Do Inc. of Levittown, NY; (19) A-Hair Import Inc. of Norcross, GA; (20) Chade Fashions, Inc. of Niles, IL; (21) Mink Hair, Ltd. d/b/a Sensual® Collection of Wayne, NJ (“Mink Hair”); (22) Mane Concept Inc. of Moonachie, NJ; (23) Oradell International Corp. d/b/a MOTOWN TRESS of Manalapan, NJ (“Oradell”); (24) Beauty Plus Trading Co., Inc. d/b/a Janet Collection™ of Moonachie, NJ; (25) Model Model Hair Fashion, Inc. of Port Washington, NY; (26) New Jigu Trading Corp. d/b/a Harlem 125® of Port Washington, NY; (27) Shake N Go Fashion, Inc. of Port Washington, NY; (28) Amekor Industries, Inc. d/b/a Vivica A. Fox® Hair Collection of Conshohocken, PA; (29) I & I Hair Corp. of Dallas, TX (“I & I Hair”); (30) Zugoo Import Inc. of Norcross, GA. *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.* at 73124.

On October 8, 2024, JBS Hair moved for leave to amend the complaint and notice of investigation to add JMS Trading as a respondent to this investigation and to make several ministerial updates to the complaint. *Id.* at 1. JBS Hair’s motion attached a “proposed amendment adding Respondent JMS Trading” and a redline showing the changes to the current complaint. On October 18, 2024, OUII filed a response in support of the motion. *Id.* On the same day, a number of respondents filed a response stating that they “do not oppose the addition of JMS Trading provided that . . . the target date and procedural schedule are extended by an amount of time equal to the time that elapses between the institution of this Investigation and the ultimate addition of JMS Trading.” *Id.* at 2.

On November 4, 2024, the presiding CALJ issued the subject ID (Order No. 15), pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)), granting Complainants’ motion to amend the complaint and NOI as requested. The ID finds that the amendments “will not prejudice respondents, the proposed respondent, Staff, or the public interest,” and that “JBS Hair has shown good cause to amend the complaint and notice of investigation to add allegations that JMS Trading has violated section 337.” *Id.* at 4. The ID also finds that “there is good cause to make the ministerial updates to the complaint that JBS Hair proposes.” *Id.* The CALJ denied the respondents’ request to extend the target date and procedural schedule.

No party filed a petition for review of the subject ID.

The Commission has determined not to review the subject ID (Order No. 15).

The Commission vote for this determination took place on December 2, 2024.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 2, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–28527 Filed 12–5–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1658 (Final)]

Truck and Bus Tires From Thailand

Determination

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that an industry in the United States is materially injured by reason of imports of truck and bus tires from Thailand, provided for in subheadings 4011.20.10 and 4011.20.50 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).^{2,3}

Background

The Commission instituted this investigation effective October 17, 2023, following receipt of a petition filed with the Commission and Commerce by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, Pittsburgh, Pennsylvania. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of truck and bus tires from

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² 89 FR 83636 (October 17, 2024).

³ The Commission also finds that imports subject to Commerce’s affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on Thailand.

Thailand were being sold at LTFV within the meaning of § 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission’s investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 12, 2024 (89 FR 49903). The Commission conducted its hearing on October 15, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on December 2, 2024. The views of the Commission are contained in USITC Publication 5562 (December 2024), entitled *Truck and Bus Tires from Thailand: Investigation No. 731–TA–1658 (Final)*.

By order of the Commission.

Issued: December 2, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–28513 Filed 12–5–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1466]

Bulk Manufacturer of Controlled Substances Application: Kinetochem LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Kinetochem LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 4, 2025. Such persons may also file a written request for a hearing on the application on or before February 4, 2025.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment

field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on November 5, 2024, Kinetochem LLC, 96 Market Street, Suite 102, Georgetown, Texas 78626–3618, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols.	7370	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances as Active Pharmaceutical Ingredients to its customers as well as for research and clinical trials. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols) the company plans to bulk manufacture these drug codes as synthetic. No other activities for these drug codes are authorized for this registration.

Matthew Strait,
Deputy Assistant Administrator.
[FR Doc. 2024–28715 Filed 12–5–24; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1464]

Bulk Manufacturer of Controlled Substances Application: Navinta LLC

AGENCY: Drug Enforcement Administration, Justice.
ACTION: Notice of application.

SUMMARY: Navinta LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 4, 2025. Such persons may also file a written request for a hearing on the application on or before February 4, 2025.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on October 14, 2024, Navinta LLC, 1499 Lower Ferry Road, Ewing, New Jersey 08618–1414, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Levomethorphan	9210	II
Levorphanol	9220	II
Remifentanil	9739	II

The company plans to bulk manufacture the listed controlled substances for validation purposes as part of the Food Administration approval process before distributing to their customers. No other activities for these drug codes are authorized for this registration.

Matthew Strait,
Deputy Assistant Administrator.
[FR Doc. 2024–28719 Filed 12–5–24; 8:45 am]
BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1465]

Importer of Controlled Substances Application: Organic Standards Solutions International, LLC

AGENCY: Drug Enforcement Administration, Justice.
ACTION: Notice of application.

SUMMARY: Organic Standards Solutions International, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before January 6, 2025. Such persons may also file a written request for a hearing on the application on or before January 6, 2025.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 6, 2024, Organic Standards Solutions International, LLC, 7290 Investment Drive, Unit B, North Charleston, South

Carolina 29418–8305, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to import the listed controlled substances to produce analytical reference standards for sale and distribution to its customers. Drug codes 7350 (Marihuana Extract) and 7360 (Marihuana) will be used for the manufacture of cannabidiol only. In reference to drug code 7370 (Tetrahydrocannabinols) the company plans to import a synthetic version of this controlled substance. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2024–28717 Filed 12–5–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1462]

Importer of Controlled Substances Application: Noramco

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Noramco has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before January 6, 2025. Such persons may also file a written request for a hearing on the application on or before January 6, 2025.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 9, 2024, Noramco, 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Methadone-Intermediate	9254	II
Opium, Raw	9600	II
Opium Extracts	9610	II
Opium Fluid Extract	9620	II
Opium Tincture	9630	II
Opium, Powdered	9639	II
Opium, Granulated	9640	II
Opium Poppy/Poppy Straw.	9650	II
Noroxymorphone	9668	II
Poppy Straw Concentrate	9670	II
Tapentadol	9780	II

The company plans to import Poppy Straw Concentrate (9670) to bulk manufacture other controlled substances for distribution to its customers. The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers. In reference to drug codes 7360

(Marihuana) and 7370 (Tetrahydrocannabinols), the company plans to import a synthetic cannabidiol and a synthetic Tetrahydrocannabinol. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2024–28728 Filed 12–5–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On December 2, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Missouri in the lawsuit entitled *United States of America v. BCP Ingredients, Inc.* Civ. No. 3:24–cv–5094 (W.D. Mo.).

The Complaint seeks injunctive relief and civil penalties for alleged violations of section 112(r) of the Federal Clean Air Act (“CAA”), 42 U.S.C. 7412(r)(7), and its implementing regulations set forth at 40 CFR part 68, resulting from a release of ethylene oxide (“EtO”) at a chemical manufacturing and repackaging facility owned and operated by BCP Ingredients, Inc. (“BCP”) in Verona, Missouri. Under the proposed Consent Decree resolving these alleged violations, BCP will pay a civil penalty of \$300,000 to the United States, install an additional state-of-the-art EtO scrubber to reduce EtO emissions at its facility, and share a copy of its final audit completion report from a 2022 third party audit. BCP also will be required to perform three Supplemental Environmental Projects totaling \$350,000: (1) donation of two vehicles to a local healthcare provider to provide mobile health services to communities near BCP's facility; (2) provision of at least 1,000 medical visits to be administered by the same local healthcare provider using the vehicles BCP will donate for the first SEP; and (3) donation of emergency response equipment to a fire department near BCP's facility.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments

should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America v. BCP Ingredients, Inc.* Civ. No. 3:24-cv-5094 (W.D. Mo.), D.J. Ref. No. 90-5-2-1-12805. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the consent decree, you may request assistance by email or mail to the addresses provided above for submitting comments.

Kathryn C. Macdonald,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
[FR Doc. 2024-28710 Filed 12-5-24; 8:45 am]
BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and Formerly Utilized Sites Remedial Action Program

On December 2, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Missouri in the lawsuit entitled *United States v. Cotter Corporation (N.S.L.) and Norfolk Southern Railway Company*, Civil Action No. 24-cv-1593. The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Formerly Utilized Sites Remedial Action Program (FUSRAP) for response costs incurred, and to be incurred, by the United States Army Corps of Engineers (the Corps) and Department of Defense for their removing contamination from uranium ore or residue processing materials at certain portions of the North St. Louis

County Superfund Site in Missouri. Under the proposed Consent Decree, Cotter Corporation, Norfolk Southern Railway Company, and the United States will pay a combined total of nearly \$164,000,000 in past and future response costs for costs associated with the above activities. In return, the proposed Consent Decree provides Cotter, Norfolk Southern, and the United States with a covenant not to sue or take administrative action under section 107(a) of CERCLA for any costs associated with the above activities at the North St. Louis County Site, as well as contribution protection under section 113(f)(2) of CERCLA. The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Cotter Corporation (N.S.L.) and Norfolk Southern Railway Company*, D.J. Ref. No. 90-11-2-08259/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Kathryn C. Macdonald,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
[FR Doc. 2024-28520 Filed 12-5-24; 8:45 am]
BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration Fee (COIF)
AGENCY: Bureau of Prisons, Justice.
ACTION: Notice.

SUMMARY: Pursuant to regulations, the Bureau of Prisons publishes the Fiscal Year (FY) 2023 Cost of Incarceration Fee (COIF) for Federal inmates.
DATES: December 6, 2024.
ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First Street NW, Washington, DC 20534.
FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel/Rules Administrator, Federal Bureau of Prisons, at the address above or at (202) 353-4885.
SUPPLEMENTARY INFORMATION: Title 28 of the Code of Federal Regulations, part 505, allows for assessment of a fee to cover the average cost of incarceration for Federal inmates. We calculate the cost of incarceration fee (COIF) by dividing the number representing the Bureau of Prisons (Bureau) facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the fiscal year, and then by multiplying the quotient by the number of days in the fiscal year. Based on FY 2023 data, the average annual COIF for a Federal inmate housed in a Bureau or non-Bureau facility in FY 2023 was \$44,090 (\$120.80 per day). The average annual COIF for a Federal inmate housed in a Residential Reentry Center for FY 2023 was \$41,437 (\$113.53 per day). (Please note: There were 365 days in FY 2023.)
James Wills,
Assistant Director/General Counsel, Federal Bureau of Prisons.
[FR Doc. 2024-28743 Filed 12-5-24; 8:45 am]
BILLING CODE 4410-05-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration
Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.
ACTION: Notice.
SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Peabody Midwest Mining, LLC.
DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 6, 2025.
ADDRESSES: You may submit comments identified by Docket No. MSHA-2024-0089 by any of the following methods:
1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the

instructions for submitting comments for MSHA–2024–0089.

2. Fax: 202–693–9441.

3. Email: petitioncomments@dol.gov.

4. Regular Mail or Hand Delivery:

MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), Petitionsformodification@dol.gov (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–063–C.

Petitioner: Peabody Midwest Mining LLC, CR 725 East, Francisco, Indiana 47699. 62237.

Mine: Francisco Underground Pit, MSHA ID No. 12–02295, located in Gibson County, Indiana.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR

75.500(d) to permit an alternative method of compliance to permit the use of battery-powered non-permissible radios used in or inby the last open crosscut.

The petitioner states that:

(a) Peabody previously filed a petition for modification of 30 CFR 75.500(d) on July 12, 2023 (Docket Number M–2023–024–C), but the Proposed Decision and Order (PDO) was denied by MSHA on June 4, 2024.

(b) Peabody currently uses Motorola and Kenwood permissible radios in its underground mine to communicate between miners. Such communication facilitates movement of equipment, assignment of necessary work as well as communication with the surface control room.

(c) The mines also use wired communication systems and the communication and tracking systems required in the mine's Emergency Response Plan. Such communication facilitates efficiency and safety. It occurs along the face areas and in other areas covered by this standard. It facilitates communication in case of emergencies such as injuries both on the section and to the surface.

(d) Motorola and Kenwood have discontinued the manufacture and sale of MSHA-approved permissible radios. Such radios were the only permissible radios available for the underground coal mine industry. The notices (see Exhibits 1 and 2) indicated that for a period of time the radios were sold out of stock but that ceased as indicated in the notes. Peabody is not aware of any other radio which is economically feasible.

(e) Peabody seeks modification of 30 CFR 75.500(d) as it applies to use of low voltage battery-powered non-permissible radios. It intends to use the following equipment:

(1) Motorola R–7 Portable Two-Way Radio (see Exhibits 3 and 4). Other intrinsically safe portable radios may subsequently be used if approved in advance by the MSHA District Manager.

(f) Peabody mines utilize the continuous miner method of mining. Some sections utilize two continuous miners and use of the radios permits coordination of the coal haulers and between the two continuous miners.

(g) Effective communication is critical to the safety of the miners at the mine. It reduces the potential for collisions and pedestrian accidents and facilitates communication in an emergency.

(h) The alternative method proposed in the petition will at all times guarantee no less than the same measure of protection afforded by the standard.

The petitioner proposes the following alternative method:

(a) Non-permissible intrinsically safe radios to be used include the Motorola R–7 Portable Two-Way Radio (HAZ LOC certified by UL standards ANSI/TIA 4950).

(b) All such radios shall be rated IP 66 or higher.

(c) All non-permissible radios shall be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations results shall be recorded in the weekly examination book and shall be made available to MSHA and the miners at the mine.

(d) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible radios.

(e) Non-permissible radios shall not be used if methane is detected in concentrations at or above one percent. When one percent or more methane is detected while the non-permissible radios are being used, the radios shall be de-energized immediately by turning them off and withdrawn from the area.

(f) All hand-held methane detectors shall be MSHA approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320. Each miner using a radio shall be trained in the use of handheld methane detectors.

(g) All radios shall be used in accordance with the safe use procedures recommended by the manufacturer.

(h) Personnel who use non-permissible radios shall be properly trained to recognize the hazards and limitations associated with use of the equipment.

(i) The radio battery is designed to last more than the length of a shift. The radio shall not be charged underground and shall be charged on the surface in accordance with the procedure for other battery-operated devices such as methane detectors.

(j) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, at all the mines for which the PDO granted by MSHA applies, for a period of not less than 60 consecutive days and a copy shall be made available to all miners' representatives.

(k) The proposed radios shall be available for inspection and testing during MSHA's investigation. As other radios are acquired, if the petition is granted, such radios shall be made

available for MSHA inspection. The radios shall be made available for MSHA testing during the investigation.

(l) The Motorola radio is rated IP 66 and IP 68. It is powered by a lithium cell.

(m) The miners at Francisco Underground Pit are not currently represented by a labor organization and this petition is posted at the mine.

In support of the proposed alternative method, the petitioner has also submitted manufacturer product specification sheets for MSHA-approved permissible radios indicating they are no longer available and manufacturer product specification sheets for the proposed Motorola R-7 Portable Two-Way Radio.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024-28517 Filed 12-5-24; 8:45 am]

BILLING CODE 4520-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Peabody Midwest Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 6, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA-2024-0091 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2024-0091.

2. *Fax:* 202-693-9441.

3. *Email:* petitioncomments@dol.gov.

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering

documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2024-065-C.

Petitioner: Peabody Midwest Mining LLC, CR 725 East, Francisco, Indiana 47699. 62237.

Mine: Francisco Underground Pit, MSHA ID No. 12-02295, located in Gibson County, Indiana.

Regulation Affected: 30 CFR 75.1002(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to permit an alternative method of compliance to permit the use of battery-powered non-permissible radios within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) Peabody previously filed a petition for modification of 30 CFR 75.1002(a) on July 12, 2023 (Docket Number M-2023-022-C), but the Proposed Decision and Order (PDO) was denied by MSHA on June 4, 2024.

(b) Peabody currently uses Motorola and Kenwood permissible radios in its underground mine to communicate between miners. Such communication facilitates movement of equipment, assignment of necessary work as well as communication with the surface control room.

(c) The mines also use wired communication systems and the communication and tracking systems required in the mine's Emergency Response Plan. Such communication facilitates efficiency and safety. It occurs along the face areas and in other areas covered by this standard. It facilitates communication in case of emergencies such as injuries both on the section and to the surface.

(d) Motorola and Kenwood have discontinued the manufacture and sale of MSHA-approved permissible radios. Such radios were the only permissible radios available for the underground coal mine industry. The notices (see Exhibits 1 and 2) indicated that for a period of time the radios were sold out of stock but that ceased as indicated in the notes. Peabody is not aware of any other radio which is economically feasible.

(e) Peabody seeks modification of 30 CFR 75.1002(a) as it applies to use of low voltage battery-powered non-permissible radios. It intends to use the following equipment:

(1) Motorola R-7 Portable Two-Way Radio (see Exhibits 3 and 4). Other intrinsically safe portable radios may subsequently be used if approved in advance by the MSHA District Manager.

(f) Peabody mines utilize the continuous miner method of mining. Some sections utilize two continuous miners and use of the radios permits coordination of the coal haulers and between the two continuous miners.

(g) Effective communication is critical to the safety of the miners at the mine. It reduces the potential for collisions and pedestrian accidents and facilitates communication in an emergency.

(h) The alternative method proposed in the petition will at all times guarantee no less than the same measure of protection afforded by the standard.

The petitioner proposes the following alternative method:

(a) Non-permissible intrinsically safe radios to be used include the Motorola R-7 Portable Two-Way Radio (HAZ LOC certified by UL standards ANSI/TIA 4950).

(b) All such radios shall be rated IP 66 or higher.

(c) All non-permissible radios shall be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being

maintained in a safe operating condition. These examinations results shall be recorded in the weekly examination book and shall be made available to MSHA and the miners at the mine.

(d) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible radios.

(e) Non-permissible radios shall not be used if methane is detected in concentrations at or above one percent. When one percent or more methane is detected while the non-permissible radios are being used, the radios shall be de-energized immediately by turning them off and withdrawn from the area.

(f) All hand-held methane detectors shall be MSHA approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320. Each miner using a radio shall be trained in the use of handheld methane detectors.

(g) All radios shall be used in accordance with the safe use procedures recommended by the manufacturer.

(h) Personnel who use non-permissible radios shall be properly trained to recognize the hazards and limitations associated with use of the equipment.

(i) The radio battery is designed to last more than the length of a shift. The radio shall not be charged underground and shall be charged on the surface in accordance with the procedure for other battery-operated devices such as methane detectors.

(j) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, at all the mines for which the PDO granted by MSHA applies, for a period of not less than 60 consecutive days and a copy shall be made available to all miners' representatives.

(k) The proposed radios shall be available for inspection and testing during MSHA's investigation. As other radios are acquired, if the petition is granted, such radios shall be made available for MSHA inspection. The radios shall be made available for MSHA testing during the investigation.

(l) The Motorola radio is rated IP 66 and IP 68. It is powered by a lithium cell.

(m) The miners at Francisco Underground Pit are not currently represented by a labor organization and this petition is posted at the mine.

In support of the proposed alternative method, the petitioner has also submitted manufacturer product

specification sheets for MSHA-approved permissible radios indicating they are no longer available and manufacturer product specification sheets for the proposed Motorola R-7 Portable Two-Way Radio.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024-28518 Filed 12-5-24; 8:45 am]

BILLING CODE 4520-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Peabody Midwest Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 6, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA-2024-0090 by any of the following methods:

1. *Federal eRulemaking Portal:*

<https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2024-0090.

2. *Fax:* 202-693-9441.

3. *Email:* petitioncomments@dol.gov.

4. *Regular Mail or Hand Delivery:*

MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), [\[dol.gov\]\(mailto:dol.gov\) \(email\), or 202-693-9441 \(fax\). \[These are not toll-free numbers.\]](mailto:Petitionsformodification@</p></div><div data-bbox=)

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2024-064-C.

Petitioner: Peabody Midwest Mining LLC, CR 725 East, Francisco, Indiana 47699. 62237.

Mine: Francisco Underground Pit, MSHA ID No. 12-02295, located in Gibson County, Indiana.

Regulation Affected: 30 CFR 75.507-1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507-1(a) to permit an alternative method of compliance to permit the use of battery-powered non-permissible radios used in the return airways.

The petitioner states that:

(a) Peabody previously filed a petition for modification of 30 CFR 75.507-1(a) on July 12, 2023 (Docket Number M-2023-023-C), but the Proposed Decision and Order (PDO) was denied by MSHA on June 4, 2024.

(b) Peabody currently uses Motorola and Kenwood permissible radios in its underground mine to communicate between miners. Such communication facilitates movement of equipment, assignment of necessary work as well as communication with the surface control room.

(c) The mines also use wired communication systems and the communication and tracking systems required in the mine's Emergency Response Plan. Such communication facilitates efficiency and safety. It occurs

along the face areas and in other areas covered by this standard. It facilitates communication in case of emergencies such as injuries both on the section and to the surface.

(d) Motorola and Kenwood have discontinued the manufacture and sale of MSHA-approved permissible radios. Such radios were the only permissible radios available for the underground coal mine industry. The notices (see Exhibits 1 and 2) indicated that for a period of time the radios were sold out of stock but that ceased as indicated in the notes. Peabody is not aware of any other radio which is economically feasible.

(e) Peabody seeks modification of 30 CFR 75.507–1(a) as it applies to use of low voltage battery-powered non-permissible radios. It intends to use the following equipment:

(1) Motorola R–7 Portable Two-Way Radio (see Exhibits 3 and 4). Other intrinsically safe portable radios may subsequently be used if approved in advance by the MSHA District Manager.

(f) Peabody mines utilize the continuous miner method of mining. Some sections utilize two continuous miners and use of the radios permits coordination of the coal haulers and between the two continuous miners.

(g) Effective communication is critical to the safety of the miners at the mine. It reduces the potential for collisions and pedestrian accidents and facilitates communication in an emergency.

(h) The alternative method proposed in the petition will at all times guarantee no less than the same measure of protection afforded by the standard.

The petitioner proposes the following alternative method:

(a) Non-permissible intrinsically safe radios to be used include the Motorola R–7 Portable Two-Way Radio (HAZ LOC certified by UL standards ANSI/TIA 4950).

(b) All such radios shall be rated IP 66 or higher.

(c) All non-permissible radios shall be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations results shall be recorded in the weekly examination book and shall be made available to MSHA and the miners at the mine.

(d) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible radios.

(e) Non-permissible radios shall not be used if methane is detected in concentrations at or above one percent.

When one percent or more methane is detected while the non-permissible radios are being used, the radios shall be de-energized immediately by turning them off and withdrawn from the area.

(f) All hand-held methane detectors shall be MSHA approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320. Each miner using a radio shall be trained in the use of handheld methane detectors.

(g) All radios shall be used in accordance with the safe use procedures recommended by the manufacturer.

(h) Personnel who use non-permissible radios shall be properly trained to recognize the hazards and limitations associated with use of the equipment.

(i) The radio battery is designed to last more than the length of a shift. The radio shall not be charged underground and shall be charged on the surface in accordance with the procedure for other battery-operated devices such as methane detectors.

(j) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, at all the mines for which the PDO granted by MSHA applies, for a period of not less than 60 consecutive days and a copy shall be made available to all miners' representatives.

(k) The proposed radios shall be available for inspection and testing during MSHA's investigation. As other radios are acquired, if the petition is granted, such radios shall be made available for MSHA inspection. The radios shall be made available for MSHA testing during the investigation.

(l) The Motorola radio is rated IP 66 and IP 68. It is powered by a lithium cell.

(m) The miners at Francisco Underground Pit are not currently represented by a labor organization and this petition is posted at the mine.

In support of the proposed alternative method, the petitioner has also submitted manufacturer product specification sheets for MSHA-approved permissible radios indicating they are no longer available and manufacturer product specification sheets for the proposed Motorola R–7 Portable Two-Way Radio.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the

same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,
Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–28516 Filed 12–5–24; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of a teleconference of the National Science Board/National Science Foundation Commission on Merit Review (MRX) for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: The MRX meeting is scheduled for Wednesday, December 11, 2024, from 4:00 p.m.–4:30 p.m. Eastern.

PLACE: This meeting will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: Commission Chair's remarks about the agenda; Discussion of final guidance; Vote for approval of final guidance; and Commission Chair's closing remarks.

CONTACT PERSON FOR MORE INFORMATION:

Point of contact for this meeting is: Chris Blair, cblair@nsf.gov, 703/292–7000. Meeting information and updates may be found at www.nsf.gov/nsb.

Ann E. Bushmiller,
Senior Counsel to the National Science Board.

[FR Doc. 2024–28900 Filed 12–4–24; 4:15 pm]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, December 19, 2024.

PLACE: via ZOOM.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in her opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) permit closure of the following portion(s) of this meeting:

- Executive (Closed) Session

Agenda

- I. Call to Order
- II. Sunshine Act Approval of Executive (Closed) Session
- III. Executive Session: CEO Report
- IV. Executive Session: CFO Report
- V. Executive Session: General Counsel Report
- VI. Executive Session: CIO Report
- VII. Executive Session: Community Advisory Council/External Committees
- VIII. Executive Session: Officer Performance Metrics
- IX. Action Item: Approval of Meeting Minutes for August 13 Audit Committee Meeting, August 15 Regular Board Meeting, September 30 Special Board Meeting, October 16 Special Board Meeting, October 17 Regular Board Meeting, and November 7 Audit Committee Meeting
- X. Action Item: Approval of 2024 Delegation of Authority Revision
- XI. Action Item: Approval of Revision to the Corporate Bylaw—Tenure Protection of Chief Audit Executive Position
- XII. Action Item: Approval of FY2025–2027 Strategic Plan
- XIII. Discussion Item: November 7 Audit Committee Meeting Report
- XIV. Discussion Item: FY2025 Corporate Scorecard
- XV. Discussion Item: Management Program Background and Updates
 - a. 2025 Board Calendar
 - b. 2025 Board Agenda Planner
 - c. CFO Report
 - i. Financials (through 9/30/24)
 - ii. Single Invoice Approvals \$100K and Over
 - iii. Vendor Payments \$350K and Over
 - iv. Exceptions
 - d. Programs Dashboard
 - e. Housing Stability Counseling Program (HSCP)

PORTIONS OPEN TO THE PUBLIC:
Everything except the Executive (Closed) Session.

PORTIONS CLOSED TO THE PUBLIC:
Executive (Closed) Session.

CONTACT PERSON FOR MORE INFORMATION:
Jenna Sylvester, Paralegal, (202) 568–2560; jsylvester@nw.org.

Jenna Sylvester,
Paralegal.

[FR Doc. 2024–28881 Filed 12–4–24; 4:15 pm]

BILLING CODE 7570–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395; NRC–2023–0152]

Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1; Draft Supplemental Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meetings and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft Supplement 15, Second Renewal, to the Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants, NUREG–1437, regarding the subsequent renewal of Renewed Facility Operating License No. NPF–12 for an additional 20 years for Virgil C. Summer Nuclear Station, Unit 1 (V.C. Summer). The V.C. Summer site is located in Fairfield County, South Carolina. Possible alternatives to the proposed action of subsequent license renewal for V.C. Summer include the no-action alternative and reasonable replacement power alternatives.

DATES: The NRC will hold a virtual public meeting on December 17, 2024, at 1 p.m. eastern time (ET), and an in-person public meeting on January 9, 2025, at 6 p.m. ET. The public meeting details can be found on the NRC's Public Meeting Schedule at <https://www.nrc.gov/pmns/mtg>. Members of the public are invited to submit comments by January 21, 2025. Comments received after that 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 that date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0152. 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.

- *Email:* Comments may be submitted to the NRC electronically using the email address: SummerEnvironmental@nrc.gov.

- *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: Kim Conway, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1335; email: Kimberly.Conway@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0152 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0152.
- *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. Draft Supplement 15, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, is available in ADAMS under Accession No. ML24330A271.

- *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. ET, Monday through Friday, excluding Federal holidays.

- *Public Library:* A copy of draft Supplement 15, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, regarding the proposed subsequent renewal of Renewed Facility Operating License No. NPF–12 for an additional 20 years for V.C. Summer will be available for public review at the Fairfield County

Library, 300 West Washington St.,
Winnsboro, SC 29180.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0152 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. Discussion

The NRC is issuing for public comment draft Supplement 15, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG-1437, regarding the subsequent renewal of Renewed Facility Operating License No. NPF-12 for an additional 20 years for V.C. Summer. Draft Supplement 15, Second Renewal, to the GEIS includes the NRC staff's evaluation of the environmental impacts of the proposed action and alternatives to the proposed action.

The NRC staff's preliminary recommendation is that the adverse environmental impacts of subsequent license renewal for V.C. Summer are not so great that preserving the option of subsequent license renewal for energy-planning decision-makers would be unreasonable.

Dated: December 2, 2024.

For the Nuclear Regulatory Commission.

Theodore Smith,

Acting Deputy Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024-28583 Filed 12-5-24; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2024-0094]

Information Collection: Physical Protection of Plants and Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "Physical Protection of Plants and Materials."

DATES: Submit comments by February 4, 2025. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0094. 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:* David Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2024-0094 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-2024-0094.

- *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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. (ML24206A179 and ML24206A181).

- *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.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2024-0094, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited 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 comment

submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized as follows.

1. *The title of the information collection:* Physical Protection of Plants and Materials.
2. *OMB approval number:* 3150–0002.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Once for the initial submittal of Cyber Security Plans, Physical Security Plans, Safeguards Contingency Plans, and Security Training and Qualification Plans and then on occasion when changes are made. Required reports are submitted and evaluated as events occur.

6. *Who will be required or asked to respond:* Nuclear power reactor licensees licensed under parts 50 or 52 of title 10 of the *Code of Federal Regulations* (10 CFR), who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material; actively decommissioning reactor licensees; Category I, Category II and Category III fuel facilities; nonpower reactors (research and test reactors); and other entities who mark and handle Safeguards Information.

7. *The estimated number of annual responses:* 135,164.

8. *The estimated number of annual respondents:* 205.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 478,028 (25,885 reporting + 428,564 recordkeeping + 23,579 third-party disclosure).

10. *Abstract:* The NRC regulations in 10 CFR part 73 prescribe requirements to establish and maintain a physical protection system and security organization with capabilities for protection of: (1) Special Nuclear Material (SNM) at fixed sites, (2) SNM in transit, and (3) plants in which SNM is used. 10 CFR part 73 contains reporting and recordkeeping requirements which are necessary to help ensure that an adequate level of protection is provided for nuclear facilities and nuclear material, such as: development and maintenance of security documents including a physical

security plan, a training and qualification plan, a safeguards contingency plan, a cyber security plan, and security implementing procedures; notifications to the NRC regarding safeguards and cyber security events; notifications to State governors and Tribes regarding shipments of irradiated reactor fuel; and requirements for conducting criminal history records checks of individuals granted unescorted access to a nuclear power facility, a non-power reactor, or access to Safeguards Information. The objective is to ensure that activities involving SNM are consistent with interests of common defense and security and that these activities do not constitute an unreasonable risk to public health and safety. The information in the reports and records submitted by licensees is used by the NRC staff to ensure that the health and safety of the public and the environment are protected, and licensee possession and use of SNM is in compliance with license and regulatory requirements.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: December 3, 2024.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–28733 Filed 12–5–24; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for

review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before January 6, 2025.

ADDRESSES: Comments should be addressed to James Olin, FOIA/Privacy Act Officer. James Olin can be contacted by email at pcf@peacecorps.gov or by telephone at (202) 692–2507. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT:

James Olin, Peace Corps, at pcf@peacecorps.gov or by telephone at (202) 692–2507.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Intelligence Background Questions.

OMB Control Number: 0420–pending.

Type of Request: New information collection.

Affected Public: Individuals or households.

Respondents Obligation to Reply:

Required to obtain or retain benefits.

Burden to the Public:

- a. *Number of respondents:* 100.
- b. *Frequency of response:* One time.
- c. *Completion time:* 10 minutes.
- d. *Annual burden hours:* 16.67 hours.

General Description of Collection: The Peace Corps uses the Intelligence Background Questionnaire to determine what kind of intelligence connection an applicant or an applicant's relative might have and how close an applicant and a relative with an intelligence connection are. This form is a supplement to the Intelligence Background Questionnaire (OMB Control Number 0420–0551) which requires additional information to determine whether the intelligence connection is substantial enough to prevent the person from being employed at the Peace Corps or being a Volunteer for the Peace Corps permanently or for a set period of time from the last intelligence connection. If an applicant disagrees with the Peace Corps' determination, he or she may appeal the determination to the Director of the Peace Corps.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information

to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 3, 2024.

James Olin,

FOIA/Privacy Act Officer.

[FR Doc. 2024-28746 Filed 12-5-24; 8:45 am]

BILLING CODE 6051-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025-520 and K2025-518; MC2025-521 and K2025-519; MC2025-522 and K2025-520; MC2025-523 and K2025-521; MC2025-524 and K2025-522; MC2025-526 and K2025-524; MC2025-528 and K2025-526; MC2025-529 and K2025-527; MC2025-530 and K2025-528; MC2025-531 and K2025-529; MC2025-534 and K2025-532; MC2025-542 and K2025-540; MC2025-543 and K2025-541; MC2025-544 and K2025-542; MC2025-545 and K2025-543; MC2025-546 and K2025-544; MC2025-547 and K2025-545]

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:* December 9, 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
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service

agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or

request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).*: MC2025-520 and K2025-518; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 812 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 9, 2024.

2. *Docket No(s).*: MC2025-521 and K2025-519; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 813 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 9, 2024.

3. *Docket No(s).*: MC2025-522 and K2025-520; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 814 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 9, 2024.

4. *Docket No(s).*: MC2025-523 and K2025-521; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 815 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 9, 2024.

5. *Docket No(s).*: MC2025-524 and K2025-522; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 816 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 9, 2024.

6. *Docket No(s).*: MC2025-526 and K2025-524; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 818 to the Competitive Product

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).

List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: December 9, 2024.

7. *Docket No(s)*: MC2025–528 and K2025–526; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 820 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: December 9, 2024.

8. *Docket No(s)*: MC2025–529 and K2025–527; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 821 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: December 9, 2024.

9. *Docket No(s)*: MC2025–530 and K2025–528; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 822 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: December 9, 2024.

10. *Docket No(s)*: MC2025–531 and K2025–529; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 823 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 9, 2024.

11. *Docket No(s)*: MC2025–534 and K2025–532; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 826 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 9, 2024.

12. *Docket No(s)*: MC2025–542 and K2025–540; *Filing Title*: USPS Request

to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 831 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 9, 2024.

13. *Docket No(s)*: MC2025–543 and K2025–541; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 832 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 9, 2024.

14. *Docket No(s)*: MC2025–544 and K2025–542; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 833 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 9, 2024.

15. *Docket No(s)*: MC2025–545 and K2025–543; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 491 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: December 9, 2024.

16. *Docket No(s)*: MC2025–546 and K2025–544; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage 834 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: December 9, 2024.

17. *Docket No(s)*: MC2025–547 and K2025–545; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 835 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 27, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 9, 2024.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–28507 Filed 12–5–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[**Docket Nos.** MC2025–527; K2025–525; MC2025–532; K2025–530; MC2025–533; K2025–531; MC2025–535; K2025–533; MC2025–538; K2025–536; MC2025–539; K2025–537; MC2025–540; K2025–538; MC2025–541; K2025–539; MC2025–548; K2025–546; MC2025–549; K2025–547; MC2025–550; K2025–548; MC2025–551; K2025–549; MC2025–552; K2025–550; MC2025–553; K2025–551; MC2025–554; K2025–552]

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.

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II. Public Proceeding(s)

1. *Docket No(s).*: MC2025–527 and K2025–525; *Filing Title*: USPS Request to Add Priority Mail Express, Priority

Mail & USPS Ground Advantage Contract 819 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Christopher Mohr; *Comments Due*: December 9, 2024.

2. *Docket No(s).*: MC2025–532 and K2025–530; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 824 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 9, 2024.

3. *Docket No(s).*: MC2025–533 and K2025–531; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 825 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 9, 2024.

4. *Docket No(s).*: MC2025–535 and K2025–533; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 827 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 9, 2024.

5. *Docket No(s).*: MC2025–538 and K2025–536; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 830 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: December 9, 2024.

6. *Docket No(s).*: MC2025–539 and K2025–537; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 488 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 9, 2024.

7. *Docket No(s).*: MC2025–540 and K2025–538; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 489 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: December 9, 2024.

8. *Docket No(s).*: MC2025–541 and K2025–539; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 490 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: December 9, 2024.

9. *Docket No(s).*: MC2025–548 and K2025–546; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 836 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: December 9, 2024.

10. *Docket No(s).*: MC2025–549 and K2025–547; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 837 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 9, 2024.

11. *Docket No(s).*: MC2025–550 and K2025–548; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 838 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: December 9, 2024.

12. *Docket No(s).*: MC2025–551 and K2025–549; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 839 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 29, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*:

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).

Gregory Stanton; *Comments Due:* December 9, 2024.

13. *Docket No(s):* MC2025–552 and K2025–550; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 840 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 29, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 9, 2024.

14. *Docket No(s):* MC2025–553 and K2025–551; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 841 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 29, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 9, 2024.

15. *Docket No(s):* MC2025–554 and K2025–552; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 492 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 29, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 9, 2024.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–28550 Filed 12–5–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101786; File No. SR–BX–2024–052]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

December 2, 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 November

21, 2024, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its expanded co-location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.³ As described in that filing, the Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11–4”) in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11–4, (iii) fees for power installation in NY11–4, and (iv)

fees for power distribution unit options in NY11–4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11–4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11–4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11–4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11–4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis.

⁴ Half cabinets are not available to new subscribers. *See* General 8, Section 1(a).

⁵ *Supra* note 4 [sic].

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11–4, the Super High Density Cabinet in NY11–4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

³ *See* Securities Exchange Act Release No. 34–100558 (July 18, 2024) [sic] Securities Exchange Act Release No. 34–101073 (September 5, 2024), 89 FR 77926 (September 24, 2024) (SR–BX–2024–035).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components.

Installation Fee for Cabinets in NY11–4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11–4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11–4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11–4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11–4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11–4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹ It largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations.

Installation Fee for Cabinet Power in NY11–4

The cabinet power options for NY11–4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40

amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11–4 and one of these options must be selected for cabinets in NY11–4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11–4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11–4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11–4 and update the fee schedule accordingly. For NY11–4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11–4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")¹¹ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power distribution units in NY11–4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide

their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components. Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Lastly, the installation fee largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁶ warranting a higher fee. Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to

customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁷ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are

¹⁷ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 20% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated July 3, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. 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.

available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11–4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ *Supra* note 11 [sic].

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2024-052 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-BX-2024-052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2024-052 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-28543 Filed 12-5-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101787; File No. SR-MRX-2024-44]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

December 2, 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 November 18, 2024, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its expanded co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-

³ Securities Exchange Act Release No. 34-101077 (September 5, 2024), 89 FR 77904 (September 24, 2024) (SR-MRX-2024-36).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components.

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-

4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹ It largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations.

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")¹¹ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power distribution units in NY11-4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components. Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Lastly, the installation fee largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations. Third, the

Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁶ warranting a higher fee. Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange 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,¹⁷ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed

monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11–4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

¹⁶ *Supra* note 10.

¹⁷ There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸ 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-44 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-MRX-2024-44. 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-MRX-2024-44 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-28544 Filed 12-5-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101788; File No. SR-ISE-2024-53]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

December 2, 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 November 18, 2024, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its expanded co-location services. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density

³ See Securities Exchange Act Release No. 34-101076 (September 5, 2024), 89 FR 77951 (September 24, 2024) (SR-ISE-2024-45).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11–4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11–4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11–4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components.

Installation Fee for Cabinets in NY11–4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11–4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High

Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11–4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11–4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11–4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11–4 include uniform, wider cabinets (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹ It largely reflects a pass-through to customers of costs charged by Nasdaq’s vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq’s administrative costs, which is comparable to its mark-up on existing installations.

Installation Fee for Cabinet Power in NY11–4

The cabinet power options for NY11–4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11–4 and one of these options must be selected for cabinets in NY11–4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11–4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11–4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11–4 and update the fee schedule accordingly. For NY11–4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11–4 as compared to the existing data halls as the installation of the higher voltage power options costs

more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq’s vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq’s administrative costs. As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units (“PDUs”) ¹¹ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3 ¹² power distribution units in NY11–4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

⁵ *Supra* note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11–4, the Super High Density Cabinet in NY11–4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components. Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H),

cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Lastly, the installation fee largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁶ warranting a higher fee. Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange 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,¹⁷ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the

Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ *Supra* note 10.

¹⁷ There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. 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.

under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11-4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸ 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-53 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-ISE-2024-53. 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-ISE-2024-53 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-28545 Filed 12-5-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101777; File No. 10-242]

In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

November 27, 2024.

I. Introduction and Procedural History

On February 6, 2024, 24X National Exchange LLC ("24X" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a Form 1 application under the Securities Exchange Act of 1934 ("Exchange Act") seeking registration as a national securities exchange under section 6 of the Exchange Act.¹ Notice of the application was published for comment in the **Federal Register** on March 4,

2024.² The Commission received five comments on the Notice³ and a letter responding to the comments from 24X.⁴ On May 31, 2024, the Commission instituted proceedings pursuant to section 19(a)(1)(B) of the Exchange Act⁵ to determine whether to grant or deny 24X's application for registration as a national securities exchange under section 6 of the Exchange Act (the "OIP").⁶ After issuance of the OIP, the Commission received six comment letters⁷ and a letter responding to the comments from 24X.⁸ On August 21, 2024, 24X filed an amendment to its Form 1 application ("Amendment No. 1"),⁹ which was published for comment in the **Federal Register** on September 3, 2024.¹⁰ On August 30, 2024, the Commission extended, pursuant to section 19(a)(1)(B) of the Exchange

² See Securities Exchange Act Release No. 99614 (Feb. 27, 2024), 89 FR 15621 (Mar. 4, 2024) ("Notice").

³ See letters from James J. Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated Apr. 5, 2024 ("Angel Letter I") and dated May 13, 2024 ("Angel Letter II"); Stan Sater, Senior Legal Counsel, Polygon.io, Inc., dated Apr. 25, 2024 ("Polygon Letter"); Andrew Glover, University of Washington and Ed deHaan, Professor of Accounting, Stanford University, dated Apr. 22, 2024 ("Glover and deHaan Letter"); Eun Ah Choi, Senior Vice President, Nasdaq, Inc., dated Apr. 25, 2024 ("Nasdaq Letter"). The public comment file for 24X's Form 1 (File No. 10-242) is available on the Commission's website at: <https://www.sec.gov/comments/10-242/10-242.htm>.

⁴ See letter from David Sassoon, General Counsel, 24X, dated May 30, 2024 ("24X Letter").

⁵ 15 U.S.C. 78s(a)(1)(B).

⁶ See Securities Exchange Act Release No. 100254 (May 31, 2024), 89 FR 48466 (June 6, 2024).

⁷ See letters from Richard Montone, JD/MBA student, Hofstra University, dated June 26, 2024 ("Montone Letter"); Ellen Greene, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association ("SIFMA"), dated June 27, 2024 ("SIFMA Letter"); Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc., dated June 27, 2024 ("Better Markets Letter"); Chris Nagy, Research Director, and Tyler Gellasch, President and Chief Executive Officer, Healthy Markets Association, dated June 28, 2024 ("Healthy Markets Letter"); Jeffrey M. Pasquerella, Chief Legal Officer, DriveWealth, LLC., dated June 28, 2024 ("DriveWealth Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, dated July 26, 2024 ("FIA PTG Letter").

⁸ See letter from David Sassoon, General Counsel, 24X, dated Aug. 21, 2024 ("24X Letter II").

⁹ Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/24x-form-1>. In Amendment No. 1, 24X amended Exhibits B, B-1, C, C-2, D, D-1, D-2, D-3, D-4, E, E-1 and N. For purposes of this Order, references to Exhibits B, C-2, D, D-1, D-3, and N will be to the amended Exhibits filed with Amendment No. 1. See *infra* note 15 (describing references to Exhibits B, B-1, E and E-1 for purposes of this Order).

¹⁰ See Securities Exchange Act Release No. 100839 (Aug. 27, 2024), 89 FR 71471 (Sept. 3, 2024).

¹⁹ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78f. The Form 1 is available on the Commission's website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/24x-form-1>.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

Act,¹¹ the time period for granting or denying 24X's Form 1 application for an additional 90 days, until November 29, 2024.¹² After issuance of Amendment No. 1, the Commission received three comment letters¹³ and a letter responding to the comments from 24X.¹⁴ On October 23, 2024, 24X filed a second amendment to its Form 1 application ("Amendment No. 2"),¹⁵ which was published for comment in the **Federal Register** on October 30, 2024.¹⁶ After issuance of Amendment No. 2, the Commission received two comment letters¹⁷ and a letter responding to the comments from 24X.¹⁸

The Commission has reviewed 24X's Form 1 application, as amended, together with the comment letters received, in order to make a determination whether to grant such registration. For the reasons set forth below and based on the representations set forth in 24X's Form 1 application, as amended, this order grants 24X's Form 1 application, as amended, for registration as a national securities exchange.

II. Statutory Standards

Pursuant to sections 6(b) and 19(a) of the Exchange Act,¹⁹ the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the

Exchange Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange.²⁰

As discussed in greater detail below, the Commission finds that 24X's application, as amended, for registration as a national securities exchange meets the requirements of the Exchange Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of 24X are consistent with section 6 of the Exchange Act in that, among other things, they are designed to: (1) assure fair representation of the exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer;²¹ (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system;²² (3) not permit unfair discrimination between customers, issuers, or dealers;²³ and (4) protect investors and the public interest.²⁴ The Commission also finds that the proposed rules of 24X are consistent with section 11A of the Exchange Act.²⁵ Finally, the Commission finds that 24X's proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁶

III. Discussion

A. Ownership and Governance of 24X

24X is a Delaware limited liability company,²⁷ which is wholly-owned by its sole member, 24X US Holdings LLC ("24X US"), which also is a Delaware limited liability company.²⁸ 24X US, in turn, is wholly-owned by 24X Bermuda Holdings LLC ("24X Bermuda"), which is a limited liability company formed

under the laws of Bermuda.²⁹ 24X US will be managed by, and all decisions regarding 24X US will be made by, 24X Bermuda.³⁰ Generally, the members of 24X Bermuda include holders of "Preferred Units,"³¹ "Common Units"³² and "Non-Voting Units."³³ Common Units and Preferred Units except Series Seed-2 Units have general voting power, and are defined as "Voting Units."³⁴ Each Voting Unit has one vote.³⁵

1. 24X Board of Directors

24X proposed that its business and affairs as a national securities exchange will be managed by a Board³⁶ comprised of a minimum of seven Directors³⁷ ("24X Board").³⁸ The 24X Board will consist of:

(A) one Director who is the Chief Executive Officer of the Exchange and who shall be deemed to be an Industry Director;³⁹

(B) Non-Industry Directors,⁴⁰ including at least one (1) Independent Director,⁴¹ the number of which shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors;⁴²

²⁹ See Certificate of Formation of 24X Bermuda Holdings LLC.

³⁰ See Second Amended and Restated Limited Liability Company Agreement of 24X US Holdings LLC ("24X US LLC Agreement"), Section VI(a).

³¹ "Preferred Units" means "Series A Units and the Series Seed Units." See Third Amended and Restated Limited Liability Company Agreement of 24X Bermuda LLC ("24X Bermuda LLC Agreement"), Article 1, 1.45. See also *id.* at Article 1, 1.55 and 1.60 defining Series A Units and Series Seed Units.

³² "Common Units" means "[u]nits of common membership interests of the Company, or any other ownership interests of the Company into which such units are reclassified, reconstituted or exchanged." See *id.* at Article 1, 1.16.

³³ "Non-Voting Units" means "units of non-voting membership interests of the Company, or any other ownership interests of the Company into which such units are reclassified, reconstituted or exchanged." See *id.* at Article 1, 1.38. A description of the members of 24X Bermuda and their respective ownership levels is set forth in Exhibit K. See also *infra* section III.B.1.

³⁴ See 24X Bermuda LLC Agreement, Article 1, 1.75. See also *id.* at Article 1, Section 1.64 defining Series Seed-2 Units.

³⁵ See 24X Bermuda LLC Agreement, Article 1, 1.75.

³⁶ See Amended and Restated Limited Liability Company Agreement of 24X National Exchange LLC ("24X LLC Agreement"), Article I, (d).

³⁷ See *id.*, at Article I, (l).

³⁸ See *id.*, at Article VI, Section 6.1(b).

³⁹ See *id.*, at Article VI, Section 6.1(c)(i)(A). See also *id.* at Article I, (w).

⁴⁰ See *id.*, at Article VI, Section 6.1(c)(i)(B)(1). See also *id.* at Article I, (ee).

⁴¹ See *id.*, at Article I, (v).

⁴² See *id.*, at Article VI, Section 6.1(c)(i)(B)(1). See also *id.* at Article I, (bb).

¹¹ 15 U.S.C. 78s(a)(1)(B).

¹² See Securities Exchange Act Release No. 100884 (Aug. 30, 2024), 89 FR 72917 (Sept. 6, 2024).

¹³ See letters from Patrick Blonien, Instructor of Finance, Carnegie Mellon University, and Alexander Ober, Ph.D. Candidate in Finance, Rice University, undated ("Blonien and Ober Letter"); John Ramsay, Chief Market Policy Officer, Investors' Exchange LLC ("IEX"), dated Oct. 9, 2024 ("IEX Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, dated Oct. 11, 2024 ("FIA PTG Letter II").

¹⁴ See letter from David Sassoon, General Counsel, 24X, dated Nov. 1, 2024 ("24X Letter III").

¹⁵ Amendment No. 2 is available on the Commission's website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/24x-form-1>. In Amendment No. 2, 24X amended Exhibits B, B-1, E, and E-1. For purposes of this Order, references to these listed Exhibits will be to the amended Exhibits filed with Amendment No. 2.

¹⁶ See Securities Exchange Act Release No. 101431 (Oct. 24, 2024), 89 FR 86400 (Oct. 30, 2024).

¹⁷ See letters from Ellen Green, Managing Director, Equities and Options Market Structure, SIFMA, dated Oct. 29, 2024 ("SIFMA Letter II"); Adrian Griffiths, Head of Market Structure, MEMX LLC ("MEMX Letter"), dated Oct. 29, 2024.

¹⁸ See letter from David Sassoon, General Counsel, 24X, dated Nov. 18, 2024 ("24X Letter IV").

¹⁹ 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

²⁰ 15 U.S.C. 78f(b)(1).

²¹ See U.S.C. 78f(b)(3).

²² See U.S.C. 78f(b)(5).

²³ See *id.*

²⁴ See *id.*

²⁵ See 15 U.S.C. 78k-1.

²⁶ See 15 U.S.C. 78f(b)(8).

²⁷ See Certificate of Formation of 24X National Exchange LLC.

²⁸ See Certificate of Formation of 24X US Holdings LLC.

(C) Member Representative Directors, the number of which must be at least twenty percent of the 24X Board;⁴³ and

(D) at least one of the Non-Industry Directors shall be representative of issuers and investors and not associated with an Exchange Member, a broker, or a dealer.⁴⁴

The first annual meeting of 24X will be held within 90 days after the Commission grants 24X's exchange registration.⁴⁵

In addition, 24X US will appoint the initial Nominating Committee and Member Nominating Committee, consistent with each committee's compositional requirements, to nominate candidates for election to the 24X Board.⁴⁶ The Nominating Committee and Member Nominating Committee, after completion of their respective duties for nominating directors for election to the 24X Board for that year, will recommend candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable.⁴⁷ Exchange Members⁴⁸ will have rights to nominate and elect additional candidates for the Member Nominating Committee pursuant to a petition process.⁴⁹

The Nominating Committee will nominate candidates for election to the 24X Board.⁵⁰ For the Member Representative Director positions, the Member Nominating Committee, composed solely of Member Representative Committee or Panel Members,⁵¹ shall consult with the Nominating Committee and the Chairman of the 24X Board and solicit

comments from Exchange Members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director.⁵² If no candidates are nominated pursuant to a petition process, then the initial nominees approved and submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee.⁵³ If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to Exchange Members for election to determine the final designees for any open Member Representative Director positions.⁵⁴ In the event of a contested election, the candidates who receive the most votes will be selected as the Member Representative Director designees by the Member Nominating Committee.⁵⁵

The 24X governance provisions are consistent with the Exchange Act. In particular, the requirement that the number of Member Representative Directors must be at least 20% of the 24X Board and the means by which they will be chosen by Exchange Members provides for the fair representation of members in the selection of directors and the administration of 24X and therefore are consistent with section 6(b)(3) of the Exchange Act.⁵⁶ This requirement helps to ensure that members of an exchange have a voice in an exchange's self-regulatory program, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.⁵⁷

In addition, the requirements that the number of Non-Industry Directors equal or exceed the sum of the number of Industry Directors and Member Representative Directors, that at least one Non-Industry Director shall also qualify as an Independent Director, and that at least one of the Non-Industry Directors shall be representative of issuers and investors and not associated with an Exchange Member, a broker, or a dealer on the 24X Board satisfy the requirements in section 6(b)(3) of the Exchange Act,⁵⁸ which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange's ability to protect the public interest.⁵⁹ Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. Public directors can provide unbiased perspectives, which may enhance the ability of the 24X Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.

2. Exchange Committees

24X has proposed to establish several named committees of the 24X Board, including an Appeals Committee⁶⁰ and a Regulatory Oversight Committee,⁶¹ as well as the Nominating Committee and Member Nominating Committee, discussed above.⁶² The Appeals

⁴³ See *id.*, at Article VI, Section 6.1(c)(1)(B)(2). If twenty percent of the Directors then serving on the 24X Board is not a whole number, such minimum number of Member Representative Directors shall be rounded up to the next whole number. *Id.*

⁴⁴ See *id.*, at Article VI, Section 6.1(c)(1)(B)(3).
⁴⁵ See 24X LLC Agreement, Article III, Section 3.4(a).

⁴⁶ See 24X LLC Agreement, Article VI, Section 6.2(g)(ii).

⁴⁷ *Id.*

⁴⁸ "Exchange Member" means "any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the Company. An Exchange Member is not a member of the Company by reason of being an Exchange Member. An Exchange Member will have the status of a 'member' of the Exchange as that term is defined in Section 3(a)(3) of the Exchange Act." See 24X LLC Agreement, Article I, (o).

⁴⁹ See 24X LLC Agreement, Article VI, Section 6.1(d)(iii).

⁵⁰ See 24X LLC Agreement, Article VI, Section 6.1(d)(i).

⁵¹ "Member Representative Committee or Panel Members" means a member of any Committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that does not own, directly or indirectly, any Units. See 24X LLC Agreement, Article I (aa).

⁵² See 24X LLC Agreement, Article VI, Section 6.1(d)(ii).

⁵³ See 24X LLC Agreement, Article VI, Section 6.1(d)(v).

⁵⁴ *Id.*

⁵⁵ See 24X LLC Agreement, Article VI, Section 6.1(d)(vi).

⁵⁶ 15 U.S.C. 78f(b)(3).

⁵⁷ See, e.g., Securities Exchange Act Release Nos. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order granting registration of MIA Exchange, LLC) ("Sapphire Order"); 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (File No. 10-237) (order granting registration of MEMX LLC ("MEMX Exchange")) ("MEMX Order"); 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10-234) (order granting registration of Long Term Stock Exchange, Inc. ("LTSE Exchange")) ("LTSE Order"); 79543 (Dec. 13, 2016), 81 FR 92901, 92903 (Dec. 20, 2016) (File No. 10-227) (order granting registration of MIA Exchange, LLC) ("MIA Exchange Order"); 68341 (Dec. 3, 2012), 77 FR 73065, 73067 (Dec. 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC ("MIA Exchange")) ("MIA Exchange Order"); 58375 (Aug. 18, 2008), 73 FR 49498, 49501 (Aug. 21, 2008) (File No. 10-182) (order granting

the registration of BATS Exchange, Inc.) ("BATS Order"); 53128 (Jan. 13, 2006), 71 FR 3550, 3553 (Jan. 23, 2006) (File No. 10-131) (granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order").

⁵⁸ 15 U.S.C. 78f(b)(3).

⁵⁹ See, e.g., Sapphire Order, *supra* note 57, at 58850; MEMX Order, *supra* note 57, at 27452; LTSE Order, *supra* note 57, at 21843; MIA Exchange Order, *supra* note 57, at 92903; MIA Exchange Order, *supra* note 57, at 73067; BATS Order, *supra* note 57, at 49501; Nasdaq Order, *supra* note 57, at 3553.

⁶⁰ See 24X LLC Agreement, Article VI, Section 6.2(f). The Appeals Committee will preside over all appeals related to disciplinary and adverse action determinations in accordance with 24X rules. *Id.*

⁶¹ See 24X LLC Agreement, Article VI, Section 6.2(h). The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities, assessing the Exchange's regulatory performance, and assisting the 24X Board and Committees in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. *Id.* See also *infra* section III.B.3.

⁶² The 24X Board could also establish additional committees. See 24X LLC Agreement, Article VI,

Committee will consist of two Independent Directors and one Member Representative Director.⁶³ Each member of the Regulatory Oversight Committee must be an Independent Director.⁶⁴

The named committees that 24X proposed, which are similar to the named committees maintained by other exchanges,⁶⁵ are designed to help enable the Exchange to carry out its responsibilities under the Exchange Act and are consistent with the Exchange Act, including section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act.⁶⁶

The Commission received one comment on Exhibit J of 24X's Form 1.⁶⁷ Regarding the proposed 24X Board and committees, this commenter stated that filling in the charts set forth in Exhibit J of 24X's Form 1 with "TBD" and "TO BE PROVIDED" "does not provide the Commission with sufficient information with which to assess compliance with the law or Commission Rules."⁶⁸ The commenter further stated that "[t]he Exchange failed to provide the names, classifications, terms, and types of businesses of the persons to fill the required roles. The point of the chart is to have those boxes filled in. They are 'to be provided' now—not in the future. What would be the basis for the Commission's approval?"⁶⁹ 24X stated that it has not commenced operations and that "[o]nce directors and committee members are determined," 24X will update its Form 1 as required under Rule 6a–2 under the Exchange Act.⁷⁰

Exhibit J requires certain information for officers, governors, members of all standing committees, or persons performing similar functions, who "presently hold or have held their offices or positions during the previous year."⁷¹ Exhibit J of 24X's Form 1

application indicates that Dmitri Galinov will be the "Industry/Chief Executive Officer" of 24X. Exhibit J also lists Dmitri Galinov as the Head of Equities for 24X, and other officers of 24X including David Sassoon as General Counsel; Jeremy Sanchez as Chief Regulatory Officer; and Jason Woerz as Chief Operating Officer.

24X has not yet commenced operations, and therefore, the nomination and election processes to fill the rest of 24X's Board and committees, as set forth in the 24X LLC Agreement, have not been initiated. Upon approval of 24X's Form 1 application, however, 24X US, as the sole owner of 24X, is required to elect only those persons to the 24X Board and committees that meet the stated compositional requirements set forth in the 24X LLC Agreement, and pursuant to Rule 6a–2 of the Exchange Act, 24X must file an amendment to its Form 1 providing the name, classification, term, and type of business of each person who will be on the 24X Board and 24X committees within 10 days after 24X US elects such persons to the 24X Board, or the Chairman of the 24X Board appoints individuals to the various 24X committees.⁷² The information provided by 24X in Exhibit J is consistent with the requirements of the form and the Exchange Act.

B. 24X Bermuda and Regulation of the Exchange

When 24X commences operations as a national securities exchange, it will have all of the attendant regulatory obligations under the Exchange Act. In particular, 24X will be responsible for the operation and regulation of its trading system and the regulation of its members. Certain provisions in both the 24X and 24X Bermuda governing documents are designed to facilitate the ability of 24X to fulfill its regulatory obligations and to help facilitate Commission oversight of 24X. The discussion below summarizes some of these key provisions.⁷³

1. Ownership Structure; Ownership and Voting Limitations

As stated above, 24X will be owned indirectly by 24X Bermuda. The 24X Bermuda LLC Agreement includes

primarily engaged (*e.g.*, floor broker, specialist, odd lot dealer, etc.).

⁷² See 17 CFR 240.6a–2. See also 24X LLC Agreement, Article VI, Section 6.2(b)(i).

⁷³ Because 24X US is the sole member of 24X (*see* 24X LLC Agreement), and 24X Bermuda is the sole member of 24X US (*see* 24X US LLC Agreement) and thus indirectly wholly owns and controls 24X, for purposes of this Order, the Commission bases its findings on provisions in the 24X Bermuda LLC Agreement, as the ultimate owner of 24X.

restrictions on the ability to own and vote units representing a fractional part of the interest in 24X Bermuda ("Units").⁷⁴ These limitations are designed to prevent any party to the 24X Bermuda LLC Agreement from exercising undue control over the operation of the Exchange and to ensure that the Exchange and the Commission are able to carry out their regulatory obligations under the Exchange Act.⁷⁵

In particular, for so long as 24X Bermuda shall control, directly or indirectly, 24X, no Person,⁷⁶ either alone or together with its Related Persons,⁷⁷ will be permitted to own,

⁷⁴ "Unit" means "(i) any Common Units (including Profits Units), Non-Voting Units or Preferred Units purchased or otherwise acquired by any Member; (ii) any equity securities issued or issuable directly or indirectly with respect to any of the foregoing Units by way of Unit distribution or split or in connection with a combination of Units, recapitalization, merger, consolidation or other reorganization; and (iii) any other units of any class or series of ownership interests of the Company held by a Member, including with respect to Convertible Securities or Options." See 24X Bermuda LLC Agreement, Article 1, 1.72

⁷⁵ These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, *e.g.*, Sapphire Order, MEMX Order, LTSE Order, MIAx PEARL Order, MIAx Order, and BATS Order *supra* note 57; IEX Order, *supra* note 65, *see also* Securities Exchange Release Nos. 6068 (Feb. 4, 2016) (File No. 10–221) (order granting exchange registration of ISE Mercury, LLC) ("ISE Mercury Order"); 70050 (July 26, 2013), 78 FR 46622, 46624 (Aug. 1, 2013) (File No. 10–209) (order granting the exchange registration of ISE Gemini, LLC) ("ISE Gemini Order"); 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (CBOE–2008–88) (Cboe demutualization order); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR–NSX–2006–03) (NSX demutualization order); 51149 (Feb. 8, 2005), 70 FR 7531 (Feb. 14, 2005) (SR–CHX–2004–26) (CHX demutualization order); 49098 (Jan. 16, 2004), 69 FR 3974 (Jan. 27, 2004) (SR–Phlx–2003–73) (Phlx demutualization order).

⁷⁶ "Person" means "any individual, partnership, joint venture, company, limited liability company, trust, or other association or entity." See 24X Bermuda LLC Agreement, Article 1, 1.41.

⁷⁷ "Related Persons" means "[with] respect to any Person: (a) any 'affiliate' of such Person (as such term is defined in Rule 12b–2 under the Exchange Act); (b) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (c) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (d) in the case of any Person that is a registered broker or dealer that has been admitted to membership in the national securities exchange known as 24X National Exchange, any Person that is associated with such member (as determined using the definition of 'person associated with a member' as defined under Section 3(a)(21) of the Exchange Act); (e) in the case of a Person that is a natural person and member of 24X National Exchange, any broker or dealer that is also a member of 24X National Exchange with which such Person is associated; (f) in the case of

Continued

Section 6.2(a). All committees of the 24X Board will be subject to the control and supervision of the 24X Board. *Id.*

⁶³ See 24X LLC Agreement, Article VI, Section 6.2(f).

⁶⁴ See 24X LLC Agreement Article VI, Section 6.2(h)(v).

⁶⁵ See, *e.g.*, Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222) (order granting the registration of IEX ("IEX Order")); Article IV, Section 4.1 of the Eleventh Amended and Restated Bylaws of Cboe Exchange, Inc.

⁶⁶ 15 U.S.C. 78f(b)(1).

⁶⁷ See Healthy Markets Letter at 2–6.

⁶⁸ *Id.* at 5.

⁶⁹ *Id.* at 5.

⁷⁰ See 24X Letter II at 16–17.

⁷¹ For any individual that presently holds or has held their offices or positions during the previous year, Exhibit J requires their name, title, dates of commencement and termination of term of office or position, and type of business in which each is

directly or indirectly, of record or beneficially, more than 40% of the then issued and outstanding Units.⁷⁸ A more restrictive condition will apply to Exchange Members, who either alone or together with their Related Persons, will be prohibited from owning, directly or indirectly, of record or beneficially, more than 20% of the then issued and outstanding Units.⁷⁹ If any party to the 24X Bermuda LLC Agreement purports to transfer⁸⁰ any Units in violation of these ownership limits, 24X Bermuda will be required (to the extent funds are legally available) to redeem the Units in excess of the applicable ownership limit.⁸¹

a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a manager or officer of the Company, any subsidiary of the Company, or any of the Company's parent companies; (g) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; or (h) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable." See 24X Bermuda LLC Agreement, Article 1, 1.49.

⁷⁸ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(i). There are limited exceptions to these prohibitions. See *infra* notes 84–85 and accompanying text.

⁷⁹ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(ii). This restriction on ownership by Exchange Members cannot be waived. See *id.* at Article 9, Section 9.2(b)(ii).

⁸⁰ "Transfer" means "any sale, transfer, conveyance, exchange, pledge, gift, donation, assignment, or other disposition of Units, whether voluntary or involuntary, and whether during the lifetime of the Person involved or upon or after his death, including, but not limited to, any disposition by operation of law, by court order, by judicial process, or by foreclosure, levy, or attachment. 'Transfer' when used as a verb shall have a correlative meaning. 'Transferor' and 'Transferee' mean a Person who makes or receives a Transfer, respectively." See 24X Bermuda LLC Agreement, Article 1, Section 1.71. See also *id.* at Article 9, Section 9.2(f)(i).

⁸¹ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(f)(iii). The price of the redeemed Units or Unit Equivalents is also prescribed in the 24X Bermuda LLC Agreement. See *id.* The number of Units or Unit Equivalents to be redeemed is to be calculated after taking into account that the redeemed Units or Unit Equivalents will become treasury shares and will no longer be deemed to be outstanding. See *id.* It is further provided in the 24X Bermuda LLC Agreement that any Units or Unit Equivalents that have been called for redemption may not be deemed outstanding Units or Unit Equivalents if a sum sufficient to redeem the Units or Unit Equivalents has been irrevocably deposited or set aside to pay the redemption price. From and after the redemption date (unless 24X Bermuda defaults in providing funds for the payment of the redemption price), the redeemed Units or Unit Equivalents that have been redeemed will become treasury shares, and all rights of the holder of the redeemed Units or Unit Equivalents in 24X Bermuda (except the right to receive from 24X Bermuda the redemption price against delivery to 24X Bermuda of evidence of ownership of the shares) will cease. See *id.* In addition, in the event that any redemption has resulted in any person

In addition, no Person, alone or together with its Related Persons, may, directly, indirectly, or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of Units or give any consent or proxy with respect to Units representing more than 20% of the voting power of the then issued and outstanding Units ("Voting Limitation").⁸² Further, no Person, either alone or together with its Related Persons, under circumstances that would result in the Units that are subject to such agreement, plan, or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan, or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote, or cause the voting of Units that would represent more than 20% of such voting power.⁸³

The 24X Bermuda Board of Managers will be permitted to waive the 40% ownership limitation and the 20% Voting Limitation pursuant to a resolution duly adopted by the 24X Bermuda Board of Managers if it makes certain determinations.⁸⁴ Any such waiver will not be effective unless and until approved by the Commission.⁸⁵

Any Person that proposes to own Units in excess of the 40% ownership limitation, or to vote or grant any

owning such number of Units or Unit Equivalents that is in violation of the ownership limits, 24X Bermuda will be required to redeem those Units or Unit Equivalents pursuant to the limitation provisions. See *id.*

⁸² See 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(iii).

⁸³ See *id.*

⁸⁴ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(b)(ii). See also *supra* note 79 (concerning the inability to waive restrictions for Exchange Members). The required determinations are that such waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an "exchange" under the Exchange Act and the rules and regulations promulgated thereunder; that such waiver is otherwise in the best interests of 24X Bermuda, its members, and the Exchange; that such waiver will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; and that such Person and its Related Persons are not subject to any applicable "statutory disqualification" within the meaning of Section 3(a)(39) of the Exchange Act. See *id.* See also 24X US LLC Agreement, Section III(b)(ii)(B). These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, e.g., Sapphire Order, MEMX Order, LTSE Order, MIAx PEARL Order, MIAx Order, and BATS Order, *supra* note 57, IEX Order, *supra* note 65, ISE Mercury Order and ISE Gemini Order, *supra* note 75; and Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010) (File Nos. 10–194 and 10–196) (order approving DirectEdge exchanges) ("DirectEdge Exchanges Order").

⁸⁵ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(b)(ii).

proxies or consents with respect to Units constituting more than 20% of the voting power of the then outstanding Units, will be required to deliver written notice to the 24X Bermuda Board of Managers of its intention.⁸⁶ The notice must be delivered to the 24X Bermuda Board of Managers not less than 45 days (or any shorter period to which the Board of Managers expressly consents) before the proposed ownership of such Units or the proposed vote.⁸⁷

The 24X Bermuda LLC Agreement also contains provisions that are designed to further safeguard the ownership limitation and Voting Limitation described above or are otherwise related to direct and indirect changes in control. Specifically, any Person that, either alone or together with its Related Persons beneficially owns, directly or indirectly (whether by acquisition or a change in the number of Units outstanding), of record or beneficially 5% or more of the then outstanding Units will be required to notify the 24X Bermuda Board of Managers in writing of such ownership.⁸⁸ Thereafter, such persons will be required to update 24X Bermuda of any increase or decrease of 1% or more in their previously reported ownership percentage.⁸⁹

The 24X LLC Agreement does not include change of control provisions that are similar to those in the 24X Bermuda LLC Agreement and the 24X US LLC Agreement because the 24X LLC Agreement instead explicitly identifies its sole owner as 24X US, and in turn the 24X US LLC Agreement explicitly identifies 24X Bermuda as its sole owner.⁹⁰ Thus, any changes in the ownership of 24X would require the 24X LLC Agreement to be amended. Any amendment to the 24X LLC Agreement, including to ownership of

⁸⁶ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(d).

⁸⁷ See *id.*

⁸⁸ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(e)(i). The notice will require the Person's full legal name; the Person's title or status and the date on which such title or status was acquired; the Person's and its Related Person's approximate ownership interest in 24X Bermuda; and whether the person has power, directly or indirectly, to direct the management or policies of 24X Bermuda, whether through ownership of securities, by contract or otherwise. See *id.*

⁸⁹ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(e)(ii). Changes of less than 1% must also be reported to 24X Bermuda if they result in such Person crossing a 20% or 40% ownership threshold. See *id.* In addition, the Exchange's rules also impose limits on affiliation between the Exchange and a Member of the Exchange. See 24X Rule 2.10 (No Affiliation between Exchange and any Member).

⁹⁰ See 24X LLC Agreement (introductory text) and Second Amended and Restated Limited Liability Company Agreement of 24X US (introductory text).

24X, would constitute a proposed rule change under section 19(b) of the Exchange Act⁹¹ and Rule 19b-4⁹² thereunder that will be required to be filed with, or filed with and approved by, the Commission.⁹³ Moreover, pursuant to the 24X LLC Agreement, any transfer of limited liability company interests of 24X will be subject to prior approval by the Commission pursuant to the rule filing procedure under section 19 of the Exchange Act.⁹⁴

Although 24X Bermuda is not directly responsible for regulation, its activities with respect to the operation of 24X must be consistent with, and must not interfere with, the self-regulatory obligations of 24X.⁹⁵ As described above, the provisions applicable to changes in control of 24X Bermuda (through changes in ownership of Units in 24X Bermuda) as well as the Voting Limitation imposed on owners of 24X Bermuda who also are Exchange Members, are designed to help prevent any owner of 24X Bermuda from exercising undue influence or control, either direct or indirect, over the operation of the Exchange and to help ensure that the Exchange retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Exchange Act.

In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has stated in the past, an exchange member's ownership interest in an entity that controls an exchange could become so large as to cast doubt on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.⁹⁶ An exchange member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such

provisions. As such, these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of the Exchange to effectively carry out its regulatory oversight responsibilities under the Exchange Act.

The Commission received one comment addressing the governance structure proposed by 24X.⁹⁷ This commenter stated 24X's ownership and voting structure "facially violate Commission Rules and the law."⁹⁸ According to this commenter "[24X] asserts that if the Commission approves its application, it has internal company documents that promise (to itself) that it will come into compliance with the law and Commission Rules within nine months of the approval. It is unclear whether or how this promise for future compliance would be enforceable, much less by whom."⁹⁹

In response to the commenter's concern about 24X's ownership and voting structure, 24X explained that "although the Exchange Act does not set forth any specific ownership and voting limitations applicable to exchanges, the Commission typically has expected exchanges to include in their governing documents certain limitations on ownership and voting. 24X's application includes each of these typical limitations on ownership and voting."¹⁰⁰ 24X stated that "[t]he only exception to such limitations is a request for a very brief, temporary exemption from certain ownership and voting limitation[s]."¹⁰¹

24X's and 24X Bermuda's proposed governance provisions are consistent with the Exchange Act, including section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act.¹⁰² In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or 24X to effectively carry out their regulatory oversight responsibilities under the Exchange Act.

24X has proposed ownership and voting limitations in Article 9, Section 9.2 of the 24X Bermuda LLC Agreement that are consistent with the ownership and voting limitations in place across all other national securities exchanges,¹⁰³ and thus are designed to enable 24X to

meet its obligations under the Exchange Act.

a. Temporary Exemption

24X proposes that Dmitri Galinov and his Related Persons¹⁰⁴ have a temporary exemption from the ownership limitation set forth in Section 9.2 of the 24X Bermuda LLC Agreement until nine (9) months after the Commission grants 24X's application for registration as a national securities exchange or until 24X commences operation, if later than nine (9) months.¹⁰⁵ Further, 24X proposes in the 24X Bermuda LLC Agreement that if Dmitri Galinov and his Related Persons do not comply with the ownership limitation in Section 9.2 of the 24X Bermuda LLC Agreement within the applicable time period, then 24X Bermuda shall redeem all of the Units the holding of which by Dmitri Galinov and/or his Related Persons results in a violation of Section 9.2 for a price per Unit, as applicable, equal to the lesser of (a) book value or (b) Fair Market Value of such Units.¹⁰⁶ 24X also proposes that Dmitri Galinov and his Related Persons shall have a temporary exemption from the Voting Limitation set forth in Section 9.2 of the 24X Bermuda LLC Agreement until nine (9) months after the Commission grants 24X's application for registration as a national securities exchange or until 24X commences operation, if later than nine (9) months, but only with respect to any vote regarding any merger, consolidation or dissolution of the 24X Bermuda or any sale of all or substantially all of the assets of the 24X Bermuda.¹⁰⁷

Exhibit K of 24X's Form 1 application provides that "Dmitri Galinov owns 7,000,000 Common Units and 179,215 Seed-3 Preferred Units, for a total of 7,179,215 Units for all classes outstanding,"¹⁰⁸ and that "Dmitri Galinov is a Related Person of KNG CAPITAL LLC, Tanya Nazarov-Kenneally, and Vladimir Nazarov. KNG CAPITAL LLC owns 320,616 Seed-1 Preferred Units, which represents 1.85% of all classes of outstanding Units.

¹⁰⁴ See *infra* notes 108–110 and accompanying text for a description of the Related Persons of Dmitri Galinov.

¹⁰⁵ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(g)(i). While 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(ii) sets forth an ownership restriction that applies to 24X Exchange Members, this provision does not apply to Mr. Galinov; the ownership limitation that does apply to Dmitri Galinov and his Related Persons is set forth in 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(i).

¹⁰⁶ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(g)(i).

¹⁰⁷ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(g)(ii).

¹⁰⁸ See Exhibit K, footnote 2.

⁹¹ 15 U.S.C. 78s(b).

⁹² 17 CFR 240.19b-4.

⁹³ See 24X LLC Agreement, Article X, Section 10.3.

⁹⁴ See 24X LLC Agreement, Article V, Section 5.2(a).

⁹⁵ See, e.g., Sapphire Order, *supra* note 57, IEX Order, *supra* note 65.

⁹⁶ See, e.g., Sapphire Order, MEMX Order, LTSE Order, MIAx PEARL Order, MIAx Order, and BATS Order, *supra* note 57, ISE Mercury Order, *supra* note 75, IEX Order, *supra* note 65; and DirectEdge Exchanges Order, *supra* note 84.

⁹⁷ See Healthy Markets Letter at 2–6.

⁹⁸ *Id.* at 2.

⁹⁹ *Id.*

¹⁰⁰ 24X Letter II at 16.

¹⁰¹ *Id.* See also *infra* section III.B.1.a.

¹⁰² 15 U.S.C. 78f(b)(1).

¹⁰³ See *supra* note 75.

Tanya Nazarov-Kenneally owns 1794 Seed-3 Preferred Units, which represents 0.01% of all classes of outstanding Units. Vladimir Nazarov owns 7176 Seed-3 Preferred Units, which represents 0.04% of all classes of outstanding Units.”¹⁰⁹ Accordingly, Exhibit K states that “on an aggregate basis, Dmitri Galinov, together with his Related Persons, owns 43.29% of the Units of all classes of outstanding Units.”¹¹⁰

In a letter, 24X stated that the temporary exemption would provide it with a brief period to bring its ownership and voting structure in line with the ownership and voting restrictions upon SEC approval.¹¹¹ 24X also stated that the Commission had granted “prior exchange applications with such limited exceptions to the ownership and voting restrictions.”¹¹²

The Commission finds that the limited temporary exemption in Article 9, Section 9.2(g) of the 24X Bermuda LLC Agreement from the ownership limitation and Voting Limitation set forth in Article 9, Section 9.2 of the 24X Bermuda LLC Agreement for Dmitri Galinov and his Related Persons is consistent with the Exchange Act. As discussed above, the ownership limitation and Voting limitation are designed to prevent any party from exercising undue control over the operation of the 24X and ensure that 24X is able to carry out its regulatory obligations under the Exchange Act. The exemption is designed to prevent Dmitri Galinov and his Related Persons from exercising undue control over 24X and minimize the possibility that 24X’s ability to carry out its self-regulatory responsibilities under the Exchange Act could be impaired. Specifically, the exemption is for a defined period of time that is based on 24X’s approval as a national securities exchange or commencement of its exchange operations. Thus, the exemption is designed to ensure that once 24X is a self-regulatory organization (“SRO”), the exemption will terminate within a specified period of time. In addition, the exemption from the Voting Limitation applies only with respect to the limited situations involving any merger, consolidation or dissolution of the 24X Bermuda or any sale of all or substantially all of the assets of the 24X Bermuda that will not permit undue control over 24X or impair the

regulatory responsibilities of 24X. The temporary exemption is designed to afford Dmitri Galinov and his Related Persons the ability to protect the investment they have already made in the establishment of 24X that is over the current ownership limitation, represented by 24X to be 3.29% of the Units of all outstanding Units.¹¹³

As part of its Form 1 application, 24X also has included in the 24X Bermuda LLC Agreement a representation that 24X Bermuda will redeem all of the Units the holding of which by Dmitri Galinov and/or his Related Persons results in a violation of the applicable 40% ownership limitation for a price per Unit, as applicable, equal to the lesser of (a) book value or (b) Fair Market Value of such Units. The 24X Bermuda LLC Agreement further provides that such redemption shall occur nine (9) months after the date of approval by the Commission of 24X’s Form 1 application or until commencement of the operation of 24X, if later than nine (9) months. Thus, in response to the commenter, 24X has established a mechanism to ensure compliance with the ownership limitation and Voting Limitation set forth in the 24X Bermuda LLC Agreement upon expiration of the stated time period. 24X Bermuda’s Managers and officers must comply with the federal securities laws and the rules and regulations promulgated thereunder and are deemed to agree to cooperate with the Commission and 24X in respect of the Commission’s oversight responsibilities regarding 24X and the self-regulatory functions and responsibilities of 24X.¹¹⁴ Therefore, should there be a need to pursue enforcement of the redemption requirement required of 24X Bermuda, 24X Bermuda’s Managers and officers must comply with the obligation and must cooperate with those efforts by the Commission and 24X to ensure that

such redemption occurs. Finally, should 24X Bermuda not redeem the Units owned by Dmitri Galinov and his Related Persons within the specified time period, the Commission may take action against 24X under section 19(h) of the Exchange Act.¹¹⁵

2. Regulatory Independence and Oversight

Although 24X Bermuda will not itself carry out regulatory functions, its activities with respect to the operation of 24X must be consistent with, and must not interfere with, 24X’s self-regulatory obligations. In this regard, 24X and 24X Bermuda propose to adopt certain provisions in their respective governing documents that are designed to help maintain the independence of the regulatory functions of 24X. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.¹¹⁶ Specifically:

- the managers, officers, employees, and agents of 24X Bermuda must give due regard to the preservation of the independence of the self-regulatory function of 24X and to its obligations to investors and the general public and must not take actions which would interfere with the effectuation of decisions by the Exchange Board relating to its regulatory functions (including disciplinary matters) or which would interfere with 24X’s ability to carry out its responsibilities under the Exchange Act.¹¹⁷

¹¹⁵ See *infra* Section III.B.2.

¹¹⁶ See, e.g., Sapphire Order, MEMX Order, LTSE Order, MIA Order, *supra* note 57, IEX Order, *supra* note 65; and DirectEdge Exchanges Order, *supra* note 84.

¹¹⁷ See 24X Bermuda LLC Agreement, Article 3, Section 3.4(a). Similarly, Article VI, Section 6.1(a)(ii) of the 24X LLC Agreement requires the Exchange Board and each Director, when managing the business and affairs of 24X, to consider the requirements of Section 6(b) of the Exchange Act and requires each Director, officer, or employee of 24X to comply with the federal securities laws and regulations thereunder and cooperate with the Commission, and 24X pursuant to its regulatory authority. Article VI, Section 6.1(a)(iii) of the 24X LLC Agreement also requires the Exchange Board, when evaluating any proposal to take into account all factors that the Exchange Board deems relevant, including, without limitation, to the extent deemed relevant: the potential impact on the integrity, continuity and stability of the national securities exchange operated by 24X and the other operations of 24X, on the ability to prevent fraudulent and manipulative acts and practices, and on investors and the public, and whether such proposal would promote just and equitable principles of trade, foster cooperation and coordination with Persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

¹¹³ See Exhibit K, footnote 2. The Commission has approved other temporary exemptions from the ownership or voting limitations included in the governance documents of owners of a national securities exchange. See Securities Exchange Act Release No. 49067 (Jan. 13, 2004), 69 FR 2761 (Jan. 20, 2004) (order granting approval to a proposed rule change by the Boston Stock Exchange Inc. Relating to the LLC Operating Agreement of the Proposed New Exchange Facility to be Operated by the Boston Options Exchange Group LLC)(approval of an exemption from a voting limitation for a period of 10 years for an owner of the BOX facility). See also Securities Exchange Act Release No. 42455 (Feb. 24, 2000), 65 FR 11388 (Mar. 2, 2000) (File No. 10–127) (order granting registration of the International Securities Exchange LLC)(approval of an exemption from an ownership limitation for period of 10 years for certain founders of the exchange).

¹¹⁴ See 24X Bermuda LLC Agreement, Article 3, Section 3.4(b).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See 24X Letter II at 16.

¹¹² *Id.* 24X cited Securities Exchange Act Release No. 42455 (Feb. 24, 2000) as support for its statement.

• 24X Bermuda must comply with the federal securities laws and the rules and regulations promulgated thereunder, and must cooperate with the Commission, 24X, Financial Industry Regulatory Authority, Inc. (“FINRA”), and any other SRO of which any routing broker for 24X is a member, pursuant to and to the extent of their respective regulatory authority.¹¹⁸ In addition, 24X Bermuda’s managers, officers, employees, and agents must comply with the federal securities laws and the rules and regulations promulgated thereunder and are deemed to agree to cooperate with: (1) the Commission and 24X in respect of the Commission’s oversight responsibilities regarding 24X and the self-regulatory functions and responsibilities of 24X; and (2) FINRA, any other SROs of which any routing broker of 24X is a member, and any routing broker of 24X in respect of FINRA’s and any such other SRO’s oversight responsibilities regarding any routing broker of 24X, as applicable.¹¹⁹ 24X Bermuda shall take reasonable steps necessary to cause its managers, officers, employees and agents to so cooperate.¹²⁰

• 24X Bermuda, and its managers, officers, employees, and agents must submit to the jurisdiction of the U.S. federal courts, the Commission, and 24X, for purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, 24X activities.¹²¹

• All books and records of 24X reflecting confidential information pertaining to the self-regulatory function of 24X (including but not limited to disciplinary matters, trading data, trading practices, and audit information) must be retained in confidence by 24X and its personnel, including its Directors, officers, employees, and agents, and will not be used by 24X for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any Exchange Member) other than personnel of the SEC, and those personnel of 24X, members of Committees, members of the 24X Board, hearing officers and other agents of 24X to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of 24X.¹²² Similar provisions apply to 24X

Bermuda and its personnel, managers, officers, employees, and agents.¹²³

• The books and records of 24X and 24X Bermuda must be maintained in the United States¹²⁴ and, to the extent they are related to the operation or administration of 24X, 24X Bermuda’s books and records will be subject at all times to inspection and copying by the Commission and 24X.¹²⁵

• Furthermore, to the extent 24X Bermuda’s corporate, financial and similar records, reports and documents, including all financial statements, books and records and minutes of proceedings, are related to the activities of 24X, such corporate, financial and similar records, reports and documents, including all financial statements, books and records and minutes of proceedings, as well as premises, managers, officers, employees and agents of 24X Bermuda shall be deemed to be the corporate, financial and similar records, reports and documents, including all financial statements, books and records and minutes of proceedings, as well as premises, managers, officers, employees or agents, as applicable, of 24X for the purposes of, and subject to oversight pursuant to, the Exchange Act.¹²⁶

• 24X Bermuda will take reasonable steps necessary to cause its manager, officers, employees, and agents, prior to accepting a position as a manager, officer, employee or agent (as applicable) with 24X Bermuda to consent in writing to the applicability of provisions regarding non-interference, confidentiality, books and records, compliance and cooperation, jurisdiction, and regulatory obligations,

¹²³ The 24X Bermuda LLC Agreement provides that all books and records of 24X reflecting confidential information pertaining to the self-regulatory function of 24X that come into the possession of 24X Bermuda, and the information contained in those books and records, will be subject to confidentiality restrictions and will not be used for any non-regulatory purposes. See 24X Bermuda LLC Agreement, Article 12, Section 12.2(c). The 24X and 24X Bermuda governing documents acknowledge that requirements to keep such information confidential shall not limit or impede the rights of the Commission to access and examine such information or limit the ability of Directors, Officers, employees, or agents of 24X to disclose such information to the Commission, or the manager, officers, employees or agents of 24X Bermuda to disclose such information to the Commission or 24X. See 24X LLC Agreement, Article IX, Section 9.2 and 24X Bermuda LLC Agreement, Article 12, Section 12.2(c).

¹²⁴ See 24X LLC Agreement, Article IX, Section 9.2; and 24X Bermuda LLC Agreement, Article 12, Section 12.2(b).

¹²⁵ See 24X Bermuda LLC Agreement, Article 12, Section 12.2(b).

¹²⁶ See 24X Bermuda LLC Agreement, Article 12, Section 12.2(a).

with respect to their activities related to 24X.¹²⁷

• The 24X Bermuda LLC Agreement requires that, so long as 24X Bermuda controls 24X, any changes to that document must be submitted to the Exchange Board for approval, and, if such change is required to be filed with the Commission pursuant to section 19(b) of the Exchange Act and the rules and regulations thereunder, such change shall not be effective until filed with and effective by operation of law, or filed with, and approved by, the Commission.¹²⁸

The provisions discussed in this section, which are designed to help ensure the independence of 24X’s regulatory function and facilitate the ability of 24X to carry out its regulatory responsibilities under, and operate in a manner consistent with, the Exchange Act, are appropriate and consistent with the requirements of the Exchange Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act.¹²⁹

Further, section 19(h)(1) of the Exchange Act¹³⁰ provides the Commission with the authority “to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Exchange Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance . . .” with any such provision by its members (including associated persons thereof). If the Commission were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Exchange Act, including without limitation sections 6(b)(1) and 19(g)(1),¹³¹ these matters could provide the basis for a disciplinary proceeding under section 19(h)(1) of the Exchange Act.¹³²

Even in the absence of the governance provisions described above, under section 20(a) of the Exchange Act,¹³³ any person with a controlling interest in 24X would be jointly and severally

¹²⁷ See 24X Bermuda LLC Agreement, Article 3, Section 3.2.

¹²⁸ See 24X Bermuda LLC Agreement, Article 12, Section 12.10(b).

¹²⁹ 15 U.S.C. 78f(b)(1).

¹³⁰ See 15 U.S.C. 78s(h)(1).

¹³¹ 15 U.S.C. 78f(b)(1); 15 U.S.C. 78s(g)(1).

¹³² 15 U.S.C. 78s(h)(1).

¹³³ 15 U.S.C. 78t(a).

¹¹⁸ See 24X Bermuda LLC Agreement, Article 3, Section 3.4(b).

¹¹⁹ See *id.*

¹²⁰ See *id.*

¹²¹ See 24X Bermuda LLC Agreement, Article 3, Section 3.4(c).

¹²² See 24X LLC Agreement, Article IX, Section 9.2.

liable with and to the same extent that 24X is liable under any provision of the Exchange Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, section 20(e) of the Exchange Act¹³⁴ creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Exchange Act or rule thereunder. Further, section 21C of the Exchange Act¹³⁵ authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Exchange Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to 24X Bermuda.

3. Regulatory Oversight Committee

The regulatory operations of 24X will be monitored by the Regulatory Oversight Committee of the Exchange Board. As mentioned above, the Regulatory Oversight Committee will consist only of Independent Directors.¹³⁶ The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of 24X’s regulatory and SRO responsibilities, assessing 24X’s regulatory performance, and assisting the 24X Board (and committees of the 24X Board) in reviewing 24X’s regulatory plan and the overall effectiveness of 24X’s regulatory functions.¹³⁷

Further, the Chief Regulatory Officer (“CRO”) of 24X will have general supervision over 24X’s regulatory operations, including responsibility for overseeing 24X’s surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which 24X is a party.¹³⁸ The Regulatory Oversight Committee, in consultation with the Chief Executive Officer of 24X, will be responsible for establishing the goals, assessing the performance, and fixing the compensation of the CRO and for recommending personnel actions involving the CRO and senior regulatory personnel.¹³⁹

C. Regulatory Funding and Services

As a prerequisite for the Commission’s granting of an exchange’s application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Exchange Act.¹⁴⁰ Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and rules thereunder and the rules of the exchange.¹⁴¹ The discussion below summarizes how 24X proposes to conduct and structure its regulatory operations.

1. Regulatory Funding

To help ensure that 24X has and will continue to have adequate funding to be able to meet its responsibilities under the Exchange Act, 24X stated that, if the Commission approves 24X’s application for registration as a national securities exchange, 24X Bermuda, through 24X US, will allocate sufficient assets to 24X to enable the Exchange’s operation.¹⁴² Specifically, 24X stated that 24X Bermuda shall make prior to the launch of the Exchange a cash contribution of \$5 million (in addition to any previously provided in-kind contributions, such as legal, regulatory, and infrastructure-related services) to 24X US. In turn, 24X US will make a corresponding cash contribution of \$5 million (in addition to any previously provided in-kind contributions, such as legal, regulatory, and infrastructure-related services) to the Exchange. The Exchange represented that such cash and in-kind contributions will be adequate to operate the Exchange, including the regulation of the Exchange.¹⁴³

24X also represented that there will be a written agreement among 24X Bermuda, 24X US and 24X that requires 24X Bermuda and 24X US to provide adequate funding for the Exchange’s operations, including the regulation of the Exchange.¹⁴⁴ Further, 24X stated that the agreement will provide that 24X will receive all fees, including regulatory fees and trading fees payable

responsibility for the role or function of the CRO, including implementation of the budget for the regulatory function or regulatory personnel matters, the Regulatory Oversight Committee shall take all steps reasonably necessary to ensure that the Chief Executive Officer does not compromise the regulatory autonomy and independence of the Chief Regulatory Officer or the regulatory function. See 24X LLC Agreement, Article VI, Section 6.2(h)(4).

¹⁴⁰ See 15 U.S.C. 78f(b)(1).

¹⁴¹ See *id.* See also Section 19(g) of the Exchange Act, 15 U.S.C. 78s(g).

¹⁴² See Form 1, Exhibit I.

¹⁴³ See *id.*

¹⁴⁴ See *id.*

by the Exchange’s members as well as any funds received from any market data fees and tape revenue. In addition, the agreement will provide that 24X Bermuda and 24X US will reimburse 24X for its costs and expenses to the extent that 24X’s assets are insufficient to meet its costs and expenses.

Further, the 24X LLC Agreement requires that any Regulatory Funds received by 24X shall not be used for non-regulatory purposes or distributed, advanced or allocated to any Company Member,¹⁴⁵ but rather, shall be applied to fund regulatory operations of the 24X (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers.¹⁴⁶ Excess non-regulatory funds, as solely determined by the 24X, will be remitted to 24X US in accordance with the 24X LLC Agreement.¹⁴⁷

One commenter stated that 24X did not provide audited financial statements.¹⁴⁸ 24X stated that it believed that it complied with the requirements of Exhibit I regarding financial statements because while 24X has been formed it has not commenced operations and does not have audited financial statements for any fiscal year.¹⁴⁹ 24X also stated that the approach it has taken with regard to Exhibit I is consistent with prior exchange applications that have been approved by the SEC based on the same provided information.¹⁵⁰

The 24X Form 1 provides the Commission with information necessary to make a finding that 24X will operate consistent with its obligations under the Exchange Act.¹⁵¹ 24X has filed financial information about how it intends to fund its operations and has filed financial information in Exhibit D about its owners, 24X Bermuda and 24X US.

¹⁴⁵ Under the 24X LLC Agreement, the Company Member is 24X US.

¹⁴⁶ See 24X LLC Agreement, Article XI, Section 11.4(b). “Regulatory Funds” in the 24X LLC Agreement means “fees, fines or penalties derived from the regulatory operations of the Company. “Regulatory Funds” shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.” Article I, II of the 24X LLC Agreement. This definition is consistent with the rules of other SROs. See, e.g., LTSE Bylaws, Article I(bb); Amended and Restated By-Laws of MIA Exchange, Article 1(II); By-Laws of NASDAQ PHILX LLC, Article I(ii); By-Laws of NASDAQ BX, Inc., Article I(ii). See also 24X Rule 15.2.

¹⁴⁷ See Form 1, Exhibit I.

¹⁴⁸ See Healthy Markets Letter at 2.

¹⁴⁹ See 24X Letter II at 16.

¹⁵⁰ *Id.*

¹⁵¹ 15 U.S.C. 78f(b)(1).

¹³⁴ 15 U.S.C. 78t(e).

¹³⁵ 15 U.S.C. 78u–3.

¹³⁶ See *supra* note 61 and accompanying text.

¹³⁷ See 24X LLC Agreement, Article VI, Section 6.2(h)(i).

¹³⁸ See 24X LLC Agreement, Article VIII, Section 8.5.

¹³⁹ See 24X LLC Agreement, Article VI, Section 6.2(h)(iii). To the extent that the Chief Executive Officer of 24X has any indirect supervisory

Exhibit I of Form 1 requires that the applicant submit “[f]or the latest fiscal year of the applicant, audited financial statements which are prepared in accordance with, or in the case of a foreign applicant, reconciled with, United States generally accepted accounting principles, and are covered by a report prepared by an independent public accountant.”¹⁵² 24X has not provided audited financial statements nor the report prepared by an independent public accountant because, as it stated in the Form 1, the “Exchange has been formed but has not commenced operations and does not yet have audited financial statements for any fiscal year.”¹⁵³ As stated in the instructions for Form 1, “Form 1 is designed to enable the Commission to determine whether an exchange applying for registration is in compliance with the provisions of sections 6¹⁵⁴ and 19¹⁵⁵ of the Exchange Act.”¹⁵⁶ In this case, the applicant exchange has no past operations or activity. Moreover, the Commission has approved prior Form 1 applications with similar circumstances.¹⁵⁷ In addition, pursuant to Rule 6a–2(b)(1) of the Exchange Act,¹⁵⁸ as a registered national securities exchange, 24X must file an amendment to its Form 1 application. Exhibits D and I must be filed on or before June 30 of each year and include audited financial information as of the end of the latest fiscal year of the Exchange; thus, the Commission and the public will be informed of 24X’s financial activity going forward.¹⁵⁹

2. Regulatory Contract With FINRA

Although 24X will be an SRO with all of the attendant regulatory obligations under the Exchange Act, it has represented to the Commission that it intends to enter into a regulatory services agreement (“RSA”) with

FINRA, under which FINRA as a regulatory services provider will perform certain regulatory functions on 24X’s behalf.¹⁶⁰ Specifically, 24X expects that such services will include the performance of investigation, disciplinary, and hearing services.¹⁶¹ Notwithstanding the RSA, 24X will retain legal responsibility for the regulation of its members and its market and the performance of FINRA as its regulatory services provider. Because 24X anticipates entering into an RSA with FINRA, it has not made provisions to fulfill the regulatory services that will be undertaken by FINRA. Accordingly, the Commission is conditioning the operation of 24X on a final RSA that specifies the services that will be provided to 24X.

It is consistent with the Exchange Act for 24X to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.¹⁶² These functions are fundamental elements of a regulatory program and constitute core self-regulatory functions. FINRA has the expertise and experience to perform these functions for 24X.¹⁶³ However, 24X, unless relieved by the Commission of its responsibility, bears the self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on 24X’s behalf.¹⁶⁴ In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of 24X to perform its regulatory functions.¹⁶⁵ Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for 24X, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are

being performed so inadequately as to cause a violation of the federal securities laws or rules thereunder by 24X.¹⁶⁶

3. Rule 17d–2 Agreements

Section 19(g)(1) of the Exchange Act,¹⁶⁷ among other things, requires every SRO registered as either a national securities exchange or national securities association to comply with the Exchange Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members.¹⁶⁸ Rule 17d–2 of the Exchange Act permits SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.¹⁶⁹ These agreements, which must be filed with and declared effective by the Commission, generally cover areas where each SRO’s rules substantively overlap, including such regulatory functions as personnel registration and sales practices. For example, the Commission declared effective a plan to allocate regulatory responsibilities between FINRA and LTSE pursuant to which FINRA assumes examination and enforcement responsibility for broker-dealers that are members of both FINRA and LTSE with respect to the rules of LTSE that are substantially similar to the applicable rules of FINRA, as well as certain specified provisions of the federal securities laws.¹⁷⁰

¹⁶⁶ See, e.g., MEMX Order, *supra* note 57; LTSE Order, *supra* note 57; IEX Order, *supra* note 65; and Nasdaq Order, *supra* note 57.

¹⁶⁷ 15 U.S.C. 78s(g)(1).

¹⁶⁸ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

¹⁶⁹ See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Exchange Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO (“common members”). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Exchange Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

¹⁷⁰ See Securities Exchange Act Release No. 86587 (Aug. 7, 2019), 84 FR 39883 (Aug. 12, 2019) (File No. 4–747). See also, e.g., Securities Exchange Act Release Nos. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018) (FINRA/MIAX Exchange/MIAX PEARL); 77321 (Mar. 8, 2016), 81 FR 13434 (Mar. 14, 2016) (File No. 4–697) (FINRA/ISE Mercury, LLC); 73641 (Nov. 19, 2014), 79 FR 70230 (Nov. 25, 2014) (File No. 4–678) (FINRA/MIAX Exchange); 70053 (July 26, 2013), 78 FR 46656 (Aug. 1, 2013) (File No. 4–663) (FINRA/Topaz Exchange n/k/a ISE Gemini, LLC); 59218 (Jan. 8, 2009), 74 FR 2143 (Jan. 14, 2009) (File No. 4–575) (FINRA/Boston Stock Exchange, Inc. (“BSE”)); 58818 (Oct. 20, 2008), 73

Continued

¹⁵² 17 CFR 249.1.

¹⁵³ See Form 1, Exhibit I.

¹⁵⁴ 15 U.S.C. 78f.

¹⁵⁵ 15 U.S.C. 78s.

¹⁵⁶ 17 CFR 249.1.

¹⁵⁷ See e.g., Exhibit I for MIAX Sapphire, LLC Form 1 Application and Exhibits, available at <https://www.sec.gov/files/rules/other/2023/exhibit-i.pdf> (stating that applicant MIAX Sapphire, LLC has been formed but has not commenced operations and does not yet have audited financial statements for any fiscal year); Exhibit I for MEMX LLC Form 1 Application and Exhibits, available at <https://www.sec.gov/files/rules/other/2019/memx/exhibit-i.pdf> (stating that applicant MEMX LLC has been formed but has not commenced operations and so does not yet have audited financial statements for any fiscal year).

¹⁵⁸ 17 CFR 240.6a–2(b)(1).

¹⁵⁹ Form 1 filings are made available to the public. See Securities Exchange Act Release No. 97182 (Mar. 22, 2023), 88 FR 23920, 23928 (Apr. 18, 2023).

¹⁶⁰ See Form 1, Exhibit L. See also 24X Rules 9.8 and 13.7.

¹⁶¹ See Form 1, Exhibit L.

¹⁶² For example, LTSE, MEMX Exchange, IEX, MIAX Exchange, MIAX PEARL, LLC, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc. (“Cboe EDGX”), and Cboe BZX Exchange, Inc. (“Cboe BZX”) have entered into RSAs with FINRA.

¹⁶³ See, e.g., MEMX Order, *supra* note 57; LTSE Order, *supra* note 57; IEX Order, *supra* note 65; DirectEdge Exchanges Order, *supra* note 84; Nasdaq Order, *supra* note 57. The Commission is not approving the RSA or any of its specific terms.

¹⁶⁴ See 15 U.S.C. 78s(g)(1).

¹⁶⁵ For example, if failings by FINRA have the effect of leaving 24X in violation of any aspect of 24X’s self-regulatory obligations, 24X would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. See, e.g., MEMX Order, *supra* note 57; LTSE Order, *supra* note 57; IEX Order, *supra* note 65; Nasdaq Order, *supra* note 57; BATS Order, *supra* note 57; DirectEdge Exchanges Order, *supra* note 84.

A Rule 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.¹⁷¹ 24X has represented to the Commission that it will join all applicable plans, including Rule 17d-2 plans for the allocation of regulatory responsibilities.¹⁷² Similar to other exchanges, the Commission understands from 24X that it will enter into a bilateral Rule 17d-2 agreement covering common members of 24X and FINRA. This agreement will allocate to FINRA regulatory responsibility, with respect to common members, for specified regulatory and enforcement matters arising out of specified common rules and specified provisions of the Exchange Act and the rules and regulations thereunder. In addition, the Commission is conditioning operation of 24X as an exchange on 24X first joining the applicable multilateral Rule 17d-2 plans, including the multi-party Rule 17d-2 plan for the allocation of regulatory responsibilities with respect to certain Regulation NMS and Consolidated Audit Trail Rules and the multi-party Rule 17d-2 plan for the surveillance, investigation, and enforcement of common insider trading rules.¹⁷³

Because 24X anticipates entering into these Rule 17d-2 agreements, it has not made provision to fulfill the regulatory obligations that will be undertaken by FINRA and other SROs under these agreements with respect to common members.¹⁷⁴ Accordingly, the Commission is conditioning the operation of 24X on approval by the

Commission of a Rule 17d-2 agreement that allocates the above specified matters to FINRA, and the approval of an amendment to the existing multi-party Rule 17d-2 plans specified above to add 24X as a party.

D. 24X Trading System

1. Overview of Trading System¹⁷⁵

24X proposes to operate a fully automated electronic trading platform¹⁷⁶ for the trading of listed NMS stocks¹⁷⁷ pursuant to unlisted trading privileges (“UTP”)¹⁷⁸ 23 hours per day,¹⁷⁹ five (5) days per week, subject to certain trading pauses, as provided in the 24X rules.¹⁸⁰ Similar to other U.S. national securities exchanges, 24X will operate three different trading sessions that span from 4 a.m. to 7 p.m. on each U.S. Business Day:¹⁸¹ (1) a “Core Market Session” between 9:30 a.m. and 4 p.m.,¹⁸² (2) a “Pre-Market Session” between 4 a.m. and 9:30 a.m.,¹⁸³ and (3) a “Post-Market Session” between 4 p.m. and 7 p.m.¹⁸⁴ 24X also will operate a fourth trading session, the 24X Market Session,¹⁸⁵ which, as

¹⁷⁵ A more detailed description of the manner of operation of 24X’s trading system can be found in Form 1, Exhibit E. The proposed rulebook for 24X can be found in Exhibit B to 24X’s Form 1, and the governing documents for 24X, 24X US and 24X Bermuda can be found in Form 1, Exhibit A and Exhibit C. A complete set of forms concerning membership and access can be found in Form 1, Exhibit F.

¹⁷⁶ See Form 1, Exhibit E. See also 24X Rule 11.9(b).

¹⁷⁷ See 17 CFR 242.600(b)(55) (defining “NMS Stock”).

¹⁷⁸ See 24X Rule 14.1.

¹⁷⁹ As discussed below, 24X will pause trading from 7 p.m. until 8 p.m. Monday, Tuesday, Wednesday, and Thursday nights. See 24X Rule 11.15(c)(2). Unless otherwise noted, all times referred to in this order are Eastern Time (“ET”).

¹⁸⁰ See, e.g., 24X Rule 11.15(c); Form 1, Exhibit E-1 at 4. See also *infra* notes 329–338 (discussing 24X’s trading pauses).

¹⁸¹ See 24X Rule 1.5(l) defining “U.S. Business Day.” In addition, 24X proposes, among others, the following terms: “24X Trading Day” (see 24X Rule 1.5(b)); “Exchange Trading Hours other than the 24X Market Session” (see 24X Rule 1.5(r)); “Extended Hours Trading” (see 24X Rule 1.5(s)); “Regular Trading Hours” (see 24X Rule 1.5(dd)). 24X Rule 1.5(s) defines “Extended Hours Trading” as “trading during the Pre-Market Session, Post-Market Session and 24X Market Session.”

¹⁸² See 24X Rule 1.5(l) defining the “Core Market Session.”

¹⁸³ See 24X Rule 1.5(z) defining the “Pre-Market Session.” See, e.g., NYSE Arca, Inc., Cboe EDGX Exchange, Inc., The Nasdaq Stock Market LLC.

¹⁸⁴ See 24X Rule 1.5(y) defining the “Post-Market Session.” See, also e.g., NYSE Arca, Inc., NYSE American LLC, NYSE Chicago, Inc., NYSE National, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., The Nasdaq Stock Market LLC. These national securities exchanges operate post-market sessions until 8 p.m. As discussed above, 24X will end its Post-Market Session at 7 p.m.

¹⁸⁵ See 24X Rule 1.5(c) defining the “24X Market Session.”

discussed in greater detail below,¹⁸⁶ will operate between 8 p.m. and 4 a.m. Sunday, Monday, Tuesday, Wednesday, and Thursday nights that precede a U.S. Business Day.¹⁸⁷

24X will not maintain a physical trading floor.¹⁸⁸ One commenter stated that the Form 1 was unclear about 24X’s physical locations.¹⁸⁹ 24X responded that it “clearly” provided information on the Form 1 execution page as well as Exhibit E.¹⁹⁰ Specifically, 24X stated that its primary address is in Connecticut and that the Exchange will operate out of a third-party data center in New Jersey, with a secondary site located in Illinois.¹⁹¹ Further, 24X stated that 24X personnel will operate out of its New York office as well as its Connecticut office.¹⁹²

The Form 1 and exhibits provide information about the location of 24X Systems and personnel. The Form 1 Execution Page states that 24X’s primary address is in Stamford, Connecticut. Exhibit E states that 24X will operate out of data centers in New Jersey and Illinois and that its personnel will operate out of offices in Connecticut and New York. Exhibit E-1 states that 24X’s trading platform will be located in the Equinix data center in New Jersey (NY4) and that its secondary back-up data center will be located in Chicago, Illinois (CH4).¹⁹³ 24X has provided information about the location of its platform and its personnel.

Only broker-dealer members of 24X and entities that enter into market access arrangements with members (collectively “Users”¹⁹⁴) will have access to the 24X System,¹⁹⁵ and only Authorized Traders¹⁹⁶ may obtain access to the 24X System on behalf of Users.¹⁹⁷ Liquidity will be derived from quotes and orders to buy and sell

¹⁸⁶ See *infra* section III.D.2.

¹⁸⁷ See 24X Rule 1.5(c). 24X initially proposed to operate the 24X Market Session on weekends and holidays as well as overnight. In Amendment No. 2, 24X revised the 24X Rule 1.5(c) definition of 24X Market Session to include only overnight hours, as discussed above, and to remove its proposal to provide trading on weekends and holidays.

¹⁸⁸ See Form 1, Exhibit E-1 at 2.

¹⁸⁹ See Healthy Markets Letter at 6.

¹⁹⁰ See 24X Letter II at 17.

¹⁹¹ *Id.* See also Form 1, Execution Page (listing Stamford, Connecticut as its primary address); Form 1, Exhibit E (describing the locations of its Systems and personnel); Form 1, Exhibit E-1 (describing the locations of the trading Systems).

¹⁹² See 24X Letter II at 17; see also Form 1, Exhibit E.

¹⁹³ See also Form 1, Exhibit E.

¹⁹⁴ See 24X Rule 1.5(mm) defining “User.”

¹⁹⁵ To obtain authorized access to the 24X System, each User must enter into a User Agreement with 24X. See 24X Rule 11.3(a). See also 24X Rule 1.5(hh) defining “System.”

¹⁹⁶ See 24X Rule 1.5(g).

¹⁹⁷ See 24X Rule 11.4.

FR 63752 (Oct. 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. (“NASD”) n/k/a FINRA) and Chicago Board of Options Exchange, Inc. concerning the CBOE Stock Exchange, LLC); 55367 (Feb. 27, 2007), 72 FR 9983 (Mar. 6, 2007) (File No. 4-529) (NASD/International Securities Exchange, LLC); 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/Nasdaq).

¹⁷¹ See *supra* notes 169–170 and accompanying text.

¹⁷² See Form 1, Exhibit E.

¹⁷³ See Securities Exchange Act Release Nos. 88366 (Mar. 12, 2020), 85 FR 15238 (Mar. 17, 2020) (File No. 4-618) (order approving and declaring effective a proposed amendment to the multi-party Rule 17d-2 plan relating to covered Regulation NMS and Consolidated Audit Trail Rules); 86542 (Aug. 1, 2019), 84 FR 38679 (Aug. 7, 2019) (File No. 4-566) (notice of filing and order approving and declaring effective an amendment to the multi-party Rule 17d-2 plan relating to the surveillance, investigation, and enforcement of insider trading rules).

¹⁷⁴ For common members, the regulatory obligations will be covered by the Rule 17d-2 agreements, and for 24X Exchange Members that are not also members of FINRA, the regulatory obligations will be covered by the RSA.

submitted to 24X electronically by Exchange Members.¹⁹⁸ 24X proposes to operate a fully automated electronic limit order book with a continuous matching function¹⁹⁹ and orders resting on the book would be ranked and executed in price/time priority.²⁰⁰

24X proposes certain rules to govern trading during Exchange Trading Hours other than the 24X Market Session,²⁰¹ while other rules and requirements would apply exclusively to trading during the 24X Market Session.²⁰² For example, 24X proposes to accept Market Orders,²⁰³ Limit Orders²⁰⁴ and Pegged Orders²⁰⁵ with various modifiers and time-in-force instructions, although subject to certain limitations²⁰⁶ during various trading sessions.²⁰⁷ Specifically, Market Orders would be accepted only during the Core Market Session; Pegged Orders would be accepted only during the Pre-Market Session, the Core Market Session, and the Post-Market Session; and Limit Orders would be accepted

during all sessions.²⁰⁸ Further, pursuant to 24X Rule 11.16, Market Orders and Pegged Orders are not eligible for execution during the 24X Market Session. Orders may be submitted in round lots, odd lots, or mixed lots.²⁰⁹ 24X will permit orders to be entered, canceled, modified, executed on or routed away from 24X during the Pre-Market Session, the Core Market Session, and the Post-Market Session.²¹⁰ 24X would also permit orders to be entered, canceled, modified or executed on the Exchange during the 24X Market Session.²¹¹

With respect to the price of executions that would occur on the Exchange,²¹² the 24X rules are designed to comply with short sale price test restriction under Rule 201 of Regulation SHO,²¹³ the order protection requirements of Rule 611 of Regulation NMS,²¹⁴ and the National Market System Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS (“LULD Plan”).²¹⁵ 24X will permit the use of self-trade protection (“STP”) modifiers to prevent an incoming order from executing against a resting order originating from the same market participant.²¹⁶

In addition, 24X will permit firms to register as Market Makers with affirmative and negative market making obligations.²¹⁷ In particular, Market Makers will be required to maintain continuous two-sided quotes of at least 100 shares only during Regular Trading Hours.²¹⁸ While Market Makers would have no such obligations during the Pre-Market, Post-Market or 24X Market Sessions, 24X’s proposed rules relating to Market Makers are similar to the rules

of other national securities exchanges, which do not extend Market Maker obligations to extended hours trading sessions.²¹⁹

In its Form 1, 24X stated that it will join and participate in any applicable national market system plan that other national securities exchanges and/or market centers have joined, including, for example, the three Equity Data Plans²²⁰ that currently govern the collection, consolidation, processing, and dissemination of core data.²²¹ 24X further states that it would “likewise join all other applicable Plans as deemed necessary and in the interest of its Users.”²²²

One commenter stated that the Exchange proposal was “somewhat vague” with regard to transaction fees and that 24X “should give a range of where fees will land compared to other exchanges.”²²³ 24X responded that its approach to fees is “typical for exchange applications” and that Exhibit E states that it “intends to establish a Fee Schedule setting forth all applicable transaction and other fees . . . close to launch of the Exchange” so that the fees reflect the “competitive landscape at that time.”²²⁴

Form 1 requires an applicant to provide a description of proposed fees.²²⁵ In its Exhibit E, 24X described its proposed fees, including transaction fees, membership fees, regulatory charges, permit application fees, market

¹⁹⁸ 24X proposes to have one class of membership open to registered broker-dealers. See 24X Rule 2.3 (stating, in part, that “any registered broker or dealer that is and remains a member of a national securities association registered under Section 15A(a) of the Exchange Act or a member of another national securities exchange registered under Section 6(a) of the Exchange Act or any person associated with such a registered broker or dealer shall be eligible to be, and to remain, a Member”).

¹⁹⁹ See Form 1, Exhibit E–1 at 2.

²⁰⁰ See 24X Rule 11.8(a) and 24X Rule 11.9(a)(4).

²⁰¹ See 24X Rule 11.1(a).

²⁰² See 24X Rule 11.16(a) (stating, “[e]xcept as explicitly set forth herein, each of the rules and requirements set forth in this Chapter 11 applies to trading activity during the 24X Market Session.”). The 24X rules make specific provisions for the 24X Market Session with respect to, for example, matters such as order types permitted. See, e.g., Exhibit E–1 to 24X’s Form 1; 24X Rule 11.7.

²⁰³ 24X defines the term “Market Order,” in part, as “[a]n order to buy or sell a stated amount of a security that is to be executed at the NBBO or better when the order reaches the Exchange.” See 24X Rule 11.7(a).

²⁰⁴ 24X defines the term “Limit Order” as “[a]n order to buy or sell a stated amount of a security at a specified price or better. A marketable Limit Order is a Limit Order to buy (sell) at or above (below) the lowest (highest) Protected Offer (Protected Bid) for the security.” See 24X Rule 11.7(b).

²⁰⁵ 24X defines the term “Pegged Order,” in part, as “[a] User may indicate to peg an order to a reference price, including an instruction of Primary Peg (the NBB for buy orders and NBO for sell orders, with or without offsets) or an instruction of Midpoint Peg (the midpoint of the NBBO). The System’s calculation of the NBBO would not take into account any Pegged Orders that are resting on the 24X Book. A new timestamp is created for a Pegged Order each time it is automatically re-priced.” See 24X Rule 11.7(c).

²⁰⁶ See 24X Rule 11.7 (describing, among other things, order types eligible for the various 24X trading sessions). See also Form 1, Exhibit E–1 at 7.

²⁰⁷ See, e.g., 24X Rule 11.7; Form 1, Exhibit B.

²⁰⁸ See 24X Rule 11.7(a)(4) for Market Orders, 24X Rule 11.7(c)(4) for Pegged Orders, and 24X Rule 11.7(b) for Limit Orders.

²⁰⁹ See 24X Rule 11.6(q). See also Form 1, Exhibit E–1 at 5.

²¹⁰ See 24X Rule 11.1(b).

²¹¹ See 24X Rule 11.1(c) (providing, in part, that “to the extent that other Trading Centers are open during the 24X Market Session, orders may be routed away to such Trading Centers during the 24X Market Session”).

²¹² As discussed above, certain rules govern trading during Exchange Trading Hours other than the 24X Market Session, while other rules and requirements apply exclusively to trading during the 24X Market Session. See *supra* note 201 and accompanying text. See also 24X Rule 11.1(a).

²¹³ See 24X Rule 11.9(a)(1). See also 24X Rule 11.9(a)(5), 24X Rule 11.23, and 24X Rule 13.2. See also *supra* section III.D.2.f.

²¹⁴ See 24X Rule 11.9(a)(2).

²¹⁵ See 24X Rule 11.9(a)(3). See also section III.D.2.b.

²¹⁶ See 24X Rule 11.9(d).

²¹⁷ See 24X Rules 11.17 through 11.20.

²¹⁸ See 24X Rule 11.20(a)(1). The term “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time each U.S. Business Day.” See 24X Rule 1.5(dd).

²¹⁹ See, e.g., MEMX Exchange Rules 11.17 through 11.20; Cboe EDGX Rules 11.17 through 11.20.

²²⁰ The three equity data plans that currently govern the collection, consolidation, processing, and dissemination of national market system data by the exclusive Securities Information Processors (“SIPs”) are (1) the Consolidated Tape Association Plan (“CTA Plan”), (2) the Consolidated Quotation Plan (“CQ Plan”), and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan”) (collectively, the “Equity Data Plans”). See also 24X Rule 1.5(o).

²²¹ See Form 1, Exhibit E. See also 24X Rule 11.11 (providing, in part, that 24X will report executions to the appropriate consolidated transaction reporting system “to the extent required by the Exchange Act and the rules and regulations thereunder.”). See also *infra* section III.D.2.a.i. (discussing the availability of the Equity Data Plans during the 24X Market Session).

²²² See Form 1, Exhibit E (stating, “including, but not limited to, the NMS Plan to Address Extraordinary Market Volatility (“Limit Up-Limit Down Plan”), the NMS Plan Governing the Consolidated Audit Trail (the ‘CAT NMS Plan’), the NMS Plan for the Selection and Reservation of Securities Symbols, and the 17d–2 Plans for Allocation of Regulatory Responsibilities”).

²²³ See Montone Letter at 9.

²²⁴ See 24X Letter II at 15.

²²⁵ See Form 1, Exhibit E (requiring a description of the manner of operation of the System and that the description should include proposed fees).

data fees, co-location fees, connectivity fees, and bandwidth fees.²²⁶ Further, 24X Rule 15.1, which establishes the Exchange's authority to impose fees, dues, assessments and other charges that 24X may prescribe, lists the following fees that 24X will impose: "membership dues, transaction fees, communication and technology fees, regulatory charges, listing fees, and other fees and charges as the Exchange may determine."²²⁷ 24X also stated that it intends to establish a fee schedule that sets forth all fees, and that the actual fee amounts and types will be determined at a time closer to launch.²²⁸

24X's Form 1 satisfies the requirements of the Form 1 as it describes the fees that 24X may prescribe. However, any fees, dues or other charges that 24X intends to assess must be filed as a proposed rule change pursuant to section 19(b) of the Exchange Act²²⁹ and Rule 19b-4 thereunder.²³⁰ Exchange fees are subject to the requirements of the Exchange Act, including sections 6(b)(4) and 6(b)(5).²³¹

2. 24X Market Session

As discussed above, 24X will operate the 24X Market Session, a fourth trading session that will extend the hours of exchange trading for NMS stocks beyond the existing extended hours sessions.²³² In Amendment No. 2, 24X modified its original proposal for the 24X Market Session to include overnight trading only on certain nights of the week—Sunday through Thursday—that precede a U.S. Business Day.²³³ As discussed above,²³⁴ while several exchanges offer a pre-market trading session that may start as early as 4 a.m. on each U.S. Business Day, and most exchanges offer a post-close trading session that ends at 8 p.m. on each U.S. Business Day, 24X's model, as amended, will expand exchange trading hours such that trading on 24X will be conducted on a largely continuous basis during the week subject to a daily one hour trading pause.²³⁵ 24X will operate the 24X Market Session, as amended, in a manner that is consistent with current

extended hours sessions.²³⁶ Further, as discussed below, 24X will require that 24X Members make disclosures to their customers concerning risks associated with trading during Extended Hours Trading, and has included tailored disclosures that 24X Members must provide to their customers to reflect the potential risks associated with the 24X Market Session, as amended.²³⁷

The Commission received several comment letters about the proposed operation of the 24X Market Session, which, as initially proposed, would have operated 8 p.m. until 4 a.m. during every U.S. Business Day as well as most of the day on weekends and holidays, subject to proposed trading pauses. Some commenters supported the originally proposed expansion of trading hours.²³⁸ For instance, two commenters stated that the originally proposed 24X Market Session would bring the "current practice of trading 24/7 onto a lit exchange"²³⁹ and that the market should be left to decide whether this is a valuable endeavor.²⁴⁰ One commenter stated that 24-hour trading already occurs and that "it is better that it be on a national securities exchange with higher regulatory protections afforded by an exchange."²⁴¹

One commenter stated that its recent research "implies that 23/7 trading will likely improve the market's allocative efficiency relative to the traditional 6.5/5 trading schedule."²⁴² This commenter stated that their research studied welfare, measured by the allocative efficiency of the market, in equilibria of two market designs: one with a daily closure, and another in which closure is eliminated. According to the commenter, the research showed that "as long as there is a closure for some time, most of the benefits of a market closure are accrued."²⁴³ Thus, the

²³⁶ For example, 24X will not accept Market Orders or Pegged Orders in the 24X Market Session and 24X will utilize the same clearly erroneous execution rules that apply on other venues that have extended hours sessions.

²³⁷ See 24X Rule 3.21. See also *infra* section III.D.2.e.

²³⁸ See, e.g., Polygon Letter; DriveWealth Letter; Angel Letter I; Angel Letter II; Montone Letter.

²³⁹ See Polygon Letter at 5. See also DriveWealth Letter at 1.

²⁴⁰ See Polygon Letter at 5. See also Angel Letter I.

²⁴¹ See Angel Letter I at 2.

²⁴² See Blonien and Ober Letter at 1.

²⁴³ According to the commenter, in the model, a market closure not only concentrates liquidity throughout the day but also helps coordinate liquidity, especially towards the end of the trading. Moreover, the commenters state that the cost of a closure, that a traders' positions may deviate far from their desired positions, is, according to the commenter, outweighed by its benefits. See Blonien and Ober Letter at 1.

commenter stated that it is likely that 24X's proposed 23/7 exchange will maintain the welfare benefits of a market closure, reduce the costs of a prolonged closure, and enhance allocative efficiency.²⁴⁴

Several commenters raised concerns about the original proposed expansion of trading hours. For instance, two commenters stated that the proposal would harm retail investors due to low volumes and wide spreads during the extended trading hours and a lack of liquidity would result in a wealth transfer from investors to professionals.²⁴⁵ Another commenter stated that although 24X suggests that retail investors would welcome 24-hour exchange trading, the demand for investors for overnight and weekend trading seems speculative because no information has been provided about the number of such investors or the relevance of the potential benefit.²⁴⁶ Another commenter stated that investor demand should be considered to assess whether the expansion of trading hours would justify the market-wide costs.²⁴⁷

One commenter suggested a "cautious approach to expanding hours" because its research indicated "negative consequences for retail investment."²⁴⁸ Another commenter, however, stated that the research cited did not examine overnight trading or expansion of trading hours but instead examined time zone differences.²⁴⁹ This commenter stated 24-hour trading "is already here on automated trading systems, so rejecting the 24X application would not restrict retail access to overnight trading at all."²⁵⁰

With respect to the commenter's concern about retail investor participation in the 24X Market Session,²⁵¹ 24X stated that, as discussed below, the Commission has historically allowed retail participation in expanded trading hours with appropriate disclosures.²⁵² In Amendment No. 1, 24X amended its 24X Rule 3.21 to

²⁴⁴ See Blonien and Ober Letter at 1. The commenter stated that these findings are based on a model of large and homogeneous traders, and that heterogeneous groups of traders, such as retail investors, market makers, and informed traders, may have asymmetric responses to market closures of differing lengths. See *id.*

²⁴⁵ See Better Markets Letter at 2; SIFMA Letter II at 2.

²⁴⁶ See IEX Letter at 2.

²⁴⁷ See SIFMA Letter II at 2. See *infra* notes 290–292 and accompanying text (discussing costs relating to the expansion of trading hours).

²⁴⁸ See Glover and deHaan Letter at 1.

²⁴⁹ See Angel Letter II at 3.

²⁵⁰ See Angel Letter II at 2.

²⁵¹ See *supra* note 245 and accompanying text.

²⁵² See 24X Letter II at 11. See also *infra* section III.D.2.e. (discussing customer disclosures relating to risks of the 24X Market Session).

²²⁶ See Form 1, Exhibit E.

²²⁷ See 24X Rule 11.15(a).

²²⁸ See Form 1, Exhibit E.

²²⁹ 15 U.S.C. 78s(b).

²³⁰ 17 CFR 240.19b-4.

²³¹ 15 U.S.C. 78f(b)(4), (b)(5).

²³² See 24X Rule 11.2(a); see also section III.D.2.d. (discussing securities eligible for trading during the 24X Market Session). See also *supra* notes 183 and 184 (describing the existing exchanges' extended hours sessions).

²³³ See 24X Rule 1.5(c).

²³⁴ See *supra* notes 183 and 184 and accompanying text.

²³⁵ See 24X Rule 11.15(c). See also *infra* section III.D.2.c.

provide additional disclosures designed to address the potential risks of the 24X Market Session.²⁵³ 24X stated, in response to commenters questioning whether additional trading hours would benefit investors, that “there is substantial interest in expanded trading hours” and that the markets should be able to determine whether the 24X proposal will be successful.²⁵⁴ 24X also stated that its amended rules for the 24X Market Session are a more incremental approach that will address the cost concerns raised by some commenters because it eliminates the potential costs related to weekend and holiday trading.²⁵⁵ 24X further stated that it did not believe that “costs related to innovation should be the basis for the Commission to determine that an exchange application does not comply with the Exchange Act.”²⁵⁶ 24X also stated that the markets will determine whether “its innovative proposal” is successful.²⁵⁷

As discussed further below, the Commission finds that the 24X rules for the 24X Market Session, as amended, are consistent with the Exchange Act. Specifically, the 24X Market Session rules are modeled on the rules of national securities exchanges that currently operate trading sessions during extended hours and are designed to address the potential differences in trading compared to Regular Trading Hours.²⁵⁸ For example, during the 24X Market Session, the only order type that may be submitted is a Limit Order, which requires market participants to set the prices at which they are willing to trade. Accepting only Limit Orders during extended hours sessions can help to address the potential risks that there may be wider spreads,²⁵⁹ or that prices may be affected by new announcements made by issuers.²⁶⁰ Other exchanges allow the submission

of only limit orders during extended hours sessions.²⁶¹

In addition, 24X Members are required to provide disclosures to customers that will provide information about potential risks of trading in extended hours, including the 24X Market Session. These disclosures are consistent with the rules of other SROs, which require customers to be provided with disclosures regarding the potential risks of extended hours trading.²⁶² While two commenters stated that investors would be harmed by low liquidity, low volumes and wider spreads, these potential risks are included in the disclosures that must be provided to customers by 24X Members.²⁶³ Investors are provided information about these potential risks and are able to decide whether to participate in extended hours sessions, including the 24X Market Session.

Further, the 24X Market Session will overlap with the extended hours trading that currently occurs in the over-the-counter (“OTC”) market.²⁶⁴

Accordingly, while the 24X Market Session represents a new trading session for exchange trading, market participants, including retail investors, are already able to trade during the times covered by the 24X Market Session. While commenters stated that investor demand should be considered to assess whether the expansion of trading hours would justify market-wide costs, the Commission is required to consider a Form 1 application for consistency with statutory standards.²⁶⁵ For the reasons discussed herein, the Commission has determined that the 24X Form 1 is consistent with the Exchange Act and the rules thereunder.

Finally, pursuant to this Form 1, as amended, 24X will not commence

operation of the 24X Market Session prior to filing a proposed rule change. Specifically, 24X Rule 1.5(c) requires 24X, prior to commencing operations during the 24X Market Session, to file a proposed rule change, pursuant to section 19(b) of the Exchange Act and the rules thereunder, to amend its rules confirming that 24X is able to comply with its obligations under the Exchange Act during the 24X Market Session and that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session (“24X Market Session Proposed Rule Change”). As discussed below, the 24X Market Session Proposed Rule Change must be filed with the Commission and approved, or otherwise become effective pursuant to Exchange Act section 19(b), before 24X can provide trading during the 24X Market Session.²⁶⁶ In the 24X Market Session Proposed Rule Change, 24X must confirm that it is able to comply with its obligations under the Exchange Act during the 24X Market Session and that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session.²⁶⁷ The 24X rule requiring the operation of the Equity Data Plans during the 24X Market Session is designed to ensure that consolidated quotation and transaction data are provided in a manner that is consistent with the existing extended hours sessions on exchanges.²⁶⁸ Accordingly, 24X rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in NMS stocks, and perfect the mechanism of a free and open market and a national market system.²⁶⁹ 24X rules are also designed to protect

²⁵³ As discussed above, in Amendment No. 2, 24X scaled back the hours of operation of the 24X Market Session to 8 p.m. to 4 a.m. Sunday, Monday, Tuesday, Wednesday, and Thursday nights, so long as the next trading day is a U.S. Business Day. See *supra* note 233 and accompanying text. As part of Amendment No. 2, 24X also revised the disclosures that must be provided by 24X Members to their customers to reflect the revised operating hours of the 24X Market Session. See *infra* section III.D.2.e.

²⁵⁴ See 24X Letter III at 5. See also 24X Letter IV at 6 (stating that “the number of market participants interested in overnight trading continues to grow.”).

²⁵⁵ See 24X Letter III at 2.

²⁵⁶ See 24X Letter III at 2.

²⁵⁷ See 24X Letter IV at 6.

²⁵⁸ See *supra* notes 183–184 and accompanying text.

²⁵⁹ See 24X Rule 3.21(f).

²⁶⁰ See 24X Rule 3.21(e).

²⁶¹ See e.g., NYSEArca Rule 7.34–E(d) (stating that only limit orders are eligible to participate in the Early Trading Session and Late Trading Session).

²⁶² See e.g., NYSEArca Rule 7.34–E(d)(3); Nasdaq Rule Equity 2, Section 20; MEMX Exchange Rule 3.21; FINRA Rule 2265.

²⁶³ See 24X Rule 3.21(a) (describing the risk of lower liquidity); 24X Rule 3.21(f) (describing the risk of wider spreads).

²⁶⁴ See e.g., Blue Ocean ATS, LLC (“BOATS”). The operating hours for BOATS occur from 8 p.m. to 4 a.m. on days with the NYSE Trade Reporting Facility is open for trade reporting. See Form ATS–N, available at sec.gov/Archives/edgar/data/1795131/000153949723000091/xslATS-N_X01/primary_doc.xml.

²⁶⁵ In a letter to the Commission, 24X stated that investor demand for overnight trading is growing and provided details of other market participants that have recently expressed interest in expanding the hours of trading on an exchange. See 24X Letter IV at 6 (citing a proposal by NYSE Arca to expand its trading hours and a notice by Schwab announcing an expansion to 24-hour trading for certain stocks).

²⁶⁶ See 24X Rule 1.5(c) and 24X Rule 11.16. 24X may begin operations of its other trading sessions once the conditions discussed below have been satisfied.

²⁶⁷ See 24X Rule 1.5(c).

²⁶⁸ As discussed above, the 24X will not start operating the 24X Market Session unless the Equity Data Plans have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session, among other things. See 24X Rule 1.5(c).

²⁶⁹ 15 U.S.C. 78f(b)(5).

investors and the public interest.²⁷⁰ The 24X rules governing the 24X Market Session will expand the hours of trading available on a national securities exchange, and such trading will be transparent because trading will not occur unless the Equity Data Plans are able to collect, consolidate, process and disseminate consolidated quotation and transaction data during the 24X Market Session (*i.e.*, between 8 p.m. and 4 a.m. Sunday, Monday, Tuesday, Wednesday, and Thursday nights that precede a U.S. Business Day).²⁷¹ The 24X rules for the 24X Market Session will foster competition by introducing another trading venue during these trading hours.²⁷² Finally, the 24X rules for the 24X Market Session are designed to provide additional investor protections.²⁷³

a. Effect of 24X Market Session on Market Structure

Several commenters raised questions about the potential impact of the 24X Market Session, as originally proposed, on current market structure because it would greatly expand exchange trading hours. Several commenters stated that the Commission should consider roundtable discussions about the market structure implications of 24-hour trading.²⁷⁴ One commenter stated that the 24X proposal “has serious implications for the regulatory, technological, and operational underpinnings of the equity securities markets and will result in significant costs for the industry.”²⁷⁵ Another commenter stated that the 24X Market Session, as originally proposed, is “incompatible” with current market structure and that a broader Commission engagement, outside of an exchange application, is needed to determine how U.S. equity market structure would be affected.²⁷⁶ This

commenter further stated that the 24X Market Session as originally proposed “could exacerbate a two-tiered system of regulation between core and extended trading hours” because certain Exchange Act rules apply only during Regular Trading Hours²⁷⁷ and could make compliance with best execution obligations more challenging.²⁷⁸ Another commenter stated that the 24X Market Session, as originally proposed “[r]aises significant, insufficiently addressed market policy concerns,”²⁷⁹ while another stated that the proposal represents the “first occurrence of a national securities exchange that utilizes unlisted trading privileges to operate outside the trading hours of the primary listing exchanges.”²⁸⁰

24X stated that “in today’s market, the regulatory requirements vary depending on the trading session” with greater protections required during Regular Trading Hours.²⁸¹ 24X stated that the Commission has allowed extended trading hours on other exchanges and the same rationale should be applied in this instance because the 24X rules for the 24X Market Session raise “no new issues.”²⁸² In response to the comment

about trading NMS stocks pursuant to UTP outside of the hours of the primary listing exchanges, 24X stated that it would “coordinate with the primary listing markets with regard to their regulatory roles related to their listed companies (*e.g.*, trading halts).”²⁸³ Further, 24X stated that 24X Rule 11.15(c)(5) requires 24X to halt trading if the primary listing exchange determines to halt trading.²⁸⁴ In response to comments about industry roundtables, 24X stated that “its exchange application has been subject to public comment by the industry and others . . . in accordance with the requirements of the Exchange Act.”²⁸⁵ 24X further stated that amending the rules governing the 24X Market Session to eliminate trading on weekends and holidays in response to comments is a “significant adaption.”²⁸⁶

The 24X rules for the 24X Market Session have been amended to increase transparency and enhance customer risk disclosures such that it will operate in a manner that is consistent with the regulatory framework of the extended hours sessions of other national securities exchanges.²⁸⁷ As discussed throughout this order, the 24X Market Session, as amended, will operate with rules that are designed to protect investors consistent with the requirements of the federal securities laws and the rules and regulations thereunder.

Several commenters suggested that a broader study of expanded hours trading should be conducted prior to Commission action on the 24X exchange application.²⁸⁸ The continuing evolution of the equities market, including increasing investor interest in extended hours trading, may warrant consideration of the existing regulatory scheme that applies to expanded hours trading sessions. The Commission continually monitors the national market system and the operation of the Federal securities laws, and the Commission, consistent with its oversight of the national market system, will continue to monitor the developments of extended hours trading. However, the monitoring of new market developments does not foreclose Commission action on the 24X Form 1, which, for reasons discussed throughout, satisfies the requirements of the Exchange Act.

Act Release No. 96494 (Dec. 14, 2022), 87 FR 80266 (Dec. 29, 2022). After submission of the comment letter, the Commission adopted amendments to Regulation NMS on Sept. 18, 2024. See Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (“2024 Regulation NMS Adopting Release”). The commenter also asked questions about proposed Regulation Best Execution, Securities Exchange Act Release No. 96496 (Dec. 14, 2022), 88 FR 5540 (Jan. 27, 2023); and the proposed Order Competition Rule, Securities Exchange Act Release No. 96495 (Dec. 14, 2022), 88 FR 128 (Jan. 3, 2023). 24X stated that “addressing how such proposals may relate to 24X’s exchange application are outside of the scope of consideration of whether 24X’s exchange application complies with the requirements of the Exchange Act.” See 24X Letter II at 19. Proposed Regulation Best Execution and the proposed Order Competition Rule remain proposals. The commenter submitted a second letter requesting confirmation about the application of aspects of the 2024 Regulation NMS Adopting Release during the 24X Market Session. See SIFMA Letter II at 13. The questions posed by the commenter are addressed within the 2024 Regulation NMS Adopting Release and existing rules and regulations. The 2024 Regulation NMS Adopting Release, as well as the definitions included in Rule 600 of Regulation NMS and the specific rules under Regulation NMS, define the application of the rules during different trading sessions.

²⁷⁷ For example, the commenter stated that certain aspects of Regulation NMS only apply during Regular Trading Hours, such as Rule 611 of Regulation NMS, and that certain definitions in Rule 600 of Regulation NMS specify Regular Trading Hours, such as “covered order.” See SIFMA Letter I at 4.

²⁷⁸ *Id.*

²⁷⁹ See Healthy Markets Letter at 7.

²⁸⁰ See Nasdaq Letter at 3.

²⁸¹ See 24X Letter II at 14. 24X further states that it will comply with all required rules and regulations applicable to national securities exchanges during its Core Market Session. *Id.*

²⁸² See 24X Letter II at 14.

²⁸³ *Id.* at 8.

²⁸⁴ *Id.* at 4.

²⁸⁵ See 24X Letter III at 5.

²⁸⁶ *Id.*

²⁸⁷ See also *infra* section III.D.2.b.i.

²⁸⁸ See *supra* note 274 and accompanying text.

²⁷⁰ *Id.*

²⁷¹ See *infra* section III.D.2.a.i.

²⁷² See *e.g.*, *supra* note 264.

²⁷³ See *e.g.*, *supra* section III.C; and *infra* section III.D.e; section III.E.2; section III.F.

²⁷⁴ See DriveWealth Letter at 2, SIFMA Letter at 2, SIFMA Letter II at 3–4; FIA PTG Letter at 2; FIA PTG Letter II at 3.

²⁷⁵ See FIA PTG Letter at 1, 2; FIA PTG Letter II at 1.

²⁷⁶ See SIFMA Letter at 4–5 (stating that the Commission must consider a number of factors, including the public interests involved, the effect on exchange competition dynamics, interaction with existing and proposed regulations, and whether a fair and orderly market is possible where potentially different rules would apply to exchanges based on the hours they operate). This commenter also stated that the Commission must consider how the 24X Form 1 would interact with “outstanding equity market structure proposals.” See SIFMA Letter at 6–7. The commenter asked interpretative questions about the proposal to amend Regulation NMS. See Securities Exchange

Further, the 24X Form 1 has been subject to the relevant notice and comment requirements. Public comment on the application has been solicited four separate times—with the publication of the Notice, the OIP, Amendment No. 1, and Amendment No. 2. The public, including market participants, have been afforded adequate opportunity for comment, and interested persons have taken the opportunity to provide written data, views, and arguments concerning this application which has yielded a robust analysis of the relevant issues.²⁸⁹ 24X has responded, by amending its Form 1, in part, to address the various concerns raised by certain commenters. Notably, 24X has narrowed its hours of operation, added rules to increase operational transparency and relevant customer risk disclosures, and amended certain proposed rules to conform with the existing regulatory framework for extended hours trading of other national securities exchanges. In addition, as has been discussed throughout this order, the expansion of trading hours initially proposed by 24X is not entirely novel as off-exchange trading currently occurs during those hours. Accordingly, issues related to the 24X Market Session have been raised, analyzed, and addressed, and Commission action on the 24X Form 1 should not be delayed by, and is not dependent on, a broader study of equity market structure.

While there will be costs to the industry related to implementing the expansion of exchange trading hours, the record does not support a denial of the 24X Form 1 application as inconsistent with the Exchange Act. The operation of the 24X Market Session will not commence until the conditions outlined in this order have been met.²⁹⁰

i. Equity Data Plans

The Equity Data Plans do not operate during the time period that will cover the 24X Market Session, as amended. Several commenters raised concerns about the lack of consolidated data during the 24X Market Session, as originally proposed.²⁹¹ One commenter stated that the 24X trading sessions should align with the operational hours

of the Equity Data Plans.²⁹² Another commenter stated that if 24X was approved without extending the exclusive SIP hours, quotes and trades would not be publicly disseminated in real time and that the delay would be inconsistent with the national market system and significantly reduce market transparency.²⁹³ One commenter stated, in response to the 24X Market Session as originally proposed, that moving to 24-hour on-exchange trading requires deliberate consideration of the market-wide implications of such a move, including the cost and complexity of overhauling the market-wide infrastructure to allow for the publication of quote and trade data by the exclusive SIPs during the proposed overnight and weekend sessions, as measured against its potential benefits.²⁹⁴ The commenter stated that changing exclusive SIP operations to accommodate the original proposal would amount to a huge undertaking, and that the costs and timeline associated with these changes have not been determined.²⁹⁵ Moreover, the commenter stated that 24X has neither acknowledged responsibility for funding these changes, nor provided information on its ability to do so.²⁹⁶ The commenter further stated that the exclusive SIPs would likely incur substantial increased ongoing costs to maintain the originally proposed extended hours, and that neither these costs, which the commenter stated would likely be borne by all exclusive SIP subscribers regardless of whether they participate in overnight or weekend trading, nor their potential benefits, have been determined.²⁹⁷

In Amendment No. 2, in response to commenters' concerns about the operation of the 24X Market Session during time periods when the Equity Data Plans are not in operation,²⁹⁸ 24X modified its Rule 1.5(c) and Rule 11.16

to require the concurrent operation of the Equity Data Plans before the operation of the 24X Market Session commences, and that 24X file the 24X Market Session Proposed Rule Change that would serve to provide notice to the Commission and the public of 24X's intention to commence operation of the 24X Market Session. Specifically, 24X Rule 1.5(c) states that 24X will not start operating the 24X Market Session unless the Equity Data Plans "(1) have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session," and (2) the Equity Data Plans have notified 24X of their readiness.²⁹⁹

24X Rule 1.5(c) requires 24X, prior to commencing the 24X Market Session, to file the 24X Market Session Proposed Rule Change, pursuant to section 19(b) of the Exchange Act and the rules thereunder. The 24X Market Session Proposed Rule Change must be filed with the SEC within 18 months of the SEC's approval of 24X's application for registration as a national securities exchange. If the 24X Market Session Proposed Rule Change is not filed within 18 months of the SEC's approval of 24X's application for registration as a national securities exchange, the Exchange will promptly file a proposed rule change to remove the rules that apply to the 24X Market Session. In addition, 24X Rule 11.16 states that, "24X will not commence operations of the 24X Market Session until a proposed rule change as required under 24X Rule 1.5(c) has been approved, or has otherwise become effective, under section 19(b) of the Exchange Act and the rules thereunder."³⁰⁰

24X responded to commenters' concerns about costs by stating that it recognized that innovations, such as the introduction of the 24X Market Session, "may involve additional costs" but that increased costs should not "be the basis for the Commission to determine that an exchange application does not comply with the Exchange Act."³⁰¹ 24X stated that market participants "are already trading overnight on ATSs or

²⁹² See Nasdaq Letter at 3. See also Montone Letter at 8.

²⁹³ See SIFMA Letter at 3. See also FIA PTG Letter at 2.

²⁹⁴ See IEX Letter at 1–2. See also DriveWealth Letter at 2.

²⁹⁵ See IEX Letter at 2. See also FIA PTG Letter at 2; FIA PTG Letter II at 3.

²⁹⁶ See IEX Letter at 2.

²⁹⁷ See IEX Letter at 2; FIA PTG Letter II at 3.

²⁹⁸ See SIFMA Letter at 3; FIA PTG Letter at 2; Nasdaq Letter at 3; Healthy Markets Letter at 10–11; but see Polygon Letter at 2–5 (stating that Commission should approve 24X and force the adoption of the competing consolidator model to allow for the dissemination of market data in real time). 24X stated that it has "fully addressed" commenter concerns about trading in the 24X Market Session occurring outside of the operating hours of the Equity Data Plans by the changes proposed in Amendment No. 2. See 24X Letter IV at 4–5.

²⁹⁹ See 24X Rule 1.5(c).

³⁰⁰ The approval of 24X's application to register as a national securities exchange is separate and distinct from Commission consideration of any future amendments to the Equity Data Plans or proposed rule changes filed by 24X. As a matter of course, the Commission will consider any future amendments to the Equity Data Plans and any proposed rule changes filed by 24X upon filing, pursuant to the applicable statutory provisions and rules.

³⁰¹ See 24X Letter II at 16.

²⁸⁹ 15 U.S.C 78s(a).

²⁹⁰ See *infra* section V.

²⁹¹ See Polygon Letter; Nasdaq Letter, Montone Letter, IEX Letter, SIFMA Letter. Several commenters also stated that there should be a consideration of off-exchange trade reporting to the Equity Data Plans. See Nasdaq Letter at 3, SIFMA Letter at 3, DriveWealth Letter at 2, FIA PTG Letter at 2. The Commission agrees and believes that the Equity Data Plans and FINRA should consider accommodating real-time OTC trade reporting.

otherwise” and that new costs for exchange trading would be “incremental.”³⁰² 24X also stated that broker-dealers can decide whether to participate in the 24X Market Session.³⁰³ Finally, 24X stated with regard to the expansion of the exclusive SIPs’ hours that the Equity Data Plans have a process for determining the cost for new participants and for changes.³⁰⁴

The Commission agrees with commenters regarding consolidated quotation and transaction information during the 24X Market Session. Pursuant to its amended Form 1, 24X will not operate during the 24X Market Session until the Equity Data Plans are able to collect, consolidate, process and disseminate quotation and transaction information at all times during the session. The 24X rules for the 24X Market Session, as amended, are consistent with sections 6(b)(5) and 11A of the Exchange Act.³⁰⁵

24X Rules 1.5(c) and 11.16 provide that 24X will submit a proposed rule change within 18 months of the Commission’s approval of 24X’s application to operate as a national securities exchange with regard to the operation of the 24X Market Session. These provisions relating to the force and effect of the 24X Market Session rules set forth in 24X Rule 11.16 help to balance the interest in providing the time needed for 24X to be able to comply with 24X Rule 1.5(c) with the interest in ensuring that the rules of an Exchange are effective and can be enforced by the Exchange.

The requirement contained in its rules that the 24X Market Session will not begin operation until the 24X Market Session Proposed Rule Change is approved or otherwise has become effective will enhance transparency during the 24X Market Session and promote the goals of the national market system. Specifically, the Commission finds that the 24X rules for the 24X Market Session, as amended, are consistent with section 11A(a)(1)(C) of the Exchange Act, in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing

investors’ orders in the best market.³⁰⁶ The requirement ensuring that 24X will not commence operation of its 24X Market Session until the availability of the concurrent operation of the Equity Data Plans accomplishes Exchange Act objectives by ensuring that there is transparency during these new, extended trading hours through the communication of quotations and transactions to market participants and investors.

Finally, one commenter stated that the Market Data Infrastructure (“MDI”) Rules³⁰⁷ should be implemented because competing consolidators would not be “time-bound” and would collect, consolidate and disseminate data “in real-time 24/7.”³⁰⁸ The MDI Rules continue to be implemented, however, the MDI Rules will not be implemented before action is required on the 24X Form 1.³⁰⁹

b. Volatility Moderators in the 24X Market Session

24X initially proposed to implement unique “24X Price Bands” to moderate risk and volatility during the 24X Market Session.³¹⁰ Several commenters questioned the use of the proposed volatility moderators.³¹¹ In particular, one commenter asked why the proposed 24X Price Bands differed from the existing Limit up-Limit down bands and stated that the proposed 24X Price Bands were “different from price bands used by ATSS that operate outside of core trading hours,”³¹² while another commenter stated there was no basis to justify the 24X Price Bands.³¹³ Another commenter, however, stated that the proposed 24X Price Bands “should be sufficient to prevent erroneous trades.”³¹⁴

³⁰⁶ 15 U.S.C. 78k–1(a)(1)(C).

³⁰⁷ Securities Exchange Act Release No. 90610 (Dec. 11, 2020), 86 FR 18596 (Apr. 9, 2021) (“MDI Rules Adopting Release”).

³⁰⁸ See Polygon Letter at 4.

³⁰⁹ See 2024 Regulation NMS Adopting Release, *supra* note 276.

³¹⁰ See, e.g., Proposed 24X Rule 11.15(a); Form 1, Exhibit E–1. As initially proposed, a 24X Price Band would be calculated for each relevant security by multiplying the “Reference Price,” as specified in 24X Rule 11.15(a)(2), by the applicable “Percentage Parameter,” set out in 24X Rule 11.15(a)(1). Under Rule 11.15(a)(1) as initially proposed, this figure (rounded to the nearest \$0.01) would then be added to the Reference Price to calculate the “Upper 24X Price Band” and subtracted from the Reference Price to calculate the “Lower 24X Price Band” and no trades would be allowed outside the 24X Price Bands. Proposed 24X Rule 11.15(a)(1).

³¹¹ See Healthy Markets Letter at 8; SIFMA Letter at 6; FIA PTG Letter at 2.

³¹² See SIFMA Letter at 6.

³¹³ See Healthy Markets Letter at 8.

³¹⁴ See Angel Letter I at 3. See also Montone Letter at 7.

24X proposed in Amendment No. 1 to remove proposed 24X Rule 11.15(a) from its rules, which removed all references to the proposed 24X Price Bands.³¹⁵ In its letter responding to comments on the OIP, 24X stated that it “would rely upon its clearly erroneous rule, [p]roposed 24X Rule 11.14, to address volatility and risk during the 24X Market Session.”³¹⁶ 24X stated that it would also “provide other additional protections to investors to address potential volatility and risk during the 24X Market Session. For example, under Proposed 24X Rule 11.7(a)(4), 24X would not allow the use of market orders during the 24X Market Session.”³¹⁷ As a result, 24X stated that its rules designed “to address potential volatility in both regular and extended hours trading” are the same as those previously approved by the Commission for other exchanges.³¹⁸

One commenter stated that given the significance of displayed quotations and transaction prices to stock valuations, many trading firms and other participants will need to monitor the prices published during overnight and weekend hours, regardless of whether they trade during those hours and that “SIP subscribers” would experience “costs.”³¹⁹ This commenter also stated that “[t]his is particularly the case” because 24X does not include volatility limits other than those that exist under its clearly erroneous execution rule.³²⁰ Another commenter opposed 24X’s plan to rely on its clearly erroneous execution rules instead of price bands, as initially proposed.³²¹ This commenter stated that the Commission should consider “whether the regulatory framework and market functionality are in place to support 24x7 trading (including, for example, whether extending the LULD plan to cover non-core hours is appropriate).”³²²

³¹⁵ See 24X Letter II at 5–6; Amendment No. 1; 24X Rule 11.15(a) (now Reserved).

³¹⁶ See 24X Letter II at 6. In Amendment No. 1, 24X further proposed to make a conforming change to its clearly erroneous rule, 24X Rule 11.14, by deleting subparagraph (d)(4) regarding calculation of the reference price when the 24X Price Bands would have been in effect during the 24X Market Session.

³¹⁷ See 24X Letter II at 6.

³¹⁸ See 24X Letter II at 6.

³¹⁹ See IEX Letter at 2.

³²⁰ See IEX Letter at 2.

³²¹ See FIA PTG Letter II at 3 (stating, “[p]rice bands serve as an important investor protection, particularly during periods of extreme volatility, whereas busting trades under an Exchange’s clearly erroneous rules can give rise to increased risks and uncertainty.”).

³²² *Id.* See also *supra* note 288 and accompanying text. The LULD Plan applies during Regular Trading Hours. See LULD Plan, available at <https://www.luldplan.com/>.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ See 24X Letter IV at 7. See *supra* notes 290–292 and accompanying text (discussing costs relating to the expansion of trading hours).

³⁰⁵ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k–1.

24X's proposed use of its clearly erroneous execution rule during the 24X Market Session addresses commenters' concerns about its initially proposed 24X Price Bands. The use of clearly erroneous execution rules in the 24X Market Session, instead of the unique, market-specific 24X Price Bands, will help to ensure there is a consistent, market-wide regulatory approach across the extended hours trading sessions of all national securities exchanges.³²³ Accordingly, 24X Rule 11.14 is designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with section 6(b)(5) of the Exchange Act.

While one commenter suggested that "SIP subscribers" may experience increased costs due to the need to monitor prices during the 24X Market Session, the commenter did not provide information as to how this differs from other extended hour trading sessions and the commenter was commenting on the 24X Market Session as originally proposed. As amended by Amendment No. 2, the 24X Market Session would cover hours that are currently available for OTC trading and 24X may not begin operating its 24X Market Session at least until the Equity Data Plans are able to collect, process, consolidate and disseminate quotation and transaction data during the 24X Market Session,³²⁴ which will help to facilitate monitoring of price valuations. Further, as stated above, the use of clearly erroneous execution rules in extended hours sessions is consistent with the regulatory framework applied to other national securities exchanges.³²⁵

c. Trading Halts and Pauses

24X proposed rules governing trading halts and pauses for technology updates and regulatory purposes. As originally proposed, 24X Rules 11.15(c)(1), (c)(2), (c)(3), (c)(4) and (c)(5) would have paused trading for: (i) three hours each Saturday morning, from 8 a.m. until 11 a.m.; (ii) an hour at 7 p.m. daily; (iii) industry-wide testing; (iv) technological or other purposes; and (v) material corporate actions with respect to a particular security during the 24X Market Session, respectively. In Amendment No. 2, 24X deleted 24X Rules 11.15(c)(1) and 11.15(c)(3) and

amended 24X Rule 11.15(c)(2), all to reflect the amended hours for the 24X Market Session. Pursuant to 24X Rule 11.15(c), 24X will pause trading on Monday, Tuesday, Wednesday and Thursday at 7 p.m.,³²⁶ during the 24X Market Session at such other times that the Exchange determines is necessary for technological or other purposes,³²⁷ and if the primary listing exchange determines to halt trading or delay the start of trading in one of its listed securities.³²⁸

With respect to regulatory halts, several commenters questioned how market surveillance and trading halts, including regulatory trading halts, would be handled in the 24X Market Session.³²⁹ Specifically, one commenter stated that 24X's proposal raised a series of surveillance questions, including (i) how 24X will manage real-time surveillance during the 24X Market Session, (ii) how the existing surveillance, trading halt, and trade review infrastructure—one in which primary listing markets perform real-time surveillance of securities listed on their markets and implement trading halts and pauses for those securities during their hours of operation—will intersect with the proposed 24X Market Session, including how 24X would coordinate with other exchanges, and (iii) the impact that such trading will have on investors, listed companies, and other market participants.³³⁰ Similarly, other commenters expressed concerns about regulatory halts, including possible unanticipated or unintended effects on primary listing markets and issuers.³³¹ One of these commenters stated that the expanded trading hours would interfere with exclusive SIPs' "periodic testing and maintenance, which currently occur at times when the exchanges are closed."³³² Another commenter generally supported the proposed trading halts but recommended that 24X "revisit trading halts around key disclosures from companies" if "they find they can

adequately secure the markets around the key disclosure periods."³³³

In response to commenters' concerns about regulatory halts,³³⁴ 24X stated that it intends to surveil all of its trading sessions, including the 24X Market Session, in the same manner.³³⁵ 24X stated that it will coordinate with the primary listing markets to halt trading in a security when the primary listing market halts trading in the security.³³⁶ In addition, in Amendment No. 1, 24X proposed to revise its trading halt rules related to the primary listing market to clarify that Rule 11.15(c)(5) will apply during all of its trading sessions.³³⁷ Specifically, 24X proposed to add language to 24X Rule 11.15(c)(5) that if trading in a security is halted by the primary listing market before the 24X Market Session and continuing into the 24X Market Session, the Exchange will halt trading in the security until trading resumes on the primary listing market for the security.³³⁸

24X's rules, as amended, governing trading halts related to corporate news and announcements will track the trading halts imposed by the primary listing markets. To the extent that material corporate news is released during the 24X Market Session and the primary listing market does not impose trading halts, the requirements of 24X Rule 3.21(e)³³⁹ and 24X Rule 3.21(i)³⁴⁰ that disclosures be provided to investors relating to the risks associated with news announcements and the additional risks of trading in the 24X Market Session, respectively, will help to ensure that market participants, including investors, are informed about the potential risks associated with trading during that time period. 24X's rules governing trading pauses, coupled with its Rule 3.21,³⁴¹ are consistent with the Exchange Act and, in particular, the section 6(b)(5) requirement that an exchange's rules be designed to promote

³³³ See Montone Letter at 6–7.

³³⁴ See *supra* notes 329–330 and accompanying text.

³³⁵ See 24X Letter II at 8.

³³⁶ See 24X Letter II at 8.

³³⁷ See 24X Rule 11.15(c)(5).

³³⁸ See 24X Rule 11.15(c).

³³⁹ See 24X Rule 3.21(e) (stating, "[n]ormally, issuers make news announcements that may affect the price of their securities after Regular Trading Hours. Similarly, important financial information is frequently announced outside of Regular Trading Hours. In Extended Hours Trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.").

³⁴⁰ See 24X Rule 3.21(i)(1) through (6).

³⁴¹ See *infra* section III.D.2.e. (discussing customer disclosures relating to risks of the 24X Market Session).

³²⁶ See 24X Rule 11.15(c)(2).

³²⁷ See 24X Rule 11.15(c)(4).

³²⁸ See 24X Rule 11.15(c)(5).

³²⁹ See Nasdaq Letter at 3, 4; Montone Letter at 6–7; SIFMA Letter at 8–9; Healthy Markets Letter at 7.

³³⁰ See Nasdaq Letter at 3. This commenter further stated in response to the initial Form 1, "pauses in the trading day allow for the SIPs to make certain technical changes with little to no disruption to the markets. We believe the Commission should consider whether 24X's proposed trading pauses are sufficient to address the technical implications of 23-hour trading sessions." *Id.* See also Healthy Markets Letter at 7.

³³¹ See SIFMA Letter at 8–9; Healthy Markets Letter at 7.

³³² See SIFMA Letter at 8.

³²³ See e.g., CboeBZX Rule 11.17; Nasdaq Equity 11, Rule 11890; NYSE Arca Rule 7.10–E.

³²⁴ See 24X Rule 1.5(c). Under the rule, 24X will not begin operation of the 24X Market Session until the 24X Market Session Proposed Rule Change has been approved or otherwise become effective. See also *supra* section III.D.b.i.

³²⁵ See *supra* note 323.

just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.

Regarding technology halts, one commenter on the 24X Market Session, as originally proposed, stated that testing for the exclusive SIP of the UTP Plan currently occurs at times which would overlap “with a portion of the 24X Market Session, and 24X has not explained how it will operate during the overlapping time.”³⁴² In Amendment No. 2, 24X has amended the 24X rules for the 24X Market Session to exclude trading on weekends. This amendment addresses concerns about conflicts with industry-wide testing, “which currently occur[s] at times when the exchanges are closed.” The trading pauses provided in 24X Rule 11.15(c), as amended³⁴³ should be sufficient to permit 24X to address the technical implications of a 23-hour trading day and will facilitate industry-wide testing, and internal market testing and systems updates and improvements.

d. Securities Eligible for Trading During the 24X Market Session

In its initial Form 1, 24X proposed to limit the securities that would be available for trading during the 24X Market Session. Specifically, proposed 24X Rule 11.2 specified that any class of securities listed or admitted to unlisted trading privileges on the Exchange would be eligible to be traded during the Pre-Market Session, Core Market Session and Post-Market Session, while in the 24X Market Session, trading would be limited to any security in the Nasdaq-100 Index, S&P 500 Index, Russell 2000 Index and the top 50 exchange-traded funds by average daily volume during a given month, as determined by the Exchange. Proposed 24X Rule 11.2 also included a notice provision for securities that might be added to, or removed from, being eligible to trade during the 24X Market Session. Finally, proposed 24X Rule 11.2 initially would have allowed Exchange members to request that securities be made eligible for trading during the 24X Market Session.³⁴⁴

One commenter stated that the proposal was “wise in limiting the trading to certain well-known NMS stocks.”³⁴⁵ Another commenter stated that 24X did not adequately justify its proposal to limit the securities eligible for trading in the 24X Market Session.³⁴⁶ Another commenter stated that 24X should provide more transparency about the proposed notice of securities that would be available to trade because the commenter stated that a “lack of timely information” about the securities available to trade “runs the risk of material trading risks, including higher volatility and lower liquidity.”³⁴⁷

In Amendment No. 1, 24X amended 24X Rule 11.2 to remove the limit on the securities eligible for trading during the 24X Market Session. As amended, 24X Rule 11.2 will allow any securities listed or admitted to trading pursuant to UTP to be eligible to trade on 24X. In other words, 24X Rule 11.2 was amended to make the eligibility requirements for the trading of securities during the 24X Market Session the same as the other three market sessions (*i.e.*, Pre-Market Session, Core Market Session and Post-Market Session). According to 24X, expanding the securities eligible to trade during the 24X Market Session will allow 24X Members and their customers to manage their security lists, and ensure continuity of eligible securities across trading sessions, which will reduce potential trading complexities and investor inquiries about eligible securities.³⁴⁸ 24X also stated that expanding the securities eligible to trade will allow it to compete with ATSS and other markets that operate in the overnight hours.³⁴⁹ Finally, 24X stated that the amended rule will prevent the exclusion of securities that may be

funds will be handled in terms of listing and pricing.” Montone Letter at 8. As discussed above, 24X will not be a listing market. *See* 24X Rule 14.1. The commenter also stated that mutual funds may need to be priced at a different time of day if trading evolved into a 23-hour format. *See* Montone Letter at 8. In response, 24X stated, and the Commission agrees, that “the determination of how and when pricing decisions for mutual funds would be made by the mutual funds in accordance with relevant legal requirements, not by 24X.” 24X Letter II at 19. 24X further stated, and the Commission agrees, that the “24X Market Session does not present new issues regarding the timing of the pricing of mutual funds” because “trading already takes place on exchange today during pre-market sessions and post-market sessions (including overnight in the OTC market)” and “mutual funds have already faced such timing decisions.” *Id.*

³⁴⁵ *See* Montone Letter at 6.

³⁴⁶ *See* SIFMA Letter at 8.

³⁴⁷ *See* Nasdaq Letter at 3. *See also* SIFMA Letter at 8; Healthy Markets Letter at 10.

³⁴⁸ *See* 24X Letter II at 11.

³⁴⁹ *See id.*

appropriate for trading in the 24X Market Session, such as international ETFs.³⁵⁰

24X Rule 11.2 as amended, is consistent with section 6(b)(5) of the Exchange Act in that it will promote just and equitable principles of trade, facilitate transactions in NMS stocks, remove impediments to, and facilitate transactions in NMS stocks and remove impediments to and perfect the mechanism of a free and open market and a national market system. While one commenter supported limiting the securities eligible for trading in the 24X Market Session,³⁵¹ 24X’s market structure choice not to limit the securities eligible for trading in the 24X Market Session will reduce the complexity of the 24X market structure, compared to the original proposal, by allowing securities to be eligible continuously throughout the four 24X trading sessions. In addition, 24X Members and their customers will have control over the trading strategies they may choose to implement. Finally, expanding the number of securities that are eligible to be traded during the 24X Market Session should help to promote competition between trading venues that may be operating during the times covered by the 24X Market Session, which will ultimately benefit investors.

e. Customer Disclosures Pertaining to Extended Hours Trading, Including the 24X Market Session

24X proposed to require that 24X Members make certain disclosures to investors concerning risks associated with trading during Extended Hours Trading.³⁵² In 24X Rule 3.21, 24X proposed to require the same disclosures as those required by other SROs relating to extended hours trading.³⁵³ Specifically, SRO rules require firms to provide disclosures to customers that extended hours trading “involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads.”³⁵⁴

While one commenter stated, in response to a question posed by the Commission in the OIP, that the proposed disclosures would be

³⁵⁰ *See id.*

³⁵¹ *See supra* note 345 and accompanying text.

³⁵² *See* 24X Rule 3.21.

³⁵³ *See, e.g.*, MEMX Exchange Rule 3.21; Cboe EDGX Rule 3.21; NYSE Arca Rule 7.34–E(d)(3); Nasdaq Section 20; FINRA Rule 2265.

³⁵⁴ *See* 24X Rule 3.21. *See also, e.g.*, MEMX Exchange Rule 3.21, Cboe EDGX Rule 3.21, NYSE Arca Rule 7.34–E(d)(3), Nasdaq, Equity 2, Section 20; FINRA Rule 2265.

³⁴² *See* Nasdaq Letter at 4; *see also* SIFMA Letter at 8.

³⁴³ As discussed above, 24X proposed in Amendment No. 2 to limit the hours of operation of the 24X Market Session and, because the 24X Market Session will not operate on Saturdays, 24X further proposed in Amendment No. 2 to remove 24X Rule 11.15(c)(1) to delete the proposed Saturday morning trading pauses.

³⁴⁴ One commenter stated that proposed 24X Rule 11.2 describes how exchange-traded funds will be “addressed in terms of listing,” but that “24X should give a similar explanation of how mutual

sufficient to highlight the unique risks posed to investors during the 24X Market Session, as originally proposed,³⁵⁵ others disagreed.³⁵⁶ One of these commenters stated that existing customer disclosures would not provide the necessary protection for investors given the heightened risks associated with the 24X Market Session.³⁵⁷ Similarly, another commenter stated that it cannot “comprehend how any disclosure that would be sufficiently short and clear to be comprehensible would adequately capture the sheer volume of potential new risks or regulatory gaps in which such trading would occur.”³⁵⁸

In response, 24X stated that it agreed with commenters that it is appropriate to require customer disclosures relating to the “heightened” risks inherent in Extended Hours Trading.³⁵⁹ In Amendment No. 1, 24X proposed “expanded” investor disclosures relating to additional potential risks of its 24X Market Session.³⁶⁰ Specifically, the new paragraph (i) added to 24X Rule 3.21 will highlight the following additional potential risks related to trading during the 24X Market Session, including the risks that: (1) the primary listing markets may not be open; (2) consolidated market data may not be available; (3) there may be limited or different regulatory protections during the 24X Market Session; (4) there may be limited trading alternatives during the 24X Market Session; (5) with near continuous trading, there may be greater risk related to system maintenance, testing and pauses and resumption in trading; and (6) the 24X Market Session is novel and may present additional unforeseen risks in addition to those discussed above.³⁶¹ In Amendment No. 2, 24X amended 24X Rule 3.21 to remove the disclosure related to the risk that consolidated data may not be available because pursuant to amended 24X Rule 1.5(c), 24X will not begin operation of its 24X Market Session unless the exclusive SIPs are able to concurrently collect, consolidate, process and disseminate consolidated data.³⁶² Thus, the proposed disclosure

stating the risk that there might not be information disseminated by the exclusive SIPs during the 24X Market Session is no longer necessary.

The expanded proposed customer disclosures set forth in 24X Rule 3.21, as amended, should address commenters’ concerns because these disclosures will provide investors with important information that should help to inform their decisions as to whether trading during extended hours, including the 24X Market Session, is suitable for them. In addition, the expanded customer disclosures set forth in 24X Rule 3.21, as amended, are consistent with the Exchange Act and, in particular, the section 6(b)(5) requirement that an exchange’s rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest. The disclosures will help provide notice to market participants, including investors, about the specific risks associated with Extended Hours Trading.

f. Other Comments

24X proposed 24X Rule 11.12 related to the clearance and settlement of trades. Under this rule, 24X will require that all transactions through the facilities of the Exchange be automatically cleared and settled through a registered clearing agency using a continuous net settlement system when the continuous net settlement system is open. When the continuous net settlement system is closed, 24X will require trades to be processed for clearing and settlement as soon as the relevant clearing agency reopens the continuous net settlement system.

One commenter questioned the settlement cycle of trades in the context of the 24X Market Session, as originally proposed.³⁶³ The commenter stated that a trade executed at 11:59 p.m. would settle the next day and a trade that executed just two minutes later, at 12:01 a.m., would not settle until the following day (assuming consecutive

settlement dates).³⁶⁴ The commenter also stated that the 24X Market Session, as originally proposed, raises additional operational and risk management questions related to the clearance and settlement processes for trades that occur overnight and on non-business days operated by registered clearing agencies, including the National Securities Clearing Corporation (“NSCC”).³⁶⁵ In its second letter, the commenter stated that all default risks and related clearance, settlement, payment and delivery risks would be borne by broker-dealers until trades were transferred to DTCC for novation, which would impose significant counterparty risk on broker-dealers.³⁶⁶ The commenter stated that retail investors “would be unaware” that trades executed during the 24X Market Session would be excluded from the NSCC and DTCC’s real-time guarantee model.³⁶⁷ The commenter stated that delays in reporting overnight trades to NSCC also impact margin requirements, including margin calculations.³⁶⁸

24X responded that the commenter’s concerns related to the clearance and settlement of trades “have long existed and are contemplated within existing NSCC/DTCC rules.”³⁶⁹ 24X also stated that it understood, from the DTCC, that the operational and clearance and settlement risks related to its proposed overnight and weekend trading are manageable using existing risk management rules and protocols,³⁷⁰ and that “DTCC plans to implement additional changes to its processes going forward to further narrow the risks presented by extended trading hours.”³⁷¹ Further, 24X stated that trades occurring within a matter of

³⁶⁴ See SIFMA Letter at 8.

³⁶⁵ *Id.* The Depository Trust and Clearing Corporation (“DTCC”) is the holding company for the three registered clearing agencies, including NSCC and the Depository Trust Company (“DTC”), each of which provides clearance and settlement services for U.S. equities. The commenter further questioned whether the NSCC (1) would require an additional deposit to support overnight activity; (2) would process trades that occur on Saturday on the following Monday or Tuesday; (3) require Monday morning stock loan delivery or margin calls for weekend trades. The commenter also questioned whether clearing firms would be able to opt-out of clearing extended hours (pre-, post-, and overnight) activity. *Id.* These interpretative questions about NSCC rules should be directed to the NSCC, an SRO. As discussed throughout, trading of NMS stocks occurs overnight in the OTC market on ATSs. The commenter did not detail how the 24X proposal, as amended, raises new or novel concerns as compared to existing overnight trading sessions.

³⁶⁶ See SIFMA Letter II at 5.

³⁶⁷ See *id.*

³⁶⁸ See SIFMA Letter II at 6.

³⁶⁹ See 24X Letter II at 17.

³⁷⁰ See 24X Letter II at 18.

³⁷¹ See 24X Letter IV at 5.

³⁵⁵ See Montone Letter at 6 (further stating, “[a]ny person looking to trade during the 24X Market Session will be aware of the numerous risks they face in trading during this period.”).

³⁵⁶ See SIFMA Letter at 4; Healthy Markets Letter at 9.

³⁵⁷ See SIFMA Letter at 4.

³⁵⁸ See Healthy Markets Letter at 9.

³⁵⁹ See 24X Letter II at 2.

³⁶⁰ See 24X Rule 3.21(i).

³⁶¹ *Id.*

³⁶² See 24X Rule 1.5(c). Under the rule, 24X will not operate the 24X Market Session until the 24X Market Session Proposed Rule Change has been approved or has otherwise become effective.

³⁶³ See SIFMA Letter at 8. Specifically, the commenter stated that for certain transactions on Fridays, Saturdays, Sundays, and holidays, the day after the trade might not be a business day and thus the settlement periods would be longer than T+1. As noted above, in Amendment No. 2, 24X amended the 24X rules for the 24X Market Session so that 24X will not offer trading on weekends and holidays. The commenter submitted a second comment that raised questions about clearance and settlement of trades in the amended 24X Market Session, as well as the 24X Market Session as originally proposed. See SIFMA Letter II.

minutes that could settle on different days is a “natural outgrowth” of the T+1 settlement process because there must be a time that delineates the end of a trading day.³⁷² Finally, 24X stated that, “as with overnight trading on ATSS today, broker-dealers concerned about potential operational and clearance and settlement risks related to such trading are not required to trade in the 24X Market Session.”³⁷³

The 24X rules related to clearance and settlement of transactions on 24X are consistent with the requirements of section 6(b)(5) of the Exchange Act that provides, among other things, that the rules of an exchange must foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.³⁷⁴ Further, the Commission concludes that while risk cannot be eliminated, it can be appropriately managed as it relates to: (1) the proposed operation of the 24X Market Session and (2) the ability of the relevant clearing agencies for equities, NSCC and the DTC, to address any potential credit, market, and liquidity risks associated with trades submitted by the Exchange. While one commenter submitted several interpretative questions related to how clearance and settlement of trades will occur during the 24X Market Session, the commenter did not explain how the clearance and settlement of 24X Market Session trades would be different from trades that occur in the overnight sessions in the OTC market.³⁷⁵ Further, the commenter stated that broker-dealers will carry all default risks and related clearance, settlement, payment and delivery risks until trades are reported. Broker-dealers may assess the risks and benefits of participating in the 24X Market Session. Although a commenter stated that investors would be unaware of the risks held by broker-dealers, 24X Rule 3.21(g) requires disclosure of the risk that certain financial market infrastructure, including “the relevant clearing agency” and “certain other providers of settlement services,” may be closed for business during the Extended Hours Trading sessions. Finally, the concerns of certain commenters about weekend trading are no longer relevant because

24X has amended its rules to eliminate weekend trading.

24X proposed several rules that are reasonably designed to ensure compliance with Regulation SHO. 24X Rule 11.9(a)(1) requires the execution price of an order with short sale instruction to be above the current national best bid if a short sale price test restriction under Rule 201 is in effect, unless the order is marked short exempt; and 24X Rule 11.9(a)(5) requires all orders to sell short to include a short sale instruction. 24X Rule 11.23 relates to Short Sale Circuit Breakers and sets forth that once a Short Sale Circuit Breaker pursuant to Rule 201 of Regulation SHO has been triggered during Regular Trading Hours, the price test restriction of Rule 201 will be in place for the applicable covered security for the remainder of the trading day on which the Short Sale Circuit Breaker is triggered, through the next U.S. Business Day after the trading day on which the Short Sale Circuit Breaker is triggered, and until 4 a.m. on the U.S. Business Day after the next U.S. Business Day after the trading day on which the Short Sale Circuit Breaker is triggered, unless the listing market for the covered security provides a notification via the exclusive SIPs indicating that the price test restriction is no longer in effect at a time earlier than 4 a.m. on the U.S. Business Day after the next U.S. Business Day after the trading day on which the Short Sale Circuit Breaker is triggered. 24X Rule 13.2 requires borrowing and deliveries to be effected in accordance with Rule 203 of Regulation SHO and provides that the 24X incorporates by reference Rules 200 and 203 of Regulation SHO.

One commenter questioned how would compliance with the circuit breaker requirements set forth in Rule 201(b)(1)(ii) of Regulation SHO be achieved if the exclusive SIPs were not in operation during the 24X Market Session.³⁷⁶ The commenter also stated that the close-out requirement for the failure to deliver, set forth in Rule 204 of Regulation SHO, could be delayed due to the extension of trading hours to non-business days.³⁷⁷ 24X responded that it would comply with Rule 201 of Regulation SHO whenever it is deemed to apply.³⁷⁸

The 24X rules are consistent with the Exchange Act as they incorporate Regulation SHO requirements. Accordingly, 24X rules are consistent with section 6(b)(5) of the Exchange Act because they are designed to prevent

fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Further, in response to commenter’s concerns about potential delays in the close out requirement due to the initially proposed 24X Market Session operating during non-business days,³⁷⁹ the 24X Market Session, as amended, will not provide for trading on non-U.S. Business Days. In response to the question raised by the commenter about compliance with the circuit breaker requirements if the exclusive SIPs were not in operation, in Amendment No. 2, 24X amended the rules governing the 24X Market Session so that 24X will not commence operations of the 24X Market Session until the Equity Data Plans are able to collect, consolidate, process and disseminate consolidated data during the 24X Market Session designated hours.³⁸⁰

24X proposed 24X Rule 11.13 governing 24X’s limitation of liability arising from use of Exchange systems or facilities.³⁸¹ Two commenters commented on 24X’s rule.³⁸² One commenter stated that 24X failed to appropriately justify its proposed limitation of liability.³⁸³ This commenter stated that 24X’s limitation of liability provision is modeled on a similar provision adopted in 2005 and that subsequent significant equity market structure changes have rendered the proposed provision inadequate, particularly given the 24X Market Session, as originally proposed.³⁸⁴ One of these commenters further stated that 24X provides no support for the Commission to find the limitation of liability provisions consistent with the Exchange Act or the public interest, and that “[a]n even greater level of scrutiny regarding the proposed 24X limitation of liability is warranted due to the additional operational risks associated with operating a near 24x7 market center.”³⁸⁵ The other commenter stated that “[n]otably, 24X intends to operate for significantly more trading hours and trading days than other national securities exchanges, and it has not explained why the liability caps

³⁷⁹ See *supra* notes 376–377 and accompanying text.

³⁸⁰ See 24X Rule 1.5(c), which requires 24X to file the 24X Market Session Proposed Rule Change.

³⁸¹ See 24X Rule 11.13.

³⁸² See FIA PTG Letter II and SIFMA Letter II.

³⁸³ See FIA PTG Letter II at 1–3.

³⁸⁴ *Id.* at 2–3; see also SIFMA Letter II at 8–9.

³⁸⁵ FIA PTG Letter II at 2 (stating, as an example, “in the event of a technological error during the 24X Market Session, there may be limited staff available to quickly resolve a critical issue, increasing the likelihood a malfunction will cause harm and persist over an extended period of time.”).

³⁷² See 24X Letter II at 18.

³⁷³ See 24X Letter IV at 5.

³⁷⁴ 15 U.S.C. 78f(b)(5).

³⁷⁵ As discussed above, the 24X Market Session will not operate until the 24X Market Session Proposed Rule Change has been approved or otherwise become effective. Market participants should direct their interpretative questions about the rules of other SROs, including NSCC or DTC, to those SROs.

³⁷⁶ See SIFMA Letter at 5.

³⁷⁷ See *id.*

³⁷⁸ See 24X Letter II at 14.

included in its proposed rule are reasonable or appropriately tailored to address the risk of system errors or malfunctions on its market across these longer periods.”³⁸⁶

In response to the commenter's concerns, 24X stated that it believes that the 24X rule complies with the Exchange Act.³⁸⁷ 24X continued that other exchanges operate pursuant to the “same rule” and that “there is no basis for reaching a different conclusion in the context of 24X's Form 1 application.”³⁸⁸ 24X also stated that “the liability caps were not established based on the number of trading hours on the exchange.”³⁸⁹

The limitation of liability provisions of 24X Rule 11.13 are consistent with the Exchange Act requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.³⁹⁰ 24X Rule 11.13 is substantively similar to other exchanges' limitation of liability provisions previously approved by the Commission and applicable to other exchanges that have extended hours trading sessions.³⁹¹ In addition, with respect to the commenters' statements that greater exchange liability would be appropriate given the “additional operational risks associated with operating a near 24x7 market center,” 24X will be required to comply with its obligations under the Exchange Act during all hours that it is operating. While 24X has more hours of operations as compared to other exchanges, 24X will have SRO obligations during the 24X Market Session as it does during its other trading sessions. Further, as discussed below, 24X will be an SCI entity that must comply with Regulation SCI.³⁹² While commenters submitted comments on the 24X Form 1, both commenters stated that the limitation of liability caps on all exchanges should be reevaluated. As stated above, the Commission, consistent with its oversight of the national market system, will continue to monitor the national market system. However, the monitoring of market developments does not foreclose Commission action on the 24X Form 1, which for reasons discussed

throughout, satisfies the requirements of the Exchange Act.

One commenter requested interpretative guidance on the application of Commission Rule 605 and Rule 610(d) and FINRA Rule 5320.08 to the proposed 24X trading sessions (*i.e.*, Pre-Market Session, Post-Market Session, 24X Market Session and Core Market Session).³⁹³ These rules are clear as to their application during different sessions and the commenter did not state why the 24X Form 1 raised unique interpretative questions compared to the extended hours sessions on other national securities exchanges that have operated for several years.

E. Technology Agreement With MEMX Technology

1. Delivery, Licenses and Services Agreement (“DLSA”)

The Exchange will utilize trading technology and systems (collectively, the “Technology and System”) developed by MEMX Technologies, LLC (“MEMX Technologies”),³⁹⁴ a subsidiary of MEMX Holdings LLC, and provided to the Exchange pursuant to a DLSA between MEMX Technologies and the Exchange.³⁹⁵ Specifically, pursuant to the DLSA, MEMX Technologies will provide technology support services to 24X, which will include “(1) the development and testing of software and hardware necessary to operate the matching engine and connectivity to other exchanges via a third-party routing broker(s) and third party-developed functions (including clearing, custody, and client connectivity), (2) the

provision of technical support in order for the Exchange to operate and monitor the Exchange; and (3) the provision of ongoing system availability commitments, updates, fixes, and technology support.”³⁹⁶ MEMX Technologies will support intra-day compliance monitoring by 24X and provide timely reporting to 24X of any potential Regulation SCI events or other operational issues with the System.³⁹⁷

All services provided to the Exchange by MEMX Technologies will be based upon requirements and instructions determined by the Exchange.³⁹⁸ Although MEMX Technologies would provide the technology support services, 24X will be responsible for operating and monitoring its Exchange-related Technology and System and administering the rules of the Exchange and other rules and regulations applicable to the Exchange.³⁹⁹ To ensure logical and physical separation from MEMX Technologies and its affiliates, the Technology and System will operate a separate instance of MEMX Technologies' core matching engine technology and software, utilizing separate servers from the MEMX Exchange system and separate connections for 24X Members to connect to 24X.⁴⁰⁰ Under the terms of the DLSA, 24X may request MEMX Technologies to develop and implement (for a fee to be determined by the parties) technology changes that change the operation of the 24X Technology and System. 24X is not obligated to agree to, accept, or adopt changes to the Technology and System that are not essential to the operation of its instance of the Technology and System.⁴⁰¹ Additionally, 24X stated that the “trading platforms operated by MEMX Technologies (including 24X National Exchange, LLC, MEMX Exchange, and any other exchanges or trading platforms operated by MEMX Technologies) currently are and will be segregated to ensure that 24X is not deemed to be a facility of MEMX Exchange.”⁴⁰² MEMX Technologies will not use or disclose information or data (i) about or originating with 24X in its dealings with MEMX Exchange or any other platform or (ii) about or originating with MEMX Exchange or any other platform in its dealing with 24X.⁴⁰³

³⁸⁶ See SIFMA Letter II at 9.

³⁸⁷ See 24X Letter III at 5.

³⁸⁸ *Id.*

³⁸⁹ See 24X Letter IV at 5.

³⁹⁰ 15 U.S.C. 78f(b)(5) and (8).

³⁹¹ See *e.g.*, MEMX Exchange Rule 11.14; LTSE Exchange Rule 11.260.

³⁹² See section III.E.2.

³⁹³ See SIFMA Letter II at 13. This commenter posed a number of questions that were interpretive in nature or technical and related to implementation of extended hours trading. As discussed throughout, there are existing extended hours trading sessions on other exchanges and the rules that are applicable during extended hours sessions are clear. The commenter stated that a broader consideration of extended hours trading in the national market system should be conducted. See *supra* section III.D.2.a (discussing comments requesting a roundtable or broader consideration of extended hours trading). As discussed above, the Commission continues to monitor the national market system, including the expansion of trading hours in the equity market.

³⁹⁴ 24X does not own the Technology and System but states that it has obtained all necessary licenses and authorizations from MEMX Technologies in order for 24X and its Members and Users to fully utilize the Technology and System. See Form 1, Exhibit E.

³⁹⁵ See Form 1, Exhibit E. Among other things, the DLSA sets forth a multi-year term with automatic renewal provisions that requires MEMX Technologies to deliver the Technology and System and run industry connectivity testing and other functional-based testing. See *id.* The DLSA also provides for transition services to the extent either party decides to terminate the arrangement. See *id.*

³⁹⁶ See Form 1, Exhibit C.

³⁹⁷ See *id.*

³⁹⁸ See *id.*

³⁹⁹ See *id.*

⁴⁰⁰ See Form 1, Exhibit E.

⁴⁰¹ See *id.*

⁴⁰² See Form 1, Exhibit C.

⁴⁰³ See *id.*

One commenter stated that the proposal by 24X to outsource its technology needs, along with the maintenance and remediation of technology issues, to MEMX Technologies “is distinct from the existing common practice of exchanges and other venues to outsource discrete technology elements to individual vendors based on the expertise provide by each vendor, subject to oversight of the vendors by the exchange as required by Regulation SCI.”⁴⁰⁴ The commenter further stated that other “existing examples do not involve exclusive reliance on a single technology provider (affiliated with one exchange) for multiple U.S. registered exchange[s].”⁴⁰⁵

This commenter’s statements were disputed by another commenter, who stated that “having a common technology platform underlying multiple registered exchanges is hardly a new phenomenon. Of the sixteen currently licensed U.S. equities exchanges, twelve are operated by just three exchange groups that each operate several independently-registered exchanges using a common technology platform.”⁴⁰⁶ The commenter further stated that use of vendors “allows competitors of all sorts to focus on their core business, whether that’s facilitating the move to a 24-hour trading model, . . . or in attracting listings from corporate issuers.”⁴⁰⁷ 24X responded that “the use of a common technology platform for multiple registered exchanges is a common practice. 24X understands that three existing exchange groups operate several independently-registered national securities exchanges using a common technology platform.”⁴⁰⁸ The Commission agrees that the outsourcing of an exchange’s technology platform to another entity is not novel.⁴⁰⁹

Two commenters stated that there should be greater clarification on the relationship between 24X and MEMX Technologies.⁴¹⁰ A third commenter expressed concerns about the proposed agreement between 24X and MEMX Technologies.⁴¹¹ One of these commenters stated that the Exchange would be heavily dependent on MEMX Technologies, and asked whether MEMX Technologies would be more properly viewed as an owner or control person for its technology needs.⁴¹² As the Commission stated above, MEMX Technologies is a vendor that will provide technology support services to 24X, to meet requirements established by 24X; MEMX Technologies has no ownership interest in 24X.⁴¹³ The ultimate responsibility for regulatory compliance with the Exchange Act and rules thereunder falls on 24X as the SRO. Nor will MEMX Technologies be able to assert control over 24X regarding operation of the Technology and System. Under the terms of the DLSA, as described in the Form 1, 24X is not obligated to agree to, accept, or adopt changes to the Technology and System that are not essential to the operation of its instance of the Technology and System.⁴¹⁴

Another commenter stated that the “exclusive reliance on a single vendor raises questions about the availability of resources by [MEMX Technologies] to fill that role.”⁴¹⁵ Similarly, one commenter asked for clarification as to

Commission’s order addresses the pertinent legal questions and concludes that this arrangement [between LTSE and MEMX Technologies] “is consistent with the Exchange Act.” See MEMX Letter at 5. 24X agreed with this commenter’s statement. See 24X Letter IV at 3.

⁴¹⁰ See Healthy Markets Letter at 9–10; Montone Letter at 5.

⁴¹¹ See IEX Letter.

⁴¹² See Healthy Markets Letter at 9. The commenter also stated that the arrangement between 24X and MEMX Technologies “would need to be public, so that the Commission and public could assess the conflicts of interests and risks posed by it to the operations of 24X.” Healthy Markets Letter at 10. A description of the DLSA and its terms may be found in 24X’s Form 1 at Exhibits C and E and have been subject to notice and public comment. Exhibits C and E to the Form 1 do not require these contracts to be filed. See Exhibit C (requiring, among other things, information relating to any entity with whom the applicant has a contractual or other arrangement relating to the operation of an electronic trading system to be used to effect transactions on the exchange) and Exhibit E (requiring a description of the operation of the exchange). These exhibits provide sufficient information to assess the proposed arrangement.

⁴¹³ See Form 1, Exhibit C.

⁴¹⁴ See Form 1, Exhibit E.

⁴¹⁵ See IEX Letter at 2. Although MEMX Technologies will develop and maintain the Technology and System pursuant to the DLSA, it is 24X market operations staff that will be responsible for the daily operations of 24X’s market. See Form 1, Exhibit E.

whether MEMX Technologies “has the staff and infrastructure to facilitate 23-hour continuous trading”⁴¹⁶ and stated that there should be “a detailed reassurance that the technology underlying the exchange will not breakdown due to a high user rate and further if the technology does fail, what the procedures will be to protect the exchange while also safeguarding investors information and portfolios.”⁴¹⁷ 24X in response stated that the technology it will utilize “has a proven track record for resiliency, a track record that should give the SEC and market participants comfort regarding the reliability of 24X’s market offering.”⁴¹⁸

Another of the commenters stated that 24X’s potential use of MEMX Technologies for operational support raises conflicts concerns and that the Form 1 “contains little if any information about management of conflicts more generally.”⁴¹⁹ This commenter stated that there are no statements or information about the “nature and extent” of the segregation between 24X and MEMX Technologies or the “financial terms of 24X’s agreement with [MEMX Technologies] and about what type of separation may exist between [MEMX Technologies] and MEMX.”⁴²⁰ The commenter further stated that its concerns “may be magnified to the extent that other exchanges propose to make use of this same exclusive ‘white label’ technology solution by the same vendor to meet their technology needs, as has been widely reported. Under that construction, [MEMX Technologies] would appear to be performing in effect a technology utility function for multiple regulated exchanges, but it

⁴¹⁶ Montone Letter at 5. One commenter asked whether in the event of a potentially serious cyber breach of its systems, 24X would “be in a position to promptly identify such a breach if it is entirely reliant on a third party for security and other technology” and, once aware, what assistance it would “require from its supplier to be able to respond in a timely way that protects exchange systems and user information.” See Healthy Markets Letter at 9. The Commission reiterates that the ultimate responsibility for regulatory compliance with the Exchange Act and rules thereunder falls on 24X and should 24X require, the DLSA provides that 24X may request technology changes from MEMX Technologies to change the operation of the System. See Form 1, Exhibit E.

⁴¹⁷ See Montone Letter at 5.

⁴¹⁸ 24X Letter III at 4. 24X also agreed with a commenter that stated that “the strength of MEMX’s technology platform is the primary reason that 24X, LTSE, and several other trading venues have contracted with MEMX Technologies to power their trading systems. MEMX has shown that its technology platform is robust and resilient day in and day out for the past four years.” See 24X Letter IV at 2–3 (quoting from MEMX Letter at 2).

⁴¹⁹ See IEX Letter at 2–3.

⁴²⁰ See IEX Letter at 3.

⁴⁰⁴ See IEX Letter at 2.

⁴⁰⁵ See IEX Letter at 3.

⁴⁰⁶ See MEMX Letter at 2. The commenter further stated, that as an example, “Nasdaq technology is also used to operate at least one ATS that is meets the volume threshold for compliance with Regulation SCI; the securities information processor (“SIP”) for Tape C stocks; and two of three trade reporting facilities (“TRFs”).” 24X agreed with this statement. See 24X Letter IV at 2–3.

⁴⁰⁷ See MEMX Letter at 4.

⁴⁰⁸ See 24X Letter III at 4.

⁴⁰⁹ See Securities Exchange Act Release No. 100783 (Aug. 20, 2024), 89 FR 68481 (Aug. 26, 2024) (SR-LTSE-2024-03) (“LTSE—MEMX Technologies Approval Order”) (approval of proposed rule change by the Long-Term Stock Exchange to transition from its current trading platform to a new trading platform that uses technology provided by MEMX Technologies). One commenter had stated that arguments regarding the use of MEMX’s technology have been substantively addressed by the Commission in the LTSE—MEMX Technologies Approval Order and that “the

would not be a regulated entity itself, and the Commission would have limited ability to evaluate, and no ability to control, how it performs that critical function.”⁴²¹

24X, not MEMX Technologies, has regulatory responsibility over the 24X System, and therefore 24X as a SRO is fully responsible for discharging its obligations as a registered national securities exchange. The Commission disagrees with the commenter that the Form 1 contains little information about these matters.⁴²² 24X has provided sufficient detail in the Form 1 regarding the relationship between 24X and MEMX Technologies.⁴²³ MEMX Technologies will not use or disclose information or data (i) about or originating with 24X in its dealings with MEMX Exchange or any other platform or (ii) about or originating with the MEMX Exchange or any other platform in its dealings with 24X.⁴²⁴ Also, the DLSA, among other things, enforces logical and physical separation from MEMX Technologies and its affiliates in that the Technology and System will operate a separate instance of MEMX Technologies’ core matching engine technology and software, utilizing separate servers from MEMX Exchange system and separate connections for Members to connect to 24X.⁴²⁵ Further, 24X will interact with the MEMX Exchange, including MEMX Exchange’s routing broker-dealer, on the same arms-length commercial terms as 24X interacts with other registered national securities exchanges and their routing broker-dealers.⁴²⁶ Membership in the MEMX Exchange will not confer any advantages when trading on 24X (or vice versa), such as faster connections, lower fees, or preferential treatment of orders on the 24X System.⁴²⁷ Membership in the MEMX Exchange will also not be a requirement for membership in or connection to 24X (or vice versa).⁴²⁸

After consideration of the disclosures 24X made in its Form 1 application and review of the comments, the Commission finds that 24X’s proposal to utilize technology provided and maintained by MEMX Technologies is consistent with the Exchange Act, in particular with section 6(b)(1) of the Exchange Act,⁴²⁹ which requires an

exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act and to comply and enforce compliance by its members and persons associated with its members with the Exchange Act and the rules thereunder. The arrangement between 24X and MEMX Technologies, as described in the 24X Form 1, will enable the Exchange to utilize trading platform technology that is already in use with an experienced operator.⁴³⁰ However, the terms of the DLSA between 24X and MEMX Technologies, as described in the Form 1, are reasonably designed not to confer upon either MEMX Exchange or 24X Members any advantages when trading on 24X, or vice versa, such as faster connections, lower fees, or preferential treatment of orders on the 24X System.⁴³¹ Further, as described in the Form 1, the DLSA will not include the technology or systems to route orders to the MEMX Exchange or any other exchange.⁴³² 24X will retain responsibility for overseeing the daily market operations of its trading system; MEMX Technologies will be responsible for performing all necessary maintenance and remediation of problems relating to the logical and physical infrastructure, in accordance with the DLSA.⁴³³ Therefore, 24X will be capable of exercising sufficient control over the operation of its Technology and System, and will be sufficiently independent from MEMX Technologies, to enable 24X to comply with the requirements under the Exchange Act and the rules thereunder.

The provisions of the DLSA described above demonstrate that the support services provided by MEMX Technology are adequate to enable 24X to meet its self-regulatory obligations. In order for 24X to perform its regulatory obligations, the DLSA provides 24X with enumerated audit rights to review books and records of MEMX Technologies related to the provision of services under the DLSA, and the ability either to produce itself, or direct MEMX Technologies to produce, MEMX Technologies documents and information related to the operation of the Technology and System to the Commission or other regulators or parties upon request, subject to appropriate due process.⁴³⁴

Finally, 24X will have regulatory responsibility for its trading Technology and System and will be responsible to fully discharge its obligations as a national securities exchange. 24X will also be responsible for its market and cross-market surveillance through the RSA, described above,⁴³⁵ and maintain its independent regulatory function to oversee the RSA and will not rely on or utilize MEMX Exchange or its personnel to fulfill any aspect of those obligations on 24X’s behalf.

2. Regulation SCI

As a registered national securities exchange, 24X will be an “SCI entity” responsible for compliance with the requirements of Regulation Systems Compliance and Integrity (“Regulation SCI”).⁴³⁶ Regulation SCI requires SCI entities to establish written policies and procedures reasonably designed to ensure that their applicable systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act.⁴³⁷ In addition, Regulation SCI requires SCI entities to take corrective action with respect to SCI events (defined to include systems disruptions, systems compliance issues, and systems intrusions), notify the Commission of such events, and disseminate information about certain SCI events to affected members or participants (and, for certain major SCI events, to all members or participants of the SCI entity).⁴³⁸ Moreover, Regulation SCI requires SCI entities to conduct a review of their systems by objective personnel at least annually, submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the Commission,⁴³⁹ and maintain certain books and records.⁴⁴⁰ It also requires SCI entities to mandate participation by designated members or participants in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing

⁴²¹ See *id.*

⁴²² See *supra* note 412.

⁴²³ See Form 1, Exhibit E. See also 24X Letter II at 15.

⁴²⁴ See Form 1, Exhibit C.

⁴²⁵ See Form 1, Exhibit E.

⁴²⁶ See *id.*

⁴²⁷ See *id.*

⁴²⁸ See Form 1, Exhibit E.

⁴²⁹ 15 U.S.C. 78f(b)(1).

⁴³⁰ See e.g., LTSE—MEMX Technologies Approval Order, *supra* note 409.

⁴³¹ See Form 1, Exhibit E.

⁴³² 24X may automatically route orders to other exchanges through the use of one or more routing brokers that are not affiliated with 24X. See Form 1, Exhibit E. See also 24X Rules 2.11 and 11.10.

⁴³³ See Form 1, Exhibit E.

⁴³⁴ See *id.*

⁴³⁵ See *supra* section III.C.2. (discussing 24X’s RSA with FINRA).

⁴³⁶ See Securities Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) (“Regulation SCI 2014 Adopting Release”).

⁴³⁷ See 17 CFR 242.1001.

⁴³⁸ See 17 CFR 242.1002. See also 17 CFR 242.1000 and 17 CFR 242.1006.

⁴³⁹ See 17 CFR 242.1003. See also 17 CFR 242.1000.

⁴⁴⁰ See 17 CFR 242.1005. See also 17 CFR 242.1007.

on an industry- or sector-wide basis with other SCI entities.⁴⁴¹

Regulation SCI applies to an SCI entity's "SCI systems," which are systems that directly support any one of six key securities market functions—trading, clearance and settlement, order routing, market data, market regulation, and market surveillance ("SCI systems"). Regulation SCI also applies to "indirect SCI systems," which are any systems that, if breached, are likely to pose a security threat to SCI systems. Further, certain SCI systems that are "critical SCI systems" are held to certain heightened requirements under Regulation SCI.⁴⁴²

The Exchange has obtained commitments from MEMX Technologies in connection with the Exchange's engagement of MEMX Technologies to develop, license, and operate the Technology and System on behalf of the Exchange to, among other things, address how this arrangement is consistent with the requirements of Regulation SCI.⁴⁴³ The Exchange acknowledges that as the SCI entity contracting with MEMX Technologies to provide software and hardware to operate both SCI systems and indirect SCI systems, 24X will have full responsibility for ensuring that it is in compliance with all aspects of Regulation SCI, including the requirements for its backup and recovery capabilities.⁴⁴⁴ In addition, the DLSA includes commitments from MEMX Technologies as developer, licensor, and operator of the Technology and System to cooperate with the Exchange and provide the Exchange with the information and access that the Exchange reasonably believes will allow the Exchange to satisfy its obligations under Regulation SCI.⁴⁴⁵

One commenter stated that it does "not see how 24X would be able to comply with Regulation SCI when it would not be in control of its own systems. . . . The introduction of another essential business partner creates previously unprecedented conflicts of interest for a registered exchange and complications for ownership and governance."⁴⁴⁶ Contrary to the commenter's statements, Regulation SCI contemplates the possibility of an SCI entity's SCI systems and indirect SCI systems being operated on its behalf by another

entity.⁴⁴⁷ In fact, because SCI entities engage in outsourcing to varying degrees, the Commission stated when it adopted Regulation SCI, "if an SCI entity determines to utilize a third party for an applicable system, it is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party."⁴⁴⁸

Another commenter questioned how exchanges that are operating Regulation SCI systems "in production mode at all hours" would be able to comply with Regulation SCI, including requirements for systems testing.⁴⁴⁹ In its response, 24X set forth a description of how its policies and procedures comply with the requirements of Regulation SCI.⁴⁵⁰ The periodic capacity stress testing, testing of system changes and testing in conjunction with the annual SCI review will be coordinated by 24X technology operations with MEMX Technologies personnel, and that vulnerability and threat testing will be coordinated by 24X with an outside vendor who will perform the tests, and with MEMX Technologies personnel as necessary.⁴⁵¹ Finally, as discussed above, in Amendment No. 2, 24X has modified the 24X Market System so that trading will not occur on weekends. Accordingly, the concerns raised about systems testing when Regulation SCI systems would be "in production mode

at all hours" are no longer germane. Based on the statements 24X has made in the Form 1, as amended, and 24X's response to commenters with respect to its obligations under Regulation SCI, as well as the provisions in the DLSA as described by 24X in the Form 1, 24X's proposal regarding the engagement of a third party to develop, license, and operate the Technology and System is designed to support the Exchange's ability to comply with its regulatory obligations under Regulation SCI.

F. Discipline and Oversight of Members

As stated above, one prerequisite for the Commission's grant of an exchange's application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Exchange Act.⁴⁵² Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the federal securities laws and rules thereunder and the rules of the exchange.⁴⁵³ Pursuant to an RSA with FINRA, FINRA will perform many of the initial disciplinary processes on behalf of 24X.⁴⁵⁴ For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to 24X rules. Appeals from disciplinary decisions will be heard by the 24X Appeals Committee,⁴⁵⁵ and the 24X Appeals Committee's decision shall be final.⁴⁵⁶ In addition, the 24X Board on its own initiative may order review of a disciplinary decision.⁴⁵⁷

The 24X LLC Agreement and 24X rules provide that the Exchange has disciplinary jurisdiction over its Members⁴⁵⁸ so that it can enforce its Members' compliance with its rules and the federal securities laws and rules.⁴⁵⁹ The Exchange's rules also permit 24X to sanction Members for violations of its rules and violations of the federal securities laws and rules by, among other things, expelling or suspending Members, limiting Members' activities, functions, or operations, fining or censuring Members, or suspending or barring a person from being associated

⁴⁴⁷ See, e.g., Rule 1000 (definitions of SCI systems, critical SCI systems and indirect SCI systems, each of which contains "any. . . systems of, or operated by or on behalf of. . ."). See also Regulation SCI 2014 Adopting Release, *supra* note 436 at 72276 (discussing the utilization of third parties by SCI entities for applicable systems).

⁴⁴⁸ See *id.* ("The Commission agrees with the comment that an SCI entity should be responsible for managing its relationship with third parties operating systems on behalf of the SCI entity through due diligence, contract terms, and monitoring of third party performance. However, the Commission believes that these methods may not be sufficient in all cases to ensure that the requirements of Regulation SCI are met for SCI systems operated by third parties. . . . Instead, if an SCI entity determines to utilize a third party for an applicable system, it is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party. The Commission believes that it would be appropriate for an SCI entity to evaluate the challenges associated with oversight of third-party vendors that provide or support its applicable systems subject to Regulation SCI. If an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.")

⁴⁴⁹ See SIFMA Letter at 8.

⁴⁵⁰ See 24X Letter II at 5.

⁴⁵¹ See *id.*

⁴⁵² See 15 U.S.C. 78f(b)(1).

⁴⁵³ See *id.*

⁴⁵⁴ See *supra* notes 119–120 and accompanying text. See also 24X Rule 9.8 (stating that 24X and FINRA are parties to a regulatory services agreement, pursuant to which FINRA will perform certain functions described in Chapter 9 on behalf of 24X).

⁴⁵⁵ See 24X Rule 8.10(b).

⁴⁵⁶ See *id.*

⁴⁵⁷ See 24X Rule 8.10(c).

⁴⁵⁸ See *supra* note 48.

⁴⁵⁹ See generally 24X LLC Agreement, Article XI and 24X Rules Chapters 7 and 8.

⁴⁴¹ See 17 CFR 242.1004.

⁴⁴² See 17 CFR 242.1000 (definitions of "SCI systems," "indirect SCI systems," and "critical SCI systems").

⁴⁴³ See Form 1, Exhibit E.

⁴⁴⁴ See *id.*

⁴⁴⁵ See *id.*

⁴⁴⁶ See Healthy Markets Letter at 9.

with a Member, or any other fitting sanction.⁴⁶⁰ 24X's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.⁴⁶¹

Accordingly, as a condition to the operation of 24X, a Minor Rule Violation Plan ("MRVP") filed by 24X under Exchange Act Rule 19d-1(c)(2) must be declared effective by the Commission.⁴⁶²

The Commission finds that the 24X LLC Agreement and 24X rules concerning its disciplinary and oversight programs are consistent with the requirements of sections 6(b)(6) and 6(b)(7) of the Exchange Act⁴⁶³ in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of 24X provide it with the ability to comply, and with the ability to enforce compliance by its Members and persons associated with its Members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of 24X.⁴⁶⁴

G. Trading on 24X Pursuant to Unlisted Trading Privileges

24X does not intend to be a primary listing market for securities.⁴⁶⁵ Accordingly, 24X has not proposed rules that would allow it to primarily list any securities at this time. Instead, 24X has proposed to trade securities pursuant to UTP. 24X Rule 14.1 establishes the Exchange's authority to trade securities on a UTP basis. 24X Rule 14.1(a) provides that 24X may extend UTP to any security that is an NMS stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with section 12(f) of the Exchange Act.⁴⁶⁶ 24X Rule 14.1(a) further provides that any such security would be subject to all 24X rules applicable to trading on 24X, unless otherwise noted.

24X Rule 14.1(b) establishes additional rules for trading of UTP Exchange Traded Products, which are defined in 24X Rule 1.5(nn).⁴⁶⁷ 24X

Rule 14.1(b) provides that 24X will distribute an information circular prior to the commencement of trading in a UTP Exchange Traded Product that generally would include the same information as the information circular provided by the listing exchange, including (a) the special risks of trading the Exchange Traded Product, (b) the Exchange's rules that would apply to the Exchange Traded Product, and (c) information about the dissemination of value of the underlying assets or indices. 24X Rule 14.1(b)(2) establishes certain requirements for Members that have customers that trade UTP Exchange Traded Products.⁴⁶⁸ 24X Rule 14.1(b)(4) also establishes certain requirements for any Member registered as a Market Maker in a UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities. 24X Rule 14.1(b)(5) provides that the Exchange's surveillance procedures for Exchange Traded Products traded on the Exchange pursuant to UTP would be similar to the procedures used for equity securities traded on the Exchange and would incorporate and rely upon existing Exchange surveillance systems.

The Commission finds that the Exchange's proposed approach to the trading of securities on a UTP basis, as set forth in 24X Rule 14.1, is consistent with section 12(f) of the Exchange Act and Rule 12f-5 thereunder.⁴⁶⁹ Rule 12f-5 under the Exchange Act requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which

linked securities, currency-linked securities, fixed-income index-linked securities, futures linked securities, multifactor-index-linked securities, trust certificates, currency and index warrants, portfolio depository receipts, trust issued receipts, commodity-based trust shares, currency trust shares, commodity index trust shares, commodity futures trust shares, partnership units, paired trust shares, trust units, managed fund shares, and managed trust securities."

⁴⁶⁸ 24X Rule 14.1(b)(2)(A) states that 24X Rule 14.1(b)(2) applies to UTP Exchange Traded Products that are the subject of an order by the Commission exempting the series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. 24X Rule 14.1(b)(2)(B) requires members to provide a written description of the terms and characteristics of UTP Exchange Traded Products to purchasers of such securities, not later than the time of confirmation of the first transaction, and with any sales materials relating to UTP Exchange Traded Products. 24X Rule 14.1(b)(2)(C) requires members to provide a prospectus to a customer requesting a prospectus.

⁴⁶⁹ 15 U.S.C. 78l(f); 17 CFR 240.12f-5.

the exchange extends unlisted trading privileges.⁴⁷⁰ 24X Rule 14.1 includes a provision that any security traded UTP on the Exchange "shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted."⁴⁷¹ The provisions in 24X Rule 14.1 are substantively the same as the existing rules of the MEMX Exchange.⁴⁷² Accordingly, pursuant to section 12(f) of the Exchange Act and Rule 12f-5 thereunder, 24X will be permitted to extend unlisted trading privileges to securities of the same class, subject to the trading rules of the Exchange.

H. Section 11(a) of the Exchange Act

Section 11(a)(1) of the Exchange Act⁴⁷³ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, "covered accounts") unless an exception applies. Rule 11a2-2(T) under the Exchange Act,⁴⁷⁴ known as the "effect versus execute" rule, provides exchange members with an exemption from the section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;⁴⁷⁵ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, 24X requested that the Commission concur with 24X's conclusion that 24X

⁴⁷⁰ See 17 CFR 240.12f-5. See also Securities Exchange Act Release No. 35737 (Apr. 21, 1995), 60 FR 20891 (Apr. 28, 1995) (File No. S7-4-95) (adopting Rule 12f-5 under the Exchange Act).

⁴⁷¹ See 24X Rule 14.1(a).

⁴⁷² See MEMX Exchange Rule 14.1.

⁴⁷³ 15 U.S.C. 78k(a)(1).

⁴⁷⁴ 17 CFR 240.11a2-2(T).

⁴⁷⁵ This prohibition also applies to associated persons. Rule 11a2-2(T)(a)(2)(iii), 17 CFR 240.11a2-2(T)(a)(2)(iii). The member may, however, participate in clearing and settling the transaction. Rule 11a2-2(T)(b)(3), 17 CFR 240.11a2-2(T)(b)(3).

⁴⁶⁰ See 24X Rule 8.1(a).

⁴⁶¹ See 24X Rule 8.15.

⁴⁶² 17 CFR 240.19d-1(c)(2).

⁴⁶³ 15 U.S.C. 78f(b)(6) and (b)(7).

⁴⁶⁴ See 15 U.S.C. 78f(b)(1).

⁴⁶⁵ See Form 1, Exhibit H.

⁴⁶⁶ 15 U.S.C. 78l(f).

⁴⁶⁷ Pursuant to 24X Rule 1.5(nn), the term "UTP Exchange Traded Products" means "derivative securities products that are not listed on the Exchange but that trade on the Exchange pursuant to unlisted trading privileges, including the following: equity linked notes, investment company units, index-linked exchangeable notes, equity gold shares, equity index-linked securities, commodity-

Members that enter orders into the 24X trading system satisfy the conditions of Rule 11a2-2(T).⁴⁷⁶ For the reasons set forth below, 24X Members entering orders into the 24X trading system could satisfy the requirements of Rule 11a2-2(T).

Rule 11a2-2(T)'s first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission condition is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.⁴⁷⁷ 24X represents that 24X does not have a physical trading floor, and the 24X trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces.⁴⁷⁸ The 24X trading system satisfies this off-floor transmission condition.

The second condition requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. 24X represents that at no time following the submission of an order is a member or an associated person of the member able to acquire control or influence over the result or timing of the order's execution.⁴⁷⁹ According to 24X, the execution of a member's order is determined solely by

what quotes and orders are present in the system at the time the member submits the order, and the order priority based on the 24X rules.⁴⁸⁰ Accordingly, a 24X member and its associated persons do not participate in the execution of an order submitted to the 24X trading system.⁴⁸¹

The third condition states that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this condition is satisfied when automated exchange facilities, such as the 24X trading system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.⁴⁸² 24X represents that the design of the 24X trading system ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to 24X.⁴⁸³ Based on 24X's representation, the 24X trading system satisfies this condition.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract that refers to section 11(a) of the Exchange Act and Rule 11a2-2(T) thereunder.⁴⁸⁴ 24X

members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.⁴⁸⁵

IV. Exemption from Section 19(b) of the Exchange Act With Regard to FINRA Rules Incorporated by Reference

24X proposes to incorporate by reference certain FINRA rules as 24X rules.⁴⁸⁶ Thus, for those 24X rules, Exchange Members will comply with the 24X rule by complying with the FINRA rule referenced therein. In connection with its proposal to incorporate FINRA rules by reference, 24X requests, pursuant to Rule 240.0-12,⁴⁸⁷ an exemption under Section 36 of the Exchange Act from the rule filing requirements of section 19(b) of the Exchange Act for changes to those 24X rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.⁴⁸⁸ 24X represents in its letter that, as a condition to the exemption, it will provide written notice to its Members whenever a proposed rule change to a FINRA rule that is incorporated by reference is proposed and whenever any such proposed change is approved by the Commission or otherwise becomes effective.⁴⁸⁹

member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 479 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

⁴⁸⁵ 24X represents that it will advise its membership through the issuance of an Information Circular that those Members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption. See 24X 11(a) Letter, *supra* note 476, at 4.

⁴⁸⁶ See letter from David Sassoon, General Counsel, 24X, to Vanessa Countryman, Secretary, Commission, dated Feb. 6, 2024 ("24X Exemption Request Letter"). 24X proposes to incorporate by reference the following FINRA rules: (1) FINRA Rule 2210 (Communications with the Public); via 24X Rule 3.5 (Communications with the Public); (2) the definition of a research report in FINRA Rule 2241, via 24X Rule 3.13(b)(3); (3) the 12000 and 13000 Series of the FINRA Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes), via 24X Rules 9.1, 9.2, 9.4, 9.5 and 9.8; (4) FINRA Rule 2268 (Requirements When Using Pre-dispute Arbitration Agreements for Customer Accounts), via 24X Rule 9.3 (Pre-dispute Arbitration Agreements); (5) the 14000 Series of the FINRA Manual (Code of Mediation Procedures), via 24X Rule 9.7 (Mediation); and (6) FINRA Rule 5270 (Frontrunning of Block Transactions), via 24X Rule 12.14 (Frontrunning of Block Transactions).

⁴⁸⁷ See 17 CFR 240.0-12.

⁴⁸⁸ See 24X Exemption Request Letter, *supra* note 486.

⁴⁸⁹ See 24X Exemption Request Letter, *supra* note 486. 24X will provide such notice through a posting on the same website location where 24X posts its

⁴⁷⁶ See letter from David Sassoon, General Counsel, 24X, to Vanessa Countryman, Secretary, Commission, dated Feb. 6, 2024 ("24X 11(a) Letter").

⁴⁷⁷ See, e.g., Nasdaq Order, *supra* note 57; Securities Exchange Act Release Nos. 61419 (Jan. 26, 2010), 75 FR 5157 (Feb. 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (Mar. 12, 2008), 73 FR 14521 (Mar. 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving Nasdaq Options Market options trading); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979) ("1979 Release").

⁴⁷⁸ See 24X 11(a) Letter, *supra* note 476 at 2.

⁴⁷⁹ See *id.* at 3. 24X states that a member may cancel or modify the order, or modify the instructions for executing the order, after the order has been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. The Commission has stated that the non-participation condition is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542 (Mar. 17, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

⁴⁸⁰ See 24X 11(a) Letter, *supra* note 476, at 3.

⁴⁸¹ See, e.g., BATS Order, *supra* note 57, at 49505; DirectEdge Exchanges Order, *supra* note 84, at 13164.

⁴⁸² See, e.g., BATS Order, *supra* note 57 at 49505; DirectEdge Exchanges Order, *supra* note 84, at 13164. In considering the operation of automated execution systems operated by an exchange, the Commission stated that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution condition of Rule 11a2-2(T). See 1979 Release, *supra* note 477.

⁴⁸³ See 24X 11(a) Letter, *supra* note 476, at 3.

⁴⁸⁴ See, e.g., BATS Order, *supra* note 57, at 49505; DirectEdge Exchanges Order, *supra* note 84, at 13164. In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the

Using its authority under section 36 of the Exchange Act,⁴⁹⁰ the Commission is hereby granting 24X's request for an exemption, pursuant to section 36 of the Exchange Act, from the rule filing requirements of section 19(b) of the Exchange Act with respect to the rules that 24X proposes to incorporate by reference.⁴⁹¹ This exemption is conditioned upon 24X providing written notice to its Members whenever FINRA proposes to change a rule that 24X has incorporated by reference. This exemption is appropriate, in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules of more than one SRO.

V. Conclusion

It is ordered that the application of 24X for registration as a national securities exchange be, and it hereby is, granted.

It is furthered ordered that operation of 24X is conditioned on the satisfaction of the requirements below:

A. Participation in National Market System Plans. 24X must join the Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Nasdaq UTP Plan (or any successors thereto); the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS; the Regulation NMS Plan to Address Extraordinary Market Volatility; the Plan for the Selection and Reservation of Securities Symbols; and the National Market System Plan Governing the Consolidated Audit Trail.

B. Intermarket Surveillance Group. 24X must join the Intermarket Surveillance Group.

C. Minor Rule Violation Plan. A Minor Rule Violation Plan filed by 24X

own rule filings pursuant to Rule 19b-4 under the Exchange Act, within the required time frame. The website posting will include a link to the location on the FINRA website where FINRA's proposed rule change is posted. *See id.*

⁴⁹⁰ 15 U.S.C. 78mm.

⁴⁹¹ The Commission previously exempted other exchanges from the requirement to file proposed rule changes under Section 19(b) of the Exchange Act. *See, e.g.,* IEX Order, *supra* note 65; ISE Mercury Order, *supra* note 75; Securities Exchange Act Release No. 68341 (Dec. 3, 2012), 77 FR 73065, 73067 (Dec. 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC ("MIAX Exchange")) ("MIAX Order"); Securities Exchange Act Release No. 79543 (Dec. 13, 2016), 81 FR 92901, 92903 (Dec. 20, 2016) (File No. 10-227) (order granting registration of MIAX PEARL, LLC ("MIAX PEARL Order")), BATS Order, *supra* note 57; DirectEdge Exchanges Order, *supra* note 84.

under Rule 19d-1(c)(2)⁴⁹² must be declared effective by the Commission.

D. Rule 17d-2 Agreement. An agreement pursuant to Rule 17d-2⁴⁹³ that allocates regulatory responsibility for those matters specified above⁴⁹⁴ must be declared effective by the Commission, or 24X must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. Participation in Multi-Party Rule 17d-2 Plans. 24X must become a party to the multi-party Rule 17d-2 agreement concerning the surveillance, investigation, and enforcement of common insider trading rules and the agreement concerning certain Regulation NMS and Consolidated Audit Trail rules.

F. RSA. 24X must finalize the provisions of the RSA with its regulatory services provider, as described above,⁴⁹⁵ that will specify the 24X and Commission rules for which the regulatory services provider will provide certain regulatory functions, or 24X must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

It is further ordered, pursuant to section 36 of the Exchange Act,⁴⁹⁶ that 24X shall be exempted from the rule filing requirements of section 19(b) of the Exchange Act with respect to the FINRA rules that 24X proposes to incorporate by reference into its rules, subject to the conditions specified in this Order.

By the Commission.

Stephanie J. Fouse,

Assistant Secretary.

[FR Doc. 2024-28551 Filed 12-5-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101793; File No. SR-NASDAQ-2024-071]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

December 2, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁴⁹² 17 CFR 240.19d-1(c)(2).

⁴⁹³ 17 CFR 240.17d-2.

⁴⁹⁴ *See supra* section III.C.3. (discussing Rule 17d-2 agreements).

⁴⁹⁵ *See supra* section III.C.2. (discussing 24X's RSA with FINRA).

⁴⁹⁶ 15 U.S.C. 78mm.

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 18, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to establish fees for its expanded co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* Securities Exchange Act Release No. 34-101078 (September 5, 2024), 89 FR 77937 (September 24, 2024) (SR-NASDAQ-2024-054).

Density Cabinets, (ii) an installation fee for cabinets in NY11–4, (iii) fees for power installation in NY11–4, and (iv) fees for power distribution unit options in NY11–4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11–4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11–4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11–4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11–4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets.

Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components.

Installation Fee for Cabinets in NY11–4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11–4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11–4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11–4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11–4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11–4 include uniform, wider cabinets (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹ It largely reflects a pass-through to customers of costs charged by Nasdaq’s vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq’s administrative costs, which is comparable to its mark-up on existing installations.

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

Installation Fee for Cabinet Power in NY11–4

The cabinet power options for NY11–4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11–4 and one of these options must be selected for cabinets in NY11–4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11–4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11–4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11–4 and update the fee schedule accordingly. For NY11–4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11–4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq’s vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq’s administrative costs. As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units (“PDUs”) ¹¹ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3 ¹² power

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11–4, the Super High Density Cabinet in NY11–4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

distribution units in NY11–4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee

amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components. Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Lastly, the installation fee largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁶ warranting a higher fee. Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. Finally, the Exchange believes that the proposed

fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁷ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience

¹⁷ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 20% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated July 3, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. 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.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ *Supra* note 10.

to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11–4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in

furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–NASDAQ–2024–071 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–NASDAQ–2024–071. 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–NASDAQ–2024–071 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–28549 Filed 12–5–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101785; File No. SR–Phlx–2024–62]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

December 2, 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 November 21, 2024, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its expanded co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-

4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components.

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-

4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹ It largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations.

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

³ See Securities Exchange Act Release No. 34-101079 (September 5, 2024), 89 FR 77931 (September 24, 2024) (SR-PHLX-2024-47).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 4 [sic].

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units (“PDUs”) ¹¹ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3 ¹² power distribution units in NY11–4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of

reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange’s proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange’s current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components. Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Lastly, the installation fee largely reflects a pass-through to customers of costs charged by Nasdaq’s vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq’s administrative costs, which is comparable to its mark-up on existing installations. Third, the Exchange believes that the power

installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁶ warranting a higher fee. Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq’s vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq’s administrative costs. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁷ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to

¹⁶ *Supra* note 11.

¹⁷ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 20% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated July 3, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. 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.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11–4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx–2024–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR-Phlx–2024–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx–2024–62 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101782; File No. SR–IEX–2024–27]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide that DEEP+ Data Will Be Included in the Exchange's HIST Data Product

December 2, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b–4 thereunder,³ notice is hereby given that, on November 27, 2024, the Investors Exchange LLC (“IEX” 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.

¹⁹ 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.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to provide that DEEP+ data will be included in its HIST⁶ Data Product. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁷ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁸

The text of the proposed rule change is available at the Exchange's website at www.iextrading.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is making this filing to provide that DEEP+ data will be included in its HIST Data Product.

IEX introduced HIST in 2017.⁹ HIST is “a data product that offers historical data.”¹⁰ At the time IEX introduced HIST, the Exchange offered two real-time data products: TOPS,¹¹ an uncompressed data feed that offers aggregated top of book quotations for all displayed orders resting on the Order Book; and DEEP,¹² an uncompressed data feed that provides aggregated depth of book quotations for all displayed

orders resting on the Order Book at each price level.¹³ Thus, in the 2017 filing to adopt HIST, IEX described HIST as including “the same substantive data that is provided in real time via TOPS and DEEP on a T+1 basis via the Exchange's public website, free of charge.”¹⁴

IEX recently filed an immediately effective rule change proposal to introduce a new data product, DEEP+, which will disseminate, on a real-time basis, order-by-order information for all displayed orders resting on the Order Book for securities traded on IEX and execution information (*i.e.*, last sale information) for executions on the Exchange.¹⁵ While DEEP+ and DEEP will both provide information about all displayed orders resting on the IEX Order Book (and last sale information), DEEP+ will provide information about each displayed resting order, while DEEP will continue to provide information about the total volume of displayed interest resting at any price.¹⁶ IEX plans to introduce DEEP+ on December 9, 2024.¹⁷

While IEX Rule 11.330(a)(5), which describes HIST, is not specific as to which historical data is included therein, IEX's 2017 rule filing adopting HIST provided that TOPS and DEEP data would be included, as noted above. Accordingly, the Exchange is making this rule filing to provide that HIST will also include DEEP+ data. IEX is not proposing to modify the language in Rule 11.330(a)(5) which will continue to state: “HIST. Historical Data is a data product that offers historical data.” IEX notes that other exchanges that offer an historical data product do not provide specificity on which of their market data products are included in their historical data products.¹⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5),²⁰ in particular, in that it would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to add the same substantive data that IEX will provide in real-time via the new DEEP+ data product to HIST, thereby providing additional transparency regarding historical IEX displayed orders to Members²¹ and other users of IEX data products.

As discussed in the Purpose section, IEX publishes the HIST file, which contains the same substantive data that is provided in real-time via TOPS and DEEP, to its website after the close of trading, where it is offered free of charge. Adding DEEP+ data to HIST is fully consistent with this approach. Further, other exchanges offer depth of book data in their historical data products in a comparable manner.²² Therefore, the Exchange does not believe that this proposed rule change raises any new or novel issues not already considered by the Commission.

IEX also believes that the proposed rule change is nondiscriminatory since all Members and other market participants will be able to access DEEP+ data through HIST.

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. As described in the Purpose and Statutory Basis sections, this rule filing merely proposes to add to its HIST data product the substantive data that will be provided in real-time via the new DEEP+ market data product, which will provide enhanced transparency to Members and other users of IEX data products regarding historical displayed orders on IEX.

With regard to intra-market competition, the proposed rule change will apply equally to all Members and other market participants on a fair, impartial and nondiscriminatory basis without imposing any new burdens. Access to HIST is optional and will be available to all Members and market participants in the same manner.

With regard to inter-market competition, other exchanges are free to adopt similar data products subject to

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ See IEX Rule 11.330(a)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4.

⁹ See Securities Exchange Act Release No. 80845 (June 1, 2017), 82 FR 26552 (June 6, 2017) (SR-IEX-2017-19).

¹⁰ See IEX Rule 11.330(a)(5).

¹¹ See IEX Rule 11.330(a)(1).

¹² See IEX Rule 11.330(a)(2).

¹³ TOPS and DEEP also include execution information (*i.e.*, last sale information) for executions on the Exchange and IEX Auction information for any IEX-listed securities. See IEX Rule 11.330(a)(1) and (2).

¹⁴ See *supra* note 9. HIST files are posted to the IEX website after the close of trading and can be accessed at <https://iextrading.com/trading/market-data/#hist-download>.

¹⁵ See Securities Exchange Act Release No. 101231 (October 2, 2024), 89 FR 81608 (October 8, 2024) (SR-IEX-2024-20); see also IEX Rule 11.330(a)(3).

¹⁶ *Id.*

¹⁷ See Trading Alert # 2024-037, available at <https://iextrading.com/alerts/#/275>.

¹⁸ See, e.g., Cboe BZX Rule 11.22(h) (“Historical Data. Historical Data is a data product that offers historical equities data”); MEMX Rule 13.8(d) (“MEMOIR Historical Data. MEMOIR Historical Data is a data product that offers historical equities data”).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See IEX Rule 1.160(s).

²² See *supra* note 18.

the SEC rule filing process, and others have done so.²³

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)²⁴ of the Act and Rule 19b-4(f)(6)²⁵ thereunder. Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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 Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁹ permits the Commission to 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 proposal may be operative concurrent with IEX's planned implementation of DEEP+ on December 9, 2024. The Commission believes that the proposed rule change raises no novel issues and that waiver of the 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.³⁰

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)³¹ 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-IEX-2024-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-IEX-2024-27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also 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-IEX-2024-27 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-28539 Filed 12-5-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101792; File No. SR-OCC-2024-015]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to Its Governance Documents To Align With Recently Adopted SEC Governance Rules

December 2, 2024.

I. Introduction

On October 21, 2024, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (the "Proposed Rule Change") to amend its governance documents as part of an effort to achieve compliance with recently adopted governance requirements³ and to make changes identified during OCC's annual review process. The Proposed Rule Change was published for comment in the **Federal Register** on October 31, 2024.⁴ The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed

²³ See *supra* note 18.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ 17 CFR 240.19b-4(f)(6)(iii).

³⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³¹ 15 U.S.C. 78s(b)(2)(B).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98959 (Dec. 5, 2023), 88 FR 84454 (Dec. 5, 2023) (File No. S7-21-22) ("SEC Adopting Release"), <https://www.govinfo.gov/content/pkg/FR-2023-12-05/pdf/2023-25807.pdf>.

⁴ Securities Exchange Act Release No. 101444 (October 25, 2024), 89 FR 86868 (October 31, 2024) (File No. SR-OCC-2024-015) ("Notice").

below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

OCC is registered with the Commission as a clearing agency for the purpose of clearing standardized equity options. The Proposed Rule Change amends OCC's Board of Directors Charter and Corporate Governance Principles ("Board Charter"), Governance and Nominating Committee ("GNC") Charter, Risk Committee Charter, Technology Committee Charter, Compensation and Performance Committee ("CPC") Charter, Regulatory Committee Charter, Audit Committee Charter, Fitness Standards, Third-Party Risk Management Framework, and Article III of OCC's By-Laws (together, "governance documents"). OCC proposes such amendments in response to the new governance rules that apply to OCC.⁵ Specifically, OCC proposes changes to require that a majority of the Board and any Board-level committee are independent directors; establish policies and procedures to identify, mitigate, or eliminate conflicts of interest; and establish policies and procedures for monitoring and managing risks relating to third-party providers of core services. The amendments also make other conforming changes and typographical corrections.

A. Board Charter and By-Laws

OCC proposes to amend the Board Charter to provide that a majority of the Board and all Board-level committees be independent directors.⁶ As a conforming change, OCC would also remove references in the current Board Charter indicating that only the Audit Committee must be comprised of independent directors.

OCC proposes adding to the Board's mission an oversight role for service providers that provide core services to OCC. The oversight would be accomplished by overseeing senior management's review, risk assessment, and approval of agreements for service providers of core services, and by reviewing senior management's policies and procedures that govern relationships and manage risks for service providers of core services. The amendments to the Board Charter also would require the Board to evaluate

certain of senior management's actions related to such service providers, including senior management's efforts to monitor identified material issues with, document weaknesses or deficiencies of, and remedy significant deterioration in performance of such service providers.

The proposed changes to the Board Charter would remove statements indicating that a substantial portion of directors must be independent "of OCC and OCC's management," and instead state that the Board's policy is to require that a majority of directors be independent at all times. The proposed changes would also clarify the role of the GNC in selecting Exchange Directors, including a requirement that the GNC have a written evaluation process for Exchange Directors, and that the GNC will evaluate each Exchange Director before that director is elected by the Equity Exchange at each annual meeting of stockholders.

OCC proposes adding the word "additional" before "independence" to describe independence criteria for the Audit Committee. The amendments would also detail specific requirements the Board would use to determine whether an individual director meets the definition of Public Director in the Board Charter and Article III of the By-Laws. Further proposed amendments to the Board Charter would require the Board to have at least five directors who are not an associated person or employee of an entity or entity affiliate that is registered or exempt from registration with the Commission or Commodity Futures Trading Commission. The current requirement that a Public Director must not be affiliated with any national securities exchange or association, designated contract market, futures commission merchant, or broker or dealer in securities would be removed.

Finally, OCC proposes amending Article III, Section A of the By-Laws to require the GNC to nominate for Public Director a non-associated person or employee of an entity or entity affiliate that is registered or exempt from registration with the Commission or Commodity Futures Trading Commission before each annual meeting of stockholders where a Public Director is elected.

B. GNC Charter

OCC proposes amending the GNC Charter to provide that at least a majority of the Committee must be comprised of independent directors. The proposed changes also require the Chair to be a Public Director who is also an independent director. Under the

amendments, the GNC would be required to assist the Board in overseeing OCC's corporate governance processes, including evaluating Board candidates, to more closely align existing practice with rule text. This evaluation would include a new written process and a packet of materials containing background and other relevant information for all Board candidates. In addition, as part of the written evaluation process, the GNC would be required to identify, screen, and review individuals qualified to serve as Directors, and to document the outcome of the written evaluation process once completed.

OCC also proposes eliminating from the GNC Charter the terms "Member Directors" and "Public Directors" and instead using the term "Directors." Under the amendments, the GNC would be required to specify fitness standards for serving as a director that are documented in writing and approved by the Board. When evaluating director nominees, the GNC would be required to consider the views of other stakeholders who may be affected by the decisions of the Board, other than owners and Clearing Members. Finally, the GNC would be required to review and advise the board on whether directors are independent, and annually recommend for Board approval the appointment of directors to Board committees and assignment of Committee Chairs.

C. Risk Committee Charter

The proposed amendments to the Risk Committee Charter would require the GNC and the Board, in making their nominations, to take into consideration a broad array of market participants on risk management issues. The proposed amendments would also amend the Risk Committee Charter to provide that at least a majority of the Committee must be comprised of independent directors. Finally, the Risk Committee would be required to provide risk assessments to the Board for any service providers of core services.

D. Technology Committee Charter

OCC proposes amending the Technology Committee Charter to provide that at least a majority of the Technology Committee must be comprised of independent directors.

E. Compensation and Performance Committee ("CPC") Charter

OCC proposes amending the CPC Charter to provide that at least a majority of the Committee must be comprised of independent directors. In addition, OCC proposes expanding the

⁵ See SEC Adopting Release.

⁶ Under the amendments, such independence would need to meet the definition of that term in, and be determined in accordance with the requirements of, Rule 17Ad-25(a) under the Exchange Act. See Notice, 89 FR at 86869; Exhibit A (Board Charter) to File No. SR-OCC-2024-015.

description of the role of the CPC in overseeing OCC's human resources programs and requiring the CPC to oversee the development of human resources programs and policies, including talent acquisition, compensation performance management, diversity, equity, and inclusion programs, training and development, benefits, and succession planning for critical roles.

F. Regulatory Committee Charter

OCC proposes amending the Regulatory Committee Charter to provide that at least a majority of the Committee must be comprised of independent directors. The Regulatory Committee Charter also would be amended to correct minor grammatical errors identified in OCC's annual review.

G. Audit Committee Charter

OCC proposes amending the Audit Committee Charter to provide that at least a majority of the Audit Committee must be comprised of independent directors.

H. Fitness Standards

OCC proposes amending its Fitness Standards to specify that, when considering nominees for election or appointment to the Board, the GNC must consider whether the individual would help demonstrate that the Board has diverse skills, knowledge, and experience and whether the individual understands and considers the views of stakeholders who may be affected by Board decisions other than OCC's owners and Clearing Members.

OCC also proposes amending its Fitness Standards to align with the proposed changes to the description of Public Director and the proposed changes in OCC's Board Charter and By-Laws. Specifically, the proposed amendments would replace current language in the Fitness Standards prohibiting a director from having an affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker-dealer in securities with language precluding the director from being an associated person or employee of an exempt or registered entity or affiliate of the Commission or Commodity Futures Trading Commission, as described above. OCC also proposes adding that this requirement will not prevent a person from serving as a Public Director solely based on some other relationship with an entity described in the previous sentence.

I. Third-Party Risk Management Framework

OCC proposes amending its Third-Party Risk Management Framework to require enhanced lifecycle management by OCC's management and Board for third-party service providers of core services. The amendments would require OCC's Management Committee, as part of the process for onboarding a service provider of core services, to evaluate and document risks related to the service agreement with the service provider, assess the risks, and submit its findings to the Board for review and approval prior to onboarding. OCC's Management Committee also would be required to conduct and report to the Board its evaluation of ongoing monitoring for service providers of core services. In addition, the Management Committee would be required to monitor service provider performance and: (i) remedy significant deterioration in services; (ii) address changing risks or material issues; or (iii) assess and document weaknesses or deficiencies if the risks or material issues cannot be remedied. The Management Committee would be required to report to the Board any action taken by senior management to remedy significant deterioration in performance of the service provider for core services or address material issues with the service provider for core services, or to assess and document deficiencies that cannot be remedied.

Under the Proposed Rule Change, the Third-Party Risk Management Framework would be amended to provide that each OCC staff working group responsible for identifying and escalating risks throughout the third-party relationship lifecycle will have a chair and designated Management Committee member responsible for identifying matters to be escalated to the Management Committee. The proposed changes would also add a definition of "Service Provider for Core Services" as a service provider for core services that directly supports the delivery of clearance or settlement functionality or any other material purpose on an ongoing basis to OCC's business through a written agreement.

In Section I, Executive Summary, the description of Exchange-related risks would be broadened from those arising from "Exchanges" to those arising from "Exchange Relationships." This definition would be moved from a footnote to section V, Definitions.

In Section II, Risk Identification, OCC proposes expanding the definitions of both Information Technology and Security risks and Legal and Regulatory risks to include when third-parties are

unable to safeguard OCC's systems and data. The proposed changes would also add as specifically identified Legal and Regulatory risks: (i) when a third-party fails to fulfill its obligations to OCC; (ii) when OCC fails to fulfill its obligations to a third-party; and (iii) when a third-party fails to comply with regulatory standards and protocols.

In Section III, Relationship Lifecycle, OCC proposes changing the header to read "Third-Party Relationship Cycle," and adding the language "in compliance with agreement terms" to clarify current risk management responsibilities relating to third-party off-boarding about off-boarding third-parties.

In Section IV, Third-Party Relationship Management, the proposed changes would broaden the header from "Exchanges" to "Exchange Relationships," as noted above. As part of OCC's current on-boarding process, OCC staff is required to present a summary of due diligence and on-boarding activities to OCC's Board. Under the Proposed Rule Change, OCC staff would present such summaries to the Management Committee as well as a summary of legal documents and requirements to the Board of Directors. OCC proposes inserting language to require the escalation of identified legal risks to the Legal Department. Further, OCC proposes replacing "OCC Officer" with "authorized signatories" to define who would be responsible for executing agreements that address control and business requirements. OCC proposes removing language from the Off-Boarding section to avoid the implication that OCC is authorized to limit connectivity with an Exchange only in the context of off-boarding an exchange. The Vendors section would be amended to require Information Technology personnel to review requests for on-boarding new technology vendors and verify that the vendors meet enterprise requirements. The Framework would be amended to clarify that agreements with vendors are required to be negotiated through the process outlined in OCC's Legal Services Policy. Lastly, references that Third-Party Risk Management personnel monitor vendors throughout the Section IV would be eliminated because it is the vendor relationship managers who are responsible for monitoring vendors; Third-Party Risk Management personnel gather information and escalate if necessary.

In Definitions, Section V, the definition of "Watch Level" would be amended to add "risk management" to a list of events requiring a risk response.

Finally, OCC proposes combining the Exchange Working Group and Vendor

Risk Working Group to create the Exchange and Vendor Working Group throughout the Third-Party Risk Management Framework. OCC also proposes making non-substantive conforming changes throughout for consistency.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.⁷ Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."⁸

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁹ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.¹⁰ Moreover, "unquestioning reliance" on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.¹¹

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, for the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(A) and (F) of the Act¹² and Rules 17Ad-22(e)(2) and 17Ad-25 thereunder.¹³

A. Consistency With Section 17A(b)(3) of the Act

Section 17A(b)(3) of the Act requires, among other things, that OCC be so organized and has the capacity to be able to comply with the provisions of the Act and the rules and regulations thereunder,¹⁴ and that OCC's rules be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.¹⁵ Based on review of the record, and for the reasons discussed below,¹⁶ OCC's changes are consistent with OCC being so organized and having the capacity to comply with the provisions of the Act and the rules and regulations thereunder and with fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. Accordingly, the Proposed Rule Change is consistent with the requirements of Sections 17A(b)(3)(A) and (F) of the Act.¹⁷

B. Consistency With Rule 17Ad-22(e)(2) Under the Act

Rule 17Ad-22(e)(2) requires covered clearing agencies to, among other things, provide for governance arrangements that are clear and transparent,¹⁸ establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities,¹⁹ and specify clear and direct lines of responsibility.²⁰ In adopting Rule 17Ad-22(e)(2), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures, including, in part, whether the board of directors contains suitable members with the appropriate skills and incentives to fulfill the board's multiple roles, and whether the board of directors should include non-executive board members.²¹

OCC's proposed changes would strengthen OCC's written fitness standards for board nominees. Strengthening the criteria by which OCC evaluates both directors and nominees would help OCC review each nominee

in the broader context of the diversity of skills, knowledge, experience, and perspectives of the Board. Additionally, the proposed changes would insert independence requirements across OCC's governance documents (*e.g.*, Board and Board committee charters). An increased focus on director independence would help ensure that the members of OCC's board of directors have the appropriate incentives to fulfill the Board's roles. As a result, the proposed changes to fitness standards and as well as the broader changes across the governing documents are consistent with ensuring that OCC's board of directors contains members with the appropriate skills and incentives to discharge their duties.

The proposed changes further detail the lines of responsibility for management of third-party providers of core services. For example, the amendments to the Third-Party Risk Management Framework described above would require the Management Committee to evaluate and document risks for on-boarding, ongoing monitoring, and off-boarding and submit those findings to the Board for review and approval. Moreover, the proposed changes described above detail how each working group will have a chair and designated member responsible for identifying matters for escalation to the Management Committee. Separately, the proposed changes more clearly articulate certain reporting and escalation lines such as the escalating legal risks related to Exchange Relationships to OCC's Legal Department, Information Technology's role in on-boarding new vendors, and consolidation of certain working groups. Taken together, these procedures establish clear and direct lines of responsibility.

As described above, OCC proposes several changes to improve the clarity of its governance arrangements. For example, the proposed changes to the CPC Charter would, consistent with current practice, expand the description of the CPC's oversight role with regard to human resources at OCC. Similarly, OCC proposes to broaden the relationships contemplated in the Third-Party Risk Management Framework by replacing the references to "Exchanges" with references to "Exchange Relationships," and to clarify the who can execute legal agreements by replacing a reference to "OCC Officers" with a reference to "authorized signatories." Separately, the proposed changes would clarify the situations in which OCC can limit connectivity with an Exchange and that

⁷ 15 U.S.C. 78s(b)(2)(C).

⁸ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) ("Susquehanna").

¹² 15 U.S.C. 78q-1(b)(3)(F) and 15 U.S.C. 78q-1(b)(3)(F).

¹³ 17 CFR 240.17Ad-22(e)(2) and 17 CFR 240.17Ad-25.

¹⁴ 15 U.S.C. 78q-1(b)(3)(A).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ See *infra* Section III. B. (Consistency with Rule 17Ad-22(e)(2) under the Act).

¹⁷ 15 U.S.C. 78q-1(b)(3)(A) and 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 17 CFR 240.17Ad-22(e)(2)(i).

¹⁹ 17 CFR 240.17Ad-22(e)(2)(iv).

²⁰ 17 CFR 240.17Ad-22(e)(2)(v).

²¹ Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70806 (Oct. 13, 2016) (File No. S7-03-14) ("Standards for Covered Clearing Agencies").

risk management issues may be a basis for Watch Level-related responses.

Based on the foregoing, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(2) under the Act.²²

C. Consistency With Rule 17Ad-25 Under the Act

Rule 17Ad-25 requires, among other things, that covered clearing agencies establish: requirements that a majority of the board of directors²³ and any committee²⁴ with Board authority be independent directors²⁵; a nominating committee, written evaluation process, fitness standards, and evaluation of the independence of nominees and directors²⁶; and policies and procedures requiring that senior management evaluate and document risks and whether the risks can be managed for service providers of core services.²⁷

The changes described above require that OCC's Board, and each committee with Board authority be composed of a majority of independent directors, and that such independence is determined in accordance with Rule 17Ad-25. The proposed changes also contemplate a written processes for nominating, evaluating, and electing directors.

The proposed changes revise the Board Charter and Third-Party Risk Management Framework to require that senior management review, approve, monitor, and remediate risks with service providers of core services.²⁸ The proposed amendments also require that senior management perform ongoing monitoring of relationships with service providers of core services, and document whether the risks can be remedied, and to inform the Board of their evaluation. Further, the proposed changes articulate the Board's role in oversight of the management of service providers of core services through the reporting required of the Management Committee.

Based on the foregoing, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-25 under the Act.²⁹

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the

requirements of the Act, and in particular, Sections 17A(b)(3)(A) and (F) of the Act³⁰ and Rules 17Ad-22(e)(2) and 17Ad-25.³¹

It is Therefore Ordered pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR-OCC-2024-015) be, and hereby is, approved.³²

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-28548 Filed 12-5-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101780; File No. SR-OCC-2024-016]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation Concerning Enhancements to the System for Theoretical Analysis and Numerical Simulations ("STANS") and OCC's Comprehensive Stress Testing ("CST") Methodology, To Better Capture the Risks Associated With Short-Dated Options

December 2, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 22, 2024, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),³ and Rule

19b-4 thereunder,⁴ The Options Clearing Corporation ("OCC") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change in connection with enhancements to the modeling approach for implied volatility components within OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations ("STANS") and OCC's Comprehensive Stress Testing ("CST") methodology, to better capture the risks associated with short-dated options. Specifically, this proposed rule change would, as described below: (1) align the day-count convention between option price smoothing and implied volatility scenario generation, and (2) extend the term structure of the implied volatility shocks to cover implied volatility risk associated with options of less than one-month expiration.

The proposed changes to OCC's STANS Methodology Description⁵ and Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description⁶ ("CST Methodology Description") are contained in Exhibits 5A and 5B, to File No. SR-OCC-2024-016, respectively. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text. Within the documents, new, revised, and deleted text related to the proposed rule change have been incorporated in section 2.1.3 (Implied Volatilities Scenarios) and 2.1.4 (S&P 500 Implied Volatilities Scenarios) of the STANS Methodology Description and section 3.3.2 (Volatility Shock Model) of the

⁴ 17 CFR 240.19b-4.

⁵ OCC has filed the STANS Methodology Description and amendments thereto with the Commission. See Exchange Act Release Nos. 100528 (July 15, 2024), 89 FR 58836 (July 19, 2024) (SR-OCC-2024-008); 98101 (Aug. 10, 2023), 88 FR 55775 (Aug. 16, 2023) (SR-OCC-2022-012); 95319 (July 19, 2022), 87 FR 44167 (July 25, 2022) (SR-OCC-2022-001); 93371 (Oct. 18, 2021), 86 FR 58704 (Oct. 22, 2021) (SR-OCC-2021-011); 91833 (May 10, 2021), 86 FR 26586 (May 14, 2021) (SR-OCC-2021-005); 91079 (Feb. 8, 2021), 86 FR 9410 (Feb. 12, 2021) (SR-OCC-2020-016). OCC makes its STANS Methodology Description available to Clearing Members. An overview of the STANS methodology is on OCC's public website: <https://www.theocc.com/Risk-Management/Margin-Methodology>.

⁶ OCC has filed the CST Methodology Description and amendments thereto with the Commission. See Exchange Act Release Nos. 100455 (July 2, 2024), 89 FR 56452 (July 9, 2024) (SR-OCC-2024-006); 90827 (Dec. 30, 2020), 86 FR 659 (Jan. 6, 2021) (SR-OCC-2020-015); 89014 (June 4, 2020), 85 FR 35446 (June 10, 2020) (SR-OCC-2020-003); 87718 (Dec. 11, 2019), 84 FR 68992 (Dec. 17, 2019) (SR-OCC-2019-010); 87717 (Dec. 11, 2019), 84 FR 68985 (Dec. 17, 2019) (SR-OCC-2019-009); 83735 (July 27, 2018), 83 FR 37855 (Aug. 2, 2018) (SR-OCC-2018-008).

²² 17 CFR 240.17Ad-22(e)(2).

²³ 17 CFR 240.17Ad-25(b).

²⁴ 17 CFR 240.17Ad-25(e).

²⁵ 17 CFR 240.17Ad-25(a).

²⁶ 17 CFR 240.17Ad-25(c).

²⁷ 17 CFR 240.17Ad-25(i).

²⁸ As described above, OCC's proposed changes include adopting a definition of Service Provider for Core Services within its rules.

²⁹ 17 CFR 240.17Ad-25.

³⁰ 15 U.S.C. 78q-1(b)(3)(F).

³¹ 17 CFR 240.17Ad-22(e)(2) and 17 CFR 240.17Ad-25.

³² In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

CST Methodology Description. The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁷

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission. In its role as a clearing agency, OCC acts as a central counterparty ("CCP"), guarantying all contracts it clears. That is, OCC becomes the buyer to every seller and the seller to every buyer, which exposes OCC to risk because OCC is obligated to perform even when one of its members defaults. These risks include: (i) credit risk, which is the risk that OCC would not maintain sufficient financial resources to cover exposures; and (ii) liquidity risk, which is the risk that OCC would not have sufficient liquid resources to meet payment obligations when due.

OCC manages its credit and liquidity risks through various safeguards to ensure that it has sufficient financial resources in both form and amount in the event of a Clearing Member failure. To begin with, OCC periodically collects margin collateral from its Clearing Members, which is designed to cover the credit exposures they individually present to OCC with a high degree of confidence. OCC also maintains a Clearing Fund, which is a mutualized pool of financial resources to which each Clearing Member is required to contribute to ensure that OCC maintains sufficient qualifying liquid resources to manage its liquidity risk, and to address the tail risk that the margin collateral OCC collects from each Clearing Member might be insufficient to cover

OCC's credit exposure to a defaulting member in extreme but plausible market conditions. In general, OCC performs daily stress testing of its financial resources using scenarios designed to assess whether the resources collected are adequate and inform the size of OCC's financial resources ("Sizing Scenarios") and measure the potential exposures Clearing Members may present to OCC to determine whether calls for additional collateral in either margin or in the Clearing Fund would be needed ("Sufficiency Scenarios"). Clearing Member margin amounts are collected based on calculations obtained from STANS, while Clearing Fund contributions are default scenario-based amounts generated by the CST methodology.

Clearing Member portfolios contain a mix of products and positions in options of various tenors, as well as other cleared positions (e.g., futures, stock loans) and collateral (e.g., valued securities, delivery obligations, US treasuries, Canadian Government bonds, and cash). Over the past several years, the options markets in particular have experienced a significant increase in the trading of short-dated options ("SDOs"), which refer to option contracts with a maturity of less than or equal to one month to expiration.⁸ However, the increase in the volume of SDO trading and the larger concentration of SDO positions held from hedging and speculation activities present unique challenges to the risk management framework.

For these reasons, OCC carried out a study to examine the specific risks posed by SDOs (the "Study")⁹ including risks posed by the increase to volatility due to the feedback between options and equity hedging activity. OCC also analyzed the valuation of SDOs and option scenario pricing in OCC's 2-day margin period of risk ("MPOR")¹⁰ and assessed the margin risk of portfolios dominated by SDOs through sensitivity analysis of realized P&L and risk coverage metrics. OCC concluded from the Study that valuation of SDOs and options scenario pricing in the 2-day MPOR was in general reasonable, but that opportunities exist to improve model performance for Clearing Member portfolios dominated

by SDOs. Moreover, a reasonableness analysis of the mark-to-market pricing and theoretical price simulation of SDOs in the MPOR indicated that certain existing margin model assumptions having a direct impact on SDO risk coverage needed further enhancement and update.

Specifically, the Study referred to a difference between option price smoothing¹¹ that uses calendar day convention, and implied volatility¹² simulation that uses trading day convention. The usage of two day count conventions¹³ results in differences in implied volatility, especially when non-trading days make up a large portion of the time-to-expiration (e.g., on Fridays for options that expire the following Monday). In this regard, SDOs are far more sensitive to differences in day-count convention than contracts with longer expiries. In addition, OCC's model for simulating the theoretical prices assumes that the implied volatility shocks of the one-month tenor ("1M") are sufficient to cover the implied volatility changes for SDO tenors.¹⁴ However, empirical results indicate that the implied volatility changes from SDOs can be much larger than those for options with one month to expiration.¹⁵

OCC proposes to improve the theoretical price simulation of SDOs and enhance the modeling of the implied volatility risk associated with SDOs by: (1) aligning the day-count convention used between option price smoothing and its models for simulating implied volatility, and (2) extending the term structure¹⁶ to cover implied volatility risk associated with options expiring in less than one-month. The

¹¹ The smoothing algorithm is the process that OCC uses to estimate fair values for plain vanilla listed options based on closing bid and ask price quotes. See Exchange Act Release No. 86731 (Aug. 22, 2019), 84 FR 45188, 45189 (Aug. 28, 2019) (File No. SR-OCC-2019-005).

¹² Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the option's underlying security at expiration, which is reflected in the current option premium in the market.

¹³ The term "day count convention" refers to a standardized methodology for calculating the number of days between two dates. Both calendar and business day conventions are used by OCC in STANS and CST calculations.

¹⁴ The "tenor" of an option is the amount of time remaining to its expiration or maturity.

¹⁵ OCC has observed that the day-over-day at the money implied volatility changes for the 1W tenor are approximately twice that of the 1M tenor on certain risk factors such as SPX, RUT, QQQ, AAPL, TSLA.

¹⁶ The "term structure" of implied volatility is the curve that depicts the relationship between the implied volatilities of options with different expiration (or maturity) dates on the same underlying. Expiration and maturity are used interchangeably but reflect the same meaning.

⁷ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁸ See, e.g., Choe, *The Rise of SPX & ODTE Options* (July 27, 2023), available at <https://go.cboe.com/1/77532/2023-07-27/jfc83k>.

⁹ OCC has included the Study as confidential Exhibit 3A to File No. SR-OCC-2024-016.

¹⁰ OCC collects its credit resources with an assumption of a two-day MPOR (i.e., two days after the last good margin collection) and potential liquidity obligations are evaluated using the same concept and assuming the liquidation processes details in OCC's Default Management Policy.

proposed changes will be introduced to the Implied Volatilities Scenarios Model and S&P 500 Implied Volatility Simulation Model in STANS and the Volatility Shock component in CST. The impact of the proposed enhancements on Clearing Member margin and on CST is presented further below.

1. Purpose

Background

OCC's risk framework includes its STANS methodology used to calculate Clearing Member margin amounts, and its CST methodology used to stress test Clearing Member portfolios in order to determine the appropriate size of the Clearing Fund and allocate portions to Clearing Members commensurate with the risk they present to OCC.

STANS Overview

STANS is OCC's proprietary risk management system for calculating Clearing Member margin requirements. The STANS methodology utilizes large-scale Monte Carlo simulations to forecast price and volatility movements in determining a Clearing Member's margin requirement.¹⁷ OCC uses a smoothing algorithm to generate theoretical prices and volatilities for option contracts based on the fair value for plain vanilla listed options from closing bid and ask price quotes.¹⁸ OCC does this by first filtering out certain poor-quality quotes on contracts based on certain conditions and estimates the forward prices of the securities underlying these options. OCC then generates the theoretical option prices based on the filtered bid and ask quotes and constructs a volatility surface¹⁹ using the smoothed prices to approximate option contract prices. The output of the Smoothing Algorithm, consisting of various theoretical option contract prices and volatilities, is then used downstream as a starting point to simulate variations in implied volatility for option contracts.

Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and the current discount interest rate. In effect, the implied volatility is responsible for that portion of the

premium that cannot be explained by the current intrinsic value of the option (*i.e.*, the difference between the price of the underlying and the exercise price of the option), discounted to reflect its time value. OCC considers variations in implied volatility within STANS to ensure that the anticipated cost of liquidating options positions in an account recognizes the possibility that the implied volatility could change during the two-business day liquidation time horizon and lead to corresponding changes in the market prices of the options. Specifically, OCC models variations in implied volatility using its (1) Implied Volatilities Scenarios Model for non-S&P 500 based products, and (2) S&P 500 Implied Volatility Simulation Model for products in the S&P 500 group.²⁰

Implied Volatilities Scenarios Model

Using its current Implied Volatilities Scenarios Model, OCC models the variations in implied volatility used to re-price non-S&P 500 based options within STANS. Variations in implied volatility are modeled through a volatility surface by incorporating certain risk factors (*i.e.*, implied volatility pivot points) based on a range of tenors and option deltas²¹ into the models in STANS. These implied volatility pivot points consist of three tenors of one month, three months and one year, and three deltas of 0.25, 0.5, and 0.75, resulting in nine implied volatility risk factors.²² These pivot points are chosen such that their combination allows the model to capture changes in level, skew (*i.e.*, strike price), convexity, and term structure of the implied volatility surface.²³

The Implied Volatility Scenarios Model has certain limitations related to SDOs. First, the underlying prices and implied volatilities generated from the Smoothing Algorithm, which are an input to the Implied Volatility Scenarios Model, are generated using a calendar day convention, which is not consistent with the trading day convention used in the calibration of the model parameters. The misalignment in day-count conventions may result in over- or under-estimation of option prices based on the implied volatility scenarios. SDOs are more sensitive to day-count

convention alignment than contracts with longer expirations due to the proportionally larger difference in time to expiry between the trading day convention and calendar day convention for shorter dated tenors.

Second, the model imposes a flat term structure on SDOs, which forces the use of the implied volatility shock from the 1M tenor on all option contracts expiring in less than one month. Because the term structure for the Implied Volatilities Scenarios Model starts at the 1M tenor, the current model is not consistent with the observed dynamics of the underlying assets and the implied volatility surface for SDOs. This may lead to inadequate coverage for portfolios with concentrations in SDOs.

S&P 500 Implied Volatility Simulation Model

OCC uses the S&P 500 Implied Volatility Simulation Model for the S&P 500 product group.²⁴ The purpose of the S&P 500 Implied Volatility Simulation Model is to establish a consistent and robust framework for implied volatility simulation and provide natural offsets for volatility products with similar characteristics to S&P 500 implied volatility. The output of the S&P 500 Implied Volatility Simulation Model is used by OCC's options pricing model, as well as the Volatility Index Futures Model. The S&P 500 Implied Volatility Simulation Model is a Monte Carlo simulation model that captures the risk dynamics in the S&P 500 implied volatility surface utilizing standardized log-moneyness²⁵ and a fixed number of key tenors as well as skew to generate an S&P 500 1M at-the-money ("ATM") risk factor.²⁶ OCC then uses the generated implied volatility scenarios to produce option prices in margin estimation and stress testing.²⁷

The S&P 500 Implied Volatility Simulation Model has certain limitations related to SDOs. Like the Implied Volatilities Scenarios Model discussed above, the S&P 500 Implied Volatility Simulation Model uses a trading day convention in the calibration of the model, which is not consistent with the calendar day convention used in the generation of the input from the Smoothing Algorithm. As for the Implied Volatilities Scenarios Model, this misalignment may result in

¹⁷ See OCC Rule 601.

¹⁸ See Exchange Act Release No. 86731 (Aug. 22, 2019), 84 FR 45188 (Aug. 28, 2019) (SR-OCC-2019-005).

¹⁹ The "volatility surface" refers to a three-dimensional plot of the implied volatilities of the various options on the same stock reflecting time to maturity, and different strike prices for the option.

²⁰ See generally Exchange Act Release No. 95319, *supra* note 3, at 44168–69.

²¹ The "delta" of an option represents the sensitivity of the option price with respect to the price of the underlying security.

²² See Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072, 8073 (Feb. 11, 2022) (SR-OCC-2022-001).

²³ *Id.*

²⁴ See generally Exchange Act Release No. 95319, *supra* note 3, at 44168–69.

²⁵ The term "moneyness" of an option refers to the relationship between the strike price and the price of the option underlying.

²⁶ See Exchange Act Release No. 94165, *supra* note 20, at 8075.

²⁷ *Id.*

over- or under-estimation of option prices, particularly for SDOs. Second, the S&P 500 Implied Volatility Simulation Model uses a fixed number of key tenors beginning with the 1M tenor. Because the term structure for the S&P 500 Implied Volatility Simulation Model starts at the 1M tenor, the current model is not consistent with the observed dynamics of the underlying assets and the implied volatility surface for SDOs, which may lead to inadequate coverage for portfolios with concentrations in SDOs.

CST Overview

As described in the CST Methodology Description, OCC uses CST to analyze the adequacy of its financial resources in extreme but plausible scenarios. It enables OCC to better manage its risks by promoting OCC's ability to thoroughly monitor its potential exposure under varied sets of stressed market scenarios and provides it with the ability to review the sufficiency of its financial resources. Moreover, the methodology includes stress tests designed to size and monitor the sufficiency of both prefunded credit and liquidity resources. OCC relies upon a set of stress scenarios constructed pursuant to the CST Methodology Description, including both Sizing and Sufficiency scenarios.

CST is a scenario-based, one-factor risk model with four principal elements.²⁸ First, a set of risk drivers is selected based on the portfolio exposures of all Clearing Members in the aggregate.²⁹ Second, each individual underlying security from the portfolio of a Clearing Member is mapped to a key risk driver, to estimate the sensitivity for the beta³⁰ of the security with respect to the corresponding risk driver.³¹ Third, stress scenarios are generated by assigning a stress shock to each of the risk drivers, which drives the shock of an individual underlying security.³² Fourth, the aggregate risk exposure or shortfall of each portfolio is generated for each stress scenario for each Clearing Member and the Clearing Member Group level.³³ The CST methodology consists of several component models, including the Volatility Shocks, the VIX

Futures Prices Shocks, and Idiosyncratic Scenarios models.

Volatility Shocks

The Volatility Shocks model component of the CST methodology provides a method to generate implied volatility in a stress scenario for all individual option products that are cleared by OCC.³⁴ This model component is used to shock any option product cleared by OCC. Shocked implied volatility is needed at the product, expiration, and strike level to evaluate individual option implied volatilities in stressed market conditions, which is then used to determine options prices and calculate the profit and loss of Clearing Member accounts in stress scenarios. For all systemic stress scenarios,³⁵ the Cboe Volatility Index ("VIX") is used as the main risk driver in determining shocked implied volatility.³⁶

Two methods are used to generate strike-level shocked implied volatility from VIX shocks: (1) an approach for equity products, including equity ETFs, indexes and futures that have the S&P 500 Index ("SPX") as the risk driver; and (2) an approach used for options on all risk factors that do not have SPX as a risk driver. The term structure of SPX-driven implied volatilities is based on volatility betas versus VIX, while a standardized log-moneyness metric is used to model the implied volatility curves.³⁷ For non-SPX driven risk factors, the implied volatility shocks are based on historical volatility beta regressed directly against the VIX.³⁸

The Volatility Shocks component of CST has certain limitations related to SDOs. First, like the STANS models discussed above, the Volatility Shocks component uses a trading day convention in the calibration of model parameters, which is not consistent with the calendar day convention used by the Smoothing Algorithm. As discussed above, this misalignment may result in over- or under-estimation of option prices, particularly for SDOs. Second, Volatility Shock imposes a flat term structure for SDOs when calculating shocked implied volatility, which is not consistent with the observed dynamics of the underlying assets and the implied volatility surface for SDOs. These

limitations may result in inadequate shocks for SDOs.

VIX Futures Price Shocks

The VIX is an index for measuring implied volatility based on options on the SPX with approximately 30 days to expiration. OCC derives VIX futures prices shocks from SPX volatility betas and VIX index shocks using the VIX Futures Price Shocks component of CST.³⁹ The term structure of the VIX futures prices shocks is modeled from that of the SPX ATM implied volatility shocks. OCC first determines the term structure of the SPX volatility beta, by running regression of the 2-day returns of SPX ATM implied volatility with respect to the 2-day returns of the VIX index for different expirations, ranging from 1M to twelve months ("12M").⁴⁰ Through linear interpolation on the term structure curve of SPX volatility beta OCC determines the volatility beta at the VIX futures expiration and 30 days after, which are the basis to calculate VIX futures price shocks. As a final step a constraint is then applied to ensure that the VIX futures price shocks do not exceed the VIX index shock.

Like the Volatility Shocks model, the VIX Futures Price Shocks component imposes a flat term structure for SDOs when calculating shocked implied volatility, which is not consistent with the observed dynamics of the underlying assets and the implied volatility surface for SDOs. This limitation of the VIX Futures Price Shocks model may result in inadequate shocks for SDOs.⁴¹

Idiosyncratic Scenarios

OCC uses Idiosyncratic Scenarios to generate and capture the risk from extreme non-systemic events that may impact OCC's financial resources.⁴² Specifically, OCC captures the risk of extreme non-systemic market moves on single name equity securities (non-ETF, non-Index) through individual up and down shocks (assuming all other products are unchanged). Single-name equities are classified into large and small capitalization (cap) for the price shocks. Four types of idiosyncratic moves are constructed based on the

²⁸ See Exchange Act Release No. 83406 (Jun 11, 2018), 83 FR 28018, 28022 (June 15, 2018) (SR-OCC-2018-008).

²⁹ *Id.*

³⁰ The "beta" of a security is the sensitivity of the price of the security relative to the price of the security.

³¹ Exchange Act Release No. 83406, *supra* note 26, at 28022.

³² *Id.*

³³ *Id.*

³⁴ See generally *id.* at 28023.

³⁵ The term "systemic stress scenarios" are scenarios designed to capture risk to OCC in an extreme event impacting all positions driven by risk drivers.

³⁶ Exchange Act Release No. 83406, *supra* note 26, at 28023.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Exchange Act Release No. 87386 (Oct. 23, 2019), 84 FR 57911, 57913-14 (Oct. 29, 2019) (SR-OCC-2019-009).

⁴⁰ See *id.* at 57916 n. 29 and accompanying text.

⁴¹ Unlike the other model discussed herein, the VIX Futures Price Shocks model uses the SPX volatility beta with extended tenors less than 1 month from the Volatility Shocks model component and Dynamic VIX Calibration model component as inputs, and day-count convention alignment is not within the scope for this model component.

⁴² See generally Exchange Act Release No. 87386, *supra* note 37, at 57913.

market capitalization and direction of the price shock: large cap up, large cap down, small cap up and small cap down.⁴³ A fixed price shock for each of the four scenarios is calibrated from historical price return data such that probability of idiosyncratic moves is comparable to systemic scenarios and probability in all four scenarios is approximately equal. Based on price shocks, ATM implied volatility shocks are calibrated for each of the four scenarios.⁴⁴

The Idiosyncratic Scenarios component of CST shares the limitations related to SDOs discussed above with respect to the other models. Specifically, the Idiosyncratic Scenarios component uses a trading day convention in the calibration of model parameters, which is not consistent with the Smoothing Algorithm's calendar day convention. As discussed above, this misalignment may result in over- or under-estimation of option prices, particularly for SDOs. Second, like the Volatility Shocks model, Idiosyncratic Scenarios imposes a flat term structure for SDOs when calculating shocked implied volatility, which is not consistent with the observed dynamics of the underlying assets and the implied volatility surface for SDOs. These limitations may result in inadequate shocks for SDOs.

Proposed Change

OCC proposes to capture the risks associated with SDOs by applying enhancements to the implied volatility modeling approach to: (1) align the day-count convention between option price smoothing and implied volatility scenario generation, and (2) extend the term structure to cover implied volatility risk associated with options with less than one month to expiration. These enhancements will be implemented for model components in STANS and CST.

Day-Count Convention Alignment

At present, the implied volatility output from smoothing, determined using a calendar day convention, is directly applied in the initial implied volatility scenarios in STANS and CST. However, the calibration of the parameters used in implied volatility scenarios uses a trading day convention, which is also used to model forecasted variance as well as the shocks in CST. OCC proposes to align the day-count convention to be consistent between calibration and price smoothing in both STANS and CST.

In STANS, OCC proposes to align the day-count convention between price smoothing and its model components used for forecasting changes in implied volatility through amendments to the sections of the STANS Methodology Description that address the Implied Volatilities Scenarios Model and the S&P 500 Implied Volatility Simulation Model.⁴⁵ For the Implied Volatilities Scenarios Model (pivot-based), implied volatility levels would be initially converted into trading day convention before application of pivot scenario shocks. The shocked implied volatility scenarios would then be converted back to calendar day convention before being used to calculate shocked option price scenarios. For the S&P 500 Implied Volatility Simulation Model, the process for generating the shocked implied volatility scenarios for listed tenors would convert the initial implied volatility from using calendar day convention to using trading day convention followed by generation of the ATM implied volatility log-return scenarios for listed tenors. The skew shock scenarios would be generated next, followed by the shocked implied volatility scenarios. The outputs of the shocked implied volatility scenarios would then be converted back to calendar day convention before calculating the theoretical option price scenarios. These conversion steps taken together would then align the day-count convention used in both option price smoothing and implied volatility simulations.

Similarly, OCC would align the day-count convention of the Implied Volatility Shocks in CST through conversion of the initial volatility surface from the output of the Smoothing Algorithm to business day convention before application of any volatility shocks.⁴⁶ After the volatility shock is applied, the shocked implied volatility would then be scaled back to calendar day convention, before being used downstream for option pricing in CST. These changes would be reflected in amendments to the CST Methodology Description's section that addresses the Volatility Shock Model. With respect to the Idiosyncratic Scenarios, the CST methodology already provides that after calculating the shocked ATM volatility,

the shocked implied volatility for all the strikes in the expiration follows the same methodology as for the Volatility Shock Model.

Extension of the Term Structure

At present, the STANS Implied Volatilities Scenarios model uses a flat term structure for options with listed tenors that are shorter than one month, which means that the implied volatility shock is derived from the 1M key tenor or pivot. OCC proposes to change the Implied Volatility Scenarios term structure for the implied volatility simulation of all non-SPX related risk factors, such that for points with shorter than one month to maturity, a squared-root decay is applied with respect to one month to expiration up to a predetermined shortest time to maturity. For the S&P 500 Implied Volatility Simulation Model term structure and SPX related risk factors, the applicable sections of the STANS Methodology Description would be updated to provide for a shorter key tenor than the current 1M time to maturity.

With respect to the CST Volatility Shocks model, which uses the volatility beta from the 1M tenor for SDOs, OCC proposes to extend the volatility beta approach to cover constant maturity tenors of less than one-month expiration by adding constant maturity tenors at the 1-week ("1W") and 2-week ("2W") key points of the term structure. Similarly, for the VIX Futures Price Shocks model, OCC proposes that the volatility beta for listed tenors that are less than the 1W tenor and down to the 3-day ("3D") tenor would be linearly interpolated from the 1W tenor and 2W tenor volatility betas, *i.e.*, the 1W and 2W tenor expirations would be added as inputs to the term structure of SPX volatility betas. As for Idiosyncratic Scenarios, the term structure would be extended from 1M down to the 1W tenor and 2W tenor. These changes would be applied to the section of the CST Methodology Description that addresses the Volatility Shock Model, the same methodology for which also applies to the Idiosyncratic Scenarios Models as described above. In addition, this change would also apply to the VIX Futures Price Shock Model because the Volatility Shock Model's method is incorporated by reference in the section that describes the volatility beta shocks applied to volatility instruments.

OCC also proposes to update the day count to the more precise value of 365.25 within the CST Methodology Description when referring to calendar days in a year and also when used in a formula. This amendment to the CST Methodology Description conforms with

⁴⁵ OCC would also make conforming changes to the whitepapers for these models. OCC has provided updates to its STANS whitepapers for the impacted models in confidential Exhibit 3B and 3C to File No. SR-OCC-2024-016.

⁴⁶ OCC would also make conforming changes to the whitepapers for these models. OCC has provided updates to its CST whitepapers for the impacted models in confidential Exhibit 3D and 3F to File No. SR-OCC-2024-016.

⁴³ *Id.*

⁴⁴ *Id.*

how the system was designed to be consistent with the day-count convention specified in the STANS Methodology Description. Since the CST system already uses a 365.25 day count convention, the proposed change to correct the documentation would have no impact on stress test results. Additionally, OCC plans to make several other minor non-substantial typographical changes throughout the document.

In addition, OCC proposes to further revise the relevant sections of the STANS Methodology Description concerning the S&P 500 Implied Volatility Simulation model to eliminate redundant and duplicative information. Specifically, OCC proposes to remove sections related to the generation of the simulation of certain shocks that are duplicative of information covered in the STANS Methodology Description's discussion of the theory and specifications for that model. The sections related to the simulation of the shocked implied volatility scenarios would be amended to instead refer to those previous sections, which would be updated to reflect the two changes proposed herein.

Impact Analysis

OCC has reviewed the potential impact of the proposed changes on margin across all Clearing Member tier accounts over a 15-month period, between July 2023 and September 2024. OCC observed that the proposed enhancements would lead to an average daily total margin⁴⁷ increase of 0.58% (approximately \$0.2 billion, calculated based on the average daily margin of nearly \$38 billion) across all accounts and activity dates, with the daily total margins falling in a narrow range between the largest decrease of 0.81% (approximately \$0.3 billion) to the largest increase of 3.21% (approximately \$1.1 billion). The results further demonstrated that the SDO enhancements had a larger measurable impact for accounts with high concentrations of short-dated options.

OCC also reviewed the potential impact on CST for the proposed model enhancements based on backtesting results over the same time period. OCC observed that the proposed changes had a relatively small impact on the Cover 1 and Cover 2 shortfalls used in Sufficiency and Sizing Scenarios for the leading Clearing Member Groups. The impact varied among Clearing Members, influenced by factors such as portfolio size, product diversity within those

portfolios, and the concentration of SDO positions. Smaller Clearing Members with a high concentration of SDO positions experienced relatively more meaningful impacts.

With respect to Sizing Scenarios impacts, OCC observed a decrease in the average Cover 2 shortfall for the 1-in-80-Year Rally Scenario of 0.1% (approximately \$12.7 million) with the daily variation falling in a narrow range between the largest decrease of 3.18% to the largest increase of 0.53%. For the Cover 2 shortfall on the 1-in-80-Year Decline Scenario OCC observed an average decrease of 0.47% (approximately \$65 million) with the daily variation falling in a narrow range between the largest decrease of 3.17% to the largest increase of 1.16%.

Similarly, regarding Sufficiency Scenarios impacts, OCC observed a decrease in the average Cover 1 shortfall for the 1987 Crash Scenario of 0.39% (approximately \$37 million) with the daily variation falling in the range between the largest daily decrease of 3.15% and largest daily increase of 1.97%. For the Largest Rally from 2008 Sufficiency Scenario, the daily average Cover 2 Shortfall increased by around 0.22%, which is about \$16 million. The shortfall ranged between a decrease of \$208 million and an increase of \$116 million, which is about a decrease of 3.54% to an increase of 1.90%. For the Largest Rally from 2008—Historical Beta Sufficiency Scenario,⁴⁸ the daily average Cover 2 Shortfall decreased by around 0.1%, which is about \$7 million. The shortfall ranged between a decrease of \$196 million and an increase of \$143 million, which is about a decrease of 1.93% to an increase of 1.41%.

Overall, OCC observed a reduction to the Clearing Fund size of around 0.14% (approximately \$14 million) based on the changes in Cover 2 shortfalls in Sizing Scenarios. OCC believes that such changes to margin and Cover 1 Sufficiency Scenarios and Cover 2 Sizing Scenarios are commensurate with the risks presented by Clearing Members SDO trading activities.

Implementation and Timeframe

The proposed margin model and CST methodology changes will be integrated into OCC's current production system, and implemented within 180 days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce the implementation date of the proposed changes by an Information

Memorandum posted to its public website at least 2 weeks prior to implementation.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act⁴⁹ and Rules 17Ad-22(e)(6)⁵⁰ and (e)(7)⁵¹ thereunder. Section 17A(b)(3)(F) of the Act⁵² requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and in general, to protect investors and the public interest. As described above, OCC could be exposed to increased credit and liquidity risk if the margin and Clearing Fund models do not adequately capture changes to the dynamic behavior of the implied volatility associated with portfolios dominated by SDO positions. As discussed above, OCC believes the proposed enhancements improve the model performance for portfolios with high SDO concentration. The output of these models would be used by OCC to calculate margin and Clearing Fund requirements designed to limit its credit and liquidity exposures to participants and ensure that OCC is able to continue the prompt and accurate clearance and settlement of its cleared products. The collection of margin and Clearing Fund helps to protect investors and the public interest by ensuring OCC has sufficient resources to manage a potential Clearing Member default that may otherwise impose unexpected costs on non-defaulting Clearing Members and, ultimately, their customers. For these reasons, OCC believes the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, and, thereby, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.⁵³

OCC also believes that the proposed changes are consistent with Rule 17Ad-22(e)(6).⁵⁴ In particular, paragraphs (i), (iii), and (v) of Rule 17Ad-22(e)(6)⁵⁵ require a covered clearing agency that provides central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system

⁴⁷ Margin is calculated as the sum of requirement shortfall and stress test add-on charge.

⁴⁸ OCC notes that backtesting data for this scenario is limited due to its recent deployment and use in production.

⁴⁹ 15 U.S.C. 78q-1.

⁵⁰ 17 CFR 240.17Ad-22(e)(6).

⁵¹ 17 CFR 240.17Ad-22(e)(7).

⁵² 15 U.S.C. 78q-1(b)(3)(F).

⁵³ *Id.*

⁵⁴ 17 CFR 240.17Ad-2(e)(6).

⁵⁵ 17 CFR 240.17Ad-2(e)(6)(i), (iii), (v).

that (1) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; (2) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and (3) uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. As noted above, OCC's current models in STANS may not adequately capture the implied volatility behaviors associated with SDO in portfolios that may be dominated by SDO positions, which could result in inadequate margin requirements. As described in detail above, OCC believes that aligning the day count convention and extending the term structure in OCC's margin system to take into consideration SDO specific attributes, are appropriate methods to enable OCC to measure SDO credit exposure and produce margin requirements commensurate with the risks presented by SDO trading activities, and as designed enables OCC to calculate margin sufficient to cover SDO exposure from Clearing Member accounts with high concentrations of short-dated options. The proposed changes are designed to enhance model outputs to produce margin requirements that are commensurate with the risks presented by portfolios containing SDO positions. As a result, OCC believes that the proposed changes are reasonably designed to calculate margin commensurate with risks and particular attributes of SDO and sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default, and uses an appropriate method to measure credit exposures that accounts for the relevant SDO product risk factors in a manner consistent with Rules 17Ad-22(e)(6)(i), (iii) and (v).⁵⁶

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁷ The proposed alignment of the calendar convention between price smoothing and model calibration, and the extension of the term structure for implied volatility and volatility shocks, would be used by OCC to manage its

credit and liquidity risk across all Clearing Members. Accordingly, OCC does not believe that the proposed rule change would unfairly hinder access to OCC's services.

While the proposed rule change may impact different accounts to a greater or lesser degree depending on the composition of SDO positions in each account, OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed above, OCC is obligated under the Exchange Act and the regulations thereunder to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things, considers, and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market.⁵⁸ Overall, the impact analysis indicates there are significant improvements in performance and margin coverage for SDOs from the proposed model enhancements.

Moreover, while the composition of SDOs within Clearing Member portfolios may drive margin and scenario charges that may be higher or lower than under the current regime, nevertheless OCC believes that margin coverage improvements occur with the adoption of the proposed enhancements. These enhanced model components would utilize a more consistent approach to calendar conventions, while the term structure is also extended to account for SDO tenors, which directly address certain limitations within the current implementation of STANS and CST models. In addition, the proposed model enhancements are expected to produce margin requirements that are more commensurate to the risks generated from holding SDO positions within Clearing Member portfolios, and therefore consistent with OCC's obligations under the Exchange Act and regulations thereunder. Accordingly, OCC believes that the proposed rule change would not impose any burden or impact on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not, and are not, intended to be solicited with respect to the proposed change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the selfregulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-OCC-2024-016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-OCC-2024-016. 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

⁵⁶ *Id.*

⁵⁷ 15 U.S.C. 78q-1(b)(3)(I).

⁵⁸ See 17 CFR 240.17Ad-2(e)(6)(i).

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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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-OCC-2024-016 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-28538 Filed 12-5-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101789; File No. SR-MIAX-2024-41]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

December 2, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 19, 2024, Miami International Securities Exchange, LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Options Exchange Fee Schedule ("Fee Schedule") to (1) update the Exchange's email domain; and (2) delete all references and transaction fees and rebates for mini-options.

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) update the Exchange's email domain; and (2) delete all references and transaction fees and rebates for mini-options.

Proposal To Amend the Footnote Definition of "Affiliate" in Section 1)a)i of the Fee Schedule

The Exchange proposes to amend the MIAX email domain in footnote #1 of the Members and Their Affiliates In Priority Customer Rebate Program Volume Tier 3 or Higher table in Section 1)a)i of the Fee Schedule.

Currently, footnote #1 in the Fee Schedule provides, in relevant part, that ". . . A MIAX Market Maker appoints an EEM and an EEM appoints a MIAX Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective . . . " MIAX started using the new domain

([@miaxglobal.com](mailto:membership@miaxglobal.com)), instead of the old domain ([@miaxoptions.com](mailto:membership@miaxoptions.com)), and all firms are required to include the new domain ([@miaxglobal.com](mailto:membership@miaxglobal.com)) as of June 1, 2023.³ The Exchange now proposes to replace the old email domain (membership@miaxoptions.com) with the new email domain (membership@miaxglobal.com) in footnote #1 in the Fee Schedule. Accordingly, with the proposed changes, footnote #1 will read as follows:

For purposes of the MIAX Options Fee Schedule, the term "Affiliate" means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, ("Affiliate"), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An "Appointed Market Maker" is a MIAX Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an "Appointed EEM" is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Market Maker) that has been appointed by a MIAX Market Maker, pursuant to the following process. A MIAX Market Maker appoints an EEM and an EEM appoints a MIAX Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxglobal.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties.

Proposal To Delete All References to Mini-Options

The Exchange proposes to delete all outdated references to mini-options in the Fee Schedule. On April 17, 2013, the Exchange began listing and trading mini-options that were options contracts on a select number of high-priced and

³ See "MIAX Exchange Group—Options and Equities Markets—Final Reminder: New email domain," available at <https://www.miaxglobal.com/alert/2023/06/01/miax-exchange-group-options-and-equities-markets-final-reminder-new-email-1>.

⁵⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

actively traded securities, each with a unit of trading ten times lower than that of standard-sized options contracts.⁴ Mini-options never gained significant market acceptance and have not achieved the expected level of traction or success in its target market. Accordingly, all mini-options were delisted several years ago and the Exchange does not have plans to re-list them in the foreseeable future. As the Exchange no longer offers mini-option contracts, the Exchange proposes to delete all references to mini-options to provide greater clarity to Members⁵ and the public regarding the Exchange's offerings and Fee Schedule. The Exchange also notes that other exchanges filed similar proposals to delete references to mini-options.⁶ In the event that the Exchange desires to list mini-options in the future, the Exchange will file a rule change with the Securities and Exchange Commission (the "Commission") to adopt rules to list mini-options and corresponding fees and rebates for transactions in mini-options, if applicable.

Specifically, the Exchange proposes to delete "except mini-options" at the end of the second sentence of the explanatory paragraph and delete "MIAX Market Makers will be assessed a \$0.02 per executed contract fee for transactions in mini-options," which is the third sentence of the explanatory paragraph below the Members and Their Affiliates In Priority Customer Rebate Program Volume Tier 3 or Higher table in Section 1(a)(j) of the Fee Schedule. The Exchange proposes to delete the two columns for mini-options transaction fees in Section 1(a)(ii) of the Fee Schedule. The Exchange proposes to delete "mini-options," in the first explanatory paragraph below cPRIME Agency Order Break-up Table in Section 1(a)(iii) of the Fee Schedule. The

Exchange proposes to delete "mini-options," in the last explanatory paragraph below the cPRIME Agency Order Break-up Table in Section 1(a)(iii) of the Fee Schedule. The Exchange proposes to delete "mini-options," in the first explanatory paragraph below the Professional Rebate Program fee table in Section 1(a)(iv) of the Fee Schedule. The Exchange proposes to delete the sentence that states "Transaction fees in mini-options will be 1/10th of the standard per contract fee or rebate described in the table above for the PRIME Auction," in the explanatory paragraph in Section 1(a)(v) of the Fee Schedule. The Exchange proposes to delete "including mini options," in the first sentence of the first explanatory paragraph in Section 1(a)(xi) of the Fee Schedule. The Exchange proposes to delete the last two rows of the table that provides the marketing fee for mini-options in Section 1(a)(xi) of the Fee Schedule. The Exchange proposes to delete "including Mini Options," in the first sentence of the explanatory paragraph of Section 2(b) of the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed changes are consistent with Section 6(b) of the Act⁷ in general, and further the objectives of Section 6(b)(1) of the Act,⁸ in particular, in that they are designed to enforce compliance by the Exchange's Members and persons associated with its Members, with the provisions of the rules of the Exchange. In particular, the Exchange believes that the proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule by updating the Exchange's new email domain and removing outdated references to mini-options that are no longer offered by the Exchange. The proposed changes will also make it easier for Members and non-Members to interpret the Exchange's Fee Schedule.

The Exchange believes that the proposed changes also further the objectives of Section 6(b)(5) of the Act. In particular, they are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors

and the public interest. The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule by updating the Exchange's new email domain and removing outdated references to mini-options that are no longer offered by the Exchange. The proposed changes to remove obsolete language in the Fee Schedule include the removal of outdated references to mini-options. Mini-options are no longer offered by the Exchange since mini-options failed to gain significant market acceptance and did not achieve the expected level of traction or success in its target market. Removing references to mini-options would render the Exchange's Fee Schedule more accurate and reduce potential investor confusion. The Exchange does not propose to amend any fees to be assessed to Members or non-Members. It is in the public interest for the Exchange's Fee Schedule to be accurate and consistent so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intra-market competition as there is no functional change to the Exchange's System⁹ or the Exchange's fees and because the Exchange's Fee Schedule applies to all market participants equally. The proposal will have no impact on competition as it is not designed to address any competitive issue but rather is designed to remedy minor issues and provide added clarity to the Fee Schedule, including removing outdated references to mini-options that are no longer offered by the Exchange. Mini-options failed to gain significant market acceptance and have not achieved the expected level of traction or success in its target market; accordingly, the Exchange delisted all mini-options several years ago and does not have plans to re-list them in the

⁴ See Securities Exchange Act Release No. 69136 (March 14, 2013), 78 FR 17259 (March 20, 2013) (SR-MIAX-2013-06).

⁵ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁶ See Securities Exchange Act Release No. 88374 (March 12, 2020), 85 FR 15522 (March 18, 2020) (SR-Phlx-2020-08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Phlx Rules To Remove References to Mini Options); see also Securities Exchange Act Release No. 88458 (March 23, 2020), 85 FR 17372 (March 27, 2020) (SR-MRX-2020-07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Removal of Obsolete Listing Rules); see also Securities Exchange Act Release No. 88456 (March 23, 2020), 85 FR 17126 (March 26, 2020) (SR-ISE-2020-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Removal of Obsolete Listing Rules).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

foreseeable future.¹⁰ The proposed changes would apply uniformly to all market participants. The proposed changes do not favor certain categories of market participants in a manner that would impose an undue burden on competition.

In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's email domain and offerings. Removing outdated references to mini-options that are no longer offered by the Exchange is to provide more clarity within the Fee Schedule by deleting obsolete language in the Fee Schedule. Mini-options failed to gain significant market acceptance and have not achieved the expected level of traction or success in its target market, so the Exchange delisted all mini-options several years ago and does not have plans to re-list them in the foreseeable future. The Exchange does not believe that the proposal will harm another exchange's ability to compete. Accordingly, the Exchange does not believe the proposal 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

¹⁰ The Exchange notes that other exchanges filed similar proposals to delete references to mini-options. See *supra* note 6.

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 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

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ 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 proposal may become operative immediately upon filing. The Exchange states that removing references to mini-options would render the Exchange's Fee Schedule more accurate and reduce potential investor confusion by removing outdated references to a type of option that is no longer offered by the Exchange. The Exchange also states that competing exchanges have removed references to mini-options in their rulebooks because they no longer trade mini-options. The Exchange further states that the proposal to update the email domain is a minor, non-substantive edit that will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule. For these reasons, and because the proposal does not raise any new or novel issues, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ 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,

as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MIAX-2024-41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MIAX-2024-41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MIAX-2024-41 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-28546 Filed 12-5-24; 8:45 am]

BILLING CODE 8011-01-P

¹⁷ 17 CFR 200.30-3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION**[SEC File No. 270–438, OMB Control No. 3235–0495]****Submission for OMB Review;
Comment Request; Extension: Rule 154***Upon Written Request, Copies Available*

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 (17 CFR 230.154) under the Securities Act of 1933 (15 U.S.C. 77a) (the “Securities Act”) permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address (“householding”) to satisfy the applicable prospectus delivery requirements.¹ The purpose of rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the shared address, addresses the prospectus to the investors as a group or to each of the investors individually, and the investors consent to the delivery of a single prospectus. The rule applies to prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth

in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.² The rule requires issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers, relying on rule 154 for the householding of prospectuses relating to open-end management investment companies that are registered under the Investment Company Act of 1940 (“mutual funds”) and each series thereof must explain to investors who have provided written or implied consent how they can revoke their consent.³ Preparing and sending the notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and, in the case of issuers that are mutual funds and any series thereof, providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of prospectuses are able to do so.

Although rule 154 is not limited to mutual funds, the Commission believes that it is used mainly by mutual funds and by broker-dealers that deliver mutual fund prospectuses. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

The Commission estimates that, as of March 2024, there are approximately 12,118 mutual fund series registered on Form N–1A, approximately 1,060 of which are directly sold and therefore deliver their own prospectuses. Of these, the Commission estimates that approximately half (530 mutual fund series): (i) do not send the implied consent notice requirement because

they obtain affirmative written consent to household prospectuses in the fund’s account opening documentation; or (ii) do not take advantage of the householding provision because of electronic delivery options which lessen the economic and operational benefits of rule 154 when compared with the costs of compliance. Therefore, the Commission estimates that each of the 530 directly sold mutual fund series will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 10,600 burden hours. In addition, of the approximately 1,060 mutual fund series that are directly sold, the Commission estimates that approximately 75% (or 795) will each spend 1 hour complying with the annual explanation of the right to revoke requirement of the rule, for a total of 795 hours.

The Commission estimates that as of March 2024, there were approximately 70 broker-dealers that have customer accounts with mutual funds, and therefore may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, 20 hours complying with the notice requirement of the rule, for a total of 1,400 hours. In addition, each broker-dealer will also spend one hour complying with the annual explanation of the right to revoke requirement, for a total of 70 hours. Therefore, the total number of respondents for rule 154 is 865 (795⁴ mutual fund series plus 70 broker-dealers), and the estimated total hour burden is approximately 12,865 hours (11,395 hours for mutual fund series, plus 1,470 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The 30-day public comment period for this information collection request opens on December 9, 2024 and closes on January 6, 2025. The public may view the full information request and submit comments at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202409-3235-007 or email comments to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov.

¹ The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities; see Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) (15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b)); see also rule 174 under the Securities Act (17 CFR 230.174) (regarding the prospectus delivery obligation of dealers); rule 15c2–8 under the Securities Exchange Act of 1934 (17 CFR 240.15c2–8) (prospectus delivery obligations of brokers and dealers).

² Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding; implied consent is not permitted in such a situation. See rule 154(b)(4).

³ See rule 154(c).

⁴ The Commission estimates that 530 mutual funds prepare both the implied consent notice and the annual explanation of the right to revoke consent + 265 mutual funds that prepare only the annual explanation of the right to revoke.

Dated: December 3, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–28732 Filed 12–5–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101790; File No. SR–LCH SA–2024–005]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to Dealer Status

December 2, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4,² notice is hereby given that on November 21, 2024, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change (“Proposed Rule Change”), as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

LCH SA is proposing to amend its: (i) CDS Clearing Rule Book (“Rule Book”), and (ii) CDS Clearing Procedures (“Procedures”) (collectively the “CDS Clearing Rules”)³ to incorporate new terms and to make conforming, clarifying, and clean-up changes in order to enable affiliates of a Clearing Member, which would be referred to as “CDS Dealers”, to present Original Transactions to LCH SA for clearing, novation and registration in the name of a Clearing Member without having to be admitted as either a Clearing Member or being a Client of a Clearing Member.⁴ The text of the Proposed Rule Change has been annexed as Exhibit 5 to File No. SR–LCH SA–2024–005. The implementation of the Proposed Rule

Change will be contingent on LCH SA’s receipt of all necessary regulatory approvals.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA 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

LCH SA is proposing to amend its CDS Clearing Rules to enable affiliates of Clearing Members that are registered as CCMs with LCH SA to present Original Transactions to LCH SA for clearing, novation and registration in the name of a Clearing Member that is a CCM⁵ without having to be admitted as either a Clearing Member or being a Client of a Clearing Member. A CCM’s affiliate will need to be admitted as a CDS Dealer by LCH SA to a register of CDS Dealers before submitting any Original Transaction, under which such affiliate is acting as agent for and on behalf of its CCM or as principal,⁶ to LCH SA through an Approved Trade Source System.⁷ Under the current Rule Book, an affiliate of a Clearing Member may submit Original Transactions for clearing with LCH SA only if such affiliate is itself admitted as a Clearing Member of LCH SA or if it is a Client of a Clearing Member.

The new status of CDS Dealer will allow affiliates of a CCM, that is either

a General Member or a Select Member, registered as such CDS Dealers to present Original Transactions to LCH SA for clearing, novation and registration in the name of a Clearing Member. This new status will provide flexibility to Clearing Members in how they operate their execution and booking arrangements within their respective group, without the need to have multiple Clearing Members within such group or to onboard their affiliates as Clients. Specifically, it will enable Clearing Members to operate more efficiently by servicing their clients via the existing execution entities and, where applicable, documentation required but allows consolidation of clearing positions and margin within a single membership.

A CDS Dealer will be required to enter into a tripartite agreement with LCH SA and a Clearing Member within its corporate group (the “CDS Dealer Clearing Agreement”). Under this agreement, the CDS Dealer will agree to be bound by the CDS Clearing Rules.

An Original Transaction presented by a CDS Dealer to LCH SA for clearing will give rise to the novation of such Original Transaction into a Cleared Transaction between LCH SA and the Clearing Member with which such CDS Dealer is party to a CDS Dealer Clearing Agreement, that will be registered in the House Trade Account of such Clearing Member; hence these Cleared Transactions under which the Clearing Member is acting as principal will be registered in the House Trade Account in which the Cleared Transactions resulting from the novation of Original Transactions presented by the Clearing Member on its own behalf are also registered.

For illustrative purposes, Exhibit 3 provides an example of a simplified operational framework under the current model as compared to the proposed model for house and client transactions. Under the current operational framework reflected in “Example 1A: House v. House Standard Trade”, a CCM may present Original Transactions to LCH SA for clearing, novation and registration in the House Trade Account of such CCM. In addition, an affiliate of a CCM may also present Original Transactions to LCH SA for clearing only if such affiliate is itself admitted as a Clearing Member of LCH SA or if it is a Client of a Clearing Member. Under the proposed framework reflected in “Example 1B: House v. Dealer Trade”, a CDS Dealer (as an affiliate of the CCM) will be able to present Original Transactions to LCH SA for clearing and novation, with the resulting trade registered in the House

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The version of the Rule Book and Sections 1 and 5 of the Procedures which includes the Proposed Rule Change reflects a separate proposed rule change previously submitted to the Securities and Exchange Commission (SEC) under the Filing No. SR–LCH SA–2024–002 recently approved by the SEC.

⁴ All capitalized terms not defined herein have the same meaning as in the Rule Book or Procedures, as applicable, in their version as available on LCH SA’s website: www.lch.com/resources/rulebooks/lch-sa.

⁵ Pursuant to Section 1.1.1 of the Rule Book, a CCM means any legal entity admitted as a clearing member in accordance with the CDS Clearing Rules and party to the CDS Admission Agreement, provided that if such entity is an FCM/BD, it has satisfied LCH SA that it is able to provide the CDS Client Clearing Services in accordance with Title V prior to offering such services.

⁶ In accordance with amended Section 1.2 of the Procedures. Thus, a CDS Dealer will not be permitted to submit any Original Transaction under which it is acting on behalf of anyone other than itself or its affiliated CCM to LCH SA for clearing.

⁷ Pursuant to Section 1.1.1 of the Rule Book, the list of the Approved Trade Source Systems that can be used for the purposes of submitting Original Transactions to LCH SA for clearing is published in a Clearing Notice, which is available here: https://www.lch.com/system/files/media_root/Clearing%20Notice_ATSS_no_2021-001_04.01.2021.pdf.

Trade Account of the CCM that is party to the CDS Dealer Clearing Agreement. The resulting Cleared Transaction will exist between LCH SA and the CCM as party to the CDS Dealer Clearing Agreement.

A client trade under the current framework is operationally similar to Example 1A in Exhibit 3. Under “Example 2A: Client v. House Standard Trade”, a client may present an Original Transaction to LCH SA for clearing, novation and registration to LCH SA via a clearing broker. The resulting Cleared Transaction will exist between LCH SA and the client (via the clearing broker). Under the proposed framework reflected in “Example 2B: Client v. Dealer Trade”, a CDS Dealer (as an affiliate of the CCM) may present an Original Transaction to LCH SA for clearing and novation, with the resulting transaction registered in the House Trade Account of the CCM. The CCM and not the CDS Dealer is therefore party to the Cleared Transaction with LCH SA. There are no changes to the operational structure of the transaction to the client in Example 2B.

The criteria to be met by a CDS Dealer differ from the ones that shall be met by a Clearing Member. For example, the clearing membership criteria are designed to ensure that Clearing Members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a central counterparty. In contrast, the criteria for a CDS Dealer to meet is primarily meant to ensure that LCH SA is able to receive trades directly from such CDS Dealer for clearing. Once the trade is cleared and registered in the house trade account of the Clearing Member, the resulting clearing trade will be a house cleared trade as any other trade directly submitted by the Clearing Member for its own account.

Under the Proposed Rule Change, LCH SA will not have any direct exposure to the CDS Dealer, and this proposed change will only introduce a new source of trades from the Clearing Member. Given that an Original Transaction presented by the CDS Dealer is only between LCH SA and the Clearing Member, LCH SA's credit risk framework and the membership criteria will only apply to the Clearing Member. In addition, LCH SA does not anticipate any increase in operational risk resulting from an increase in the number of cleared transactions brought by CDS Dealers, as it will be able to leverage its current process for managing trade flows for existing Clearing Members.

1. Proposed Revisions to the Rule Book and Procedures

i. Rule Book

LCH SA proposes to add additional defined terms and make amendments to existing defined terms contained within Title I, Chapter 1, Section 1.1.1 of the Rule Book.

The term “CDS Dealer” will be added to define the new status that LCH SA is proposing to implement under the Proposed Change Rule and means a Person admitted by LCH SA to the Register of CDS Dealers and who has not been removed from the Register of CDS Dealers and for the avoidance of any doubt, a CDS Dealer is not a Clearing Member. As further described below, a CDS Dealer will be required to comply with the criteria as provided for in Section 1.2 of the Procedures, pursuant to which it shall belong to the same Financial Group as its Clearing Member.

The term of “Register of CDS Dealers” will be added to refer to the register which lists the CDS Dealers regarded by LCH SA as for the time being eligible to submit Original Transactions for registration as CCM Cleared Transactions by LCH SA.

The term “CDS Dealer Clearing Agreement” will be added to refer to the written agreement that a CDS Dealer will be required to execute with LCH SA and a CCM.

The term “ATSS Participant” will be modified to add a reference to a CDS Dealer as such a CDS Dealer will be required to be a participant of an Approved Trade Source System for the purpose of submitting Original Transactions, as part of the intraday and/or the backloading process, to LCH SA for clearing and will therefore be considered as an ATSS Participant.

The term “CCM Client” will be amended to expressly indicate, for the avoidance of any doubt, that a CDS Dealer shall not be considered as a CCM Client.

The term “CCM House Margin Account” will be modified to correct a typographical error by removing “CCM” before “House Cleared Transactions” as “CCM House Cleared Transactions” is not a defined term.

The term “Clearing Notice” will be amended to add references to the CDS Dealers as the topics covered by such Clearing Notices will also be relevant to CDS Dealers (for instance, the occurrence of an event of default occurring in respect of a Clearing Member or LCH SA).

The term “Data Protection Law” will be updated to refer to the latest EU and French regulations applicable under

French law in respect of data protection matters.

The term “House Trade Account” will be amended to make an express reference to Cleared Transactions resulting from the novation of Original Transactions presented by a CDS Dealer to LCH SA for clearing that will be registered in the House Trade Account of the Clearing Member with which that CDS Dealer is party to a CDS Dealer Clearing Agreement.

The term “House Trade Leg” will be amended to include trade legs of a CDS or Index Swaption in respect of which a CDS Dealer acts as protection seller or buyer or Index Swaption buyer or seller, respectively, so that such trade legs will be covered in the definition of “Original Transaction”.

The term “Index Swaption Clearing Service” will be modified to provide that, in addition to Clearing Members, CDS Dealers and Clients will be able to submit Index Swaptions for clearing by LCH SA.

The term “Procedures” will be modified to specify that Procedures will also provide for the procedure for application for admission to the Register of CDS Dealers and regulation of CDS Dealers admitted to such register.

Beyond definitional changes, a new Article 1.1.3.10 will be added to Section 1.1.3 (*Interpretation and references*) to make clear that nothing in the CDS Clearing Documentation shall give rise to a requirement for LCH SA to take any action which would contravene the provisions of Applicable Law or its continuing regulatory obligations. Indeed, each of the CDS Clearing Document is subject to, and interpreted in accordance with, the relevant Applicable Law. This amendment is not linked to the introduction of the CDS Dealer status but shall apply to the interpretation of each provision of the CDS Clearing Documentation for the avoidance of doubt.

LCH SA also proposes to amend Article 1.2.4.1 to specify that the time fixed by the CDS Clearing Documentation for the doing of any acts in relation to LCH SA may be extended or waived by LCH SA in its discretion, in respect of acts done by a CDS Dealer, similarly to what is currently provided in respect of acts done by a Clearing Member.

LCH SA proposes to amend Article 1.2.5.1 to extend to CDS Dealers the provision relating to the conditions in which LCH SA delivers a notice, order or communication to Clearing Members.

LCH SA proposes to amend Section 1.2.10 to extend the applicable liability provisions which currently apply to LCH SA and its Clearing Members, to

the CDS Dealers as well and pursuant to which a CDS Dealer shall be liable for any direct Damage incurred by LCH SA as a consequence of the CDS Dealer's breach of any of its obligation under the CDS Clearing Documentation or the terms of a Cleared Transaction (Article 1.2.10.1). Amended Article 1.2.10.2 will be amended to specify that a CDS Dealer, as this is currently the case for a Clearing Member, will not be held liable for any special, indirect or consequential Damage or any Damage which results from abnormal or fraudulent use of the CDS Clearing System by third parties, or for any Damage resulting from acts or omissions of third parties, other than members of its respective Financial Group. LCH SA also proposes to add a reference to CDS Dealers to the cases where LCH SA is not liable for damages arising out of or in connection with certain situations involving the CDS Dealers, that are mentioned in Article 1.2.10.3.

LCH SA will process personal data concerning representatives, managers, employees or any other individuals acting on behalf of CDS Dealers, therefore requiring such CDS Dealers to notify each of their relevant Representatives that their personal data is disclosed to LCH SA. Articles 1.2.13.1 and 1.2.13.4 will be modified accordingly to reflect the foregoing. In addition, Article 1.2.13.5 will be amended to provide that CDS Dealers consent to the recording of telephone conversations and agree to obtain any necessary consent of, and give any necessary notice of such records to, its relevant personnel, and agree that recordings may be used in evidence.

References to CDS Dealers are proposed to be added in Article 2.2.7.7 to provide that such CDS Dealers use the services offered by Approved Trade Source Systems in accordance with their own contractual arrangements and that LCH SA will not be responsible for verifying the content of such contractual arrangements, as this is currently the case for Clearing Members. CDS Dealers will need to be participants of an Approved Trade Source System at least to be able to submit Original Transactions to LCH SA for clearing.

LCH SA is proposing to amend Article 2.3.1.1 to request each Clearing Member to notify LCH SA in case of any material breach of the CDS Clearing Documentation by any of the CDS Dealers with which such a Clearing Member is party to a CDS Dealer Clearing Agreement.

LCH SA proposes to amend Article 2.3.1.5(ii) so that Clearing Members will not be in breach of any obligation to provide information to LCH SA if they

are prevented from providing such information due to the refusal of a CDS Dealer—as this is currently the case for Clients—to provide the relevant Clearing Member with the required information (provided the Clearing Member has undertaken reasonable due diligence and provides LCH SA with documented proof of its inability to obtain relevant information from the CDS Dealer despite such due diligence).

LCH SA is proposing to create a new Chapter 5 in Title II relating to the status of a CDS Dealer. This chapter sets out the role of a CDS Dealer, consisting in the ability to present Original Transactions to LCH SA for clearing, novation and registration in the name of the Clearing Member with which the relevant CDS Dealer is party to a CDS Dealer Clearing Agreement in the CDS Clearing System pursuant to the CDS Clearing Documentation. New Chapter 5 provides that once a CDS Dealer is admitted to the Register of CDS Dealers, such CDS Dealer shall automatically and without further formalities be subject to, and bound by, the CDS Clearing Documentation. This new Chapter 5 also refers to Section 1 of the Procedures, which specifies the conditions under which an applicant may be considered for admission into the Register of CDS Dealers as a CDS Dealer, including that the applicant for CDS Dealer status must have a clearing arrangement in place with a Clearing Member within their Financial Group, as well as the ongoing obligations applicable to a CDS Dealer. Finally, LCH SA is proposing to provide in new Chapter 5 that it may suspend or remove a CDS Dealer from the Register of CDS Dealers and the consequences of any such suspension which are, for a suspended CDS Dealer, to remain bound by all of its obligations under the CDS Clearing Documentations and its CDS Dealer Clearing Agreement and to be removed from the Register of CDS Dealers if such CDS Dealers has been suspended for a period of more than three months. If the membership of a Clearing Member which has signed a CDS Dealer Clearing Agreement with a CDS Dealer is suspended or terminated, its CDS Dealer will be automatically suspended, or removed, from the Register of CDS Dealers.

LCH SA is proposing to amend Articles 3.1.6.1(iii) and (iv) (describing the consequences of the novation of Original Transactions that are either CDS or Index Swaptions) to provide that the Clearing Member with which a CDS Dealer is party to a CDS Dealer Clearing Agreement will become party to the relevant Cleared Transaction novated from an Original Transaction presented

by such CDS Dealer for clearing by LCH SA.

Article 3.1.6.4, which currently provides for the assumptions made by LCH SA in respect of any Original Transaction received for clearing, will be amended to also cover Original Transactions submitted by CDS Dealers and therefore such CDS Dealer (like a Clearing Member) will acknowledge and agree that certain notices on any event that may be delivered in respect of an Original Transaction, such as a Credit Event Notice, in relation to an Original Transaction accepted for clearing by LCH SA shall be deemed never to have been delivered at the Novation Time.

LCH SA also proposes to amend Article 3.1.6.6 to extend the application of such Article to CDS Dealers in respect of their ability to submit Original Transactions through a particular Approved Trade Source System that may be suspended from time to time.

LCH SA proposes to replace “Clearing Member concerned” with “Clearing Member in whose Trade Accounts such Cleared Transactions are registered” in Article 3.1.6.7 to include Cleared Transactions novated from Original Transactions presented by a CDS Dealer for clearing by LCH SA in the Cleared Transactions registered on the basis of incorrect or corrupted data in respect of which a Clearing Member agrees to be bound. Further, under the proposed amended version of the same article, LCH SA will not be liable to CDS Dealers with regard to the registration of such Cleared Transactions.

Article 3.1.9.1 will be amended to provide that, in the context of the CDS Default Management Process applicable to the default of a Clearing Member, the notice that is published by LCH SA will notify CDS Dealers, in addition to all Clearing Members, that it will not novate any Original Transactions submitted to LCH SA for clearing on the Clearing Day on which LCH SA requests that an adjustment be made to the Loss Distribution Cap Amount for one or more Non-Defaulting Clearing Member(s) and until each affected Non-Defaulting Clearing Member has agreed to such adjustment. LCH SA is proposing to add a reference to CDS Dealers in Article 3.1.9.4 so that LCH SA will also inform CDS Dealers of the arising of an Early Termination Trigger Date. LCH SA proposes to remove the reference to Clearing Members at the end of the same article in order not to imply that only Clearing Members are able to submit Original Transactions to LCH SA for clearing, as CDS Dealers will also be authorized to do so.

LCH SA proposes to add a reference to CDS Dealers in Articles 3.1.10.1 and

3.1.10.2 to provide that LCH SA will arrange for the removal of Backloading Transactions and Intraday Transactions from the TIW on behalf of the relevant CDS Dealers (in addition to the Clearing Members and Clients).

LCH SA proposes to amend Article 4.2.7.2 so that Clearing Members will be authorized to provide Markit LCH Settlement Prices to CDS Dealers, as it is currently the case for Clients of Clearing Members.

LCH SA is proposing to amend Article 4.3.2.3 which currently provides for the non-exhaustive list of measures that LCH SA may take, following the issuance of a Default Notice in respect of a Defaulting Clearing Member, to allow LCH SA to suspend the ability of the CDS Dealers with whom a Defaulting Clearing Member is party to a CDS Dealer Clearing Agreement to submit new Original Transactions for clearing (in indent (iv)).

Under the current Rule Book, Article 5.1.1.1 provides that, pursuant to EMIR, an Affiliate of a CCM shall be treated as a CCM Client. LCH SA proposes to delete this sentence and specify at the beginning of the same article that a CCM Client may include an Affiliate of a CCM, considering that under the Proposed Rule Change an Affiliate of a CCM may also be a CDS Dealer which may submit Original Transactions to LCH SA for clearing that will result in the registration of Cleared Transactions in the House Trade Account of the Clearing Member (excluding any Client Trade Account).

ii. Procedures

(A) Section 1

LCH SA is proposing to rename Section 1 of the Procedures (*Membership*) “Clearing Member and CDS Dealer Status” since this Section will also cover the application process for the CDS Dealer status.

Paragraph 1.1 will be amended to explicitly indicate that such paragraph relates to the application procedure for Clearing Member status and therefore to distinguish it from the new application procedure for CDS Dealer status set out in new Paragraph 1.2. Such new application procedure is also different from the process applicable for the onboarding the Clearing Member’s clients since the Cleared Transactions resulting from the novation of the Original Transactions submitted by the CDS Dealer are registered in the House Trade Account of a CDS Dealer’s Clearing Member and not in a Client Trade Account. Where necessary, references to the status of Clearing Member will be added in Paragraph 1.1.

Further, a minor amendment is being made to correct a typographical error by replacing the reference to the “Access Agreement” which is not defined in the CDS Clearing Rules with a reference to an agreement providing an Applicant with a technical access to LCH SA that must be executed by the Applicant and LCH SA.

LCH SA proposes to delete the reference to “Regulatory Body” in Paragraph 1.1(d)(iii) as this term is not defined in the Rule Book and the reference to existing defined term “Competent Authority” is sufficient. A new Paragraph 1.2 will be added providing for the new application procedure for CDS Dealer status. It will mainly replicate the application procedure that applies to applicants for the Clearing Member status; hence this new Paragraph 1.2(a) will address the form in which such an application must be made with LCH SA and will provide that CDS Dealers that have been approved by LCH SA shall, within six months of notification of their approval, fulfil all conditions attached to their approval (if any). Paragraph 1.2(b) will also describe the actions LCH SA will be authorized to take in respect of an applicant for CDS Dealer status as part of the due diligence and application review process. As for any applicant that wishes to be admitted as a Clearing Member, LCH SA will be permitted to: (i) make enquiries of any nature about the applicant for the CDS Dealer status and any Person connected or associated with the applicant; (ii) ask the applicant to supply additional information and take whatever steps are necessary to verify information (which may include an on-site visit); (iii) disclose information to a Competent Authority, LCH SA’s insurers in connection with any form of insurance, or otherwise in accordance with the CDS Clearing Documentation and the CDS Dealer Clearing Agreement; (iv) and to endeavor to process, consider and decide upon an application in a timely fashion, but owes no duty or obligation to the applicant for the CDS Dealer status to do so, contrary to an application for the clearing membership for which there is an indicative timeline provided for in Section 1.1 of the Procedures to comply with the regulatory transparency requirements that LCH SA shall comply with.⁸ It should be noted that, contrary to the applicable process for any applicant for

the Clearing Member status, there will be no requirement for an applicant for the CDS Dealer status to carry out any operational test linked to its capacity of using the CDS Clearing Service; indeed, the CDS Dealer is a party to the Cleared Transactions resulting from the novation of Original Transactions submitted by the CDS Dealer to LCH SA for clearing.

Paragraph 1.2(c) will set out the following criteria that an applicant for CDS Dealer status must satisfy in order to be considered for admission to the Register of CDS Dealers:⁹

(i) be validly incorporated and existing under the laws of its jurisdiction of incorporation and (if relevant in such jurisdiction) be in good standing;

(ii) execute and maintain a CDS Dealer Clearing Agreement and comply with the provisions hereof;

(iii) undertake to accept and comply with the CDS Clearing Documentation by executing the CDS Dealer Clearing Agreement;

(iv) accept to comply with all Applicable Law relating to its status as a CDS Dealer and the performance of its obligations pursuant to the CDS Clearing Documentation;

(v) ensure that all fees and other amounts required by LCH SA are paid in accordance with the CDS Clearing Documentation and/or the CDS Dealer Clearing Agreement;

(vi) be an ATSS Participant for the purpose of submitting Original Transactions for clearing by LCH SA;

(vii) provided the applicant specifies any number of branches, with agreement from its corresponding Clearing Member from which it proposes to submit Original Transactions for clearing by LCH SA, such branches shall be of the same legal entity as the CDS Dealer; and

(viii) have a clearing arrangement governing the submission of Original Transactions in place with a Clearing Member, with which that applicant for the CDS Dealer status is party to a CDS Dealer Clearing Agreement, within their Financial Group; this arrangement will

⁹ The criteria to be met by a CDS Dealer differ from the ones that shall be met by a Clearing Member. Indeed, the clearing membership related criteria are designed to ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a central counterparty, which is not the case for a CDS Dealer for which the criteria shall ensure that LCH SA is able to receive trades directly from them for clearing. Once the trade is cleared and registered in the house trade account of the Clearing Member, the resulting clearing trade will be a house cleared trade as any other trade directly submitted by the Clearing Member for its own account.

⁸ Especially, in accordance with Article 37 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

take the form of either a give up agreement or an agency agreement.

The CDS Dealer shall also comply with the provisions of the CDS Dealer Clearing Agreement to which it is a party.

Finally, the scope of Paragraph 1.3 (*Change Procedure*) will be clarified by adding a reference to the clearing membership (and therefore excluding CDS Dealer status).

(B) Section 4

LCH SA is proposing to amend the criteria constituting the Eligibility Requirements for an Original Transaction set out in Paragraph 4.1(c) in order to: (i) specify that the Eligibility Requirements relating to the Clearing Member apply to the Clearing Member in whose Account Structure the Cleared Transaction corresponding to an Original Transaction is to be registered so that it also applies to a Clearing Member whose CDS Dealers and/or Clients submit Original Transactions to LCH SA for clearing; (ii) add the new criteria pursuant to which a CDS Dealer presenting an Original Transaction shall not be suspended or removed from the Register of CDS Dealers as a new indent (ii); and (iii) indicate that LCH SA shall be permitted to clear such Original Transaction, including when it will have been presented by a CDS Dealer.

Paragraphs 4.2(f)(ii), 4.3(e)(ii), 4.4(e)(ii) currently provide that, if and for so long as any Clearing Member has one or more Open Position(s) registered in any of its Margin Accounts, the Clearing Member may submit for clearing an Original Transaction which no longer meets the applicable Eligibility Requirements if such Original Transaction is a risk reducing transaction. These paragraphs will be amended to indicate that CDS Dealers will also be authorized to submit such risk reducing transactions; we have also taken the opportunity to add a reference to Clients for the sake of clarity.¹⁰

(C) Section 5

LCH SA is proposing to amend Paragraph 5.13 which currently deals with the process applicable to the Original Transactions cleared in error to provide that a Clearing Member will be also able to reverse an Original Transaction presented for clearing by a CDS Dealer in error by submitting an equal but opposite transaction to LCH SA for clearing and then using the compression functionality, in the same way as for any Original Transaction that

a Clearing Member has submitted to LCH SA for clearing in error.

2. Technical Amendments

The amendments to the Procedures and Rule Book also contain typographical corrections, clean-up changes, cross references corrections and similar technical corrections as well as various conforming references to the new or revised defined terms:

(i) in respect of the Rule Book, the term “Trading Venue Transaction”, Articles 2.2.3.1, 2.2.1.1(iv), 2.2.2.1(iv), 2.4.1.1, 4.2.7.7., 5.1.1.3(xviii), the second paragraph of Article 5.3.3.2 and Articles 5.3.5.1, 5.3.5.2, 5.3.5.4 and 6.1.1.3(xvi). We have also taken the opportunity to replace any reference to a “person” with the defined term “Person” for consistency purposes in Article 1.0.1.2, Section 1.1.1, Articles 1.2.12.1, 1.2.12.2, 2.1.1.2, 4.2.7.5, 6.1.1.2 and the Annex of Appendix 1;

(ii) in respect of Section 1 of the Procedures, the numbering of certain sub-paragraphs of Paragraph 1.1 and the paragraphs following the new Paragraph 1.2 and the use of the defined term “Person”; and

(iii) in respect of Section 5 of the Procedures, Paragraphs 5.2(a)(iii), 5.5(a), 5.18.3, 5.18.4, 5.18.5(a), 5.6(a) and 5.8(a) with the use of the defined term “website” instead of referring to “LCH website”. Paragraph 5.16(a)(iii)(G)(1) is also being amended to remove reference to the “CDSClear Margin And Product Flows Document”, as this is duplicative.

2. Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Exchange Act¹¹ and the regulations thereunder, including the clearing agency standards under Exchange Act Rule 17Ad-22.¹² Section 17A(b)(3)(F) of the Exchange Act¹³ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and are not designed to permit the unfair discrimination in the admission of participants or among participants in the use of the clearing agency. LCH SA also notes that the Congressional findings set forth under Section 17A indicate that Section 17A

was enacted to, among other things, reduce unnecessary costs on investors.

As discussed above, LCH SA is proposing to amend its CDS Clearing Rules to enable affiliates of a Clearing Member admitted by LCH SA to the Register of CDS Dealers to present Original Transactions to LCH SA for clearing, novation and registration in the name of a Clearing Member without having to be admitted as either a Clearing Member or being a Client of a Clearing Member. By allowing affiliates of a Clearing Member to present Original Transactions to LCH SA for clearing in this manner, the Proposed Rule Change will broaden the solutions for Clearing Members and their affiliates and enable further optimization of their clearing activities, thus reducing the overall cost of clearing which is consistent with the unnecessary clearing costs reduction policy underlying the adoption of Section 17A of the Exchange Act. Further, the Proposed Rule Change will promote flexibility and permit Clearing Members and their affiliates to manage and mitigate risks in a manner that is more closely tailored to their needs and the needs of their customers. The Proposed Rule Change will also facilitate a more efficient access to cleared markets by CDS Dealers, which may result in a larger number of cleared transactions that are carried out in a clear and transparent manner. LCH SA does not anticipate any increase in operational risk resulting from an increase in the number of cleared transactions, as it will be able to leverage its current process for managing trade flows for existing Clearing Members. The Proposed Rule Change may also contribute to more efficient and systematic clearing of more products by Clearing Members, thus contributing to the prompt and accurate clearance process and settlement of securities transactions and derivative agreements, contracts, and transactions, which will be in the public interest and consistent with Section 17A of the Exchange Act and the rules promulgated thereunder. Specifically, clearing Members will be able to consolidate their cleared positions and margin within a single membership under the Proposed Rule Change. In addition, Clearing Members will have the benefit of a single netting pool for all trades cleared. This provides efficiency of margin offset, while also reducing funding requirements of a separate default fund contribution if joining as a standalone Clearing Member. Further, the Proposed Rule Change will not have any impact on the existing risk methodology applied by LCH SA or on

¹⁰ For the avoidance of doubt, this amendment is not linked to the CDS Dealer initiative.

¹¹ 15 U.S.C. 78q-1.

¹² 17 CFR 240.17Ad-22.

¹³ 15 U.S.C. 78q-1(b)(3)(F).

LCH SA's existing policies and procedures for assuring the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, which is also consistent with Section 17A of the Exchange Act and the rules promulgated thereunder. LCH SA will continue to apply its existing risk methodology and the policies and procedures, thereunder to Clearing Members, regardless of whether such Clearing Members provide clearing services for CDS Dealers, primarily because executed trades made by CDS Dealers will be between LCH SA and the respective Clearing Member. Clearing Members will still be required to comply with the Membership Requirements set forth in Article 2.2.1.1. of the Procedures, which include, *inter alia*, minimum capital requirements and maintaining a minimum internal credit score.

LCH SA also believes that the Proposed Rule Change is consistent with the requirements of Exchange Act Rule 17Ad-22(e)(18)¹⁴ and (e)(19)¹⁵. Rule 17Ad-22(e)(18)(i) provides, *inter alia*, that a covered clearing agency establish objective, risk-based, and publicly disclosed criteria for participation, which permits fair and open access by direct and, where relevant, indirect participants and other financial market utilities.¹⁶ Rule 17Ad-22(e)(19) provides, *inter alia*, that a covered clearing agency identify, monitor, and manage the material risks arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.¹⁷

By enabling affiliates of a Clearing Member admitted by LCH SA to the Register of CDS Dealers to present Original Transactions to LCH SA for clearing, novation and registration in the name of a Clearing Member without having to be admitted as either a Clearing Member or being a Client of a Clearing Member, LCH SA is increasing access to its clearing and settlement services. In doing so, LCH SA is proposing amendments to its Procedures for the admission of CDS Dealers that are based on reasonable risk-related participation requirements that are tailored to and commensurate with the specific risks of such an arrangement, and are publicly disclosed. LCH SA is also proposing to amend its

Procedures to describe the actions it will be authorized to take in respect of an applicant for CDS Dealer status as part of the due diligence and application review process. This process will align with the existing review process for onboarding Clearing Member applicants. Furthermore, CDS Dealers will be required to enter into a CDS Dealer Clearing Agreement whereby they will be bound by the CDS Clearing Rules. The CDS Dealer Clearing Agreement will provide LCH SA with the ability to gather information about CDS Dealers to identify, monitor, and manage any material risks arising from the arrangement, including by allowing LCH SA to make enquiries of any nature regarding the CDS Dealer and asking the CDS Dealer to supply additional information for purposes of assessing whether such CDS Dealer meets the criteria to remain on the Register of CDS Dealers. As such, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(18)¹⁸ and (e)(19).¹⁹

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²⁰ LCH SA does not believe that the Proposed Rule Change would impose burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Proposed Rule Change would provide flexibility of clearing services access to affiliates of Clearing Members but would not otherwise affect the ability of Clearing Members or other market participants generally to engage in cleared transactions or to access LCH SA's clearing services. Therefore, LCH SA does not believe that the Proposed Rule Change would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the Proposed Rule Change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice 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-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-LCH SA-2024-005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. All submissions should refer to file number SR-LCH SA-2024-005. 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,

¹⁴ 17 CFR 240.17Ad-22(e)(18).

¹⁵ 17 CFR 240.17Ad-22(e)(19).

¹⁶ 17 CFR 240.17Ad-22(e)(18).

¹⁷ 17 CFR 240.17Ad-22(e)(19).

¹⁸ 17 CFR 240.17Ad-22(e)(18).

¹⁹ 17 CFR 240.17Ad-22(e)(19).

²⁰ 15 U.S.C. 78q-1(b)(3)(I).

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 LCH SA and on LCH SA's website at: <https://www.lch.com/resources/rulebooks/proposed-rule-changes>.

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-LCH SA-2024-005 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-28547 Filed 12-5-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101784; File No. SR-GEMX-2024-41]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

December 2, 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 November 18, 2024, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to establish fees for its expanded co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/>

rulebook/gemx/rules, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with

power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components.

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this

⁵ *Supra* note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

³ Securities Exchange Act Release No. 34-101074 (September 5, 2024), 89 FR 77920 (September 24, 2024) (SR-GEMX-2024-34).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹ It largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations.

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution

efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")¹¹ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power distribution units in NY11-4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11-4, which would allow customers to

connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11-4, installation fees for power installation in NY11-4, and fees for power distribution unit options in NY11-4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11-4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Lastly, Nasdaq notes that the proposed fee for the Ultra High Density Cabinet accounts for the cost of the cabinet and is actually lower than the cost to Nasdaq of procuring it from its vendor, Wise Components. Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Lastly, the installation fee largely reflects a pass-through to customers of costs charged by Nasdaq's vendor, Equinix, for installation as well as a small mark-up to cover Nasdaq's administrative costs, which is comparable to its mark-up on existing installations. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁶ warranting a higher fee. Moreover, the higher fee largely reflects a pass-through to customers of the costs charged by Nasdaq's vendor, Equinix, for installation, as well as a small mark-up to cover Nasdaq's administrative costs. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange 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,¹⁷ connectivity

to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange

additional substitute platforms to further compete with the Exchange and the products it offers.

venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11–4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸ 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–GEMX–2024–41 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–GEMX–2024–41. This file number should be included on the subject line if email is used. To help the Commission process and review your

¹⁶ *Supra* note 10.

¹⁷ There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-GEMX-2024-41 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-28541 Filed 12-5-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101783; File No. SR-NASDAQ-2024-075]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Hennessy Stance ESG ETF Under Nasdaq Rule 5750 (Proxy Portfolio Shares)

December 2, 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 November 25, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 The Exchange proposes to list and trade shares of the Hennessy Stance ESG ETF (the "Fund") under Nasdaq Rule 5750 ("Proxy Portfolio Shares"). Currently, the shares of the Fund are listed and traded on NYSE Arca, Inc. ("Arca"). The shares of the Fund are referred to herein as the "Shares."

The text of the proposed rule change is set forth below.

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 list and trade Shares of the Fund under Nasdaq Rule 5750.³ Currently, the Shares of the Fund are listed and traded on Arca under Arca Rule 8.601-E (Active Proxy Portfolio Shares).⁴ The Shares of the

³ The Exchange adopted Nasdaq Rule 5750 in Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032).

⁴ The SEC previously approved Stance Equity ESG Large Cap Core ETF, which was the predecessor of the Fund before it was reorganized and renamed as Hennessy Stance ESG Large Cap ETF. The Fund subsequently filed to amend its investment strategy and change its name to Hennessy Stance ESG ETF. See Securities Exchange Act Release Nos. 91266 (March 5, 2021), 86 FR 13930 (March 11, 2021) (SR-NYSEArca-2020-104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Stance Equity ESG Large Cap Core ETF under NYSE Arca Rule 8.601-E) ("2020 Filing"); 34-94961 (May 23, 2022), 87 FR 32215 (May 27, 2022) (Notice of filing and Immediate

Fund are issued by Hennessy Funds Trust (the "Issuer"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The Fund's investment adviser is Hennessy Advisors, Inc. (the "Adviser"). Stance Capital, LLC and Vident Advisory, LLC are the sub-advisers (the "Sub-Advisers") for the Fund.

All descriptions, representations, and information provided with respect to the Fund and the operation of the Fund in the Fund Filing remain unchanged with the exception of the Nasdaq listing rules that would apply as discussed herein.

Nasdaq Rule 5750(b) provides that if the investment adviser to the investment company issuing Proxy Portfolio Shares⁵ is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio,⁶ the

Effectiveness of Proposed Rule Change to facilitate the use of custom baskets by certain series of Active Proxy Portfolio Shares) ("Custom Basket Filing"); 96559 (December 21, 2022), 87 FR 79919 (December 28, 2022) (SR-NYSEARCA-2022-84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Representations, including renaming the Fund from Stance Equity ESG Large Cap Core ETF to Hennessy Stance ESG Large Cap ETF) ("2022 Filing"); and 97378 (April 25, 2023), 88 FR 26636 (May 1, 2023) (SR-NYSEARCA-2023-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Representations Relating to the Hennessy Stance ESG Large Cap ETF) ("2023 Filing") (2020 Filing, as amended by Custom Basket Filing, 2022 Filing and 2023 Filing, will be referred to hereinafter as "Fund Filing").

⁵ The term "Proxy Portfolio Share" means a security that: (A) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. See Nasdaq Rule 5750(c)(1).

⁶ The term "Fund Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of

Continued

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Proxy Basket⁷ and/or Custom Basket,⁸ as applicable. In addition, Nasdaq Rule 5750(b)(5) further requires that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto.

In addition, in accordance with Nasdaq Rule 5750(b)(6), any person or entity, including a custodian, Reporting Authority,⁹ distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket or Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-

dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto.

The Adviser and Sub-Advisers are not registered as broker-dealers and are not affiliated with a broker-dealer. In the event (a) the Adviser or Sub-Adviser(s) becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a "fire wall" with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto. Any person related to the Adviser, Sub-Adviser(s), or the Fund who makes decisions pertaining to the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or has access to non-public information regarding the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or financial instruments composing the Proxy Basket or Fund Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the

maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5750(d)(2)(D), which sets forth circumstances under which a series of Proxy Portfolio Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares traded on the Exchange is \$0.01. The Shares of the Fund will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5750.

With respect to Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Additionally, Nasdaq Rule 5750(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Proxy Portfolio Shares.

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

net asset value at the end of the business day. See Nasdaq Rule 5750(c)(2).

⁷ The term "Proxy Basket" means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 5750, to the extent applicable: (A) Ticker symbol; (B) CUSIP or other identifier; (C) Description of holding; (D) Quantity of each security or other asset held; and (E) Percentage weight of the holding in the portfolio. See Nasdaq Rule 5750(c)(5).

⁸ For purposes of this rule, the term "Custom Basket" means a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares. See Nasdaq Rule 5750(c)(6).

⁹ The term "Reporting Authority" in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; Custom Basket; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions. See Nasdaq Rule 5750(c)(3).

Prior to the commencement of trading, the Exchange will require the Fund to represent to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities.¹⁰ The Exchange also may obtain information regarding trading in the Shares via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Additional Information

The Exchange represents that the Shares will conform to the initial and continued listing criteria under Nasdaq Rule 5750, including the dissemination of key information such as the Proxy Basket, the Custom Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the

objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change to switch the listing of the Fund from Arca to Nasdaq is consistent with the Act. In particular, Nasdaq's Rules and procedures as described above are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria for Proxy Portfolio Shares in Nasdaq Rule 5750.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Additionally, Nasdaq Rule 5750(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Proxy Portfolio Shares.

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange will require the Fund to represent to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the

distribution of material, non-public information by its employees.

The Exchange will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares from such markets and other entities.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of the Shares, which are Proxy Portfolio Shares and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ For a list of the current members of ISG, see www.isgportal.com.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that all descriptions, representations, and information provided with respect to the Fund and the operation of the Fund in the Fund Filing remain unchanged except that the Nasdaq listing rules referenced above would apply instead of the rules referenced in the Fund Filing.¹⁶ In addition, the Exchange represents that the Shares will be subject to Nasdaq's surveillance procedures and the trading halts and trading rules described herein.¹⁷ Therefore, the Commission believes that the proposal raises no novel legal or regulatory issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-NASDAQ-2024-075 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-NASDAQ-2024-075. 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-NASDAQ-2024-075 and should be submitted on or before December 27, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.
[FR Doc. 2024-28540 Filed 12-5-24; 8:45 am]
BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION
[Disaster Declaration #20900 and #20901;
WASHINGTON Disaster Number WA-20013]
Presidential Declaration of a Major
Disaster for Public Assistance Only for
the Confederated Tribes of the Colville
Reservation

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 Confederated Tribes of the Colville Reservation (FEMA-4849-DR), dated November 26, 2024.

¹⁹ 17 CFR 200.30-3(a)(12), (59).

Incident: Wildfires.

DATES: Issued on November 26, 2024.
Incident Period: July 17, 2024 through August 21, 2024.

Physical Loan Application Deadline Date: January 27, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: August 26, 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 November 26, 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 area has been determined to be adversely affected by the disaster:

The Confederated Tribes of the Colville Reservation

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 209005 and for economic injury is 209010.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,
Acting Deputy Associate Administrator,
Office of Disaster Recovery & Resilience.
[FR Doc. 2024-28567 Filed 12-5-24; 8:45 am]
BILLING CODE 8026-09-P

¹⁶ See *supra* Item II.
¹⁷ See *id.*
¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

SMALL BUSINESS ADMINISTRATION**[Disaster Declaration #20902 and #20903;
PUERTO RICO Disaster Number PR-20003]****Presidential Declaration of a Major
Disaster for Public Assistance Only for
the Commonwealth of Puerto Rico****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 Commonwealth of Puerto Rico
(FEMA-4850-DR), dated November 27,
2024.*Incident:* Tropical Storm Ernesto.**DATES:** Issued on November 27, 2024.*Incident Period:* August 13, 2024
through August 16, 2024.*Physical Loan Application Deadline
Date:* January 27, 2025.*Economic Injury (EIDL) Loan
Application Deadline Date:* August 27,
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
November 27, 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 Municipalities:* Aibonito,
Anasco, Aguas Buenas,
Barranquitas, Canovanas, Ceiba,
Coamo, Comerio, Corozal,
Hormigueros, Jayuya, Las Marias,
Loiza, Manati, Maricao, Maunabo,
Mayaguez, Naguabo, Orocovis, San
Lorenzo, San Sebastian, Santa
Isabel, Vega Alta, Vieques, Villalba,
Yabucoa.

The Interest Rates are:

	Percent
For Physical Damage:	

	Percent
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations with- out Credit Available Else- where	3.250
For Economic Injury: Non-Profit Organizations with- out Credit Available Else- where	3.250

The number assigned to this disaster
for physical damage is 20902B and for
economic injury is 209030.(Catalog of Federal Domestic Assistance
Number 59008)**Alejandro Contreras,***Acting Deputy Associate Administrator,
Office of Disaster Recovery & Resilience.*

[FR Doc. 2024-28565 Filed 12-5-24; 8:45 am]

BILLING CODE 8026-09-P**SMALL BUSINESS ADMINISTRATION****[Disaster Declaration #20896 and #20897;
CALIFORNIA Disaster Number CA-20029]****Administrative Declaration of a
Disaster for the State of California****AGENCY:** U.S. Small Business
Administration.**ACTION:** Notice.**SUMMARY:** This is a notice of an
Administrative declaration of a disaster
for the State of California dated
November 29, 2024.*Incident:* Mountain Fire.**DATES:** Issued on November 29, 2024.*Incident Period:* November 6, 2024
and continuing.*Physical Loan Application Deadline
Date:* January 28, 2025.*Economic Injury (EIDL) Loan
Application Deadline Date:* August 29,
2025.**ADDRESSES:** Visit the MySBA Loan
Portal at <https://lending.sba.gov> to
apply for a disaster assistance loan.**FOR FURTHER INFORMATION CONTACT:**
Alan Escobar, Office of Disaster
Recovery & Resilience, U.S. Small
Business Administration, 409 3rd Street
SW, Suite 6050, Washington, DC 20416,
(202) 205-6734.**SUPPLEMENTARY INFORMATION:** Notice is
hereby given that as a result of the
Administrator's disaster declaration,
applications for disaster loans may be
submitted online using the MySBA
Loan Portal <https://lending.sba.gov> or
other locally announced locations.
Please contact the SBA disaster
assistance customer service center by
email at [disastercustomerservice@
sba.gov](mailto: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:* Ventura.*Contiguous Counties:*California: Kern, Los Angeles, Santa
Barbara.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Avail- able Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.563
Businesses with Credit Avail- able Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations with- out Credit Available Else- where	3.625
For Economic Injury:	
Business and Small Agricul- tural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations with- out Credit Available Else- where	3.625

The number assigned to this disaster
for physical damage is 208965 and for
economic injury is 208970.The State which received an EIDL
Declaration is California.(Catalog of Federal Domestic Assistance
Number 59008)**Isabella Guzman,***Administrator.*

[FR Doc. 2024-28528 Filed 12-5-24; 8:45 am]

BILLING CODE 8026-09-P**SOCIAL SECURITY ADMINISTRATION****[Docket No: SSA-2024-0052]****Agency Information Collection
Activities: Proposed Request and
Comment Request**The Social Security Administration
(SSA) publishes a list of information
collection packages requiring clearance
by the Office of Management and
Budget (OMB) in compliance with
Public Law 104-13, the Paperwork
Reduction Act of 1995, effective October
1, 1995. This notice includes extensions
and revisions of OMB-approved
information collections.SSA is soliciting comments on the
accuracy of the agency's burden
estimate; the need for the information;
its practical utility; ways to enhance its
quality, utility, and clarity; and ways to
minimize burden on respondents,

including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, (SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833-410-1631, Email address: OR.Reports.Clearance@ssa.gov.

Or you may submit your comments online through <https://www.reginfo.gov/public/do/PRAmain> by clicking on

Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items. Please reference Docket ID Number [SSA-2024-0052] in your submitted response.

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 4, 2025. Individuals can obtain copies of the collection instrument by writing to the above email address.

Coverage of Employees of State and Local Governments—20 CFR 404-0960-0425. The Code of Federal Regulations at 20 CFR 404, Subpart M, prescribes the rules for States

submitting reports of deposits and recordkeeping to SSA. SSA requires States (and interstate instrumentalities) to provide wage and deposit contribution information for pre-1987 periods. Not all states have completely satisfied their pending wage report and contribution liability with SSA for pre-1987 tax years. SSA needs these regulations until all pending items with all states are closed out, and to provide for collection of this information in the future, if necessary. The respondents are State and local governments or interstate instrumentalities.

Type of Request: Extension of an OMB-approved Information Collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
404. 1204 (a) & (b)	52	1	30	26	\$32.39	** \$842
404.1215	52	1	60	52	* 32.39	** 1,684
404. 1216 (a) & (b)	52	1	60	52	* 32.39	** 1,684
Totals	156	.....	.....	130	.....	** 4,210

* We based this figure by averaging both the average State Government hourly wages (https://www.bls.gov/oes/current/naics4_999200.htm), and the average Local Government hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/naics4_999300.htm).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 6, 2025. Individuals can obtain copies of these OMB clearance packages by writing to the OR.Reports.Clearance@ssa.gov.

1. Work Activity Report—Employee—20 CFR 404.1520(b), 404.1571-404.1576, 404.1584-404.1593, and 416.971-404.976—0960-0059. SSA uses Form SSA-821-BK to collect recipient employment information to determine whether recipients worked after becoming disabled and, if so, whether the work is substantial gainful activity. In addition, SSA uses the SSA-821-BK and SSA-821-APP to obtain work information during the initial claims process, the continuing disability

review process, post-adjudicative work issue actions, and for Supplemental Security Income (SSI) claims involving work issues. SSA reviews and evaluates the data to determine if the applicant or recipient meets the disability requirements of the law. The respondents are applicants or recipients of Title II Social Security Disability, and Title XVI SSI applicants.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA-821-BK In Office	64,330	1	30	32,165	* \$13.30	** 24	*** \$770,030
SSA-821-BK Phone	128,660	1	30	64,330	* 13.30	** 19	*** 1,397,458
SSA-821-BK Returned Via Mail	192,990	1	40	128,660	* 13.30	.....	*** 1,710,380
SSA-821-BK Electronic	25,320	1	45	18,990	* 13.30	.....	*** 252,567
Totals	411,300	.....	.....	244,145	.....	.....	*** 4,130,435

* We based this figure on the average of both DI payments based on SSA's current FY 2024 data (<https://mwww.ba.ssa.gov/legislation/2024FactSheet.pdf>), and U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2024 wait times for field offices (24 minutes) and teleservice centers (19 minutes), based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Claimant's Medication—20 CFR 404.1512, 416.912—0960–0289. To receive Old Age Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) payments, the relevant State Disability Determination Service (DDS) or field office (FO) must first adjudicate claimants' applications. If the DDS or FO denies an initial application, the claimants may request for reconsideration of the initial denial. At that time, the claimants may submit additional documentation to further justify their claims. If the DDS denies

the claim at the reconsideration level, the claimant may then request a hearing before a judge. Before the hearing, SSA allows the claimant to submit additional evidence to support their claim. In addition, since judges must obtain information from the claimant to update and complete their medical record and to verify the accuracy of the information, SSA also sends the claimant Form HA–4632, Claimant's Medications, to request information from the claimant regarding the current medications they use. This information helps the judge overseeing the case to

fully investigate: (1) the claimant's medical treatment and (2) the effects of the medications on the claimant's medical impairments and functional capacity. The judge makes the completed form a part of the documentary evidence of record, placing it in the official record of the proceedings as an exhibit. The respondents are applicants (or their representatives) for OASDI or SSI payments who request a hearing to contest an agency denial of their claim.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office or for teleservice centers (minutes)**	Total annual opportunity cost (dollars)***
HA–46321—PDF/paper version	51,000	1	20	17,000	*\$13.30	** 21	*** \$463,505
Electronic Records Express Submissions	249,000	1	20	83,000	*\$31.48	.....	*** 2,612,840
Totals	300,000	.....	.....	100,000	.....	.....	*** 3,076,345

* We based this figure on the average DI payments based on SSA's current data (<https://www.ssa.gov/legislation/2024FactSheet.pdf>) and on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2024 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Questionnaire for Children Claiming SSI Benefits—20 CFR 416.912(a)—0960–0499. Sections 1614 and 1631 of the Act allow SSA to determine the eligibility of an applicant's claim for SSI payments. Parents or legal guardians seeking to obtain or retain SSI eligibility for their

children use Form SSA–3881–BK to provide SSA with the addresses of nonmedical sources such as schools, counselors, agencies, organizations, or therapists who would have information about a child's functioning. SSA uses this information to help determine a child's claim or continuing eligibility

for SSI. The respondents are the parents, guardians, or other caretakers of: (1) applicants who appeal SSI childhood disability decisions; or (2) recipients undergoing a continuing disability review.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office (minutes)**	Total annual opportunity cost (dollars)***
SSA–3881–BK (Paper Version)	98,307	1	30	49,154	*\$31.48	** 24	*** \$2,785,256
SSA–3881–BK (Intranet Version)	52,936	1	30	26,468	*\$31.48	** 21	*** 1,416,474
Totals	151,243	.....	.....	75,622	.....	.....	*** 4,201,730

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2024 wait times for field offices and hearings office, as well as by averaging both the average FY 2024 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Waiver of Right to Appear—Disability Hearing—20 CFR 404.913–404.914, 404.916(b)(5), 416.1413–416.1414, 416.1416(b)(5)—0960–0534. Claimants for Social Security disability payments or their representatives can use Form SSA–773–U4 to waive their

right to appear at a disability hearing. The disability hearing officer uses the signed form as a basis for not holding a hearing, and for preparing a written decision on the claimant's request for disability payments based solely on the evidence of record. The respondents are

disability claimants for Social Security benefits or SSI payments, or their representatives, who wish to waive their right to appear at a disability hearing.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA-773-U4	4,356	1	3	218	* \$13.30	** 24	*** \$26,068

* We based this figure on average DI payments based on SSA's current FY 2024 data (<https://mwww.ba.ssa.gov/legislation/2024FactSheet.pdf>).

** We based this figure on the average FY 2024 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Function Report—Child (Birth to 1st Birthday, Age 1 to 3rd Birthday, Age 3 to 6th Birthday, Age 6 to 12th Birthday, Age 12 to 18th Birthday)—20 CFR 416.912 and 416.924a(a)(2)—0960–0542. As part of SSA's disability determination process, we use Forms SSA-3375–BK through SSA-3379–BK to request information from a child's parent or guardian for children applying for SSI. The five different versions of the form contain questions about the child's

day-to-day functioning appropriate to a particular age group; thus, respondents use only one version of the form for each child. The adjudicative team (disability examiners and medical or psychological consultants) of State disability determination services offices collect the information on the appropriate version of this form (in conjunction with medical and other evidence) to form a complete picture of the children's ability to function and

their impairment-related limitations. The adjudicative team uses the completed profile to determine: (1) if each child's impairment(s) results in marked and severe functional limitations; and (2) whether each child is disabled. The respondents are parents and guardians of child applicants for SSI.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA-3375	26,864	1	20	8,955	* \$31.48	** 21	*** \$577,878
SSA-3376	53,347	1	20	17,782	* \$31.48	** 21	*** 1,147,540
SSA-3377	108,745	1	20	36,248	* \$31.48	** 21	*** 2,339,247
SSA-3378	193,800	1	20	64,600	* \$31.48	** 21	*** 4,168,896
SSA-3379	142,006	1	20	47,335	* \$31.48	** 21	*** 3,054,725
Totals	524,762	.....	.....	174,921	.....	.....	*** 11,288,286

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging the average FY 2024 wait times for field offices and teleservice Centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: December 2, 2024.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2024-28509 Filed 12-5-24; 8:45 am]

BILLING CODE 4191-02-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2024-0049]

Social Security Ruling, SSR 24-3p.; Titles II and XVI: Use of Occupational Information and Vocational Specialist and Vocational Expert Evidence in Disability Determinations and Decisions

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 24-3p. This SSR rescinds and replaces “SSR 00-4p: Titles II and XVI:

Use of Vocational Expert and Vocational Specialist Evidence, and Other Reliable Occupational Information in Disability Decisions”, and explains our standard for evaluating whether vocational evidence is sufficient to support a disability determination or decision.

DATES: We will apply this notice on January 6, 2025.

FOR FURTHER INFORMATION CONTACT:

Patrick McGuire, Social Security Administration, Office of Analytics, Review, and Oversight, Appellate Operations, 6401 Security Boulevard, Baltimore, MD 21235-6401, (703) 605-7100, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our internet site, Social Security Online, at <https://www.ssa.gov>.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not

require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1).

SSRs represent precedential final opinions, orders, and statements of policy and interpretations that we have adopted relating to the Federal Old Age, Survivors, and Disability Insurance program, and Supplemental Security Income program. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

Although SSRs do not have the same force and effect as law, they are binding on all SSA components in accordance with 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or until we publish a new SSR that replaces or modifies it.

The Acting Commissioner of Social Security, Carolyn W. Colvin, having reviewed and approved this document, is delegating the authority to electronically sign this document to Erik Hansen, a Federal Register Liaison for the Social Security Administration, for purposes of publication in the **Federal Register**.

Erik Hansen,

Associate Commissioner, for Legislative Development and Operations, Social Security Administration.

Policy Interpretation Ruling

SSR 24–3p: Titles II and XVI: Use of Occupational Information and Vocational Specialist and Vocational Expert Evidence in Disability Determinations and Decisions

This SSR rescinds and replaces SSR 00–4p: Titles II and XVI: Use of Vocational Expert and Vocational Specialist Evidence, and Other Reliable Occupational Information in Disability Decisions.

Citations (Authority): Sections 216(i), 223(d)(2)(A), and 1614(a)(3)(B) of the Social Security Act, as amended and 20 CFR 404.1560, 404.1566–404.1569, Part 404 Subpart P Appendix 2, 416.960, and 416.966–416.969.

Dates: We will apply this notice on January 6, 2025.¹

Purpose: When we make disability determinations and decisions, we may ask impartial vocational specialists (VS) or vocational experts (VE) to provide evidence about work. VSs and VEs give us evidence tailored to the specific facts of the cases about which we consult them, based on their professional knowledge, training, and experience and the vocational data available to them.

In 2000, we issued SSR 00–4p, which explains that, before relying on VS and VE evidence to support a disability decision, our adjudicators must (1) identify and obtain a reasonable explanation for any conflicts between occupational information provided by a VS or VE and information in the *Dictionary of Occupational Titles (DOT)*, including its companion publication, the *Selected Characteristics*

of Occupations Defined in the Revised Dictionary of Occupational Titles; and (2) explain in the determination or decision how any conflict that has been identified was resolved.

We continue to recognize the DOT as a valid and reliable source of occupational information, and we will continue to use it in adjudication. However, we acknowledge that the DOT is not the only reliable source of occupational information. We note that recent federal statistical data relating to work in the national economy uses the Standard Occupational Classification (SOC) system² and that the SOC system for classifying occupations is different from that of the DOT. The requirements of SSR 00–4p make it difficult to use these other sources, because it is not clear how a VS, VE or adjudicator can fulfill the requirement to identify and resolve conflicts with the DOT when primarily using a data source that is, structurally, very different from the DOT. We do not want to discourage use of occupational information that is reliable and commonly used in the vocational profession. In addition, our adjudicative experience since we issued SSR 00–4p has shown that requiring our adjudicators, VSs, and VEs to identify and explain conflicts with the DOT is time consuming. At the hearing level, the requirements of SSR 00–4p have led to unnecessary remands to resolve apparent conflicts that were not identified at the hearing when the VE testified, and the requirements of SSR 00–4p might discourage VSs and VEs from using occupational data in sources other than the DOT.

This ruling explains our standard for evaluating whether vocational evidence is sufficient to support a determination or decision. We are rescinding SSR 00–4p and will no longer require our adjudicators to identify and resolve conflicts between occupational information provided by VSs and VEs and information in the DOT.

Pertinent History: We use a five-step sequential evaluation process to determine whether an individual is disabled. We may use VS or VE evidence at steps four and five in that process.

At step four of the sequential evaluation process, we consider whether an individual, given their residual functional capacity (RFC), can

perform any of their past relevant work (PRW) either as the individual actually performed it or as the work is generally performed in the national economy. If we find that the individual can perform any of their PRW, we will find that the individual is not disabled. If the individual cannot perform any of their PRW, we go to the fifth step of the sequential evaluation process.

At step five of the sequential evaluation process, we consider whether an individual's impairment(s) prevents them from adjusting to other work that exists in significant numbers in the national economy, considering their RFC and the vocational factors of age, education, and work experience. If we find that the individual cannot adjust to other work, we will find that the individual is disabled. If we find that the individual can adjust to other work, we will find that the individual is not disabled.

In appropriate instances, we use the medical-vocational guidelines to decide whether work exists in the national economy.³ When an individual's RFC and vocational factors of age, education, and work experience correspond to a rule in the medical-vocational guidelines, that rule applies and directs a decision of “disabled” or “not disabled.” Where our finding of fact about an individual's RFC or a vocational factor does not correspond precisely to a medical-vocational rule, the guidelines provide a framework to guide our decision-making.

Our regulations state that we will take administrative notice of reliable job information.⁴ In certain cases, we use VSs and VEs as sources of job-related evidence⁵ including evidence about whether an individual's work skills can be used in other work, the specific occupations in which they can be used, or a similarly complex issue. VSs and VEs provide expert vocational evidence and rely on the publications listed in 20 CFR 404.1566(d) and 416.966(d) or other reliable sources of occupational information. VEs and VSs may use any reliable source of occupational information that is commonly used by vocational professionals and is relevant under our rules, along with their professional knowledge, training, and experience. VEs and VSs may use a combination of these sources when providing occupational evidence. Adjudicators must weigh the VE or VS evidence in the context of the overall record and determine whether it can

¹ We will use this SSR beginning on its applicable date. We will apply this SSR to new applications filed on or after the applicable date of the SSR and to claims that are pending on or after the applicable date. This means that we will use this SSR on and after its applicable date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the applicable date of this SSR, we will apply this SSR to the entire period at issue in the decision we make after the court's remand.

² During the 1980s and 1990s, the Office of Management and Budget (OMB) led the effort to standardize various occupational classification systems then in use across the federal government with a SOC system to “promote a common language for categorizing occupations in the world of work.” 62 FR 36338, 36338 (July, 1997), available at <https://www.bls.gov/soc/2000/frn-july-7-1997.pdf>.

³ 20 CFR part 404 subpart P appendix 2.

⁴ 20 CFR 404.1566(d) and 416.966(d).

⁵ 20 CFR 404.1566(e) and 416.966(e).

support a conclusion at step four or step five.

Policy Interpretation

The DOT

Our rules, such as regulatory terms and definitions, and our guidance are controlling for our adjudicators. The DOT, which, as noted above, we continue to take administrative notice of as a reliable source, corresponds to many of our rules and guidance. For example, the maximum requirements of occupations as generally performed in the DOT correspond directly to our rules and guidance. We classify jobs as sedentary, light, medium, heavy, and very heavy, using the same meaning as those terms have in the DOT. Our categorization of skills also corresponds with the DOT. The DOT lists a specific vocational preparation (SVP) level for each occupation it describes. Our skill level definitions in 20 CFR 404.1568 and 416.968, of unskilled, semi-skilled, and skilled work as corresponding to DOT SVP levels of 1 to 2, 3 to 4, and 5 to 9.

VS and VE Occupational Evidence

We may also ask a VS or VE to provide evidence concerning a variety of case-specific factual issues. A VS or VE may offer evidence concerning the physical and mental demands of an individual's past relevant work, either as actually performed by the individual or as generally performed in the national economy,⁶ evidence concerning whether an individual's work skills can be used in other work and the specific occupations in which they can be used, or evidence regarding similarly complex issues.⁷ We may ask VSs and VEs to offer examples of other occupations an individual can perform. Additionally, VEs may offer estimates of the number of jobs that exist in the national economy in such occupations.⁸ We do not dictate any specific approach to estimating job numbers, and the numbers provided are only general estimates. Our adjudications are non-

adversarial,⁹ and we process millions of cases each year. Our adjudicators must determine whether VS or VE evidence is adequate to decide the claim and must do so efficiently.

VSs and VEs may provide evidence based on their professional experience and any reliable source of occupational information that is commonly used in the vocational profession and relevant under our rules. VSs and VEs are in the best position to determine the most appropriate sources of data to support the evidence they offer. We expect VSs and VEs to identify the sources of the data they use and, where applicable, to explain their general approach to estimating job numbers. If the VS or VE uses a data source that defines exertion, education, or skill levels differently than our regulations, we expect the VS or VE to explain the difference. We may instruct VSs or VEs to address other concerns as needed. For example, VSs and VEs should identify and explain if they cite an occupation that is performed in a different way than identified in the source of data they used. Because VEs and VSs are impartial and qualified professionals whom we consult because of their expertise, a more detailed inquiry into the sources of data or approaches used is not usually required. At the hearing level, when the claimant is represented, we expect the representative to raise any relevant questions or challenges about the VE's testimony at the time of the hearing and to assist in developing the record through appropriate questions to the VE.¹⁰ Based on the vocational evidence in the case and the record overall, an adjudicator will determine whether the evidence provided by a VS or VE is adequate to support a decision at step four or five.

Some sources of occupational data use definitions of exertion level, skill level, and education level that align closely with our program rules. The DOT is such a source. If a VS or VE uses a source that defines exertion, skill, or education level differently than our program rules, we expect the VS or VE to acknowledge the difference and explain whether or how they have accounted for the difference.

In addition, the VS or VE may cite to multiple acceptable sources of occupational data that do not precisely

correspond to each other. In some instances, it may be necessary for the VS or VE to explain how they accounted for the differences in classification. For example, Federal agencies that collect occupational data now use the SOC system. One difference between the DOT and the SOC system is that the SOC system aggregates occupational data at a higher level. While there are some SOC codes that correspond to a single DOT code, other SOC codes may correspond to a large number of DOT codes.¹¹ VSs and VEs may rely on occupational sources that use the SOC system. Examples of these data sets include, but are not limited to, the U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics (OEWS), and the Occupational Requirements Survey (ORS).

For example, VEs may cite occupations from the DOT but derive estimates of job numbers from the OEWS when providing evidence to us in our hearings process. Because the DOT uses a different classification taxonomy from the SOC system, VEs would need to explain the general approach of how they compared the DOT data to the data about estimates of job numbers in OEWS, a SOC-based classification system.¹² In this example, the VE could address the SOC group for the corresponding DOT code and explain how the estimates of job numbers for the specific occupation are derived from the overall numbers for the SOC group. A detailed inquiry is not required, but if a VE does not provide any explanation about the general approach, our adjudicators should ask them to provide one.

Consider the following illustration: at a hearing, an ALJ presents a hypothetical question to a VE regarding a younger individual with a high school education and no transferable skills, who can perform a reduced range of light work. The VE explains that the DOT and OEWS are the data sources used for the testimony. The VE then testifies that the hypothetical individual can perform work in the DOT occupation of Fast-Foods Worker (DOT Code 311.472-010). The VE relies on their experience along with published

⁶ 20 CFR 404.1560(b)(2) and 416.960(b)(2).

⁷ 20 CFR 404.1566(e) and 416.966(e).

⁸ See 20 CFR 404.1566(e) and 416.966(e). See also SSR 83-12 Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work, SSR 83-14 Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments, and SSR 96-9p Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work.

⁹ 20 CFR 404.900(b) and 416.1400(b). The rules of evidence used in federal courts do not apply. 42 U.S.C. 405(b)(1).

¹⁰ 20 CFR 404.1740 and 416.1540. Raising relevant questions about or challenges to the VE's testimony at the time of the hearing, when the VE is ready and available to answer them, furthers the efficient, fair, and orderly conduct of the administrative decision-making process.

¹¹ For example, SOC 11-9171 Funeral Home, Manager matches to one DOT Code 187.167-030 Funeral Director; however, SOC 51-9061 Inspectors, Testers, Sorters, Samplers, and Weighers matches to 782 DOT codes.

¹² If VEs rely only on sources that use the same classification systems, then they do not need to provide a crosswalk. For example, if a VE uses ORS and OEWS, which both use the SOC system, then no crosswalk is necessary. Similarly, if a VE relies only on the DOT, no crosswalk is necessary. The DOT, however, does not provide information about job numbers.

comparisons between the DOT and SOC¹³ to identify the closest related SOC group as 35–3023 Fast Food and Counter Workers. The VE explains that five additional DOT occupations crosswalk to the same SOC group,¹⁴ and that OEWS data shows there are 3,325,050 jobs nationally for the Fast Food and Counter Workers SOC group.¹⁵ Considering the limitations in the hypothetical question, the VE explains that the Fast-Foods Worker (DOT Code 311.472–010) occupation occurs more frequently in the labor market than the other five DOT jobs in the same SOC group. Then, the VE states that the Fast-Food Worker occupation accounts for 1,300,000 jobs in the SOC group. The VE explains that the response was based on the VE's experience, training, observation of how the job is performed in multiple settings and industries, and familiarity with the job market estimates.

Adjudicator Responsibilities

Our adjudicators are responsible for evaluating the VS or VE evidence within the context of the overall evidence in the claim. If the VS or VE does not provide the expected information and explanation outlined above, the adjudicator will usually need to develop the record with sufficient evidence to make a supported finding at step four or step five of the sequential evaluation process.¹⁶

[FR Doc. 2024–28508 Filed 12–5–24; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12599]

Notice of Determinations; Additional Culturally Significant Objects Being Imported for Exhibition— Determinations: “Caspar David Friedrich: The Soul of Nature” Exhibition

SUMMARY: On September 30, 2024, notice was published in the **Federal Register** of determinations pertaining to a certain object to be included in an exhibition entitled “Caspar David Friedrich: The Soul of Nature.” Notice is hereby given of the following determinations: I hereby determine that certain additional objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the aforesaid exhibition at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021. The notice of determinations published on September 30, 2024, appears at 89 FR 79683.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–28535 Filed 12–5–24; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2024–0023]

Request for Comments and Notice of a Public Hearing Regarding the 2025 Special 301 Review

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments and notice of public hearing.

SUMMARY: Each year, USTR conducts a review to identify countries that deny adequate and effective protection of intellectual property (IP) rights or deny fair and equitable market access to U.S. persons who rely on IP protection. Based on this review, the U.S. Trade Representative determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies, or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List.

DATES:

January 27, 2025 at 11:59 p.m. EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from the public.

February 10, 2025 at 11:59 p.m. EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from foreign governments.

February 19, 2025: The Special 301 Subcommittee will hold a public hearing at the Office of the United States Trade Representative, 1724 F Street NW, Rooms 1&2, Washington, DC. If necessary, the hearing may continue on the next business day. Those who intend to testify at the public hearing must submit a notice of intent to appear by the deadlines stated above. Please consult the USTR website at <https://ustr.gov/issue-areas/intellectual-property/Special-301>, for confirmation of the date and location and the schedule of witnesses.

February 26, 2025 at 11:59 p.m. EST: Deadline for submission of post-hearing written comments from persons who testified at the public hearing.

On or about April 30, 2025: USTR will publish the 2025 Special 301 Report within 30 days of the publication of the National Trade Estimate Report.

ADDRESSES: USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: <https://www.regulations.gov> (*Regulations.gov*). Follow the submission instructions in section IV below. The docket number is

¹³ When OMB mandated the SOC system for occupational data collection, Federal agencies developed crosswalks from the existing taxonomies to the SOC. 64 FR 53136, 53139 (1999), available at <https://www.govinfo.gov/content/pkg/FR-1999-09-30/pdf/99-25445.pdf>. The DOT crosswalk file is available at <https://www.onetcenter.org/crosswalks.html>.

¹⁴ The other five DOT codes are: DOT Code 311.477–014 Counter Attendant, Lunchroom or Coffee Shop; DOT Code 311.477–038 Waiter/Waitress, Take Out; DOT Code 311.674–010 Canteen Operator; DOT Code 311.677–014 Counter Attendant, Cafeteria; DOT Code 319.474–010 Fountain Server.

¹⁵ U.S. Bureau of Labor Statistics. OEWS, May 2022. <https://www.bls.gov/oes/current/oes353023.htm>.

¹⁶ Our determinations and decisions are based on the preponderance of the evidence standard. See 20 CFR 404.902, 404.920, 404.953, 416.1402, 416.1420, and 416.1453.

USTR–2024–0023. For alternatives to on-line submissions, please contact USTR at Special301@ustr.eop.gov before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT:

Claire Avery-Page, Director for Innovation and Intellectual Property, at Special301@ustr.eop.gov or 202.395.6862. You can find information about the Special 301 Review at <https://www.ustr.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the Special 301 provisions, requires the U.S. Trade Representative to identify countries that deny adequate and effective IP protections or fair and equitable market access to U.S. persons who rely on IP protection. The Trade Act requires the U.S. Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act (19 U.S.C. 2411–2415).

In addition, USTR has created a Priority Watch List and Watch List to assist in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Subcommittee, which reviews information from many sources, and consults with and makes recommendations to the U.S. Trade Representative on issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. In 2025, USTR will conduct a public hearing as part of the review process and will allow hearing participants to provide additional information relevant to the review. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries the acts, policies, or practices of which deny adequate and effective protection for IP rights or deny fair and equitable market

access to U.S. persons who rely on IP protection. The Special 301 provisions also require the U.S. Trade Representative to identify any act, policy, or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 32.6 of the United States-Mexico-Canada Agreement (USMCA) (as defined in section 3 of the USMCA Implementation Act). USTR invites the public to submit views relevant to this aspect of the review.

The Special 301 provisions require the U.S. Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the National Trade Estimate Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report on or about April 30, 2025.

II. Public Comments

To facilitate this year's review, written comments should be as detailed as possible and provide all necessary information to identify and assess the effect of the acts, policies, and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential, or other orders, and administrative, court, or other determinations that should factor into the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should include the methodology used to calculate the estimated losses.

III. Public Hearing

The Special 301 Subcommittee will convene a public hearing on February 19, 2025, in Rooms 1 and 2, 1724 F Street NW, Washington, DC, at which interested persons, including representatives of foreign governments, may appear to provide oral testimony. If necessary, the hearing may continue on the next business day. Because the hearing will take place in Federal facilities, attendees must show photo identification and will be screened for security purposes. Please consult the

USTR website at <https://ustr.gov/issue-areas/intellectual-property/Special-301>, to confirm the date and location of the hearing and to obtain copies of the hearing schedule. USTR also will post the transcript and recording of the hearing on the USTR website as soon after the hearing as possible.

Witnesses must deliver prepared oral testimony, which is limited to five minutes, before the Special 301 Subcommittee in person and in English. Subcommittee member agencies may ask questions following the prepared statement. Witnesses not from foreign governments must submit a notice of intent to testify and a hearing statement by January 27, 2025, and foreign government witnesses must submit a notice of intent to testify and a hearing statement by February 10, 2025. The submissions must be in English and must include: (1) The name, address, telephone number, email address, and firm or affiliation of the individual wishing to testify, and (2) a hearing statement that is relevant to the Special 301 review.

IV. Submission Instructions

All submissions must be in English and sent electronically via [Regulations.gov](https://www.regulations.gov) using docket number USTR–2024–0023. To submit comments, locate the docket (folder) by entering the number USTR–2024–0023 in the 'search for dockets or documents on agency actions' window at the [Regulations.gov](https://www.regulations.gov) home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'comment'.

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol: Commenter Name or Organization_2025 Special 301 Review_Comment, or Notice of Intent to Testify or Hearing Statement. Please include the following information in the 'start typing comment here' field: '2025 Special 301 Review' and whether the submission is a comment, a request to testify at the hearing, or a hearing statement. Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the 'start typing comment here' field. For further information on using [Regulations.gov](https://www.regulations.gov), please select 'FAQ' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments that contains business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the filer should type 'business confidential' in the 'start typing comment here' field. Filers of comments containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P'. Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments. Filers submitting comments containing no BCI should name their file using the name of the person or entity submitting the comments.

As noted, USTR strongly urges commenters to submit comments through *Regulations.gov*. You must make any alternative arrangements before transmitting a document and in advance of the relevant deadline by contacting USTR at *Special301@ustr.eop.gov*.

USTR will place comments in the docket and they will be open to public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering Docket Number USTR-2024-0023 in the 'search' field on the home page.

Daniel Lee,

Assistant U.S. Trade Representative for Innovation and Intellectual Property, Office of the United States Trade Representative.

[FR Doc. 2024-28559 Filed 12-5-24; 8:45 am]

BILLING CODE 3390-F4-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2024-0081]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 4, 2025.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0081 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

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

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Fawn Thompson, (404)-895-6229, fawn.thompson@dot.gov, Office of Technical Services—Center for Accelerating Innovation, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590. Office hours are from 7 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: 2023–2026 Accelerated Innovation Deployment (AID) Demonstration Grants

Background: The purpose of this Notice of Funding Opportunity (NOFO) is to invite applications for the FHWA's Accelerated Innovation Deployment (AID) Demonstration grants for fiscal years (FY) 2023–2026. Up to \$10 million

will be available for FY 2023, with up to \$12.5 million for each subsequent fiscal year. Funds made available for FYs 2023–2026 for the AID Demonstration are to be awarded on a competitive basis to fund activities eligible for assistance under title 23, United States Code (U.S.C.) in any phase of a highway transportation project between project planning and project delivery including planning, financing, operation, structures, materials, pavements, environment, and construction that address the Technology and Innovation Deployment Program goals. This notice describes the application requirements, selection and evaluation criteria, applicable program and Federal requirements and deliverables, and available technical assistance during the grant solicitation period.

Respondents: Entities eligible include State Departments of Transportation (DOT), Federal Land Management Agencies, and Tribal governments. State DOT may apply for AID Demonstration grants in partnership with Local Public Agencies (LPA), and the State DOT will be responsible for administering the AID Demonstration grant work by the LPA. Any federally recognized Tribe identified on the list of "Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs" (87 FR 4636) is eligible to apply for AID Demonstration grants.

Frequency: The information will be collected annually.

Estimated Average Burden per Response: The following is expected for respondents and recipients:

- *Application Sub-Total:* 21 hours per respondent
- *Program Management Sub-Total:* 21 hours per recipient

Estimated Total Annual Burden

Hours: It is expected that the respondents and recipients will complete approximately 2,340 burden hours to address the Application and Program Management requirements.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request

for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on December 3, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024-28568 Filed 12-5-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0182]

Agency Information Collection Activities; New Information Collection: Medical Documentation for Employee's Request for Reasonable Accommodation Form

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The ICR is related to the collection of certificates of medical examinations to determine whether applicants meet the Office of Personnel Management (OPM)-approved medical qualification standards for certain positions. The ICR is necessary to determine whether an employee meets the necessary requirements to obtain a reasonable accommodation.

DATES: Comments on this notice must be received on or before February 4, 2025.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2024-0182 using any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC, 20590-0001 between 9 a.m. and 5 p.m. ET, Monday

through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

- **Fax:** 1-202-493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT:

Benjamin Tate, Disability Program Manager, Human Resources Service Division, DOT, FMCSA, 1200 New Jersey Avenue SE, West Building, 6th Floor, Washington, DC 20590-0001; 202-815-0830; benjamin.tate@dot.gov.

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2024-0182), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0182/document>, click on this notice, click "Comment," and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public

to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>. The comments are posted without edits and are searchable by the name of the submitter.

Background

In accordance with the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendments Act of 2008, FMCSA makes reasonable accommodations for the known physical or mental limitations of qualified individuals with disabilities, unless the accommodation would impose an undue hardship on the operation of FMCSA. FMCSA requires medical information from a health care provider to determine whether the person's condition rises to the level of disability under the law and to determine whether the limitations can be effectively accommodated. FMCSA will use Form MCSA-3962.1, "Medical Documentation for Employee's Reasonable Accommodation Request," to help determine whether the Agency will provide reasonable accommodation to qualified individuals. FMCSA makes available electronic versions (PDF fillable) of Form MCSA-3962.1. The form can be filled out on the computer and then either emailed or printed off and submitted to the appropriate office.

Title: Medical Documentation for Employees Request for Reasonable Accommodation Form.

OMB Control Number: 2126-00XX.

Type of Request: New ICR.

Respondents: Health Professionals.

Estimated Number of Respondents: 45.

Estimated Time per Response: 5 minutes.

Expiration Date: This is a new ICR.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3.75 Hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will

summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.
Thomas P. Keane,
Associate Administrator, Office of Research and Registration.

[FR Doc. 2024-28696 Filed 12-5-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0216]

Agency Information Collection Activities; Renewal of an Approved Information Collection; Waiver and Exemption Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled "Waiver and Exemption Requirements". The ICR estimates the burden applicants incur to comply with the reporting tasks required for requesting waivers and exemptions.

DATES: Comments on this notice must be received on or before February 4, 2025.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2024-0216 using any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC, 20590-0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

- **Fax:** 1-202-493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Bernadette Walker, Driver and Carrier Operations Division, DOT, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; 202-385-2415; Bernadette.walker@dot.gov.

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2024-0216), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0216/document>, click on this notice, click "Comment," and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice DOT/ALL 14

(Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>. The comments are posted without edits and are searchable by the name of the submitter.

Background

In 1998, the Federal Highway Administration (FHWA), the predecessor agency of FMCSA, adopted 49 CFR part 381 as an interim final rule (IFR), establishing procedures for applying for waivers, exemptions, and pilot programs (63 FR 67600, December 8, 1998). Section 4007 of the Transportation Equity Act for the 21st Century (TEA-21) amended 49 U.S.C. 31315 and 31136(e) to provide authority to the Secretary of Transportation to grant waivers and exemptions from motor carrier safety regulations. Section 4007 of TEA-21 requires that the terms and conditions for all waivers and exemptions likely achieve a level of safety equivalent to or greater than what would be achieved by complying with the safety regulations. In 2004, FMCSA adopted its IFR as final at 49 CFR part 381, consistent with section 4007 of TEA-21 (69 FR 51589, August 20, 2004). The final rule also established procedures that govern how FMCSA reviews, grants, or denies requests for waivers and applications for exemptions. The final rule included requirements for publishing notice of exemption applications in the **Federal Register** to afford the public an opportunity for comment. There is no statutory requirement to publish **Federal Register** notices concerning waiver applications.

The ICR estimates the burden an individual, motor carrier, State, or State Driver's Licensing Agency (SDLA) incurs to comply with the reporting tasks required for requesting waivers and exemptions in 49 CFR part 381. The current burden estimate associated with this information collection, approved by OMB on May 23, 2022, is 97 hours. Through this ICR renewal, the Agency requests an increase in the burden hours from 97 hours to 119 hours. The increase is the result of the increase in estimated waiver and exemption applications the Agency expects to receive in the next three years.

Title: Waiver and Exemption Requirements.

OMB Control Number: 2126-0076.

Type of Request: Renewal, of a currently approved ICR.

Respondents: Individuals and motor carriers.

Estimated Number of Respondents: 447 per year.

Estimated Time per Response: 5 minutes to 2 hours.

Expiration Date: May 31, 2025.

Frequency of Response: On occasion (respondents are not required to submit request for waivers or exemptions).

Estimated Total Annual Burden: 119 hours.

Definitions: N/A.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2024-28698 Filed 12-5-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0027]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; correction.

SUMMARY: FMCSA corrects its November 19, 2024, notice of final disposition granting exemptions for 11 individuals from the Agency's requirement interstate commercial motor vehicle (CMV) drivers have "no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV." The expiration date for the exemptions was incorrectly published as November 13, 2024. The correct expiration date is November 13, 2026.

DATES: This correction is effective December 6, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical

Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing materials in the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION: On November 19, 2024 (89 FR 91479), FMCSA published a notice of final disposition in which the Agency announced its decision to exempt 11 individuals from the requirement that interstate CMV drivers have "no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV." The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce, provided certain conditions are satisfied. The notice incorrectly indicated that the expiration date of the exemptions is November 13, 2024. Through this notice, FMCSA corrects the expiration date.

In FR Doc. 2024-26972 appearing on page 91479 in the **Federal Register** of November 19, 2024, the following correction is made:

1. On page 91479, in the third column, under the dates section, "The exemptions expire on November 13, 2024." is corrected to read "The exemptions expire on November 13, 2026."

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-28691 Filed 12-5-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2024-0157]

Request for Comments on the Renewal of a Previously Approved Collection: Centers of Excellence (CoE) for Domestic Maritime Workforce Training and Education Annual Application for Designation

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB)

approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133-0549 (Centers of Excellence (CoE) for Domestic Maritime Workforce Training and Education Annual Application for Designation) is used to determine the eligibility of certain qualified training entities to apply for CoE designation. Due to a change in the CoE program designation duration, the total responses, respondents, and burden hours for this collection have reduced since the last renewal. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

ADDRESSES: Written comments and recommendations for the proposed information collections should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Gerard Wall, Program Manager, 202-366-7273, Centers of Excellence, Room W23-470, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590, Email: gerard.wall@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Centers of Excellence (CoE) for Domestic Maritime Workforce Training and Education Annual Application for Designation.

OMB Control Number: 2133-0549.

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

Abstract: In order to implement section 3507 of the National Defense Authorization Act of 2018, Public Law 115-91 (the "Act"), codified at 46 United States Code (U.S.C.) 51706 (previously designated as 46 U.S.C. 54102), MARAD developed a procedure to recommend to the Secretary the designation of eligible institutions as Centers of Excellence (CoE) for Domestic Maritime Workforce Training and Education. Pursuant to the Act, the Secretary of Transportation may designate certain eligible and qualified training entities as CoEs. Authority to administer the CoE program is delegated to MARAD in 49 Code of Federal Regulations (CFR) 1.93(a). The previously approved policy for collecting information is required to administer the Center of Excellence program which supports the DOT strategic goal of Economic Competitiveness, and the MARAD

strategic goal to Maintain and Modernize the Maritime workforce.

Respondents: Postsecondary educational and vocational institutions, registered apprenticeship sponsors, and structured experiential learning training programs in certain eligible locations are eligible to apply for CoE designation. Additionally, “maritime training centers previously designated as a 2021 CoE” are eligible under the statute.

Affected Public: Postsecondary educational and vocational institutions, registered apprenticeship sponsors, and structured experiential learning training programs.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Estimated Hours per Response: 48.

Annual Estimated Total Annual Burden Hours: 2,400.

Frequency of Response: Once Annually.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on October 1, 2024 (89 FR 80012).

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.
Secretary, Maritime Administration.
[FR Doc. 2024–28613 Filed 12–5–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0156]

Request for Comments on the Reinstatement of a Previously Approved Information Collection: United States Marine Highway Program

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0541 (United States Marine Highway Program) (also known as America’s Marine Highway Program) will be used to evaluate and review applications being submitted for grant award consideration. This collection was initially discontinued on August 28, 2023, due to the elimination of the project designation application for this

program from the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. However, in order to facilitate the operation of the United States Marine Highway Program Grant Program (the Program), which provides funding to develop, expand, or promote marine highway transportation or shipper use of marine highway transportation, this collection is being reinstated. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments must be submitted on or before February 4, 2025.

ADDRESSES: You may submit comments identified by Docket No. MARAD–2024–0156 through one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Search using the above DOT docket number and follow the online instructions for submitting comments.

- **Mail or Hand Delivery:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to www.regulations.gov including any personal information provided.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department’s performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB’s clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Timothy Pickering, 202–366–0704, Office of Ports & Waterways Planning, Maritime Administration, 1200 New Jersey Ave. SE, Washington, DC 20590, Email: timothy.pickering@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: United States Marine Highway Program

OMB Control Number: 2133–0541.

Type of Request: Reinstatement of a Previously Approved Collection

Abstract: The Department of Transportation will reinstate solicitation

of grant applications for Marine Highway Grant Funding as specified in the United States Marine Highway Program, codified at 46 U.S.C. 55601. These applications must comply with the requirements of the referenced United States Marine Highway Notice of Funding Opportunity and be submitted in accordance with the instructions contained in that Notice of Funding Opportunity. United States Marine Highway Grant Notice of Funding Opportunities occurs when funds are appropriated by Congress.

Respondents: States, political subdivisions of a State, or a local government, a United States metropolitan planning organization, a United States port authority, a Tribal government, or a United States private sector operator of marine highway projects.

Affected Public: Vessel Operators.

Estimated Number of Respondents: 25.

Estimated Number of Responses: 25.

Estimated Hours per Response: 125.

Annual Estimated Total Annual

Burden Hours: 1,700.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2024–28614 Filed 12–5–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Information Collection and Request for Public Comment

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Department of the Treasury, as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act (PRA) of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury, is soliciting comments concerning the Small Dollar Loan Program (SDL Program) Application (Application). The Application is an online form submitted through the CDFI Fund’s Awards Management

Information System (AMIS). Information on the SDL Program can be found on the CDFI Fund's website at <https://www.cdfifund.gov/programs-training/programs/sdlp>. The CDFI Fund is required by law to make the Applications publicly available for comment prior to submission for a new PRA number.

DATES: Written comments must be received on or before February 4, 2025 to be assured of consideration.

ADDRESSES: You may submit comments concerning the SDL Program Application 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: Eddie Tsibulevskiy, Program Manager, SDL Program, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, by email to SDLP@cfdi.treas.gov, or phone 202-653-0421 (Option 3).

SUPPLEMENTARY INFORMATION:

Title: Small Dollar Loan Program Application.

OMB Number: 1559-0051.

Abstract: The Small Dollar Loan Program (SDL Program) was authorized by Title XII—Improving Access to Mainstream Financial Institutions Act of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203), which amended the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4719). Through the SDL Program, the CDFI Fund provides Federal Financial Assistance in the form of grants for loan loss reserves and technical assistance to enable award recipients to establish and/or expand small dollar loan programs. Small dollar loan programs supported by the SDL Program are intended to address the issues of consumer access to mainstream financial institutions and provide alternatives to high-cost small dollar loans. The SDL Program is also intended to enable award recipients to help unbanked and underbanked populations build credit, access

affordable capital, and allow greater access into the mainstream financial system.

Through the SDL Program, the CDFI Fund provides:

- *Grants for Loan Loss Reserves (LLR):* The awards will enable a Certified Community Development Financial Institution (CDFI) to establish a loan loss reserve fund to defray the costs of establishing or expanding a small dollar loan program.
- *Grants for Technical Assistance (TA):* The awards will support technology, staff support, and other eligible activities to enable a Certified CDFI to establish and maintain a small dollar loan program.

SDL Program Award Recipients are selected through a competitive process involving a careful review of all Applications for program funding. The Application requires the submission of numeric data and narrative responses in three parts: 1. Market Need; 2. Business Strategy and Impact; and 3. Organizational Capacity, including financial and compliance-related data. The Award selection process is defined in the Notice of Funds Availability (NOFA) for each funding round.

SDL Program Award Recipients enter into Assistance Agreements with the CDFI Fund that set forth required terms and conditions of the Award, including reporting and data collection requirements. The Assistance Agreement requires the submission of annual performance reports. The CDFI Fund reviews the information collected in the performance reports to ensure the Recipient's compliance with its Performance Goals and contractual obligations, as well as monitor the overall performance of the program.

This request for public comment relates to the SDL Program form under OMB control number 1559-0051, which includes the Application. Capitalized terms not defined in this Notice (other than titles) have the meaning set forth in the fiscal year (FY) 2024 SDL Program NOFA.

Current Actions: Renewal of existing Information Collection.

Type of Review: Regular Review.

Affected Public: Businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

Estimated Number of Respondents: 100 (Application).

Estimated Annual Time per Respondent: 89 hours (Application).

Estimated Annual Burden Hours: 8,900 hours (Application).

Request for Comments: Comments submitted in response to this Notice

will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund website at <https://www.cdfifund.gov>. The CDFI Fund is seeking input on the SDL Program Application. The Application may be obtained from the Request for Public Comments page of the CDFI Fund's website at <https://www.cdfifund.gov/requests-for-comments>.

The CDFI Fund is seeking: (a) specific input on the content of the SDL Program Application and (b) general input on the SDL Program related topics and considerations.

Comments concerning the Application are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services required to provide information; and (f) whether any additional questions or factors should be considered as part of the CMF Application and/or review process.

Additionally, the CDFI Fund specifically requests comments concerning the following questions:

1. Should any data fields, questions, or tables, be added, removed, or clarified to ensure collection of relevant information?

2. The Application states that LLR Awards cannot exceed 20% of the Applicant's three-year projected total of small dollar loans closed. Is the 20% cap appropriate for the purpose of supporting a wide variety of small dollar loan program designs? If not, provide a rationale and state what alternative cap would be more appropriate.

3. Is the maximum LLR Award size of \$350,000 appropriate for the purpose of supporting a wide variety of small dollar loan program designs? If not, what maximum award size would be more appropriate and why?

4. The Application requests information on how the Applicant will use an LLR Award to establish a small dollar loan program or expand an existing one. Is the requested information adequate to demonstrate a

need for an LLR Award? Why or why not? What, if any, additional information should be collected to assess the need and use of an LLR Award request?

5. Is the maximum award size for Technical Assistance Awards of \$150,000 appropriate to support eligible Technical Assistance activities? If not, what maximum award size would be appropriate and why?

6. Is the data collected in the track record and projections tables adequate and appropriate to assess an Applicant's experience in small dollar lending and projections? Why or why not?

7. The period of performance for SDLP awards is three years. Is three years sufficient to expend the award to

launch or expand a small dollar loan program? If it's not sufficient, what period would be more appropriate and why?

8. Is there other information not requested (such as additional detail on other unsecured consumer loans below \$10,000) in the Application that would demonstrate an Applicant's experience in small dollar lending and projected small dollar lending activities? If yes, what is that information?

9. The Application includes questions about the intended impact of an Applicant's small dollar lending strategy. (1) How should the CDFI Fund assess the impact of SDL Program Awards on communities served by Applicants? (2) The CDFI Fund has

identified a set of impact options for Applicants to choose in the Application. Are the current impact choices sufficient? Why or why not? Are there impacts that should be added or modified and if yes, what are they?

10. The SDL Program Application states that the Awards will not be made to Applicants that engage in the Prohibited Practices listed in Table 1. Are the Prohibited Practices appropriate to prevent predatory or abusive lending practices that low-income borrowers often face? Why are they not? Are there any Prohibited Practices that should be added, eliminated, or clarified? What are they?

TABLE 1—SDL PROGRAM PROHIBITED PRACTICES

Prohibited practice	Prohibited practice definition
i. High-Rate loans	Loans that exceed the lower of the following two rates: (1) an all-inclusive 36% APR (using the methodology prescribed in 32 CFR 232.4 of the Military Lending Act (referred to as the Military Annual Percentage Rate [MAPR]; or (2) the interest rate limit as set by the state agency that oversees financial institutions in your state.
ii. Coerced automated repayments	Loans that: (1) have delayed loan disbursements for borrowers who do not agree to automatic repayments, (2) charge fees for borrowers who select manual payments, or (3) require borrowers to make payments using wire transfers or other means that may result in additional fees for borrowers.
iii. Excessive refinancing	Loans that allow refinancing before at least 80% of the principal has been repaid.
iv. Loan insurance or credit card add-ons	Loans that offer add-on insurance or credit card products, whether they are automatic or not, that require borrowers to opt-in or opt-out to decline coverage or require the borrower to accept or opt-out of a credit card. For example, loans that automatically include insurance products such as credit, life, disability insurance or involuntary unemployment insurance coverage, or loans that automatically open a credit card for the borrower.
v. Security interests in household goods, vehicles, or deposit accounts. Exception: loans with a savings account component or credit builder loans.	Loans that are secured, except for loans secured by a savings account for loans with a savings component or credit builder loans.
vi. Excessive late fees on missed loan payments	Loans that charge more than one fee per late payment.
vii. Abusive overdraft practices	Lenders who hold the account from which repayment is being made may not collect a loan payment from the borrower's account that overdraws the account, triggering overdraft fees.
viii. Aggressive debt collection practices	Loans in which the lender: • Does not offer a workout program or other accommodations to help struggling borrowers before pursuing other debt collection avenues. • All debt collection activities must comply with the Fair Debt Collection Practices Act, whether conducted by the lender, a contract debt collector or sold to third party debt collectors. • Does not disclose to borrowers the details of its debt collection practices or provide notice to a borrower when its account is placed with debt collectors.
ix. Forced arbitration clause, class action ban, and other bans on legal remedies.	Loan contracts that contain clauses that prevent borrowers from seeking legal remedies in court, such as mandatory arbitration clauses, or clauses requiring that the borrower waive the right to a trial by jury or the right to participate in a class action lawsuit.

Authority: (Pub. L. 111–203, 12 U.S.C. 4719, 12 CFR part 1805, 12 CFR part 1815, 12 U.S.C. 4502)

Pravina Raghavan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2024–28521 Filed 12–5–24; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Advanced Pricing Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction

Act of 1995. Currently, the IRS is soliciting comments concerning the burden for requesting and obtaining advance pricing agreements.

DATES: Written comments should be received on or before February 4, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés García, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Please include, "OMB Number: 1545–1503—Public Comment Request Notice" in the Subject line.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Rjoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Advance Pricing and Mutual Agreement Program.

OMB Number: 1545–1503.

Document Number: Rev. Proc. 2015–41.

Abstract: The purpose of section 482 is to ensure that taxpayers clearly reflect income attributable to controlled transactions and to prevent the avoidance of taxes with respect to such transactions. Revenue Procedure 2015–41 provides guidance on the process of requesting and obtaining advance pricing agreements from the Advance Pricing and Mutual Agreement program ("APMA"). This revenue procedure also provides guidance on administration of an executed advance pricing agreement (APA).

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, or households.

Estimated Number of Respondents: 390.

Estimated Time per Respondent: 27 hrs., 57 min.

Estimated Total Annual Burden Hours: 10,900.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become

material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 3, 2024.

Ronald J. Durbala,
IRS Tax Analyst.

[FR Doc. 2024–28578 Filed 12–5–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee; Request for Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for nominations and applications.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications from individuals with experience in such areas as state tax administration, cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, public administration, and

consumer advocacy to be considered for selection as members of the Electronic Tax Administration Advisory Committee (ETAAC).

DATES: Written nominations and applications must be received on or before Jan. 31, 2025.

ADDRESSES: Applications may be submitted via fax to 855–811–8020 or via email to PublicLiaison@irs.gov. Applications and additional information are available on the IRS website at <https://www.irs.gov/etaac>. Applications may also be requested by telephone from National Public Liaison, 202–317–4299.

FOR FURTHER INFORMATION CONTACT: Alec Johnston at (202) 317–4299, or send an email to publicliaison@irs.gov.

SUPPLEMENTARY INFORMATION: The IRS strongly encourages representatives from consumer groups with an interest in tax issues to apply.

Nominations should describe and document the proposed member's qualifications for ETAAC membership, including the applicant's knowledge of regulations and the applicant's past or current affiliations and involvement with the particular tax segment or segments of the community that the applicant wishes to represent on the committee. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representation on ETAAC. Submissions must include an application and resume.

ETAAC provides continuing input into the development and implementation of the IRS organizational strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues—such as prevention of identity theft-related refund fraud—in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members work closely with the Security Summit, a joint effort of the IRS, state tax administrators and the nation's tax industry, to fight identity theft and refund fraud. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements.

This is a volunteer position. Members will serve three-year terms on the ETAAC to allow for a rotation in membership and ensure different perspectives are represented. Travel

expenses within government guidelines will be reimbursed. In accordance with Department of Treasury Directive 21–03, a clearance process including fingerprints, tax checks, a Federal Bureau of Investigation criminal check and a practitioner check with the Office of Professional Responsibility will be conducted.

The establishment and operation of the Electronic Tax Administration Advisory Committee (ETAAC) is required by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), title II, section 2001(b)(2). ETAAC follows a charter in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. 1001–1014. The ETAAC provides continued input into the development and implementation of the IRS's strategy for electronic tax administration. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration. Members will provide an annual report to Congress by June 30.

Applicants must complete the application form, which includes describing and documenting the applicant's qualifications for ETAAC membership. Applicants must submit a short one or two-page statement including recent examples of specific skills and qualifications as they relate to: cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, consumer advocacy and public administration. Examples of critical thinking, strategic planning and oral and written communication are desirable.

An acknowledgement of receipt will be sent to all applicants.

Equal opportunity practices will be followed in all appointments to the ETAAC in accordance with Department of Treasury and IRS policies.

Dated: November 30, 2024.

John A. Lipold,

Designated Federal Official.

[FR Doc. 2024–28721 Filed 12–5–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Requirements Related to Requests for Ruling and Determination Letters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the guidance for taxpayers regarding information collection requirements related to requests for ruling and determination letters.

DATES: Written comments should be received on or before February 4, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Please include, “OMB Number: 1545–1522—Public Comment Request Notice” in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Rulings and determination letters.

OMB Number: 1545–1522.

Regulation Project Number: Rev. Proc. 2025–1.

Abstract: This revenue procedure explains how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), and the Associate

Chief Counsel (Procedure and Administration). It explains the forms of advice and the way advice is requested by taxpayers and provided by the Service.

Current Actions: The previous approval was inadvertently discontinued. This submission is being made to request OMB approval on an existing collection in use without an OMB Control Number.

Type of Review: Existing collection in use without an OMB Control Number.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 3,966.

Estimated Time per Respondent: 79.70 hrs.

Estimated Total Annual Burden Hours: 316,100.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information

collection; they will also become a matter of public record.

Approved: December 3, 2024.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2024–28571 Filed 12–5–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0734]

Agency Information Collection Activity Under OMB Review: Report of General Information, Report of First Notice of Death, Report of Nursing Home or Assisted Living Information, Report of Defense Finance and Accounting Service (DFAS), Report of Non-Receipt of Payment, Report of Incarceration, Report of Month of Death

AGENCY: Veterans Benefits Administration (VBA), 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 (VBA), 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 by January 6, 2025.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: 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. 2900–0734.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Report of General Information (VA Form 27–0820), Report of First Notice of Death (VA Form 27–0820a), Report of Nursing Home and Assisted Living Information (VA Form 27–0820b), Report of Defense Finance and Accounting Service (DFAS) (VA Form 27–0820c), Report of Non-Receipt of Payment (VA Form 27–0820d), Report of Incarceration (VA Form 27–0820e), Report of Month of Death (VA Form 27–0820f).

OMB Control Number: 2900–0734
https://www.reginfo.gov/public/do/PRASearch.

Type of Review: Extension of a currently approved collection.

Abstract: The forms will be used by VA personnel to document verbal information obtained telephonically from claimants or their beneficiary. The data collected will be used as part of the evidence needed to determine the claimant’s or beneficiary’s eligibility for benefits.

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 80990, October 4, 2024.

Affected Public: Individuals and households.

Estimated Annual Burden: 212,500 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 2,550,000.

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. 2024–28570 Filed 12–5–24; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Building for the Future Through Electric Regional Transmission Planning
and Cost Allocation; Final Rule

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****18 CFR Part 35****[Docket No. RM21–17–001; Order No. 1920–
A]****Building for the Future Through
Electric Regional Transmission
Planning and Cost Allocation****AGENCY:** Federal Energy Regulatory
Commission, Department of Energy
(DOE).**ACTION:** Order on rehearing and
clarification.**SUMMARY:** In this order, the Federal
Energy Regulatory Commission
addresses arguments raised on
rehearing, sets aside, in part, and

clarifies Order No. 1920, which required transmission providers to conduct Long-Term Regional Transmission Planning to ensure the identification, evaluation, and selection, as well as the allocation of the costs, of more efficient or cost-effective regional transmission solutions to address Long-Term Transmission Needs. Order No. 1920 also directed other reforms to improve coordination of regional transmission planning and generator interconnection processes, require consideration of certain alternative transmission technologies in regional transmission planning processes, and improve transparency of local transmission planning processes and coordination between regional and local transmission planning processes.

DATES: The changes to Order No. 1920 made in this order on rehearing and clarification will be effective on January 6, 2025.**FOR FURTHER INFORMATION CONTACT:**

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I. Executive Summary

1. In Order No. 1920,¹ the Federal Energy Regulatory Commission (Commission) revised the *pro forma* Open Access Transmission Tariff (OATT) to adopt reforms to its existing electric transmission planning and cost allocation requirements pursuant to section 206 of the Federal Power Act (FPA).² The Commission found that existing regional transmission planning and cost allocation processes are unjust, unreasonable, and unduly discriminatory or preferential because, *inter alia*, the Commission's existing transmission planning and cost allocation requirements do not require transmission providers to: (1) perform a sufficiently long-term assessment of transmission needs that identifies Long-

Term Transmission Needs;³ (2) adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs; and (3) consider a set of benefits of regional transmission facilities planned to meet those Long-Term Transmission Needs.⁴ Order No. 1920 addressed these deficiencies by establishing requirements to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential including, *inter alia*, requiring transmission providers to conduct Long-Term Regional Transmission Planning⁵ that will ensure the identification, evaluation, and selection of more efficient or cost-effective regional transmission facilities to address Long-

Term Transmission Needs, as well as the just and reasonable allocation of the costs of those facilities. By expanding the time horizon and scope of Commission-jurisdictional regional transmission planning processes, Order No. 1920 reflected an evolutionary step in the Commission's ongoing commitment⁶ to ensure that those

⁶ See *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, 118 FERC ¶ 61,119 (2007), *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007) (cross-referenced at 118 FERC ¶ 61,119), *order on reh'g and clarification*, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009); *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011), Order No. 1000-A, 77 FR 32184 (May 31, 2012), 139 FERC ¶ 61,132 (2012), *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom.*

¹ *Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation*, Order No. 1920, 89 FR 49280 (June 11, 2024), 187 FERC ¶ 61,068 (2024).

² 16 U.S.C. 824e.

³ See *infra* Introduction and Background section (defining "Long-Term Transmission Needs").

⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1.

⁵ See *infra* Introduction and Background section (defining "Long-Term Regional Transmission Planning").

processes remain just and reasonable and meet the needs of the American people.

2. In this order, we refine and improve Long-Term Regional Transmission Planning by building on the reforms adopted in Order No. 1920, with a particular focus on ensuring that states have a robust role in Long-Term Regional Transmission Planning and cost allocation processes established in this rule. We continue to find, as the Commission did in the final rule, that the key components of Order No. 1920 together ensure that transmission providers will conduct sufficiently long-term, forward-looking, and comprehensive transmission planning and cost allocation processes. At least once every five years, transmission providers are required to conduct Long-Term Regional Transmission Planning, a process that includes looking ahead over a 20-year transmission planning horizon. This process further requires developing at least three plausible and diverse Long-Term Scenarios⁷ that are based upon known drivers of transmission needs and informed by best available data; analyzing the impacts of events like extreme weather under each Long-Term Scenario; and evaluating potential Long-Term Regional Transmission Facilities.⁸ This evaluation includes assessing whether these facilities would yield reliability and economic benefits to transmission customers and, if so, identifying those benefits. Together, these reforms ensure that transmission providers, state regulators, and stakeholders possess the information necessary for each transmission planning region to identify, evaluate, and select (*i.e.*, determine whether to pursue the development of facilities) more efficient or cost-effective transmission facilities that provide significant benefits for customers.

3. Here, we adopt a number of modifications and clarifications to address the concerns raised in response to Order No. 1920. Order No. 1920 recognized the important role that states will play in Long-Term Regional Transmission Planning and established various requirements to facilitate their participation in those processes, including requiring transmission providers to engage with states in developing cost allocation approaches for Long-Term Regional Transmission

Facilities. With this order, we reaffirm and enhance that finding by recognizing that meaningful engagement with states is critical to the success of the Long-Term Regional Transmission Planning reforms established in Order No. 1920. Specifically, in response to rehearing and clarification requests, we better integrate states' input into regional transmission planning and cost allocation processes, both in the transmission providers' development of Order No. 1920 compliance filings and the ongoing implementation of these reforms in the future. These modifications and clarifications address many of the concerns raised in the rehearing requests submitted in response to Order No. 1920, and they will increase the likelihood that Long-Term Regional Transmission Planning results in efficient and cost-effective transmission investment.

4. In this order, we also clarify what this rule does, and does not, require. Because Order No. 1920 mandates only improvements to transmission planning *processes* which, in turn, ensures foundational transparency about potential transmission development, Order No. 1920 does not force or mandate the development of certain transmission facilities. A requirement to develop a structured process to analyze *whether* building certain transmission facilities would yield benefits greater than their costs, over the long term and based upon various future scenarios, will help transmission providers and states to assess the value that those projects could bring. However, such process-based requirements are not the same as a requirement to build any particular transmission facilities. More precisely, Order No. 1920 does not require transmission providers to select any particular transmission facility; does not automatically authorize transmission developers to develop or construct any specific facilities; and does not mandate any specific set of transmission customers to pay for any particular transmission facilities. Instead, Order No. 1920 and this order together set out processes that direct transmission planning regions to systematically consider various drivers of transmission needs and develop cost allocation approaches that yield the development of cost-effective transmission projects and thereby yield just and reasonable rates for customers.

5. As such, Long-Term Regional Transmission Planning as required by Order No. 1920 is a significant step forward in the Commission's responsibility to ensure just and reasonable and not unduly discriminatory or preferential rates. By

establishing minimum standards based on transmission planning best practices observed around the country for forecasting future scenarios and managing the uncertainty inherent in forward-looking planning, the Long-Term Regional Transmission Planning requirements established in this proceeding will lead transmission providers to re-direct investment toward more efficient or cost-effective regional transmission facilities, and ultimately produce greater benefits for transmission customers.

6. Moreover, improving regional transmission planning practices is an urgent concern in light of the uncontroverted, rapidly changing circumstances on the grid, including load growth; the increased impacts of extreme weather; affordability concerns; and changing economics and policies that shape the resource mix and demand, which are increasing the need for transmission across the country. To cost-effectively meet these needs, Order No. 1920 and this order set out systematic processes that transmission providers will use to identify and analyze transmission projects that bring benefits to consumers, while recognizing the need for flexibility to account for regional differences.

7. Order No. 1920 follows in the footsteps of Order Nos. 890 and 1000 when it comes to the requirements governing the selection of potential regional transmission facilities identified through Long-Term Regional Transmission Planning. Consistent with the core theory of Order Nos. 890 and 1000, even though Order No. 1920 does not require the buildout of specific transmission facilities, it will reveal the benefits of designing and developing transmission projects and enable investment in those that yield great benefits for electricity customers across the country. Ultimately, we expect Order No. 1920 to lead to the development of more efficient or cost-effective transmission facilities through improved analysis and transparency that empower the transmission planning regions with the information needed to make prudent investments in beneficial transmission infrastructure for customers.

8. Order No. 1920's requirements for regional cost allocation practices are similarly well grounded in Commission and court precedent. If more efficient or cost-effective Long-Term Regional Transmission Facilities are identified and determined to be worth developing as a result of the enhanced regional transmission planning required by Order No. 1920, customers will pay for these facilities *only to the extent that*

S.C. Pub. Serv. Auth. v. FERC, 762 F.3d 41 (D.C. Cir. 2014) (per curiam).

⁷ See *infra* Introduction and Background section (defining "Long-Term Scenario").

⁸ See *infra* Introduction and Background section (defining "Long-Term Regional Transmission Facility").

they benefit from them. That is because Order No. 1920 requires, consistent with well-established law and Orders No. 890 and 1000, that any cost allocation must comply with cost causation and the “beneficiary pays” principle.⁹ Thus, Order No. 1920 will not lead one group of customers to pay for more than their fair share of the costs of transmission development because any proposal to charge customers for costs that are not “roughly commensurate” with the benefits they are expected to receive from Long-Term Regional Transmission Facilities would contravene the final rule.¹⁰

9. Order No. 1920 builds on Order No. 1000’s cost allocation requirements. Order No. 1000 required transmission providers to incorporate into their tariffs a default (“*ex ante*”) cost allocation approach that, if transmission facilities are determined to be worth investing in based upon the results of the regional transmission planning process, would provide a mechanism for those transmission customers that benefit to pay for those projects. Prior to Order No. 1000, transmission providers did not necessarily have the means to charge transmission customers located within a particular transmission planning region, but outside their individual service territories, for the costs of regional transmission facilities that benefit customers throughout the region. Thus, the requirement to establish an *ex ante* cost allocation method in each OATT that would apply if a regional transmission planning process resulted in the selection of more efficient or cost-effective transmission facilities was central to ensuring that those facilities could actually be developed. Like Order No. 1000, Order No. 1920 requires each transmission provider to establish at least one *ex ante* cost allocation method through which the costs of Long-Term Regional Transmission Facilities will be allocated in a manner consistent with the “beneficiary pays” principle. Just

like in Order No. 1000, the requirement to establish a mechanism by which the costs of selected transmission facilities may be allocated to relevant benefitting transmission customers does not mandate any particular method that transmission providers or planning regions must adopt.

10. Importantly, Order No. 1920 provides *additional flexibility* to transmission providers and states regarding cost allocation. While transmission providers under Order No. 1000 must adopt a cost allocation method for each type of transmission facility, Order No. 1920 relaxes this requirement. Furthermore, the modifications and clarifications granted on rehearing expand states’ critical role in determining the cost allocation approach most suitable for each transmission planning region. These modifications and clarifications are necessary because the Commission recognizes that states play a critical role in the successful planning of, the decision about how to pay for, and ultimately, the deployment of beneficial regional transmission facilities.

11. For example, under Order No. 1920 as modified in this order, Relevant State Entities have an opportunity to negotiate their preferred *ex ante* cost allocation method(s) in the first instance, including being able to secure an extension of time if needed to continue those negotiations. Upon reaching agreement, Relevant State Entities can present their preferred approach to the transmission provider, which then will either propose that approach to the Commission in its compliance filing for this rule, or if the transmission provider submits a different proposal, will include in its compliance filing the states’ preferred approach for the Commission to consider.

12. This order further improves states’ ability to negotiate cost allocation methods. Under Order No. 1920, states, through Relevant State Entities,¹¹ have an opportunity to secure the right to negotiate alternate cost allocation methods in the future, for either an individual transmission facility or a group of them, instead of using the *ex ante* cost allocation method on file in transmission providers’ OATTs. This State Agreement Process¹² allows Relevant State Entities to consider, for example, whether certain Long-Term Regional Transmission Facilities largely provide a unique set of benefits such

that the costs of those facilities are appropriately paid for in a different manner than under the *ex ante* cost allocation method. And, going forward, we require transmission providers to consult with Relevant State Entities regarding potential future changes to *ex ante* cost allocation methods and State Agreement Processes used in Long-Term Regional Transmission Planning.

13. Order No. 1920 provides greater flexibility than Order No. 1000 to deviate from the *ex ante* cost allocation method or to establish more than one *ex ante* cost allocation method. We also provide new opportunities for states to influence each of these choices because better enabling state input into cost allocation choices helps to ensure that more efficient or cost-effective Long-Term Regional Transmission Facilities that are likely to be sited and constructed only with state regulatory approval are ultimately developed successfully. Given that Order No. 1920 continues to afford considerable flexibility to transmission providers and Relevant State Entities to determine the cost allocation methods appropriate for their transmission planning region and retains the core obligation that any cost allocation method filed must be consistent with cost causation, the beneficiary pays principle, and other statutory requirements, we believe that cost allocation under this rule will result in just and reasonable rates. Order No. 1920 requires no more than Order No. 1000—that some mechanism for charging customers for more efficient or cost-effective transmission facilities be available in case such facilities are determined, after evaluation through Long-Term Regional Transmission Planning, to be worth developing. In fact, Order No. 1920 expands the opportunities for transmission providers, state regulators, and stakeholders to ensure that the costs of Long-Term Regional Transmission Facilities are allocated only “roughly commensurate” with the benefits expected to result from those facilities.

14. As noted above, we agree with certain arguments raised on rehearing and/or clarification of Order No. 1920. The instances where we modify the discussion in Order No. 1920 and set aside the result of Order No. 1920 generally fall into three categories. First, as discussed above, we further enhance the role of Relevant State Entities in Long-Term Regional Transmission Planning, especially their role in shaping the development of Long-Term Scenarios and cost allocation methods. Second, we clarify that, when Relevant State Entities request, transmission providers must develop a reasonable

⁹ See *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063, at P 66 (2007) (requiring PJM to set forth a “beneficiary pays” method in its tariff and consistently apply that approach each time a new regionally-planned transmission facility is approved), *on reh’g*, Opinion No. 494–A, 122 FERC ¶ 61,082 (2008), *remanded Ill. Com. Comm’n v. FERC*, 576 F.3d 470, 474–78 (7th Cir. 2009) (*ICC v. FERC II*) (remanding Commission order for further proceedings in light of Commission’s failure to provide substantial evidence supporting Commission’s approval of cost allocation method as complying with “beneficiary pays” principle).

¹⁰ See *ICC v. FERC I*, 576 F.3d at 477 (holding that, if the Commission cannot quantify the benefits of particular transmission facilities to a particular class of transmission customers, it must have “an articulable and plausible reason to believe that the benefits [of those facilities] are at least roughly commensurate with” the costs to be paid by those customers).

¹¹ See *infra* Introduction and Background section (defining “Relevant State Entity”).

¹² See *infra* Introduction and Background section (defining “State Agreement Process”).

number of additional scenarios to help inform the development or application of cost allocation methods. And third, we remove the requirement that transmission providers include corporate commitments in Factor Category Seven.

15. In the first category, Order No. 1920 provided an opportunity for states to influence how transmission is planned and ultimately paid for. This order goes even farther by agreeing with the rehearing arguments advanced by several states seeking additional and expanded opportunities for states to engage. Specifically, we require transmission providers to incorporate input from states about how Long-Term Scenarios used in Long-Term Regional Transmission Planning will be developed, particularly given that these scenarios will necessarily reflect how the states plan to meet their laws, policies, and regulations. In addition, we require transmission providers to include in the transmittal or as an attachment to their Order No. 1920 compliance filings any *ex ante* cost allocation method and/or State Agreement Process agreed to by the Relevant State Entities (to the extent the transmission provider does not adopt such an agreed-to cost allocation method and/or process as its own proposal), along with any information related to the Engagement Period¹³ requested by a Relevant State Entity to be included. We are further persuaded by arguments on rehearing that Relevant State Entities may, in some cases, need time beyond the six-month Engagement Period allowed under Order No. 1920. We therefore clarify that the Commission will grant extensions of time requested by Relevant State Entities where there is a showing that additional time is needed to resolve cost allocation discussions, up to a period of an additional six months. We believe this clarification ensures states who are engaged in working toward agreed-upon cost allocation methods and/or a State Agreement Process will have the time they need to resolve those discussions.

16. Furthermore, to ensure that Relevant State Entities have a role in cost allocation for Long-Term Regional Transmission Facilities going forward, we require that transmission providers consult with Relevant State Entities (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es), or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, to

amend that method or process. Finally, we clarify that the flexibility Order No. 1920 affords to transmission providers and Relevant State Entities to determine cost allocation methods appropriate for their region does not preclude proposed methods that allocate costs commensurate with reliability and economic benefits region-wide, while allocating costs commensurate with additional benefits to a subset of states that agree to such cost allocation, *e.g.*, based on the incremental costs and benefits of transmission needed to achieve state laws, policies, and regulations beyond the cost of transmission needed in the absence of those laws, policies, and regulations.

17. In the second category, we clarify in response to requests for rehearing that, while transmission providers are obligated to develop three Long-Term Scenarios that meet all of the requirements of the rule, Order No. 1920 permits transmission providers to develop additional analyses, including other scenarios, to help inform who pays for those selected facilities. We further modify Order No. 1920 on rehearing to now require that transmission providers develop a reasonable number of additional scenarios at Relevant State Entities' request. The aim of Order No. 1920 is to ensure that transmission providers engage in the sufficiently long-term, forward-looking, and comprehensive transmission planning that is essential to have the information necessary to determine which investments are worth making. As long as transmission providers engage in that robust planning process and achieve the transparency required through that process, transmission providers can develop and consider additional information beyond that required as part of Long-Term Regional Transmission Planning.

18. In the third category of changes, on rehearing we modify, in one respect, the requirement to use seven categories of factors in the development of the three Long-Term Scenarios that are used to identify Long-Term Transmission Needs, and potential solutions to those needs. Several parties raise concerns regarding the inclusion of corporate commitments in Factor Category Seven, which they argue may elevate the needs of particular transmission customers above those of others. Upon further consideration, we eliminate the requirement to incorporate corporate commitments from Factor Category Seven into each Long-Term Scenario and thus we eliminate the potential for confusion around the treatment of particular transmission customers, while enabling transmission providers

to give appropriate weight to corporate commitments as an indicator of customer preference in a region where those preferences are known.

19. Taken together, we believe the requirements of Order No. 1920 with the modifications and clarifications we make on rehearing will remedy the deficiencies of current regional transmission planning processes, establish sufficiently long-term, forward-looking, and comprehensive transmission planning, and ensure that transmission providers and Relevant State Entities in each region have the flexibility to devise cost allocation methods that reasonably and fairly assign the costs of Long-Term Regional Transmission Facilities to those that benefit from such facilities.

II. Introduction and Background

20. In Order No. 1920, the Commission found that existing regional transmission planning and cost allocation processes are unjust, unreasonable, and unduly discriminatory or preferential because the Commission's existing transmission planning and cost allocation requirements do not require transmission providers to:¹⁴ (1) perform a sufficiently long-term assessment of transmission needs that identifies Long-Term Transmission Needs;¹⁵ (2)

¹⁴ Section 201(e) of the FPA, 16 U.S.C. 824(e), defines "public utility" to mean "any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter." As stated in the Order No. 888 *pro forma* Open Access Transmission Tariff (OATT), "transmission provider" is a "public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff." *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmittal Utils.*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (TAPS), *aff'd sub nom. N.Y. v. FERC*, 535 U.S. 1 (2002); *Pro forma OATT* section I.1 (Definitions). The term "transmission provider" includes a public utility transmission owner when the transmission owner is separate from the transmission provider, as is the case in regional transmission organizations (RTO) and independent system operators (ISO).

¹⁵ For purposes of Order No. 1920, Long-Term Transmission Needs are transmission needs identified through Long-Term Regional Transmission Planning by, among other things and as discussed in Order No. 1920, running scenarios and considering the enumerated categories of factors. Order No. 1920, 187 FERC ¶ 61,068 at P 299.

¹³ See *infra* Introduction and Background section (defining "Engagement Period").

adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs; and (3) consider the broader set of benefits of regional transmission facilities planned to meet those Long-Term Transmission Needs.¹⁶

21. Order No. 1920 therefore established requirements to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential. First, Order No. 1920 required transmission providers in each transmission planning region to participate in a regional transmission planning process that includes Long-Term Regional Transmission Planning.¹⁷ Order No. 1920 established specific requirements regarding how transmission providers must conduct Long-Term Regional Transmission Planning, including, among other things, the use of Long-Term Scenarios to identify Long-Term Transmission Needs and Long-Term Regional Transmission Facilities¹⁸ to meet those needs.¹⁹

¹⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1.

¹⁷ *Id.* P 224. Long-Term Regional Transmission Planning means regional transmission planning on a sufficiently long-term, forward-looking, and comprehensive basis to identify Long-Term Transmission Needs, identify transmission facilities that meet such needs, measure the benefits of those transmission facilities, and evaluate those transmission facilities for potential selection in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective regional transmission facilities to meet Long-Term Transmission Needs. *Id.* For purposes of Order No. 1920, and consistent with Order No. 1000, a transmission planning region is one in which transmission providers, in consultation with stakeholders and affected states, have agreed to participate for purposes of regional transmission planning and development of a single regional transmission plan. *Id.* P 2 n.7; see Order No. 1000, 136 FERC ¶ 61,051 at P 160.

¹⁸ For purposes of Order No. 1920, a Long-Term Regional Transmission Facility is a regional transmission facility that is identified as part of Long-Term Regional Transmission Planning to address Long-Term Transmission Needs. Order No. 1920, 187 FERC ¶ 61,068 at P 250. For the purposes of Order No. 1920, and consistent with Order No. 1000, a regional transmission facility is a transmission facility located entirely in one transmission planning region. An interregional transmission facility is a transmission facility that is located in two or more transmission planning regions. A local transmission facility is a transmission facility located solely within a transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation. *Id.* P 41 n.58 (citing Order No. 1000, 136 FERC ¶ 61,051 at PP 63, 482 n.374).

¹⁹ *Id.* P 298. For purposes of Order No. 1920, Long-Term Scenarios are scenarios that incorporate various assumptions using best available data inputs about the future electric power system over a sufficiently long-term, forward-looking transmission planning horizon to identify Long-Term Transmission Needs and enable the identification and evaluation of transmission facilities to meet such transmission needs. *Id.* P 302.

22. Order No. 1920 required transmission providers to measure and use at least seven specified benefits to evaluate Long-Term Regional Transmission Facilities as part of Long-Term Regional Transmission Planning.²⁰ Order No. 1920 required transmission providers to calculate the benefits of Long-Term Regional Transmission Facilities over a time horizon that covers, at a minimum, 20 years starting from the estimated in-service date of the transmission facilities and required that this minimum 20-year benefit horizon be used both for the evaluation and selection of Long-Term Regional Transmission Facilities in the regional transmission plan for purposes of cost allocation.²¹

23. Order No. 1920 required transmission providers to include in their OATTs an evaluation process, including selection criteria, that they will use to identify and evaluate Long-Term Regional Transmission Facilities for potential selection to address Long-Term Transmission Needs.²² Further, Order No. 1920 required transmission providers to include in their OATTs a process to provide Relevant State Entities²³ and interconnection customers with the opportunity to voluntarily fund the cost of, or a portion of the cost of, a Long-Term Regional Transmission Facility that otherwise would not meet transmission providers' selection criteria.²⁴ Order No. 1920 also required transmission providers to include in their OATTs provisions that require transmission providers—in certain circumstances—to reevaluate Long-Term Regional Transmission Facilities that previously were selected.²⁵

24. Order No. 1920 required transmission providers to file one or

²⁰ *Id.* P 719.

²¹ *Id.* P 859. The Commission recognized that some transmission planning regions may include Long-Term Regional Transmission Facilities, or a portfolio of such Facilities, in a regional transmission plan, but may not necessarily include these Facilities for purposes of cost allocation. *Id.* P 3 n.8 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 63). For purposes of Order No. 1920, unless otherwise noted, when referencing Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) that are selected, we intend that the word "selected" mean that those Facilities are selected in the regional transmission plan for purposes of cost allocation. *Id.*

²² *Id.* P 911.

²³ For the purposes of Order No. 1920, a Relevant State Entity is any state entity responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state. *Id.* P 1355.

²⁴ *Id.* P 1012.

²⁵ *Id.* P 1048.

more *ex ante* Long-Term Regional Transmission Cost Allocation Methods²⁶ to allocate the costs of Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) that are selected.²⁷ Order No. 1920 further allowed, but did not require, transmission providers to adopt a State Agreement Process for allocating the costs of all, or a subset of, Long-Term Regional Transmission Facilities.²⁸ Where Relevant State Entities agree to such a State Agreement Process, and transmission providers choose to file such a process, a State Agreement Process would provide Relevant State Entities up to six months after selection for its participants to determine, and transmission providers to file, a cost allocation method for specific Long-Term Regional Transmission Facilities.²⁹ Order No. 1920 also established a six-month time period (Engagement Period), during which transmission providers must: (1) provide notice of the starting and end dates for the six-month time period; (2) post contact information that Relevant State Entities may use to communicate with transmission providers about any agreement among Relevant State Entities on a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process, as well as a deadline for communicating such agreement; and (3) provide a forum for negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process that enables robust participation by Relevant State Entities.³⁰

25. Order No. 1920 required transmission providers to evaluate for potential selection in their existing Order No. 1000 regional transmission planning processes regional transmission facilities that will address certain identified interconnection-related transmission needs associated with certain interconnection-related network upgrades originally identified through the generator interconnection process.³¹

²⁶ For purposes of Order No. 1920, a Long-Term Regional Transmission Cost Allocation Method is an *ex ante* regional cost allocation method for one or more Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) that are selected in the regional transmission plan for purposes of cost allocation. *Id.* P 1291.

²⁷ *Id.*

²⁸ *Id.* P 1402. For purposes of Order No. 1920, a State Agreement Process is a process by which one or more Relevant State Entities may voluntarily agree to a cost allocation method for Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) before or no later than six months after they are selected. *Id.*

²⁹ *Id.*

³⁰ *Id.* P 1354.

³¹ *Id.* PP 1106–1107.

26. Order No. 1920 required transmission providers to consider more fully the alternative transmission technologies of dynamic line ratings, advanced power flow control devices, advanced conductors, and transmission switching in Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning and cost allocation processes.³²

27. Order No. 1920 required transmission providers to adopt enhanced transparency requirements for local transmission planning processes and improve coordination between regional and local transmission planning with the aim of identifying potential opportunities to “right-size” replacement transmission facilities.³³

28. Order No. 1920 required transmission providers to revise their interregional transmission coordination procedures to reflect the Long-Term Regional Transmission Planning reforms adopted in Order No. 1920.³⁴ Order No. 1920 also required transmission providers to meet additional information sharing and transparency requirements with respect to their interregional transmission coordination processes.³⁵

29. The Commission received 49 timely filed requests for rehearing and/or clarification³⁶ and several additional filings.³⁷ The rehearing requests raise

issues related to nearly all reforms adopted in Order No. 1920.

30. Pursuant to *Allegheny Defense Project v. FERC*,³⁸ the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the FPA,³⁹ we are modifying the discussion in Order No. 1920, setting aside the order, in part, and clarifying the order, as discussed below.⁴⁰

31. Specifically, we set aside the order, in part, to specify that: (1) transmission providers are not required to use the set of seven required benefits to help inform their identification of Long-Term Transmission Needs;⁴¹ (2) Factor Category Seven no longer includes corporate commitments;⁴² (3) transmission providers must propose an effective date for the OATT revisions necessary to comply with Order No. 1920 that is no later than two years from the date on which they will commence the first Long-Term Regional Transmission Planning cycle;⁴³ (4) when Relevant State Entities agree on a Long-Term Regional Transmission Cost Allocation Method or State Agreement Process resulting from the Engagement Period, transmission providers must include that method or process in the

transmittal or as an attachment to their compliance filing, even if transmission providers propose a different Long-Term Regional Transmission Cost Allocation method or do not propose to adopt a State Agreement Process along with any information that Relevant State Entities provide to transmission providers regarding the state negotiations during the Engagement Period;⁴⁴ and (5) transmission providers shall consult with Relevant State Entities prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es), or if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method or process.

32. Additionally, we grant multiple clarifications on most elements of Order No. 1920, as further discussed below. For example, among other clarifications, we clarify that transmission providers may develop additional scenarios, beyond the three Long-Term Scenarios that Order No. 1920 requires, to provide Relevant State Entities with information that they can use to inform the application of Long-Term Regional Cost Allocation Method(s) or the development of cost allocation methods through the State Agreement Process(es), and that Order No. 1920 does not prevent transmission providers from recognizing different types of benefits and using them to allocate costs in proportion to those benefits.

33. Finally, we specify that the Commission will grant an extension of the required Engagement Period for up to an additional six months when Relevant State Entities request an extension and represent to the Commission that they agree, consistent with their chosen method to reach agreement, that they need additional time to finish cost allocation discussions. If the Commission grants such an extension request, it will also, as appropriate, extend, *sua sponte*, the relevant Order No. 1920 compliance deadlines to ensure that any extension of the Engagement Period would not conflict with the required compliance deadlines.

III. The Overall Need for Reform

A. Order No. 1920

34. In Order No. 1920, the Commission found substantial evidence to support the conclusion that the

Andrews, Illinois Commission, and Minnesota Commission each submitted late-filed pleadings that are generally supportive of Order No. 1920. Further, on June 12, 2024, Missouri Commission filed a letter addressing Order No. 1920. On September 3, 2024, Chairman Willie Phillips responded to the Missouri Commission letter. On July 22, 2024, State Regulatory Commissioners filed a letter expressing views on Order No. 1920. On October 9, 2024, Chairman Willie Phillips responded to the State Regulatory Commissioners' letter.

³⁸ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

³⁹ 16 U.S.C. 825(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

⁴⁰ *Allegheny Def. Project*, 964 F.3d at 16–17. In Appendix B, we provide the revisions to the provisions of Attachment K to the *pro forma* OATT made in this order on rehearing and clarification.

⁴¹ See Order No. 1920, 187 FERC ¶ 61,068 at P 301 (“Transmission providers must use [the set of seven required benefits] to help to inform their identification of Long-Term Transmission Needs.”).

⁴² See *id.* P 481 (“We adopt the NOPR proposal, with modification, to require transmission providers in each transmission planning region to incorporate Factor Category Seven: utility and corporate commitments and federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs, in the development of Long-Term Scenarios.”).

⁴³ See *id.* P 1072 (“Thus, we require transmission providers in each transmission planning region to propose on compliance a date, no later than one year from the date on which initial filings to comply with this final rule are due, on which they will commence the first Long-Term Regional Transmission Planning cycle.”).

⁴⁴ See *id.* P 1359 (“We note, however, that the ultimate decision as to whether to file a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process to which Relevant State Entities have agreed will continue to lie with the transmission providers.”).

³² *Id.* P 1198.

³³ *Id.* PP 1625, 1677.

³⁴ *Id.* P 1751.

³⁵ *Id.*

³⁶ Appendix A provides the short names of the entities that filed requests for rehearing or clarification. To the extent that they intend to seek rehearing, the pleadings filed by Grid United, PJM States, Vermont Commission, and Virginia and North Carolina Commissions are deficient because they fail to include a separate section entitled “Statement of Issues” listing each issue presented to the Commission in a separately enumerated paragraph that includes representative precedent on which the participant is relying, as required by Rule 713(c)(2) of the Commission’s Rules of Practice and Procedure (18 CFR 385.713(c)(2)). Consistent with Rule 713, we deem these petitioners to have waived the issues for which they seek rehearing. We consider petitioners’ requests for clarification and, to provide clarity, address their arguments on rehearing below. EEI, PJM States, and PJM Utilities filed answers to certain requests for rehearing. Rule 713(d)(1) (18 CFR 385.713(d)(1)) prohibits an answer to a request for rehearing. Accordingly, we deny EEI’s, PJM States’, and PJM Utilities’ motions to answer and reject their answers. Although PJM States style their July 3, 2024 pleading as comments, we treat the pleading as an answer to PJM’s request for rehearing. See, e.g., *San Diego Gas & Elec. Co.*, 133 FERC ¶ 61,014, at P 15 (2010) (“[W]e are not obligated to accept a filing solely on the basis of its party-bestowed title. Instead, we examine the substance of the pleading.”).

³⁷ Susann Rizzo, Gary Andrews, and Cher Gilmore filed letters supporting Order No. 1920. They also urged the Commission to require interregional transmission planning and establish environmental justice liaisons. In addition, E.

Commission's existing regional transmission planning and cost allocation requirements are unjust, unreasonable, and unduly discriminatory or preferential. Specifically, the Commission explained that the absence of sufficiently long-term, forward-looking, and comprehensive transmission planning requirements causes transmission providers to fail to adequately anticipate and plan for future system conditions and to fail to appropriately evaluate the benefits of transmission infrastructure.⁴⁵ The Commission found that this status quo results in piecemeal transmission expansion to address relatively near-term needs and causes transmission providers to make relatively inefficient investments in transmission infrastructure, the costs of which are ultimately recovered through Commission-jurisdictional rates. One result of this dynamic, the Commission explained, is that transmission customers overpay to meet their transmission needs and forgo benefits that outweigh their costs, which results in less efficient or cost-effective transmission investments. Such deficiencies, the Commission found, render Commission-jurisdictional regional transmission planning and cost allocation processes unjust, unreasonable, and unduly discriminatory or preferential.⁴⁶

35. The Commission explained that it has the authority to issue Order No. 1920 under FPA section 206, which "instructs the Commission to remedy 'any . . . practice' that 'affect[s]' a rate for interstate electricity service 'demanded' or 'charged' by 'any public utility' if such practice 'is unjust, unreasonable, unduly discriminatory or preferential.'"⁴⁷ The Commission concluded that the D.C. Circuit has recognized that regional transmission planning and cost allocation processes are practices affecting rates subject to the Commission's exclusive jurisdiction⁴⁸ and that transmission providers use those processes to "determine which transmission facilities will more efficiently or cost-effectively meet" transmission needs, the development of which directly impacts the rates, terms, and conditions of Commission-jurisdictional service.⁴⁹ The Commission found that, because these processes identify, evaluate, and

select the regional transmission facilities whose costs will be recovered through transmission rates, they directly affect those rates.⁵⁰ The Commission found that, because such regional transmission facilities lead to a more robust transmission system, regional transmission planning and cost allocation processes, as well as "the rules and practices that determine how those [processes] operate,"⁵¹ directly affect rates that customers pay for *both* transmission and sale of electric energy in interstate commerce.⁵² The Commission noted that it may act pursuant to FPA section 206 if the Commission first establishes, through substantial evidence,⁵³ that existing practices are unjust, unreasonable, or unduly discriminatory or preferential and, second, establishes that the replacement practices are just and reasonable.⁵⁴

36. Addressing whether existing rates, or practices affecting rates, remain just and reasonable—*i.e.*, the first prong under FPA section 206⁵⁵—the Commission found that existing Order No. 890 and Order No. 1000 transmission planning and cost allocation requirements do not result in regional transmission planning that is conducted on a sufficiently long-term, forward-looking, and comprehensive basis, and transmission providers therefore often do not identify, evaluate, or select more efficient or cost-effective regional transmission solutions to meet Long-Term Transmission Needs.⁵⁶ The Commission determined that this results in piecemeal, inefficient, and less cost-effective transmission planning, which imposes real costs on customers⁵⁷ and renders the Commission's existing transmission planning and cost

allocation requirements unjust, unreasonable, and unduly discriminatory or preferential in violation of FPA section 206.⁵⁸

37. The Commission also found that existing transmission planning and cost allocation requirements are insufficient to ensure just and reasonable and not unduly discriminatory or preferential rates. Thus, pursuant to FPA section 206, the Commission stated that it is now requiring transmission providers to engage in and conduct sufficiently long-term, forward-looking, and comprehensive transmission planning and cost allocation processes to identify and plan for Long-Term Transmission Needs. The Commission found that such reforms will facilitate a process by which transmission providers can better identify, evaluate, and select more efficient or cost-effective transmission solutions to meet Long-Term Transmission Needs, which will ensure that Commission-jurisdictional rates are just and reasonable and not unduly discriminatory or preferential.⁵⁹

1. The Transmission Investment Landscape Today

38. The Commission explained that due to continuing changes in the industry, ongoing investment in transmission facilities is necessary to ensure the transmission system remains reliable, affordable, and economically efficient. More comprehensive transmission planning can enable transmission providers to proactively identify potential reliability problems and economic constraints and evaluate potential transmission solutions, which can facilitate the selection of more efficient or cost-effective transmission facilities to meet Long-Term Transmission Needs.⁶⁰ Transmission infrastructure can also increase competition among generators, which results in a host of benefits for customers, including cost savings from greater access to low-cost power.⁶¹

39. The Commission cited evidence demonstrating a nationwide increase in transmission spending since the issuance of Order No. 1000 and explained that, unsurprisingly, transmission costs have become an increasing share of customers' overall electricity bills in regions that saw a significant increase in transmission expenditures.⁶² Further, the Commission highlighted several studies in the record demonstrating that

⁵⁰ *Id.*; see also *id.* P 86 n.186 (citing *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 485 (D.C. Cir. 2009)).

⁵¹ *Id.* P 86 (quoting *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 279 (2016) (*EPSA*)).

⁵² *Id.* (citing 16 U.S.C. 824e(a)).

⁵³ *Id.* (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 54). The Commission explained that FPA section 206 empowers the Commission to address the mere *threat* of unjust and unreasonable rates and, in this context the Commission need not necessarily provide *empirical* evidence for every proposition to satisfy the substantial evidence standard. Order No. 1920, 187 FERC ¶ 61,068 at P 86 n.189 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 64–65, 85).

⁵⁴ *Id.* (citing 16 U.S.C. 824e(a); *EPSA*, 577 U.S. at 277).

⁵⁵ See *Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F.3d 10, 13 (D.C. Cir. 2021) (explaining that section 206 "mandates a two-step procedure" whereby the Commission, on the first step, must make an explicit finding that the existing rate is unlawful and then, on the second step, must set a new rate. (quotation omitted)).

⁵⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 87.

⁵⁷ *Id.*

⁵⁸ *Id.* P 88.

⁵⁹ *Id.* P 89.

⁶⁰ *Id.* P 90 (citations omitted).

⁶¹ *Id.* P 91.

⁶² *Id.* P 92 (citations omitted).

⁴⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 85.

⁴⁶ *Id.*

⁴⁷ *Id.* P 86 (citation omitted) (quoting *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 55).

⁴⁸ *Id.* (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 55–59, 84).

⁴⁹ *Id.* (quoting *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 56).

transmission investment is likely to increase substantially in coming years.⁶³

40. The Commission found that a number of factors are driving the growing need for new transmission infrastructure.⁶⁴ First, the Commission found that longer-term reliability needs are changing and driving a significant shift in the demands placed on the transmission system, and transmission system operators are increasingly depending on regional transmission facilities to ensure operational stability and system reliability, particularly due to the growing frequency of extreme weather events and increasing share of variable resources entering the resource mix.⁶⁵ Second, after many years of flat or minimal load growth in regions across the country, the Commission found that both regional and national demand is projected to increase significantly in the coming decades, which will require an increasingly robust transmission system to serve this growing load reliably. Third, the Commission found that supply is changing, driven by federal, federally-recognized Tribal, state, and local policies, customer demands, utility commitments, and the shifting economics of resources that comprise the resource mix.⁶⁶

41. The Commission also found that the record in this proceeding affirms the Commission's longstanding recognition that regional transmission planning that identifies more efficient or cost-effective transmission solutions helps to ensure cost-effective transmission development for customers and can yield better returns for every dollar spent than localized or piecemeal transmission solutions, while inadequate or poorly designed transmission planning processes can cause customers to foot the bill for piecemeal, inefficient, and less cost-effective transmission solutions.⁶⁷

42. Based on its experience implementing Order No. 1000, the Commission found that existing regional transmission planning processes are not of sufficient scope and duration to adequately or consistently identify transmission needs and associated opportunities to evaluate and select, on a more comprehensive basis, more efficient or cost-effective transmission solutions to those needs.⁶⁸ The Commission explained that, in some regions, investment in regional

transmission facilities has declined as compared to prior to Order No. 1000 and that, across all non-RTO/ISO regions, not a single transmission facility has been selected pursuant to the regional planning processes since implementation of Order No. 1000. The Commission noted that, within some RTO/ISO regional transmission planning processes, even where investments through the regional transmission planning process occur, much of that investment has been in transmission projects that only address immediate reliability needs.⁶⁹ The Commission also cited evidence showing that, in the limited instances in which transmission providers have followed processes that share many of the elements that Order No. 1920 requires, customers have seen clear and quantifiable benefits.⁷⁰

43. Further, the Commission explained that a substantial amount of new transmission investment is occurring in generator interconnection processes and local transmission planning processes, which, unlike regional transmission planning processes, do not comprehensively assess either broader transmission needs or solutions to those needs. The Commission concluded that overreliance on those processes can result in relatively inefficient or less cost-effective transmission development for customers, which contributes to rates for transmission that are unjust and unreasonable.⁷¹

44. The Commission cited evidence showing a sharp growth in both the total cost of interconnection-related network upgrades and in the cost of such upgrades relative to generation project costs, as well as evidence showing that increases in interconnection costs are being driven, in many cases, by an expansion in the scope and complexity of interconnection-related network upgrades.⁷² The Commission noted that, unlike regional transmission planning processes, the generator interconnection process is not designed to consider how to address transmission needs more efficiently or cost-effectively beyond the discrete interconnection request (or requests) being studied.⁷³ The Commission found that increasingly relying on interconnection customers' interconnection-related network upgrades to expand the capacity of the transmission system is inefficient and leads to less cost-effective transmission

development than would result from long-term, forward-looking, and more comprehensive regional transmission planning, to the detriment of customers.⁷⁴

45. The Commission also cited evidence that, since the issuance of Order No. 1000, the majority of investment in transmission facilities has been in local transmission facilities, a trend that is accelerating across multiple regions.⁷⁵ The Commission noted evidence that transmission expansion through local transmission planning and in-kind replacement processes is incremental and misses the potential to identify, evaluate, and select more efficient or cost-effective transmission facilities to solve transmission needs, as well as to afford system-wide benefits that may not be achieved through piecemeal, one-off local transmission facilities.⁷⁶ Such transmission planning, the Commission stated, results in relatively inefficient or less cost-effective transmission development for customers, which contributes to rates for transmission that are unjust and unreasonable.⁷⁷

2. Unjust, Unreasonable, and Unduly Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes

46. The Commission concluded that there is substantial evidence in the record to support the determination that sufficiently long-term, forward-looking, and comprehensive regional transmission planning and cost allocation to meet Long-Term Transmission Needs is not occurring on a consistent and sufficient basis.⁷⁸ The Commission found that the absence of a sufficiently long-term, forward-looking, and comprehensive regional transmission planning process results in relatively unfavorable outcomes, including: piecemeal transmission expansion to address relatively near-term transmission needs, transmission providers undertaking investments in relatively inefficient or less cost-effective transmission infrastructure, and transmission customers paying more than is necessary or appropriate to meet their transmission needs and/or

⁶³ *Id.* P 93 (citations omitted).

⁶⁴ *Id.* P 94 (citations omitted).

⁶⁵ *Id.* (citations omitted).

⁶⁶ *Id.* PP 96–99 (citations omitted).

⁶⁷ *Id.* P 100 (citations omitted).

⁶⁸ *Id.* P 101.

⁶⁹ *Id.* (citations omitted).

⁷⁰ *Id.* P 102.

⁷¹ *Id.* P 103 (citations omitted).

⁷² *Id.* PP 104–105 (citations omitted).

⁷³ *Id.* P 106.

⁷⁴ *Id.* P 108.

⁷⁵ *Id.* P 109.

⁷⁶ *Id.* P 110 (citations omitted).

⁷⁷ *Id.* The Commission acknowledged the important roles played by generator interconnection processes and local transmission planning processes and underscored that the Commission's findings were not intended to call into question the justness and reasonableness of either process. *Id.* P 111.

⁷⁸ *Id.* P 112.

forgoing benefits that outweigh their costs.⁷⁹

47. The Commission determined that there is substantial evidence in the record to support the conclusion that the Commission's regional transmission planning and cost allocation requirements are deficient, thus rendering Commission-jurisdictional regional transmission planning and cost allocation processes unjust and unreasonable. Specifically, the Commission found that existing regional transmission planning and cost allocation requirements fail to require transmission providers to: (1) perform a sufficiently long-term assessment of transmission needs that identifies Long-Term Transmission Needs; (2) adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs; and (3) consider the broader set of benefits of regional transmission facilities planned to meet those Long-Term Transmission Needs.⁸⁰

48. As to the first deficiency—the lack of sufficiently long-term planning—the Commission cited evidence in the record demonstrating that, under the status quo, most transmission planning regions do not plan beyond a 10-year transmission planning horizon.⁸¹ The Commission stated that the absence of any consistent and sufficient longer-term assessment of transmission needs prevents transmission providers from identifying Long-Term Transmission Needs and considering regional transmission facilities that may be more efficient or cost-effective solutions to address those needs.⁸² The Commission added that short-term transmission planning fails to take advantage of the potential for efficiencies or economies of scale that regional transmission facilities can provide and fails to create opportunities to “right size” the replacement of aging transmission facilities to address multiple transmission needs over the longer term. Further, the Commission stated that the time horizon over which much transmission planning is often occurring is shorter than the time needed to plan and construct large (e.g., high voltage or long distance) transmission facilities⁸³ and much too short to capture all of the benefits that regional transmission facilities can provide.⁸⁴

49. The Commission noted that the likelihood that near-term assessments

will fail to identify Long-Term Transmission Needs and more efficient or cost-effective regional transmission facilities to meet those needs is higher during periods of rapid change, as the electric sector is now experiencing, during which the need for transmission infrastructure is expected to grow considerably.⁸⁵

50. The second deficiency the Commission discussed is that the Commission's existing regional transmission planning and cost allocation requirements fail to require transmission providers to account adequately on a forward-looking basis for known determinants of Long-Term Transmission Needs; moreover, the Commission stated, transmission providers are not consistently or sufficiently doing so.⁸⁶ The Commission further stated that the record demonstrates that there are numerous factors that increasingly shape Long-Term Transmission Needs, are known and identifiable, and have reasonably predictable effects, especially in the aggregate, such as reliability needs driven by the impact of extreme weather; trends in future generation additions and retirements; load growth; federal, federally-recognized Tribal, state, and local laws and regulations; and utility goals.⁸⁷ The Commission determined, however, that existing regional transmission planning processes frequently undervalue or do not consider some or all of these factors, and that the Commission's existing regional transmission planning requirements do not ensure that such factors will be sufficiently accounted for in that planning.⁸⁸ The Commission noted that the failure to adequately consider such factors delays planning for the transmission system's changing operational needs until shortly before those transmission needs manifest. As a result, the Commission stated, existing regional transmission planning processes are piecemeal and fail to take advantage of economies of scale in transmission investment or opportunities to address multiple transmission needs over multiple time horizons, which leads to transmission investment that is not more efficient or cost-effective and renders Commission-jurisdictional regional transmission planning and cost allocation processes unjust and unreasonable.⁸⁹

51. The third deficiency that the Commission identified is that the

Commission's regional transmission planning and cost allocation requirements fail to require transmission providers to adequately consider the broader set of benefits of regional transmission facilities planned to meet Long-Term Transmission Needs. The Commission pointed to evidence demonstrating that many regional transmission planning processes focus too narrowly only on some benefits, while other regional transmission planning processes fail entirely to consider cost savings associated with certain transmission facilities.⁹⁰ The Commission also explained that the cost-benefit analyses that transmission providers often use provide an inaccurate portrayal of the comparative benefits of different transmission facilities, which results in transmission customers forgoing benefits that may significantly outweigh their costs and in less efficient or cost-effective transmission investments, and ultimately contributes to Commission-jurisdictional rates that are unjust and unreasonable.⁹¹

52. The Commission determined that, given its findings concerning the deficiencies in existing transmission planning requirements, and its conclusion that long-term, forward-looking, and more comprehensive regional transmission planning is needed, existing cost allocation requirements are also deficient and must be modified to properly account for Long-Term Regional Transmission Planning.⁹²

53. The Commission determined that its current cost allocation requirements, which were designed in the context of the Order No. 1000 regional transmission planning process, are insufficient to appropriately allocate costs associated with regional transmission facilities selected in accordance with Order No. 1920's Long-Term Regional Transmission Planning requirements.⁹³ The Commission's existing Order No. 1000 cost allocation requirements contemplate the application of differing cost allocation methods to different types of transmission facilities, but Order No. 1920's approach to Long-Term Regional Transmission Planning accounts for multiple drivers of Long-Term Transmission Needs and results in Long-Term Regional Transmission Facilities that produce a broader set of benefits and therefore warrants a

⁷⁹ *Id.*

⁸⁰ *Id.* P 114.

⁸¹ *Id.* P 115.

⁸² *Id.* (citations omitted).

⁸³ *Id.* P 116 (citations omitted).

⁸⁴ *Id.* (citations omitted).

⁸⁵ *Id.* P 117 (citations omitted).

⁸⁶ *Id.* P 118.

⁸⁷ *Id.* P 119.

⁸⁸ *Id.* P 120.

⁸⁹ *Id.* P 121 (citations omitted).

⁹⁰ *Id.* P 122 & n.312.

⁹¹ *Id.* P 123.

⁹² *Id.* P 124.

⁹³ *Id.* P 126.

different approach to cost allocation.⁹⁴ The Commission also explained that existing Order No. 1000 regional transmission planning processes do not mandate the consideration of specific benefits and that information concerning these benefits may be relevant when allocating the costs of Long-Term Regional Transmission Facilities in a manner that is at least roughly commensurate with their benefits.⁹⁵ Further, the Commission noted that under existing cost allocation requirements, there is no dedicated process to engage states in the development of regional cost allocation methods. The Commission explained that engaging states in cost allocation is particularly relevant to Long-Term Regional Transmission Planning given the long lead times for construction of transmission projects, which create uncertainty for Long-Term Regional Transmission Facilities and increase the importance of ensuring that such facilities will obtain needed siting approvals from the states and are thus timely and cost-effectively developed. The Commission therefore concluded that it is both necessary and appropriate to establish specific cost allocation requirements tailored to the Long-Term Regional Transmission Planning reforms.⁹⁶

54. The Commission found that there is substantial evidence in the record demonstrating that Long-Term Regional Transmission Planning and cost allocation to identify and plan for Long-Term Transmission Needs does not occur on a consistent and sufficient basis.⁹⁷ The Commission added that this is largely due to the deficiencies it identified regarding existing regional transmission planning and cost allocation requirements.⁹⁸ The Commission also found that, under the status quo, transmission providers are meeting many transmission needs by identifying transmission solutions and developing transmission facilities outside of the regional transmission planning and cost allocation processes or in response to near-term reliability needs.⁹⁹ The Commission stated that this approach may not identify more efficient or cost-effective transmission solutions and will saddle consumers with the costs of relatively inefficient or less cost-effective piecemeal

transmission investment and expansion.¹⁰⁰

55. Moreover, the Commission found that transmission needs in most transmission planning regions are rapidly changing and exacerbating concerns arising from the absence of sufficiently long-term, forward-looking, and comprehensive regional transmission planning and cost allocation processes and the corresponding failure by transmission providers to identify and evaluate more efficient or cost-effective transmission solutions to Long-Term Transmission Needs.¹⁰¹ The Commission emphasized that it is reacting to well-documented factors, which the record demonstrates are driven by exogenous forces beyond the Commission's jurisdiction or control, including, but not limited to, the increasing frequency of extreme weather events, customer preferences, demand growth, economic and technological trends, and federal, federally-recognized Tribal, state, and local policies.¹⁰²

56. The Commission stated that Order No. 1920 does not aim to affect—either facilitate or hinder—any changes or decisions that occur outside of the Commission's jurisdiction.¹⁰³ Instead, the Commission explained, Order No. 1920 focuses on ensuring that Commission-jurisdictional processes associated with regional transmission planning and cost allocation result in rates that are just and reasonable and not unduly discriminatory or preferential; Order No. 1920 seeks to ensure that such regional transmission planning processes are adequately “accounting for” changes occurring outside of the Commission's jurisdiction, including the resource decisions that are the exclusive jurisdiction of states.¹⁰⁴

57. The Commission disagreed with arguments that it could not rely on general findings, rather than individualized analyses of each, specific transmission planning region, as the basis for Order No. 1920.¹⁰⁵ The Commission explained that it was acting pursuant to relevant precedent, which makes clear that the Commission need not make findings that are region-specific in every case and is instead empowered to “rely on ‘generic’ or ‘general’ findings of a systemic problem to support imposition of an industry-

wide solution,”¹⁰⁶ notwithstanding regional variation among regional transmission planning processes. Moreover, the Commission acknowledged that, while transmission planning practices vary considerably between transmission planning regions, the record demonstrates that deficiencies in transmission planning processes “reach well beyond ‘isolated pockets’ ”¹⁰⁷ and instead pervade large swathes of the country, including RTO/ISO and non-RTO/ISO planning regions.¹⁰⁸ Thus, the Commission added, Order No. 1920 does not present an “extreme ‘disproportion of remedy to ailment.’ ”¹⁰⁹ The Commission also noted that it has discretion to decide the most efficient approach for resolving industry-wide problems.¹¹⁰ Further, the Commission reasoned, “region-specific solutions will lead to ‘siloeed and disjunctive transmission planning policies [that] will not solve the problems facing the nation’s electric grid.’ ”¹¹¹

58. The Commission stated that the record shows that significant changes in transmission needs are well underway nationwide and that failing to account for Long-Term Transmission Needs threatens just and reasonable rates across the country.¹¹² The Commission also noted that significant investments in new transmission facilities are expected to occur and substantially affect Commission-jurisdictional rates that customers pay, which underscores the importance of addressing deficiencies in its regional transmission planning and cost allocation requirements now.¹¹³

3. Benefits of Long-Term Regional Transmission Planning and Cost Allocation To Identify and Plan for Long-Term Transmission Needs

59. Based on the record, the Commission found that Order No. 1920's requirements will help to ensure just and reasonable Commission-jurisdictional rates by addressing deficiencies in the existing regional transmission planning and cost allocation requirements and promoting

¹⁰⁶ *Id.* (quoting *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 67 (quoting *Interstate Nat. Gas Ass'n of Am. v. FERC*, 285 F.3d 18, 37 (D.C. Cir. 2002))).

¹⁰⁷ *Id.* (quoting *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 67) (alteration omitted).

¹⁰⁸ *Id.* (citations omitted).

¹⁰⁹ *Id.* (quoting *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 67) (alteration omitted).

¹¹⁰ *Id.* (citing Order No. 1000, 136 FERC ¶ 61,051 at P 60).

¹¹¹ *Id.* (quoting ACEG NOPR Reply Comments at 17).

¹¹² *Id.* P 133 (citation omitted).

¹¹³ *Id.* (citing Order No. 1000, 136 FERC ¶ 61,051 at PP 46, 50).

⁹⁴ *Id.*

⁹⁵ *Id.* (citing *ICC v. FERC I*, 576 F.3d at 477; Order No. 1000, 136 FERC ¶ 61,051 at PP 622, 639).

⁹⁶ *Id.*

⁹⁷ *Id.* P 127 (citations omitted).

⁹⁸ *Id.*

⁹⁹ *Id.* (citations omitted).

¹⁰⁰ *Id.* P 128 (citations omitted).

¹⁰¹ *Id.* P 129.

¹⁰² *Id.* (citation omitted).

¹⁰³ *Id.* P 130 (emphasis in original).

¹⁰⁴ *Id.* (citing *PJM Power Providers Grp. v. FERC*, 88 F.4th 250, 275 (3d Cir. 2023); *Elec. Power Supply Ass'n v. Star*, 904 F.3d 518, 524 (7th Cir. 2018)).

¹⁰⁵ *Id.* P 132 (citations omitted).

enhanced reliability and more efficient or cost-effective transmission solutions.¹¹⁴ The Commission noted evidence in the record demonstrating that the kind of regional transmission planning required by Order No. 1920 will help transmission providers to identify, evaluate, and select more efficient or cost-effective transmission solutions to Long-Term Transmission Needs.¹¹⁵

60. The Commission found that Long-Term Regional Transmission Planning that expands the transmission planning horizon and considers factors affecting Long-Term Transmission Needs as well as a broader list of benefits will: (1) reduce reliance on transmission solutions that are relatively inefficient or less cost-effective because they address only short-term transmission needs; (2) unlock the benefits of economies of scale in transmission investment;¹¹⁶ (3) enable opportunities to “right size” replacement transmission facilities;¹¹⁷ (4) facilitate the selection of regional transmission facilities that could address multiple transmission needs over different time horizons; and (5) provide states, utilities, customers, and other stakeholders with greater insight and transparency into the costs and benefits of particular transmission solutions to address Long-Term Transmission Needs. The Commission concluded that these regional transmission planning and cost allocation reforms will help to ensure just and reasonable rates.¹¹⁸ The Commission added that sufficiently long-term, forward-looking, and comprehensive regional transmission planning and cost allocation processes will also enhance reliability because a robust, well-planned transmission system is foundational to ensuring an affordable, reliable supply of electricity.¹¹⁹ Additionally, the Commission cited evidence demonstrating how long-term, forward-looking, and more comprehensive regional transmission planning can better identify reliability needs and resolve those needs with more efficient or cost-effective transmission solutions.¹²⁰

B. The Commission Adequately Demonstrated That Existing Rates, or Practices Affecting Rates, Are Unjust and Unreasonable

61. We sustain the Commission’s determination in Order No. 1920 that existing regional transmission planning and cost allocation processes are unjust and unreasonable, and unduly discriminatory or preferential. We conclude that this finding, as well as the Commission’s finding that the identified deficiencies in transmission planning and cost allocation processes render existing Commission-jurisdictional rates unjust and unreasonable, was based on substantial record evidence, reflecting significant input from nearly 200 stakeholders across the country, third-party reports and studies, and the Commission’s extensive knowledge of the industry and expert predictions regarding the transmission planning processes and cost allocation requirements that the Commission itself has established and oversees in carrying out its statutory responsibilities. We disagree with several rehearing parties who argue that the Commission failed to satisfy its burden under the first prong of FPA section 206 to show that Order No. 1000 regional transmission planning and cost allocation processes are unjust, unreasonable, or unduly discriminatory and preferential.¹²¹ First, we disagree with certain rehearing parties as to the nature of the Commission’s evidentiary burden under FPA section 206. Second, we conclude that the Commission’s factual findings and the substantial evidence supporting those findings satisfies, and exceeds, the Commission’s burden under FPA section 206. Third, we find that the “deficiencies identified by the Commission” in Order No. 1920 do not “exist[] only in isolated pockets” and such evidence is supported by the record. Finally, we conclude that the Commission has authority to conduct a nationwide rulemaking. We address these points in turn.

1. The Commission Correctly Characterized Its Statutory Burden

a. Requests for Rehearing

62. SERTP Sponsors contend that the Commission must demonstrate more than theoretical deficiencies to support nationwide policies and that systemic problems must be demonstrated beyond

isolated issues.¹²² SERTP Sponsors argue that Order No. 1920’s findings, which are based on theory and supposition, are insufficient to carry the applicable burden and are contradicted by substantial specific evidence about SERTP.¹²³ SERTP Sponsors argue that *South Carolina Public Service Authority v. FERC* “does not stand for the proposition that any assertion of any theoretical problem by FERC is enough to satisfy the first step of the analysis under [s]ection 206.”¹²⁴ SERTP Sponsors contend that except in limited circumstances—e.g., when there is a lack of empirical evidence—the D.C. Circuit requires more than theoretical deficiencies to support nationwide policies.¹²⁵

63. Relatedly, Industrial Customers claim that Order No. 1920 is “legally infirm” because it does not make specific findings that rates and practices are unjust, unreasonable, or unduly discriminatory or preferential and instead “proposes to amend Order No. 1000 based upon mere concerns that Order No. 1000 *may not* be planning transmission in a manner that comports with the FPA.”¹²⁶

b. Commission Determination

64. We sustain our determination under the first prong of FPA section 206 and find that the Commission relied on sufficient and appropriate evidence to support its determination that existing rates are unjust and unreasonable. We disagree with SERTP Sponsors’ and Industrial Customers’ arguments that the Commission did not satisfy its section 206 burden because its analysis under the first prong of FPA section 206 was predicated “entirely on theory and supposition”¹²⁷ or on “mere concerns” that Order No. 1000 processes “*may not* be planning transmission in a manner that comports with the FPA.”¹²⁸ Setting aside that in making this determination the Commission did not rely solely on “supposition” or “mere concerns” about deficiencies in the Order No. 1000 regional transmission planning and cost allocation processes,¹²⁹ SERTP

¹²² SERTP Sponsors Rehearing Request at 34 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 71).

¹²³ *Id.*

¹²⁴ *Id.* at 31 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 65).

¹²⁵ *Id.* at 29, 31, 34.

¹²⁶ Industrial Customers Rehearing Request at 16–17 (emphasis in original).

¹²⁷ SERTP Sponsors Rehearing Request at 31.

¹²⁸ Industrial Customers Rehearing Request at 16–17.

¹²⁹ See, e.g., Order No. 1920, 187 FERC ¶ 61,068 at PP 93–97, 114–123 (discussed below in The Commission Adequately Supported Its Determination on Step One of Section 206 section).

¹¹⁴ *Id.* P 134.

¹¹⁵ *Id.* P 135.

¹¹⁶ *Id.* P 136 (citation omitted).

¹¹⁷ *Id.* (citations omitted).

¹¹⁸ *Id.* (citations omitted).

¹¹⁹ *Id.* P 137.

¹²⁰ *Id.* P 138 (citations omitted).

¹²¹ Alabama Commission Rehearing Request at 3–4; Designated Retail Regulators Rehearing Request at 3, 7–8, 19–22; Industrial Customers Rehearing Request at 3–4, 6, 11–18; SERTP Sponsors Rehearing Request at 28–29, 31–37; Undersigned States Rehearing Request at 7, 19–21; Arizona Commission Rehearing Request at 19–20.

Sponsors' and Industrial Customers' arguments disregard well-established principles regarding the findings and type of evidence sufficient to support a conclusion that the Commission's burden under the first prong of FPA section 206 has been satisfied, as established by longstanding authority, including the D.C. Circuit's opinion in *South Carolina Public Service Authority v. FERC*.

65. In *South Carolina Public Service Authority v. FERC*, the D.C. Circuit—reviewing Order No. 1000, which the Commission adopted to address the “theoretical threat” of unjust or unreasonable rates “stem[ing] from the absence of [transmission] planning processes that take a sufficiently broad view of both the tasks involved and the means of addressing them”—rejected arguments similar to those made here by Industrial Customers.¹³⁰ In particular, petitioners there, similar to Industrial Customers here, argued that the “‘theoretical threat’ described by the Commission fail[ed] to satisfy its evidentiary burden under [s]ection 206”¹³¹

66. The court squarely rejected that contention.¹³² It explained that the substantial evidence required to support a finding that an existing practice affecting rates is “unjust, unreasonable, unduly discriminatory or preferential” pursuant to FPA section 206 “requires ‘more than a scintilla’ but ‘less than a preponderance’ of evidence.”¹³³ Substantial evidence, however, “does not necessarily mean empirical evidence,”¹³⁴ and, in satisfying the substantial evidence standard, the Commission may rely on its own predictions as long as they are “‘at least likely enough to be within the

Commission’s authority’ and [are] based on reasonable economic propositions.”¹³⁵ As the court recognized, “[a]gencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall.”¹³⁶

67. The court in reviewing Order No. 1000 determined that the Commission had satisfied its evidentiary burden under section 206. In particular, the Commission had identified “significant changes in the nation’s electric power industry” that presented “significant challenges to the development and cost allocation of interstate transmission projects” and highlighted five deficiencies in Order No. 890’s transmission planning and cost allocation processes.¹³⁷ Ultimately, the court held that the Commission’s determination that the then-current transmission planning and cost allocation practices were unjust or unreasonable was based on substantial evidence.¹³⁸

68. By insisting that the Commission was required to demonstrate that rates or practices are, *in fact*, unjust, unreasonable, or unduly discriminatory or preferential,¹³⁹ SERTP Sponsors and Industrial Customers overlook principles articulated in *South Carolina Public Service Authority v. FERC*, including that the Commission need not provide empirical evidence for every proposition and may instead rely upon the threat of unjust and unreasonable rates as a basis for taking action.¹⁴⁰ Their argument is predicated on a faulty premise that, in a rulemaking setting, the Commission must wait for a threat to result in actual harm, and may not act where it anticipates harmful consequences.¹⁴¹ But in *South Carolina*

Public Service Authority v. FERC, the court explicitly reached the opposite conclusion, holding that the Commission satisfied its evidentiary burden under section 206 by relying on the theoretical threat to just and reasonable rates even though the Commission acknowledged other evidence in the record.¹⁴² SERTP Sponsors are thus incorrect to suggest that the *South Carolina Public Service Authority v. FERC* court allowed the Commission to rely on generic factual findings only because the record lacked empirical evidence.¹⁴³

69. *South Carolina Public Service Authority v. FERC* makes clear that, because “substantial evidence” is not limited to empirical evidence and may include generic factual predictions, the Commission could have satisfied its evidentiary burden under the first prong of FPA section 206 with analysis based on theoretical threats and predictions regarding such threats based on reasonable economic propositions within the Commission’s expertise.¹⁴⁴ Here, however, the Commission established a theoretical threat and, as discussed below, also cited substantial empirical and other record evidence to support its finding that the existing regional transmission planning processes and cost allocation requirements—and the rates that have resulted from them—are unjust and unreasonable.

2. The Commission Adequately Supported Its Determination on Step One of Section 206

a. Requests for Rehearing

70. Designated Retail Regulators argue that, in its analysis under the first prong of section 206 of the FPA, the Commission made conclusory, “blanket claims that are unsupported by evidence.”¹⁴⁵ Undersigned States similarly assert that the Commission does not “point to evidence in the record sufficient to support” a finding that existing regional transmission planning and cost allocation processes are resulting in unjust, unreasonable, unduly discriminatory, and preferential Commission-jurisdictional rates because “such evidence does not exist.”¹⁴⁶ Arizona Commission contends that the evidence in the record used to support Order No. 1920’s section 206 finding

¹³⁰ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 64 (alteration omitted) (quoting Order No. 1000, 136 FERC ¶ 61,051 at P 52).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 54 (quoting *Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 645 (D.C. Cir. 2010)), 64–65 (citing 16 U.S.C. 824e(a)), 5 U.S.C. 706(2)(E)).

¹³⁴ *Id.* at 65 (citing 5 U.S.C. 706(2)(E)); see also *Xcel Energy Servs. Inc. v. FERC*, 41 F.4th 548, 560–61 (D.C. Cir. 2022) (“In making decisions, it is ‘perfectly legitimate for the Commission to base its findings on ‘basic economic theory,’ including relying on ‘generic factual predictions,’ as long as the agency ‘explains and applies the relevant economic principles in a reasonable manner.’” (cleaned up) (quoting *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (D.C. Cir. 2010) (per curiam))); *id.* (“Where the ‘promulgation of generic rate criteria clearly involves the determination of policy goals or objectives, and the selection of means to achieve them,’ the ‘courts reviewing an agency’s selection of means are not entitled to insist on empirical data for every proposition on which the selection depends.’” (alterations omitted) (quoting *Associated Gas Distribs. v. FERC*, 824 F.2d 981, 1008 (D.C. Cir. 1987) (*Associated Gas Distributors*))).

¹³⁵ *Id.*; see also *id.* at 76 (“[A]t least in circumstances where it would be difficult or even impossible to marshal empirical evidence, the Commission is free to act based upon reasonable predictions rooted in basic economic principles.”).

¹³⁶ *Id.* at 65 (quoting *Associated Gas Distributors*, 824 F.2d at 1008); see also *Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92, 109 (2d Cir. 2015) (“FERC may permissibly rely on economic theory alone to support its conclusions so long as it has applied the relevant economic principles in a reasonable manner and adequately explained its reasoning.”).

¹³⁷ *Id.* at 66.

¹³⁸ See *id.* at 67.

¹³⁹ Industrial Customers Rehearing Request at 16–17; SERTP Sponsors Rehearing Request at 34.

¹⁴⁰ See *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 64–65; see also *id.* at 85 (“[W]hether a threat of unjust or unreasonable rates derives from a practice or the absence thereof, Section 206 empowers the Commission to address it.”); *Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 844 (D.C. Cir. 2006) (stating that the Commission could choose to “rely solely on a theoretical threat”).

¹⁴¹ See Industrial Customers Rehearing Request at 16–17.

¹⁴² *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 64, 67.

¹⁴³ SERTP Sponsors Rehearing Request at 29.

¹⁴⁴ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 65 (quoting *Associated Gas Distributors*, 824 F.2d at 1008).

¹⁴⁵ Designated Retail Regulators Rehearing Request at 20–21.

¹⁴⁶ Undersigned States Rehearing Request at 21.

consists largely of comments from special interest groups that will profit from Order No. 1920 and not evidence specific to the Arizona Commission.¹⁴⁷

71. Industrial Customers claim that, rather than making specific findings that existing practices are unjust and unreasonable, the Commission made “several generic assertions . . . to reach very broad conclusions,”¹⁴⁸ and “generically assert[ed]” that the Commission satisfies its burden under the first prong of the FPA section 206 inquiry “based on the record.”¹⁴⁹ Industrial Customers assert that the failure to reach specific findings, supported by substantial evidence, under the first prong of FPA section 206 renders Order No. 1920 legally infirm.¹⁵⁰ Industrial Customers claim that the absence of detailed and substantiated findings makes it “difficult, if not impossible” for transmission providers to file compliance filings because it will be challenging to develop and propose solutions without an understanding of the root problem the Commission is trying to fix.¹⁵¹

b. Commission Determination

72. We continue to find that the Commission made adequate findings under the first prong of FPA section 206 and marshalled substantial evidence to support those findings. We are therefore not persuaded by rehearing parties’ arguments to the contrary. Below, we first summarize the empirical and other record evidence the Commission cited to support its findings that Commission-jurisdictional regional transmission planning and cost allocation processes are unjust and unreasonable because they result in transmission providers failing to identify Long-Term Transmission Needs, to evaluate and select more efficient or cost-effective transmission solutions to meet those transmission needs, and to allocate the costs of transmission facilities selected to meet those transmission needs in a manner that is at least roughly commensurate with benefits.¹⁵² Next, we summarize the Commission’s generic factual predictions. We conclude that this evidence is more than sufficient to meet the Commission’s evidentiary burden under section 206.

73. Based on the robust record before it, the Commission concluded that transmission investment, which has

increased nationwide since the Commission issued Order No. 1000,¹⁵³ is likely to grow substantially in coming years due to three factors that are driving a growing need for new transmission infrastructure.¹⁵⁴ First, reports and comments in the record demonstrated that longer-term reliability needs are changing as transmission providers increasingly rely on regional transmission facilities to ensure operational stability as extreme weather events become more frequent and variable resources increasingly enter the resource mix.¹⁵⁵ Based on evidence in the record, the Commission concluded that transmission investment is likely to be more critical, and produce

¹⁵³ *Id.* P 92 (referencing a study by the US DOE, which found that annual investment in transmission first exceeded \$5 billion per year in 2006, doubled to more than \$10 billion per year by 2010, doubled again by 2016, and has been between \$18 billion and \$22 billion annually since 2014 (quoting US DOE, *National Electric Transmission Congestion Study*, at 9–10 (Sept. 2020), <https://www.energy.gov/sites/default/files/2020/10/f79/2020%20Congestion%20Study%20FINAL%2022Sept2020.pdf>)); *id.* (citing estimates from The Brattle Group and Grid Strategies that transmission developers in the United States invested \$20 to \$25 billion annually in transmission facilities from 2013 to 2020 (citing Brattle-Grid Strategies Oct. 2021 Report at 2); Brattle Apr. 2019 Competition Report at 2–3 & fig.1)).

¹⁵⁴ *Id.* P 93 (citing a number of studies projecting sustained transmission spending through at least 2050, including one by Princeton University projecting that high voltage transmission capacity must expand by 60 percent by 2030 at a capital cost of \$330 billion and must triple by 2050 at a capital cost of \$2.2 trillion, as well as another by The Brattle Group projecting \$750 billion of new transmission investment between 2023 and 2050. (citing Eric Larson et al., Princeton Univ., *Net-Zero America: Potential Pathways, Infrastructure, and Impacts*, at 108 (Oct. 2021), <https://netzeroamerica.princeton.edu/the-report>; Jürgen Weiss et al., The Brattle Group, *The Coming Electrification of the North American Economy*, at iii (2019), <https://wiresgroup.com/wp-content/uploads/2020/05/2019-03-06-Brattle-Group-The-Coming-Electrification-of-the-NA-Economy.pdf>)).

¹⁵⁵ The Commission cited comments and reports demonstrating that transmission infrastructure can be critical to system reliability during extreme weather events such as Winter Storm Uri. *Id.* P 94 & n.209 (citing ACEG NOPR Initial Comments at 22 n.63 (stating that during Winter Storm Uri, “[a]n additional 1 gigawatt (GW) of transmission ties between ERCOT and the Southeastern U.S. could have saved nearly \$1 billion and kept power flowing to hundreds of thousands of Texans.”); Grid Strategies July 2021 Extreme Weather Report at 7–8 (“The value of transmission for resilience can be seen in the drastically different outcomes of MISO and SPP relative to ERCOT during [Winter Storm Uri]. . . . In contrast to the 13,000 MW MISO was importing during the peak of [the] event, ERCOT was only able to import about 800 MW of power throughout the event.”)). The Commission also cited research from US DOE’s Lawrence Berkeley National Laboratory suggesting that 50% of the value created by alleviating transmission system congestion occurs during only 5% of the hours during which the transmission system is used, further evidence of the significant value of transmission during unanticipated events. *Id.* P 94 (citing LBNL Aug. 2022 Transmission Value Study at 33).

more reliability benefits for customers, as extreme weather and other system contingencies become more frequent.¹⁵⁶ Second, the Commission noted evidence that electric demand is projected to increase significantly in the coming decades due to electrification trends and new large loads associated with evolving industrial and commercial needs.¹⁵⁷ Again, relying on record evidence, the Commission found that these increases in aggregate electricity demand will have significant consequences for the transmission system.¹⁵⁸ Third, the Commission found that the resource mix is changing due to federal, federally-recognized Tribal, state, and local policies,¹⁵⁹ customer demands for clean energy,¹⁶⁰ utility

¹⁵⁶ *Id.* P 94 (citing LBNL Aug. 2022 Transmission Value Study at 33; Clean Energy Associations NOPR Initial Comments at 5).

¹⁵⁷ *Id.* P 95 (citing Jürgen Weiss et al., The Brattle Group, *The Coming Electrification of the North American Economy* (Mar. 2019), <https://wiresgroup.com/wp-content/uploads/2020/05/2019-03-06-Brattle-Group-The-Coming-Electrification-of-the-NA-Economy.pdf>); John D. Wilson and Zach Zimmerman, Grid Strategies, *The Era of Flat Power Demand is Over*, at 3 (Dec. 2023), <https://gridstrategiesllc.com/wp-content/uploads/2023/12/National-Load-Growth-Report-2023.pdf> (“Over [2023], grid planners nearly doubled the 5-year load growth forecast. The nationwide forecast of electricity demand shot up from 2.6% to 4.7% growth over the next five years, as reflected in 2023 FERC [Form 714] filings. Grid planners forecast peak demand growth of 38 gigawatts (GW) through 2028.”); N. Amer. Elec. Reliability Corp., *2023 Long-Term Reliability Assessment*, at 33 (Dec. 2023), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2023.pdf (“Electricity peak demand and energy growth forecasts over the 10-year assessment period are higher than at any point in the past decade. The aggregated assessment area summer peak demand forecast is expected to rise by 79 GW, and aggregated winter peak demand forecasts are increasing by nearly 91 GW. Furthermore, the growth rates of forecasted peak demand and energy have risen sharply since the 2022 [Long-Term Reliability Assessment], reversing a decades-long trend of falling or flat growth rates.”)).

¹⁵⁸ *See id.* P 95 (citing National Grid NOPR Initial Comments at 6 (discussing preliminary findings of the ISO–NE 2050 Transmission Study, which show “significant new transmission will be needed to reliably serve” increased future loads assumed in the study (citing ISO–NE, 2050 Transmission Study (2023), https://www.iso-ne.com/static-assets/documents/2023/08/2050_study_ma_cetwg_2023_aug_final.pdf)).

¹⁵⁹ *Id.* P 96 & nn.223–227 (noting numerous jurisdictions that have adopted decarbonization, electrification, and renewable energy-related laws and policies); *id.* (citing ACORE NOPR Initial Comments at 1–2 & n.2; American Clean Power Ass’n, *It’s a Big Deal for Job Growth and for a Clean Energy Future* (2022), <https://cleanpower.org/blog/its-a-big-deal-for-job-growth-and-for-a-clean-energy-future> (“Analysis suggests that the [Inflation Reduction Act] could more than triple clean energy production in the U.S. and lead to \$600 billion in capital investment in clean energy infrastructure.”); Evergreen Action NOPR Initial Comments at 3–4; NextEra NOPR Reply Comments at 5); *id.* P 99.

¹⁶⁰ *Id.* P 97 (“Since 2014, for example, ‘commercial and industrial customers have contracted for more than 52 GW of clean energy.’”

¹⁴⁷ Arizona Commission Rehearing Request at 19.

¹⁴⁸ Industrial Customers Rehearing Request at 16.

¹⁴⁹ *Id.* at 13 (alteration omitted).

¹⁵⁰ *Id.* at 17.

¹⁵¹ *Id.* at 17–18.

¹⁵² Order No. 1920, 187 FERC ¶ 61,068 at PP 114–122.

emission commitments,¹⁶¹ and the changing economics of resources that comprise the resource mix.¹⁶²

74. Considering the changing transmission investment landscape, the Commission then relied on substantial record evidence to find that the Commission's existing regional transmission planning and cost allocation requirements are deficient in three ways and therefore fail to require transmission providers to adequately plan on a sufficiently long-term, forward-looking, and comprehensive basis.¹⁶³

75. The first deficiency that the Commission identified is the lack of a sufficiently long-term assessment of transmission needs.¹⁶⁴ The Commission explained that most transmission planning regions do not plan beyond a 10-year transmission planning horizon,¹⁶⁵ which is shorter than the time needed to plan and construct large

(e.g., high voltage or long distance) transmission facilities¹⁶⁶ or to capture all of the benefits that regional transmission facilities can provide.¹⁶⁷ According to comments and studies in the record, short-term transmission planning also fails to take advantage of the potential for efficiencies or economies of scale that regional transmission facilities can provide and does not create opportunities to “right size” the replacement of aging transmission facilities.¹⁶⁸ Based on this evidence, the Commission concluded that relying solely on shorter-term transmission planning and studies fails to identify Long-Term Transmission Needs and consequently undervalues or entirely ignores the benefits of transmission investments to meet those needs.¹⁶⁹

76. The second deficiency that the Commission identified is that transmission providers are not required to account adequately on a forward-looking basis for known determinants of

Long-Term Transmission Needs or to account for such known determinants in a manner that ensures the identification and evaluation of more efficient or cost-effective regional transmission facilities to meet Long-Term Transmission Needs.¹⁷⁰ The Commission highlighted concrete evidence of this deficiency, including that some regional transmission planning processes ignore factors relevant to identifying transmission needs,¹⁷¹ while others fail to account for factors that will shape future load.¹⁷² The Commission added that, while forecasting necessarily involves uncertainty, the record demonstrates that there are numerous factors that increasingly shape Long-Term Transmission Needs, that are known and identifiable, and have reasonably predictable effects, especially in the aggregate.¹⁷³ These include, for example, reliability needs driven by the impact of extreme weather,¹⁷⁴ trends in future generation additions and retirements,¹⁷⁵ load growth,¹⁷⁶ federal, federally-recognized Tribal, state, and local laws and

(alteration omitted) (quoting Advanced Energy Buyers NOPR Initial Comments at 5)).

¹⁶¹ *Id.* P 97 & nn.233–37 (noting that Exelon, Dominion, AEP, Southern, Entergy, Duke Energy, NextEra, and Tennessee Valley Authority have all announced some version of a net-zero carbon emission plan or commitment).

¹⁶² *Id.* P 97 & n.239 (citing ACORE ANOPR NOPR Initial Comments at app. 1, p. 22 (“Wind and solar energy costs have fallen 70 and 89 percent, respectively, in the last ten years, from 2009 through 2019.”)); Order No. 1920, 187 FERC ¶ 61,068 at P 99 (“[A]s of 2021, nearly 70% of capacity additions across the country were from new, utility-scale wind and solar resources[,] . . . [and] those trends are projected to continue, with over 1,300 GW of wind, solar, and storage resources in interconnection queues across the country as of 2021.” (citing SREA NOPR Initial Comments at 1–2; AEE NOPR Initial Comments at 12–13; California Commission NOPR Initial Comments at 65; Renewable Northwest NOPR Initial Comments at 36; FERC, State of the Markets 2020, at 10, 12 (Mar. 2021); FERC, State of the Markets 2023, at 4 (Mar. 2024); US DOE Initial Comments at app. B, PP. 8–9, 26)).

¹⁶³ *Id.* P 112.

¹⁶⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 115 (citing MISO ANOPR Reply Comments at 5 (“[G]iven long-term needs of an evolving system, additional transmission is necessary to reliably serve customers now and into the future. These challenges require immediate action and further delay only increases the risk that system enhancements may not be in place in the timeframe needed.”); PIOs NOPR Initial Comments at 13 (“[A] short-term outlook under-forecasts longer-term transmission needs, preventing the development of more cost-effective transmission facilities, and fails to consider how the needs of the transmission system are shifting.”); US DOE ANOPR Initial Comments at 10 (stating that failure to plan transmission far enough ahead results in “adverse implications for system reliability, resilience, consumers’ electricity rates, and the achievement of clean energy goals”)).

¹⁶⁵ *Id.* (noting that commenters point out that ISO-NE, SERTP, and NorthernGrid use a 10-year transmission planning horizon, while PJM uses a 5-year transmission planning horizon for what it refers to as its short-term transmission planning process and a 6-to-15-year transmission planning horizon for what it refers to as its intermediate-term transmission planning process).

¹⁶⁶ *Id.* P 116 (citing AEP NOPR Initial Comments at 11; Nevada Commission NOPR Initial Comments at 7 n.24; PIOs NOPR Initial Comments at 14; Renewable Northwest NOPR Initial Comments at 5; SEIA NOPR Initial Comments at 6). The Commission discussed MISO’s MVP initiative, which took a decade to move from approval by the MISO Board of Directors in 2011 to completion of most of the projects by 2021, a 10-year period that does not even account for the significant transmission facility development efforts that occurred prior to the MISO Board of Directors’ approval. Order No. 1920, 187 FERC ¶ 61,068 at P 116 (citing AESL Consulting, *A Transmission Success Story: The MISO MVP Transmission Portfolio*, at 39 (2021)).

¹⁶⁷ *Id.* (citing SEIA NOPR Initial Comments at 6; US DOE NOPR Initial Comments at 33).

¹⁶⁸ *Id.* (citing ACORE NOPR Initial Comments at 4 (“The narrowly focused current approaches [to transmission planning] do not identify opportunities to take advantage of the large economies of scale in transmission that come from ‘up-sizing’ reliability projects to capture additional benefits, such as congestion relief, reduced transmission losses, and facilitating the more cost-effective interconnection of the renewable and storage resources needed to meet public policy goals.” (quoting Brattle-Grid Strategies Oct. 2021 Report at 3)); PIOs ANOPR Initial Comments at 10–11; SEIA ANOPR Initial Comments at 14).

¹⁶⁹ *Id.* P 117 & n.290 (“Relying on successive small transmission expansion projects to meet foreseeable long-term needs may lead to the need for expensive retrofits (at customers’ expense) at a later date. Economies of scale and network economies suggest that an initial larger-scale buildout will often represent a lower-cost solution.” (quoting US DOE ANOPR Initial Comments at 10)); *id.* (“While the Tranche 1 Portfolio is the result of MISO’s long-range planning process being executed for only the second time, the rapid change within the industry will require that it become a more routine aspect of the MISO planning process going forward.” (quoting Midcontinent Independent System Operator, *MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 Portfolio Report*, at 6 (July 28, 2022), <https://cdn.misoenergy.org/MTEP21%20Addendum-LRTP%20Tranche%201%20Report%20with%20Executive%20Summary625790.pdf>)).

¹⁷⁰ *Id.* P 118.

¹⁷¹ *Id.* (discussing record evidence that some existing regional transmission planning processes ignore trends in future generation, the impact of extreme weather, state laws, and utility goals) (citing Acadia Center and CLF NOPR Initial Comments at 1; GridLab NOPR Initial Comments at 4–5; Brattle-Grid Strategies Oct. 2021 Report at 36; Grid Strategies July 2021 Extreme Weather Report at 5; SPP Market Monitor ANOPR Initial Comments at 3 & n.5; Renewable Northwest NOPR Initial Comments at 4, 8, 12; SREA NOPR Initial Comments at 25)).

¹⁷² *Id.* (discussing record evidence that existing regional transmission planning processes fail to account for factors shaping electrification trends like electric vehicles and data centers (citing AEE ANOPR Initial Comments at 18; Clean Energy Buyers NOPR Initial Comments at 7–8; National Grid NOPR Initial Comments at 8; AEE ANOPR Initial Comments at 18; Rocky Mountain Institute NOPR Supplemental Comments at 1; WIRES NOPR Supplemental Comments at attach. 1, p. 36)).

¹⁷³ *Id.* P 119.

¹⁷⁴ *Id.* P 120 (citing ACEG NOPR Initial Comments at 63; NERC NOPR Initial Comments at 6; Evergreen Action NOPR Initial Comments at 2 (“[A]dditional transmission built under improved planning procedures would [] create large reliability benefits. With increasing extreme weather events due to climate change—including wildfires, winter storms, hurricanes, and more—additional transmission infrastructure and grid improvements are increasingly necessary for resilience purposes.”); WE ACT NOPR Initial Comments at 2).

¹⁷⁵ *Id.* P 120 (citing Pattern Energy NOPR Initial Comments at 26; SEIA NOPR Initial Comments at 9).

¹⁷⁶ *Id.* (citing Northwest and Intermountain NOPR Initial Comments at 5 n.12; John Wilson and Zach Zimmerman, *The Era of Flat Demand is Over*, Grid Strategies, at 3, 6 (Dec. 2023), <https://gridstrategiesllc.com/wp-content/uploads/2023/12/National-Load-Growth-Report-2023.pdf> (noting the 5-year load growth forecast has nearly doubled from 2.6% to 4.7% and “transmission investments need to increase just to keep up with demand”)).

regulations,¹⁷⁷ and utility goals.¹⁷⁸ The Commission explained, however, that existing regional transmission planning processes frequently undervalue or do not consider some or all of these factors, and the Commission's existing regional transmission planning requirements do not ensure otherwise.¹⁷⁹ The Commission found that the failure to adequately consider such factors delays planning for the transmission system's changing operational needs until shortly before those transmission needs manifest, resulting in transmission planning processes that are piecemeal and fail to take advantage of economies of scale in transmission investment or opportunities to address multiple transmission needs over multiple time horizons.¹⁸⁰

77. The Commission explained that the third deficiency is that transmission providers are not required to adequately consider the broader set of benefits that accrue to regional transmission facilities planned to meet Long-Term Transmission Needs.¹⁸¹ Relying on record evidence, the Commission found that many current regional transmission planning and cost allocation processes consider only a narrow subset of benefits that regional transmission facilities provide¹⁸² or fail entirely to consider cost savings associated with certain transmission facilities.¹⁸³

78. These deficiencies have concrete consequences that illustrate the

deleterious effects of inadequate regional transmission planning processes. For instance, the Commission cited evidence showing that investment in regional transmission facilities has declined in some regions as compared to the investment that was occurring prior to Order No. 1000 and that, across all non-RTO/ISO regions, not a single transmission facility has been selected since implementation of Order No. 1000.¹⁸⁴ Further, the Commission noted that within some RTO/ISO regional transmission planning processes, even where investments through the regional transmission planning process occur, much of that investment has been in transmission projects that only address immediate reliability needs.¹⁸⁵

79. At the same time, the Commission found, significant expansion of the transmission system is occurring through one-off, piecemeal, interconnection-related network upgrades constructed in response to individual generator interconnection requests.¹⁸⁶ The Commission noted the shortcomings of relying on the generator interconnection process for addressing transmission needs, including that the generator interconnection process does not look at time horizons beyond the specific interconnection request(s) being studied, comprehensively assess any transmission needs beyond those created by the specific interconnection request(s), or achieve the economies of scale in transmission investment that long-term, forward-looking, and more comprehensive regional transmission planning processes can provide.¹⁸⁷

¹⁸⁴ *Id.* P 101 (citing Rob Gramlich and Jay Caspari, Americans for a Clean Energy Grid, Planning for the Future: *FERC's Opportunity to Spur More Cost-Effective Transmission Infrastructure*, at 25 & fi. 8 (Jan. 2021), https://cleanenergygrid.org/wp-content/uploads/2021/01/ACEG_Planning-for-the-Future1.pdf; ACORE ANOPR Initial Comments at 4 (“Despite the potential benefits, regional transmission investment has not increased and in some regions even has declined over the past decade.”) (citation omitted); State Agencies NOPR Initial Comments at 23 (“Regionally planned projects have [] declined in RTOs/ISOs” (citing John C. Gravan & Rob Gramlich, NRRI Insights, *A New State-Federal Cooperation Agenda for Regional and Interregional Transmission*, at 2 (Sept. 2021), <https://pubs.naruc.org/pub/FF5D0E68-1866-DAAC-99FB-A31B360DC685>); FERC, Staff Report, 2017 *Transmission Metrics*, at 19 (Oct. 6, 2017), <https://www.ferc.gov/sites/default/files/2020-05/transmission-investment-metrics.pdf>).

¹⁸⁵ *Id.* P 101 (citing Southwestern Power Group NOPR Initial Comments at 15; PIOs ANOPR Initial Comments at 93 & n.276; Ari Peskoe, *Is the Utility Syndicate Forever?*, 42 *Energy L.J.* 1, 56–57 (2021)).

¹⁸⁶ *Id.* P 104 (citing Pine Gate NOPR Initial Comments at 6, 8–10; PIOs NOPR Initial Comments at 9).

¹⁸⁷ *Id.* P 106 (citing Anbaric NOPR Initial Comments at 5; Clean Energy Associations NOPR Initial Comments at 15; Exelon NOPR Initial Comments at 5; Pine Gate NOPR Initial Comments

80. The Commission also cited evidence that, since the issuance of Order No. 1000, the majority of investment in transmission facilities has been in local transmission facilities, a trend that is accelerating across multiple regions.¹⁸⁸ The Commission pointed out that in RTO/ISO regions one half of the nearly \$70 billion in aggregate transmission investments by Commission-jurisdictional transmission providers between 2013 and 2017 was approved outside of regional transmission planning processes.¹⁸⁹

81. Relying on the foregoing record of empirical and other record evidence, the Commission found that existing regional transmission planning requirements are deficient and fail to require transmission providers to adequately plan on a sufficiently long-term, forward-looking, and comprehensive basis.¹⁹⁰ Substantial facts in the record also supported the Commission's finding that the absence of sufficiently long-term, forward-looking, and comprehensive regional transmission planning processes is resulting in piecemeal transmission expansion to address relatively near-term transmission needs,¹⁹¹ a trend that

at 9; PIOs NOPR Initial Comments at 10; SEIA ANOPR Initial Comments at 2; Southeast PIOs NOPR Initial Comments at 37).

¹⁸⁸ *Id.* P 109 (citing NOPR, 179 FERC ¶ 61,028 at PP 39–40 (2022)).

¹⁸⁹ *Id.* (citing PIOs NOPR Initial Comments at 9).

¹⁹⁰ *Id.* P 127 (citing New Jersey Commission NOPR Initial Comments at 8 (explaining that, outside of limited circumstances, PJM, Florida, ISO-NE, Southeastern Regional, South Carolina Regional, WestConnect, NorthernGrid, NYISO, SPP, and CAISO do not conduct multi-driver or portfolio transmission planning, which has required ratepayers to pay for tens of billions of dollars in unnecessary transmission projects); NextEra ANOPR Initial Comments at 71 (“While there are examples of longer-term planning currently being utilized by some regions, such as MISO's annual 15-year Futures assessment or SPP's 20-year Integrated Transmission Plan run every five years, there is no standard as to what time horizon long-term planning must study, nor how often this planning should be done. Further, no standards or guidelines exist as to what should be included in such long-term planning to ensure that customers are charged just and reasonable rates for the most efficient and cost-effective investments given the most comprehensive and up-to-date information available.”); Western PIOs NOPR Initial Comments at 4–28 (arguing that in the Western United States transmission planning outside of CAISO is not developed and is ineffective); Brattle-Grid Strategies Oct. 2021 Report at 13–15 & tbl. 2 (documenting inconsistent “use of proactive, scenario-based, multi-value processes” across various planning authorities, including NYISO, CAISO, MISO, PJM, ISO-NE, Florida, Southeast Regional, and South Carolina”)).

¹⁹¹ *Id.* PP 127–128 (citing LS Power NOPR Initial Comments at 46–50; PIOs NOPR Initial Comments at 9–10 (explaining that about half of the approximately \$70 billion in aggregate transmission investment by Commission-jurisdictional transmission owners in RTO/ISO regions was approved outside of regional transmission planning processes)).

¹⁷⁷ *Id.* PP 119, 120 (citing Acadia Center and CLF NOPR Initial Comments at 8; AEE NOPR Initial Comments at 10 (noting that “[a]s of September 2020, 38 states and the District of Columbia had adopted renewable portfolio standards, and 21 states (plus the District of Columbia and Puerto Rico)—representing more than half of the U.S. population—include a target of 100% renewable energy by 2050 or sooner. Many of these requirements have been enacted in statute and are binding on utilities and retail energy providers.”)).

¹⁷⁸ *Id.* P 120 (citing Renewable Northwest NOPR Initial Comments at 6; SREA NOPR Initial Comments at 41–46).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* P 121 (PIOs NOPR Initial Comments at 10–11; Renewable Northwest NOPR Initial Comments at 8).

¹⁸¹ *Id.* P 122 (citation omitted).

¹⁸² *Id.* (citing Brattle-Grid Strategies Oct. 2021 Report at 2 (“[M]ost of [the nation's recent transmission] investment addresses individual local asset replacement needs, near-term reliability compliance, and generation-interconnection-related reliability needs without considering a comprehensive set of multiple regional needs and system-wide benefits.”); Massachusetts Attorney General ANOPR Initial Comments at 22; PIOs NOPR Initial Comments at 10–11).

¹⁸³ *Id.* (citing SREA NOPR Initial Comments at 24 (“SERTP participants explained that SERTP is unable to conduct adjusted production cost savings, because none of the utilities involved in SERTP have the software capable of doing so. In effect, the ‘Economic Planning Studies’ only evaluate the costs of potential upgrades to the system, but none of the benefits.”)).

reflects that existing regional transmission planning requirements are leading to relatively inefficient or less cost-effective results.

82. Moreover, as courts have made clear, the Commission was also entitled to base its findings regarding the need for reform on generic factual predictions.¹⁹² In *Associated Gas Distributors*, the court explained that the Commission is permitted to act on predictions that are unsupported by record evidence when such predictions are “at least likely enough to be within the Commission’s authority” and based on reasonable behavioral or economic assumptions.¹⁹³ Indeed, “[a]gencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall.”¹⁹⁴ Thus, in *South Carolina Public Service Authority v. FERC*, the court held that the Commission satisfied its burden on the first prong of FPA section 206 analysis where “[t]he threat to just and reasonable rates arose, in the Commission’s judgment, from existing planning and cost allocation practices that could thwart the identification of more efficient and cost-effective transmission solutions.”¹⁹⁵

83. Here, relying on its expertise and knowledge of the industry, the Commission made several predictions that were fully consistent with the grounds for action that courts have accepted in the past, including in *Associated Gas Distributors* and *South Carolina Public Service Authority v. FERC*. First, the Commission made such predictions when it explained how observed deficiencies in existing regional transmission planning and cost allocation requirements are resulting in deleterious consequences and ultimately rendering rates unjust and unreasonable.¹⁹⁶ Next, the Commission predicted that existing cost allocation requirements—which were designed and established in the context of existing shorter-term Order No. 1000 regional transmission planning processes and lack a dedicated process through which states have an opportunity to participate in the development of regional cost allocation methods—are insufficient to

appropriately allocate costs associated in the context of the Long-Term Regional Transmission Planning requirements established in Order No. 1920.¹⁹⁷ Finally, the Commission anticipated that, absent Order No. 1920’s reforms, regional transmission planning processes will continue to fail to identify, evaluate, and select regional transmission facilities that can more efficiently or cost-effectively meet Long-Term Transmission Needs, requiring customers to pay for relatively inefficient or less cost-effective transmission development.¹⁹⁸ Such predictions are precisely the type of evidence that courts have permitted the Commission to use as the basis for section 206 rulemaking.

84. Given both the empirical and other record evidence and the generic factual predictions on which the Commission relied, we are unpersuaded by Designated Retail Regulators’ and Undersigned States’ arguments¹⁹⁹ that the Commission’s determination under the first prong of FPA section 206 was unsupported by substantial evidence. Indeed, the Commission’s findings regarding ongoing changes to the nation’s electric power industry and deficiencies in existing transmission planning and cost allocation processes, along with the evidence supporting those findings, are similar to, or the same as, the type of findings and evidence that formed the basis for action in Order No. 1000 and that the *South Carolina Public Service Authority v. FERC* court determined satisfied the Commission’s burden under the first prong of FPA section 206.²⁰⁰

85. For these same reasons, we disagree with Arizona Commission’s unsubstantiated contention that the evidence in the record on which the Commission relied to satisfy its section 206 burden consists largely of comments from special interest groups that will profit from the final rule.²⁰¹ The Commission’s findings were based on an extensive record consisting of over 30,000 pages of comments from nearly 200 stakeholders, including industry participants such as transmission providers,²⁰² generation

developers,²⁰³ trade associations,²⁰⁴ customer groups,²⁰⁵ and governmental entities.²⁰⁶ The Commission’s findings also relied upon many reports and studies in the record and the Commission’s expert predictions.²⁰⁷ Arizona Commission disregards this substantial evidence.

86. We are also unpersuaded by Industrial Customers’ assertion that the absence of substantial evidence makes it “difficult if not impossible” for transmission providers to submit compliance filings because it will be challenging to develop and propose solutions without an understanding of

Comments); *id.* P 118 (citing National Grid NOPR Initial Comments); *id.* P 136 (citing Exelon NOPR Initial Comments).

²⁰³ See, e.g., *id.* P 120 (citing Pattern Energy NOPR Initial Comments); *id.* P 127 (citing NextEra ANOPR Initial Comments); LS Power NOPR Initial Comments).

²⁰⁴ See, e.g., *id.* P 116 (citing SEIA ANOPR Initial Comments); *id.* P 137 (citing EEI NOPR Initial Comments).

²⁰⁵ See, e.g., *id.* P 118 (citing Clean Energy Buyers NOPR Initial Comments; ELCON NOPR Initial Comments); *id.* PP 119–120 (citing Industrial Customers NOPR Initial Comments).

²⁰⁶ See, e.g., *id.* P 115 (citing Massachusetts Attorney General NOPR Initial Comments; US DOE ANOPR Initial Comments); *id.* P 116 (citing Nevada Commission NOPR Initial Comments); *id.* P 120 (citing NERC NOPR Initial Comments); *id.* PP 121, 127, 135 (citing New Jersey Commission NOPR Initial Comments); *id.* P 128 (citing Michigan State Entities NOPR Initial Comments).

²⁰⁷ See, e.g., *id.* P 92 (citing US DOE, *National Electric Transmission Congestion Study*, (Sept. 2020), <https://www.energy.gov/sites/default/files/2020/10/f79/2020%20Congestion%20Study%20FINAL%2022Sept2020.pdf>); Brattle-Grid Strategies Oct. 2021 Report); *id.* P 101 (citing ACEG Jan. 2021 Planning Report; John C. Gravan & Rob Gramlich, *NRRI Insights, A New State-Federal Cooperation Agenda for Regional and Interregional Transmission* (Sept. 2021), <https://pubs.naruc.org/pub/FF5D0E68-1866-DAAC-99FB-A31B360DC685>); FERC, Staff Report, *2017 Transmission Metrics* (Oct. 6, 2017), <https://www.ferc.gov/sites/default/files/2020-05/transmission-investment-metrics.pdf>); *id.* P 102 (citing Midcontinent Indep. Sys. Operator, *RGOS: Regional Generation Outlet Study* (Nov. 2020)); MTEP2017 Review); *id.* P 116 (citing AESL Consulting, *A Transmission Success Story: The MISO MVP Transmission Portfolio* (2021); Midcontinent Independent System Operator, *MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 Portfolio Report* (July 28, 2022), <https://cdn.misoenergy.org/MTEP21%20Addendum-LRTP%20Tranche%201%20Report%20with%20Executive%20Summary625790.pdf>); *id.* P 118 (citing Grid Strategies July 2021 Extreme Weather Report; Regulatory Assistance Project, *FERC Transmission: The Highest-Yield Reforms* (July 2022), <https://www.raponline.org/wp-content/uploads/2023/09/rap-littell-prause-weston-FERC-transmission-highest-yield-reforms-2022-july.pdf>); Rob Gramlich, et al., *Fostering Collaboration Would Help Build Needed Transmission* (Feb. 2024)); *id.* P 120 (citing BPA, *TSR Study and Expansion Process* (Dec. 7, 2021), <https://www.bpa.gov/-/media/Aep/transmission/atc-methodology/2021-22sep-overview.pdf>); John Wilson and Zach Zimmerman, *The Era of Flat Demand is Over, Grid Strategies* (Dec. 2023), <https://gridstrategiesllc.com/wp-content/uploads/2023/12/National-Load-Growth-Report-2023.pdf>).

¹⁹² See *Citadel FNGE Ltd. v. FERC*, 77 F.4th 842, 858 (D.C. Cir. 2023); *Xcel Energy Servs. Inc. v. FERC*, 41 F.4th at 560–61; *Associated Gas Distributors*, 824 F.2d at 1008.

¹⁹³ *Associated Gas Distributors*, 824 F.2d at 1008 (discussing *Wis. Gas Co. v. FERC*, 770 F.2d 1144 (D.C. Cir. 1985); *Elec. Consumers Res. Council v. FERC*, 747 F.2d 1511 (D.C. Cir. 1984)).

¹⁹⁴ *Associated Gas Distributors*, 824 F.2d at 1008.

¹⁹⁵ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 66 (emphasis added).

¹⁹⁶ See Order No. 1920, 187 FERC ¶ 61,068 at PP 117, 121, 123.

¹⁹⁷ *Id.* P 126.

¹⁹⁸ *Id.* P 113.

¹⁹⁹ Designated Retail Regulators Rehearing Request at 20–21; Undersigned States Rehearing Request at 21.

²⁰⁰ See *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 65–67; see also Order No. 1000, 136 FERC ¶ 61,051 at PP 44–47, 78–83.

²⁰¹ See Arizona Commission Rehearing Request at 19.

²⁰² See, e.g., Order No. 1920, 187 FERC ¶ 61,068 at P 115 (citing PJM NOPR Initial Comments; MISO ANOPR Reply Comments; ITC NOPR Initial Comments); *id.* P 116 (citing AEP NOPR Initial

the root problem that the Commission is trying to fix.²⁰⁸ As discussed above, the Commission made detailed findings addressing the deficiencies of existing transmission planning and cost allocation requirements and the processes related to those requirements.²⁰⁹ Moreover, in developing their compliance filings, transmission providers will rely on the Commission's specific identification of the new requirements established under the second prong of FPA section 206, not on the deficiencies in existing transmission planning and cost allocation processes and requirements identified under the first prong of the Commission's section 206 analysis. We are therefore not persuaded that Order No. 1920's findings lack the requisite specificity to enable transmission providers to make compliance filings.

3. The Commission Identified Deficiencies That Exist Beyond Isolated Pockets

a. Requests for Rehearing

87. Alabama Commission and SERTP Sponsors assert that Order No. 1920's generalized observations criticizing the effectiveness of existing transmission planning processes are based on examples from other parts of the country and do not apply to, or address evidence regarding, Alabama and the Southeast.²¹⁰ According to Alabama Commission, Alabama and SERTP already achieve many, if not most, of the goals of the final rule.²¹¹ Alabama Commission contends that Alabama has a resource planning process that accounts for needed transmission buildout to maintain reliable service and proactively plans its transmission system to maintain deliveries from existing resources and accommodate generation additions.²¹² Alabama Commission adds that the SERTP process ensures that there are no regional transmission solutions that are more efficient and cost-effective than the solutions identified through the underlying state-jurisdictional process.²¹³

88. SERTP Sponsors allege that the SERTP process has been highly efficient, and that its integrated resource plan and request for proposal-driven transmission planning and other similar

processes effectively address the Commission's concerns regarding siloed planning, lack of scenario planning, and local versus regional project focus. SERTP Sponsors argue that, while the court in *South Carolina Public Service Authority v. FERC* allowed the Commission to support a rulemaking by finding a systemic problem not limited to isolated pockets, given SERTP's scale, scope, and that it does not suffer from the theoretical deficiencies identified in Order No. 1920, the Commission has not satisfied the standard set out in *South Carolina Public Service Authority v. FERC*.²¹⁴ SERTP Sponsors claim that they ensure a comprehensive and proactive approach to transmission system development by incorporating various factors into their planning, including reliability, economic growth, environmental attributes, and public policy requirements.²¹⁵ According to SERTP Sponsors, the alternative projects identified through its regional transmission planning analyses have not proved to be more efficient or cost-effective than those identified through SERTP's integrated resource plan and request for proposal-driven transmission planning.²¹⁶

89. SERTP Sponsors also disagree with Order No. 1920's finding that nationwide transmission grid expansion is primarily driven through the generator interconnection process, because in the Southeast, transmission expansion is driven by the underlying integrated resource plan/request for proposal and other similar planning processes.²¹⁷ SERTP Sponsors state that Southern Companies added \$5.3 billion in transmission capital expenditures from 2017–2021, with only \$57 million (just over 1%) related to generation interconnection.²¹⁸ Similarly, SERTP Sponsors explain that Duke Energy added an estimated \$503 million of transmission facilities to its transmission plan, targeted at unlocking areas of its transmission system that were repeatedly identified in past generator interconnection studies as constrained to more timely and cost-effectively integrate needed generation resources.²¹⁹ SERTP Sponsors contend that Order No. 1920 ignored this evidence.²²⁰

²¹⁴ SERTP Sponsors Rehearing Request at 34 n.100.

²¹⁵ *Id.* at 32.

²¹⁶ *Id.* at 33.

²¹⁷ *Id.* at 36.

²¹⁸ *Id.* at 36–37.

²¹⁹ *Id.* at 37 (citing Duke NOPR Initial Comments at 8–9).

²²⁰ *Id.* (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*) (internal citation omitted)).

90. Designated Retail Regulators and Undersigned States aver that, contrary to the Commission's claims, the evidence in the record demonstrates that a substantial portion of transmission providers have been and are engaging in long-term planning.²²¹ For example, Designated Retail Regulators and Undersigned States point to MISO's Multi-Value Projects (MVP) process, which they claim includes most of the requirements of Order No. 1920.²²² Designated Retail Regulators and Undersigned States also contend that CAISO, NYISO, Southern Companies, and other transmission planners also have sufficient long-term planning and that SPP indicated in its NOPR comments that its OATT requires planning processes that are sufficient to meet the intent and desired outcomes of Order No. 1920.²²³

b. Commission Determination

91. We disagree with rehearing parties who argue that the Commission did not satisfy its burden under the first prong of FPA section 206 because certain transmission providers may already engage in some form of long-term transmission planning.²²⁴ We are satisfied that the Commission identified deficiencies in existing regional transmission planning and cost allocation processes that exist beyond isolated pockets.

92. First, “[t]hat some commenters may engage in sufficient transmission planning processes ‘is as unastonishing as it is irrelevant,’” where, as here, the deficiencies identified by the Commission and supported by substantial evidence reach well beyond “isolated pockets.”²²⁵ Record evidence demonstrates that transmission planning regions across the country—including ISO–NE, SERTP, and NorthernGrid—do not plan beyond a 10-

²²¹ Designated Retail Regulators Rehearing Request at 21–22; Undersigned States Rehearing Request at 22–23.

²²² Designated Retail Regulators Rehearing Request at 21–22; Undersigned States Rehearing Request at 22.

²²³ Designated Retail Regulators Rehearing Request at 22 (citing Order No. 1920, 187 FERC ¶ 61,068 (Christie, Comm'r, dissenting, at PP 65–66); SPP NOPR Initial Comments at 3); Undersigned States Rehearing Request at 22–23 (citing Order No. 1920, 187 FERC ¶ 61,068 (Christie, Comm'r, dissenting, at PP 65–66); SPP NOPR Initial Comments at 3).

²²⁴ Alabama Commission at 3–4; Designated Retail Regulators Rehearing Request at 21–22; Undersigned States Rehearing Request at 22–23; SERTP Sponsors Rehearing Request at 28–37.

²²⁵ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 67 (first quoting *Wis. Gas Co. v. FERC*, 770 F.2d at 1157; and then quoting *Associated Gas Distributors*, 824 F.2d at 1019).

²⁰⁸ Industrial Customers Rehearing Request at 17.

²⁰⁹ See *supra* Unjust, Unreasonable, and Unduly Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes section.

²¹⁰ Alabama Commission Rehearing Request at 3; SERTP Sponsors Rehearing Request at 28–29, 31.

²¹¹ Alabama Commission Rehearing Request at 3.

²¹² *Id.* at 3–4.

²¹³ *Id.* at 4.

year transmission planning horizon,²²⁶ which is problematic for several reasons, including that regional transmission facilities often have lead times that exceed 10 years²²⁷ and that a 10-year transmission planning horizon is much too short to capture all of the benefits that regional transmission facilities can provide.²²⁸ Further, comments and reports in the record establish that transmission planning processes in several regions do not account for known determinants of Long-Term Transmission Needs such as trends in future generation²²⁹ and extreme weather.²³⁰ The record demonstrates that many regional transmission planning processes also fail to adequately consider the range of benefits of regional transmission facilities planned to meet Long-Term Transmission Needs.²³¹ And the Commission cited evidence showing that, except in limited cases, transmission providers in many regions do not conduct multi-driver or portfolio transmission planning, which has led to ratepayers paying for relatively

inefficient or less cost-effective transmission projects.²³²

93. We are unpersuaded by SERTP Sponsors' argument that the Commission failed to satisfy its burden under the first prong of FPA section 206 analysis because it ignored evidence that transmission expansion in SERTP is driven by "planning processes that proactively anticipate[] a changing resource mix and the use of firm 'physical' transmission service—and not by interconnection requests."²³³ As Order No. 1920 makes clear, the deficiencies of existing transmission planning and cost allocation processes result in various detrimental outcomes reflecting that existing requirements are unjust and unreasonable. Over-reliance on generator interconnection requests to expand the transmission system is just one such example. The Commission noted other existing deficiencies as well, including that the majority of investments in transmission facilities are occurring through local transmission planning processes and in-kind replacements, which focus on the needs of individual transmission provider footprints and miss the potential for more efficient or cost-effective regional transmission facilities.²³⁴

94. Moreover, although SERTP Sponsors assert that SERTP "does not suffer from [Order No. 1920's] theoretical deficiencies,"²³⁵ and Alabama Commission asserts that that

the Commission ignored evidence that transmission planning in SERTP "achieves many, if not most, of the goals in the Final Rule,"²³⁶ the Commission, in fact, cited evidence that SERTP's transmission planning process suffers from each of the three deficiencies that the Commission identified in Order No. 1920. Record evidence demonstrates that SERTP's regional transmission planning and cost allocation process (1) does not perform a sufficiently long-term assessment of transmission needs;²³⁷ (2) does not adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs;²³⁸ and (3) fails to adequately consider the broader set of benefits of regional transmission facilities planned to meet Long-Term Transmission Needs.²³⁹

95. Further, Designated Retail Regulators and Undersigned States provide no support for their claim that "a substantial portion of transmission providers" are currently conducting "effective long-term planning."²⁴⁰ Instead, they assert that CAISO, NYISO, Southern Companies, and "[o]ther regions . . . have sufficient long-term planning"²⁴¹ without explaining how the transmission planning processes in those regions do not suffer from the deficiencies that the Commission identified in Order No. 1920 as necessitating reform of its existing regional transmission planning and cost allocation requirements. Similarly, Designated Retail Regulators' and Undersigned States' conclusion that SPP's transmission planning processes are "sufficient to meet the Commission's

²²⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 115 & n.282 (citing ITC NOPR Initial Comments at 9 (referring to the "broad use of a 10-year planning horizon in the existing transmission planning processes of many major planning regions")).

²²⁷ *Id.* P 116 (citing AEP NOPR Initial Comments at 11; Nevada Commission NOPR Initial Comments at 7 n.24; PIOs NOPR Initial Comments at 14; Renewable Northwest NOPR Initial Comments at 5; SEIA NOPR Initial Comments at 6). The Commission discussed MISO's MVP initiative, which took a decade to move from approval by the MISO Board of Directors in 2011 to completion of most of the projects by 2021, a 10-year period that does not even account for the significant transmission facility development efforts that occurred prior to the MISO Board of Directors' approval. Order No. 1920, 187 FERC ¶ 61,068 at P 116 (citing AESL Consulting, *A Transmission Success Story: The MISO MVP Transmission Portfolio*, at 39 (2021)).

²²⁸ *Id.* (citing SEIA NOPR Initial Comments at 6; US DOE NOPR Initial Comments at 33).

²²⁹ *Id.* P 118 & n.294.

²³⁰ *Id.* P 118 & n.293.

²³¹ *Id.* P 122 & nn.309–12 (citing Massachusetts Attorney General ANOPR Initial Comments at 22 ("New England's siloed approach to transmission planning inhibits identification of multi-value solutions."); PIOs Initial Comments at 10 ("[T]he vast majority of current transmission projects are focused solely either on network reliability or connecting the next generator in the interconnection queue and ignore any other potential benefits, possible economies of scale or other efficiencies that might occur by considering multiple future needs . . . [M]ultiple quantifiable benefits to transmission . . . are being ignored in the transmission planning process."); SREA Initial Comments at 24 ("SERTP participants explained that SERTP is unable to conduct adjusted production cost savings, because none of the utilities involved in SERTP have the software capable of doing so. In effect, the 'Economic Planning Studies' only evaluate the costs of potential upgrades to the system, but none of the benefits.")).

²³² *Id.* P 127 & n.318 (citing New Jersey Commission NOPR Initial Comments at 8 (explaining that, outside of limited circumstances, PJM, Florida, ISO-NE, Southeastern Regional, South Carolina Regional, WestConnect, NorthernGrid, NYISO, SPP, and CAISO do not conduct multi-driver or portfolio transmission planning, which has required ratepayers to pay for tens of billions of dollars in unnecessary transmission projects); NextEra ANOPR Initial Comments at 71 ("While there are examples of longer-term planning currently being utilized by some regions, such as MISO's annual 15-year Futures assessment or SPP's 20-year Integrated Transmission Plan run every five years, there is no standard as to what time horizon long-term planning must study, nor how often this planning should be done. Further, no standards or guidelines exist as to what should be included in such long-term planning to ensure that customers are charged just and reasonable rates for the most efficient and cost-effective investments given the most comprehensive and up-to-date information available."); Western PIOs NOPR Initial Comments at 4–28 (arguing that in the Western United States transmission planning outside of CAISO is not developed and is ineffective); Brattle-Grid Strategies Oct. 2021 Report at 13–15 & tbl. 2 (documenting inconsistent "use of proactive, scenario-based, multi-value processes" across various planning authorities, including NYISO, CAISO, MISO, PJM, ISO-NE, Florida, Southeast Regional, and South Carolina))).

²³³ SERTP Sponsors Rehearing Request at 36.

²³⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 109–111.

²³⁵ SERTP Sponsors Rehearing Request at 34 & n.100.

²³⁶ Alabama Commission Rehearing Request at 3.

²³⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 115 (noting that SERTP uses a 10-year transmission planning horizon (citing Southeast PIOs NOPR Initial Comments at 12)).

²³⁸ *Id.* P 118 n.294 (explaining that in 2021, SERTP stated that because it did not receive any proposals for transmission needs driven by Public Policy Requirements for the 2021 planning cycle, it identified no possible transmission needs driven by Public Policy Requirements for further evaluation of potential transmission solutions in that planning cycle (citing SREA NOPR Initial Comment at 25)).

²³⁹ *Id.* P 122 n.312 ("SERTP participants explained that SERTP is unable to conduct adjusted production cost savings, because none of the utilities involved in SERTP have the software capable of doing so. In effect, the 'Economic Planning Studies' only evaluate the costs of potential upgrades to the system, but none of the benefits." (quoting SREA NOPR Initial Comments at 24)).

²⁴⁰ See Designated Retail Regulators Rehearing Request at 21; Undersigned States Rehearing Request at 22.

²⁴¹ Designated Retail Regulators Rehearing Request at 22 (citing Order No. 1920, 187 FERC ¶ 61,068 (Christie, Comm'r, dissenting, at PP 65–66)); Undersigned States Rehearing Request at 23 (citing Order No. 1920, 187 FERC ¶ 61,068 (Christie, Comm'r, dissenting, at PP 65–66)).

desired outcomes”²⁴² cites to a single sentence in comments SPP filed nearly two years before the Commission adopted Order No. 1920, in which SPP stated only that it “believe[d] its current study processes and initiatives [to be] sufficient to meet the Commission’s desired outcomes.”²⁴³ Such unsupported statements about the sufficiency of transmission planning processes in various transmission planning regions similarly fail to establish that those transmission providers’ existing transmission planning and cost allocation processes do not suffer the deficiencies that the Commission identified in Order No. 1920. While MISO’s regional transmission planning process may satisfy certain of Order No. 1920’s requirements, this does not establish that deficiencies in existing regional transmission planning and cost allocation processes are occurring only in “isolated pockets.”

96. Moreover, SERTP Sponsors do not identify any authority supporting the contention that the Commission cannot make a generic finding under section 206 unless it shows that every transmission provider’s OATT is unjust and unreasonable or unduly discriminatory or preferential. Nor are we convinced by SERTP Sponsors’ attempts to distinguish *South Carolina Public Service Authority v. FERC*, where the court held that “the Commission may act by generic rule . . . without first finding that the rates charged by individual utilities are unjust or unlawful when it concludes that any tariff violating the rule would have such adverse effects on the interstate gas or energy market as to render it unjust and unreasonable.”²⁴⁴ SERTP Sponsors assert that, given “SERTP’s scale and scope and the fact that it does not suffer from [Order No. 1920’s] theoretical deficiencies,” the reasoning of *South Carolina Public Service Authority v. FERC* is inapplicable here. However, while we do not need to make specific findings regarding individual transmission providers, we note, as discussed above, that record evidence demonstrates that SERTP does suffer from each of the theoretical deficiencies that the Commission identified in Order No. 1920. Significantly, in finding that existing regional transmission planning and cost allocation requirements are not

just and reasonable, the Commission also recognized that “the present is not a prediction of the future”²⁴⁵ in light of the threat, documented by substantial evidence, that, absent Order No. 1920’s reforms, regional transmission planning processes will continue to fail to identify, evaluate, and select regional transmission facilities that can more efficiently or cost-effectively meet Long-Term Transmission Needs, requiring customers to pay for relatively inefficient or less cost-effective transmission development. That “the present is not a prediction of the future” is especially true in a period of rapid change like the electric sector is now experiencing. Given industry trends that the Commission highlighted in Order No. 1920—changing longer-term reliability needs due to more frequent extreme weather events and the increasing share of variable resources entering the resource mix,²⁴⁶ significantly increasing demand,²⁴⁷ and changes to the nation’s resource mix²⁴⁸—even if the identified deficiencies in existing regional transmission planning and cost allocation requirements have yet to manifest clearly in every transmission planning region, we can reasonably predict that they will in the near future. The Commission acted within its authority to prevent that eventuality from materializing.²⁴⁹

97. Moreover, the Commission found that the existing regional transmission planning and cost allocation requirements are unjust and unreasonable under of the first prong of FPA section 206.²⁵⁰ While transmission planning regions vary in their specific approaches, and some transmission providers, within their discretion, may

have adopted practices that satisfy some of Order No. 1920’s requirements, there is no guarantee that these practices will continue in the absence of Order No. 1920’s requirements. If transmission providers believe that they already satisfy any of the requirements of Order No. 1920, they may seek to demonstrate that they do so in their compliance filings.

4. The Commission Has the Authority To Conduct a Generic Rulemaking

a. Requests for Rehearing

98. Undersigned States argue that the Commission lacks authority to make rate determinations on a generic, national level.²⁵¹ Undersigned States note that under section 206, the Commission has the power to determine, after a hearing held upon its own motion or upon complaint, that the rates charged by a specific utility subject to Commission jurisdiction are unjust, unreasonable, unduly discriminatory, or preferential, and if so, to adjust that rate.²⁵² Undersigned States claim that this does not authorize the Commission to issue Order No. 1920.²⁵³

99. Arizona Commission argues that there is no evidence that it has acted in a discriminatory or unfair way while creating rates and processes.²⁵⁴ Therefore, Arizona Commission argues, Order No. 1920’s section 206 finding is unlawful when applied to the Arizona Commission because there must be an individual finding as to the Arizona Commission before section 206 can be applied to it. Arizona Commission states that it is arbitrary and capricious “to infer any evidence in the record supports the conclusion the [Arizona Commission] has acted in a discriminatory or unfair way.”²⁵⁵

b. Commission Determination

100. We continue to find that the Commission has the authority to institute the reforms adopted in Order No. 1920 and that it was not required to demonstrate that transmission planning and cost allocation processes are unjust, unreasonable, or unduly discriminatory or preferential with respect to specific transmission providers. Rehearing parties’ arguments to the contrary seem to rely on a misinterpretation of FPA section 206. Section 206 delegates substantial responsibility to the Commission:

101. Whenever the Commission, after a hearing held upon its own motion or

²⁴⁵ *Id.* at 67 (quoting Order No. 1000–A, 139 FERC ¶ 61,132 at P 65); *see also* Order No. 1000–A, 139 FERC ¶ 61,132 at P 65 (“The Commission is authorized to make rules with prospective effect that will prevent situations that are inconsistent with the FPA from occurring, which means that it is authorized to consider how the future may be different from the present if the rules it proposes are not adopted.”).

²⁴⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 94.

²⁴⁷ *Id.* P 95.

²⁴⁸ *Id.* P 96.

²⁴⁹ *See S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 64–65, 85 (“[W]hether a threat of unjust or unreasonable rates derives from a practice or the absence thereof, Section 206 empowers the Commission to address it.”).

²⁵⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 114 (“Based on the record, including the comments submitted in response to the NOPR, we find that there is substantial evidence to support the conclusion that deficiencies in the Commission’s existing regional transmission planning and cost allocation requirements are resulting in Commission-jurisdictional rates that are unjust, unreasonable, and unduly discriminatory or preferential.”) (emphasis added).

²⁴² Designated Retail Regulators Rehearing Request at 22 (citing SPP NOPR Initial Comments at 3); Undersigned States Rehearing Request at 22 (citing SPP NOPR Initial Comments at 3).

²⁴³ SPP NOPR Initial Comments at 3.

²⁴⁴ *See S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 86 (quoting *Associated Gas Distributors*, 824 F.2d at 1008).

²⁵¹ Undersigned States Rehearing Request at 23.

²⁵² *Id.* at 23–24 (citing 16 U.S.C. 824e).

²⁵³ *Id.* at 24.

²⁵⁴ Arizona Commission Rehearing Request at 19.

²⁵⁵ *Id.* at 19–20.

upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.²⁵⁶

102. As the Commission explained in Order No. 1920, and as courts have confirmed, transmission planning and cost allocation processes are “are practices affecting rates subject to the Commission’s exclusive jurisdiction.”²⁵⁷ Rehearing parties cite no precedent suggesting that section 206 requires the Commission to act on an individual, utility-by-utility basis, and we are aware of none.

103. Contrary to Undersigned States’ argument that the Commission lacks authority to make rate determinations on a generic, national level, courts have consistently interpreted section 206 to allow the Commission to regulate on a national level, through notice-and-comment rulemakings, when the Commission finds systemic issues throughout the industry that cause practices affecting rates charged by public utilities to be unjust, unreasonable, or unduly discriminatory or preferential.²⁵⁸ Nearly 40 years of precedent has consistently interpreted the Commission’s FPA section 206 authority—and the corresponding, nearly identical authority in the Natural Gas Act²⁵⁹—as providing the Commission with the authority to “rely on ‘generic’ or ‘general’ findings of a systemic problem to support imposition of an industry-wide solution.”²⁶⁰ In fact, in interpreting the nearly identical provision of the Natural Gas Act, the D.C. Circuit stated that “[t]he Commission is not required to make individual findings, however, if it exercises its Natural Gas Act § 5

authority by means of a generic rule.”²⁶¹ The Commission has, time and time again, exercised section 206 authority through generic rulemakings that rely on industry-wide findings rather than region-by-region or utility-specific findings.²⁶² Indeed, Order No. 1920 itself builds upon existing transmission planning and cost allocation requirements adopted by the Commission through other generally applicable, nationwide rulemakings. Thus, the Commission was not required to make specific findings as to the Arizona Commission or transmission planning and cost allocation processes within Arizona or any given state. Moreover, Order No. 1920’s reforms are directed to transmission providers, consistent with the Commission’s jurisdiction,²⁶³ and do not require any action by state regulatory authorities.²⁶⁴ In light of the Commission’s authority to act on a generic basis to reform the practices of all transmission providers, the Commission reasonably exercised its broad discretion to proceed by nationwide rulemaking to remedy the deficiencies that it determined in Order No. 1920 render its existing regional transmission planning and cost allocation requirements unjust and unreasonable.²⁶⁵

²⁶¹ *Associated Gas Distributors*, 824 F.2d at 1008. It is “well settled that comparable provisions of the Natural Gas Act and [FPA] are to be construed *in pari materia*.” *Ky. Utils. Co. v. FERC*, 760 F.2d 1321, 1325 n.6 (D.C. Cir. 1985).

²⁶² See, e.g., *TAPS*, 225 F.3d 667 (upholding Order No. 888, which was promulgated under FPA section 206 and premised on general systemic conditions rather than evidence regarding individual utilities); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (same for Order No. 1000); *Elec. Storage Participation in Mkts. Operated by Reg’l Transmission Organs. and Indep. Sys. Operators*, Order No. 841, 83 FR 9580 (Mar. 6, 2018), 162 FERC ¶ 61,127, at P 21 (2018), *order on reh’g*, Order No. 841-A, 167 FERC ¶ 61,154 (2019), *aff’d sub nom. Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 964 F.3d 1177 (D.C. Cir. 2020) (*NARUC*); Order No. 890, 118 FERC ¶ 61,119 at PP 41–43.

²⁶³ Order No. 1920, 187 FERC ¶ 61,068 at PP 1 n.2, 253.

²⁶⁴ See Order No. 1920, 187 FERC ¶ 61,068 at P 263 (“[T]his final rule directly regulates transmission planning and cost allocation processes, . . . directly regulates *only* those practices, and it *does not* directly regulate any matter reserved to the states by FPA section 201.”).

²⁶⁵ See *Wis. Gas Co. v. FERC*, 770 F.2d at 1157 (“An administrative agency must be equipped to act either by general rule or individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. The choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency.” (alterations omitted) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 202–03 (1947))).

C. The Commission Demonstrated That the Replacement Rate is Just and Reasonable

1. Requests for Rehearing

104. Several rehearing parties argue that the Commission did not demonstrate that the replacement tariff and transmission planning requirements are just and reasonable.²⁶⁶ According to Designated Retail Regulators, Order No. 1920 “requires the construction of transmission to socialize the costs of policies of some States and parties over others and shifts the costs caused by interconnecting remotely located generators to everyone,” but provides “no analysis showing that the resulting rates are just and reasonable.”²⁶⁷ Industrial Customers contend that Order No. 1920 generically asserts, without “evidence, proof, or data,” that its reforms “*should* provide cost savings.”²⁶⁸

105. Designated Retail Regulators also claim that Order No. 1920 contradicts Order Nos. 888 and 890, under which the cost of transmission is generally borne by load. Designated Retail Regulators argue that, in contrast, the final rule promotes the construction of long-haul transmission designed to move energy from remote resources located in one state to load located in another without any contractual or other assurance to the load-serving entity that the remotely located resource will provide firm energy. Designated Retail Regulators contend that, in the absence of a contractual or regulatory requirement to supply firm energy, there is no reasonable rationale that would justify allocating the cost for this transmission to remotely located load.²⁶⁹ Designated Retail Regulators also argue that remotely located customers who are required to pay for transmission facilities without regulatory or contractual guarantees of receiving firm energy are not beneficiaries, must less cost causers.²⁷⁰

106. Industrial Customers argue that Order No. 1920 is arbitrary and capricious and does not reflect reasoned decision-making because it fails to consider and address costs to consumers, which is an essential element of the problem of transmission

²⁶⁶ Designated Retail Regulators Rehearing Request at 22–23; Undersigned States Rehearing Request at 23.

²⁶⁷ Designated Retail Regulators Rehearing Request at 22–23; see also Undersigned States Rehearing Request at 23 (similar).

²⁶⁸ Industrial Customers Rehearing Request at 20.

²⁶⁹ Designated Retail Regulators Rehearing Request at 23.

²⁷⁰ *Id.* at 23–24.

²⁵⁶ 16 U.S.C. 824e.

²⁵⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 86 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 55).

²⁵⁸ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (upholding Order No. 1000); *TAPS*, 225 F.3d 667, *aff’d sub nom. N.Y. v. FERC*, 535 U.S. 1 (upholding Order No. 888).

²⁵⁹ 15 U.S.C. 717d(a).

²⁶⁰ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 67 (quoting *Interstate Nat. Gas of Am. v. FERC*, 285 F.3d at 37; see also *TAPS*, 225 F.3d at 687–88; *Associated Gas Distributors*, 824 F.2d 981; *Wis. Gas Co. v. FERC*, 770 F.2d at 1166 & n.36).

planning and cost allocation.²⁷¹ Arizona Commission echoes this argument and contends that Order No. 1920 fails to protect consumers and will saddle ratepayers with trillions of dollars in increased rates in coming years, resulting in unfair rates.²⁷² Arizona Commission adds that the “several factors” that Order No. 1920 requires transmission providers to “consider[] in transmission planning and cost allocation” should have included fairness, reasonableness of cost, or consideration of who caused the cost, as mandated by the FPA.²⁷³

2. Commission Determination

107. We continue to find that the replacement regional transmission planning and cost allocation requirements that the Commission adopted in Order No. 1920 are just and reasonable.²⁷⁴ We disagree with rehearing parties’ arguments that the Commission did not demonstrate that the replacement rate is just and reasonable, as it appears that these arguments may mischaracterize Order No. 1920. Designated Retail Regulators argue that Order No. 1920 “requires the construction of transmission to socialize the costs of the policies of some States and parties over others and shifts the costs caused by interconnecting remotely located generators to everyone.”²⁷⁵ Like Order No. 1000, Order No. 1920’s “transmission planning reforms are concerned with process, and are not intended to dictate substantive outcomes.”²⁷⁶ Order No. 1920 specifically provided that “[t]he regional transmission planning requirements and cost allocation requirements in this final rule, like those of Order Nos. 890 and 1000, are focused on the transmission planning process, and do not require any substantive outcomes from this process.”²⁷⁷

108. Moreover, Order No. 1920 did not change the Commission’s cost causation requirements and does not contradict Order Nos. 888 and 890, under which the cost of transmission is generally borne by load.²⁷⁸ Order No.

1920 reiterated that “any cost allocation method applied to a Long-Term Regional Transmission Facility must ensure that costs are allocated in a manner that is at least roughly commensurate with the estimated benefits of the facility, consistent with cost causation and court precedent.”²⁷⁹ Order No. 1920 further stated that “[n]othing in this final rule requires states to subsidize other states’ public policies and, indeed, this final rule requires, consistent with long-established Commission and court precedent, that transmission customers within a transmission planning region need only pay costs that are ‘roughly commensurate’ with the benefits that transmission providers estimate they will receive from a regional transmission facility.”²⁸⁰ Thus, “even if one state’s public policy is a driver of a Long-Term Transmission Need, the costs of a Long-Term Regional Transmission Facility that transmission providers select will be allocated to transmission customers only to the extent that they benefit from that facility and only to a degree that is at least roughly commensurate with the benefits that facility provides to them.”²⁸¹ For these reasons, we also disagree with Designated Retail Regulators’ argument that Order No. 1920 contradicts Order Nos. 888 and 890. Nonetheless, we believe certain clarifications discussed further below will alleviate Designated Retail Regulators’ and Undersigned States’ concerns regarding Order No. 1920’s impact on multi-state cost allocation.²⁸²

109. We are similarly unpersuaded by Designated Retail Regulators’ assertion that the Commission failed to satisfy its burden under the second prong of FPA section 206 because, under Order No.

1920, “there is no reasonable rationale that would justify . . . remotely located customers being required to pay for transmission facilities without regulatory or contractual guarantees of receiving firm energy.”²⁸³ The physics of an interconnected electric transmission system are such that even customers distant from new Long-Term Regional Transmission Facilities and without specific contractual arrangements with such facilities *may* benefit from those facilities.²⁸⁴ And any proposed cost allocation method for Long-Term Regional Transmission Facilities *must* allocate the costs of a new Long-Term Regional Transmission Facility in a manner at least roughly commensurate with the estimated benefits of the facility.²⁸⁵ Beyond arguing that Order No. 1920 contradicts Order Nos. 888 and 890, Designated Retail Regulators do not argue that the Commission lacks authority to mandate the allocation of costs where there is no contractual or regulatory requirement to supply firm energy, and we do not believe that such a limitation exists.²⁸⁶

110. Additionally, the Commission found that Order No. 1920’s requirements—that transmission providers conduct Long-Term Regional Transmission Planning that will ensure the identification, evaluation, and selection, as well as the allocation of costs, of more efficient or cost-effective regional transmission solutions to address Long-Term Transmission Needs—will address the deficiencies in the existing regional transmission planning and cost allocation requirements. Furthermore, the Commission determined, these requirements will promote enhanced reliability and more efficient or cost-effective transmission solutions, which will help to ensure just and reasonable rates.²⁸⁷ The Commission’s finding was based on consideration of the record and reasonable economic predictions,

²⁸³ Designated Retail Regulators Rehearing Request at 23–24.

²⁸⁴ See *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 85 (“Entities that contract for service on the transmission grid cannot choose to affect only the transmission facilities for which they have entered into a contract and cannot claim that they are not using or benefiting from such transmission facilities simply because they did not enter a contract to use them.” (quoting Order No. 1000–A, 139 FERC ¶ 61,132 at P 561 (cleaned up))).

²⁸⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 1305.

²⁸⁶ See *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 84 (reasoning that the text of section 206 does not limit “cost allocation to entities with preexisting commercial relationships,” and instead “empowers the Commission to fix ‘any rate’ ‘demanded, observed, charged, or collected by any public utility for any transmission . . . subject to the jurisdiction of the Commission,’ and ‘any . . . practice’ ‘affecting such rate.’”).

²⁸⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 134.

²⁷¹ Industrial Customers Rehearing Request at 19–20 (citing *State Farm*, 463 U.S. at 43).

²⁷² Arizona Commission Rehearing Request at 20.

²⁷³ *Id.* at 21.

²⁷⁴ Order No. 1920, 187 FERC ¶ 61,068 at PP 134–138.

²⁷⁵ Designated Retail Regulators Rehearing Request at 22–23; see also Undersigned States Rehearing Requests at 23 (similar).

²⁷⁶ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 58 (quoting Order No. 1000–A, 139 FERC ¶ 61,132 at P 188); see *infra* Statutory Authority section.

²⁷⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 232.

²⁷⁸ See *infra* Federal/State Division of Authority section.

²⁷⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1305 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 87; Order No. 1000, 136 FERC ¶ 61,051 at P 10; *ICC v. FERC I*, 576 F.3d at 476); see also Order No. 1920, 187 FERC ¶ 61,068 at P 1297 (“Any cost allocation method(s) that transmission providers propose . . . must allocate costs in a manner that is at least roughly commensurate with estimated benefits . . .”).

²⁸⁰ *Id.* P 267 (citing *Ill. Com. Comm’n v. FERC*, 756 F.3d 556, 562 (7th Cir. 2014) (*ICC v. FERC III*); *ICC v. FERC I*, 576 F.3d at 477; *Sw. Power Pool, Inc.*, 182 FERC ¶ 61,141, at P 12 (2023)); see also Order No. 1920, 187 FERC ¶ 61,068 at P 280 (“[T]he final rule categorically does not require states to subsidize other states’ public policies or generation decisions,” but instead, “consistent with the cost causation principle, [the] final rule requires customers to pay for a share of the costs of new Long-Term Regional Transmission Facilities only to the extent that they benefit from those facilities and, even then, any share they pay must be roughly commensurate with the benefits they receive.”).

²⁸¹ *Id.* P 282.

²⁸² See *supra* Concerns Regarding Cost Causation section.

which indicate that long-term, forward-looking, and more comprehensive regional transmission planning that identifies Long-Term Transmission Needs helps transmission providers to identify, evaluate, and select more efficient or cost-effective transmission solutions to meet those needs.²⁸⁸ These points are especially true considering the clarifications we adopt below.

111. For instance, the Commission was persuaded by empirical evidence demonstrating the success of MISO's Long-Range Transmission Plan in delivering more efficient or cost-effective transmission solutions.²⁸⁹ By addressing public policy, economic, and reliability transmission planning needs simultaneously through its MVP category, MISO eliminated the need for \$300 million in future baseline reliability upgrades and provided production cost savings that exceeded the entire cost of the portfolio by \$10 billion.²⁹⁰ The Commission noted that the cost savings that MISO experienced were the direct product of more comprehensive, longer-term regional transmission planning.²⁹¹

112. The Commission also made several reasonable economic predictions regarding the effects of Order No. 1920. It was, for instance, reasonable for the Commission to predict that the transmission planning reforms adopted in Order No. 1920, which bear many similarities to MISO's MVP process, will have similar results and that longer-term regional transmission planning that considers a wider array of relevant factors will yield a more efficient or cost-effective selection of regional transmission facilities to meet Long-Term Transmission Needs, thus saving customers money.²⁹² The Commission reasonably concluded, and we continue to find, that forgoing this type of planning and requiring customers to bear the costs of relatively inefficient and less cost-effective transmission development results in unjust and unreasonable Commission-jurisdictional rates.²⁹³

113. We understand concerns raised by Arizona Commission and Industrial Customers that Order No. 1920 fails to

protect consumers and will impose substantial costs on ratepayers.²⁹⁴ However, in Order No. 1920, the Commission found that the *existing* approach to regional transmission planning is resulting in customers paying more than necessary or appropriate to meet their transmission needs, forgoing benefits that outweigh their costs, or some combination thereof.²⁹⁵ Thus, the Commission adopted reforms in Order No. 1920 that are necessary to ensure that regional transmission planning processes identify, evaluate, and select regional transmission facilities that can more efficiently or cost-effectively meet Long-Term Transmission Needs, so that customers do not continue to pay for relatively inefficient or less cost-effective transmission development.²⁹⁶ Addressing costs to ratepayers was central to the reforms that the Commission adopted in Order No. 1920, and the Commission cited evidence that more comprehensive, longer-term regional transmission planning results in significant cost saving for customers.²⁹⁷ Further, we disagree with Industrial Customers' argument that Order No. 1920 states, without "evidence, proof, or data," that its reforms "*should* provide cost savings."²⁹⁸ As discussed above, the Commission cited robust and diverse evidence to support its finding that the type of regional transmission planning required by the final rule will likely result in cost savings to customers relative to the status quo approach.²⁹⁹ Nonetheless, we believe the clarifications adopted herein will alleviate Industrial Customers' concerns.

114. We also recognize Arizona Commission's argument that the "several factors" that Order No. 1920 requires transmission providers to "consider[] in transmission planning and cost allocation" should have included fairness or reasonableness of

cost or consideration of who caused the cost.³⁰⁰ We believe these factors are appropriately accounted for in other stages of the regional transmission planning and cost allocation process. For example, the evaluation process considers reasonableness of costs by considering cost estimates for, as well as the benefits of, identified Long-Term Regional Transmission Facilities.³⁰¹ The cost allocation process also considers fairness and cost causation, as "transmission customers within a transmission planning region need only pay costs that are 'roughly commensurate' with the benefits that transmission providers estimate they will receive from a regional transmission facility."³⁰² However, we believe certain clarifications adopted herein will address the concerns underlying Arizona Commission's argument.

D. The Commission's Section 206 Findings Were Not Circular

1. Requests for Rehearing

115. Industrial Customers and SERTP Sponsors argue that the Commission's findings under the two prongs of section 206 are circular.³⁰³ According to Industrial Customers, rather than cite specific record evidence or specify the problems that the Commission seeks to address, the Commission relies on the benefits of Order No. 1920's remedy—*e.g.*, longer-term, more comprehensive regional transmission planning—to support its threshold finding under the first prong of FPA section 206.³⁰⁴ Industrial Customers thus assert that Order No. 1920 relies on "circular reasoning," whereby the Commission develops a desired solution and then finds that the current absence of that desired solution renders the status quo unjust and unreasonable.³⁰⁵ This approach, Industrial Customers contend, does not reflect reasoned decision making.³⁰⁶ Further, Industrial Customers argue that proceeding in this fashion exceeds the Commission's authority under the FPA and could allow the Commission to "essentially legislate to achieve any desired

²⁸⁸ *Id.* PP 135–138 (citing ACEG NOPR Initial Comments 53–56; Brattle-Grid Strategies Oct. 2021 Report at 7 & nn.13–14; Clean Energy Associations NOPR Initial Comments at 25–27; Exelon NOPR Initial Comments 5; ITC NOPR Initial Comments at 44; MISO NOPR Initial Comments at 88; MTEP2017 Review at 6, 8; New Jersey Commission NOPR Initial Comments at 4; PIOs NOPR Initial Comments at 10, 35; SEIA NOPR Initial Comments 25–26).

²⁸⁹ *Id.* P 135.

²⁹⁰ *Id.* (MTEP2017 Review at 6).

²⁹¹ *Id.* P 136.

²⁹² *See id.*

²⁹³ *Id.* P 112.

²⁹⁴ *See* Arizona Commission Rehearing Request at 20–21; Industrial Customers Rehearing Request at 19–20.

²⁹⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 117.

²⁹⁶ *Id.* P 113; *see also id.* P 136 ("[R]egional transmission planning and cost allocation reforms [adopted in Order No. 1920] will benefit customers by leading to more efficient or cost-effective transmission investment, thereby helping to ensure just and reasonable rates." (citations omitted)).

²⁹⁷ *E.g.*, *Id.* P 135 (citing MTEP2017 Review at 6).

²⁹⁸ Industrial Customers Rehearing Request at 20 (emphasis in original).

²⁹⁹ *See supra* The Commission Adequately Supported Its Determination on Step One of Section 206 section; *see also* Order No. 1920, 187 FERC ¶ 61,068 at P 135 & n.346 (citing a projection that proactive, portfolio-based transmission planning in PJM could ultimately save ratepayers over \$30 billion compared to the status quo).

³⁰⁰ Arizona Commission Rehearing Request at 21.

³⁰¹ Order No. 1920, 187 FERC ¶ 61,068 at PP 955, 958.

³⁰² *Id.* P 267; *see BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268–69 (D.C. Cir. 2014) ("[T]he cost causation principle itself manifests a kind of equity.").

³⁰³ Industrial Customers Rehearing Request at 13–15; SERTP Sponsors Rehearing Request at 29–32, 34–35.

³⁰⁴ Industrial Customers Rehearing Request at 13.

³⁰⁵ *Id.* at 14.

³⁰⁶ *Id.* at 15.

outcome.”³⁰⁷ Industrial Customers assert that the D.C. Circuit has previously determined that the Commission failed to meet its section 206 burden and therefore committed error by “beginning] with the remedy to show that the *status quo* is not just and reasonable.”³⁰⁸

116. SERTP Sponsors claim that Order No. 1920’s broad conclusion that the regional transmission planning processes conducted by all transmission providers in each transmission planning region are unjust, unreasonable, unduly discriminatory, and preferential is based on the absence of the unique form of long-term regional transmission planning that meets the Commission’s current view of what a regional transmission planning process should be.³⁰⁹ SERTP Sponsors also contend that Order No. 1920 assumes that all regions follow the same generic approach and, while the Commission’s *pro forma* transmission planning requirements may be subject to improvement, the Commission has not satisfied its burden of showing that the SERTP regional transmission planning process is unjust and unreasonable.³¹⁰

117. SERTP Sponsors assert that Order No. 1920 imposes its preferred solution in line with the Commission’s vision instead of addressing a real need for reform specific to the SERTP regional transmission planning process, thereby imposing a “solution in search of a problem.”³¹¹ SERTP Sponsors argue that, in doing so, the Commission misapplied section 206 by collapsing the two-step standard into one step, echoing the mistake described in *Emera Maine*.³¹² SERTP Sponsors contend that Order No. 1920 does not demonstrate widespread failures in transmission planning practices, but rather theorizes potential inadequacies in meeting the Commission’s desired outcomes.³¹³ SERTP Sponsors aver that Order No. 1920’s discussion of the growing need for transmission investments and perceived insufficiencies of current planning standards does not prove that existing processes fail to meet the evolving demands of the electric grid.³¹⁴ SERTP Sponsors allege that the SERTP process has been highly efficient, and that its integrated resource plan and request for proposal-driven transmission planning and other similar processes

effectively address the Commission’s concerns regarding siloed planning, lack of scenario planning, and local versus regional project focus.³¹⁵

118. SERTP Sponsors argue that Order No. 1920 incorrectly characterizes SERTP’s and other similar transmission planning regions’ transmission planning processes as deficient due to the absence of alternative regional transmission facilities selected since the implementation of Order No. 1000.³¹⁶ SERTP Sponsors contend that the fact that no regional transmission projects have been selected underscores the success of existing integrated resource plan/request for proposal-driven planning systems rather than a failure or deficiency in the regional transmission planning process.³¹⁷ SERTP Sponsors also contend that the success of the Southeast’s process has been confirmed by the absence of a National Interest Electric Transmission Corridor (NIETC) designation in the Southeast.³¹⁸ SERTP Sponsors state that Order No. 1920’s attempt to characterize this success as a deficiency collapses the first and second steps of section 206 in the way that the courts have struck down in the past and means that this aspect of the order is unsupported by substantial evidence and is otherwise arbitrary and capricious.³¹⁹

2. Commission Determination

119. We conclude that the Commission’s section 206 findings, identifying specific deficiencies in regional transmission planning and cost allocation requirements at prong one and establishing specific new requirements at prong two, are—as they are required to be—closely related, in contrast to rehearing parties’ arguments. Industrial Customers and SERTP Sponsors’ arguments on this point³²⁰ both rely on *Emera Maine*, in which the D.C. Circuit found that the Commission erred in basing its determination that the utility’s existing 11.14% base return on equity (ROE) was unjust and unreasonable because it exceeded the 10.57% ROE that the Commission had concluded was the just and reasonable base ROE.³²¹ The court explained that the Commission must first determine that an existing rate is unjust and unreasonable (prong one) before it imposes a replacement rate (prong

two).³²² Industrial Customers and SERTP Sponsors argue that, like the Commission’s error in *Emera Maine*, Order No. 1920 based its finding that the status quo is unjust and unreasonable on the absence of the Commission’s specific desired replacement.³²³

120. When acting under section 206, the Commission must make two findings: (1) that the existing rate, or a practice affecting a rate, is unjust, unreasonable, or unduly discriminatory or preferential; and (2) that the Commission’s replacement rate, or practice affecting a rate, is just and reasonable and not unduly discriminatory or preferential.³²⁴ As discussed above, the Commission appropriately made both findings in Order No. 1920, so *Emera Maine* is inapposite.

121. The Commission’s findings under the first prong of section 206 do not rely on the specific replacement rate that it created in Order No. 1920. Rather, the Commission’s findings under the first prong of section 206 rest on deficiencies, identified based on substantial record evidence, in existing regional transmission planning and cost allocation requirements, specifically that they are insufficiently long-term, forward-looking, and comprehensive. The fact that there is a relationship between the deficiencies identified in prong one and the new requirements established as the just and reasonable replacement under prong two of FPA section 206 demonstrates that the replacement regional transmission planning and cost allocation requirements are appropriately tailored toward remedying the deficiencies that the Commission identified in existing regional transmission planning and cost allocation requirements.

122. Order No. 1920 made explicit findings that the Commission’s existing regional transmission planning and cost allocation requirements are unjust, unreasonable, and unduly discriminatory or preferential in several respects.³²⁵ First, with regard to long-term regional transmission planning, the Commission noted that most transmission planning regions do not plan beyond a 10-year time horizon.³²⁶

³²² *Id.* at 25–26.

³²³ Industrial Customers Rehearing Request at 15; SERTP Sponsors Rehearing Request at 30.

³²⁴ 16 U.S.C. 824e(a), (b); *Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F.3d at 13.

³²⁵ See *supra* Unjust, Unreasonable, and Unduly Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes section.

³²⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 115; see *supra* Unjust, Unreasonable, and Unduly

³⁰⁷ *Id.* at 14.

³⁰⁸ *Id.* at 15 (citing *Emera Me. v. FERC*, 854 F.3d 9, 22, 25 (D.C. Cir. 2017)).

³⁰⁹ SERTP Sponsors Rehearing Request at 30.

³¹⁰ *Id.* at 31–32.

³¹¹ *Id.* at 30.

³¹² *Id.* (citing *Emera Me.*, 854 F.3d at 22–26).

³¹³ *Id.* at 34.

³¹⁴ *Id.*

³¹⁵ *Id.* at 32.

³¹⁶ *Id.* at 35.

³¹⁷ *Id.*

³¹⁸ *Id.* at 35–36 (citation omitted).

³¹⁹ *Id.* at 36 & n.104 (citations omitted).

³²⁰ Industrial Customers Rehearing Request at 15 (citing *Emera Maine*, 854 F.3d at 9, 22, 25); SERTP Sponsors Rehearing Request at 30 (citing the same).

³²¹ *Emera Maine*, 854 F.3d at 25–26.

The Commission's finding that a 10-year transmission planning horizon is insufficient does not rely on the Commission's finding that 20 years is the just and reasonable time horizon for Long-Term Regional Transmission Planning. The reasoning underlying the finding that a 10-year transmission planning horizon is insufficient would hold true even if the Commission had determined a different number (*e.g.*, 17 or 25 or 31 years) was the just and reasonable replacement. This result is in stark contrast to *Emera Maine*, where the Commission's finding that the existing base ROE was unjust and unreasonable rested entirely on the finding that it did not equal the Commission's replacement ROE.³²⁷ Second, the Commission found, based on substantial evidence, that existing regional transmission planning and cost allocation requirements fail to require transmission providers to adequately account for known determinants of Long Term Transmission Needs.³²⁸ Third, the Commission found, also based on substantial evidence, that the Commission's regional transmission planning and cost allocation requirements fail to require transmission providers to adequately consider a sufficiently broad and standard set of benefits of regional transmission facilities.³²⁹ These findings are not based on the precise list of determinants or benefits that the Commission identified in establishing the replacement under of the second prong under FPA section 206, but rather on the conclusion that most transmission providers focus too narrowly on only some determinants and benefits, ignoring other relevant factors, which leads to relatively inefficient or less cost-effective transmission development.³³⁰ Lastly, the Commission's findings that existing cost allocation requirements are deficient relied on the fact that the Commission's previous cost allocation requirements were tailored to the Order No. 1000 regional transmission planning requirements, but Order No. 1920's new

requirements for Long-Term Regional Transmission Planning account for multiple drivers of Long-Term Transmission Needs and result in Long-Term Regional Transmission Facilities that produce a broader set of benefits, and therefore warrant a different approach to cost allocation for such transmission facilities.³³¹

123. We also disagree with SERTP Sponsors' contention that Order No. 1920 assumes that all transmission planning regions follow the same generic approach.³³² To the contrary, and as discussed above, Order No. 1920 highlights deficiencies in regional transmission planning processes around the country.³³³ Moreover, the Commission found that its existing regional transmission planning and cost allocation requirements are unjust and unreasonable.³³⁴ While regions vary in specific approaches, those approaches are all based on the same requirements. It is those requirements that we continue to find are unjust and unreasonable given the record before us.

124. Additionally, although SERTP Sponsors contend that SERTP's process is highly efficient,³³⁵ the Commission is not required to make findings with respect to individual transmission owners' transmission planning and cost allocation processes to remedy the deficiencies that it determined in Order No. 1920 render its existing regional transmission planning and cost allocation requirements unjust and unreasonable.³³⁶ We also are not

³³¹ *Id.* PP 124–126; *see supra* Unjust, Unreasonable, and Unduly Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes section.

³³² SERTP Sponsors Rehearing Request at 28, 31–34.

³³³ *See supra* Unjust, Unreasonable, and Unduly Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes section.

³³⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 114 (“Based on the record, including the comments submitted in response to the NOPR, we find that there is substantial evidence to support the conclusion that deficiencies in the Commission's existing regional transmission planning and cost allocation requirements are resulting in Commission-jurisdictional rates that are unjust, unreasonable, and unduly discriminatory or preferential.”) (emphasis added).

³³⁵ SERTP Sponsors Rehearing Request at 32.

³³⁶ *See supra* The Commission Has the Authority to Conduct a Generic Rulemaking section. Moreover, we note that the record reflects disagreement on this point. *See* Order No. 1920, 187 FERC ¶ 61,068 at P 56 (“SREA argues that ‘transmission planning in the Southeast has many holes and is threadbare.’”); *id.* P 115 (“[C]ommenters point out that . . . SERTP . . . plan[s] using a 10-year transmission planning horizon.”); *id.* P 333 (“SERTP's 10-year transmission planning horizon prevented Georgia Power from using that process to plan for its long-term North Georgia Reliability & Resilience Plan and its goal to integrate 6,000 MW

persuaded by SERTP Sponsors' argument that the absence of regional transmission facilities selected since the implementation of Order No. 1000 necessarily demonstrates the success of integrated resource plan/request for proposal-driven planning systems instead of a deficiency in regional transmission planning processes.³³⁷ Integrated resource plan/request for proposal-driven planning systems do not replace the need for effective regional transmission planning, as only regional transmission planning ensures consideration of more efficient or cost-effective transmission facilities across utility footprints. We continue to find that “the absence of sufficiently long-term, forward-looking, and comprehensive regional transmission planning processes is resulting in piecemeal transmission expansion to address relatively near-term transmission needs,” which results in “transmission providers undertaking investments in relatively inefficient or less cost-effective transmission infrastructure, the costs of which are ultimately recovered through Commission-jurisdictional rates.”³³⁸

IV. Statutory Authority

A. Order No. 1920 Determination

125. In Order No. 1920, the Commission reaffirmed its conclusion in the NOPR that it was acting within its legal authority under FPA section 206 by requiring transmission providers to participate in a regional transmission planning process that includes Long-Term Regional Transmission Planning.³³⁹ In doing so the Commission found—and noted that no commenter disputed—that transmission planning and cost allocation processes are practices affecting the rates charged by public utilities in connection with the Commission-jurisdictional transmission of electric energy in interstate commerce.³⁴⁰

126. The Commission disagreed with arguments that the requirements adopted in Order No. 1920 infringe on

of renewable resources by 2035.”); *id.* P 709 (“Kentucky Commission Chair Chandler argues against SERTP Sponsors' comments that suggest that integrated resource plan/request for proposal processes already consider four of the proposed categories of benefits . . . [and] contends that [those] process[es] can only address these four categories on a utility-by-utility basis and, thus, [are] unable to plan for transmission facilities across utilities or transmission planning regions by nature.”).

³³⁷ SERTP Sponsors Rehearing Request at 35.

³³⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 112.

³³⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 253.

³⁴⁰ *Id.* (citing 16 U.S.C. 824e; *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 55–59; *Emera Me. v. FERC*, 854 F.3d at 673–74).

Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes section.

³²⁷ *Emera Maine*, 854 F.3d at 22.

³²⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 118; *see supra* Unjust, Unreasonable, and Unduly Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes section.

³²⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 122; *see supra* Unjust, Unreasonable, and Unduly Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes section.

³³⁰ Order No. 1920, 187 FERC ¶ 61,068 at PP 122–123.

the authority reserved to the states by FPA section 201 or are otherwise barred by certain prudential or constitutional principles.³⁴¹ Noting that it believed that these concerns mainly arose from misunderstandings regarding the substance of Order No. 1920, the Commission explained that Order No. 1920 builds on more than a quarter century of Commission action on transmission planning and cost allocation, which courts have affirmed notwithstanding objections similar to those presented to Order No. 1920, by addressing specific gaps in the existing framework.³⁴² It emphasized that Order No. 1920 “does not regulate, aim at, or otherwise attempt to influence integrated resource planning, the generation mix, decisions related to the siting and construction of transmission facilities or generation resources, or any other matters reserved to states under FPA section 201.”³⁴³ To the contrary, Order No. 1920 “directly regulates transmission planning and cost allocation processes, . . . directly regulates *only* those practices, and it *does not* directly regulate any matter reserved to the states by FPA section 201.”³⁴⁴ Moreover, Order No. 1920 “is not aiming to *indirectly* regulate any matter reserved to the states by FPA section 201” but, instead, only to improve existing transmission and cost allocation processes to address identified deficiencies with those processes.³⁴⁵

127. The Commission explained that these considerations confirmed that Order No. 1920 was well within its authority under the FPA, particularly in light of U.S. Supreme Court precedent

in *EPSA*.³⁴⁶ Applying that decision, the Commission stated that “what matters is that this final rule aims to regulate and, in fact, does regulate only practices that affect the transmission of electric energy in interstate commerce, which are squarely within the Commission’s jurisdiction under the FPA.”³⁴⁷ In Order No. 1920, the Commission “aim[ed] to improve Commission-regulated transmission planning processes, in this instance by ensuring that they are sufficiently long-term, forward-looking, and comprehensive such that they are capable of identifying and meeting Long-Term Transmission Needs.”³⁴⁸ Likewise, and consistent with *EPSA*, the Commission found that every aspect of Order No. 1920 “happens exclusively as part of a process that is subject to the Commission’s jurisdiction and governs exclusively how those processes work.”³⁴⁹ The Commission further explained that Order No. 1920 does not require that transmission providers achieve any particular substantive outcome of the transmission planning process, aim to alter states’ or the nation’s generation mix, or otherwise regulate matters within state jurisdiction.³⁵⁰

128. The Commission further explained that, applying *EPSA*, Order No. 1920 was within its jurisdiction to regulate the practices affecting the rates for the transmission of electric energy in interstate commerce, notwithstanding that the rule might have effects on matters reserved to state jurisdiction under FPA section 201.³⁵¹ The Commission explained that such effects are inevitable—a “fact of economic life” as the Supreme Court put it—given “Congress’s decision in the FPA to divide jurisdiction over the industry, including both generation and transmission, into spheres of Commission and state jurisdiction that

are not ‘hermetically sealed’ from one another.”³⁵²

129. The Commission therefore disagreed with arguments that Order No. 1920 unlawfully intruded on areas of reserved state authority under FPA section 201.³⁵³ The Commission stated that Long-Term Regional Transmission Planning “necessarily involves taking into account assumptions about the generation resources that will be available, because transmission needs arise from the relative amounts, locations, and timing of supply (*i.e.*, generation) and of demand (*i.e.*, load).”³⁵⁴ It stated that the effects of such planning on areas of state authority, however, do not divest the Commission of the jurisdiction Congress conferred on it to regulate the transmission of electric energy in interstate commerce.³⁵⁵

130. The Commission was also not persuaded by arguments that Order No. 1920 was unlawful under the “major questions doctrine.”³⁵⁶ It found that commenters were misinterpreting the Supreme Court’s decision in *West Virginia v. EPA* as suggesting that, in every instance, agency regulations affecting energy policy and the generation mix are “major questions” requiring direct authorization from Congress.³⁵⁷ Rather, the Commission stated that the Supreme Court in that decision considered a specific United States Environmental Protection Agency (EPA) action in light of a particular statutory provision and concluded that this action implicated the major questions doctrine based on a variety of factors specific to that context.³⁵⁸ The Commission noted that commenters had not analyzed whether Order No. 1920 would, based on the factors the Supreme Court examined, constitute a major question; when the Commission

³⁴¹ *Id.* P. 254.

³⁴² *Id.* PP 254–256.

³⁴³ *Id.* P. 254; *see also id.* P. 257 (“[T]his rule does not mandate development of any particular transmission facility.”); *id.* P. 258 (“[T]his final rule does not authorize or require any entity to adopt a particular siting plan for Long-Term Regional Transmission Facilities that transmission providers select; or to forego state-jurisdictional siting proceedings where they are necessary; or to begin construction on such Long-Term Regional Transmission Facilities.”); *id.* P. 259 (explaining that Order No. 1920 “does not change existing mechanisms for cost-recovery through retail rates; authorize or require states or state commissions to change the laws or regulations that govern the conduct of integrated resource planning or request for proposal processes; authorize or require transmission providers or transmission developers to bypass any applicable state-regulated integrated resource planning or request for proposal processes; or authorize or require states or public utilities to adopt a different mix of generation resources”); *id.* P. 266.

³⁴⁴ *Id.* P. 263.

³⁴⁵ *Id.*; *see also id.* P. 265 (“[T]his final rule aims to regulate and, in fact, does regulate only practices that affect the transmission of electric energy in interstate commerce, which are squarely within the Commission’s jurisdiction under the FPA.”).

³⁴⁶ *See id.* PP 264–266.

³⁴⁷ *Id.* P. 265.

³⁴⁸ *Id.*

³⁴⁹ *Id.* P. 266 (quotation marks omitted).

³⁵⁰ *Id.*; *cf. id.* P. 267 (also rejecting arguments that Order No. 1920 required states to subsidize other state’s public policies, explaining that Order No. 1920 required following long-extant precedent that transmission customers need only pay costs that are “roughly commensurate” with the benefits received from a regional transmission facility).

³⁵¹ *Id.* P. 264 (explaining that such effects are of “no legal consequence” (quoting *EPSA*, 577 U.S. at 281)); *see id.* P. 262 n.612 (quoting *EPSA*, 577 U.S. at 281–82 (“When FERC regulates what takes place on the wholesale market, as part of carrying out its charge to improve how that market runs, *then no matter the effect* on retail rates, [16 U.S.C.] 824(b) imposes no bar.” (emphasis added))).

³⁵² *Id.* (quoting *EPSA*, 577 U.S. at 281); *see id.* P. 272 (“We acknowledge that Long-Term Regional Transmission Planning will affect matters that are within the states’ jurisdiction. As stated, this is inevitable.”).

³⁵³ *See id.* PP 271–274.

³⁵⁴ *Id.* P. 272 (noting also that existing transmission planning processes already take these assumptions into account, and that Order No. 1920 “simply modifies the scope and duration of these assumptions” to ensure more effective transmission planning).

³⁵⁵ *See id.* PP 264, 271–272.

³⁵⁶ *See id.* PP 275–279.

³⁵⁷ *Id.* PP 275–276.

³⁵⁸ *Id.* P. 276 (noting that these factors “include[d] whether the EPA’s administrative action was a ‘transformative’ expansion of its power, whether the EPA had relevant technical and policy expertise, whether the relevant statutory provision was ‘ancillary’ to the broader statutory construct, and whether the EPA’s administrative action implicated significant economic and political questions” (citing *W.V. v. EPA*, 597 U.S. 697, 710, 724–25, 729, 731–32 (2022) (*West Virginia*)).

considered those factors, it concluded that Order No. 1920 would not implicate the major questions doctrine.³⁵⁹ Among other things, the Commission found that Order No. 1920, as an incremental improvement building on past regulation, did not represent a transformative expansion of the Commission's regulatory authority and did not have vast economic or political significance;³⁶⁰ did not resemble EPA's assertion of authority related to the electric system;³⁶¹ was not reliant on a "backwater" statutory provision; and was not promulgated notwithstanding Congress's repeated rejection of legislation to enact reforms similar to those in the rule.³⁶²

131. The Commission also disagreed with arguments that Order No. 1920 effectively required certain states to subsidize other states' vision of what resources should be used in electricity generation and, therefore, violated the Constitution's "equal sovereignty doctrine."³⁶³ Here, the Commission again explained that Order No. 1920 "categorically does not require states to subsidize other states' public policies or generation decisions," but rather was consistent with longstanding cost-causation principles.³⁶⁴ Moreover, the Commission pointed out that no court has ever applied the equal sovereignty doctrine invoked by commenters as a limit on Congress's Article I powers, including legislation enacted under the Commerce Clause, such as the FPA.³⁶⁵

B. Federal/State Division of Authority

1. Requests for Rehearing

132. Several of the requests for rehearing argue that Order No. 1920 exceeds the Commission's statutory authority under FPA section 206 and is, therefore, unlawful.³⁶⁶ Many of these requests for rehearing acknowledge the Commission's authority under the FPA over "the transmission of electric energy in interstate commerce and . . . the sale

of electric energy at wholesale in interstate commerce."³⁶⁷ However, rehearing parties argue that the Commission's jurisdiction "extend[s] only to those matters which are not subject to regulation by the States" and that the Commission, with certain exceptions, "shall not have jurisdiction . . . over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce."³⁶⁸ Undersigned States and Designated Retail Regulators also state that FPA section 215(i)(3) reserves jurisdiction to the states over the "safety, adequacy, and reliability of electric service."³⁶⁹ Designated Retail Regulators aver that the Commission's authority is limited by the National Interest Electric Transmission Corridor process.³⁷⁰

133. Several rehearing requests posit that Order No. 1920 exceeds the Commission's authority because it invades or undermines state authority over the choice of generating resources maintained or constructed within each state's jurisdiction.³⁷¹ Undersigned States and Designated Retail Regulators argue that Order No. 1920 "puts into

place planning processes that will favor renewables over other generation and ignore the combined generation/transmission benefits that other solutions could provide."³⁷² They argue that this will result in "shift[ing] costs to deliver those renewables to customers that do not cause those costs to be incurred and that have selected other generation options with different transmission requirements."³⁷³ In this vein, Undersigned States and Designated Retail Regulators assert that "[r]equiring customers in states to pay for infrastructure to support the public policies and generation resource mixes chosen by other states, without demonstrable benefits to that load, would be a major intrusion on the States' right to choose the resources that best fit their public policies."³⁷⁴

134. Many of the other arguments challenging the Commission's statutory authority proceed along similar lines. Alabama Commission argues that the Commission in Order No. 1920 is "putting a 'thumb on the scale' and intruding on resource selection in Alabama."³⁷⁵ Georgia Commission contends that in Order No. 1920 the Commission is acting as a national integrated resource planner, attempting to change the future generation mix,³⁷⁶ and will require states to subsidize the renewable generation policies of other states.³⁷⁷ Arizona Commission argues that the Commission lacks "jurisdiction to impose mandated energy policies for intrastate distribution or to foist costs on rate payers for costs created in other

³⁶⁷ 16 U.S.C. 824(b)(1); *see also* 16 U.S.C. 824d(a), 824e(a); Undersigned States Rehearing Request at 10–11 (arguing that the FPA is "primarily, and perhaps exclusively, an economic regulation statute"); Designated Retail Regulators at 12 (same); Alabama Commission Rehearing Request at 5; Arizona Commission Rehearing Request at 10; Utah Commission Rehearing Request at 3.

³⁶⁸ 16 U.S.C. 824(a), (b)(1); *see* Undersigned States Rehearing Request at 11; Designated Retail Regulators at 12–13; Alabama Commission Rehearing Request at 5 (asserting that the Commission's jurisdiction does not extend to "electric power generation, transmission siting, distribution, retail supply, and service models," including "oversight of the IRP process and the associated selection of resources to provide reliable retail service"); Arizona Commission Rehearing Request at 10–11; Idaho Commission Rehearing Request at 4; Montana Commission Rehearing Request at 2–3.

³⁶⁹ 16 U.S.C. 824o(i)(3); Undersigned States Rehearing Request at 11; Designated Retail Regulators Rehearing Request at 13.

³⁷⁰ Designated Retail Regulators Rehearing Request at 18–19 (citing 16 U.S.C. 824p).

³⁷¹ *See* Undersigned States Rehearing Request at 11–13 (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 212 (1983); *Nw. Cent. Pipeline Corp. v. State Corp. Comm'n of Kan.*, 489 U.S. 493, 522 (1989); *Monongahela Power Co.*, 40 FERC ¶ 61,256, at 61,861 (1987); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) (Glick, Comm'r, dissenting at P 5)); Designated Retail Regulators Rehearing Request at 13–14; Idaho Commission Rehearing Request at 4; Utah Commission Rehearing Request at 3–5; West Virginia Commission Rehearing Request at 11; Arizona Commission Rehearing Request at 10–11; *cf. id.* at 2–3 ("The states have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electric transmission facilities.") (quoting *Piedmont Env't Council v. FERC*, 558 F.3d 304, 310 (4th Cir. 2009)).

³⁷² Undersigned States Rehearing Request at 13; Designated Retail Regulators Rehearing Request at 14–15; *see also* Undersigned States Rehearing Request at 3–4 (arguing that Order No. 1920's "building-block concepts ('Sufficiently long-term,' 'Long-Term Transmission Needs,' 'known determinants of Long-Term Transmission Needs,' the 'broader set of benefits,' and particularly, the inputs to this elaborate scheme) mandate new planning processes for transmission facilities that are designed to (1) move remote renewables over long distances and (2) socialize their costs"); *id.* at 27–29; Designated Retail Regulators Rehearing Request at 3–4, 27–28 (similar).

³⁷³ Undersigned States Rehearing Request at 13; Designated Retail Regulators Rehearing Request at 14–15; *see also* Undersigned States Rehearing Request at 33–34.

³⁷⁴ Undersigned States Rehearing Request at 12–13; Designated Retail Regulators Rehearing Request at 14; *see also id.* at 38 ("FERC has no statutory authority to pick winners and losers among differing types of generation or use the cost allocation process as an alternative means to dilute financial responsibility for policy decisions.").

³⁷⁵ Alabama Commission Rehearing Request at 5.

³⁷⁶ Georgia Commission Rehearing Request at 3–4 (arguing that Order No. 1920 violates states' reserved decision-making power by requiring that they "measure their long-term transmission plans against seven factors identified in the Order," because these factors allegedly favor certain policies and projects).

³⁷⁷ *Id.* at 5–6.

³⁵⁹ *See id.* PP 277–279.

³⁶⁰ *See id.* PP 277–278.

³⁶¹ *Id.* P 279.

³⁶² *See id.*

³⁶³ *See id.* PP 280–282.

³⁶⁴ *Id.* P 280.

³⁶⁵ *See id.* P 281 (noting that the FPA, in turn, "empowers the Commission to regulate the rates and practices affecting rates for the transmission of electricity in interstate commerce").

³⁶⁶ *See* Undersigned States Rehearing Request at 2–3, 6, 10–13, 17; Designated Retail Regulators at 2–3, 6, 11–15, 18; Alabama Commission Rehearing Request at 5; Georgia Commission Rehearing Request at 3–4; Arizona Commission Rehearing Request at 2, 9–12, 15; Idaho Commission Rehearing Request at 2, 4–5; Montana Commission Rehearing Request at 1–4; Wyoming Commission Rehearing Request at 1–4; Utah Commission Rehearing Request at 1, 3–7; West Virginia Commission Rehearing Request at 3–4, 10–12.

states.”³⁷⁸ Idaho Commission asserts that certain of the categories of factors that transmission providers must consider in developing Long-Term Scenarios will “disproportionately favor certain projects in the planning process, provide disparate treatment to states’ policy goals, affect resource planning and selection at the state level, and infringe on states’ authority with respect to generation.”³⁷⁹ Montana Commission, Wyoming Commission, and West Virginia Commission argue that, absent a voluntary State Agreement Process, the cost allocation approach in Order No. 1920 ensures that nonconsenting states will be swept up in their neighbors’ preferred policy projects, invading the jurisdiction of states.³⁸⁰ Utah Commission argues that the Commission stated its intention in the ANOPR and NOPR to unlawfully influence the generation mix.³⁸¹ It claims that Order No. 1920 “effectively rigs the planning and cost allocation process to ensure (i) FERC’s preferred stakeholders’ projects are selected in the planning process and (ii) these preferred stakeholders are not required to bear the full costs associated with their choices.”³⁸²

2. Commission Determination

135. We appreciate these concerns articulated on rehearing and believe several clarifications that we adopt below will alleviate these concerns. Nonetheless, we sustain the Commission’s determination that Order No. 1920 is a valid exercise of our statutory authority under the FPA and

does not unlawfully intrude into areas of reserved state authority.³⁸³ In arguing to the contrary, the rehearing requests fail to meaningfully address the substance of Order No. 1920 and fail to respond to the Commission’s explanation for why that rule falls within its jurisdiction. Instead, they misconstrue that rule as attempting to control or influence the generation mix in favor of allegedly Commission-preferred resources.³⁸⁴ Moreover, the arguments on rehearing are unjustified as a legal matter as they fail to apply *EPSA* to Order No. 1920 (and in many cases, do not even acknowledge this controlling precedent).³⁸⁵ They also depend on the mistaken view that the policies of one state may not have permissible extraterritorial effects on other states through interstate commerce, including in the context of interstate transmission of electricity as regulated under the FPA.³⁸⁶

a. Order No. 1920 Does Not Attempt To Control the Generation Mix or Intrude in Areas of State Authority

136. We begin our discussion of the Commission’s statutory authority to issue Order No. 1920 with the substance of Order No. 1920. In broad strokes, Order No. 1920 required transmission providers to “(1) perform a sufficiently long-term assessment of transmission needs that identifies Long-Term Transmission Needs; (2) adequately account on a forward-looking basis for

known determinants of Long-Term Transmission Needs; and (3) consider the broader set of benefits of regional transmission facilities planned to meet those Long-Term Transmission Needs.”³⁸⁷ As affirmed by the D.C. Circuit, regional transmission planning and cost allocation processes are practices directly affecting rates subject to the Commission’s sole jurisdiction, as transmission providers “use those processes to ‘determine which transmission facilities will more efficiently or cost-effectively meet’ transmission needs.”³⁸⁸

137. In light of the direct effects that transmission planning processes have on Commission-jurisdictional rates, “the Commission has taken multiple significant actions on transmission planning and cost allocation, including issuing Order Nos. 888, 890, and 1000.”³⁸⁹ Order No. 1920 thus does not stand in a vacuum, but rather “build[s] upon more than a quarter century of significant actions taken by the Commission on transmission planning and cost allocation,”³⁹⁰ particularly by addressing specific gaps in the existing regional transmission planning process set forth in Order No. 1000.³⁹¹

138. Order No. 1920 required transmission providers to conduct Long-Term Regional Transmission Planning to identify Long-Term Transmission Needs, identify transmission facilities that meet such needs, measure the benefits of those transmission facilities, and evaluate those transmission facilities for potential selection in the regional transmission plan for purposes of cost allocation.³⁹² To identify these Long-Term Transmissions Needs and transmission facilities that meet such needs, transmission providers must develop a set of at least three plausible and diverse Long-Term Scenarios, using the best available data inputs about the future electric power system, over a transmission planning horizon of no less than 20 years.³⁹³ In developing such scenarios, transmission providers

³⁷⁸ Arizona Commission Rehearing Request at 11–12 (citing *Fed. Power Comm’n v. S. Cal. Edison Co.*, 376 U.S. 205, 210 (1964), for the proposition that Congress intended to draw an easily ascertained bright line between state and federal jurisdiction); *id.* at 13; *cf. id.* at 6–7 (arguing that “nothing in federal jurisprudence or the FPA allows FERC to usurp these traditional state functions of intrastate transmission and balancing such energy source costs with ratepayer fairness”).

³⁷⁹ Idaho Commission Rehearing Request at 4–5.

³⁸⁰ Montana Commission Rehearing Request at 2–4 (citing *EPSA*, 577 U.S. at 295–96; *Pac. Gas & Elec. Co.*, 461 U.S. at 212; *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 56–59; Wyoming Commission Rehearing Request at 2–4 (similar); West Virginia Commission Rehearing Request at 3–4, 10–12 (similar, also arguing that “[w]ithout a meaningful voluntary state agreement process, the Commission erred by exceeding its jurisdiction and interfering with state decisions about generation resource planning and approval”).

³⁸¹ Utah Commission Rehearing Request at 4–5.

³⁸² *Id.* at 5–6 (arguing that Order No. 1920 “precludes transmission planners and cost allocation from distinguishing between transmission projects that are necessary to resolve an identified reliability or economic concern from those that are only necessary because some state, local government, or corporation has unilaterally adopted a policy”); *see id.* at 8 (“[T]he FPA gives FERC no authority to regulate electricity generation and specifically reserves that power to the states.”).

³⁸³ Order No. 1920, 187 FERC ¶ 61,068 at PP 253–54.

³⁸⁴ *See, e.g.*, Undersigned States Rehearing Request at 3–4, 12–13; Designated Retail Regulators Rehearing Request at 11–15; Georgia Commission Rehearing Request at 3–4; Idaho Commission Rehearing Request at 2, 4–5; Alabama Commission Rehearing Request at 5; Arizona Commission Rehearing Request at 2, 11–12, 15; Montana Commission Rehearing Request at 3–4; Wyoming Commission Rehearing Request at 3–4; West Virginia Commission Rehearing Request at 12; Utah Commission Rehearing Request at 1, 3–7.

³⁸⁵ *See* Designated Retail Regulators Rehearing Request at 3–4, 6, 11–15 (no citation of *EPSA*); Georgia Commission Rehearing Request at 3–4 (same); Idaho Commission Rehearing Request at 2, 4–5 (same); Arizona Commission Rehearing Request at 2, 9–12, 15 (same); Alabama Commission Rehearing Request at 5 (same); Utah Commission Rehearing Request at 1, 3–7; Undersigned States Rehearing Request at 14 (citing *EPSA* as recognizing the steady flow of jurisdictional disputes under the FPA); Montana Commission Rehearing Request at 3 (citing *EPSA* as establishing that “FERC regulation of jurisdictional subject matters (wholesale sales and transmission) may influence matters within the states’ power to regulate”); Wyoming Commission Rehearing Request at 2–3 (same); West Virginia Commission Rehearing Request at 11 (same).

³⁸⁶ *See, e.g.*, Undersigned States Rehearing Request at 12–13; Designated Retail Regulators Rehearing Request at 11, 14; Utah Commission Rehearing Request at 12; West Virginia Commission Rehearing Request at 12; *see also infra* Order No. 1920 Does Not Require Unlawful Subsidization of State Policies section.

³⁸⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1; *see also id.* PP 224–248.

³⁸⁸ *Id.* P 86 (quoting *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 56); *id.* (“[T]hese processes identify, evaluate, and select the regional transmission facilities whose costs will be recovered through transmission rates . . .”).

³⁸⁹ *Id.* P 14; *see also id.* PP 15–19 (describing the reforms in Order No. 1000).

³⁹⁰ *Id.* P 255.

³⁹¹ *Id.* P 256; *see also id.* PP 257–259 (describing how Order No. 1920 is consistent with the approach in Order No. 1000, including in that Order No. 1920 does not mandate the development of particular transmission facilities, intrude on siting processes for transmission facilities, or change existing mechanisms for cost recovery); *id.* P 266.

³⁹² *Id.* P 38; *see also id.* PP 1–13, 225.

³⁹³ *See id.* PP 40, 248.

must consider certain known determinants of transmission needs, which the Commission identified in Order No. 1920 as falling within seven categories of factors that affect Long-Term Transmission Needs.³⁹⁴

139. The categories of factors the Commission identified were “(1) federal, federally-recognized Tribal, state, and local laws and regulations affecting the resource mix and demand; (2) federal, federally-recognized Tribal, state, and local laws and regulations on decarbonization and electrification; (3) state-approved integrated resource plans and expected supply obligations for load-serving entities; (4) trends in fuel costs and in the cost, performance, and availability of generation, electric storage resources, and building and transportation electrification technologies; (5) resource retirements; (6) generator interconnection requests and withdrawals; and (7) utility and corporate commitments and federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs.”³⁹⁵ The Commission identified these categories of factors because they provide information about the drivers of Long-Term Transmission Needs, including changes in reliability needs, demand, and supply (such as the generation resource mix) that, in turn, affect what transmission facilities will be required going forward.³⁹⁶ The Commission stated that transmission providers have discretion, however, to consider additional factors³⁹⁷ and may, in developing their Long-Term Scenarios, find that any factor is not, in fact, likely to affect Long-Term Transmission Needs.³⁹⁸

140. Under Order No. 1920, transmission providers must also identify and evaluate transmission facilities to meet such Long-Term Transmission Needs and for potential selection as Long-Term Regional Transmission Facilities in the regional transmission plan for purposes of cost allocation.³⁹⁹ Here, the Commission required that transmission providers measure and use at least seven specified

benefits as part of that analysis,⁴⁰⁰ which measurement reflects “the value that the transmission providers expect a particular Long-Term Regional Transmission Facility to provide to transmission customers in the transmission planning region.”⁴⁰¹ The Commission provided transmission providers with extensive flexibility in the measurement of such benefits.⁴⁰²

141. The Commission also required transmission providers to “file one or more *ex ante* Long-Term Regional Transmission Cost Allocation Methods to allocate the costs of Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) that are selected.”⁴⁰³ It provided a process for robust participation by Relevant State Entities to seek to reach agreement on a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process.⁴⁰⁴ However, the Commission found that “[w]hile we permit transmission providers to include a State Agreement Process in their OATTs . . . it cannot be the sole method filed for cost allocation for Long-Term Regional Transmission Facilities,”⁴⁰⁵ and required that “the relevant Long-Term Regional Transmission Cost Allocation Method on file would apply as a backstop.”⁴⁰⁶

142. The bases for the reforms in Order No. 1920 are entirely focused on improving Commission-jurisdictional processes. The Commission found that existing transmission planning and cost allocation processes are inadequate, such that “transmission providers are often not identifying, evaluating, or selecting more efficient or cost-effective regional transmission solutions to meet Long-Term Transmission Needs.”⁴⁰⁷ Trends in “economics, growing demand, and federal, federally-recognized Tribal, state, and local policies [that] are already resulting in significant changes in the resource mix”⁴⁰⁸ have reinforced that more

effective transmission planning “helps to ensure cost-effective transmission development for customers and can yield better returns for every dollar spent.”⁴⁰⁹ In fact, “in the limited instances in which transmission providers have followed processes that share many of the elements of the long-term, forward-looking, and more comprehensive regional transmission planning this rule requires, customers have seen clear and quantifiable benefits.”⁴¹⁰ In issuing Order No. 1920, the Commission was thus acting in a responsive capacity to account for observable, large-scale, and preexisting trends driven by external forces, which highlighted the need for improved transmission planning and cost allocation processes.⁴¹¹

143. As this summary reflects,⁴¹² Order No. 1920 directly regulates transmission planning and cost allocation processes, effectuating one of the “core objects” of the FPA, as identified by the Supreme Court: “ensur[ing] effective transmission of electric power.”⁴¹³ And the parties arguing that Order No. 1920 unlawfully intrudes into reserved areas of state authority do not identify any aspect of Order No. 1920 that is not, on its face, directed toward these Commission-jurisdictional targets.⁴¹⁴ Rather, they argue that Order No. 1920 intrudes on state resource selection because, in regulating such *transmission* planning

whereas most capacity retirements were from coal resources, with these trends projected to continue); *see also id.* PP 94–98 (discussing trends that shape transmission needs and reflect the need for more efficient and cost-effective transmission planning).

⁴⁰⁹ *Id.* P 100 (“Conversely, inadequate or poorly designed transmission planning processes can lead to relatively inefficient or less cost-effective transmission investment, with customers footing the bill”); *see also, e.g., id.* PP 103–06, 121, 123, 236; *cf. id.* P 101 (discussing that existing transmission planning requirements have “yielded only limited investments in regional transmission projects”).

⁴¹⁰ *Id.* P 102.

⁴¹¹ *See, e.g., id.* P 129 (“[T]he Commission is reacting to well-documented factors, which the record demonstrates are driven by exogenous forces beyond the Commission’s jurisdiction or control”); *id.* P 130; *id.* P 261 (“[T]his final rule responds to changes in the electric industry that have arisen in the years since the Commission’s last regulatory action related to transmission planning.”).

⁴¹² This summary addresses aspects of Order No. 1920 as pertinent to the challenges to the Commission’s statutory authority raised on rehearing.

⁴¹³ *EPSCA*, 577 U.S. at 290; *see also S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 57 (“Reforming the practices of failing to engage in regional planning and *ex ante* cost allocation for development of new regional transmission facilities . . . involves a core reason underlying Congress’ instruction in Section 206.”).

⁴¹⁴ *See* Order No. 1920, 187 FERC ¶ 61,068 at PP 265–66.

³⁹⁴ *See id.* PP 248, 387–537.

³⁹⁵ *Id.* P 409. As discussed below, we are setting aside the requirement in Factor Category Seven to consider corporate commitments. *See infra* Requests to Omit One or More Specific Categories of Factors section. That change does not affect our conclusion as to the Commission’s statutory authority, including our response to the arguments on rehearing addressing the federal/state division of authority under the FPA.

³⁹⁶ *See* Order No. 1920, 187 FERC ¶ 61,068 at PP 90–111, 299–300, 432, 440, 447, 456, 463, 472, 481.

³⁹⁷ *See id.* P 412.

³⁹⁸ *See id.* PP 415, 417.

³⁹⁹ *See id.* PP 1–3, 40, 225, 719–720.

⁴⁰⁰ *See id.* P 3; *see also id.* PP 729, 737.

⁴⁰¹ *Id.* P 269; *see also id.* P 720 (identifying the benefits to be considered).

⁴⁰² *See, e.g., id.* PP 728, 735, 839.

⁴⁰³ *Id.* P 5; *see also id.* P 43 (defining Long-Term Regional Transmission Cost Allocation Method); *id.* P 1291.

⁴⁰⁴ *See id.* PP 5, 1291.

⁴⁰⁵ *Id.* P 1292; *see id.* P 1293 (explaining that, if transmission providers were to rely solely on a State Agreement Process, this gives rise to the possibility there would be no cost allocation method for Long-Term Regional Transmission Facilities such that selected facilities would be less likely to be developed and their benefits less likely to be realized).

⁴⁰⁶ *Id.* P 1292.

⁴⁰⁷ *Id.* P 87.

⁴⁰⁸ *Id.* P 99 (noting that “as of 2021, nearly 70% of capacity additions across the country were from new, utility-scale wind and solar resources”

and cost allocation, Order No. 1920 is purportedly biased toward the construction of transmission facilities that will serve allegedly Commission-favored resources, which will in turn affect the generation resource mix.⁴¹⁵ Here, they focus on the categories of factors that the Commission identified as reflecting known determinants of transmission needs, arguing that certain of these factors are not resource neutral.⁴¹⁶

144. The rhetoric in the rehearing requests suggesting that the Commission exceeded its statutory authority by directing reforms targeted at certain transmission planning outcomes demonstrates a misunderstanding of Order No. 1920, and particularly the categories of factors.⁴¹⁷ The Commission found that the categories of factors set forth in Order No. 1920 reflect known determinants of transmission needs,⁴¹⁸ such that requiring that transmission providers consider these factors in Long-Term Regional Transmission Planning is appropriate and reasonable. The substantive content of these factors (for example, a state law or policy implementing the state's reserved authority over resource choices) and how they affect transmission providers' development of Long-Term Scenarios

(for example, the extent to which they may lead to the identification of specific Long-Term Transmission Needs) will be attributable to exogenous forces independent of Commission action.⁴¹⁹ Indeed, these forces are drivers of the pre-existing trends, discussed above, that have demonstrated the urgency of more effective transmission planning.⁴²⁰ In other words, the Commission is not requiring consideration of these factors in order to achieve particular outcomes in the transmission planning process, but rather acting in a responsive capacity to identify and account for the most likely variables that are relevant to effective Long-Term Regional Transmission Planning and ensure that those variables are considered in such planning.⁴²¹

145. Factor Category One (federal, federally-recognized Tribal, state, and local laws and regulations affecting the resource mix and demand) is illustrative,⁴²² although these same points also apply to the other categories of factors. Because such laws and regulations, by definition, "affect[] the resource mix and demand" and, in turn, changes in resource mix and demand can affect Long-Term Transmission Needs,⁴²³ these laws and regulations are relevant to determining such transmission needs. The effect of such laws and regulations on transmission needs is inevitable⁴²⁴ and would be the same even in the absence of Order No. 1920.⁴²⁵ Furthermore, the existence and

content of such laws and regulations are independent of any Commission action, as they are attributable instead to the lawful exercise of the authority of the entities, including states, responsible for enacting or promulgating such laws and regulations. Order No. 1920 thus requires Long-Term Regional Transmission Planning that *accounts* for the effects of these laws and regulations on transmission needs, because failure to adequately do so has had, and will continue to have, significant deleterious consequences.⁴²⁶ Order No. 1920 does not create these effects or aim to influence them.

146. Contrary to claims in the rehearing requests,⁴²⁷ the categories of factors set forth in Order No. 1920 are also resource-neutral. Factor Category One is, again, illustrative. To the extent a law or regulation affects the resource mix or demand, transmission providers must consider how that law or regulation may affect Long-Term Transmission Needs. This requirement applies to all laws and regulations falling within Factor Category One, irrespective of their substantive content.⁴²⁸ Thus, to the extent a state law may affect the resource mix because, for example, it encourages or discourages the development of *any* particular type of generation, that would be a relevant consideration in Long-Term Regional Transmission Planning.⁴²⁹ This same point applies to all of the categories of factors specified in Order No. 1920: transmission providers must consider those categories of factors in developing Long-Term Scenarios irrespective of the substantive content of any given factor in a category.

147. In this respect, the categories of factors identified in Order No. 1920 are best understood as a non-exhaustive identification of essential inputs

policy decisions would continue to exist, regardless of whether they were identified in Long-Term Regional Transmission Planning, failing to identify, evaluate, and select Long-Term Regional Transmission Facilities to address those needs will result in unjust and unreasonable rates").

⁴²⁶ See *id.* PP 130, 233, 261–262.

⁴²⁷ See *supra* P 143 n.416.

⁴²⁸ See Order No. 1920, 187 FERC ¶ 61,068 at P 437 ("We are not endorsing the merits of any specific federal, federally-recognized Tribal, state, or local laws and regulations or of any specific state-approved integrated resource plans. We emphasize that the Commission's policies are technology neutral, and we are not establishing a preference for certain types of generation or energy end uses.").

⁴²⁹ Similarly, where a state has laws or regulations that are, themselves, resource neutral or lacks laws or regulations affecting the generation mix or demand, the relevant transmission providers must conduct their Long-Term Regional Transmission Planning considering those considerations.

⁴¹⁵ See Undersigned States Rehearing Request at 13; Designated Retail Regulators Rehearing Request at 14; Georgia Commission Rehearing Request at 3–4; Arizona Commission Rehearing Request at 9–12, 15; Idaho Commission Rehearing Request at 4–5; Utah Commission Rehearing Request at 4–5; Montana Commission Rehearing Request at 3–4; West Virginia Commission Rehearing Request at 12; Wyoming Commission Rehearing Request at 3–4; Alabama Commission Rehearing Request at 5; *cf.* Ohio Commission Federal Advocate Rehearing Request at 18–20 (asserting that, in doing so, the Commission is violating the Commerce Clause of the Constitution).

⁴¹⁶ See Undersigned States Rehearing Request at 10–13, 27–28 (arguing that Order No. 1920 and that the categories of factors, in particular, "are not resource neutral"); Designated Retail Regulators Rehearing Request at 14–15, 26–28 (same); Georgia Commission Rehearing Request at 4; Idaho Commission Rehearing Request at 4–5; Ohio Commission Federal Advocate Rehearing Request at 18–20; Utah Commission Rehearing Request at 3–4; Montana Commission Rehearing Request at 12; West Virginia Commission Rehearing Request at 12; Wyoming Commission Rehearing Request at 3–4.

⁴¹⁷ See Order No. 1920, 187 FERC ¶ 61,068 at P 260 ("In this final rule, the Commission neither aims to influence the resource mix, nor, as a practical matter, could the final rule achieve such an outcome."); see also *id.* PP 129–30, 254, 419; *cf.* *Dep't of Com. v. N.Y.*, 588 U.S. 752, 780–81 (2019) ("A court is ordinarily limited to evaluating the agency's contemporaneous explanation in light of the existing administrative record."); *Pharm. Rsch. & Mfrs. of Am. v. F.T.C.*, 790 F.3d 198, 212 (D.C. Cir. 2015) (noting the presumption of procedural regularity and substantive rationality that attaches to final agency action).

⁴¹⁸ See Order No. 1920, 187 FERC ¶ 61,068 at PP 119–120, 130, 412, 415; see also *id.* PP 422–84 (discussing the adoption of the specific categories of factors).

⁴¹⁹ See *id.* PP 129–130, 233, 261–62, 419, 436.

⁴²⁰ See *supra* Unjust, Unreasonable, and Unduly Discriminatory or Preferential Commission-Jurisdictional Transmission Planning and Cost Allocation Processes section.

⁴²¹ See Order No. 1920, 187 FERC ¶ 61,068 at PP 230, 266.

⁴²² See *id.* P 130 n.328 (citing *PJM Power Providers Grp. v. FERC*, 88 F.4th 250, 275 (3d Cir. 2023) (holding that the Commission is "unambiguously authorize[d] . . . to take state policies into account to the extent that such policies affect [the Commission's] statutorily prescribed area of focus . . ."); *Elec. Power Supply Ass'n v. Star*, 904 F.3d at 524 (approving of the Commission's decision to take state zero-emissions credit systems like that in Illinois "as givens and set out to make the best of the situation [these systems] produce").

⁴²³ We note that the arguments on rehearing require recognizing that different types of generating resources, located in different areas, may have different transmission needs. See, e.g., Undersigned States Rehearing Request at 10, 16. In this respect, the rehearing requests tend to reinforce, rather than rebut, that the categories of factors set forth in Order No. 1920 are salient considerations for effective transmission planning.

⁴²⁴ See Order No. 1920, 187 FERC ¶ 61,068 at P 435 ("Rather than a unique feature of Long-Term Regional Transmission Planning, transmission planning of any kind will inherently reflect the policy choices of multiple decisionmakers, because the quantity and location of generation and load are shaped by multiple decisionmakers.").

⁴²⁵ See *id.* P 436 (explaining that "because . . . Long-Term Transmission Needs driven by disparate

relevant to Long-Term Regional Transmission Planning. To the extent that, in developing any Long-Term Scenarios, these inputs may point toward identification of particular Long-Term Transmission Needs, this will be the result of external forces that determine the substance of these inputs. In fact, the evaluation of these inputs will be conducted by transmission providers in consultation with relevant stakeholders without the Commission imposing any requirements that dictate the substantive outcome of the transmission planning process.⁴³⁰ Indeed, all the requirements that the Commission has established for conducting Long-Term Regional Transmission Planning—such as the number of Long-Term Scenarios to be developed, the time horizon to be considered, that scenarios be “plausible and diverse,” and that the best available data be used—are also process-focused and resource-neutral.⁴³¹

148. Moreover, the discretion afforded to transmission providers in conducting their analyses further precludes the Commission from attempting to “put a thumb on the scale” of the transmission planning process to favor certain generation resources. Transmission providers may consider additional factors, beyond those specified in the categories of factors set forth in Order No. 1920, in developing Long-Term Scenarios and identifying Long-Term Transmission Needs.⁴³² Transmission providers also “have discretion to determine whether specific factors must be accounted for within each category (*i.e.*, if the specific factor will likely affect Long-Term Transmission Needs).”⁴³³ Thus, the categories of factors set forth in Order No. 1920 reflect minimum standards that transmission providers may not ignore when developing Long-Term Scenarios. However, as long as these scenarios otherwise meet the requirements of Order No. 1920 (*e.g.*, they are plausible and diverse), Order No. 1920 ensures

that transmission providers may consider *all* of the relevant factors and may also determine, in any given case, that any factor is *not* likely to affect such needs. This construct is wholly consistent with resource-neutral transmission planning.⁴³⁴

149. Certain rehearing requests state that other aspects of Order No. 1920 (such as the seven required benefits to evaluate Long-Term Regional Transmission Facilities) are preferential toward allegedly Commission-favored resources. These arguments are not well developed.⁴³⁵ Nonetheless, based on our best understanding of these arguments, we disagree with them for reasons similar to those articulated above and in Order No. 1920. Requiring that transmission providers measure and use, at a minimum, the seven required benefits in evaluating Long-Term Regional Transmission Facilities does not attempt to influence the external forces driving the need for new transmission facilities or displace the authority of other actors. Rather, this requirement helps to ensure that transmission providers conducting Long-Term Regional Transmission Planning have sufficient information to make their decisions, including as to which Long-Term Regional Transmission Facilities will “more efficiently or cost-effectively address Long-Term Transmission Needs.”⁴³⁶ Here, too, the Commission’s approach has not been overly prescriptive, as transmission providers may propose on compliance to measure additional benefits as part of Long-Term Regional Transmission Planning⁴³⁷ and the Commission has afforded transmission providers flexibility as to how to measure each required benefit.⁴³⁸

⁴³⁴ Transmission providers also have discretion regarding “how to account for specific factors in the development of Long-Term Scenarios (*e.g.*, the method and data used to forecast resource retirements), and how to vary the treatment of each category of factors across Long-Term Scenarios (*e.g.*, assume all forecasted resource retirements materialize in some but not all Long-Term Scenarios).” *Id.* P 417.

⁴³⁵ *See, e.g.*, Undersigned States Rehearing Request at 3–4, 8, 27–29 (asserting that the “factors and benefit metrics” will “favor some resources over others”; arguing that particular factors are not “resource neutral” but no similar argument or explanation as to the benefits metrics); Designated Retail Regulators Rehearing Request at 3–4, 8, 26–29 (similar); Arizona Commission Rehearing Request at 15.

⁴³⁶ Order No. 1920, 187 FERC ¶ 61,068 at PP 667, 721; *see also id.* P 722 (“[W]ithout consideration of such benefits, Long-Term Regional Transmission Planning cannot be reasonably expected to identify, evaluate, and select more efficient or cost-effective regional transmission solutions to address Long-Term Transmission Needs.”); *id.* P 723.

⁴³⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 667.

⁴³⁸ *Id.* P 728; *cf. id.* P 734 (“[W]hile this final rule requires the measurement and use of the required

150. Thus, Order No. 1920 reflects a modest exercise of well-established Commission authority. To be sure, there is an urgent and growing need for new transmission infrastructure, driven by a wide variety of factors, including those leading to changes in the generation resource mix.⁴³⁹ Order No. 1920 identifies those factors, which are occurring independent of Commission action, and gives transmission providers the tools they need to respond to this need and these changes.⁴⁴⁰ The parties that argue that the Commission is attempting to influence the generation resource mix by requiring transmission providers to consider these factors to inform their Long-Term Regional Transmission Planning are reversing cause and effect that necessitated the issuance of Order No. 1920.⁴⁴¹

b. Order No. 1920 Is Consistent with the FPA and Precedent Regarding the Commission’s Authority

151. As discussed above, in filling the discrete gaps in the Order No. 1000 regional transmission planning and cost allocation process, the Commission carefully tailored the reforms it adopted to avoid intruding on areas of reserved state authority. But because the spheres of federal and state authority over electricity are not “hermetically sealed” from one another,⁴⁴² we recognize the possibility that Order No. 1920’s requirements—although entirely focused on addressing practices within the Commission’s jurisdiction—may have effects on areas of reserved state authority.

152. While the rehearing requests discuss the text of the FPA and precedent reflecting that states have reserved authority in certain areas, including over the selection and approval of generation resources, they fail to discuss key Supreme Court precedent in *EPSA* as it applies Order

set of benefits, it is the evaluation process, including selection criteria, that transmission providers propose on compliance that will inform which Long-Term Regional Transmission Facilities are selected.”).

⁴³⁹ *See id.* PP 90–99.

⁴⁴⁰ *See id.* P 233 (“These changes are occurring independent of any action that we take in this final rule, and they are being driven by a wide variety of factors. This final rule provides transmission providers with the tools that they need to respond to these factors . . .”).

⁴⁴¹ Claims that the Commission “advertised” its “unlawful purpose” in the ANOPR and NOPR, *see* Utah Commission Rehearing Request at 4–5, are erroneous for much the same reason: they misconstrue statements in which the Commission discussed the need for transmission reform to respond to changes in the resource mix driven by external factors, including increased penetration of renewable resources, as indicative of an intention to drive such changes.

⁴⁴² *EPSA*, 577 U.S. at 281.

⁴³⁰ We further strengthen those consultation requirements in this order by requiring transmission providers to consult with and consider the positions of Relevant State Entities as to how to account for factors related to state public policies in Long-Term Regional Transmission Planning assumptions.

⁴³¹ *See id.* P 248 (summarizing those process-focused requirements).

⁴³² *See id.* P 412.

⁴³³ *See id.* P 417 (further providing that transmission providers must “assume that the laws, regulations, state-approved integrated resource plans, and expected supply obligations for load-serving entities identified in the first three categories of factors—that transmission providers have determined are likely to affect Long-Term Transmission Needs—are fully met”); *see also id.* P 415.

No. 1920. Despite the Commission's lengthy discussion of *EPSA* in Order No. 1920, on rehearing we are confronted with no argument that the Commission erred in its analysis or misapplied that decision to the facts here.

153. Under the FPA, the Commission has exclusive jurisdiction over "the transmission of electric energy in interstate commerce," and "the sale of electric energy at wholesale in interstate commerce."⁴⁴³ The Supreme Court has "construed broadly" this grant of jurisdiction over interstate transmission of electricity.⁴⁴⁴ Under this grant of authority, "ensur[ing] effective transmission of electric power" is one of the "core objects" of the FPA.⁴⁴⁵ FPA section 206 is one of the principal tools Congress afforded the Commission to exercise this authority, under which it may find that practices affecting Commission-jurisdictional rates are "unjust, unreasonable, unduly discriminatory or preferential," and determine the just and reasonable practice to be thereafter observed and in force.⁴⁴⁶ As the D.C. Circuit has recognized, the authority afforded to the Commission under FPA section 206 is "broadly stated" and not a "subtle device."⁴⁴⁷

154. The Commission does not, however, have jurisdiction over "facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter," except as specifically provided.⁴⁴⁸ FPA section 201 also contains a policy statement recognizing the need for Federal regulation in areas subject to the Commission's jurisdiction, but also providing that "Federal regulation, however, [is] to extend only to those matters which are not subject to regulation by the States."⁴⁴⁹ Thus, as

the rehearing requests point out, courts and the Commission have recognized certain reserved areas of state authority, including over electricity generation.⁴⁵⁰

155. Under *EPSA*, Order No. 1920 is a lawful exercise of the Commission's authority because it regulates practices that directly affect the rates for the transmission of electric energy in interstate commerce—transmission planning and cost allocation processes—and directly regulates only those practices.⁴⁵¹ These findings are not contested in the rehearing requests challenging the Commission's authority. As discussed in Order No. 1920 and above, Order No. 1920 is also not aimed at and does not regulate any area of reserved state authority, whether over electricity generation or otherwise, confirming that the rule is within the Commission's authority.⁴⁵² While it

mere policy declaration that cannot nullify a clear and specific grant of jurisdiction, even if the particular grant seems inconsistent with the broadly expressed purpose." (quotation marks omitted)).

⁴⁵⁰ See *Pac. Gas & Elec. Co.*, 461 U.S. at 205 ("Need for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States."); *Monongahela Power Co.*, 40 FERC ¶ 61,256 at 61,861 ("[J]urisdiction over the capacity planning, determination of power needs, plant siting, licensing, construction, and the operations of coal-fired plants had been deliberately withheld from our control or responsibility . . ."); cf. *Nw. Cent. Pipeline Corp.*, 489 U.S. at 522 ("Unless clear damage to federal goals would result, FERC's exercise of its authority [under the Natural Gas Act] must accommodate a State's regulation of production [of natural gas]."); *Piedmont Env't Council*, 558 F.3d at 310 ("The states have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electric transmission facilities."); *Calpine Corp. v. PJM Interconnection*, 171 FERC ¶ 61,035 (Glick, Comm'r, dissenting at P 5).

⁴⁵¹ Order No. 1920, 187 FERC ¶ 61,068 at P 263 (noting that "no commenter contests" this point); see *id.* P 265–66; *EPSA*, 577 U.S. at 278 (construing the text of FPA section 206 regarding the Commission's "affecting" jurisdiction" as limited to rules or practices that "directly affect" the rates within the Commission's jurisdiction); *NARUC*, 964 F.3d at 1186–87 (applying *EPSA*, considering whether the practice at issue meets the "directly affects" test, whether the Commission directly regulates state areas of authority, and whether the Commission action does not conflict with the FPA's core purposes); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 63 ("[B]ecause the orders' planning mandate is directed at ensuring the proper functioning of the interconnected grid spanning state lines, the mandate fits comfortably within Section 201(b)'s grant of jurisdiction over 'the transmission of electric energy in interstate commerce.'" (citation omitted)); *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d at 481–82 (where economic impact of FERC regulation would likely cause States to construct new generation facilities, such state response was not the result of a "direct regulation" of generation facilities but the product of a state's response to changed incentives and "has little relevance").

⁴⁵² See *NARUC*, 964 F.3d at 1186–87 (finding that Commission order did not unlawfully regulate matters left to the States; "States remain equipped with every tool they possessed prior to Order No. 841 to manage their facilities and systems.").

would be unlawful for the Commission to regulate within reserved state areas of authority, even as a means of accomplishing objectives within the Commission's statutorily granted authority,⁴⁵³ a Commission regulation does not run afoul of FPA section 201(b) just because it affects, even substantially, a reserved area of state authority.⁴⁵⁴ To the contrary, the rule is exactly the opposite: when the Commission regulates within the areas set forth for its authority in FPA sections 201 and 206 (here, practices directly affecting rates for interstate transmission of electricity) as part of "carrying out its charge to improve how that market runs . . . [FPA section 201(b)] imposes no bar" to such regulation, "no matter the effect" on areas of state authority.⁴⁵⁵ *EPSA* is, therefore, fatal to the arguments asserting that Order No. 1920 is unlawful on the theory that, by regulating transmission planning processes and cost allocation, Order No. 1920 may affect state generation resource planning or other areas of state authority.

156. Furthermore, the rehearing requests disregard how Order No. 1920 ensures that Long-Term Regional Transmission Planning processes facilitate and respect the lawful authority of actors, including states, in areas such as generation resource planning, electricity production, and electricity demand. Factor Categories One, Two, and Three, in particular, require transmission providers to consider "(1) federal, federally-recognized Tribal, state, and local laws and regulations affecting the resource mix and demand; (2) federal, federally-recognized Tribal, state, and local laws and regulations on decarbonization and electrification; [and] (3) state-approved integrated resource plans and expected supply obligations for load-serving entities."⁴⁵⁶ Far from intruding on the authority of states in these domains, Order No. 1920 requires that in

⁴⁴³ 16 U.S.C. 824(b)(1) ("The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy . . .").

⁴⁴⁴ *N.Y. v. FERC*, 535 U.S. at 15.

⁴⁴⁵ *EPSA*, 577 U.S. at 290.

⁴⁴⁶ 16 U.S.C. 824e(a).

⁴⁴⁷ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 56 ("The authority and obligation that Congress vested in the Commission to remedy certain practices is broadly stated and the only question is what limits are fairly implied."); see also *id.* at 55 ("The text does not define 'practice,' although use of the word 'any' amplifies the breadth of the delegation to the Commission.").

⁴⁴⁸ 16 U.S.C. 824(b)(1).

⁴⁴⁹ *Id.* 824(a). This policy statement does not nullify the grant of authority to the Commission in the FPA. See *N.Y. v. FERC*, 535 U.S. at 22 ("Moreover, we have described the precise reserved state powers language in [FPA section] 201(a) as a

⁴⁵³ See *EPSA*, 577 U.S. at 279–80 (positing a hypothetical in which the Commission "issued a regulation compelling every consumer to buy a certain amount of electricity on the retail market" as a means of altering wholesale prices falling within the Commission's jurisdiction and explaining that this would be unlawful "because it specifies terms of sale at retail—which is a job for the States alone").

⁴⁵⁴ See *id.* at 281 ("[A] FERC regulation does not run afoul of 824(b)'s proscription just because it affects—even substantially—the quantity or terms of retail sales."); *NARUC*, 964 F.3d at 1186–87; Order No. 1920, 187 FERC ¶ 61,068 at P 264; see also *id.* PP 265–266.

⁴⁵⁵ *EPSA*, 577 U.S. at 281–82 (such effects are "of no legal consequence"); Order No. 1920, 187 FERC ¶ 61,068 at P 264; see also *id.* PP 265–66.

⁴⁵⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 409.

developing Long-Term Scenarios transmission providers account for that authority in Long-Term Regional Transmission Planning and, in fact, afford states *maximum* respect for that authority by assuming that these laws, regulations, integrated resource plans, and expected supply obligations will be fully met.⁴⁵⁷ If anything, the Commission has adopted a conservative approach to ensure that Order No. 1920 is consistent with the structure of federalism set forth in the FPA.⁴⁵⁸

c. Order No. 1920 Does Not Require Unlawful Subsidization of State Policies

157. We also remain unpersuaded by arguments that Order No. 1920 exceeds the Commission's authority because it will allegedly intrude into state authority by requiring them to effectively subsidize the policies or generation resource mixes of other states.⁴⁵⁹ Nothing in Order No. 1920 requires a state to subsidize the policies of other states.⁴⁶⁰ In particular, and among other requirements to ensure such subsidization will not occur, Order No. 1920 mandates "consistent with long-established Commission and court precedent, that transmission customers within a transmission planning region need only pay costs that are 'roughly commensurate' with the benefits that

transmission providers estimate they will receive from a regional transmission facility."⁴⁶¹

158. No cost allocation method proposals have yet been submitted to the Commission in response to Order No. 1920, let alone approved, and application of any such hypothetical Commission-approved proposals to particular Long-Term Regional Transmission Facilities is even further in the future. As a result, disputes about the precise cost allocation method that transmission providers may file, the benefits associated with particular transmission facilities, or how the costs of those particular facilities may be allocated are necessarily theoretical and premature. Regardless, Order No. 1920's bedrock requirement that the cost allocation proposals that will eventually be filed must comply with the beneficiary-pays cost allocation principle is inconsistent with parties' claims that the Commission is unlawfully requiring consumers who do not benefit from Long-Term Regional Transmission Facilities to subsidize such facilities. This beneficiary-pays approach is a just and reasonable basis for allocating costs of regional transmission projects.⁴⁶² Indeed, courts and the Commission have explained that requiring that the costs imposed must be at least roughly commensurate to the benefits received⁴⁶³ ensures that

rates remain "just" by avoiding subsidization.⁴⁶⁴

159. Furthermore, the requests for rehearing arguing that Order No. 1920 intrudes on their authority by requiring such subsidization place too much weight on the broad premise that states have reserved authority over generation resource planning and electricity production within their own borders.⁴⁶⁵ This, however, is a far cry from establishing that state authority over generation within that state's own borders also includes a right to be free from the incidental effects of policies of other states (e.g., as to generation planning) as those effects may manifest through interstate commerce in electricity. For example, Undersigned States and Designated Retail Regulators cite the federal/state division of authority set forth in the FPA, and argue that "[e]ach state has authority over the choice of which generating resources are maintained and constructed within its own jurisdiction."⁴⁶⁶ However, they then recast this as a broader "right to choose the resources that best fit their public policies," a framing that omits the geographic limitation that states' reserved authority over such resources applies only to resources within their

⁴⁵⁷ See *id.* PP 417, 507. At the same time, the Commission in Order No. 1920 reasonably recognized that the first three categories of factors are not the only known determinants of transmission needs.

⁴⁵⁸ FPA section 215(i)(3), 16 U.S.C. 824o(i)(3), and section 216, 16 U.S.C. 824p, which certain rehearing requests cite in passing, see Undersigned States Rehearing Request at 6, 11; Designated Retail Regulators Rehearing Request at 6–7, 13, 18–19, do not affect this conclusion. Neither provision limits the Commission's authority over transmission planning processes or cost allocation under the FPA. Rather, section 215(i)(3) establishes that "[n]othing in this section," relating to establishment of Electric Reliability Organizations, "shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard." The National Interest Electric Transmission Corridor process in section 216 affords the Commission, in certain circumstances, authority over siting of interstate electric transmission facilities; the siting of particular transmission facilities is not at issue in Order No. 1920. See Order No. 1920, 187 FERC ¶ 61,068 at PP 254, 258.

⁴⁵⁹ See Undersigned States Rehearing Request at 12–13; Designated Retail Regulators Rehearing Request at 14–15; Georgia Commission Rehearing Request at 5–6; Arizona Commission Rehearing Request at 11–12; Montana Commission Rehearing Request at 2–4; West Virginia Commission Rehearing Request at 2–4, 10–12.

⁴⁶⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 267; see also, e.g., *id.* PP 232, 268–70, 280; *cf. id.* P 1419 ("[W]e reiterate that all cost allocation methods, including those resulting from a State Agreement Process, must allocate costs in a manner that is at least roughly commensurate with estimated benefits.").

⁴⁶¹ *Id.* P 267; see *id.* P 268 (discussing various requirements in Order No. 1920, including the beneficiary-pays cost allocation principle, that "provide robust assurance that the cost allocation methods ultimately proposed under the final rule will not result in improper cost subsidization."); *id.* P 280.

⁴⁶² *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 84; see *id.* at 85 (noting that the court had "repeatedly embraced" the "basic tenet" of beneficiary-pays cost allocation as a logical extension of the cost causation principle and that the Commission has "reasonably identified the lack of beneficiary-based cost allocation as a practice likely to result in rates that are not just and reasonable or are unduly discriminatory or preferential" (citing Order No. 1000, 136 FERC ¶ 61,051 at P 487); *Neb. Pub. Power Dist. v. FERC*, 957 F.3d 932, 941 (8th Cir. 2020) ("[I]t is certain that to the extent that a utility benefits from the costs of new facilities, it may be said to have caused a part of those costs to be incurred. Because NPPD has greatly benefitted from Tri-State's facilities, it is likely that some of the costs have been caused by NPPD." (internal quotations and alterations omitted)); *ICC v. FERC I*, 576 F.3d at 476 ("Not surprisingly, we evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party. To the extent that a utility benefits from the costs of new facilities, it may be said to have 'caused' a part of those costs to be incurred. . . ." (citations omitted)).

⁴⁶³ As discussed in greater detail below, Order No. 1920 recognized that Long-Term Regional Transmission Facilities are likely to provide a diverse array of benefits. The Commission specifically required that transmission providers consider seven economic and reliability benefits in

Long-Term Regional Transmission Planning, but did not prohibit them from also considering public policy benefits. See *infra* Omission of Regional Cost Allocation Principle No. 6 and Ability to Allocate Costs by Type of Project section (reiterating the fundamental principle that costs will be allocated in a manner that is at least roughly commensurate with estimated benefits, ensuring that ratepayers will not pay for facilities from which they do not benefit).

⁴⁶⁴ *El Paso Elec. Co. v. FERC*, 76 F.4th 352, 361–63 (5th Cir. 2023) ("The cost-causation principle, as understood by the courts and articulated in Order No. 1000, . . . ensure[s] that rates are 'just' . . . [by] prevent[ing] 'subsidization by ensuring that costs and benefits correspond to each other.'" (quoting Order No. 1000–A, 139 FERC ¶ 61,132 at P 578; citing *BNP Paribas Energy Trading GP v. FERC*, 743 F.3d at 268; *Nat'l Ass'n of Reg. Util. Comm'rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007))).

⁴⁶⁵ See, e.g., Undersigned States Rehearing Request at 10–13; Designated Retail Regulators Rehearing Request at 11–14; Montana Commission Rehearing Request at 2–4 (arguing that Order No. 1920 intrudes on state authority because "without a voluntary state agreement process, the Final Rule's regional cost allocation scheme ensures that nonconsenting states will be swept up in their neighbors' preferred policy projects"); Wyoming Commission Rehearing Request at 2–4 (similar); West Virginia Commission Rehearing Request at 3–4, 10–12 (similar); Arizona Commission Rehearing Request at 13 ("[S]tates without renewable resource policy objectives will be forced to absorb costs generated by the transmission of (often rurally sited) renewable energy." (emphasis omitted)); Georgia Commission Rehearing Request at 5–6; Utah Commission Rehearing Request at 6–7.

⁴⁶⁶ Undersigned States Rehearing Request at 11–12; Designated Retail Regulators Rehearing Request at 13.

own jurisdiction.⁴⁶⁷ As a consequence, they claim, it is “an over-reach into the traditional area of regulation reserved for the States” for their residents “to pay for infrastructure to support[] the public policies and resource mixes of other States, without demonstrable benefits to that load” as the costs of those policies manifest in interstate transmission facility cost allocations.⁴⁶⁸

160. Neither statutory text in the FPA nor any of the precedent cited by the rehearing requests establishes that states’ authority, when they participate in interstate commerce in electricity, includes a right to be free from the incidental extraterritorial effects of the policies of other states as they may manifest through such interstate commerce.⁴⁶⁹ To the contrary, as the Supreme Court has recognized, “the production and transmission of energy is an activity particularly likely to affect more than one State.”⁴⁷⁰ The FPA is a congressional enactment authorizing the Commission to regulate in this area.⁴⁷¹

161. In fact, the FPA was enacted in response to a Supreme Court decision holding that the Commerce Clause prevents states from regulating certain transactions between electric utilities located in other states—thereby creating the “*Attleboro* gap.”⁴⁷² Congress

responded by passing the FPA,⁴⁷³ preventing the “creation of any regulatory ‘no man’s land.’ Some entity must have jurisdiction to regulate each and every practice that takes place in the electricity markets.”⁴⁷⁴ *Attleboro* and Congress’s enactment of the FPA thus reflect the authority vested in the Commission to regulate in these domains precisely because states are constitutionally incapable of doing so, including as to how the interaction of state policies may manifest in interstate commerce.⁴⁷⁵ Moreover, the purported requirement that states must voluntarily agree to any cost allocation for interstate transmission facilities would run the risk of creating the sort of “regulatory void” that the FPA was designed to preclude. In particular, it would effectively assign to the states the regulatory responsibility for cost allocation of interstate transmission facilities (notwithstanding that this falls within an area Congress assigned to the Commission in the FPA), creating the possibility that this area goes entirely unregulated should states fail to reach agreement.⁴⁷⁶ In other words, far from prohibiting any extraterritorial effects, the FPA’s statutory standard puts the Commission in charge of regulating those effects pursuant to the just and reasonable standard, which includes the cost causation principle.

162. The argument that, particularly absent state agreement to cost allocation, Order No. 1920 exceeds the Commission’s authority is also ahistorical when viewed in the regulatory context.⁴⁷⁷ In Order No.

1000, the Commission required that transmission providers “devise methods for allocating the costs of certain new transmission facilities to those entities that benefit from them.”⁴⁷⁸ The D.C. Circuit held that this requirement fell within the Commission’s statutory authority to regulate practices affecting rates⁴⁷⁹ and otherwise rejected challenges to the Commission’s authority to adopt these cost allocation reforms under FPA section 206.⁴⁸⁰ In addition, Order No. 1000 also adopted Cost Allocation Principle 1, requiring (like Order No. 1920) that the cost of transmission facilities be allocated to those that will benefit from those facilities in a manner at least roughly commensurate with the estimated benefits of that facility.⁴⁸¹ In doing so, the Commission neither required state agreement to *ex ante* cost allocation methods, nor that any such method ensure that costs be allocated based on whether a state agreed with the public policies of other states associated with the generating facilities connected to the relevant transmission facilities.⁴⁸² Order No. 1920’s approach of requiring an Engagement Period directed toward state agreement on cost allocation, with an *ex ante* cost allocation backstop,⁴⁸³ thus reflects an expansion of states’ ability to participate in the development of regional cost allocation methods as compared to the status quo ante, while recognizing the bounds of state authority. And we take further steps in this order to ensure that states have a meaningful opportunity to inform both Long-Term Regional Transmission Planning and cost allocation for Long-Term Regional Transmission Facilities, particularly with respect to the

long understood to represent valid exercises of the States’ constitutionally reserved powers’); *id.* at 390 (noting that the Supreme Court has “recognized since *Gibbons v. Ogden*, 9 Wheat 1, 22 U.S. 1 (1824), that virtually all state laws create ripple effects beyond their borders”).

⁴⁷⁸ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 81; *see id.* at 82–83 (discussing these reforms in more detail).

⁴⁷⁹ *See id.* at 84.

⁴⁸⁰ *See id.* at 84–87.

⁴⁸¹ *See* Order No. 1000, 136 FERC ¶ 61,051 at P 622; *see S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 85 (“The Commission therefore reasonably identified the lack of beneficiary-based cost allocation as a practice likely to result in rates that are not just and reasonable or are unduly discriminatory or preferential.” (citing Order No. 1000, 136 FERC ¶ 61,051 at P 487)).

⁴⁸² *Cf.* Order No. 1000, 136 FERC ¶ 61,051 at P 685 (permitting, but not requiring, transmission providers to use different types of cost allocation methods for different types of transmission facilities, “such as transmission facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements”).

⁴⁸³ *See* Order No. 1920, 187 FERC ¶ 61,068 at PP 1291–1292.

⁴⁶⁷ Undersigned States Rehearing Request at 12–13; Designated Retail Regulators Rehearing Request at 14.

⁴⁶⁸ Undersigned States Rehearing Request at 12–13; Designated Retail Regulators Rehearing Request at 14. This reference to “demonstrable benefits to load” appears to reflect the view that certain states may disagree with the choices of other states in terms of generation resource selection, particularly on the basis that “less-remote resources of any type might be less expensive, more reliable, and environmentally beneficial.” Undersigned States Rehearing Request at 4–5; Designated Retail Regulators Rehearing Request at 4–5 (similar).

⁴⁶⁹ No such generic right to avoid the extraterritorial effects of the policies of other states as they may manifest through interstate commerce exists under the Constitution. *See Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 371–74 (2023) (rejecting arguments, under the dormant Commerce Clause, “invoking . . . an ‘almost per se’ rule forbidding enforcement of state laws that have the ‘practical effect of controlling commerce outside the State,’ even when those laws do not purposely discriminate against out-of-state economic interests”).

⁴⁷⁰ *Ark. Elec. Co-op. Corp. v. Ark. Pub. Serv. Comm’n*, 461 U.S. 375, 377 (1983) (explaining also that the effect of such production and transmission “on interstate commerce is often significant enough that uncontrolled regulation by the States can patently interfere with broader national interests”); *see* Order No. 1920, 187 FERC ¶ 61,068 at P 282 (“The nature of the interconnected transmission system is such that states naturally affect one another in pursuing policies available to them while exercising the authority reserved to them under FPA section 201.”).

⁴⁷¹ *See* 16 U.S.C. 824(a), (b)(1), 824d, 824e.

⁴⁷² *EPSA*, 577 U.S. at 266 (citing *Pub. Util. Comm’n of R.I. v. Attleboro Steam & Elec. Co.*, 273 U.S. 83, 89–90 (1927)).

⁴⁷³ *Id.*

⁴⁷⁴ *Id.* at 289 (citation omitted).

⁴⁷⁵ *See Appalachian Power Co. v. Pub. Serv. Comm’n of W. Va.*, 812 F.2d 898, 905 (4th Cir. 1987) (enactment of the FPA reflects “the judgment embodied in the commerce clause that there are situations in which the broader perspective of federal authority is necessary”); *cf. id.* at 904 (“[S]tates are powerless to exert authority that potentially conflicts with FERC determinations regarding rates or agreements affecting rates.”).

⁴⁷⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1293 (“[I]f transmission providers were to rely solely on a State Agreement Process to determine the cost allocation for Long-Term Regional Transmission Facilities and that process fails to result in agreement, there would be no cost allocation method for Long-Term Regional Transmission Facilities selected as the more efficient or cost-effective solutions to Long-Term Transmission Needs.”); *see also infra* Obligation to File an Ex Ante Long-Term Regional Transmission Cost Allocation Method and Its Use as a Backstop section.

⁴⁷⁷ The Supreme Court has observed that “[i]n our interconnected national marketplace, many (maybe most) state laws have the ‘practical effect of controlling’ extraterritorial behavior” such that application of an “extraterritoriality doctrine” to preclude such effects would lead to “strange places.” *Nat’l Pork Producers Council*, 598 U.S. at 374–75 (citing examples and concluding that adopting this rule would “cast a shadow over laws

implementation and effect of state public policies.

163. Order No. 1920 regulates within, and only within, Commission authority, while ensuring that state policy choices in areas of reserved state authority are respected and effectuated. Order No. 1920 treats such choices evenhandedly and as antecedent to Long-Term Regional Transmission Planning, requiring transmission providers to consider those choices, among other factors, when they identify Long-Term Transmission Needs and (ultimately) Long-Term Regional Transmission Facilities.⁴⁸⁴ Long-Term Regional Transmission Planning is, in turn, focused on evaluating the Long-Term Regional Transmission Facilities that will reliably and cost-effectively deliver the power needed to serve the load that is expected given these (and other) drivers of transmission needs.⁴⁸⁵ As to cost allocation, transmission providers have flexibility to propose specific cost allocation methods for Long-Term Regional Transmission Facilities, but the prospect of unlawful subsidization of such a transmission facility by customers that do not benefit from it is foreclosed by the requirement that any such method must conform to the beneficiary-pays cost allocation requirement.⁴⁸⁶ To be clear, that means that no state or its customers will be required to pay for the costs of Long-Term Regional Transmission Facilities unless they benefit from those transmission facilities and in a manner that is at least roughly commensurate with those costs. This approach toward the interplay of federal and state regulation of electricity wholly comports with the jurisdictional lines drawn in the FPA.⁴⁸⁷

⁴⁸⁴ See *supra* Requests to Omit One or More Categories of Factors section.

⁴⁸⁵ *Id.*; see also *supra* Evaluation and Selection of Long-Term Regional Transmission Facilities section.

⁴⁸⁶ Similarly, we find that Undersigned States and Designated Retail Regulators assertion that they may be required to pay for infrastructure “without demonstrable benefits to that load,” Undersigned States Rehearing Request at 12–13; Designated Retail Regulators Rehearing Request at 14, is misplaced. Under the beneficiary-pays principle, costs are assigned to customers only to the extent that they receive demonstrable benefits that are at least roughly commensurate with those costs.

⁴⁸⁷ See *EPSA*, 577 U.S. at 282 (“considering ‘the target at which a law aims’” in deciding whether FERC’s wholesale market rule fell within its power to regulate wholesale sales (quoting *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 385 (2015)); cf. *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 165 (2016) (holding that states may not set retail rates, a power typically falling on the states’ side of the FPA’s jurisdictional line, 16 U.S.C. 824(b)(1), in a way that fails to “give effect” to a wholesale rate); *Oneok*, 575 U.S. at 385–86 (contrasting a state policy properly aimed at its field of jurisdiction with one aimed directly at the federal field).

164. Contrast this with the rehearing requests challenging the Commission’s authority under the FPA. By virtue of states’ connection to the interstate transmission grid, consumers in those states participate in interstate commerce. However, certain parties seeking rehearing object to the potential consequences of that connection, particularly the amount that these ratepayers may be required to pay for the transmission facilities connecting to those resources. But where a ratepayer in one state benefits from a transmission facility, it is appropriate that they bear costs at least roughly commensurate with that benefit.⁴⁸⁸

165. For the reasons stated above and in Order No. 1920, we disagree with arguments that, under the FPA, the Commission’s authority to regulate interstate transmission planning processes and cost allocation is limited as these rehearing requests claim. We find that the requirements of Order No. 1920 are within our authority over the “transmission of electric energy in interstate commerce,” and particularly to ensure that practices affecting rates for such transmission are just and reasonable.⁴⁸⁹

C. Major Questions Doctrine

1. Requests for Rehearing

166. Several of the rehearing requests also invoke the “major questions” doctrine, particularly the Supreme Court’s decision in *West Virginia v. EPA*,⁴⁹⁰ in connection with their contention that Order No. 1920 exceeds the Commission’s statutory authority.⁴⁹¹ Undersigned States and Designated Retail Regulators argue that Order No. 1920 involves a “major question” such that Order No. 1920 must be supported by clear congressional authorization because the Commission is attempting to supplant state generation planning

⁴⁸⁸ Indeed, a contrary rule would arguably be inconsistent with judicial precedent governing cost causation. See, e.g., *El Paso Elec. Co.*, 76 F.4th at 360–63 (finding that the Commission impermissibly “prohibited the WestConnect region from imposing binding cost allocation on the non-jurisdictional utilities although they will ‘cause,’ in part, the costs of new grid improvements”); *id.* at 361–62 (explaining that it was of fundamental legal importance that the non-jurisdictional utilities at issue were specifically and intentionally designated as beneficiaries, rather than incidental, unintended beneficiaries, such that they were impermissible “free riders” if not allocated an appropriate share of costs).

⁴⁸⁹ 16 U.S.C. 824(b)(1), 824d(a), 824e(a).

⁴⁹⁰ 597 U.S. 697.

⁴⁹¹ See Undersigned States Rehearing Request at 7, 14–17; Designated Retail Regulators Rehearing Request at 7, 15–19; Arizona Commission Rehearing Request at 2, 3–6 & n.8; Idaho Commission Rehearing Request at 2, 6–7; Utah Commission Rehearing Request at 1, 7–8; Ohio Commission Federal Advocate Rehearing Request at 20.

authority in favor of promoting distantly located renewable energy.⁴⁹² They assert that *West Virginia* supports concluding that Order No. 1920 implicates the major questions doctrine.⁴⁹³ Undersigned States and Designated Retail Regulators also point to the claimed economic consequences of Order No. 1920, citing alleged costs in the hundreds of billions or trillions of dollars; the breadth of the transmission grid; and the importance of electricity in everyday life.⁴⁹⁴ They argue that Order No. 1920 is “blatantly preferential,” will not ensure just and reasonable rates, and that attempting to influence the generation resource mix exceeds both the Commission’s expertise and the scope of the FPA as a consumer-protection statute geared toward ensuring such just and reasonable rates.⁴⁹⁵

167. Likewise, Arizona Commission argues that the Commission has “implemented a nationwide scheme, foisted on all 50 states, to adopt energy generation modes to its liking” even though “nothing in th[e FPA] authorizes the adoption of the Biden Administration’s renewable energy policy goals.”⁴⁹⁶ Arizona Commission and Utah Commission assert that in *West Virginia* the Supreme Court stated that it is highly unlikely that Congress would leave to agency discretion how much coal-based generation there should be over the coming decades, and assert that major policy changes must occur pursuant to an express statement of Congress.⁴⁹⁷ Arizona Commission argues that commenters have observed the breadth and consequences of Order

⁴⁹² Undersigned States Rehearing Request at 14–15; Designated Retail Regulators Rehearing Request at 15–16; see also *id.* at 17–18 (“[T]here is no clear delegated authority allowing FERC to determine what type of generating resources should be transmitted from where in the United States.”).

⁴⁹³ Undersigned States Rehearing Request at 14–15 (also asserting that this is a major question because “it implicates a unique and complex jurisdictional divide between state and federal regulatory authority” (citing *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 764 (2021); *EPSA*, 577 U.S. at 264–65)); Designated Retail Regulators Rehearing Request at 17.

⁴⁹⁴ Undersigned States Rehearing Request at 15; Designated Retail Regulators Rehearing Request at 16–17.

⁴⁹⁵ Undersigned States Rehearing Request at 16–17; Designated Retail Regulators Rehearing Request at 16–17, 18–19.

⁴⁹⁶ Arizona Commission Rehearing Request at 4–6.

⁴⁹⁷ *Id.* at 5–6; see also *id.* at 3–4 (arguing that Congress does not use oblique or elliptical language to empower fundamental changes to a statutory scheme); Utah Commission Rehearing Request at 7–8.

No. 1920⁴⁹⁸ and cites a characterization of the Commission's approach as controversial,⁴⁹⁹ asserts that the FPA is a consumer protection statute,⁵⁰⁰ and states that Congress has not enacted the "Green New Deal."⁵⁰¹ Utah Commission contends that "transitioning the grid away from fossil-fueled generation and toward renewable resources" is a major question, pointing to its social and political context and economic consequences.⁵⁰²

168. In arguing that Order No. 1920 involves a major question, Idaho Commission points to statements in the concurrence to Order No. 1920 that the nation's energy grid is at a crossroads, with "'consequential action' . . . emphatically warranted" and "proselytiz[ing] for states to join it in building an 'electric transmission grid for the 21st century.'" ⁵⁰³ It contends that the Commission has "gone to great lengths to enact a sweeping policy agenda, in the absence of congressional authority, that infringes on states' authority, and impermissibly attempts to expand the Commission's jurisdiction under the FPA, in violation of the major questions doctrine."⁵⁰⁴

169. Ohio Commission Federal Advocate argues, citing *West Virginia*, that the Commission has not identified a clear congressional authorization to "use its power under the FPA to facilitate federal, state, Tribal, local, and corporate policies, including decarbonization and electrification policies, under the guise of building a robust transmission system."⁵⁰⁵ It argues that the Commission lacks this authority.⁵⁰⁶

170. SERTP Sponsors bring several requests for clarification of Order No. 1920, which we summarize and address in detail below. Focusing on the "respect afforded to state-approved IRPs and LSE supply obligations," SERTP Sponsors state that, absent certain of

those clarifications, "particularly [in] Sections II.A.1 and II.C.3" of their argument, Order No. 1920 could encroach on state jurisdiction.⁵⁰⁷ They particularly contend that if these clarifications are not granted "Order No. 1920 would be seeking to influence the makeup of the nation's energy policy and generation mix, which would constitute a 'major question,' given the vast economic consequences that would result from an exercise of such authority."⁵⁰⁸

2. Commission Determination

171. We continue to find that Order No. 1920 does not implicate the major questions doctrine. As the summary above reflects, the rehearing requests provide little to no discussion of the scope of the Commission's authority under the FPA or the statutory context and, as discussed in the preceding sections, they misinterpret Order No. 1920 itself.⁵⁰⁹ The Supreme Court has described the major questions doctrine as applicable only in "extraordinary cases," which it has identified through a detailed analysis of the statutory context and agency action at issue.⁵¹⁰ Specifically, that doctrine comes into play where, despite a "colorable textual basis" for the agency's claim of authority, the agency action was so extravagant when viewed in light of the statutory context that it was unlikely that Congress would have afforded this claimed authority to the agency, and particularly would not have done so in an oblique or subtle way.⁵¹¹ As a rule, Congress does not "hide 'elephants in mouseholes.'" ⁵¹²

172. In *West Virginia*, the Supreme Court held that EPA claimed a "newfound," "transformative," "extravagant," and "unheralded" ⁵¹³

authority to "substantially restructure the American energy market" by devising emission limitations that were based on EPA's judgment of how much coal-fired electricity generation should be in the overall mix of electricity generation.⁵¹⁴ The Supreme Court concluded that this authority swept far beyond the ordinary understanding of EPA's purview, inserting the agency into areas into which it lacked technical expertise and in which it was required to make "a very different kind of policy judgment."⁵¹⁵ EPA did so against the backdrop of the significant policy questions involved that would ordinarily be addressed by Congress.⁵¹⁶ In fact, the Supreme Court recognized that EPA's newly claimed authority

(*UARG*) (rejecting EPA's "enormous and transformative expansion in EPA's regulatory authority" in "discover[ing] in a long-extant statute an unheralded power" to require certain permits for greenhouse gas emissions).

⁵¹⁴ *West Virginia*, 597 U.S. at 721, 724–25; see also *Nat'l Fed'n of Indep. Bus.*, 595 U.S. at 117 ("The Secretary has ordered 84 million Americans to either obtain a COVID-19 vaccine or undergo weekly medical testing at their own expense. This is no everyday exercise of federal power." (citation omitted)); *UARG*, 573 U.S. at 321–22 (explaining that EPA itself acknowledged the "calamitous consequences of interpreting the [Clean Air] Act in that way," thereby rendering the relevant provisions multiple orders of magnitude more burdensome and expensive); *id.* at 324 ("[W]e confront a singular situation: an agency laying claim to extravagant statutory power over the national economy while at the same time strenuously asserting that the authority claimed would render the statute 'unrecognizable to the Congress that designed' it." (citation omitted)); *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000) (explaining that "[t]his is hardly an ordinary case" given that the FDA was now purporting to have authority that would allow it to outright ban tobacco products, notwithstanding the unique place such products have in American history and the existing regulatory scheme adopted by Congress).

⁵¹⁵ *West Virginia*, 597 U.S. at 728–29 (noting that, in this context, EPA was required to make judgments as to the reliability of the energy grid and the effects of its action on energy prices, such that EPA's exercise of authority required "technical and policy expertise not traditionally needed in EPA regulatory development" (quotation marks omitted)); see also *Nat'l Fed'n of Indep. Bus.*, 595 U.S. at 118 ("[N]o provision of the Act addresses public health more generally, which falls outside of OSHA's sphere of expertise."); *King v. Burwell*, 576 U.S. 473, 485–86 (2015) (declining to defer to the Internal Revenue Service (IRS) interpretation of the Affordable Care Act's guarantee of tax credits for health insurance purchases, noting that that decisions about "health insurance policy" fell beyond the IRS's zone of "expertise," making it "especially unlikely that Congress would have delegated th[e] decision" over tax credits "to the IRS.").

⁵¹⁶ *West Virginia*, 597 U.S. at 729–30; see also *King*, 576 U.S. at 485–86 (noting that the tax credits at issue "involv[e] billions of dollars in spending each year and affect[] the price of health insurance for millions of people," the Court deemed their provision "a question of deep economic and political significance" that Congress would not have implicitly delegated to the agency (quotation marks omitted)).

⁴⁹⁸ See Arizona Commission Rehearing Request at 6; cf. *id.* at 16 (citing the cost of achieving net-zero on the transmission grid).

⁴⁹⁹ See *id.* at 4–5.

⁵⁰⁰ See *id.* at 20.

⁵⁰¹ See *id.* at 5.

⁵⁰² Utah Commission Rehearing Request at 8 & n.17 (arguing that Order No. 1920 "patently dictates outcomes and cost allocation and does so to discriminate and favor the policy preferences of certain preferred stakeholders"; citing Commissioner Christie's dissent claiming that Order No. 1920 is intended to cost consumers trillions of dollars).

⁵⁰³ Idaho Commission Rehearing Request at 6 (quoting Order No. 1920, 187 FERC ¶ 61,068 (Phillips & Clements Comm'rs, concurring at PP 34–35)).

⁵⁰⁴ *Id.* at 6–7.

⁵⁰⁵ Ohio Commission Federal Advocate Rehearing Request at 20.

⁵⁰⁶ *Id.*

⁵⁰⁷ SERTP Sponsors Rehearing Request at 37–41; see also *id.* at 41–45.

⁵⁰⁸ *Id.* at 39–40 (arguing that "the application or implementation of Order No. 1920 in a manner that would undercut or conflict with state-regulated IRPs and resource adequacy decisions would transform the regulatory paradigm from an electric system expansion process driven by state-regulated resource assumptions made in state-regulated IRPs to one driven by FERC-regulated resource assumptions made in the FERC-regulated LTRTP processes," exceeding the scope of the Commission's expertise and previous regulation of "practices affecting rates").

⁵⁰⁹ See *supra* Federal/State Division of Authority section.

⁵¹⁰ See *West Virginia*, 597 U.S. at 721.

⁵¹¹ *Id.* at 722–23; see also *id.* at 721.

⁵¹² See *id.* at 746 (Gorsuch, J., concurring) (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001)); see also *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 125 (2022) (Gorsuch, J., concurring).

⁵¹³ *West Virginia*, 597 U.S. at 724; see also *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 323–24 (2014)

enabled it to enact a program addressing the dangers posed by greenhouse gas emissions even though Congress had considered (but rejected) legislative proposals to create such programs.⁵¹⁷ Thus, in *West Virginia*, the Supreme Court confronted an EPA assertion of authority that it concluded was elephantine—surprising not just in scope, but also in character vis-à-vis EPA’s ordinary regulatory role.

173. The Supreme Court concluded that EPA purported to find that authority in a statutory mousehole: the “ancillary,” “backwater,” “gap-filler” authority in section 111(d) of the Clean Air Act, under which it was to identify the “best system of emission reduction” for existing stationary sources of air pollutants.⁵¹⁸ Reflecting the ancillary nature of this provision, the Supreme Court noted that EPA had only used it a handful of times over more than four decades,⁵¹⁹ and in doing so had uniformly based its regulatory approach on identifying systems that would reduce pollution by causing the regulated source to operate more cleanly.⁵²⁰ As a result, according to the Supreme Court, EPA’s claim that it had authority to base emission limitations on its policy judgment regarding the appropriate generation resource mix “was not only unprecedented; it also effected a fundamental revision of the statute, changing it from [one sort of] scheme of . . . regulation into an entirely different kind.”⁵²¹ The

Supreme Court held that, to justify this power, EPA offered only a “vague statutory grant” supported by such an expansive, acontextual reading of the “definitional possibilities” of the word “system” that accepting this construction would have rendered the statutory text an “empty vessel.”⁵²²

174. *West Virginia* thus reflects the sort of “extraordinary case” meriting application of the major questions doctrine and illustrating the factors relevant to that inquiry. Moreover, *West Virginia* and other cases in this area reflect that application of that doctrine does not boil down to a facile examination, divorced from the statutory context, of the agency action at issue. The major questions doctrine does not provide, for example, that courts should find that an agency action requires express Congressional authorization based simply on the economic consequences of that action, the fact that the agency is addressing a significant problem, or the sector of industry that the agency is regulating. As the Fourth Circuit recently explained, while the “doctrine applies only when the question at issue—i.e., the authority the agency is claimed to have—is a major one,” that is a necessary, not a sufficient, condition triggering the doctrine’s application.⁵²³ “The [Supreme] Court has highlighted several other [relevant] hallmarks,” such as (1) whether the statute’s “structure indicates that Congress did not mean to

regulate the issue in the way claimed,”⁵²⁴ (2) whether a “‘distinct regulatory scheme’ [is] already in place to deal with the issue which would conflict with the agency’s newly asserted authority,”⁵²⁵ (3) where the agency has “fail[ed] to invoke the[] [asserted powers] previously,” (4) where the “asserted authority falls outside the agency’s traditional expertise,” and (5) where the “asserted authority . . . is found in an ‘ancillary provision.’”⁵²⁶ As discussed below, none of these “hallmarks” is present here.

175. We continue to conclude that the major questions doctrine does not apply to Order No. 1920.⁵²⁷ The Commission’s authority under FPA section 206 is no statutory “mousehole.” Far from being an “ancillary,” “back-water,” or “gap-filler” provision as the court referenced in *West Virginia*, FPA section 206 sets forth core Commission regulatory authority to remedy unjust and unreasonable rates, and practices affecting rates, for the transmission of electric energy in interstate commerce.⁵²⁸ As discussed above, the Commission’s action in Order No. 1920 falls well within the ordinary understanding of its statutory authority under this provision, as it is regulating practices directly affecting such rates,⁵²⁹ such that Order No. 1920 does not involve converting the authority set forth to regulate such practices into a new kind of regulatory scheme.⁵³⁰ By the same token, since it is based on this core statutory authority, Order No. 1920 also does not involve invoking definitional possibilities to stretch a statutory term or phrase (e.g., “system”

⁵¹⁷ *West Virginia*, 597 U.S. at 731–32 (“Congress, however, has consistently rejected proposals to amend the Clean Air Act to create such a program.”); see also *Brown & Williamson*, 529 U.S. at 160 (adopting FDA’s statutory interpretation required ignoring “the plain implication of Congress’ subsequent tobacco-specific legislation”); *id.* at 142–58.

⁵¹⁸ *West Virginia*, 597 U.S. at 709–710 (noting that the “thrust of Section 111 focuses on emissions limits for *new* and *modified* sources” rather than the existing sources that EPA was regulating under the challenged rule); *id.* at 730.

⁵¹⁹ *Id.* at 710–11 (“It was thus only a slight overstatement for one of the architects of the 1990 amendments to the Clean Air Act to refer to Section 111(d) as an ‘obscure, never-used section of the law.’” (citation omitted)).

⁵²⁰ *Id.* at 725–26 (citing EPA’s view, in its inaugural rulemaking under this provision, that Congress in this provision intended a technology-based approach); see also *Nat’l Fed’n of Indep. Bus.*, 595 U.S. at 118–19 (“It is telling that OSHA, in its half century of existence, has never before adopted a broad public health regulation of this kind [A] vaccine mandate is strikingly unlike the workplace regulations that OSHA has typically imposed.”); *Brown & Williamson*, 529 U.S. at 144 (noting FDA’s “consistent and repeated statements” that it lacked jurisdiction to regulate tobacco products).

⁵²¹ *West Virginia*, 597 U.S. at 728 (quotation marks omitted); see also *Nat’l Fed’n of Indep. Bus.*, 595 U.S. at 117–18 (“The Act empowers the Secretary to set workplace safety standards, not broad public health measures.”); *UARG*, 573 U.S. at

322 (explaining that EPA itself recognized that the results of its statutory interpretation “would be so ‘contrary to congressional intent,’ and would so ‘severely undermine what Congress sought to accomplish,’ that they necessitated as much as a 1,000-fold increase in the permitting thresholds set forth in the statute”); *id.* at 322–23 (explaining how a “brief review of the relevant statutory provisions leaves no doubt that the PSD program and Title V are designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens”); *MCI Telecomms. Corp. v. Am. Tel. & Telegraph Co.*, 512 U.S. 218, 234 (1994) (“[FCC’s statutory interpretation] is effectively the introduction of a whole new regime of regulation (or of free-market competition), which may well be a better regime but is not the one that Congress established.”); *cf. Brown & Williamson*, 529 U.S. at 156 (“Under these circumstances, it is clear that Congress’ tobacco-specific legislation has effectively ratified the FDA’s previous position that it lacks jurisdiction to regulate tobacco.”).

⁵²² *West Virginia*, 597 U.S. at 732; see also *Brown & Williamson*, 529 U.S. at 160 (explaining that FDA’s statutory interpretation required adopting “an extremely strained understanding of ‘safety’ as it is used throughout the Act” even though the concept is “central to the [Act’s] regulatory scheme”); *MCI*, 512 U.S. at 229–34 (rejecting agency interpretation concluding that a statutory provision authorizing the FCC to “modify” the provisions of 47 U.S.C. 203 authorized the agency to make “radical or fundamental changes to the statutory requirements”).

⁵²³ *N.C. Coastal Fisheries Reform Grp. v. Capt. Gaston LLC*, 76 F.4th 291, 296–97 (4th Cir. 2023).

⁵²⁴ *Id.*

⁵²⁵ *Id.* (quoting *Brown & Williamson*, 529 U.S. at 143–46).

⁵²⁶ *Id.* (quoting *Whitman v. Am. Trucking Ass’n, Inc.*, 531 U.S. at 468).

⁵²⁷ Order No. 1920, 187 FERC ¶ 61,068 at PP 275–279.

⁵²⁸ 16 U.S.C. 824e(a); see *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 56 (explaining that the Commission’s authority under FPA section 206 is “broadly stated and the only question is what limits are fairly implied”; this provision is not a “subtle device”); *id.* at 55 (“The text does not define ‘practice,’ although use of the word ‘any’ amplifies the breadth of the delegation to the Commission.”); *cf. N.Y. v. FERC*, 535 U.S. at 15 (upholding Order No. 888, noting that the Supreme Court has “construed broadly” the Commission’s jurisdiction under FPA section 201).

⁵²⁹ See *supra* Order No. 1920 Is Consistent with the FPA and Precedent Regarding the Commission’s Authority section (discussing the application of *EPSCA* and related precedent to Order No. 1920 as confirming that the Commission is acting within its authority).

⁵³⁰ See *EPSCA*, 577 U.S. at 290 (“ensur[ing] effective transmission of electric power” is one of the “core objects” of the FPA); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 57.

in *West Virginia*) to its limits, thereby stripping the relevant term of meaning.

176. Also, unlike the provision at issue in *West Virginia*, FPA section 206 is not a rarely used provision; the Commission has acted under this authority countless times, including in significant rulemakings. This includes the Commission's landmark Order No. 888, in which the Commission addressed fundamental shifts in the landscape of the electric industry by requiring functional unbundling of wholesale generation and transmission services and imposing a similar open access requirement on unbundled retail transmission in interstate commerce,⁵³¹ as well as oversight of those processes and cost allocation via more targeted FPA section 206 complaints and Commission-initiated FPA section 206 proceedings.⁵³² The Supreme Court upheld Order No. 888 order, underscoring the breadth of the Commission's authority under FPA section 206. The Commission's exercise of this authority in the field of transmission planning processes and cost allocation is, itself, far from unprecedented considering the Commission's issuance of Order Nos. 890 and 1000, upon which Order No. 1920 now builds.⁵³³ In Order No. 890, the Commission required—among other things—that public utility transmission providers' local transmission planning

processes satisfy nine transmission planning principles to ensure that transmission planning processes were just and reasonable and not unduly discriminatory and preferential.⁵³⁴ The Commission's next step, Order No. 1000, sought to further ensure that transmission planning and cost allocation requirements embodied in the *pro forma* OATT could facilitate the development of more efficient or cost-effective regional transmission facilities.⁵³⁵ Order No. 1920 is a continuation of these prior efforts to ensure that transmission planning and cost allocation processes support the reliable and cost-effective operation of the transmission grid, by addressing identified deficiencies in those processes that render Commission-jurisdictional rates unjust and unreasonable.

177. Turning to the agency action at issue, Order No. 1920 is not an “elephant”: while it addresses a significant problem, it does so through an improvement of the already existing Commission-jurisdictional regional transmission planning and cost allocation processes, building on and consistent with the Commission's exercise of authority in past actions,⁵³⁶ and is not aimed at areas of reserved state authority. Rehearing requests arguing to the contrary—and particularly those claiming that the Commission is attempting to control or influence the resource mix or install itself as a national integrated resource planner—are based on mischaracterizations or misunderstandings of Order No. 1920, as discussed above.⁵³⁷ Order No. 1920 is

well within the Commission's ordinary remit and technical expertise of regulating practices affecting interstate transmission rates, unlike the cases discussed above which involved agency forays into areas well beyond their ordinary purview, such as EPA regulating the generation resource mix, Occupational Safety and Health Administration (OSHA) regulating the general public health, or the IRS addressing health insurance policy. Nor is this an instance in which the Commission has acted against a backdrop of contrary congressional action.⁵³⁸

178. Moreover, the Commission in Order No. 1920 acted in a fundamentally *responsive* capacity to require more effective transmission planning processes and cost allocation to ensure cost-effective and reliable Long-Term Regional Transmission Planning in light of preexisting forces beyond the Commission's control that give rise to transmission needs.⁵³⁹ This stands in contrast to cases in which the Supreme Court has applied the major questions doctrine, which involved agency actions that, in themselves, affirmatively and proactively caused the transformative consequences that the Court identified as demonstrative of extravagant exercises of agency power.⁵⁴⁰ For similar reasons, it is incorrect to ascribe to Order No. 1920, which aims to ensure that Long-Term Transmission Needs are met more efficiently and cost-effectively, the economic consequences associated with the construction of new transmission infrastructure, as the need for this infrastructure would still exist independent of Order No. 1920.⁵⁴¹

⁵³¹ See *N.Y. v. FERC*, 535 U.S. at 11, 17.

⁵³² See, e.g., *Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F.3d 10, 15 (D.C. Cir. 2021) (denying petitions for review of Commission order, under FPA section 206, regarding cost allocation for the Artificial Island Project); *Coal. of MISO Transmission Customers v. Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,099, 61,770 (2020) (denying complaint, under FPA section 206, challenging MISO's location-based cost allocation method for Baseline Reliability Projects); *City Utilities of Springfield, Mo. v. Sw. Power Pool, Inc.*, 168 FERC ¶ 61,085, 61,467 (2019) (denying complaint, under FPA section 206, asserting that SPP's administration of the unintended consequences review process for SPP's allocation of the costs of transmission facilities was unjust, unreasonable, unduly discriminatory, or preferential); *N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,058 (2016) (granting in part and denying in part a complaint under FPA section 206 requesting that the Commission reform the interregional transmission planning process of the Joint Operating Agreement between MISO and PJM); *Monongahela Power Co.*, 156 FERC ¶ 61,134 (2016) (instituting a proceeding under FPA section 206 to determine whether PJM transmission owners are complying with their Order No. 890 transmission planning obligations), *order accepting in part proposed tariff revisions and requiring tariff revisions*, 162 FERC ¶ 61,129 (2018).

⁵³³ See Order No. 1920, 187 FERC ¶ 61,068 at PP 14–19, 47–48, 255; *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 58 (“Commission-mandated transmission planning is not new. [Order No. 1000] builds on Order No. 890's requirements in light of changed circumstances and is simply the next step in a series of related reforms that began no later than Order No. 888.” (citation omitted)).

⁵³⁴ See Order No. 890, 118 FERC ¶ 61,119 at PP 418–601 (requiring, among other things, that local transmission planning processes satisfy nine transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects); Order No. 1920, 187 FERC ¶ 61,068 at PP 14, 277.

⁵³⁵ Order No. 1000, 136 FERC ¶ 61,051 at PP 11–12, 42–44; Order No. 1000–A, 139 FERC ¶ 61,132 at PP 3–6; see also Order No. 1920, 187 FERC ¶ 61,068 at P 16 (“The reforms in Order No. 1000 included: (1) regional transmission planning; (2) transmission needs driven by Public Policy Requirements; (3) nonincumbent transmission developer reforms; (4) regional and interregional cost allocation, including a set of principles for each category of cost allocation; and (5) interregional transmission coordination. The reforms focused on the process by which transmission providers engage in regional transmission planning and the associated cost allocation rather than on the outcomes of the process.”).

⁵³⁶ See Order No. 1920, 187 FERC ¶ 61,068 at P 278 (describing the rule as implementing “incremental process improvements”).

⁵³⁷ See *supra* Federal/State Division of Authority section.

⁵³⁸ Arguments to the contrary suggesting, for example, that the Commission is attempting to implement the “Green New Deal,” rest on the incorrect premise that the Commission is attempting to preferentially favor renewable resources or influence the generation mix. Moreover, even the references cited in the rehearing requests describe the “Green New Deal” as a broad set of goals aimed at achieving net zero carbon emissions, without specific policies, rather than a specific proposal to enact the sort of transmission planning process and cost allocation reforms at issue in Order No. 1920. See, e.g., *Arizona Commission Rehearing Request* at 4–5.

⁵³⁹ See *supra* Federal/State Division of Authority section (noting that these forces would continue to exist, driving transmission needs, even absent Commission action).

⁵⁴⁰ See, e.g., *West Virginia*, 597 U.S. at 721, 724–25 (addressing EPA rule seeking to “substantially restructure the American energy market”); *Nat'l Fed'n of Indep. Bus.*, 595 U.S. at 117 (addressing agency rule requiring vaccination or medical testing); *UARG*, 573 U.S. at 321–22 (addressing agency change in statutory interpretation subjecting millions of sources to permitting requirements).

⁵⁴¹ See Order No. 1920, 187 FERC ¶ 61,068 at P 278 (“The incremental process improvements required by the final rule, however, do not

179. In particular, arguments asserting that Order No. 1920 will impose “billions or trillions of dollars in transmission cost[s]”⁵⁴² claims that attempt to link the transmission costs of achieving a “net zero” carbon emission policy as “caused by Order No. 1920”⁵⁴³ are not supported by the record and, instead, depend entirely on an unfounded logical leap. These arguments incorrectly portray the consequences of decisions made by other actors,⁵⁴⁴ which represent preexisting and independent forces driving transmission needs that are outside of the Commission’s control,⁵⁴⁵ as attributable to Order No. 1920. As noted above, such arguments fundamentally reverse cause and effect by mischaracterizing Order No. 1920’s process-focused requirements that transmission providers adequately *plan* for these drivers of Long-Term Transmission Needs—which requirements do not seek to achieve any substantive outcome or direct the construction of any particular transmission facilities—as *causing* these transmission needs.⁵⁴⁶ This has no basis

fundamentally change the economic or political stakes of ensuring that Commission-jurisdictional rates remain just and reasonable.”); *id.* PP 92–93; *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 51 (noting the expense associated with construction of transmission infrastructure at the time of the promulgation of Order No. 1000). No case applying the major questions doctrine has done so solely based on the economic consequences of the agency action at issue or suggested that agencies are not empowered to address significant problems falling within their general grants of statutory authority. *Cf., e.g., N.Y. v. FERC*, 535 U.S. at 11, 17 (affirming Commission order adopting reforms restructuring electricity markets); *Flyers Rts. Educ. Fund, Inc. v. U.S. Dep’t of Transp.*, 810 F. App’x 1, 3 (D.C. Cir. 2020) (explaining that *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) “permits, but does not require, an agency to act incrementally”); *WildEarth Guardians v. EPA*, 751 F.3d 649, 655–56 (D.C. Cir. 2014) (summarizing *Defs. of Wildlife v. Gutierrez*, 532 F.3d 913 (D.C. Cir. 2008), upholding a decision to focus on a comprehensive approach). Creating such a rule would be inconsistent with the Supreme Court’s discussion of the history of the major questions doctrine reflecting its application only in extraordinary cases, and then only upon a detailed consideration of the statutory context. *See West Virginia*, 597 U.S. at 721.

⁵⁴² Undersigned States Rehearing Request at 15; *see* Designated Retail Regulators Rehearing Request at 15–16.

⁵⁴³ Arizona Commission Rehearing Request at 16.

⁵⁴⁴ In particular, Order No. 1920 is neutral on the policy choices that may drive certain of these decisions, including whether “net zero” is an appropriate policy goal; these questions are not for the Commission to resolve.

⁵⁴⁵ *See supra* Order No. 1920 Does Not Attempt to Control the Generation Mix or Intrude in Areas of State Authority section (explaining that Order No. 1920 is resource neutral, treating these exogenous forces that drive Long-Term Transmission Needs as inputs to Long-Term Regional Transmission Planning).

⁵⁴⁶ *See supra* Order No. 1920 Does Not Attempt to Control the Generation Mix or Intrude in Areas of State Authority section.

in fact. The drivers of these transmission needs (including those that flow from the policy decisions of actors lawfully entitled to make such choices) and the costs associated with building transmission infrastructure to meet such needs will exist independent of Order No. 1920’s requirements. Indeed, because a major focus of Order No. 1920 is ensuring that more efficient or cost-effective transmission facilities are evaluated and selected, not only would these needs still exist absent the Commission’s action but we expect that meeting these needs would impose *higher* costs on ratepayers.

180. We therefore continue to conclude that Order No. 1920 is not a transformative exercise of Commission authority, whether in magnitude or character, and FPA section 206 is not a surprising basis for the Commission’s action, meaning that the major questions doctrine does not apply here.⁵⁴⁷ The Supreme Court’s decision in *EPSA* and D.C. Circuit decisions in *California Independent System Operator v. FERC*⁵⁴⁸ and *South Carolina Public Service Authority v. FERC* further confirm the inapplicability of the major questions doctrine to Order No. 1920. Each of those cases addressed the scope of the Commission’s authority under FPA section 206 over “practice[s] . . . affecting” rates, the same grant of statutory authority supporting issuance of Order No. 1920, and are thus of particular significance here.⁵⁴⁹

181. In *EPSA* and *CAISO*, the Courts’ statutory construction limiting the Commission to regulating practices “directly affecting” rates was motivated by the same concern animating the major questions doctrine: effectuating congressional intent by ensuring that the Commission’s exercise of this authority was reasonably constrained by more than the definitional possibilities as to what constitutes a “practice . . . affecting” rates.⁵⁵⁰ *South Carolina*

⁵⁴⁷ Order No. 1920, 187 FERC ¶ 61,068 at PP 278–279.

⁵⁴⁸ 372 F.3d 395 (D.C. Cir. 2004) (*CAISO*).

⁵⁴⁹ *See EPSA*, 577 U.S. at 277–78; *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 56–57; *CAISO*, 372 F.3d at 399–404.

⁵⁵⁰ *See EPSA*, 577 U.S. at 277–78 (adopting the “directly affecting” construction of FPA section 206(a) because “[t]aken for all it is worth, that statutory grant could extend FERC’s power to some surprising places” given that markets in all of electricity’s inputs might affect the supply of power and “markets in just about everything” might affect load-serving entities’ demand); *CAISO*, 372 F.3d at 400 (explaining that ambiguity, in statutory construction, is not a creature of definitional possibilities but of statutory context); *id.* at 401 (rejecting the argument that there is an “infinite” of acceptable definitions for what constitutes a “practice” to give [the Commission] the authority to regulate anything done by or connected with a

Public Service Authority v. FERC considered the scope of this authority as applied to the same context presented here, transmission planning and cost allocation processes, in reviewing the highly similar Order No. 1000. The court held that “[r]eframing the practices of failing to engage in regional planning and *ex ante* cost allocation for development of new regional transmission facilities is not the kind of interpretive ‘leap’ that concerned the court in *CAISO* but rather involves a core reason underlying Congress’ instruction in [FPA] Section 206.”⁵⁵¹ It likewise distinguished *MCI*—one of the cases the Supreme Court in *West Virginia* discussed as part of the lineage of the major questions doctrine—holding that FPA section 206 “cannot be fairly viewed as the type of ‘subtle device’ at issue” in that case.⁵⁵²

182. Thus, *EPSA* and *CAISO* reflect that the Supreme Court and the D.C. Circuit already have construed the statutory grant of authority to the Commission over practices affecting rates in FPA section 206 as imposing guardrails to ensure consistency with congressional intent and to avoid the use of this authority in ways that would implicate the major questions doctrine. *South Carolina Public Service Authority v. FERC*, in turn, applied these guardrails in the same context as Order No. 1920 and found that the Commission was acting within its statutory authority to address “a core reason underlying Congress’ instruction in [FPA] Section 206.”⁵⁵³ Particularly given the major questions doctrine’s focus on discerning congressional intent as to the scope of a legislative delegation,⁵⁵⁴ these cases further support our conclusion (in addition to the discussion already set forth) that the major questions doctrine does not require enhanced skepticism of Order No. 1920.⁵⁵⁵

183. We are, therefore, unpersuaded by arguments that the major questions doctrine should apply to Order No. 1920. Claims that Order No. 1920 presents a major question because the Commission has overstepped the jurisdictional boundaries set forth in the FPA and intruded into areas of state

regulated utility, as any act or aspect of such an entity’s corporate existence could affect, in some sense, the rates”).

⁵⁵¹ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 57.

⁵⁵² *Id.* at 56.

⁵⁵³ *Id.* at 57.

⁵⁵⁴ *See West Virginia*, 597 U.S. at 721–23.

⁵⁵⁵ *See supra* Order No. 1920 Is Consistent with the FPA and Precedent Regarding the Commission’s Authority section (explaining, as discussed in Order No. 1920 and not disputed on rehearing, that Order No. 1920 is consistent with the Supreme Court’s decision in *EPSA*).

authority⁵⁵⁶ are mistaken because the Commission has acted well within its authority to regulate practices affecting interstate transmission rates, honoring the jurisdictional divide set forth by Congress in the FPA.⁵⁵⁷ Arguments that the Commission is misusing the FPA to enact preferential policies⁵⁵⁸ are misplaced for the same reasons. As already discussed, arguments invoking the purported economic consequences of Order No. 1920⁵⁵⁹ misattribute the costs of constructing transmission infrastructure to Order No. 1920. Regardless, while the economic impact is relevant to this inquiry, the major questions doctrine is a nuanced, context-specific doctrine that does not require clear congressional authorization for every agency action that may have significant economic consequences or addresses a significant problem.⁵⁶⁰

⁵⁵⁶ See Undersigned States Rehearing Request at 14–15 (citing *Ala. Ass'n of Realtors v. HHS*, 594 U.S. at 764 (finding that one consideration favoring application of the major questions doctrine was that the agency action “intrudes into an area that is the particular domain of state law: the landlord-tenant relationship”)); *id.* at 16 (arguing that the Commission was attempting to determine “what resources should be powering the grid twenty years into the future”); Designated Retail Regulators Rehearing Request at 15–19 (similar); Arizona Commission Rehearing Request at 5–6; Utah Commission Rehearing Request at 7–8; *cf.* Ohio Commission Federal Advocate Rehearing Request at 20 (“FERC points to no ‘clear congressional authorization’ for it to use its power under the FPA to facilitate federal, state, Tribal, local, and corporate policies. . . .”).

⁵⁵⁷ See *supra* Federal/State Division of Authority section; Order No. 1920, 187 FERC ¶ 61,068 at PP 263–267. We also reiterate, in response to arguments that the Supreme Court in *West Virginia* found it “‘highly unlikely that Congress would leave to agency discretion the decision of how much . . . generation there should be over the coming decades’ on a resource-by-resource basis,” Undersigned States Rehearing Request at 15 (quoting *West Virginia*, 597 U.S. at 729; also citing “the breadth of the transmission grid [and] the importance of electricity in everyday life”), that “the Court did not determine that energy policy and the mix of generation resources are in every instance a major question.” Order No. 1920, 187 FERC ¶ 61,068 at P 276; see also *id.* PP 277–278. In any event, Order No. 1920 still would not implicate the major questions doctrine because it is not aimed at this end.

⁵⁵⁸ See Undersigned States Rehearing Request at 16–17; Designated Retail Regulators Rehearing Request at 16–17; Arizona Commission Rehearing Request at 3 n.2, 4, 20.

⁵⁵⁹ See Undersigned States Rehearing Request at 14–15; Designated Retail Regulators Rehearing Request at 15–16; Utah Commission Rehearing Request at 8; *cf.* Arizona Commission Rehearing Request at 16 (citing the cost of achieving net-zero on the transmission grid).

⁵⁶⁰ See *id.*; *cf. also* Arizona Commission Rehearing Request at 6 (“Under *West Virginia*, a major doctrinal change in the law, and the making of a federal rule that fundamentally reshapes policy, has to be done pursuant to an express statement of Congress”); Idaho Commission Rehearing Request at 6.

184. We also are not persuaded by SERTP Sponsors’ arguments that, unless the Commission grants its requests for clarification, Order No. 1920 runs afoul of the major questions doctrine, encroaches on state jurisdiction, or otherwise exceeds the Commission’s authority. SERTP Sponsors do not clearly set forth the basis for many of their purported concerns regarding the Commission’s statutory authority or application of the major questions doctrine, or even which arguments raise these concerns. For instance, while SERTP Sponsors identify Sections II.A.1 and II.C.3 of their argument as particularly raising these concerns,⁵⁶¹ in their Statement of Issues they more broadly state that the clarifications in “Sections II.A and II.C” of their argument are necessary to avoid intruding into state jurisdiction or application of the major questions doctrine.⁵⁶² But it is far from clear, and SERTP Sponsors do not explain, why many of the requested clarifications in Sections II.A and II.C would be necessary to avoid SERTP Sponsors’ stated concerns about the Commission failing to afford adequate respect to state-approved integrated resource plans and load-serving entities’ supply obligations or otherwise implicate concerns that the Commission is intruding into state jurisdiction.⁵⁶³ Certain of SERTP Sponsors’ other claims that, absent clarification, other aspects of Order No. 1920 would exceed the Commission’s authority, are single-sentence assertions that provide little or nothing to illuminate why they believe this is the case.⁵⁶⁴

⁵⁶¹ SERTP Sponsors Rehearing Request at 39; see also *id.* at 41, 43 (issue statements 1 and 15).

⁵⁶² *Id.* at 44–45.

⁵⁶³ See, e.g., *id.* at 7–8 (arguing that states should be allowed to lengthen the time, upon agreement or motion, to reach an agreement as to cost allocation method); *id.* at 8 (requesting clarification on voluntary funding opportunities); *id.* at 11–12 (arguing that Long Term Transmission Needs have been defined in a circular fashion and that transmission providers should have discretion to use their expertise where they lack certain information); *id.* at 12–17 (requesting clarification that the factors affecting a single assumption will not necessarily have an additive effect; clarification on how specific factors will be identified; clarification on whether the Commission has expanded what constitutes legally binding obligations; and rehearing regarding adoption of Factor Category Seven).

⁵⁶⁴ See *id.* at 41 (“Absent the requested clarification in section II.A.2, the six-month period permitted for states to negotiate an extension of the time period [sic] for negotiating *ex ante* or *ex post* state agreements on cost allocation, Order No. 1920 is contrary to FPA section 201, is *ultra vires*, and arbitrary and capricious”); *id.* (“Absent the requested clarification in section II.A.3, Order No. 1920 is contrary to FPA section 201 because it effectively mandates selection and/or construction of an LTRTF.”); *id.* at 43 (“Absent the clarifications

185. We address SERTP Sponsors’ requests for clarification on their substance at various points in our discussion below. In several instances, we find that SERTP Sponsors have failed to plead their arguments that, absent their requested clarification, the Commission has exceeded its authority with the specificity required on rehearing, and we reject them on that basis.⁵⁶⁵ Regardless, to the extent that we do not grant those requests for clarification, whether in whole or in part, we find that the explanations in Order No. 1920 and herein establishing that Order No. 1920 is within the Commission’s authority, does not unlawfully intrude into state areas of reserved authority, and does not implicate the major questions doctrine render SERTP Sponsors’ arguments to the contrary unpersuasive. Where we believe further additional explanation is warranted in response to addressing a specific request for clarification made by SERTP Sponsors, we provide that explanation in conjunction with addressing the relevant request for clarification.

D. Other Issues

1. Requests for Rehearing

186. Several of the parties seeking rehearing argue that Order No. 1920 is not supported by the D.C. Circuit’s decision in *South Carolina Public Service Authority v. FERC*, asserting that the Commission has attempted to direct substantive outcomes affecting the generation resource mix. Arizona Commission contends that Order No. 1000 “confined mandatory consideration [of factors affecting transmission needs] to pertinent laws and regulations, whereas Order No. 1920 now mandates consideration of broader ‘policy goals,’” which are “more nebulous political agendas susceptible to significant fluctuations.”⁵⁶⁶ It contends that the Commission “is not authorized to compel Arizona to use

requested in section II.C.2.d, requiring the utilization of Factor Category Seven intrudes into matters involving retail customers subject to state regulation, thereby being *ultra vires* and contrary to FPA section 201.”).

⁵⁶⁵ See *ZEP Grand Prairie Wind, LLC*, 183 FERC ¶ 61,150, at P 10 (2023); see also *Ind. Util. Regul. Comm’n v. FERC*, 668 F.3d 735, 736 (D.C. Cir. 2012).

⁵⁶⁶ Arizona Commission Rehearing Request at 12–13 (arguing also that Arizona law “does not allow the [Arizona Commission] to adopt, create, or mandate energy policy goals, and Order No. 1920’s effort to compel the [Arizona Commission] to do so is unlawful” and that Order No. 1920’s approach will lead to unjust cost allocations wherein states without renewable policy objectives must absorb costs generated by the transmission of renewable energy).

specific energy resources.”⁵⁶⁷ Montana Commission, West Virginia Commission, and Wyoming Commission argue that Order No. 1000 was upheld in *South Carolina Public Service Authority v. FERC* because of its light touch, which did not mandate a “backstop” *ex ante* cost allocation method to a voluntary state agreement, whereas Order No. 1920 has placed states in the untenable position of either agreeing to unjust and unreasonable cost allocations or having that burden foisted on them by default.⁵⁶⁸ They further assert that Order No. 1920’s “influence over the selection of transmission projects will inevitably affect resource planning and selection at the state level,” invading the jurisdiction of the states.⁵⁶⁹ Utah Commission argues that Order No. 1920, unlike Order No. 1000, “patently dictates outcomes and cost allocation and does so to discriminate and favor the policy preferences of certain preferred stakeholders.”⁵⁷⁰

187. Undersigned States and Designated Retail Regulators argue that Order No. 1920 “mandates transmission planning criteria that marginalize the input from Relevant Electric Retail Regulatory Authorit[ies] [(RERRAs)] in transmission planning, instead favoring selected generation.”⁵⁷¹ In particular, they argue that Order No. 1920 adopts monolithic nationwide criteria that remove the states’ role in planning and cost allocation, and that those criteria are “designed to allow the preferred policy goals of certain states, utilities, and corporate interests to dictate transmission planning for all,” rather than prioritizing reliability and consumer impacts.⁵⁷² Similarly, Georgia Commission argues that Order No. 1920 “violates the states’ reserved decision-making power by requiring that the states measure their long-term transmission plans against seven factors identified in the Order.”⁵⁷³

188. Relatedly, Montana Commission, West Virginia Commission, and Wyoming Commission argue that Order No. 1920 undermines states’ role in transmission planning and ratemaking, and does not result in just and reasonable rates.⁵⁷⁴ In particular, they assert that under Order No. 1920, transmission providers would be required to plan projects while considering the policy goals of various states (e.g., decarbonization), such that “the leading transmission projects may not be the most economical, let alone necessary, but for the policy goals of other states.”⁵⁷⁵ They contend that the costs allocated to retail customers may exceed the benefits that state policy recognizes from regional transmission projects, such that state commissions “would be forced to either assign unjust and unreasonable rates to retail customers, or deny the utility a potentially significant portion of its expected cost recovery.”⁵⁷⁶ Arizona Commission argues that Order No. 1920 usurps state authority mandating that it “apply rates that are fair and reasonable and not to cost share with rate payers who did not cause (and do not benefit from) a particular cost.”⁵⁷⁷

189. Arizona Commission also states that it owes its existence to the Arizona Constitution and that it has plenary power to set just and reasonable rates and charges collected by public service corporations.⁵⁷⁸ It asserts that even the Arizona state legislature is “precluded by state constitutional law from legislating rate making decisions,” and contends that, by the same token, the federal government “is certainly precluded from directing Arizona utilities to adopt energy plans that could

cost hundreds of billions of dollars to Arizona consumers.”⁵⁷⁹

190. On rehearing, Undersigned States again argue that Order No. 1920 is beyond the Commission’s authority because, if the FPA were interpreted to authorize the rule, it “would likely violate the Constitution’s equal sovereignty doctrine.”⁵⁸⁰ They argue that Order No. 1920 “sets up a scheme where one state can effectively require other states to subsidize their own public policy agenda—a core, sovereign state function.”⁵⁸¹ Undersigned States also now bring a single sentence argument that “even if the Rule were supported by statutory authorization . . . then it would violate the nondelegation doctrine,” on the theory that Congress is entirely precluded from delegating any “major policy question[s]” to agencies.⁵⁸²

191. Ohio Commission Federal Advocate contends that in issuing Order No. 1920 the Commission has violated the Commerce Clause because Commission authority “does not reach . . . attempts to use it to assist utilities and corporations with meeting their goals and commitments.”⁵⁸³ It particularly asserts that “[t]he U.S. Supreme Court has held that in the absence of federal legislation, commerce is generally open to control by states” and that Order No. 1920 will disproportionately benefit certain states, e.g., those with policies in favor of electrification of the transportation and building sectors.⁵⁸⁴

2. Commission Determination

192. We find that arguments that Order No. 1920 is not supported by the D.C. Circuit’s decision in *South Carolina Public Service Authority v. FERC* upholding Order No. 1000 are

⁵⁷⁹ *Id.* at 8–9.

⁵⁸⁰ Undersigned States Rehearing Request at 18–19.

⁵⁸¹ *Id.* (arguing that Order No. 1920 subverts the democratic process, encroaches on state prerogatives, and is inconsistent with principles of cooperative federalism (citing *Coyle v. Smith*, 221 U.S. 559, 567 (1911); *Franchise Tax Bd. v. Hyatt*, 578 U.S. 171, 179 (2016); *Stearns v. Minn.*, 179 U.S. 223, 245 (1900); *Shelby Cnty. v. Holder*, 570 U.S. 529, 544 (2013)).

⁵⁸² *Id.* at 17–18 (citing *Paul v. U.S.*, 140 S. Ct. 342, 342 (2019) (Mem.) (Kavanaugh, J., statement respecting denial of certiorari); *Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 685–86 (1980) (Rehnquist, J., concurring in judgment); *A.L.A. Schechter Poultry Corp. v. U.S.*, 295 U.S. 495 (1935)).

⁵⁸³ Ohio Commission Federal Advocate Rehearing Request at 18–19 (citing *Phila. v. N.J.*, 437 U.S. 617, 623 (1978); *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 300 (1997); *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525 (1949); *N.Y. v. U.S.*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997)).

⁵⁸⁴ *Id.* (also arguing that Order No. 1920 will also benefit certain types of generation developers).

⁵⁶⁷ *Id.* at 13.

⁵⁶⁸ See Montana Commission Rehearing Request at 2–4; West Virginia Commission Rehearing Request at 10–12; Wyoming Commission Rehearing Request at 2–4.

⁵⁶⁹ See Montana Commission Rehearing Request at 4; West Virginia Commission Rehearing Request at 12; Wyoming Commission Rehearing Request at 4.

⁵⁷⁰ Utah Commission Rehearing Request at 8 n.17.

⁵⁷¹ Undersigned States Rehearing Request at 7–8; see *id.* at 24–26; Designated Retail Regulators Rehearing Request at 8, 24–26.

⁵⁷² Undersigned States Rehearing Request at 24; *id.* at 26 (“With its rigid planning and cost allocation criteria, the Rule will result in the imposition of massive transmission costs necessary to accomplish certain states’ policy goals upon other states.”); Designated Retail Regulators Rehearing Request at 24–26 (similar).

⁵⁷³ Georgia Commission Rehearing Request at 4.

⁵⁷⁴ See Montana Commission Rehearing Request at 6–7 (arguing that a significant share of the costs of transmission facilities are allocated to retail customers, a question which is best left to the expertise of the states); West Virginia Commission Rehearing Request at 9–10; Wyoming Commission Rehearing Request at 6–8.

⁵⁷⁵ See Montana Commission Rehearing Request at 6–7; West Virginia Commission Rehearing Request at 9–10; Wyoming Commission Rehearing Request at 7–8.

⁵⁷⁶ Montana Commission Rehearing Request at 6–7 (noting that the Montana Commission typically conducts *post hoc* rather than *ex ante* rate reviews and that it is not clear that Order No. 1920 is designed to accommodate this process); West Virginia Commission Rehearing Request at 9–10; Wyoming Commission Rehearing Request at 7–8.

⁵⁷⁷ Arizona Commission Rehearing Request at 20–22 (claiming that Order No. 1920 “usurps the Arizona Constitution and its methodology” because it “provides several factors that must be considered in transmission planning and cost allocation” which “include neither the fairness nor reasonableness of the costs nor any consideration of who causes the costs mandated by the FPA”).

⁵⁷⁸ *Id.* at 7–9.

erroneous because, as the court in that case put it, they “misperceive[] what the Commission has required in the Final Rule.”⁵⁸⁵ Order No. 1920 is directed toward ensuring just and reasonable rates by requiring Long-Term Regional Transmission Planning, including requiring transmission providers to evaluate which Long-Term Regional Transmission Facilities will more efficiently or cost-effectively address Long-Term Transmission Needs.⁵⁸⁶ As in *South Carolina Public Service Authority v. FERC*,⁵⁸⁷ the Commission has declined to impose obligations to “mandate development of any particular transmission facility,”⁵⁸⁸ change applicable siting requirements and processes,⁵⁸⁹ or “change existing mechanisms for cost-recovery through retail rates.”⁵⁹⁰ Order No. 1920 “does not regulate, aim at, or otherwise attempt to influence integrated resource planning, the generation mix, decisions related to the siting and construction of transmission facilities or generation resources, or any other matters reserved to states under FPA section 201.”⁵⁹¹ Under Order No. 1920, like Order No. 1000, “the substance of a regional transmission plan and any subsequent formation of agreements to construct or operate regional transmission facilities remain within the discretion of the decision-makers in each planning region.”⁵⁹² The Commission also maintains Order No. 1000’s light touch as to regional cost allocation: “[i]t does not dictate how costs are to be allocated. Rather, the Rule provides for general cost allocation principles and leaves the details to transmission providers to

determine in the planning processes.”⁵⁹³

193. We disagree with the arguments in the rehearing requests that Order No. 1920 attempts to direct substantive outcomes, including as to the generation resource mix.⁵⁹⁴ As already explained, Order No. 1920 remains process-focused and does not seek to achieve particular substantive outcomes, influence or direct the generation mix, preferentially favor certain transmission facilities, or require unlawful subsidization of state policies.⁵⁹⁵ While it requires consideration of certain categories of factors in assessing Long-Term Transmission Needs,⁵⁹⁶ these factors are resource-neutral and, within the broad parameters set by Order No. 1920, transmission providers have significant discretion in developing Long-Term Scenarios that further precludes the Commission from attempting to dictate outcomes.⁵⁹⁷ Moreover, as described, transmission providers must consult with and consider the positions of the Relevant State Entities as to how to account for factors related to state public policies in Long-Term Regional Transmission Planning assumptions.

194. We disagree with claims that Commission has departed from the “light touch” of Order No. 1000 because Order No. 1000 did not mandate a “backstop” *ex ante* cost allocation method to a voluntary State Agreement Process.⁵⁹⁸ As *South Carolina Public Service Authority v. FERC* recognized and upheld, Order No. 1000 required transmission providers to file an *ex ante* cost allocation method.⁵⁹⁹ Order No.

1920 did not diminish states’ role compared to Order No. 1000 but, instead, increased the available opportunities for robust participation by Relevant State Entities to seek to reach agreement on a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process.⁶⁰⁰ By virtue of these requirements, Order No. 1920 is more solicitous of state input and uses an even lighter touch than Order No. 1000 in this respect. As discussed elsewhere,⁶⁰¹ we take further steps in this rehearing order to strengthen states’ role in Long-Term Regional Transmission Planning and cost allocation for Long-Term Regional Transmission Facilities.

195. We are also not persuaded by arguments that Order No. 1920 exceeds the Commission’s authority because it thwarts the role of RERRAs⁶⁰² or unlawfully intrudes on the authority of state bodies that regulate retail rates.⁶⁰³ Order No. 1920 “does not change existing mechanisms for cost-recovery through retail rates,” but, instead, regulates transmission planning and cost allocation processes falling within the Commission’s jurisdiction.⁶⁰⁴ To the extent that Order No. 1920 might affect retail rates or other areas of state authority, this does not defeat the Commission’s authority; as a valid exercise of the Commission’s jurisdiction over practices affecting interstate transmission rates, Order No. 1920 is lawful notwithstanding such effects.⁶⁰⁵ Finally, assertions that the

regional cost allocation principles.” (citing Order No. 1000, 136 FERC ¶ 61,051 at P 558)); see *id.* at 82–87 (rejecting challenges to the Commission’s authority to adopt such reforms).

⁶⁰⁰ See *id.* PP 5, 268, 1291.

⁶⁰¹ *Infra* Transmission Planning Horizon section; Obligation to File an *Ex Ante* Long-Term Regional Transmission Cost Allocation Method and Its Use as a Backstop section.

⁶⁰² See Undersigned States Rehearing Request at 7–8; Designated Retail Regulators Rehearing Request at 8, 24–26; Georgia PSC Rehearing Request at 4.

⁶⁰³ See Montana Commission Rehearing Request at 6–7; West Virginia Commission Rehearing Request at 9–10; Wyoming Commission Rehearing Request at 6–8; Arizona Commission Rehearing Request at 20–22 (arguing that the primary focus of transmission planning and cost allocation has been reliability and low cost, and that Order No. 1920 introduces other considerations).

⁶⁰⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 259.

⁶⁰⁵ See *supra* Federal/State Division of Authority section; *EPSA*, 577 U.S. at 281–82 (“When FERC regulates what takes place on the wholesale market, as part of carrying out its charge to improve how that market runs, *then no matter the effect* on retail rates, 824(b) imposes no bar.” (emphasis added)); see also Arizona Commission Rehearing Request at 20–22 (claiming that Order No. 1920 “usurps the Arizona Constitution and its methodology” and otherwise conflicts with state law); U.S. Const. Art. VI (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any

⁵⁸⁵ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 57.

⁵⁸⁶ Order No. 1920, 187 FERC ¶ 61,068 at PP 134, 667, 721–723.

⁵⁸⁷ See *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 57–58 (explaining that the Commission did not impose obligations to build or mandatory processes to construct transmission facilities in the regional transmission plan and disavowed that it was purporting to determine what needs to be built, where it needs to be built, and who needs to build it); see *id.* at 62 (“The orders neither require facility construction nor allow a party to build without securing necessary state approvals.”).

⁵⁸⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 257; see *id.* P 419 (“We are not requiring that transmission providers select any particular Long-Term Regional Transmission Facility and therefore are not directing the development of any particular transmission facilities.”).

⁵⁸⁹ See *id.* P 258.

⁵⁹⁰ *Id.* P 259.

⁵⁹¹ *Id.* P 254; see also *id.* P 256 (“[W]e direct reforms to close these gaps without otherwise disturbing the regional transmission planning structure required by Order No. 1000, which was fully affirmed on appeal in the face of similar objections to those raised here.”).

⁵⁹² *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 58.

⁵⁹³ *Id.* at 81; see, e.g., Order No. 1920, 187 FERC ¶ 61,068 at PP 268–269, 723, 916, 954, 1291–1294.

⁵⁹⁴ See Arizona Commission Rehearing Request at 12–13; Montana Commission Rehearing Request at 3–4; West Virginia Commission Rehearing Request at 10–12; Wyoming Commission Rehearing Request at 2–4; Utah Commission Rehearing Request at 8 n.17.

⁵⁹⁵ See *infra* Requirement to Incorporate Categories of Factors section.

⁵⁹⁶ See Order No. 1920, 187 FERC ¶ 61,068 at P 300 (“Long-Term Transmission Needs are similar in kind to transmission needs identified through existing regional transmission planning processes established under Order No. 1000. Where Long-Term Transmission Needs differ is their identification through the long-term, forward-looking, and more comprehensive regional transmission planning and cost allocation processes established in this final rule.”).

⁵⁹⁷ See *infra* Requirement to Incorporate Categories of Factors section.

⁵⁹⁸ See Montana Commission Rehearing Request at 2–4; West Virginia Commission Rehearing Request at 10–12; Wyoming Commission Rehearing Request at 2–4.

⁵⁹⁹ See *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 53 (“The cost-allocation reforms in Order No. 1000 require each transmission provider to include in its OATT a method (or set of methods) for allocating *ex ante* the costs of new regional transmission facilities that complies with six

Commission is attempting to dictate substantive outcomes or prefer certain energy resources or policies or that Order No. 1920 does not comport with principles of cost causation⁶⁰⁶ are not convincing for the reasons already explained.⁶⁰⁷

196. We are also not persuaded by Undersigned States' argument⁶⁰⁸ that if Order No. 1920 were authorized by the FPA, the FPA would violate equal sovereignty principles. The Commission in Order No. 1920 explained at length its reasons for rejecting that argument.⁶⁰⁹ On rehearing, Undersigned States repeat their arguments from their comments on the NOPR while failing to engage with, let alone rebut, the Commission's reasoning in Order No. 1920.⁶¹⁰ We therefore sustain Order No. 1920's rejection of this argument for the reasons stated therein. We particularly note that Undersigned States have pointed to no precedent applying the equal sovereignty doctrine in circumstances comparable to those here.⁶¹¹

Thing in the Constitution or Laws of any State to the Contrary notwithstanding.""); *NARUC*, 964 F.3d at 1186–88 (discussing the application of the Supremacy Clause in the context of the FPA in rejecting an argument that a Commission regulation unlawfully regulated matters falling within state authority).

⁶⁰⁶ See, e.g., States Rehearing Request at 7–8, 24; Designated Retail Regulators Rehearing Request at 8, 25–26; Georgia PSC Rehearing Request at 4; Arizona Commission Rehearing Request at 22; Utah Commission Rehearing Request at 9.

⁶⁰⁷ See *supra* Federal/State Division of Authority section (explaining that Order No. 1920 is not directed at achieving substantive outcomes and that the categories of factors are resource-neutral); *supra* Order No. 1920 Does Not Require Unlawful Subsidization of State Policies section (explaining that arguments that the Commission is requiring subsidization of state policies are incorrect and unpersuasive).

⁶⁰⁸ Undersigned States Rehearing Request at 18–19.

⁶⁰⁹ Order No. 1920, 187 FERC ¶ 61,068 at PP 280–282 (explaining that this argument was not supported by precedent and is incorrect because Order No. 1920 does not require subsidization of other states policies or generation decisions).

⁶¹⁰ See Undersigned States Rehearing Request at 18–19; Order No. 1920, 187 FERC ¶ 61,068 at P 212 & n.535 (citing Undersigned States Reply Comments at 5–6).

⁶¹¹ See Order No. 1920, 187 FERC ¶ 61,068 at PP 280–282. In addition to the discussion in Order No. 1920, we observe that, unlike here, the cases on which Undersigned States rely addressed the validity of direct and *de jure* limitations of the rights of certain states relative to the rights provided to other states. See *Franchise Tax Bd. v. Hyatt*, 578 U.S. at 178 (explaining that Nevada “has applied a special rule of law applicable only in lawsuits against its sister States”); *Shelby Cnty. v. Holder*, 570 U.S. at 544 (“And despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties).”); *Coyle v. Smith*, 221 U.S. at 579 (“Has Oklahoma been admitted upon an equal footing with the original states? If she has, she, by virtue of her jurisdictional sovereignty as such a state, may determine for her own people the proper location of the local seat of government.”);

197. Also unpersuasive is Undersigned States' nondelegation argument.⁶¹² To begin with, this argument was not raised prior to rehearing, as required by the Commission's Rule of Practice and Procedure 713(c)(3).⁶¹³ We typically do not consider arguments raised for the first time on rehearing, unless those arguments could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances.⁶¹⁴ Commenters had the opportunity to raise this argument, but did not do so.⁶¹⁵

198. In any event, a statute does not violate the nondelegation doctrine so long as Congress has set forth an “intelligible principle” to guide the delegatee's exercise of authority.⁶¹⁶ Undersigned States fail to apply (or even acknowledge) this test, address the precedent setting it forth, or engage with

cf. Stearns v. Minn., 179 U.S. at 244–45 (discussing the validity of certain provisions of the enabling act admitting Minnesota to the Union, as incorporated in the Minnesota Constitution, in noting that “a state admitted into the Union enters therein in full equality with all the others”).

⁶¹² See Undersigned States Rehearing Request at 17–18.

⁶¹³ See 18 CFR 385.713(c)(3) (providing that any request for rehearing must “[s]et forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order”).

⁶¹⁴ See *Ala. Power Co.*, 179 FERC ¶ 61,128, at P 15 (2022); *KEI (Me.) Power Mgmt. (III) LLC*, 173 FERC ¶ 61,069, at P 38 n.77 (2020); *Tex. E. Transmission, LP*, 141 FERC ¶ 61,043, at P 19 (2012) (“We do so because (1) our regulations preclude other parties from responding to a request for rehearing and (2) such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.” (quotation marks omitted)); *Calpine Oneta Power v. Am. Elec. Power Serv. Corp.*, 114 FERC ¶ 61,030, at P 7 (2006); *Iroquois Gas Transmission Sys., L.P.*, 86 FERC ¶ 61,261, at 61,949 (1999); *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 (1994); *NO Gas Pipeline v. FERC*, 756 F.3d 764, 770 (“We finally note that Jersey City's alleged constitutional claim of actual bias is also based as untimely. Jersey City has shown us nothing of record to establish that it raised this issue before FERC's issuance of the initial order.”).

⁶¹⁵ See *U.S. v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37 (1952) (“Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice.”); *cf. Reytblatt v. U.S. Nuclear Regul. Comm'n*, 105 F.3d 715, 723 (D.C. Cir. 1997) (agencies are not required to respond to untimely comments).

⁶¹⁶ *Whitman v. Am. Trucking Ass'n*, 531 U.S. at 472 (citing *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)); see also *Fox Television Stations, Inc.*, 556 U.S. at 536; *Nat'l Postal Pol'y Council v. Postal Regul. Comm'n*, 17 F.4th 1184, 1192 (D.C. Cir. 2021).

the text of the FPA.⁶¹⁷ Instead, distinct from their major questions doctrine argument, they assert a *per se* bar on Congress delegating “major policy questions” to agencies.⁶¹⁸ They cite no case adopting this sweeping rule,⁶¹⁹ and we therefore decline to apply this approach here.⁶²⁰ Moreover, Undersigned States' single-sentence argument fails to explain the parameters of this test or how we would apply it to the statutory text of the FPA or Order No. 1920. And even were we to set aside the foregoing, we would still disagree that Order No. 1920 involves the delegation of such a “major policy question” for the reasons stated herein and in Order No. 1920.⁶²¹

199. Finally, Ohio Commission Federal Advocate incorrectly claims that Order No. 1920 “violates the federal Commerce Clause” on the theory that Order No. 1920 may disproportionately benefit commerce in certain states, which have implemented policies allegedly favored by the rule, as compared to other states.⁶²² As discussed above, Order No. 1920 is a valid exercise of congressionally granted authority under the FPA. It does not favor particular state policies or transmission planning outcomes, but rather takes state policies as inputs into Long-Term Regional Transmission Planning.⁶²³ Furthermore, the precedent

⁶¹⁷ *Cf. Gundy v. United States*, 588 U.S. 128, 146 (2019) (plurality opinion) (“We have sustained authorizations for agencies to set “fair and equitable” prices and “just and reasonable” rates.” (citing *Yakus v. United States*, 321 U.S. 414, 422, 427 (1944); *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944)).

⁶¹⁸ See Undersigned States Rehearing Request at 17–18.

⁶¹⁹ See *id.* (citing *Paul v. U.S.*, 140 S. Ct. at 342 (2019) (Mem.) (Kavanaugh, J., statement respecting denial of certiorari) (expressly recognizing that “the Court has not adopted a nondelegation principle for major questions”); *Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. at 685–86 (Rehnquist, J., concurring in judgment) (similar); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495).

⁶²⁰ This argument is also in tension with the Court's articulation of the major questions doctrine in *West Virginia*. See 597 U.S. at 721, 723 (explaining that the major questions doctrine applied only in extraordinary cases, based on specific statutory context and a variety of factors, and that “delegation[s]” to address major questions were permissible with clear congressional authorization); *cf. Paul v. U.S.*, 140 S. Ct. at 342 (Mem.) (Kavanaugh, J., statement respecting denial of certiorari) (recognizing that application of this test would overturn the aspect of major questions doctrine allowing Congress to “delegate to the agency the authority both to decide the major policy question and to regulate and enforce”).

⁶²¹ See *supra* Major Questions Doctrine section; Order No. 1920, 187 FERC ¶ 61,068 at PP 253–62, 275–78.

⁶²² Ohio Commission Federal Advocate Rehearing Request at 18–19.

⁶²³ See *supra* Federal/State Division of Authority section.

that Ohio Commission Federal Advocate cites does not support concluding that a generally applicable Commission rule promulgated pursuant to its authority under the FPA (itself a valid exercise of Congress's Commerce Clause authority) violates the Commerce Clause if that rule may have disparate effects on commerce in various states.⁶²⁴

V. Long-Term Regional Transmission Planning

A. Requirement To Participate in Long-Term Regional Transmission Planning

1. Order No. 1920 Requirements

200. In Order No. 1920, the Commission required transmission providers in each transmission planning region to participate in a regional transmission planning process that includes Long-Term Regional Transmission Planning, meaning regional transmission planning on a sufficiently long-term, forward-looking, and comprehensive basis to identify Long-Term Transmission Needs, identify transmission facilities that meet such needs, measure the benefits of those transmission facilities, and evaluate those transmission facilities for potential selection in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective transmission facilities to meet Long-Term Transmission Needs. The Commission required that Long-Term Regional Transmission Planning comply with the following Order Nos. 890 and 1000 transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; and (6) dispute resolution.⁶²⁵

⁶²⁴ See Ohio Commission Federal Advocate Rehearing Request at 18–19; *Gen. Motors Corp. v. Tracy*, 519 U.S. at 281–82, 287–88, 311–12 (addressing whether state sales and use taxes were impermissible as discriminatory under dormant Commerce Clause or Equal Protection Clause jurisprudence; holding that the taxes violated neither provision of the Constitution); *City of Phila. v. N.J.*, 437 U.S. at 623 (similarly addressing issues arising under dormant Commerce Clause jurisprudence, in the absence of controlling federal legislation, particularly as to whether New Jersey could close its borders to importation of certain waste); *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. at 545 (“Since the [state] statute as applied violates the [dormant] Commerce Clause and is not authorized by federal legislation pursuant to that Clause, it cannot stand.”); *cf. Printz v. United States*, 521 U.S. at 935 (“We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State’s officers directly.”); *New York v. U.S.* 505 U.S. at 161 (“This litigation . . . concerns the circumstances under which Congress may use the States as implements of regulation . . .”).

⁶²⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 224.

201. The Commission explained that Long-Term Regional Transmission Planning will enhance the existing regional transmission planning and cost allocation processes required by Order No. 1000. The Commission also stated that, except as set forth in Order No. 1920, it does not require any transmission provider to replace or otherwise make changes to its existing Order No. 1000-compliant regional transmission planning processes that plan for reliability or economic transmission needs, or the associated Order No. 1000-compliant regional cost allocation method(s). As such, the Commission explained, transmission providers may continue to rely on their existing regional transmission planning and cost allocation processes to comply with Order No. 1000’s requirements related to transmission needs driven by reliability concerns or economic considerations.⁶²⁶ The Commission also declined a request to mandate that the “base cases” used in Order No. 1000 regional transmission planning processes and the Long-Term Scenarios used in Long-Term Regional Transmission Planning be defined in the same process.⁶²⁷

202. The Commission further explained that Order No. 1920 does not alter the existing Order No. 1000 requirement to consider Public Policy Requirements in the regional transmission planning process, and further stated that it will instead deem transmission providers to be in compliance with this existing requirement by conducting Long-Term Regional Transmission Planning in accordance with the requirements set forth in Order No. 1920.⁶²⁸ The Commission allowed transmission providers to propose in their Order No. 1920 compliance filings to continue using some or all aspects of the existing regional transmission planning and cost allocation processes that they use to consider transmission needs driven by Public Policy Requirements. The Commission held that transmission providers nevertheless must comply with the Long-Term Regional Transmission Planning requirements set forth in Order No. 1920, such that continued use of existing regional transmission planning and cost allocation processes related to transmission needs driven by Public Policy Requirements will not supplant transmission providers’ obligation to comply with Order No. 1920. The Commission required that, in their

⁶²⁶ *Id.* P 241.

⁶²⁷ *Id.* P 246.

⁶²⁸ *Id.* P 242.

Order No. 1920 compliance filings, transmission providers that wish to continue to use some or all of their existing regional transmission planning and cost allocation processes to consider transmission needs driven by Public Policy Requirements must demonstrate that continued use of any such processes does not interfere with or otherwise undermine Long-Term Regional Transmission Planning as set forth in Order No. 1920.⁶²⁹

203. The Commission also allowed transmission providers to propose a regional transmission planning process that simultaneously plans for shorter-term reliability and economic transmission needs, as well as Long-Term Transmission Needs as defined in Order No. 1920, through a combined process. The Commission required transmission providers proposing to address all of these transmission needs in a single regional transmission planning process to demonstrate that such a unified regional transmission planning process continues to comply with Order No. 1000, as well as with the Long-Term Regional Transmission Planning requirements set forth in Order No. 1920, by demonstrating that such a combined process is consistent with or superior to the requirements of both Order Nos. 1000 and 1920. The Commission explained that, in the case that the requirements of Order Nos. 1000 and 1920 conflict, the Order No. 1920 requirements will prevail, and transmission providers must demonstrate that their proposed regional transmission planning process is consistent with or superior to the applicable Order No. 1920 requirements.⁶³⁰

204. As described further in the Implementation of Long-Term Regional Transmission Planning section below, in Order No. 1920, the Commission required transmission providers to explain on compliance how the initial timing sequence for Long-Term Regional Transmission Planning interacts with existing regional transmission planning processes. The Commission required transmission providers to provide in their explanations any information necessary to ensure that stakeholders understand this interaction, including at least the following two components. First, the Commission required transmission providers to address the possible interaction between the transmission planning cycle for Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes. The

⁶²⁹ *Id.* P 243.

⁶³⁰ *Id.* P 244.

Commission recognized that there may be overlap in the time horizon for Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes and that these processes will likely inform each other.⁶³¹ Second, the Commission required transmission providers to address the possible displacement of regional transmission facilities from the existing regional transmission planning processes. The Commission recognized that it is possible that, in some cases, Long-Term Regional Transmission Facilities selected to address Long-Term Transmission Needs may provide near-term reliability or economic benefits, and thus could displace regional transmission facilities that are under consideration as part of existing regional transmission planning processes.⁶³²

2. Requests for Rehearing and Clarification

205. Multiple parties request rehearing and clarification on the requirement that, in their Order No. 1920 compliance filings, transmission providers that wish to continue to use some or all of their existing regional transmission planning and cost allocation processes to consider transmission needs driven by Public Policy Requirements must demonstrate that continued use of any such processes does not interfere with or otherwise undermine Long-Term Regional Transmission Planning as set forth in Order No. 1920. Large Public Power requests clarification that the Commission will presume the existing regional transmission planning and cost allocation processes that transmission providers use to consider transmission needs driven by Public Policy Requirements to be just and reasonable. Large Public Power claims that this is an issue on which the Commission was not clear in Order No. 1920, because the Commission stated that Order No. 1920 “do[es] not alter the existing Order No. 1000 requirement to consider transmission needs driven by Public Policy Requirements in the regional transmission planning process,” that transmission providers may propose to continue using these processes, and that transmission providers proposing to do so “must demonstrate that continued use of any such processes does not interfere with or otherwise undermine Long-Term Regional Transmission Planning as set forth in this final

rule.”⁶³³ Large Public Power contends that its members see value in existing regional transmission planning processes that transmission providers use to consider transmission needs driven by Public Policy Requirements, and requests that the Commission not disrupt these processes—in particular the process conducted by NYISO. Large Public Power describes certain aspects of NYISO’s regional transmission planning process and explains that the New York Commission and the Commission each have approved these processes.⁶³⁴ Large Public Power therefore requests that, in reviewing transmission providers’ Order No. 1920 compliance filings, the Commission presume that these existing processes are just and reasonable, and argues that the Commission should not require transmission providers and their stakeholders to face the burden of demonstrating that these processes are just and reasonable.⁶³⁵ If the Commission does not grant clarification, Large Public Power requests rehearing on the ground that the Commission did not advance in Order No. 1920 any “cogent rationale” for treating regional transmission planning processes that consider Public Policy Requirements differently from those that plan for reliability or economic transmission needs.⁶³⁶

206. Similar to Large Public Power’s rehearing request, Pennsylvania Commission argues that requiring transmission providers in Order No. 1920 to demonstrate that continued use of existing regional transmission planning and cost allocation processes to consider transmission needs driven by Public Policy Requirements does not interfere with or otherwise undermine Long-Term Regional Transmission Planning is an abuse of discretion, and that the Commission failed to engage in reasoned decision making.⁶³⁷ Pennsylvania Commission further argues that this requirement is inconsistent with the Commission’s statements that, outside the context of Long-Term Regional Transmission Planning, Order No. 1920 will not “otherwise disturb[] the regional transmission planning structure required by Order No. 1000” or “inadvertently cause the re-litigation of

aspects of those existing processes.”⁶³⁸ Pennsylvania Commission contends that Order No. 1920 requires full re-litigation on compliance of all processes used to satisfy Public Policy Requirements, including PJM’s State Agreement Approach because it addresses state Public Policy Requirements.⁶³⁹ Pennsylvania Commission argues that the Commission should amend Order No. 1920 to either remove this compliance requirement, explicitly limit it to processes used for Long-Term Regional Transmission Planning, or to clarify that PJM’s State Agreement Approach does not interfere with Long-Term Regional Transmission Planning and therefore would not be subject to re-litigation.⁶⁴⁰

207. Similarly, PJM States request that the Commission clarify that PJM’s State Agreement Approach does not conflict with Order No. 1920, and that states within PJM can continue to pursue public policies through the voluntary election of the State Agreement Approach in its current form.⁶⁴¹ Pennsylvania Commission also supports and adopts the clarification request of PJM States.⁶⁴²

208. PIOs argue that existing Order No. 1000 regional transmission planning processes that plan for reliability or economic transmission needs are unjust, unreasonable, and unduly discriminatory, and they request rehearing of various aspects of Order No. 1920 to ensure that these existing processes complement Long-Term Regional Transmission Planning rather than conflict with and undermine it.⁶⁴³ Citing a number of statements in Order No. 1920, PIOs contend that these existing regional transmission planning processes threaten the reliability of the transmission system, fail to build transmission infrastructure necessary to meet regional transmission needs over the long term, and instead invest in transmission facilities addressing narrower, shorter-term needs, which ultimately leads to transmission customers paying unjust and unreasonable rates.⁶⁴⁴ PIOs contend that evidence in the record demonstrates that failing to address the “systemic inadequacies” of existing regional

⁶³⁸ Order No. 1920, 187 FERC ¶ 61,068 at PP 252, 256; *see* Pennsylvania Commission Rehearing Request at 2.

⁶³⁹ Pennsylvania Commission Rehearing Request at 2–3 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 243).

⁶⁴⁰ *Id.*

⁶⁴¹ PJM States Rehearing Request at 6–7.

⁶⁴² Pennsylvania Commission Rehearing Request at 1.

⁶⁴³ *See generally* PIOs Rehearing Request at 16–25.

⁶⁴⁴ *Id.* at 16–18.

⁶³¹ *Id.* P 1071.

⁶³² *Id.* (citation omitted).

⁶³³ Large Public Power Rehearing Request at 4–6 (quoting Order No. 1920, 187 FERC ¶ 61,068 at PP 242–243).

⁶³⁴ *Id.* at 6–9.

⁶³⁵ *Id.* at 4, 6, 9.

⁶³⁶ *Id.* at 7.

⁶³⁷ Pennsylvania Commission Rehearing Request at 2.

transmission planning processes or aligning them with Long-Term Regional Transmission Planning will perpetuate unjust and unreasonable rates.⁶⁴⁵

209. PIOs therefore request that the Commission amend Order No. 1920 in three ways. First, PIOs argue that the Commission should require transmission providers either to conduct a regional transmission planning process that simultaneously plans for shorter-term reliability and economic transmission needs and Long-Term Transmission Needs through a combined process or to align the methods of all regional transmission planning processes, including Long-Term Regional Transmission Planning.⁶⁴⁶ Second, PIOs argue that the Commission should delineate clear boundaries between and align the timing of Long-Term Regional Transmission Planning and existing processes, such that transmission providers would address only the limited regional transmission needs that cannot be reasonably anticipated and cannot be addressed during a Long-Term Regional Transmission Planning cycle. Otherwise, PIOs contend, these processes all would identify transmission facilities over the same planning periods despite different underlying assumptions, benefits assessments, and cost allocation.⁶⁴⁷ Third, PIOs argue that the Commission should require Long-Term Regional Transmission Planning and existing processes to use the same “base case” embodying transmission providers’ best assessment of future system conditions. Otherwise, PIOs contend, transmission providers ultimately may identify redundant transmission facilities, fail to identify more efficient or cost-effective Long-Term Regional Transmission Facilities, or be motivated to undermine Long-Term Regional Transmission Planning in favor of existing processes.⁶⁴⁸

3. Commission Determination

210. We decline to grant the clarification sought by Large Public Power that the Commission will presume the existing regional transmission planning and cost allocation processes that transmission providers use to consider transmission needs driven by Public Policy Requirements to be just and reasonable. We disagree with Large Public Power that Order No. 1920 was unclear as to how the Commission will evaluate any

proposals transmission providers may make in their compliance filings to continue using some or all aspects of the existing regional transmission planning and cost allocation processes that they use to consider transmission needs driven by Public Policy Requirements. We also disagree with the Pennsylvania Commission that the Commission failed to engage in reasoned decision making. The Commission stated clearly in Order No. 1920, and we continue to find, that, while transmission providers may propose to retain existing Order No. 1000 regional transmission planning and cost allocation processes related to transmission needs driven by Public Policy Requirements, transmission providers that do so must demonstrate that continued use of any such processes does not interfere with or otherwise undermine Long-Term Regional Transmission Planning as set forth in Order No. 1920.⁶⁴⁹ In other words, the Commission will not presume the existing regional transmission planning and cost allocation processes used to consider transmission needs driven solely by Public Policy Requirements are just and reasonable.

211. We also disagree with Large Public Power’s argument that the Commission did not justify the differential treatment of regional transmission planning processes that consider transmission needs driven by Public Policy Requirements compared to those that plan for reliability or economic transmission needs. The Commission found that conducting Long-Term Regional Transmission Planning as set forth in Order No. 1920 is sufficient to comply with the Order No. 1000 requirement to consider Public Policy Requirements in the regional transmission planning process. In other words, Long-Term Regional Transmission Planning may subsume the purpose of existing regional transmission planning and cost allocation processes used to consider transmission needs driven by Public Policy Requirements. Given that potential, it is necessary and appropriate to require transmission providers to demonstrate that continued use of Order No. 1000 processes to consider transmission needs driven by Public Policy Requirements does not interfere with or otherwise undermine Long-Term Regional Transmission Planning under Order No. 1920. We also

note that Order No. 1920 allows transmission providers to propose a regional transmission planning process that simultaneously plans for shorter-term reliability and economic transmission needs, as well as Long-Term Transmission Needs, through a combined process, and that transmission providers proposing to address all of these transmission needs in a single regional transmission planning process must demonstrate that the combined regional transmission planning process continues to comply with Order No. 1000, as well as with the Long-Term Regional Transmission Planning requirements set forth in Order No. 1920, by demonstrating that such a combined process is consistent with or superior to the requirements of both Order No. 1000 and Order No. 1920.⁶⁵⁰

212. Similarly, we disagree with the Pennsylvania Commission that this requirement is inconsistent with the Commission’s statements that, except for Long-Term Regional Transmission Planning, Order No. 1920 will not “otherwise disturb[] the regional transmission planning structure required by Order No. 1000” or “inadvertently cause the re-litigation of aspects of those existing processes.”⁶⁵¹ That said, we appreciate the Pennsylvania Commission’s concern that Order No. 1920 requires re-litigation of PJM’s State Agreement Approach and its request that the Commission limit the requirement to processes used for Long-Term Regional Transmission Planning. We also recognize PJM States’ request for clarification that PJM’s State Agreement Approach does not interfere or conflict with Long-Term Regional Transmission Planning. As the Commission explained in Order No. 1920, this requirement does not alter the existing Order No. 1000 requirement to consider transmission needs driven by Public Policy Requirements in the regional transmission planning process, and transmission providers will be deemed to be in compliance with this existing requirement by conducting Long-Term Regional Transmission Planning in accordance with the requirements set forth in Order No. 1920.⁶⁵² Thus, Order No. 1920 allows transmission providers to propose in their Order No. 1920 compliance filings to continue using some or all aspects of the existing Order No. 1000 regional transmission planning and cost allocation processes that they use to consider transmission needs

⁶⁴⁵ *Id.* at 20.

⁶⁴⁶ *Id.* at 21–23.

⁶⁴⁷ *Id.* at 23–24.

⁶⁴⁸ *Id.* at 24–25.

⁶⁴⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 243; *see also id.* P 240 (declining to pre-judge whether any existing regional transmission planning processes meet the requirements of Order No. 1920).

⁶⁵⁰ *Id.* P 244.

⁶⁵¹ *Id.* PP 252, 256; *see* Pennsylvania Commission Rehearing Request at 2–3.

⁶⁵² Order No. 1920, 187 FERC ¶ 61,068 at P 242.

driven by Public Policy Requirements, if they so choose. But the Commission held that transmission providers nevertheless must comply with the Long-Term Regional Transmission Planning requirements set forth in Order No. 1920 and that continued use of existing Order No. 1000 regional transmission planning and cost allocation processes related to transmission needs driven by Public Policy Requirements alone is insufficient to comply with Order No. 1920. Stated differently, transmission providers that wish to continue to use some or all of their existing Order No. 1000 regional transmission planning and cost allocation processes to consider transmission needs driven by Public Policy Requirements must demonstrate that the continued use of any such processes does not interfere with or otherwise undermine Long-Term Regional Transmission Planning as set forth in Order No. 1920.⁶⁵³

213. With respect to PJM's State Agreement Approach specifically, we note that it is separate and apart from PJM's compliance with the Order No. 1000 requirement to consider transmission needs driven by Public Policy Requirements.⁶⁵⁴ Therefore, PJM's State Agreement Approach is unaffected by Order No. 1920's requirement to justify continued use of regional transmission planning and cost allocation processes to consider transmission needs driven by Public Policy Requirements. In response to PJM States and Pennsylvania Commission, we note that Order No. 1920 does not prohibit PJM from continuing to use its existing State Agreement Approach. If the Relevant State Entities in PJM agree to rely on PJM's existing State Agreement Approach as an Order No. 1920 State Agreement Process that applies to selected Long-Term Regional Transmission Facilities, and PJM agrees, PJM must propose and demonstrate on compliance that its State Agreement Approach complies with all of the State Agreement Process requirements set forth in Order No. 1920.

214. We also disagree with PIOs' rehearing arguments related to existing

regional transmission planning processes that plan for reliability and economic needs and the relationship of these processes to Long-Term Regional Transmission Planning. First, we decline PIOs' request that we require transmission providers to conduct a regional transmission planning process that simultaneously plans for shorter-term reliability and economic transmission needs and Long-Term Transmission Needs through a combined process. We continue to find that transmission providers may propose on compliance such a combined process, but we do not require that transmission providers do so because the difficulty of transitioning to this kind of combined regional transmission planning process may outweigh any potential benefits of requiring such a process.⁶⁵⁵

215. Furthermore, we find that requiring transmission providers to use a combined process to plan for shorter-term reliability and economic transmission needs and Long-Term Transmission Needs is unnecessary to address the deficiencies in existing regional transmission planning and cost allocation requirements that the Commission identified in Order No. 1920. Specifically, the Commission found that existing regional transmission planning and cost allocation requirements fail to require transmission providers to: (1) perform a sufficiently long-term assessment of transmission needs that identifies Long-Term Transmission Needs; (2) adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs; and (3) consider the broader set of benefits of regional transmission facilities planned to meet those Long-Term Transmission Needs.⁶⁵⁶ Because we find that Order No. 1920's Long-Term Regional Transmission Planning and cost allocation requirements adequately remedy these deficiencies, we decline to impose the additional requirements that PIOs suggest.

216. Second, we find premature PIOs' arguments as to the need to align methods and timing between existing regional transmission planning processes and Long-Term Regional Transmission Planning. In Order No. 1920, the Commission required transmission providers to explain how Long-Term Regional Transmission Planning will interact with existing regional transmission planning processes to plan for transmission needs driven by reliability concerns or

economic considerations, including their timing and the potential that Long-Term Regional Transmission Facilities may displace transmission facilities that are under consideration in those processes.⁶⁵⁷ The Commission will evaluate the interaction between these processes on compliance and address any potential issues with this interaction in the orders on transmission providers' compliance filings.

217. Third, we disagree with PIOs as to the necessity of requiring that transmission providers use the same "base case" in existing regional transmission planning and in Long-Term Regional Transmission Planning. The Commission neither proposed such a requirement in the NOPR nor adopted one in Order No. 1920, and we are not persuaded to adopt PIOs' suggestion in this order. However, we note that nothing in Order No. 1920 precludes transmission providers from using the same base case in existing regional transmission planning and in Long-Term Regional Transmission Planning if they so choose.

B. Long-Term Scenarios Requirements

1. Requirement for Transmission Providers To Use the Seven Required Benefits To Help To Inform Their Identification of Long-Term Transmission Needs

a. Order No. 1920 Requirements

218. Order No. 1920 required transmission providers to participate in a regional transmission planning process that includes Long-Term Regional Transmission Planning, which is defined as a multi-step process to: (1) identify Long-Term Transmission Needs; (2) identify transmission facilities that meet such needs; (3) measure the benefits of those transmission facilities; and (4) evaluate those transmission facilities for potential selection in the regional transmission plan for purposes of cost allocation.⁶⁵⁸ Order No. 1920 defined Long-Term Transmission Needs as "transmission needs identified through Long-Term Regional Transmission Planning by, among other things and as discussed in this final rule, running scenarios and considering the enumerated categories of factors."⁶⁵⁹

219. Order No. 1920 generally addressed the identification of Long-Term Transmission Needs and the measurement of the benefits of Long-Term Regional Transmission Facilities

⁶⁵³ *Id.* P 243.

⁶⁵⁴ See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 142 (2013) ("We find PJM's proposed State Agreement Approach is not needed for PJM to comply with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. PJM's State Agreement Approach supplements, but does not conflict or otherwise replace, PJM's process to consider transmission needs driven by public policy requirements as required by Order No. 1000. . . . Accordingly, the Commission need not find that the State Agreement Approach and corresponding cost allocation method comply with Order No. 1000.").

⁶⁵⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 245.

⁶⁵⁶ *Id.* P 114.

⁶⁵⁷ *Id.* PP 1071–1073.

⁶⁵⁸ *Id.* P 224.

⁶⁵⁹ *Id.* PP 39, 299.

separately.⁶⁶⁰ The Commission stated, however, that transmission providers “must use [the seven required benefits] to help to inform their identification of Long-Term Transmission Needs.”⁶⁶¹ The Commission provided an example of how transmission providers can use one of the required benefits (the production cost savings benefit, Benefit 3) to help identify Long-Term Transmission Needs.⁶⁶²

b. Requests for Rehearing and Clarification

220. PJM requests clarification that the Commission did not intend to require transmission providers to use any of the seven benefits outlined in Order No. 1920 to help inform the identification of Long-Term Transmission Needs. If the Commission did intend to require transmission providers to use the set of seven required benefits to help inform the identification of Long-Term Transmission Needs, PJM requests that the Commission grant rehearing, either to eliminate this requirement or to provide transmission providers with flexibility as to this requirement to accommodate regional differences. PJM asserts that Order No. 1920 contains only one discussion of a requirement for transmission providers to use the seven required benefits to help inform their identification of Long-Term Transmission Needs, and, as such, PJM questions whether the Commission intended to impose this requirement.⁶⁶³ PJM further asserts that the Commission offered only one hypothetical example of how one of these seven benefits might help inform the identification of Long-Term Transmission Needs, and PJM argues that the Commission did not provide any evidence, let alone substantial evidence, to demonstrate why transmission providers should be required to use the seven benefits to inform the identification of Long-Term Transmission Needs.⁶⁶⁴ PJM further claims that requiring the use of all seven benefits outlined in Order No. 1920 to help inform the identification of Long-Term Transmission Needs is inconsistent with PJM’s sponsorship

model because, in such a model, transmission developers propose transmission facilities after and in response to identified transmission needs, such that using the benefits of such transmission facilities to identify transmission needs is circular.⁶⁶⁵ PJM also asserts that the NOPR did not provide notice of the requirement that transmission providers use the seven benefits to help inform the identification of Long-Term Transmission Needs, and PJM therefore lacked opportunity to provide comments as to why the requirement is inappropriate for the PJM region.⁶⁶⁶

221. SERTP Sponsors argue that Order No. 1920 defines Long-Term Transmission Needs in a circular fashion by describing them as “transmission needs identified through Long-Term Regional Transmission Planning by, among other things and as discussed in this final rule, running scenarios and considering the enumerated categories of factors,”⁶⁶⁷ but also requiring that the seven required benefits should inform the identification of Long-Term Transmission Needs.⁶⁶⁸ SERTP Sponsors claim that this creates a potential chicken-or-egg conundrum, because Long-Term Transmission Needs are driven by factors and must be identified before the use and measurement of the seven required benefits to evaluate Long-Term Regional Transmission Facilities.⁶⁶⁹

222. PIOs request three clarifications related to the requirement that transmission providers use the seven benefits to help to inform the identification of Long-Term Transmission Needs.⁶⁷⁰ First, PIOs request that the Commission clarify what “help to inform” means in this context, in order to avoid an outcome in which the seven benefits are only considered superficially rather than as meaningful determinants of Long-Term Transmission Needs. Second, PIOs request that the Commission clarify that transmission providers may not identify Long-Term Transmission Needs solely on the basis of one of the Order No. 1000 “silos,” e.g., reliability. PIOs claim that, if a transmission provider were to identify Long-Term Transmission Needs solely based on reliability, for example,

and then use the seven required benefits only to compare potential solutions, the resulting set of needs would be incomplete, and the resulting solutions would be inefficient. Third, PIOs request clarification that the requirement to use the seven required benefits to help identify Long-Term Transmission Needs applies equally to transmission providers that use a competitive bidding process and to those that use a sponsorship model. Regarding the sponsorship model in particular, PIOs also request clarification as to how the Commission envisions the process by which transmission providers could use the seven required benefits to help identify needs, without these needs being so granular that the transmission provider has effectively defined a specific project.⁶⁷¹

c. Commission Determination

223. We agree with certain of the rehearing arguments raised by PJM and SERTP Sponsors and therefore we set aside the requirement for transmission providers to use the set of seven required benefits to help inform their identification of Long-Term Transmission Needs. Specifically, we find that PJM and SERTP Sponsors highlight potential challenges and difficulty transmission providers may have in implementing this requirement. As further explained below, although we find that it is appropriate to set this requirement aside, we clarify and emphasize that the identification of Long-Term Transmission Needs should rely on economic and reliability drivers.

224. In requiring transmission providers to use the set of seven required benefits to help to inform their identification of Long-Term Transmission Needs, the Commission intended in Order No. 1920 to ensure that transmission providers would use their experience evaluating both the reliability and economic benefits of transmission facilities—as reflected in the seven required benefits—and technical expertise assessing the transmission system to identify whether there are reliability issues or opportunities to relieve constraints that could be resolved through Long-Term Regional Transmission Facilities identified through Long-Term Regional Transmission Planning. Upon further consideration, we find that Order No. 1920’s Long-Term Regional Transmission Planning requirements, including the requirements to develop Long-Term Scenarios using the

⁶⁶⁰ *E.g.*, *id.* P 224 (describing these two requirements as separate steps).

⁶⁶¹ *Id.* PP 301, 719; *see id.* P 667 n.1485, P 859 n.1910.

⁶⁶² *Id.* P 301 (“[W]hen transmission providers are working to identify Long-Term Transmission Needs, areas of significant congestion on the transmission system—where Long-Term Regional Transmission Facilities could reduce congestion and in turn facilitate production cost savings—may indicate a Long-Term Transmission Need.”).

⁶⁶³ PJM Rehearing Request at 24–26 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 301).

⁶⁶⁴ *Id.* at 25.

⁶⁶⁵ *Id.* at 25–26.

⁶⁶⁶ *Id.* at 25 n.103.

⁶⁶⁷ SERTP Sponsors Rehearing Request at 11 (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 39).

⁶⁶⁸ *Id.* (citing Order No. 1920, 187 FERC ¶ 61,068 at P 719).

⁶⁶⁹ *Id.*

⁶⁷⁰ PIOs Rehearing Request at 59 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 301, 719).

⁶⁷¹ *Id.* at 59–60.

minimum required Factor Categories,⁶⁷² to use the minimum required transmission planning horizon,⁶⁷³ and to develop Long-Term Scenarios that are plausible and diverse,⁶⁷⁴ taken together, will ensure that transmission providers identify Long-Term Transmission Needs.

225. Thus, we are clarifying here that the categories of factors will help transmission providers identify Long-Term Transmission Needs, consistent with the Commission's statements in Order No. 1920.⁶⁷⁵ Potential Long-Term Regional Transmission Facilities that address Long-Term Transmission Needs, as identified by the Long-Term Scenarios and sensitivities, will then be evaluated for their economic and reliability benefits, which will ensure that Long-Term Regional Transmission Planning leads to transmission solutions that more efficiently or cost-effectively address reliability and economic transmission needs over the appropriate transmission planning horizon.⁶⁷⁶

226. Finally, because we are setting aside the requirement for transmission providers to use the set of seven required benefits to help inform their identification of Long-Term Transmission Needs, we find moot PIOs' request for clarification concerning this requirement.

2. Transmission Planning Horizon

a. Order No. 1920 Requirements

227. In Order No. 1920, the Commission required transmission providers in each transmission planning region to develop Long-Term Scenarios

as part of Long-Term Regional Transmission Planning using no less than a 20-year transmission planning horizon. The Commission defined Long-Term Scenarios as scenarios that incorporate various assumptions using best available data inputs about the future electric power system over a sufficiently long-term, forward-looking transmission planning horizon to identify Long-Term Transmission Needs and enable the identification and evaluation of transmission facilities to meet such transmission needs.⁶⁷⁷ The Commission defined best available data inputs as data inputs that are timely, developed using best practices and diverse and expert perspectives, adopted via a process that satisfies the transmission planning principles of Order Nos. 890 and 1000, and reflect the list of factors that transmission providers account for in their Long-Term Scenarios.⁶⁷⁸

228. The Commission clarified that using a transmission planning horizon of no less than 20 years means that transmission providers must develop Long-Term Scenarios to identify Long-Term Transmission Needs that will materialize in the 20 years or more following the commencement of the Long-Term Regional Transmission Planning cycle.⁶⁷⁹ The Commission explained that requiring a transmission planning horizon of not less than 20 years strikes a balance. On the one hand, the Commission stated, a 20-year transmission planning horizon extends far enough into the future that transmission providers can proactively identify Long-Term Transmission Needs that could be met with more efficient or cost-effective Long-Term Regional Transmission Facilities and allows sufficient time to identify, plan, obtain siting and permitting approval for, and construct more efficient or cost-effective Long-Term Regional Transmission Facilities. On the other hand, the Commission found that there may be sufficient uncertainty regarding system conditions and transmission needs beyond a 20-year transmission planning horizon such that it may be challenging for transmission providers to forecast Long-Term Transmission Needs across that time period.⁶⁸⁰

229. In adopting the minimum 20-year transmission planning horizon requirement in Order No. 1920, the Commission disagreed that a 20-year transmission planning horizon could result in Long-Term Regional

Transmission Planning based on speculative transmission needs. The Commission explained that the Long-Term Regional Transmission Planning requirements adopted in Order No. 1920 are designed to avoid over-building transmission in response to speculative transmission needs through a series of tools and safeguards, which include the requirement that transmission providers reevaluate Long-Term Regional Transmission Facilities in certain circumstances.⁶⁸¹

230. The Commission also disagreed with requests that it adopt a shorter transmission planning horizon, reasoning that a shorter planning horizon would fail to sufficiently capture Long-Term Transmission Needs given that some drivers of such needs extend up to 20 years into the future. The Commission added that a shorter minimum transmission planning horizon might not allow for sufficient time to develop Long-Term Regional Transmission Facilities with long lead-time requirements or to compare alternative transmission solutions to identify more efficient or cost-effective transmission solutions to meet Long-Term Transmission Needs.⁶⁸²

b. Requests for Rehearing and Clarification

231. Alabama Commission, Ohio Commission Federal Advocate, and Dominion seek rehearing of Order No. 1920's requirement that transmission providers in each transmission planning region develop Long-Term Scenarios as part of Long-Term Regional Transmission Planning using no less than a 20-year transmission planning horizon.⁶⁸³

232. Dominion contends that Order No. 1920 is arbitrary and capricious because the Commission failed to address Dominion's concerns regarding the use of a 20-year transmission planning horizon.⁶⁸⁴ Dominion asserts that the Commission failed to address its NOPR comments, which argued that a 20-year transmission planning horizon runs the risk of essentially implementing a "transmission Integrated Resource Plan" that mandates potentially speculative transmission projects. Dominion avers that integrated resource plans are snapshots in time that show potential pathways for meeting future needs and are not

⁶⁷² Order No. 1920, 187 FERC ¶ 61,068 at P 409.

⁶⁷³ *Id.* P 344.

⁶⁷⁴ *Id.* P 414.

⁶⁷⁵ See *id.* P 299 (stating that "the drivers of transmission needs are diverse and include, but are not limited to, evolving reliability concerns, changes in the resource mix, and changes in demand"); *id.* P 300 (stating that "Long-Term Transmission Needs are similar in kind to transmission needs identified through existing regional transmission planning processes established under Order No. 1000," which include both reliability and economic considerations).

⁶⁷⁶ We note that this understanding that potential Long-Term Regional Transmission Facilities that address Long-Term Transmission Needs are evaluated for both reliability and economic benefits is consistent with the Commission's determination in Order No. 1920 that, while transmission providers have significant flexibility to determine a regionally appropriate *ex ante* cost allocation, such cost allocation may not be based on a siloed approach that assumes Long-Term Regional Transmission Planning addresses only reliability or only economic needs. However, as also noted below, transmission providers and Relevant State Entities have broad flexibility to recognize the different types of benefits provided by Long-Term Regional Transmission Facilities and allocate costs in proportion to those benefits. See *infra* General Benefits Requirements Related to Cost Allocation section.

⁶⁷⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 302.

⁶⁷⁸ *Id.* P 633.

⁶⁷⁹ *Id.* P 344.

⁶⁸⁰ *Id.* P 345.

⁶⁸¹ *Id.* P 348.

⁶⁸² *Id.* P 349.

⁶⁸³ Alabama Commission Rehearing Request at 4; Dominion Rehearing Request at 11–14; Ohio Commission Federal Advocate Rehearing Request at 20–21.

⁶⁸⁴ Dominion Rehearing Request at 7, 12–15.

concrete, definitive plans.⁶⁸⁵ Dominion states that in its NOPR comments it explained that predicting the future resource mix is challenging and that numerous planning considerations that apply today could change over the next 20 years, which is why Dominion cautioned against requiring transmission providers to make investment and cost allocation decisions based on speculation 20 years into the future.⁶⁸⁶

233. According to Dominion, its NOPR comments also asserted that a 20-year transmission planning horizon requires using less reliable assumptions, which can lead to stranded or misallocated costs,⁶⁸⁷ especially because cost allocation under Order No. 1920 could occur much earlier than before.⁶⁸⁸ Dominion argues that planning further into the future decreases certainty, likely has diminishing returns, and requires transmission providers to deploy personnel with scarce planning expertise—a highly valuable resource—who could be used more efficiently by planning for likelier scenarios.⁶⁸⁹

234. Further, Dominion argues that because Order No. 1920 would not necessarily permit reevaluation in certain circumstances that could render a transmission project unnecessary—e.g., where changes in technology or load growth obviate the need for a project in a particular location—the reevaluation process is insufficient to address concerns regarding the speculative nature of a 20-year planning horizon.⁶⁹⁰

235. Dominion also argues that the Commission arbitrarily dismissed its requests for flexibility to adopt a timeline that is suited to a particular transmission planning region to reduce the risk of selection of transmission projects that may not actually be needed.⁶⁹¹ Dominion states that, if the Commission must prescribe a minimum transmission planning horizon, it would be more reasonable to continue allowing PJM/Dominion Energy Virginia to use a 15-year forecast horizon, which strikes a balance between long-term needs and avoiding speculative projects, and to continue allowing South Carolina Regional Transmission Planning/Dominion Energy South Carolina to use

a 10-year transmission planning horizon. Such transmission planning horizons, Dominion claims, would be more tailored to the transmission planning regions' needs.⁶⁹²

236. Ohio Commission Federal Advocate also asserts that the Commission acted arbitrarily and capriciously and violated the consumer protection provisions of the FPA by adopting the 20-year transmission planning horizon requirement. Ohio Commission Federal Advocate argues that a 20-year transmission planning horizon puts transmission planners in the “impossible position” of having to predict the resource mix and location of resources 20 years in the future and will lead to inefficient and potentially unnecessary investment decisions.⁶⁹³ In the alternative to seeking rehearing on the 20-year transmission planning horizon requirement, Ohio Commission Federal Advocate requests that the Commission clarify that the 20-year planning horizon should be informational only and should not be relied upon for investment decisions until the future can be better ascertained.⁶⁹⁴ Similarly, Alabama Commission contends that a 20-year transmission planning horizon is likely to produce speculative outputs that lack sufficient basis for actionable planning decisions and that action on these outputs should be determined at the state level to avoid costly transmission facilities that are not actually needed.⁶⁹⁵

i. Commission Determination

237. We sustain the requirement that transmission providers in each transmission planning region develop Long-Term Scenarios as part of Long-Term Regional Transmission Planning using no less than a 20-year transmission planning horizon. The Commission's adoption of a 20-year transmission planning horizon was reasonable and supported by record evidence,⁶⁹⁶ and the Commission did not disregard arguments to the contrary. As the Commission explained in Order No. 1920, a transmission planning horizon of less than 20 years would fail to sufficiently capture Long-Term Transmission Needs given that drivers of such needs can extend up to 20 years into the future, such as state laws that include requirements to be met 15 to 20 years in the future.⁶⁹⁷ In addition, a 20-

year transmission planning horizon allows for more time between when a transmission facility is identified to meet a future transmission need and when the transmission need materializes, allowing for sufficient time to identify, plan, obtain siting and permitting approval for, and construct Long-Term Regional Transmission Facilities.⁶⁹⁸

238. Moreover, we continue to find that a shorter minimum transmission planning horizon may not allow for sufficient time to develop Long-Term Regional Transmission Facilities with long lead-time requirements or to compare alternative transmission solutions to identify more efficient or cost-effective transmission solutions to meet Long-Term Transmission Needs.⁶⁹⁹ We therefore are not convinced by arguments that the Commission should have adopted a minimum transmission planning horizon shorter than 20 years.

239. We disagree with arguments that the minimum 20-year transmission planning horizon could result in the selection of speculative transmission projects or will lead to inefficient and potentially unnecessary investment decisions,⁷⁰⁰ including Dominion's related argument that a 20-year transmission planning horizon runs the risk of “essentially implementing a transmission Integrated Resource Plan [] that mandates investments in potentially speculative transmission projects” or may result in imprecision and could lead to stranded or misallocated costs.⁷⁰¹ As the Commission found in Order No. 1920, the Long-Term Regional Transmission Planning requirements include tools and safeguards designed to avoid overbuilding transmission in response to speculative transmission needs.⁷⁰² These tools and safeguards include: (1) the requirement that transmission providers develop (and periodically update) multiple plausible and diverse Long-Term Scenarios based upon best available data; (2) transmission providers' flexibility to develop evaluation processes, including selection criteria, that will enable them to select Long-Term Regional Transmission Facilities in a way that maximizes benefits accounting for costs

⁶⁸⁵ *Id.* at 13–14 (citing Dominion NOPR Initial Comments at 18–19).

⁶⁸⁶ *Id.* at 14 (citing Dominion NOPR Initial Comments at 20).

⁶⁸⁷ *Id.* (citing Dominion NOPR Initial Comments at 20).

⁶⁸⁸ *Id.*

⁶⁸⁹ *Id.* at 15.

⁶⁹⁰ *Id.* at 16–18.

⁶⁹¹ *Id.* at 15.

⁶⁹² *Id.* at 12–13, 16.

⁶⁹³ Ohio Commission Federal Advocate Rehearing Request at 20–21.

⁶⁹⁴ *Id.* at 21.

⁶⁹⁵ Alabama Commission Rehearing Request at 4.

⁶⁹⁶ See Order No. 1920, 187 FERC ¶ 61,068 at PP 309–318 (describing support for a transmission planning horizon of at least 20 years).

⁶⁹⁷ *Id.* P 349.

⁶⁹⁸ *Id.* P 345; see also *id.* P 312 (describing arguments of commenters whose comments supported a 20-year transmission planning horizon).

⁶⁹⁹ *Id.* P 349.

⁷⁰⁰ Alabama Commission Rehearing Request at 4; Dominion Rehearing Request at 11–15; Ohio Commission Rehearing Request at 20–21.

⁷⁰¹ Dominion Rehearing Request at 13–14.

⁷⁰² Order No. 1920, 187 FERC ¶ 61,068 at P 348.

over time without over-building transmission facilities; and (3) the lack of a selection mandate.⁷⁰³ We continue to find that, by facilitating regional transmission planning that accounts for a range of potential futures, Order No. 1920 ensures that transmission providers will be able to manage uncertainty, which, in turn, mitigates the risk of speculative transmission development.⁷⁰⁴

240. Although Dominion argues that the reevaluation process is insufficient to address concerns that a 20-year transmission planning horizon could lead to the selection of speculative transmission projects,⁷⁰⁵ Dominion does not demonstrate how Order No. 1920's other tools and safeguards beyond the reevaluation requirement are individually or collectively insufficient to prevent over-building transmission in response to speculative transmission needs.⁷⁰⁶ Moreover, robust scenario-planning allows transmission providers to compare the costs and benefits of Long-Term Regional Transmission Facilities under different future conditions, which informs selection and consequently helps to mitigate uncertainty.

241. In addition, as discussed later,⁷⁰⁷ we also clarify that transmission providers must consult with and consider the positions of the Relevant State Entities as to how to account for factors related to states' laws, policies, and regulations in transmission planning assumptions, which will ensure that such factors are effectively accounted for in the development of Long-Term Scenarios. We believe this clarification mitigates Ohio Commission Federal Advocate's concerns that the 20-year transmission planning horizon could result in unnecessary investment.⁷⁰⁸ With this clarification, Order No. 1920 provides transmission providers with the tools and safeguards

that they need to manage uncertainty and mitigate the risk of speculative regional transmission development while preserving the benefits of Long-Term Regional Transmission Planning.

242. For the same reason, we are unpersuaded by Alabama Commission's related argument that action on transmission plans should be determined at the state level to avoid costly transmission facilities that may not be needed. Nonetheless, as further discussed in this order, we clarify Order No. 1920 to require transmission providers to include and consider the perspective of Relevant State Entities in multiple ways, including: (1) to consult with and consider the positions of the Relevant State Entities and any other entity authorized by a Relevant State Entity as its representative as to how to account for factors related to states' laws, policies, and regulations when determining the assumptions that will be used in the development of Long-Term Scenarios; (2) to include any Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process that Relevant State Entities agree to in the transmittal or as an attachment to their compliance filings; (3) to consult with Relevant State Entities (a) prior to amending the *ex ante* Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es) agreed to by Relevant State Entities or (b) if Relevant State Entities seek for a transmission provider to amend the method on file; (4) to develop a reasonable number of additional scenarios, when requested by Relevant State Entities, for the purposes of informing the application of Long-Term Regional Cost Allocation Method(s) or the development of cost allocation methods through the State Agreement Process(es); and (5) to make available, on a password-protected portion of OASIS or other password-protected website, a breakdown of the allocated costs, by zone (*i.e.*, by transmission provider retail distribution service territory/footprint or RTO/ISO transmission pricing zone), and a quantification of the benefits imputed to each zone, as such benefits can be reasonably estimated, when a cost allocation method is agreed upon under a State Agreement Process or, if no State Agreement Process is used, at the time the transmission provider selects the Long-Term Regional Transmission Facility. These additional measures to involve states will resolve Alabama Commission's concern and prevent costly transmission facilities that are not actually needed from being constructed.

243. As to another argument raised by Alabama Commission, which we interpret to argue that Long-Term Regional Transmission Planning should serve only to inform other transmission planning processes, we continue to find that remedying the deficiencies in the Commission's existing regional transmission planning requirements requires that transmission providers adopt the requirements herein, which will allow them to identify and have the opportunity to select more efficient or cost-effective Long-Term Regional Transmission Facilities to meet Long-Term Transmission Needs.⁷⁰⁹

244. We disagree with Dominion's argument that the Commission failed to address commenters' request for flexibility regarding the length of the minimum transmission planning horizon. The Commission has already justified its decision not to adopt a shorter transmission planning horizon, reasoning that a planning horizon of less than 20 years would be insufficient to capture Long-Term Transmission Needs, develop and construct Long-Term Regional Transmission Facilities with long lead-time requirements, and compare alternative transmission solutions to identify more efficient or cost-effective transmission solutions to meet Long-Term Transmission Needs.⁷¹⁰ The Commission explained why providing transmission providers with flexibility to choose a shorter transmission planning horizon would limit transmission providers' ability to adequately plan for Long-Term Transmission Needs and perpetuate the status quo, thus failing to address the deficiencies that the Commission identified in its existing regional transmission planning and cost allocation requirements.⁷¹¹ Moreover, in adopting the 20-year minimum transmission planning horizon, the Commission struck a balance between, on the one hand, providing transmission providers with sufficient time to proactively identify Long-Term Transmission Needs and ultimately construct more efficient or cost-effective Long-Term Regional Transmission Facilities to meet those needs, and, on the other hand, avoiding uncertainty regarding system conditions and

⁷⁰³ *Id.* P 231.

⁷⁰⁴ *Id.* P 229.

⁷⁰⁵ Dominion Rehearing Request at 16–18.

⁷⁰⁶ For example, Order No. 1920 requires transmission providers to develop (and periodically update) multiple plausible and diverse Long-Term Scenarios based upon best available data, provides transmission providers with flexibility to develop evaluation processes, including selection criteria, that will enable them to select Long-Term Regional Transmission Facilities in a way that maximizes benefits accounting for costs over time without over-building transmission facilities, and lacks a selection mandate.

⁷⁰⁷ *Infra* Stakeholder Process and Transparency section.

⁷⁰⁸ We also note that the transparency requirements adopted herein, *see infra* Evaluation and Selection of Long-Term Regional Transmission Facilities, will provide states with additional insight into the efficiency and cost-effectiveness of any Long-Term Regional Transmission Facilities that transmission providers select.

⁷⁰⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 914.

⁷¹⁰ *Id.* P 349.

⁷¹¹ *See, e.g., id.* PP 115–116 (finding that, under the status quo, most transmission planning regions do not plan beyond a 10-year transmission planning horizon, which prevents transmission providers from identifying Long-Term Transmission Needs and considering regional transmission facilities that may be more efficient or cost-effective solutions to address those needs and fails to take advantage of the potential for efficiencies or economies of scale that regional transmission facilities can provide).

transmission needs beyond a 20-year horizon.⁷¹²

245. Finally, we reiterate that, in this order, the Commission clarifies Order No. 1920 to increase the states' involvement in the Long-Term Transmission Planning Process to provide them with a greater role in determining Long-Term Transmission Needs, and ensuring that they are able to provide input into the method used to allocate the costs of Long-Term Regional Transmission Facilities.

246. For these reasons, we reject Dominion's request that the Commission allow PJM/Dominion Energy Virginia to continue to use a 15-year transmission planning horizon and South Carolina Regional Transmission Planning/Dominion Energy South Carolina to continue to use a 10-year transmission planning horizon.⁷¹³ Likewise, for these same reasons, we decline Ohio Commission Federal Advocate's request that the Commission clarify that Long-Term Scenarios resulting from a 20-year transmission planning horizon will be used for informational purposes only.

247. Further, we find unpersuasive Ohio Commission Federal Advocate's allegation that the Commission contravened the consumer-protection requirements of the FPA by adopting a 20-year minimum transmission planning horizon.⁷¹⁴ Ohio Commission Federal Advocate does not state how the 20-year minimum transmission planning horizon contravenes the FPA nor does it specify which requirements of the FPA the Commission allegedly transgressed by adopting the 20-year minimum transmission planning horizon requirement. To the extent that Ohio Commission Federal Advocate is claiming that the 20-year minimum transmission planning horizon requirement will result in unjust and unreasonable rates, as discussed above, we have provided a number of flexibilities to increase the states' involvement in Long-Term Regional Transmission Planning and to ensure that there is a significant degree of transparency in Long-Term Regional Transmission Planning, both of which will ensure that rates are just and reasonable. Recognizing these additional flexibilities, we continue to find the required 20-year minimum transmission planning horizon is integral to the requirement that transmission providers conduct long-term, forward-looking, and more

comprehensive regional transmission planning.⁷¹⁵ The Commission found that such a requirement is necessary to remedy the deficiencies that it identified in its existing regional transmission planning and cost allocation requirements⁷¹⁶ and will help transmission providers to identify, evaluate, and select more efficient or cost-effective transmission solutions to Long-Term Transmission Needs, which will help ensure just and reasonable rates.⁷¹⁷

3. Frequency of Long-Term Scenario Revisions

a. Order No. 1920 Requirements

248. In Order No. 1920, the Commission modified the NOPR proposal and required transmission providers in each transmission planning region to reassess and revise the Long-Term Scenarios that they use in Long-Term Regional Transmission Planning at least once every five years,⁷¹⁸ rather than at least every three years as the NOPR proposed.⁷¹⁹ The Commission explained that, in implementing this requirement, transmission providers in each transmission planning region must reassess whether the data inputs and factors incorporated in previously developed Long-Term Scenarios need to be updated and then revise those Long-Term Scenarios, as needed, to reflect updated data inputs and factors.⁷²⁰ The Commission clarified that a Long-Term Regional Transmission Planning cycle, which begins with the development of Long-Term Scenarios using best available data inputs,⁷²¹ and proceeds to identifying Long-Term Transmission Needs, measuring the benefits of Long-Term Regional Transmission Facilities to address those needs, and evaluating and deciding whether to select Long-Term Regional Transmission Facilities, must conclude no later than five years after the date it began.⁷²² Transmission providers must complete these steps of the Long-Term Regional Transmission Planning cycle, including selection decisions, no later than three years from

the date that the Long-Term Regional Transmission Planning cycle began.⁷²³

249. The Commission stated that nothing in Order No. 1920 prevents transmission providers from evaluating and selecting *additional* Long-Term Regional Transmission Facilities after year three of the Long-Term Regional Transmission Planning cycle and before the next five-year Long-Term Regional Transmission Planning cycle begins.⁷²⁴ However, the Commission explained that, if Long-Term Regional Transmission Facilities are selected at year three of the Long-Term Regional Transmission Planning cycle, those same Long-Term Regional Transmission Facilities cannot be de-selected during the remainder of the current five-year planning cycle.⁷²⁵

250. The Commission found that, while three years provides sufficient time for transmission providers to complete the steps of the Long-Term Regional Transmission Planning cycle,⁷²⁶ requiring the Long-Term Regional Transmission Planning cycle to repeat at three-year intervals could be administratively burdensome and the benefit of updating Long-Term Scenarios every three years may not outweigh those additional burdens.⁷²⁷ Thus, the Commission found that requiring selection decisions to occur within three years of commencing a Long-Term Regional Transmission Planning cycle, while allowing as long as five years between the commencement of each planning cycle, strikes an appropriate balance between various benefits and burdens.⁷²⁸ Order No. 1920 required that transmission providers conclude one Long-Term Regional Transmission Planning cycle before developing Long-Term Scenarios at the beginning of the next Long-Term Regional Transmission Planning cycle.⁷²⁹

251. Order No. 1920 also required transmission providers to designate a point in the evaluation process at which they will decide to either select or not select the relevant Long-Term Regional Transmission Facility (or portfolio of such Facilities) along with a point in time or action that concludes a Long-Term Regional Transmission Planning cycle.⁷³⁰ The Commission further stated that transmission providers may propose on compliance to conduct

⁷¹⁵ See Order No. 1920, 187 FERC ¶ 61,068 at PP 345, 349.

⁷¹⁶ *Id.* P 134.

⁷¹⁷ See *id.* PP 345, 349.

⁷¹⁸ *Id.* P 377.

⁷¹⁹ NOPR, 179 FERC ¶ 61,028 at P 97.

⁷²⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 377.

⁷²¹ At the outset of a Long-Term Regional Transmission Planning cycle, transmission providers may develop the new Long-Term Scenarios either by crafting entirely new Long-Term Scenarios or by updating the data inputs and factors for previously developed Long-Term Scenarios. *Id.*

⁷²² *Id.* P 378.

⁷²³ *Id.* P 379.

⁷²⁴ *Id.* P 379 n.873.

⁷²⁵ *Id.*

⁷²⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 379 (citations omitted).

⁷²⁷ *Id.* (citations omitted).

⁷²⁸ *Id.*

⁷²⁹ *Id.* P 381.

⁷³⁰ *Id.*

⁷¹² *Id.* P 345.

⁷¹³ See Dominion Rehearing Request at 12–13, 16.

⁷¹⁴ See Ohio Commission Federal Advocate Rehearing Request at 20.

Long-Term Regional Transmission Planning more frequently than every five years.⁷³¹

b. Requests for Rehearing and Clarification

252. PIOs request rehearing of the Commission's decision to extend the Long-Term Regional Transmission Planning Cycle from three years to five years. They request that the Commission reduce the Long-Term Regional Transmission Planning cycle to three years.⁷³² PIOs argue that the Commission's decision to extend the Long-Term Regional Transmission Planning cycle from three years, as it proposed in the NOPR, to five years lacked support in the record, was not based on the Commission's findings, and was arbitrary and capricious given the urgency of the problem.⁷³³ PIOs assert that the faster transmission drivers change, the more frequently Long-Term Scenarios should be updated.⁷³⁴ PIOs contend that, in decreasing the frequency of Long-Term Regional Transmission Planning cycles, the Commission disregarded evidence that transmission drivers—*e.g.*, reliability concerns, demand, interconnection request capacity—have changed at an accelerating pace, since the issuance of the NOPR.⁷³⁵

253. PIOs aver that under Order No. 1920, transmission providers complete the entire substance of the planning cycle projects in the first three years, followed by a “fallow period” for up to two years.⁷³⁶ This structure, PIOs argue, fails to alleviate the purported administrative burdens associated with the NOPR's three-year proposal and undermines Order No. 1920's essential purpose of requiring transmission providers to identify and address rapidly-shifting and critical regional transmission needs with urgency.⁷³⁷ PIOs assert that it is illogical for the Commission to claim that transmission providers need two additional years at the end of each cycle to update model inputs in preparation for the next transmission planning cycle when they initially assembled that same information, from scratch, in three years.⁷³⁸

254. In support of their request that the Commission grant rehearing and adopt the NOPR's proposed three-year

transmission planning cycle, PIOs also assert that the structure of the five-year planning structure is unclear. PIOs argue that Order No. 1920 nearly contradicts itself by stating that transmission providers must “determine whether to select Long-Term Regional Transmission Facilities no later than three years” after the cycle begins and then adding that “nothing in this final rule prevents transmission providers from evaluating and selecting additional Long-Term Regional Transmission Facilities after year three” of the cycle and before the next cycle begins.⁷³⁹ PIOs argue that, while these and similar statements are facially irreconcilable, they could be harmonized under a reading that would allow transmission providers to make final selection decisions on any Long-Term Regional Transmission Facilities up until the end of the five-year transmission planning cycle as long as they make a selection decision on at least one Long-Term Regional Transmission Facility before the end of year three.⁷⁴⁰ According to PIOs, however, such a structure would undermine stakeholder concerns about changes to the planning process that occur mid-stream that would require re-running an analysis and would encourage transmission providers to make decisions when stakeholders are no longer at the table.⁷⁴¹ PIOs request that the Commission grant rehearing and adopt the NOPR's widely supported three-year transmission planning cycle.⁷⁴²

255. SERTP Sponsors request clarification as to what Order No. 1920 requires with respect to the inclusion of previously selected Long-Term Regional Transmission Facilities in updated base or reference cases that transmission providers use in the subsequent Long-Term Regional Transmission Planning cycle. SERTP Sponsors claim that Order No. 1920 may be inconsistent on this question because one section of the rule appears to require transmission providers to include such facilities in these updated base or reference cases while another section of the rule appears to provide flexibility on this issue.⁷⁴³

c. Commission Determination

256. We sustain the requirement that transmission providers in each transmission planning region reassess and revise the Long-Term Scenarios that they use in Long-Term Regional Transmission Planning at least once every five years.⁷⁴⁴ We disagree with PIOs that the decision to extend the Long-Term Regional Transmission Planning cycle from three years to five years lacked support in the record, was not based on the Commission's findings, and was arbitrary and capricious.

257. First, we are not persuaded by PIOs' argument that, by extending the Long-Term Regional Transmission Planning cycle, the Commission acted inconsistently with its findings in Order No. 1920 that transmission needs are changing at an increasingly rapid pace.⁷⁴⁵ In Order No. 1920, the Commission addressed the pace at which transmission drivers are changing, finding that transmission providers must reassess and revise their Long-Term Scenarios at least once every five years to ensure that the Long-Term Scenarios accurately reflect factors that may change over the five-year time span, such as changes in technology, load forecasts, or federal, federally-recognized Tribal, state, or local laws.⁷⁴⁶ While transmission needs, and the factors driving those needs, are indeed changing rapidly, PIOs provide insufficient and unconvincing support for their argument that a five-year Long-Term Regional Transmission Planning cycle is incapable of accounting for that pace of change. Further, we underscore that Order No. 1920 provides transmission providers with flexibility to address evolving transmission needs. For instance, nothing in Order No. 1920 prohibits transmission providers from updating the assumptions, inputs, and factors, used to inform Long-Term Scenarios during a Long-Term Regional Transmission Planning cycle,⁷⁴⁷ and, to the extent that transmission providers believe that a shorter Long-Term Regional Transmission Planning cycle is necessary to account for the pace of change, they may propose on compliance to conduct Long-Term

⁷⁴⁴ See Order No. 1920, 187 FERC ¶ 61,068 at P 377.

⁷⁴⁵ PIOs Rehearing Request at 9–11.

⁷⁴⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 380.

⁷⁴⁷ See *id.* PP 380–381. We also note that, consistent with Order No. 890's transparency transmission planning principle, Order No. 1920 requires transmission providers in each transmission planning region to publicly disclose (subject to any applicable confidentiality protections) information and data inputs that they use to create each Long-Term Scenario. See *id.* P 560 (citing Order No. 890, 118 FERC ¶ 61,119 at P 471).

⁷³⁹ *Id.* at 13 (quoting Order No. 1920, 187 FERC ¶ 61,068 at PP 379, 381).

⁷⁴⁰ *Id.* at 14.

⁷⁴¹ *Id.* at 13–14.

⁷⁴² *Id.* at 15. PIOs also argue that, for the small minority of entities that need more initial flexibility beyond the one-year period entities already have to file compliance filings, the Commission could allow for case-by-case extensions. *Id.*

⁷⁴³ SERTP Sponsors Rehearing Request at 26–27 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 382, 1031).

⁷³¹ *Id.* P 384.

⁷³² PIOs Rehearing Request at 9–15.

⁷³³ *Id.* at 6 (citations omitted).

⁷³⁴ *Id.* at 10–11.

⁷³⁵ *Id.* at 9–11 (citations omitted).

⁷³⁶ *Id.* at 11 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 378–379).

⁷³⁷ *Id.* at 12.

⁷³⁸ *Id.* at 12–13.

Regional Transmission Planning more frequently than every five years.⁷⁴⁸

258. Second, the Commission's decision to require that Long-Term Regional Transmission Planning cycles occur at least every five years was guided by comments in the record urging the Commission to address competing priorities, including: (1) ensuring timely identification, evaluation, and selection of more efficient or cost-effective Long-Term Regional Transmission Facilities; (2) providing transmission providers with sufficient flexibility to address regional differences; and (3) limiting the administrative burdens placed on transmission providers.⁷⁴⁹ Order No. 1920's requirement that transmission providers reassess and revise the Long-Term Scenarios that they use in Long-Term Regional Transmission Planning at least once every five years strikes a reasonable balance between those priorities. Further, we disagree with PIOs' assertion that extending the Long-Term Regional Transmission Planning cycle from three years to five years does not ease administrative burdens or improve planning accuracy.⁷⁵⁰ In Order No. 1920, the Commission decreased the frequency at which Long-Term Regional Transmission Planning cycles must occur, meaning that transmission providers have the option to develop fewer Long-Term Scenarios over a five-year period than they would have been required to develop under the NOPR proposal, thus decreasing the administrative burden associated with updating the Long-Term Scenarios that form the basis for Long-Term Regional Planning during each planning cycle.

259. Third, we are not persuaded by PIOs' argument that the structure of the Long-Term Regional Transmission Planning cycle is unclear or that its implementation will exclude meaningful stakeholder participation.⁷⁵¹ Order No. 1920 requires transmission providers to complete the steps of the Long-Term Regional Transmission Planning cycle and make selection decisions no later than three years from the date when the Long-Term Regional Transmission Planning cycle began.⁷⁵² To the extent that transmission providers decide to evaluate additional Long-Term Regional Transmission Facilities after year three but before the next Long-Term Regional Transmission Planning cycle begins, Order No. 1920

gives them the flexibility to do so.⁷⁵³ One possible outcome of this structure is that transmission providers may make selection decisions on additional Long-Term Regional Transmission Facilities until the end of the five-year Long-Term Regional Transmission Planning cycle. But we disagree with PIOs' contention that Order No. 1920 could be read to allow transmission providers to make "final" selection decisions on "any" Long-Term Regional Transmission Facilities until the five-year Long-Term Regional Transmission Planning cycle's end so long as they make a selection decision on at least one Long-Term Regional Transmission Facility before the end of year three.⁷⁵⁴

260. Order No. 1920 requires that transmission providers complete their evaluation and selection processes in the first three years of a Long-Term Regional Transmission Planning cycle, including identifying Long-Term Regional Transmission Facilities that address the Long-Term Transmission Needs that transmission providers identified, estimating the costs and measuring the benefits of those facilities, and making a selection decision on those facilities, including a determination that is sufficiently detailed for stakeholders to understand why particular facilities or portfolios of facilities were selected or not selected.⁷⁵⁵ After transmission providers have completed these steps, no later than three years after the beginning of the Long-Term Regional Transmission Planning cycle, transmission providers may select "additional" Long-Term Regional Transmission Facilities, but they may not deselect any Long-Term Regional Transmission Facilities selected earlier in that Long-Term Regional Transmission Planning cycle.⁷⁵⁶

261. We therefore disagree with PIOs' argument that the five-year structure of the Long-Term Regional Transmission Planning cycle would encourage transmission providers to make planning decisions when stakeholders are "no longer at the table."⁷⁵⁷ Such arguments are predicated on a misunderstanding of what Order No. 1920 requires. We emphasize that any Long-Term Regional Transmission Facilities selected after year three of the Long-Term Regional Transmission Planning cycle are selected in the Long-Term Regional Transmission Planning

process. Thus, contrary to PIOs' suggestion, the requirements for selecting Long-Term Regional Facilities apply, including the transparency requirements adopted in Order No. 1920, should transmission providers choose to evaluate and select additional Long-Term Regional Transmission Facilities after year three of the Long-Term Regional Transmission Planning cycle.⁷⁵⁸

262. Finally, we provide clarification to SERTP Sponsors as to the inclusion of previously selected Long-Term Regional Transmission Facilities in the updated base or reference cases that transmission providers will use in subsequent Long-Term Regional Transmission Planning cycles. In most circumstances, we expect that transmission providers will include previously selected Long-Term Regional Transmission Facilities, including those that are not yet in service, in these updated planning models, and we continue to find that doing so will improve the accuracy of Long-Term Regional Transmission Planning.⁷⁵⁹ We expect that if transmission providers conclude that previously-selected Long-Term Regional Transmission Facilities are not appropriate to use in a base case, they would provide an explanation to stakeholders who may be relying on the base case in future transmission planning or generator interconnection studies as to why these facilities are not included. Nevertheless, we clarify that Order No. 1920 does not *require* that transmission providers include previously selected Long-Term Regional Transmission Facilities in the planning models that they use in a subsequent Long-Term Regional Transmission Planning cycle, and we continue to find that it is appropriate to provide flexibility to transmission providers on how they update their planning models.⁷⁶⁰

4. Categories of Factors

a. Requirement To Incorporate Categories of Factors

i. Order No. 1920 Requirements

263. In Order No. 1920, the Commission required transmission providers in each transmission planning region to incorporate in the development of Long-Term Scenarios seven specific categories of factors: (1) federal, federally-recognized Tribal, state, and local laws and regulations affecting the resource mix and demand;

⁷⁴⁸ See *id.* P 384.

⁷⁴⁹ See *id.* P 379.

⁷⁵⁰ PIOs Rehearing Request at 12–13.

⁷⁵¹ *Id.* at 13–15.

⁷⁵² Order No. 1920, 187 FERC ¶ 61,068 at PP 379, 955.

⁷⁵³ *Id.* P 379 n.873.

⁷⁵⁴ PIOs Rehearing Request at 14.

⁷⁵⁵ See Order No. 1920, 187 FERC ¶ 61,068 at P 955.

⁷⁵⁶ *Id.* P 379 n.873.

⁷⁵⁷ PIOs Rehearing Request at 14.

⁷⁵⁸ See Order No. 1920, 187 FERC ¶ 61,068 at P 954.

⁷⁵⁹ See *id.* P 382.

⁷⁶⁰ See *id.* P 1031.

(2) federal, federally-recognized Tribal, state, and local laws and regulations on decarbonization and electrification; (3) state-approved integrated resource plans and expected supply obligations for load-serving entities; (4) trends in fuel costs and in the cost, performance, and availability of generation, electric storage resources, and building and transportation electrification technologies; (5) resource retirements; (6) generator interconnection requests and withdrawals; and (7) utility and corporate commitments and federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs.⁷⁶¹ The Commission found that incorporating these categories of factors in the development of Long-Term Scenarios is necessary because these categories are essential to identifying Long-Term Transmission Needs, and that incorporating them will ensure that transmission providers are accounting for known and identifiable drivers of Long-Term Transmission Needs.⁷⁶² The Commission stated that transmission providers may not exclude any of the proposed categories of factors from the development of Long-Term Scenarios because each category of factors includes important drivers of Long-Term Transmission Needs, and that not incorporating all of the categories of factors will increase the likelihood that transmission providers will continue to underestimate or omit certain drivers of Long-Term Transmission Needs.⁷⁶³

264. The Commission explained that incorporating a category of factors in the development of Long-Term Scenarios requires transmission providers to use factors in the category, for each factor individually or collectively, to determine the assumptions that will be used in the development of Long-Term Scenarios.⁷⁶⁴ The Commission stated that it expects that similar factors (or groups of factors) affecting a single assumption used in the development of Long-Term Scenarios will have an additive effect on that assumption.⁷⁶⁵ Further, transmission providers must incorporate the categories of factors in the development of Long-Term Scenarios in a way that results in plausible and diverse Long-Term Scenarios.⁷⁶⁶

265. With respect to factors within each category of factors, Order No. 1920 requires that transmission providers

account for the factors that they have determined are likely to affect Long-Term Transmission Needs. Order No. 1920 further requires transmission providers, in coordination with stakeholders through an open and transparent process, to determine how each of those factors (or group of similar factors) is likely to affect Long-Term Transmission Needs. Transmission providers must then account for the factors that they have determined are likely to affect Long-Term Transmission Needs in the development of Long-Term Scenarios but need not account for a factor that they determine is unlikely to affect Long-Term Transmission Needs.⁷⁶⁷

266. The Commission stated that requiring transmission providers to incorporate the seven categories of factors into the development of Long-Term Scenarios strikes the right balance between prescriptive requirements and flexibility.⁷⁶⁸ The Commission also stated that the final rule does not direct the development of specific transmission facilities because transmission providers retain discretion to determine how specific factors will affect Long-Term Transmission Needs.⁷⁶⁹

ii. Requests for Rehearing and Clarification

267. Arizona Commission argues that Order No. 1920's requirement that transmission providers use a specific set of "planning criteria," *i.e.*, that transmission providers incorporate seven categories of factors in Long-Term Scenarios, is "simply a way of 'pre-cooking' outcomes."⁷⁷⁰ Arizona Commission argues that this is inconsistent with the NOPR, which required transmission providers to implement a process, not achieve specific outcomes.⁷⁷¹

268. SERTP Sponsors request that the Commission clarify or, in the alternative, grant rehearing to specify that Order No. 1920 does not require each factor to have an additive effect on a common assumption because, in their view, such a requirement would be arbitrary and capricious and not supported by substantial evidence.⁷⁷² SERTP Sponsors assert that requiring each factor to have an additive effect would undermine transmission

providers' discretion over how to account for different factors.⁷⁷³

269. Further, SERTP Sponsors argue that the record does not demonstrate that each individual factor will have an additive effect, and a finding to this effect risks overstating the effect of each factor, which would render the resulting scenarios implausible and more likely to misidentify Long-Term Transmission Needs and Facilities.⁷⁷⁴

270. Designated Retail Regulators and Undersigned States request that the Commission grant rehearing on the grounds that the Order No. 1920 requirement to use the seven categories of factors in Long Term Regional Transmission Planning will overvalue transmission benefits and will result in unjust, unreasonable, and unduly discriminatory rates.⁷⁷⁵ Designated Retail Regulators and Undersigned States argue that transmission planning assumptions should reflect regional differences, and that requiring transmission providers to develop Long-Term Scenarios that incorporate Order No. 1920's seven categories of factors will result in unjust and unreasonable rates because the categories of factors overlap and may result in double counting.⁷⁷⁶ Designated Retail Regulators and Undersigned States also assert that there is insufficient evidence and analysis to conclude that use of the factors will result in cost-effective solutions.⁷⁷⁷

iii. Commission Determination

271. Regarding Arizona Commission's argument that Order No. 1920's requirement that transmission providers incorporate seven categories of factors into their development of Long-Term Scenarios predetermines outcomes in Long-Term Regional Transmission Planning, we reiterate that, in Order No. 1920, as clarified herein, the Commission gives transmission providers the tools necessary to respond to changing factors that drive Long-Term Transmission Needs.⁷⁷⁸ As discussed below in further detail,⁷⁷⁹ transmission providers must consult with and consider the positions of the Relevant State Entities and any other

⁷⁷³ *Id.* at 13.

⁷⁷⁴ *Id.*

⁷⁷⁵ Designated Retail Regulators Rehearing Request at 8, 26; Undersigned States Rehearing Request at 8, 26.

⁷⁷⁶ Designated Retail Regulators Rehearing Request at 8, 26–29; Undersigned States Rehearing Request at 8, 26–29.

⁷⁷⁷ Designated Retail Regulators Rehearing Request at 8; Undersigned States Rehearing Request at 8.

⁷⁷⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 233.

⁷⁷⁹ *Infra* Stakeholder Process and Transparency section.

⁷⁶¹ *Id.* P 409.

⁷⁶² *Id.* P 410.

⁷⁶³ *Id.* P 411.

⁷⁶⁴ *Id.* P 413.

⁷⁶⁵ *Id.*

⁷⁶⁶ *Id.* P 414.

⁷⁶⁷ *Id.* P 415.

⁷⁶⁸ *Id.* P 417.

⁷⁶⁹ *Id.* P 419.

⁷⁷⁰ Arizona Commission Rehearing Request at 18.

⁷⁷¹ *Id.*

⁷⁷² SERTP Sponsors Rehearing Request at 12–13.

entity authorized by a Relevant State Entity as its representative as to how to account for factors related to states' laws, policies, and regulations when determining the assumptions that will be used in the development of Long-Term Scenarios. The Commission also explained in both the NOPR and in Order No. 1920 that it is not requiring that transmission providers achieve any particular outcome via Long-Term Regional Transmission Planning,⁷⁸⁰ and Order No. 1920 does not mandate selection of any Long-Term Regional Transmission Facilities.⁷⁸¹

272. In response to SERTP Sponsors' request for clarification, we clarify that Order No. 1920 does not require transmission providers, when determining the assumptions that they will use when developing Long-Term Scenarios where similar factors (or groups of factors) affect a single assumption, to assume that the factors have additive effects on the relevant assumptions. The Commission stated in Order No. 1920 that it expected that similar factors (or groups of factors) affecting a single assumption used in the development of Long-Term Scenarios will have an additive effect on that assumption,⁷⁸² but we agree with SERTP Sponsors that this may not always be the case, and at times, similar factors may not have an additive effect on assumptions used to develop Long-Term Scenarios. We also acknowledge that factors in different categories of factors may overlap.⁷⁸³

273. We clarify that, where factors may have overlapping effects on the planning assumptions, transmission providers must avoid double counting the effect that those factors have on assumptions used to develop Long-Term Scenarios. Specifically, where there is overlap between factors in Factor Categories One through Three and factors in Factor Categories Four through Seven, or a factor could arguably be considered in a Factor Category in the first three categories or

the last four categories, transmission providers must incorporate that factor in the appropriate Factor Category in the first three categories.⁷⁸⁴ Because Relevant State Entities and their designated representatives will participate in developing Long-Term Scenarios by informing how transmission providers account for the impact of individual factors, we believe that Relevant State Entities, working in concert with transmission providers, will be able to identify and minimize instances where factors overlap. Further, to the extent that factors in Factor Categories One through Three have overlapping effects on planning assumptions, transmission providers must ensure that each Long-Term Scenario accounts for the factors in Factor Categories One through Three without double counting their effects on planning assumptions. Finally, although we agree with SERTP Sponsors that similar factors will not always have an additive effect on assumptions used to develop Long-Term Scenarios, where similar factors do not overlap, we clarify our expectation that similar factors (or groups of factors) affecting certain assumptions used in the development of Long-Term Scenarios will have a combined effect on those assumptions accordingly.

274. In response to SERTP Sponsors' argument that the requirements in Order No. 1920 risk overstating the effect of each factor, which would render the resulting scenarios implausible and more likely to misidentify Long-Term Transmission Needs, we explain that Order No. 1920 addresses this issue by allowing transmission providers to exercise discretion in how they account for each factor, provided that each Long-Term Scenario account for and be consistent with factors in the first three categories of factors.⁷⁸⁵ As the Commission noted in Order No. 1920, incorporating a category of factors into the development of Long-Term Scenarios does not require exacting precision; transmission providers may generalize how all of the discrete factors in a category of factors will, in the aggregate, affect the development of

Long-Term Scenarios.⁷⁸⁶ In addition, the Commission held in Order No. 1920 that transmission providers have the discretion to determine whether specific factors must be accounted for within each category, how to account for specific factors in the development of Long-Term Scenarios, and how to vary the treatment of each category of factors across Long-Term Scenarios, provided that transmission providers assume that the laws, regulations, state-approved integrated resource plans, and expected supply obligations for load-serving entities that transmission providers have determined are likely to affect Long-Term Transmission Needs are fully met.⁷⁸⁷ Finally, we believe that the clarification discussed below will mitigate SERTP Sponsors' concern by ensuring that the effects of factors used to develop Long-Term Scenarios are not overstated.

275. More specifically, Order No. 1920 states that transmission providers must give states and stakeholders a meaningful opportunity to provide timely input on how and what information to incorporate in Long-Term Scenarios, including how specific factors may affect Long-Term Transmission Needs.⁷⁸⁸ We clarify below that, when incorporating planning for states' laws, policies, and regulations' into the development of Long-Term Scenarios, transmission providers must consult with and consider the positions of the Relevant State Entities and their designated representatives as to how those requirements will be realized.⁷⁸⁹ If, for example, states have laws regarding the future resource mix or decarbonization targets, the assumptions for how the power industry would need to evolve to meet those legal requirements should be developed in close consultation with the Relevant State Entities. We clarify that, for a state that has required integrated resource planning processes, transmission providers should include one of the state's preferred power system trajectories, including both the supply and demand side resource trajectory as appropriate, in each Long-Term Scenario, or include different state-preferred power system trajectories in different Long-Term Scenarios.

276. While we disagree with the rehearing arguments of Designated Retail Regulators and Undersigned States that the Order No. 1920 requirement to use the seven categories

⁷⁸⁰ See, e.g., NOPR, 179 FERC ¶ 61,028 at PP 9, 245; Order No. 1920, 187 FERC ¶ 61,068 at PP 232, 266.

⁷⁸¹ Order No. 1920, 187 FERC ¶ 61,068 at PP 1026–1027.

⁷⁸² *Id.* P 413.

⁷⁸³ *Id.* P 440 (“We acknowledge that there could be overlap between Factor Categories One and Two because a certain law or regulation could reasonably be considered to fit into both categories. In such a circumstance, transmission providers must account for the law or regulation in one of the two categories, not both, to avoid double-counting of that factor's anticipated effect on Long-Term Transmission Needs.”). As another example, a utility commitment in Factor Category Seven would overlap with an integrated resource plan if the utility commitment was incorporated in the development of the integrated resource plan.

⁷⁸⁴ For example, if a transmission provider determines that a factor will affect Long-Term Transmission Needs, but the factor could arguably be incorporated in Factor Category Three or Factor Category Seven, the transmission provider must incorporate this factor in Factor Category Three.

⁷⁸⁵ It is unclear whether SERTP Sponsors intended to argue that failure to grant clarification in this respect would result in Order No. 1920 exceeding the Commission's authority; to the extent they intended to do so, we find this argument has not been raised with the specificity required on rehearing. See *supra* Major Questions Doctrine section.

⁷⁸⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 413.

⁷⁸⁷ *Id.* P 417.

⁷⁸⁸ *Id.* P 528.

⁷⁸⁹ *Infra* Stakeholder Process and Transparency section.

of factors in Long Term Regional Transmission Planning will result in overvaluing transmission benefits, we believe that the clarifications discussed herein will alleviate the concerns underlying their rehearing arguments. As an initial matter, we find arguments that the categories of factors overlap to be moot because, as clarified above, transmission providers should avoid double counting the effects of overlapping factors when developing Long-Term Scenarios. While these rehearing parties are correct that Order No. 1920 requires transmission providers to incorporate seven categories of factors, transmission providers retain specific discretion with respect to how they account for each individual factor within a category to develop the required Long-Term Scenarios.⁷⁹⁰ Further, as discussed below,⁷⁹¹ we clarify that transmission providers must consult with and consider the positions of the Relevant State Entities and any other entity authorized by a Relevant State Entity as its representative as to how to account for factors related to states' laws, policies, and regulations when determining the assumptions that will be used in the development of Long-Term Scenarios, which will ensure that states have input into these factors and that these factors are not over or undervalued. We further note the Commission's finding in Order No. 1920 that transmission providers have discretion to reflect regional differences in the development of Long-Term Scenarios.⁷⁹²

277. We disagree with Designated Retail Regulators and with Undersigned States that Order No. 1920 provides insufficient evidence and analysis to conclude that use of the factors will result in cost-effective solutions. As discussed above and below, we, in this order, adopt a number of clarifications to ensure that states are consulted regarding the use of factors to develop Long-Term Scenarios, which, in turn,

affect which Long-Term Regional Transmission Facilities are selected. We also emphasize that the states have a significant role in working to create a cost allocation method that ensures any solutions that are selected have costs allocated appropriately to beneficiaries. Because of this involvement, we find that the potential risk of the categories of factors leading to solutions that are not cost-effective is diminished, particularly in light of the requirement that selection criteria used in Long-Term Regional Transmission Planning must seek to maximize benefits accounting for costs over time without over-building transmission facilities.⁷⁹³ Finally, we add that Order No. 1920 included substantial evidence in the record to demonstrate that existing transmission planning and cost allocation processes were insufficient to ensure just and reasonable rates by inadequately accounting on a forward-looking basis for known determinants of Long-Term Transmission Needs.⁷⁹⁴

b. Specific Categories of Factors and the Treatment of Factors in the Development of Long-Term Scenarios

i. Order No. 1920 Requirements

278. As stated above, in Order No. 1920, the Commission found that incorporating the seven categories of factors in the development of Long-Term Scenarios was necessary. The Commission stated that transmission providers may not exclude any of the categories of factors from being incorporated into the development of Long-Term Scenarios because each category includes important determinants of Long-Term Transmission Needs, and failing to incorporate all of the proposed categories of factors into Long-Term Scenarios would increase the likelihood that transmission providers would continue to underestimate or omit known determinants of Long-Term Transmission Needs.⁷⁹⁵ The Commission considered category-specific record evidence in support of its determination to adopt each of the seven categories of factors.⁷⁹⁶ The Commission declined to adopt additional categories of factors proposed by commenters because of a lack of substantial record evidence, or a finding that the commenter-proposed category of factors is already accounted for in

other parts of Long-Term Regional Transmission Planning.⁷⁹⁷

279. The Commission in Order No. 1920 also required transmission providers in each transmission planning region to assume that legally binding obligations (*i.e.*, federal, federally-recognized Tribal, state, and local laws and regulations) are followed, state-approved integrated resource plans are followed, and expected supply obligations for load-serving entities are fully met.⁷⁹⁸ The Commission therefore required each Long-Term Scenario to account for and be consistent with, and not discount, factors in the first three categories of factors (*i.e.*, (1) federal, federally-recognized Tribal, state, and local laws and regulations affecting the resource mix and demand; (2) federal, federally-recognized Tribal, state, and local laws and regulations on decarbonization and electrification; and (3) state-approved integrated resource plans and expected supply obligations for load-serving entities) once transmission providers have determined that such a factor is likely to affect Long-Term Transmission Needs. The Commission found that it is necessary to prohibit the discounting of factors in the first three categories of factors because they are more certain drivers of Long-Term Transmission Needs, relative to factors in other Factor Categories.⁷⁹⁹ Where two legally binding factors have conflicting or opposite implications for Long-Term Transmission Needs, however, transmission providers must reconcile this information while giving full effect to the maximum extent possible to all legally binding factors.⁸⁰⁰

280. The Commission allowed transmission providers to rely on the open and transparent stakeholder process discussed below to identify the factors in the first three required categories of factors. Transmission providers may independently identify factors in the first three categories of factors, but Order No. 1920 does not obligate transmission providers to do so.⁸⁰¹ Transmission providers retain the discretion to determine whether and how particular factors, including those in the first three categories of factors, are likely to affect Long-Term Transmission Needs.⁸⁰² Further, the Commission stated in Order No. 1920 that it expects that transmission providers will rely, at least in part, on information that relevant federal, state, and local

⁷⁹⁰ See, *e.g.*, Order No. 1920, 187 FERC ¶ 61,068 at P 412 (allowing transmission providers to propose to use additional categories of factors); *id.* P 413 (clarifying that incorporating categories of factors does not require exacting precision and allowing transmission providers to generalize how factors within the categories will, in the aggregate, affect the development of Long-Term Scenarios); *id.* P 415 (allowing transmission providers to determine whether specific factors will affect Long-Term Transmission Needs and allowing transmission providers not to account for specific factors that they determine do not affect such needs); *id.* P 417 (allowing transmission providers to determine how to account for specific factors within different Long-Term Scenarios).

⁷⁹¹ *Infra* Stakeholder Process and Transparency section.

⁷⁹² Order No. 1920, 187 FERC ¶ 61,068 at P 417.

⁷⁹³ *Id.* P 964.

⁷⁹⁴ *Id.* PP 112–133.

⁷⁹⁵ *Id.* P 411.

⁷⁹⁶ Order No. 1920, 187 FERC ¶ 61,068 at PP 448–449, 457–458, 464–466, 472–473, 481–484.

⁷⁹⁷ *Id.* PP 492–494.

⁷⁹⁸ *Id.* P 507.

⁷⁹⁹ *Id.*

⁸⁰⁰ *Id.* P 515.

⁸⁰¹ *Id.* P 508.

⁸⁰² *Id.* PP 510, 512.

government entities, federally-recognized Tribes, utilities, and load-serving entities provide during the required open and transparent stakeholder process to determine if specific factors are likely to affect Long-Term Transmission Needs and how to account for those specific factors in Long-Term Scenarios.⁸⁰³

281. The Commission provided transmission providers with additional discretion in how they account for each factor in Factor Categories Four through Seven (*i.e.*, (4) trends in fuel costs and in the cost, performance, and availability of generation, electric storage resources, and building and transportation electrification technologies; (5) resource retirements; (6) generator interconnection requests and withdrawals; and (7) utility and corporate commitments and federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs) compared to how they account for each factor in the first three categories. For purposes of developing plausible and diverse Long-Term Scenarios, Order No. 1920 requires transmission providers, after they have determined that a specific factor in Factor Categories Four through Seven is likely to affect Long-Term Transmission Needs over the transmission planning horizon, to assess the extent to which the anticipated effects on Long-Term Transmission Needs due to that factor are likely to be realized in part, in full, or exceeded.⁸⁰⁴ Transmission providers may choose to discount or to put more weight on the effects of factors in Factor Categories Four through Seven on Long-Term Transmission Needs, but only to the extent that each Long-Term Scenario remains plausible.⁸⁰⁵

282. The Commission disagreed with concerns that the additional flexibility afforded to transmission providers in how they account for each factor in Factor Categories Four through Seven could allow transmission providers to ignore these categories of factors. The Commission explained that Order No. 1920 requires transmission providers to incorporate all categories of factors in each Long-Term Scenario, even if they discount specific factors within the category, and requires all Long-Term Scenarios to be plausible.⁸⁰⁶

283. Further, the Commission explained that, because Order No. 1920 requires that all Long-Term Scenarios be consistent with and fully account for

factors in Factor Category Three, which includes state-approved integrated resource plans and expected supply obligations of load-serving entities, the final rule does not ignore the Commission's fundamental responsibility under FPA section 217 to facilitate planning to meet the needs of load-serving entities.⁸⁰⁷

ii. Requests To Omit One or More Specific Categories of Factors

(a) Requests for Rehearing and Clarification

284. Designated Retail Regulators and Undersigned States request that the Commission grant rehearing on the grounds that Order No. 1920 requires transmission providers to consider several factors in Long-Term Regional Transmission Planning, and including these factors will result in rates that are unjust and unreasonable.⁸⁰⁸ Arizona Commission avers that through Order No. 1920, the Commission is promoting certain preferred "green" energy generation resources by requiring transmission providers to incorporate seven categories of factors.⁸⁰⁹ Arizona Commission states that these factors have political and policy considerations that do not belong in Arizona where the legislature has not mandated such costs, planning, or experimentation to the detriment of ratepayers.⁸¹⁰

285. Designated Retail Regulators and Undersigned States both argue that Order No. 1920 usurps the role of the states in transmission planning by requiring that the plans and goals of some states, tribes, local governments, and private companies override the plans and goals of other entities while also forcing these entities to bear the cost burden.⁸¹¹ Designated Retail Regulators and Undersigned States assert that Factor Categories One, Two, Four, Six, and Seven unjustly involve the policy goals of state and local governments and the commitments of utilities, and thus impose construction costs upon ratepaying loads without sufficient and measurable benefits.⁸¹² Designated Retail Regulators and Undersigned States both state that there is insufficient evidence and analysis to

support that use of these factors will result in cost-effective solutions.⁸¹³

286. Ohio Commission Federal Advocate requests that the Commission grant rehearing on the grounds that the Commission acted arbitrarily and capriciously and abused its discretion because Order No. 1920 requires transmission providers to incorporate unreasonable categories of factors in the development of Long-Term Scenarios.⁸¹⁴ Specifically, Ohio Commission Federal Advocate is concerned that several factors would encourage a massive transmission build-out at unjust and unreasonable rates and requests that the Commission grant rehearing to remove Factor Categories One, Two, Six, and Seven as these factors are highly speculative and subject to change.⁸¹⁵ Ohio Commission Federal Advocate asserts that the Commission has not engaged in reasoned decision making by asserting that a best-available-data requirement will ensure these factors are incorporated in a meaningful way because even the best available data for a corporate commitment still amounts to nothing more than a corporate commitment.⁸¹⁶ Ohio Commission Federal Advocate claims that the Commission's attempt to mitigate the flaws of requiring transmission providers to incorporate factors in Factor Categories Four through Seven by allowing transmission providers to discount or give special weight to these factors is arbitrary and capricious. Further, Ohio Commission Federal Advocate asserts that Factor Categories Three, Four, and Five may be problematic if transmission projects are chosen to satisfy state or federal policies and, due to the other provisions of Order No. 1920, may not be properly cost allocated.⁸¹⁷

287. Several petitioners request that the Commission grant rehearing on the grounds that the Order No. 1920 requirement to include Factor Category Seven (utility and corporate commitments and federal, federally-recognized Tribal, state, and local policy goals that affect long-term transmission needs) should be excluded from the development of Long-Term Scenarios.⁸¹⁸

⁸⁰⁷ *Id.* P 420.

⁸⁰⁸ Designated Retail Regulators Rehearing Request at 7; Undersigned States Rehearing Request at 7.

⁸⁰⁹ Arizona Commission Rehearing Request at 15.

⁸¹⁰ *Id.* at 22.

⁸¹¹ Designated Retail Regulators Rehearing Request at 8; Undersigned States Rehearing Request at 7–8.

⁸¹² Designated Retail Regulators Rehearing Request at 28; Undersigned States Rehearing Request at 27–28.

⁸¹³ Designated Retail Regulators Rehearing Request at 8 (citation omitted); Undersigned States Rehearing Request at 8 (citation omitted).

⁸¹⁴ Ohio Commission Federal Advocate Rehearing Request at 15.

⁸¹⁵ *Id.* at 16–17.

⁸¹⁶ *Id.* at 17.

⁸¹⁷ *Id.*

⁸¹⁸ Alabama Commission Rehearing Request at 4–5; Industrial Customers Rehearing Request at 49–54; Northern Virginia Rehearing Request at 4–7;

⁸⁰³ *Id.* P 511.

⁸⁰⁴ *Id.* P 516.

⁸⁰⁵ *Id.* P 518.

⁸⁰⁶ *Id.*

288. SERTP Sponsors argue that Factor Category Seven does not demonstrate reasoned decision making, is not supported by substantial evidence, and could intrude into matters involving retail customers subject to state regulation in an unduly discriminatory and preferential manner.⁸¹⁹ SERTP Sponsors assert that utility or corporate commitments and local policy goals are fundamentally retail concerns with arrangements subject to state-regulated tariffs and proceedings, and that the other categories of factors already encompass the transmission needs from these arrangements.⁸²⁰ SERTP Sponsors also request clarification that Factor Category Seven is not intended to give preferential treatment to certain retail customers, like corporations, over others.⁸²¹

289. Industrial Customers state that the Commission did not satisfactorily explain in Order No. 1920 why it found unpersuasive comments on the NOPR questioning the inclusion of utility or corporate commitments in Factor Category Seven, given that such commitments may not be firm or could change over the transmission planning horizon.⁸²² Further, Industrial Customers assert that the Commission's attempt to alleviate concerns by emphasizing in Order No. 1920 that transmission providers "have discretion" to account for ambiguity concerning these commitments actually raises several additional issues.⁸²³ Industrial Customers argue that there are no clear rules to guide such discretion and that there is an alleged contradiction with Order No. 1920's "earlier mandate to use publicly available information on goals and aspirations around corporate energy purchasing strategies."⁸²⁴ Industrial Customers add that one transmission provider, PJM, has publicly stated that it does not want such discretion due to the significant administrative burdens.⁸²⁵

290. Industrial Customers additionally state that Order No. 1920's inclusion of Factor Category Seven

unduly discriminates against load that may be served by generation that may not be considered "clean energy."⁸²⁶ Industrial Customers highlight the Commission's statement that Order No. 1920 responds to "corporate, governmental, and utility commitments to rely on *certain* generation resources" and argue that the word "certain" implies without definition or justification a limited subset within possible generation resources.⁸²⁷

291. Industrial Customers contend that many companies consider corporate sustainability and clean energy strategies to be proprietary and sensitive, so utilizing known and available corporate commitments and information without also having the underpinning analytical evidence cannot be reasonably relied on to inform future transmission planning scenarios.⁸²⁸ Similarly, Industrial Customers state that Order No. 1920 does not demonstrate that corporate strategies and goals are known determinants or representative and reliable anecdotes able to be utilized in Long-Term Scenarios.⁸²⁹

292. Northern Virginia argues that the inclusion of "corporate commitments" as an independent factor in Category Factor Seven is arbitrary and capricious as this inclusion circumvents the planning process utilized by load serving utilities and state regulators to also meet these commitments.⁸³⁰ Additionally, Northern Virginia states that corporate commitments are too ephemeral and uncertain to be included in Long-Term Scenarios, and asserts that transmission planning processes should utilize best data from utilities and state regulators that are required to plan to serve load.⁸³¹ Northern Virginia also argues that the Commission should not give special status to private corporations not charged with planning for the greater good, and that corporate commitments are not comparable to utility planning or governmental policy goals.⁸³² Northern Virginia states that any entities with corporate commitments can participate in existing stakeholder and customer processes.⁸³³

293. Virginia and North Carolina Commissions argue that the Commission should remove Factory Category Seven from the development of Long-Term Scenarios as transmission

providers may not have the resources and should not be in a position to assess the reasonableness or accuracy of corporate or utility commitments.⁸³⁴ Similarly, Virginia and North Carolina Commissions contend that it would be unreasonable to expect state entities to use their limited resources to evaluate and opine on such commitments or policy goals and that many states may be constrained from doing so if these commitments impact filings before the state entity.⁸³⁵ Additionally, Virginia and North Carolina Commissions request that the Commission only permit the incorporation of public policy goals previously approved through a state regulatory process or, alternatively, clarify that transmission providers can fully discount any public policy factors that fall under Factor Category Seven.⁸³⁶

294. NRECA states that the Commission expanded the concept of Long-Term Transmission Needs well beyond reliability, economic, and public policy issues by adopting seven categories of factors, including Factor Category Seven.⁸³⁷ NRECA asserts that the costs of facilities built to satisfy corporate commitments should be borne by the relevant corporations, not by those who do not benefit from the facility.⁸³⁸

295. Harvard ELI and PIOs request clarification to reframe Factor Category Seven.⁸³⁹ Harvard ELI requests that the Commission clarify whether Factor Category Seven implements the existing requirement to plan for all transmission users on a comparable basis and further clarify that all long-term planning rules are similarly rooted in the open access comparability standard.⁸⁴⁰ PIOs request clarification on whether required scenario factors additionally include city and consumer-side market preferences.⁸⁴¹

(b) Commission Determination

296. We are unpersuaded by parties that request that the Commission set aside the requirement for transmission providers to incorporate the seven specified categories of factors into the development of Long-Term Scenarios, including requests to set aside the requirement to incorporate certain specific categories of factors.

⁸³⁴ Virginia and North Carolina Commissions Rehearing Request at 7.

⁸³⁵ *Id.*

⁸³⁶ *Id.* at 8 (citation omitted).

⁸³⁷ NRECA Rehearing Request at 54–55.

⁸³⁸ *Id.* at 55.

⁸³⁹ Harvard ELI Rehearing Request at 9–11; PIOs Rehearing Request at 61.

⁸⁴⁰ Harvard ELI Rehearing Request at 9–11.

⁸⁴¹ PIOs Rehearing Request at 61.

NRECA Rehearing Request at 55; SERTP Sponsors Rehearing Request at 15–17; Virginia and North Carolina Commissions Rehearing Request at 6–8.

⁸¹⁹ SERTP Sponsors Rehearing Request at 16 (citations omitted).

⁸²⁰ *Id.* at 15.

⁸²¹ *Id.* at 16.

⁸²² Industrial Customers Rehearing Request at 51 (citation omitted).

⁸²³ *Id.* at 51–52 (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 484).

⁸²⁴ *Id.* at 52 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 413).

⁸²⁵ *Id.* at 52–53 (citing PJM NOPR Initial Comments at 68).

⁸²⁶ *Id.* at 54–55 (citations omitted).

⁸²⁷ *Id.* at 55 (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 261).

⁸²⁸ *Id.* at 49–50.

⁸²⁹ *Id.* at 50.

⁸³⁰ Northern Virginia Rehearing Request at 4.

⁸³¹ *Id.* at 3–4.

⁸³² *Id.* at 4.

⁸³³ *Id.* at 7–9.

Nevertheless, we believe certain clarifications adopted herein will alleviate the concerns these parties raise on rehearing. Specifically, our clarification that transmission providers must consult with and consider the positions of the Relevant State Entities and any other entity authorized by a Relevant State Entity as its representative as to how to account for factors related to states' laws, policies, and regulations when determining the assumptions that will be used in the development of Long-Term Scenarios will help ensure that each Long-Term Scenario reflects states' preferences and future needs. However, with respect to Factor Category Seven, we set aside the requirement to include corporate commitments, as discussed further below.

297. We continue to find that existing regional transmission planning requirements fail to ensure that transmission providers adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs. We reiterate that requiring transmission providers to incorporate the seven categories of factors into the development of Long-Term Scenarios is necessary because without doing so, transmission providers will fail to adequately consider drivers of Long-Term Transmission Needs.⁸⁴²

298. With regard to Arizona Commission's claim that Order No. 1920 favors "green" energy,⁸⁴³ we reiterate that nothing in Order No. 1920 favors, promotes, or subsidizes particular types of generation resources over others and that the Commission's policies are technology and fuel neutral. Order No. 1920 does not endorse the merits of any laws and regulations or of any specific state-approved integrated resource plans.⁸⁴⁴ Rather, we reiterate that states play a vital role in identifying the factors, especially in Factor Categories One, Two, and Seven, that transmission providers account for in Long-Term Regional Transmission Planning. We are unpersuaded by Arizona Commission and NRECA that the categories of factors requirements in Order No. 1920 include policy factors that have not been previously considered in regional transmission planning.⁸⁴⁵ In Order No. 1000, the Commission required transmission providers to establish procedures that provide for the

consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.⁸⁴⁶

299. We are not persuaded by arguments that Factor Category One and Factor Category Two, which include state and local laws and regulations, will unjustly impose the policy goals of certain state and local governments on others.⁸⁴⁷ We reiterate that transmission planning of any kind will inherently reflect the policy choices of multiple decisionmakers because the quantity and location of generation and load are shaped by multiple decisionmakers.⁸⁴⁸ In this case, we expect transmission providers to work with states to ensure the way those state laws and regulations are incorporated into Long-Term Scenarios reflects states' preferred implementation of those laws and regulations. We also reiterate that transmission providers must appropriately value the effect of states' policy decisions in regional transmission planning in order to ensure just and reasonable rates.⁸⁴⁹

300. Parties argue that the Commission's categories of factors requirements will impose formidable costs upon ratepaying loads that neither caused the need for the construction of additional transmission facilities nor measurably benefit from that construction and therefore are unjust and unreasonable and unduly discriminatory and preferential.⁸⁵⁰ We disagree. The requirements of Order No. 1920, as clarified herein, ensure that Relevant States Entities, which represent consumers, have a voice in how factors within the categories of factors are accounted for, the development of Long-Term Scenarios that results from those factors, and the allocation of costs after a Long-Term Regional Transmission Facility is selected.⁸⁵¹ Nothing in Order No. 1920 changed the Commission's policy that costs must be allocated in a manner that is at least roughly commensurate with benefits, which ensures that ratepayers

are not paying unjust and unreasonable rates.⁸⁵²

301. We also disagree with arguments from Designated Retail Regulators and Undersigned States that there is insufficient evidence and analysis to support the conclusion that use of Factor Categories One, Two, Four, Six, and Seven will result in cost-effective solutions.⁸⁵³ We believe the collaboration between transmission providers and Relevant State Entities, where relevant, will ensure that those categories of factors are incorporated into the development of Long-Term Scenarios that identify Long-Term Regional Transmission Facilities that both meet the needs of states and provide reliability and economic value. At the same time, we believe that transmission providers cannot identify more efficient or cost-effective solutions to Long-Term Transmission Needs if they undervalue or entirely omit the consideration of some or all of the seven categories of factors.⁸⁵⁴ The Commission based its determination for each category of factors on record evidence specific to each category of factors indicating that each required category of factors is essential to identifying Long-Term Transmission Needs.⁸⁵⁵ To the extent states may be concerned about the resulting cost allocation, we note certain clarifications below that provide greater opportunities for input to Relevant State Entities with respect to cost allocation.⁸⁵⁶

302. For this reason, we also disagree with Ohio Commission Federal Advocate that the categories of factors requirements are unreasonable, arbitrary, and capricious, and will encourage a massive transmission build-out at unjust and unreasonable rates. We continue to find that the categories of factors that Order No. 1920 requires transmission providers to incorporate into the development of Long-Term Scenarios reflect the wide variety of drivers of Long-Term Transmission Needs and therefore are necessary to ensure the identification of more efficient or cost-effective transmission solutions to such needs. We also note

⁸⁴⁶ Order No. 1000, 136 FERC ¶ 61,051 at P 203; see also *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 89–92 (upholding this Order No. 1000 requirement).

⁸⁴⁷ *E.g.*, Designated Retail Regulators Rehearing Request at 28; Ohio Commission Federal Advocate Rehearing Request at 16–17; Undersigned States Rehearing Request at 27–28.

⁸⁴⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 435.
⁸⁴⁹ *Id.* P 436.

⁸⁵⁰ *E.g.*, Designated Retail Regulators Rehearing Request at 28; Ohio Commission Federal Advocate Rehearing Request at 16–17; Undersigned States Rehearing Request at 27–28.

⁸⁵¹ See *infra* Stakeholder Process and Transparency section; Requests for Additional Flexibility Regarding Long-Term Scenarios Requirements section.

⁸⁵² See, *e.g.*, Order No. 1920, 187 FERC ¶ 61,068 at PP 419, 1419, 1471, 1513.

⁸⁵³ *E.g.*, Designated Retail Regulators Rehearing Request at 8; Undersigned States Rehearing Request at 8.

⁸⁵⁴ *E.g.*, Order No. 1920, 187 FERC ¶ 61,068 at PP 120, 228.

⁸⁵⁵ *Id.* P 410; see also *id.* PP 391–395, 423–424, 438, 443–445, 450–452, 459, 467, 474–477 (summarizing record evidence that indicates that the seven categories of factors are essential to identifying Long-Term Transmission Needs).

⁸⁵⁶ See *infra* Requests for Additional Flexibility Regarding Long-Term Scenarios Requirements section.

⁸⁴² Order No. 1920, 187 FERC ¶ 61,068 at P 410.

⁸⁴³ Arizona Commission Rehearing Request at 15.

⁸⁴⁴ Order No. 1920, 187 FERC ¶ 61,068 at PP 232, 437.

⁸⁴⁵ Arizona Commission Rehearing Request at 22; NRECA Rehearing Request at 54–55.

that, in Order No. 1920, the Commission responded to concerns that certain categories of factors are too speculative or subject to change and should not be incorporated into the development of Long-Term Scenarios.⁸⁵⁷ Further, the Commission justified the framework for treating different types of categories of factors differently in the development of Long-Term Scenarios.⁸⁵⁸

303. However, we set aside, in part, the requirement for transmission providers to incorporate seven specific categories of factors in the development of Long-Term Scenarios. Specifically, we set aside the requirement for transmission providers to incorporate corporate commitments⁸⁵⁹ in Factor Category Seven when developing Long-Term Scenarios. We find that requiring transmission providers to consider corporate commitments when developing Long-Term Scenarios may introduce the risk of one class of transmission users cross-subsidizing another class of transmission users. We clarify that we continue to require transmission providers to consider corporate commitments that are likely to affect Long-Term Transmission Needs as part of Long-Term Regional Transmission Planning to the extent that these commitments affect transmission customers' transmission needs, because transmission providers must plan for the needs of all transmission customers on a comparable basis under Order Nos. 888, 890, and 1000.⁸⁶⁰ As such, we find that it is unnecessary to require transmission providers to separately identify corporate commitments as a factor in their development of Long-Term Scenarios given that the effects of such commitments will be sufficiently incorporated into Long-Term Regional Transmission Planning through the incorporation of other Factor Categories, such as Factor Category Three (state-approved integrated resource plans and expected supply obligations for load-serving entities).

304. We agree with Harvard ELI's argument that transmission providers must consider how the contracts and

purchasing plans of all transmission customers may affect Long-Term Transmission Needs in a comparable way to how transmission providers must consider utility purchasing plans and decisions. However, we disagree with Harvard ELI that the Commission's existing open access comparability standard requires transmission providers to plan for all transmission users on a comparable basis. Instead, as noted above, the open access comparability standard requires planning for transmission customers on a comparable basis. We emphasize this distinction because, in the context of Order No. 1920, transmission "users" could refer to retail customers of load-serving entities, and those load-serving entities are either transmission providers or transmission customers of transmission providers. In focusing on transmission users, Harvard ELI's request would inappropriately expand scope of the open access comparability standard to include retail customers. Therefore, we deny Harvard ELI's requested clarification.

305. Finally, we deny Northern Virginia's request to assign transmission facility costs related to corporate commitments through the Large Generator Interconnection Procedures. The Commission did not propose such a requirement in the NOPR and, as such, this request is beyond the scope of this proceeding.

306. Aside from corporate commitments, we otherwise sustain the requirement for transmission providers in each transmission planning region to incorporate Factor Category Seven into the development of Long-Term Scenarios, while recognizing the role of states in the incorporation of this category. Specifically, transmission providers must incorporate utility commitments and federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs into the development of Long-Term Scenarios. While we require transmission providers to incorporate this category of factors into the development of Long-Term Scenarios, we emphasize that, where relevant, each of the factors within the category should be the subject of discussion with the states who have the policy goals, and their preferences as far as how to integrate these goals should be taken into account when developing Long-Term Scenarios. We also find that utility commitments and federal, federally-recognized Tribal, state, and local policy goals could be drivers of Long-Term Transmission Needs.

307. We disagree with SERTP Sponsors and Industrial Customers that this requirement does not constitute reasoned decision making or engage with counterarguments in Order No. 1920 and note, as described above, that the requirement to incorporate Factor Category Seven into the development of Long-Term Scenarios was based on record evidence.⁸⁶¹ Further, the Commission acknowledged commenter concerns that utility, federally-recognized Tribal, and governmental goals may be more likely to change over the transmission planning horizon than factors in other required Factor Categories.⁸⁶² However, the Commission did not find that these commitments and goals are so speculative, amorphous, or unreliable that they should not be incorporated into Long-Term Scenarios at all.⁸⁶³

308. We also disagree with arguments that the inclusion of Factor Category Seven is unduly discriminatory or preferential.⁸⁶⁴ The Commission requires that transmission providers plan for all transmission customers' transmission needs on a comparable basis.⁸⁶⁵ We clarify that Factor Category Seven, as modified above, is not intended to single out certain utility commitments or federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs; instead, Factor Category Seven, as modified above, captures factors that are not fully represented in the other six categories of factors and also affect Long-Term Transmission Needs. As noted in Order No. 1920, transmission providers have discretion to determine whether a proposed factor in Factor Category Seven likely affects Long-Term Transmission Needs⁸⁶⁶ and how such factors in Factor Category Seven should be considered,⁸⁶⁷ but we clarify such discretion must be applied in a manner that ensures comparability among transmission customers. We also clarify that "certain generation resources" in Order No. 1920's reference to "corporate, governmental, and utility commitments to rely on certain generation resources," which, as modified on rehearing, is now

⁸⁵⁷ Order No. 1920, 187 FERC ¶ 61,068 at PP 229, 231, 473.

⁸⁵⁸ *Id.* PP 484, 507.

⁸⁵⁹ We clarify that we distinguish in this context between "corporate commitments" and utility commitments that are made by transmission providers and load-serving entities, regardless of their corporate form.

⁸⁶⁰ *See, e.g.*, Order No. 890, 118 FERC ¶ 61,119 at P 435 ("The Commission has broad authority to remedy undue discrimination by ensuring that transmission providers plan for the needs of their customers on a comparable basis. That fundamental requirement was adopted in Order No. 888 and the reforms adopted herein should ensure that it will be implemented properly." (footnote omitted)).

⁸⁶¹ Order No. 1920, 187 FERC ¶ 61,068 at PP 474–477 (summarizing record evidence indicating that Factor Category Seven is essential to identifying Long-Term Transmission Needs).

⁸⁶² *Id.* P 484.

⁸⁶³ *Id.*

⁸⁶⁴ SERTP Sponsors Rehearing Request at 16; Industrial Customers Rehearing Request at 54.

⁸⁶⁵ *See, e.g.*, Order No. 890, 118 FERC ¶ 61,119 at P 435.

⁸⁶⁶ Order No. 1920, 187 FERC ¶ 61,068 at PP 415, 417.

⁸⁶⁷ *Id.* P 516

“governmental and utility commitments,” does not refer to a certain resource type, or limit consideration of such government or utility commitments to only those commitments to rely on renewable resources.⁸⁶⁸ Rather, this requirement means that transmission providers must consider the generation resources that a federal, state, or local government entity, federally-recognized Tribe, or utility has chosen to rely on regardless of the resource type.

309. In response to Virginia and North Carolina Commissions’ request as to whether transmission providers may discount public policy factors within Factor Category Seven to zero, we reiterate that, with respect to Factor Category Seven, transmission providers have discretion as to how they account for these factors. We also clarify that transmission providers may conclude that certain factors within Factor Category Seven do not affect Long-Term Transmission Needs and, therefore, do not need to account for them when incorporating Factor Category Seven into the development of Long-Term Scenarios.⁸⁶⁹

310. Regarding Industrial Customers’ concern that the quality of information on utility commitments make Factor Category Seven unworkable, we note the clarification below that transmission providers may rely on the open and transparent stakeholder process to identify the factors in Factor Category Seven, as modified above, in the same manner that they may rely on the open and transparent stakeholder process to identify the factors in Factor Categories One through Three.⁸⁷⁰ We continue to believe that federal, state, and local government entities, federally-recognized Tribes, utilities, load-serving entities, and their retail regulators that participate in the stakeholder process are distinctly well-positioned to provide transmission providers with vital information regarding factors in Factor Category Seven, as modified above.⁸⁷¹ In response to Industrial Customers’ claim that the best information may be confidential,⁸⁷² we clarify that transmission providers may include what they believe to be appropriate confidentiality protections in their

compliance proposals to account for proprietary commitments. The Commission will evaluate those proposals by using the established principles in Order No. 890,⁸⁷³ as well as precedent on existing confidentiality protections with respect to transmission planning that the Commission has previously found comply with the Order No. 890 transmission planning principles.

311. We disagree with Industrial Customers’ argument that the Commission’s emphasis on transmission provider discretion is problematic.⁸⁷⁴ Order No. 1920, with Factor Category Seven as modified above, strikes the right balance by allowing transmission providers discretion as to the treatment of factors within Factor Category Seven when developing Long-Term Scenarios. In contrast to Industrial Customers’ claim,⁸⁷⁵ we do not believe that transmission providers need clear rules or standards for implementing their discretion over incorporating Factor Category Seven, as modified above, in the development of Long-Term Scenarios. We find that transmission providers can rely on their expert judgement and the information provided to them through the open and transparent stakeholder process to develop three plausible Long-Term Scenarios for purposes of identifying Long-Term Transmission Needs. Furthermore, we continue to find that concerns regarding the administrative burden of identifying specific factors are addressed by allowing transmission providers to rely on the open and transparent stakeholder process to identify factors.⁸⁷⁶ We find that our clarification that transmission providers may rely on the open and transparent stakeholder process to identify the factors in Factor Category Seven,⁸⁷⁷ as well as our decision to exclude corporate commitments from that Factor Category, renders moot Industrial Customers’ claim that Order No. 1920 forces transmission providers to account for corporate energy commitments and goals of “all potentially known or capable-of-being known energy commitments or contracts.”⁸⁷⁸

⁸⁷³ Order No. 890, 118 FERC ¶ 61,119 at PP 471–476; *see also* Order No. 1920, 187 FERC ¶ 61,068 at P 466 (clarifying that transmission providers may include what they believe to be appropriate confidentiality protections in their proposals to account for resource retirements that might take place over the transmission planning horizon).

⁸⁷⁴ Industrial Customers Rehearing Request at 51–53.

⁸⁷⁵ *Id.* at 52.

⁸⁷⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 508.

⁸⁷⁷ *See infra* Stakeholder Process and Transparency section.

⁸⁷⁸ Industrial Customers Rehearing Request at 53.

312. We recognize that utility commitments and federal, federally-recognized Tribal, state, and local policy goals in Factor Category Seven may initially surface as retail concerns that are addressed through arrangements with retail providers;⁸⁷⁹ however, this fact does not obviate the need for transmission providers to account for them in the development of Long-Term Scenarios. We acknowledge that there could be an overlap between Factor Category Seven, as modified above, and other categories (e.g., integrated resource plans in Factor Category Three), because utility commitments and policy goals may be addressed through arrangements with retail providers. As discussed above,⁸⁸⁰ transmission providers should avoid double counting the anticipated effects that those factors have on assumptions used to develop Long-Term Scenarios where the impact of factors overlaps, such that transmission providers must incorporate those factors once in the appropriate Factor Categories One through Three, not Factor Categories Four through Seven.

313. We disagree with NRECA’s claim that the inclusion of Factor Category Seven expands the definition of Long-Term Transmission Needs beyond reliability, economic, or public policy issues. The Commission was clear that the drivers of transmission needs are diverse and include, but are not limited to, evolving reliability concerns, changes in the resource mix, and changes in demand.⁸⁸¹ Foundationally, and consistent with our clarification that economic drivers contribute to Long-Term Transmission Needs,⁸⁸² we find that all seven categories of factors in Order No. 1920 pertain to Long-Term Transmission Needs because they affect the reliable and economic operation of the interconnected transmission system. The categories of factors requirements are intended to address certain

⁸⁷⁹ SERTP Sponsors Rehearing Request at 15. In light of the discussion above, we continue to conclude that Order No. 1920—including Factor Category Seven, as modified—is within the Commission’s authority notwithstanding that considerations relevant to Factor Category Seven may also arise in the context of retail transactions. *See supra* Order No. 1920 Is Consistent with the FPA and Precedent Regarding the Commission’s Authority section (explaining that where the Commission regulates within its statutory authority, that regulation does not run afoul of the jurisdictional lines drawn in the FPA irrespective of any effects on areas of reserved state authority).

⁸⁸⁰ *Supra* Requirement to Incorporate Categories of Factors section.

⁸⁸¹ Order No. 1920, 187 FERC ¶ 61,068 at P 299.

⁸⁸² *See supra* Requirement for Transmission Providers To Use the Seven Required Benefits To Help To Inform Their Identification of Long-Term Transmission Needs section.

⁸⁶⁸ *Id.* P 261; Industrial Customers Rehearing Request at 55.

⁸⁶⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 415.

⁸⁷⁰ *Supra infra* Stakeholder Process and Transparency section (clarifying that transmission providers have no independent obligation to identify factors in Factor Category Seven and may rely on stakeholders to identify factors in Factor Category Seven).

⁸⁷¹ Order No. 1920, 187 FERC ¶ 61,068 at P 530.

⁸⁷² Industrial Customers Rehearing Request at 49–50.

deficiencies in the Commission's existing regional transmission planning requirements, including the failure to ensure that transmission providers adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs.⁸⁸³

iii. Other Specific Required Categories of Factors

(a) Requests for Rehearing and Clarification

314. NRECA requests rehearing of the Commission's holding in Order No. 1920 that transmission providers have the discretion to determine that factors in Factor Category Three (state-approved integrated resource plans and expected supply obligations for load-serving entities) may not affect Long-Term Transmission Needs.⁸⁸⁴ NRECA argues that Order No. 1920 is in error because the Commission took action in this regard that is at odds with the needs of load-serving entities in violation of FPA section 217(b)(4).⁸⁸⁵ NRECA acknowledges that the Commission explained in Order No. 1920 that the final rule is consistent with FPA section 217(b)(4) and the interpretation of that statute adopted when the D.C. Circuit upheld Order No. 1000 in *South Carolina Public Service Authority v. FERC*.⁸⁸⁶ Nonetheless, NRECA claims that Order No. 1920 is different from Order No. 1000, and therefore that decision is not dispositive—particularly as to Order No. 1920's treatment of state-approved integrated resource plans and the expected supply obligations as discretionary.⁸⁸⁷ NRECA further argues that the Commission should revisit its conclusion that *South Carolina Public Service Authority v. FERC* remains binding precedent, because the D.C. Circuit upheld Order No. 1000's compliance with section 217(b)(4) using the deferential standard of review in *Chevron U.S.A. Inc. v. Natural*

Resources Defense Council, Inc.,⁸⁸⁸ which was under review by the U.S. Supreme Court at the time NRECA submitted its request for rehearing.⁸⁸⁹ NRECA further argues that the Commission's decision in this regard was arbitrary and capricious because Order No. 1920 was not “based on a consideration of the relevant factors” and “entirely failed to consider an important aspect of the problem.”⁸⁹⁰

315. SERTP Sponsors request the following clarifications regarding specific categories of factors. With regard to Factor Categories One through Three, SERTP Sponsors request that the Commission expressly clarify that the open and transparent stakeholder process established by transmission providers is not intended to create an opportunity to relitigate or dispute the underlying integrated resource plans, resource projections, or laws and regulations, but instead, simply intends to create a forum in which such inputs can be brought forth to examine the potential impact on Long-Term Transmission Needs.⁸⁹¹ Regarding Factor Category Three, SERTP Sponsors request that the resource planning and procurement processes of non-jurisdictional transmission providers, such as those of the non-jurisdictional SERTP Sponsors, that have been approved by their respective governing authorities should be included in this Factor Category Three as scenario inputs that are to be included without discount.⁸⁹² SERTP Sponsors also request clarification that “federal, federally-recognized Tribal, state, and local laws and regulations” is intended to encompass only “enacted statutes (i.e., passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level” as established in Order No. 1000, albeit with the addition of Tribal laws and regulations.⁸⁹³ Similarly, SERTP Sponsors request clarification that for Factor Category One, such legally binding obligations, incentives (e.g., tax credits), and/or restrictions must be enacted by legislatures or promulgated by the relevant agency or Tribal authority.⁸⁹⁴

⁸⁸⁸ *Id.* (citing *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 54).

⁸⁸⁹ *Id.* (citing *Loper Bright Enters. v. Raimondo*, No. 22–451; *Relentless, Inc. v. Dep't of Commerce*, No. 22–1219 (U.S. argued Jan. 17, 2024)).

⁸⁹⁰ *Id.* at 41–42 (quoting *State Farm*, 463 U.S. at 43).

⁸⁹¹ SERTP Sponsors Rehearing Request at 5.

⁸⁹² *Id.* at 6.

⁸⁹³ *Id.* at 14–15 (quoting Order No. 1000, 136 FERC ¶ 61,051 at P 2).

⁸⁹⁴ *Id.*

316. PIOs request rehearing of the Commission's findings regarding Factor Categories Four and Seven because they assert that the Commission erred when it failed to create specific guardrails to prevent transmission providers from minimizing these two categories of factors.⁸⁹⁵ PIOs argue that the Commission must provide specific guardrails for Factor Categories Four and Seven to ensure that transmission needs are accurately assessed.⁸⁹⁶ PIOs argue that Order No. 1920 allows “boundless discounting” of these categories, which “creates an opportunity for transmission providers to functionally ignore the Commission's mandate.”⁸⁹⁷

317. PIOs contend that the evidence in the record does not substantiate the Commission's dismissal of the concern that the additional discretion granted to transmission providers regarding the last four categories of factors could functionally minimize these categories.⁸⁹⁸ Regarding Factor Category Four, PIOs urge the Commission to maintain a list of best available data.⁸⁹⁹ Regarding Factor Category Seven, PIOs request that the Commission limit the discounting of utility and corporate commitments by creating a presumption that transmission providers' discounting cannot assume greater failure to reach utility and corporate commitments than has occurred in the previous 10 years.⁹⁰⁰

(b) Commission Determination

318. We disagree with NRECA's rehearing arguments and continue to find that, while transmission providers must incorporate into the development of Long-Term Scenarios all factors in Factor Category Three (state-approved integrated resource plans and expected supply obligations for load-serving entities) that the transmission providers determine are likely to affect Long-Term Transmission Needs, transmission providers have the discretion as to whether they must account for a specific factor in Factor Category Three in the development of Long-Term Scenarios by concluding it is likely to affect Long-Term Transmission Needs.⁹⁰¹ We continue to believe that the framework adopted in Order No. 1920 regarding categories of factors strikes the right balance between prescriptive

⁸⁹⁵ PIOs Rehearing Request at 33–35.

⁸⁹⁶ *Id.* at 33.

⁸⁹⁷ *Id.*

⁸⁹⁸ *Id.*

⁸⁹⁹ *Id.* at 34.

⁹⁰⁰ *Id.* at 35.

⁹⁰¹ Order No. 1920, 187 FERC ¶ 61,068 at PP 447, 510.

⁸⁸³ Order No. 1920, 187 FERC ¶ 61,068 at P 418.

⁸⁸⁴ NRECA Rehearing Request at 37–39 (citing Order No. 1920, 187 FERC ¶ 61,068 PP 507, 510); see also East Kentucky Rehearing Request at 2–3 (arguing that Order No. 1920 violates FPA section 217(b)(4) by treating state-approved integrated resource plans and expected supply obligations for load-serving entities as discretionary factors in Factor Category Three (citation omitted)); *id.* at 1 (stating that East Kentucky “specifically adopts the majority of issues identified by NRECA and incorporates the bases and arguments for rehearing set forth in the NRECA Rehearing Request for those issues”).

⁸⁸⁵ NRECA Rehearing Request at 39–40 (citing 16 U.S.C. 824q(b)(4)).

⁸⁸⁶ *Id.* at 40–41 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 283).

⁸⁸⁷ *Id.* at 41.

requirements and flexibility.⁹⁰² Transmission providers determining whether a particular factor is likely to affect Long-Term Transmission Needs does not allow them to simply pick-and-choose one factor that they may prefer over another factor. Instead, allowing transmission providers to determine whether to account for a specific factor by concluding it is likely to affect Long-Term Transmission Needs is necessary to ensure that transmission providers develop accurate assumptions on which to base their Long-Term Scenarios.⁹⁰³ Further, Order No. 1920 builds on the foundation of Order No. 890, and specifically the comparability principle, which requires that transmission providers treat similarly situated customers comparably in the transmission planning process.⁹⁰⁴

319. We believe that the vast majority of factors in Factor Category Three, which represent state-approved integrated resource plans and expected supply obligations for load-serving entities, will likely affect Long-Term Transmission Needs. Nevertheless, we cannot foresee every potential factor that may be identified, and we therefore find it appropriate to preserve transmission providers' discretion to conclude that a specific factor (even in Factor Category Three) will have limited or no impact on Long-Term Transmission Needs. We also emphasize, as discussed below,⁹⁰⁵ that transmission providers must consult with and consider the positions of the Relevant State Entities as to how to incorporate categories of factors into the development of Long-Term Scenarios in such a way that states will play an important role in ensuring that state-approved integrated resource plans are incorporated in the manner they are expected to be implemented.

320. We also disagree with NRECA's argument that the Commission acted at odds with the needs of load-serving entities in violation of FPA section 217(b)(4) by providing transmission providers with the discretion to not account for factors in Factor Category Three that a transmission provider finds are unlikely to affect Long-Term Transmission Needs. If a factor is unlikely to affect Long-Term

Transmission Needs, excluding that factor in the transmission planning process is unlikely to negatively affect the needs of load-serving entities. Contrary to NRECA's claims, FPA section 217(b)(4) does not require the Commission to require transmission providers to account for factors in the development of Long-Term Scenarios that do not affect Long-Term Transmission Needs. We continue to find that Order No. 1920 satisfies the Commission's obligation under FPA section 217(b)(4) because Order No. 1920 facilitates the planning and expansion of transmission facilities to meet load-serving entities' needs.⁹⁰⁶ Long-Term Regional Transmission Planning, as clarified herein, is intended to enhance the transmission planning process for states, load-serving entities, and other interested parties, and, to that end, requires transmission providers to account for factors (including load-serving entities' expected supply obligations) that are likely to affect Long-Term Transmission Needs in the development of Long-Term Scenarios.

321. Further, we disagree with NRECA that the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*⁹⁰⁷—in which the Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*—requires us to reconsider the D.C. Circuit's holding in *South Carolina Public Service Authority v. FERC* as to the meaning of FPA section 217(b)(4).⁹⁰⁸ The D.C. Circuit interpreted section 217(b)(4) and determined that this provision requires the Commission to “facilitate the planning of a reliable grid” by “seek[ing] to ensure that adequate transmission capacity is built to allow load-serving entities to meet their service obligations.”⁹⁰⁹ Order No. 1920 did not reinterpret FPA section 217(b)(4), but rather applied the interpretation adopted by the D.C. Circuit. Moreover, we believe the interpretation set forth by the Commission in Order No. 1000, endorsed by the D.C. Circuit in *South Carolina Public Service Authority v. FERC* and applied in Order No. 1920, remains the most reasonable reading of this statutory provision.⁹¹⁰

Fundamentally, meeting the reasonable needs of load-serving entities to satisfy their service obligations requires that sufficient transmission capacity is available to deliver power when it is needed, and fostering a reliable transmission system is the best way to ensure that such capacity is available. Order No. 1920's requirements are designed to achieve precisely that development of sufficient transmission capacity to ensure reliable and affordable delivery of needed power to meet the reasonable needs of load-serving entities, and therefore we find that it complies with FPA section 217(b)(4).

322. We grant SERTP Sponsors' request for clarification regarding the first three categories of factors and clarify that nothing in Long-Term Regional Transmission Planning is intended to relitigate or dispute the outcomes of the underlying integrated resource plans, resource projections, or laws and regulations that are (or are not) incorporated into the development of Long-Term Scenarios. The open and transparent stakeholder process required in Order No. 1920 is a forum that provides stakeholders, including states, with a meaningful opportunity to propose potential factors and to provide timely input on how to account for specific factors in the development of Long-Term Scenarios.⁹¹¹ For purposes of identifying Long-Term Transmission Needs, every factor is an input that transmission providers consider when determining the assumptions to use in the development of Long-Term Scenarios. Through the stakeholder process, states, transmission providers and stakeholders will have the opportunity to discuss how a factor would affect assumptions used to develop Long-Term Scenarios, if it does at all, and how the effect varies in different Long-Term Scenarios.

323. In addition, we grant SERTP Sponsors' request for clarification regarding non-jurisdictional entities,⁹¹² in part. We clarify that, where a non-

section 217 because it supports the development of needed transmission facilities, which ultimately benefits load-serving entities.”), with *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 90 (“Section 217 (b)(4) requires the Commission to facilitate the planning of a reliable grid, which is exactly what the Commission has done in the challenged orders.”); Order No. 1920, 187 FERC ¶ 61,068 at P 283 (“As articulated in *South Carolina Public Service Authority v. FERC*, FPA section 217(b)(4) requires the Commission to ‘facilitate the planning of a reliable grid,’ and we do so by ‘seek[ing] to ensure that adequate transmission capacity is built to allow load-serving entities to meet their service obligations.’” (alteration in original) (citation omitted)).

⁹¹¹ Order No. 1920, 187 FERC ¶ 61,068 at P 528.

⁹¹² SERTP Sponsors Rehearing Request at 6.

⁹⁰² *Id.* P 417.

⁹⁰³ *Cf. id.* P 530 (discussing importance of transmission providers being able to develop more accurate assumptions to serve as the basis for their Long-Term Scenarios).

⁹⁰⁴ *Id.* P 14 (citing Order No. 890, 118 FERC ¶ 61,119 at PP 418–601); see also Order No. 890, 118 FERC ¶ 61,119 at PP 494–495 (discussing the comparability principle).

⁹⁰⁵ *Infra* Stakeholder Process and Transparency section.

⁹⁰⁶ Order No. 1920, 187 FERC ¶ 61,068 PP 283, 420.

⁹⁰⁷ 144 S.Ct. 2244 (2024).

⁹⁰⁸ NRECA Rehearing Request at 41 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 54).

⁹⁰⁹ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 90. Moreover, even if the D.C. Circuit had relied on *Chevron* in reaching this conclusion, the Supreme Court confirmed that “mere reliance” on *Chevron* is “not enough to justify overruling a statutory precedent.” *Loper Bright*, 144 S.Ct. at 2273.

⁹¹⁰ Compare Order No. 1000, 136 FERC ¶ 61,051 at P 108 (“[T]his Final Rule is consistent with

jurisdictional entity is a transmission customer of one or more transmission providers in a transmission planning region, the transmission providers must plan for the non-jurisdictional entity's needs as a transmission customer as it would for the needs of any other transmission customer, including any resource planning and procurement processes that have been approved by the respective governing authorities under Factor Category Three, for purposes of complying with the requirements of Order No. 1920. For example, each Long-Term Scenario must account for and be consistent with these factors once the transmission providers have determined that such a factor is likely to affect Long-Term Transmission Needs.⁹¹³ However, we further clarify that transmission providers may *not* plan for the needs of a non-jurisdictional utility transmission provider if that non-jurisdictional transmission provider has not enrolled in the transmission planning region and thereby has not agreed to any cost allocation method applicable to selected Long-Term Regional Transmission Facilities.⁹¹⁴ If the transmission provider were to plan for and consider non-jurisdictional transmission providers' Long-Term Transmission Needs without a way to ensure the non-jurisdictional transmission provider contributes to the costs of the resulting Long-Term Regional Transmission Facilities, the resulting cost allocation could violate the cost causation principle and result in free-ridership.⁹¹⁵

324. In response to SERTP Sponsors' request for clarification regarding the meaning of "laws and regulations," we clarify that Order No. 1920 adopts the meaning of the terms used in the NOPR, namely "enacted statutes (*i.e.*, passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction."⁹¹⁶ Order No. 1920 amended the term "statutes" used in the NOPR by adding the duly enacted and legally binding obligations of federally-recognized Tribes.⁹¹⁷ We

reiterate that Factor Categories One and Two include laws and regulations at the federal, federally-recognized Tribal, state, and local level.⁹¹⁸

325. We disagree with PIOs' request for rehearing to create more prescriptive requirements for Factor Category Four (trends in fuel costs and in the cost, performance, and availability of generation, electric storage resources, and building and transportation electrification technologies) and Factor Category Seven (utility and corporate commitments and federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs).⁹¹⁹ We reiterate that the framework that the Commission adopted in Order No. 1920 regarding the incorporation of categories of factors into the development of Long-Term Scenarios strikes the right balance between prescriptive requirements and flexibility.⁹²⁰ We believe that the requirements for transmission providers to incorporate (*i.e.*, more than merely consider) categories of factors in the development of Long-Term Scenarios, as well as to develop plausible Long-Term Scenarios with the best available data,⁹²¹ are adequate to safeguard against "boundless discounting" and opportunities to "functionally ignore the Commission's mandate."⁹²²

326. More specifically, we disagree with PIOs' request to require on rehearing that transmission providers incorporate certain factors from a Commission-maintained list of data sources for Factor Category Four. As an initial matter, we find that it is unnecessary to grant PIOs' request because transmission providers' technical expertise and the required open and transparent stakeholder process to identify factors are sufficient to ensure that transmission providers implement the requirements of Long-Term Regional Transmission Planning. In addition to the Commission's concerns regarding regional variation and stifled innovation identified in Order No. 1920,⁹²³ we conclude that

there are practical challenges associated with the Commission establishing and maintaining a list of data sources. For example, transmission providers already collect data similar to the data needed for these factors for other applications, and the Commission would be duplicating this data collection effort. We believe that transmission providers working with Relevant State Entities and other stakeholders in their regions are better equipped to understand the unique circumstances of their regions and to compile data and inputs for the required categories of factors.

327. With respect to Factor Category Seven, we decline to limit the discounting of utility and corporate commitments as proposed by PIOs.⁹²⁴ In this case, we find that transmission providers may face practical challenges in accurately quantifying the historical rate of failure for utility commitments; moreover, the historical rate of failure is not necessarily determinative of future achievement rates for such commitments. In addition, limiting how transmission providers manage the uncertainty associated with utility commitments may have unintended consequences. For example, such a limit would not allow transmission providers to adapt their treatment of utility commitments in response to, for example, industry-wide changes that make it more challenging for utilities to meet prior commitments. We believe that the existing requirements in Order No. 1920⁹²⁵ are adequate to safeguard against boundless discounting of factors in Factor Category Seven.⁹²⁶

iv. Requests for Additional Requirements

(a) Requests for Rehearing

328. Invenenergy requests rehearing, asserting that the Commission erred by not requiring transmission providers to include "advanced-stage" merchant high-voltage direct current (HVDC) transmission facilities in the list of factors to be considered when developing Long-Term Scenarios.⁹²⁷ Invenenergy claims this omission is unduly discriminatory against advanced-stage merchant HVDC transmission.⁹²⁸ Invenenergy also asserts that the Commission failed to consider significant evidence in Order No. 1920 because the Commission failed to

⁹¹³ Order No. 1920, 187 FERC ¶ 61,068 at PP 507, 510.

⁹¹⁴ *Cf.* Order No. 1000–A, 139 FERC ¶ 61,132 at P 276 ("[T]he regional transmission planning process is *not required* to plan for the transmission needs of such a non-[jurisdictional] utility transmission provider that has not made the choice to join a transmission planning region." (emphasis added)).

⁹¹⁵ *El Paso Elec. Co. v. FERC*, 76 F.4th at 363–66.

⁹¹⁶ NOPR, 179 FERC ¶ 61,028 at P 104 n.189; *see also* Order No. 1000, 136 FERC ¶ 61,051 at P 2. We clarify here that the definition of "laws and regulations" includes laws and regulations duly enacted by local jurisdictions, even where there are differences in how these jurisdictions enact laws or promulgate regulations.

⁹¹⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 434.

⁹¹⁸ *Id.* P 409. It is unclear whether SERTP Sponsors intended to argue that failure to grant clarification in this respect would result in Order No. 1920 exceeding the Commission's authority; to the extent they intended to do so, we find this argument has not been raised with the specificity required on rehearing. *See supra* Major Questions Doctrine section.

⁹¹⁹ PIOs Rehearing Request at 33.

⁹²⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 417.

⁹²¹ *Id.* PP 413–414.

⁹²² PIOs Rehearing Request at 33.

⁹²³ *See* Order No. 1920, 187 FERC ¶ 61,068 at P 639 (declining to impose further requirements as to data uniformity because regional variation may make uniformity challenging and because it could stifle innovation that may improve Long-Term Regional Transmission Planning).

⁹²⁴ The issue of discounting corporate commitments is rendered moot by our decision to set aside the requirement to include these commitments in Factor Category Seven above.

⁹²⁵ *Id.* PP 413–414.

⁹²⁶ PIOs Rehearing Request at 33.

⁹²⁷ Invenenergy Rehearing Request at 2, 6–7.

⁹²⁸ *Id.* at 10.

address AEE's comments, which argued that merchant HVDC transmission facilities must be included in at least one Long-Term Scenario in order to address potential undue discrimination against merchant HVDC transmission facilities. According to Invenergy, AEE asserted that it is important to include merchant HVDC transmission facilities in at least one Long-Term Scenario because merchant HVDC transmission facilities are developed by nonincumbent transmission developers and this inclusion guards against potential undue discrimination.⁹²⁹ In addition, Invenergy claims that failure to utilize critical and readily available information will result in Long-Term Scenarios that do not accurately reflect the topography of the system, and that this information should be included to guard against potential undue discrimination from incumbent transmission owners.⁹³⁰ Invenergy argues that the Commission ignored significant evidence in the record from Invenergy and others on this issue.⁹³¹

(b) Commission Determination

329. In response to Invenergy's request for rehearing, we reiterate that the Commission did not propose specific requirements in the NOPR regarding merchant HVDC transmission facilities under development and was not persuaded by the evidence in the record that it should include advanced-stage HVDC transmission facilities in the minimum set of known determinants of Long-Term Transmission Needs.⁹³² Invenergy has not clearly articulated how merchant HVDC transmission facilities are essential to identifying, or are known and identifiable drivers of, Long-Term Transmission Needs.

330. In the NOPR, the Commission referenced merchant transmission facilities only once,⁹³³ and that reference was in the context of a larger proposed requirement that the Commission declined to adopt in Order No. 1920.⁹³⁴ Order No. 1920 addressed

specific deficiencies with the Commission's existing regional transmission planning and cost allocation requirements but did not identify issues surrounding merchant transmission as one of those deficiencies.⁹³⁵

331. We disagree with Invenergy's claim that the exclusion of proposed but not yet built merchant HVDC transmission facilities from the required factors underlying the Long-Term Scenarios is unjust and unreasonable.⁹³⁶ In Order No. 1920, the Commission described the seven specific categories of factors required by the Commission as "essential to identifying Long-Term Transmission Needs" and "known and identifiable drivers of Long-Term Transmission Needs."⁹³⁷ Although Invenergy claimed that one of its merchant HVDC transmission facilities could address transmission needs,⁹³⁸ Invenergy has failed to clearly articulate how proposed but not yet built merchant HVDC transmission facilities are essential to identifying, or are known and identifiable drivers of, Long-Term Transmission Needs. However, as indicated in Order No. 1920, transmission providers may be aware of additional categories of factors beyond those adopted in the final rule that drive Long-Term Transmission Needs and may incorporate additional categories of factors into the development of Long-Term Scenarios.⁹³⁹ We clarify that, if transmission providers elect to use additional categories of factors beyond the required categories of factors in Order No. 1920 in the development of Long-Term Scenarios, the transparency requirements set forth in Order No. 1920 also apply to the additional categories of factors.⁹⁴⁰ Pursuant to this clarification, transmission providers must publish on

zones] NOPR proposal is not warranted at this time").

⁹³⁵ *Id.* P 139 ("[W]e find that the Commission's regional transmission planning and cost allocation requirements fail to require transmission providers to: (1) perform a sufficiently long-term assessment of transmission needs that identifies Long-Term Transmission Needs; (2) adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs; and (3) consider the broader set of benefits of regional transmission facilities planned to meet those Long-Term Transmission Needs. We find that reforms to those requirements are thus necessary to ensure that Commission-jurisdictional rates are just, reasonable, and not unduly discriminatory or preferential.").

⁹³⁶ Invenergy Rehearing Request at 8.

⁹³⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 410.

⁹³⁸ Invenergy Initial NOPR Comments at 7 ("A planned 5,000 MW HVDC line such as Grain Belt's would be a significant system addition, and could itself provide system benefits or even address transmission needs otherwise identified through the planning process. . . .").

⁹³⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 493.

⁹⁴⁰ *See id.* PP 528–533.

the public portion of an OASIS or other public website: (1) the list of each additional categories of factors, and the factors in each of the additional categories of factors that they will account for in their Long-Term Scenarios; (2) a description of each additional category of factors and a description of each factor that they will account for in their Long-Term Scenarios; (3) a general statement explaining how they will account for each additional category of factors and each of the additional factors in their Long-Term Scenarios; (4) a description of the extent to which they will discount any factors in each additional category of factors; and (5) a list of the factors that they considered but did not incorporate in each additional category of factors in their Long-Term Scenarios. Consistent with Order No. 1920, we find that this transparency is necessary to make clear to stakeholders which specific additional categories of factors and factors transmission providers incorporate into Long-Term Scenarios and how they are incorporated. We believe this posting requirement for additional categories of factors will also provide greater transparency into how transmission providers develop Long-Term Scenarios, while still providing transmission providers with flexibility regarding whether, and if so, how they choose to incorporate relevant factors.⁹⁴¹ Accordingly, in transmission planning regions where proposed HVDC transmission facilities may play a role in shaping Long-Term Transmission Needs, transmission providers have the flexibility to consider and incorporate such facilities into their Long-Term Scenarios.

332. We also disagree with Invenergy's argument that the Commission has failed to direct transmission providers to use critical—and readily available—information related to the future electric power system, which renders the resulting Long-Term Scenarios unjust and unreasonable.⁹⁴² Order No. 1920 requires transmission providers to develop Long-Term Scenarios with data inputs that are timely, developed using best practices and diverse and expert perspectives, and adopted via a process that satisfies the transmission planning principles of Order Nos. 890 and 1000.⁹⁴³ In addition, in Order No. 1920, the Commission found that transmission providers must use best available data when determining whether each factor is likely to affect Long-Term

⁹²⁹ Invenergy Rehearing Request at 9 (citing AEE NOPR Reply Comments at 19).

⁹³⁰ *Id.* at 8–9.

⁹³¹ *Id.* at 9.

⁹³² *See* Order No. 1920, 187 FERC ¶ 61,068 at P 493.

⁹³³ NOPR, 179 FERC ¶ 61,028 at P 150 (In the context of the NOPR proposal for the identification of geographic zones, the Commission proposed to include "any merchant or other entity commitments to build . . . transmission facilities" as one of seven mandatory considerations to assess generation developers' commercial interest in developing generation within each designated geographic zone.).

⁹³⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 665 (stating that "[t]he [identification of geographic

⁹⁴¹ *Id.* P 534.

⁹⁴² Invenergy Rehearing Request at 9.

⁹⁴³ Order No. 1920, 187 FERC ¶ 61,068 at P 633.

Transmission Needs. Once transmission providers have determined that a factor is likely to affect Long-Term Transmission Needs, they must use the best available data when they then account for that factor in the development of Long-Term Scenarios.⁹⁴⁴

333. We also disagree with Invenery's claim that the Commission ignored significant evidence in the record.⁹⁴⁵ We remain unpersuaded by the evidence in the record that the Commission should include advanced-stage HVDC transmission facilities in the minimum set of known determinants of Long-Term Transmission Needs.⁹⁴⁶ Invenery's experience with its Grain Belt project in the MISO Long Range Transmission Plan speaks to a separate issue currently before the Commission.⁹⁴⁷

334. Finally, we disagree with Invenery's argument that the Commission's inclusion of a wide range of factors, including generation interconnections, but exclusion of advanced-stage merchant HVDC facilities is unduly discriminatory and opens such developers to further potential undue discrimination.⁹⁴⁸ The Commission found it appropriate to require transmission providers to incorporate Factor Category Six (generator interconnection requests and withdrawals) into the development of Long-Term Scenarios because generation interconnection queues provide important information about future generation development over the transmission planning horizon and therefore affect Long-Term Transmission Needs.⁹⁴⁹ We cannot make a similar finding for advanced-stage merchant HVDC transmission based on the record in this proceeding, nor do we conclude (and Invenery has not demonstrated) that the exclusion of advanced-stage merchant HVDC facilities from the required categories of factors opens merchant transmission developers to potential undue discrimination. We also are not persuaded by Invenery's reference to AEE's comments claiming that being a nonincumbent transmission developer rises to the level of potential undue

discrimination that must be remedied by requiring merchant HVDC to be included in Long-Term Scenarios. To the extent that similar potential undue discrimination claims for nonincumbent merchant HVDC transmission developers are pending in other proceedings, the Commission will address those claims based on the evidence in those proceedings. We note that AEE provides no evidence of potential undue discrimination and that AEE itself has not filed a rehearing request on this issue. Finally, we clarify that transmission providers, in addressing interconnection requests and withdrawals under Factor Category Six, must include merchant transmission developer interconnection requests in the development of Long-Term Scenarios, and in a manner comparable to other interconnection requests.

c. Stakeholder Process and Transparency

i. Order No. 1920 Requirements

335. In Order No. 1920, the Commission required transmission providers in each transmission planning region to revise the regional transmission planning process in their OATTs to outline an open and transparent process that provides stakeholders, including federally-recognized Tribes and states, with a meaningful opportunity to propose potential factors and to provide timely input on how to account for specific factors in the development of Long-Term Scenarios. The Commission further required transmission providers to publish on the public portion of an OASIS or other public website the following information: (1) the list of the factors in each of the seven required categories of factors that they will account for in their Long-Term Scenarios; (2) a description of each factor that they will account for in their Long-Term Scenarios; (3) a general statement explaining how they will account for each of those factors in their Long-Term Scenarios; (4) a description of the extent to which they will discount any factors in Factor Categories Four through Seven in each Long-Term Scenario; and (5) a list of the factors that they considered but did not incorporate in their Long-Term Scenarios.⁹⁵⁰ In addition, the Commission required transmission providers to post this information after stakeholders, including states, have had the meaningful opportunity to propose potential factors and to provide input on how to account for specific factors in

the development of Long-Term Scenarios.⁹⁵¹ The Commission explained that this requirement will provide greater transparency into how transmission providers develop Long-Term Scenarios, while still providing transmission providers with flexibility regarding whether, and if so, how they choose to incorporate relevant factors.⁹⁵² and the Commission explained that this transparency also ensures that transmission providers review stakeholder-proposed factors in a fair and non-discriminatory manner.⁹⁵³

336. The Commission also required transmission providers, consistent with Order No. 890's transparency transmission planning principle, to make transparent the methodology, criteria, assumptions, and data used to develop each Long-Term Scenario.⁹⁵⁴ Given the importance of a robust stakeholder process to developing more accurate assumptions to serve as the basis for Long-Term Scenarios, Order No. 1920 required transmission providers to give stakeholders a meaningful opportunity to provide timely input on how and what information to incorporate into the development of Long-Term Scenarios, including how to account for a specific factor in terms of how the factor may affect Long-Term Transmission Needs. The Commission explained that this meaningful opportunity includes the opportunity to propose factors, provide information and identify sources of best available data, propose how a factor may affect Long-Term Transmission Needs, and explain how that factor could be reflected in the development of Long-Term Scenarios, including the extent to which it is appropriate to discount the effects of certain factors on Long-Term Transmission Needs.⁹⁵⁵

337. The Commission further found in Order No. 1920 that stakeholder input is particularly important for factors in the first three categories of factors, because federal, state, and local government entities, federally-recognized Tribes, and utilities, load-serving entities, and their retail regulators that participate in the stakeholder process are distinctly well-positioned to provide transmission providers with vital information on how the factors over which they have authority or that they govern are likely to influence Long-Term Transmission Needs over the transmission planning

⁹⁴⁴ *Id.*

⁹⁴⁵ Invenery Rehearing Request at 9 ("As demonstrated above, multiple commenters, including Invenery, the Clean Energy Associations, and others placed evidence into the record explaining why merchant HVDC transmission facilities must be included.").

⁹⁴⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 493.

⁹⁴⁷ *Invenery Transmission LLC v. Midcontinent Indep. Sys. Operator, Inc.*, Complaint, Docket No. EL22-83-000 (filed Aug. 8, 2022).

⁹⁴⁸ Invenery Rehearing Request at 10.

⁹⁴⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 472.

⁹⁵⁰ *Id.* P 528.

⁹⁵¹ *Id.* P 533.

⁹⁵² *Id.* P 534.

⁹⁵³ *Id.* P 535.

⁹⁵⁴ *Id.* P 305 (citing Order No. 890, 118 FERC ¶ 61,119 at P 471).

⁹⁵⁵ *Id.* PP 529–530.

horizon.⁹⁵⁶ The Commission recognized that different stakeholders may provide information about the same factor that is contradictory and allowed transmission providers to weigh more heavily one source of information over another.⁹⁵⁷

ii. Requests for Rehearing and Clarification

338. NESCOE requests clarification that transmission providers must rely on states in developing Long-Term Scenarios where state laws, regulations, and/or policies are driving Long-Term Transmission Needs. If the Commission does not provide this clarification, NESCOE requests rehearing.⁹⁵⁸ NESCOE explains that state officials have expertise in connection with these matters such that transmission providers should rely on states for input regarding the details of state requirements in Factor Categories One, Two, and Seven. NESCOE claims that, in the absence of this clarification, transmission providers may devote resources to developing Long-Term Scenarios that are less useful to transmission planning regions.⁹⁵⁹ Similarly, PJM States request clarification of the degree to which transmission providers should defer to, weigh, or consider the input of states as it relates specifically to state laws and integrated resource plans. PJM States argue that states have a unique role as to these subjects, and that transmission providers should not treat state perspectives the same as those of any other stakeholder.⁹⁶⁰

339. PIOs request rehearing such that the Commission would strengthen the transparency provisions by requiring transmission providers to provide more detailed explanations of the factors to be used and to justify any discounting of factors in Factor Categories Four through Seven. PIOs argue that stronger transparency provisions would foster more meaningful stakeholder processes.⁹⁶¹ Specifically, PIOs contend that, with respect to the information that transmission providers must publish on the public portion of an OASIS or other public website, the Commission should replace the third item, *i.e.*, “a general statement explaining how [transmission providers] will account for each of [the factors that they will account for in their Long-Term Scenarios],” with “a detailed description of the reasoning and methodology used to account for each

factor, as well as providing the actual data inputs when possible.”⁹⁶²

340. PIOs criticize the Commission’s rationale for declining to include this requirement, *i.e.*, that the burden would not be justified by the benefit of such additional information. PIOs argue that requiring transmission providers to justify their discounting decisions would help hold transmission providers accountable, incentivize more accurate discounting assumptions, and guard against pressure from self-interested stakeholders to excessively discount factors.⁹⁶³ PIOs contend that Order No. 1920 is arbitrary and capricious because failing to require more detailed explanations of the factors to be used or to justify any discounting of factors in Factor Categories Four through Seven does not flow rationally from Order No. 1920’s “more fundamental findings” as to the requirements for transmission providers to provide meaningful opportunity for stakeholder input and to make the development of Long-Term Scenarios transparent.⁹⁶⁴

341. SERTP Sponsors request that the Commission clarify that transmission providers have the discretion to include or to exclude an assumption from the development of a Long-Term Scenario where stakeholders do not provide transmission providers with sufficient information as to whether a potential assumption or factor is likely to affect Long-Term Transmission Needs. SERTP Sponsors provide the example of a generator whose point of interconnection is unknown and contend that transmission providers should not be obligated to hypothesize arbitrarily as to that point of interconnection, because doing so likely would yield implausible Long-Term Scenarios and would not result in cost-effective or efficient transmission planning.⁹⁶⁵

342. SERTP Sponsors request that the Commission clarify that transmission providers may rely on stakeholders to identify factors in Factor Categories Four through Seven, and, if stakeholders identify no such factors, that transmission providers may but need not do so. SERTP Sponsors contend that Order No. 1920 implies but does not clearly provide for this requested clarification.⁹⁶⁶ SERTP Sponsors also request that the Commission clarify that transmission providers may rely upon stakeholders to identify factors that,

unlike factors in Factor Categories One through Three, do not pertain directly to a specific transmission provider in the relevant transmission planning region.⁹⁶⁷ If the Commission does not so clarify, SERTP Sponsors request rehearing on the grounds that requiring transmission providers to identify such factors would be unduly burdensome.⁹⁶⁸

343. Finally, SERTP Sponsors request that the Commission clarify the required timing of when transmission providers must publish on the public portion of an OASIS or other public website the information about factors required by Order No. 1920. SERTP Sponsors contend that Order No. 1920 does not make clear whether this information must be published in conjunction with transmission providers’ compliance filings or by the start of the first Long-Term Regional Transmission Planning cycle. SERTP Sponsors argue that the Commission should require transmission providers to post this information after the conclusion of the period during which stakeholders provide input into these matters.⁹⁶⁹

iii. Commission Determination

344. In response to NESCOE’s and PJM States’ requested clarification that transmission providers must rely on states in developing Long-Term Scenarios where state laws, regulations, and/or policies are driving Long-Term Transmission Needs, we grant the following clarifications. We clarify that states must have a meaningful opportunity to provide timely input on the development of Long-Term Scenarios, including factors and data inputs, and to explain how their own policies and planning affect Long-Term Transmission Needs.⁹⁷⁰ Furthermore, we clarify that transmission providers must consult with and consider the positions of the Relevant State Entities and any other entity authorized by a Relevant State Entity as its representative as to how to account for factors related to states’ laws, policies, and regulations when determining the assumptions that will be used in the development of Long-Term Scenarios.⁹⁷¹ Specifically, transmission

⁹⁵⁶ *Id.* P 530.

⁹⁵⁷ *Id.* P 531.

⁹⁵⁸ NESCOE Rehearing Request at 11.

⁹⁵⁹ *Id.* at 20–21.

⁹⁶⁰ PJM States Rehearing Request at 4.

⁹⁶¹ PIOs Rehearing Request at 36.

⁹⁶² *Id.*

⁹⁶³ *Id.* at 37–38.

⁹⁶⁴ *Id.* at 38 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 305).

⁹⁶⁵ SERTP Sponsors Rehearing Request at 13–14.

⁹⁶⁶ *Id.* at 13 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 516).

⁹⁶⁷ *Id.* at 14 & n.33.

⁹⁶⁸ *Id.* at 14.

⁹⁶⁹ *Id.* at 26.

⁹⁷⁰ Order No. 1920, 187 FERC ¶ 61,068 at PP 528–537, 560–562, 634.

⁹⁷¹ A Relevant State Entity may believe that a different state entity would be better situated to advise transmission providers as to how state policy may affect Long-Term Transmission Needs. For example, the state entity responsible for electric utility regulation may believe that the state entity responsible for energy policy is in a better position to advise on state energy policy implementation. In

providers shall consult with Relevant State Entities and any other authorized entities as to whether a specific state policy must be accounted for as a factor within each category (*i.e.*, if the specific state policy will likely affect Long-Term Transmission Needs), how to account for the specific state policy in the development of Long-Term Scenarios (*e.g.*, the method and data used to forecast generation resources added because of a specific state policy), and how to adjust the treatment of the specific state policy across Long-Term Scenarios (*e.g.*, assume certain policy-related outcomes materialize in some but not all Long-Term Scenarios).⁹⁷²

345. We further clarify that, where transmission providers determine that a factor based on a state's law, regulation, or policy is likely to affect Long-Term Transmission Needs, transmission providers should rely on the state in determining *how* to account for such a state-related factor when developing Long-Term Scenarios. For example, for a state that has required integrated resource planning processes, transmission providers should include one of the state's preferred power system trajectories, including both the supply and demand side resource trajectory as appropriate, in each of Long-Term Scenarios, or include different state-preferred power system trajectories in different Long-Term Scenarios. As such, transmission providers could include in the development of Long-Term Scenarios the set of resource capacity additions and/or retirements expected by a state based on the incentives or requirements in that state's law. If transmission providers determine, based on input provided by the state or their own judgment, that a factor based on a state's law, regulation, or policy is likely to affect Long-Term Transmission Needs, transmission providers should then determine whether and how to account for that factor in the development of Long-Term Scenarios.

346. We disagree with PIOs that a more detailed explanation of the factors that transmission providers will account for in their Long-Term Scenarios and justification of the factors that they will discount is warranted. Broadly, we affirm that Order No. 1920 strikes the right balance between prescriptive requirements and flexibility with respect to the development of Long-Term Scenarios.⁹⁷³ We also find that

this case, the Relevant State Entity may authorize the other state entity as its representative in discussions with transmission providers.

⁹⁷² See *id.* P 417.

⁹⁷³ *Id.*

this is true with respect specifically to Order No. 1920's requirements on stakeholder process and transparency. PIOs request that we require "a detailed description of the reasoning and methodology used to account for each factor, as well as providing the actual data inputs when possible" and that we require transmission providers to justify their discounting decisions of factors in Factor Categories Four through Seven. We find that such requirements are not necessary to ensure that stakeholders have a meaningful opportunity to provide input. We further find that the requirements of Order No. 1920 ensure that the development of Long-Term Scenarios is sufficiently transparent,⁹⁷⁴ and that PIOs' requested requirements are not needed to ensure that transmission providers use accurate data.⁹⁷⁵

347. We emphasize that Order No. 1920 sets minimum requirements with which all transmission providers must comply, and we are not convinced that the level of information that PIOs seek is necessary. Further, we clarify that nothing in Order No. 1920 prevents transmission providers from providing more than the minimum amount of information that we require, including the level of detail requested by PIOs. Moreover, we conclude that granting PIOs' request is unnecessary because the existing transparency requirements in Order No. 1920⁹⁷⁶ are sufficient to ensure that "the methodology, criteria, assumptions, and data used to develop each Long-Term Scenario" are transparent.⁹⁷⁷

348. We decline to provide clarification to SERTP Sponsors with respect to the inclusion or exclusion of factors for which stakeholders provide insufficient information, and we similarly decline to address SERTP Sponsors' hypothetical in the

⁹⁷⁴ See *id.* P 533 (requiring transmission providers to publicly post "(1) the list of the factors in each of the seven required categories of factors that they will account for in their Long-Term Scenarios; (2) a description of each factor that they will account for in their Long-Term Scenarios; (3) a general statement explaining how they will account for each of these factors in their Long-Term Scenarios; (4) a description of the extent to which they will discount any factors in Factor Categories Four through Seven in each Long-Term Scenario; and (5) a list of the factors that they considered but did not incorporate in their Long-Term Scenarios.").

⁹⁷⁵ PIOs Rehearing Request at 36–37. See Order No. 1920, 187 FERC ¶ 61,068 at P 636 ("We find that a requirement to use the best available data inputs is warranted to ensure that transmission providers are regularly updating data inputs and using timely and accurate data inputs to inform Long-Term Scenarios.").

⁹⁷⁶ *Supra* P 346 n.975.

⁹⁷⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 305.

abstract.⁹⁷⁸ Generally, transmission providers can rely on stakeholders for input on the development of Long-Term Scenarios, including factors and data inputs, and must consult with and consider the positions of Relevant State Entities and any other entity authorized by a Relevant State Entity as its representative regarding how their policies and planning affect Long-Term Transmission Needs and the assumptions that will be used in the development of Long-Term Scenarios. Transmission providers implementing Long-Term Regional Transmission Planning necessarily will balance competing interests from within the transmission planning region when developing Long-Term Scenarios, and Order No. 1920 provides transmission providers with sufficient flexibility to exercise engineering judgment to ensure the reliable operation of the transmission system and compliance with a variety of regulatory requirements.⁹⁷⁹

349. In response to SERTP Sponsors' request for clarification regarding the identification of factors in Factor Categories Four through Seven, we clarify that transmission providers must identify factors in Factor Categories Four, Five, and Six but need not independently identify factors in Factor Category Seven—rather, transmission providers may rely on stakeholders, including states, to bring such factors to their attention. We believe that factors in Factor Categories One, Two, Three, and Seven arise from stakeholder decision-making and legal processes that generally are external to the transmission provider and are therefore suitable for identification by the states and other stakeholders that govern or have authority over those processes. Therefore, as with factors in Factor Categories One, Two, and Three, transmission providers may rely on stakeholders to identify factors in Factor Category Seven in the development of Long-Term Scenarios, particularly through the open and transparent stakeholder process required by Order No. 1920.⁹⁸⁰ In contrast, we believe that

⁹⁷⁸ It is unclear whether SERTP Sponsors intended to argue that failure to grant clarification in this respect would result in Order No. 1920 exceeding the Commission's authority; to the extent they intended to do so, we find this argument has not been raised with the specificity required on rehearing. See *supra* Major Questions Doctrine section.

⁹⁷⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1027.

⁹⁸⁰ *Id.* P 508. We note, however, an exception to this general rule. Where the transmission provider is the entity that has made a commitment that affects Long-Term Transmission Needs, the transmission provider may not rely on the

factors in Factor Categories Four, Five, and Six relate to the expertise of transmission providers arising from their day-to-day operations. For example, transmission providers manage processes for processing interconnection requests and withdrawals (Factor Category Six) and determining the impact of resource retirements (Factor Category Five). In managing those processes and the day-to-day operations of the transmission system, transmission providers also gain information about trends in technology and fuel costs within and outside the electricity supply industry (Factor Category Four). Therefore, we clarify that transmission providers have an independent obligation to identify factors in Factor Categories Four, Five, and Six regardless of whether any such factors are identified by stakeholders and must, where relevant, consult with and consider the positions of Relevant State Entities and any entities authorized by the Relevant State Entities. In response to SERTP Sponsors' argument that, if transmission providers must independently identify factors in Factor Categories Four through Seven, the Commission would be holding transmission providers to a burdensome unattainable standard, we clarify that the independent obligation to identify factors in Factor Categories Four through Six does not require transmission providers to identify every potentially knowable factor within those categories. Transmission providers can use their prior experience and professional judgement to independently identify factors in Factor Categories Four, Five, and Six.

350. Finally, in response to SERTP Sponsors' request for clarification regarding the timing of transmission providers' publication of information regarding the factors to be incorporated into the development of Long-Term Scenarios on the public portion of an OASIS or other public website, we clarify that transmission providers do not need to include this information with the filings that they submit to comply with Order No. 1920. Rather, we clarify that Order No. 1920 requires transmission providers to post this information as part of each Long-Term Regional Transmission Planning cycle after stakeholders, including states, have had a meaningful opportunity to propose potential factors and to provide input on how to account for specific factors in the development of Long-Term Scenarios for that planning

cycle.⁹⁸¹ We further clarify that publication of information regarding the factors to be incorporated into the development of Long-Term Scenarios must occur before transmission providers finish developing Long-Term Scenarios,⁹⁸² and, in any event, well before the transmission provider has identified Long-Term Transmission Needs.

5. Requests for Additional Flexibility Regarding Long-Term Scenarios Requirements

351. This section responds to requests for rehearing or clarification to permit additional flexibility with respect to multiple interrelated Long-Term Scenario requirements, including transmission providers' incorporation of factors from seven categories of factors; the treatment of factors in the first three categories of factors; and the number, type, and plausibility of Long-Term Scenarios.

a. Order No. 1920 Requirements

352. In Order No. 1920, the Commission required transmission providers in each transmission planning region to develop, at least once during the five-year Long-Term Regional Transmission Planning cycle, at least three distinct Long-Term Scenarios that, at a minimum, incorporate the seven categories of factors listed in the Categories of Factors section.⁹⁸³ The Commission adopted the NOPR proposals to require transmission providers in each transmission planning region to publicly disclose information and data inputs used to create each Long-Term Scenario and provide stakeholders an opportunity to provide timely and meaningful input into how Long-Term Scenarios are developed.⁹⁸⁴

353. The Commission required transmission providers in each transmission planning region to develop a plausible and diverse set of at least three Long-Term Scenarios.⁹⁸⁵ The Commission also required that each individual Long-Term Scenario be plausible to avoid resting on assumptions about factors and data inputs that do not reasonably capture possible future outcomes. The Commission clarified that the term "diverse" means that the set of Long-Term Scenarios must represent a reasonable range of probable future

outcomes consistent with the requirement for plausibility, based on assumptions about the factors and data inputs.⁹⁸⁶

354. The Commission also required transmission providers in each transmission planning region to develop at least one sensitivity, applied to each Long-Term Scenario, to account for uncertain operational outcomes that determine the benefits of and/or need for transmission facilities during multiple concurrent and sustained generation and/or transmission outages due to an extreme weather event across a wide area.⁹⁸⁷ In Order No. 1920, the Commission provided transmission providers with flexibility to conduct this sensitivity either before or after identifying potential regional transmission solutions to the Long-Term Transmission Needs identified using those Long-Term Scenarios.⁹⁸⁸ Order No. 1920 did not preclude transmission providers from considering additional sensitivities, and the Commission encouraged transmission providers to assess the need to develop other sensitivities as part of Long-Term Regional Transmission Planning.⁹⁸⁹ The Commission found that modeling extreme weather events as sensitivities is appropriate for Long-Term Regional Transmission Planning.⁹⁹⁰

b. Requests for Rehearing and Clarification

355. PJM requests rehearing such that the Commission either would consider requests for flexibility or permit flexibility that PJM contends would be required for PJM to develop Long-Term Scenarios and sensitivities consistent with a draft long-term transmission planning process that PJM has developed.⁹⁹¹ PJM argues that Order No.

⁹⁸⁶ *Id.* P 576.

⁹⁸⁷ *Id.* P 593.

⁹⁸⁸ *Id.* P 594.

⁹⁸⁹ *Id.* P 597.

⁹⁹⁰ *Id.* P 598.

⁹⁹¹ See PJM Rehearing Request at 12 ("Granting rehearing and permitting flexibility with respect to the issues identified below would allow PJM to use the PJM Long Term Regional Transmission Planning process as the foundation for a long-term planning process that achieves the objectives of the Final Rule, even though implementation details may differ in some way from those the Final Rule prescribes." (footnote omitted)); *id.* at 14 ("PJM urges the Commission to grant rehearing and confirm that it will consider requests for flexibility to accommodate regional differences."); *id.* at 19 ("[G]iven the diversity among regions, PJM believes it is appropriate to allow transmission planners to work with states and stakeholders within their respective regions to determine the appropriate number of and specific scenarios to be used in the Long-Term Regional Transmission Planning process, as well as giving the transmission provider flexibility to determine how to weigh specific factors used to develop the assumptions upon

⁹⁸¹ *Id.* P 533.

⁹⁸² See *id.* P 534 (discussing the value of posting requirement in terms of the transparency into how transmission providers develop Long-Term Scenarios).

⁹⁸³ *Id.* P 559.

⁹⁸⁴ *Id.* P 560.

⁹⁸⁵ *Id.* PP 575–577.

identification by stakeholders of this factor or these factors.

1920's requirements with respect to the development of Long-Term Scenarios are overly prescriptive, particularly with respect to the requirements that transmission providers develop three Long-Term Scenarios that each incorporate seven categories of factors and that transmission providers cannot discount factors in Factor Categories One through Three.⁹⁹² PJM contends that these requirements would "complicate" PJM's efforts to promote more efficient or cost-effective regional transmission planning and development.⁹⁹³

356. PJM explains that, under the draft long-term transmission planning process that PJM developed, PJM would develop three distinct scenarios that would "generally account for the seven factors" required by Order No. 1920: the "Base Reliability Scenario," the "Medium Public Policy Scenario," and the "High Public Policy Scenario."⁹⁹⁴ The Base Reliability Scenario would include certain "categories of factors," including: the PJM Load Forecast Report; announced retirements and retirements required by Public Policy Requirements; in-service generation and generation that is not yet in service but with an executed service agreement or State Agreement Approach reservation; and replacement generation taken mainly from the PJM Service Request process.⁹⁹⁵ The Medium Public Policy Scenario would build on the Base Reliability Scenario by including certain additional Public Policy Requirements that otherwise would be brought to PJM as part of the State Agreement Approach process, such as state renewable portfolio standards.⁹⁹⁶ The High Public Policy Scenario would in turn build on the Medium Public Policy Scenario by modeling "Public Policy Objectives," defined as Public Policy Requirements that are not yet in a statute or regulation.⁹⁹⁷ PJM argues that this draft process would demonstrate a wide range of possible transmission needs, and would be a prudent way to account for long-term needs without overbuilding the transmission system.⁹⁹⁸

which Long-Term Scenarios are based."); *id.* ("PJM urges the Commission to grant rehearing and confirm that it will consider requests for flexibility to develop Long-Term Scenarios and conduct sensitivity analyses in such a way as to accommodate regional differences.").

⁹⁹² *Id.* at 13 n.59, 16, 18.

⁹⁹³ *Id.* at 16, 18.

⁹⁹⁴ *Id.* at 16–18.

⁹⁹⁵ *Id.* at 16–17.

⁹⁹⁶ *Id.* at 17–18.

⁹⁹⁷ *Id.* at 18 & n.80.

⁹⁹⁸ *Id.* at 19.

357. PJM States and West Virginia Commission request that the Commission clarify that—or, in the alternative, request rehearing such that—Order No. 1920 does not prohibit the development by transmission providers of a fourth Long-Term Scenario or additional sensitivities that are designed to provide information to states on the factors driving the need for transmission facilities and on their costs and benefits. PJM States and West Virginia Commission explain that Order No. 1920 requires that transmission providers assume that all legally binding obligations are followed, state-approved integrated resource plans are followed, and expected supply obligations for load-serving entities are met and not discounted. PJM States and West Virginia therefore express concern that Order No. 1920 places "undue restrictions" on the development of scenarios or sensitivities that can provide the information sought by states, which PJM States contend would be necessary to assist in cost allocation determinations and in siting and safety decisions.⁹⁹⁹

358. Ohio Commission Federal Advocate argues that Order No. 1920 makes it impossible to identify and evaluate transmission facilities that are required due to other states' laws, as well as to "isolate the incremental costs" arising from those laws. Ohio Commission Federal Advocate states that this lack of transparency is not in the public interest, and that the Commission should clarify that counterfactual scenarios that do not reflect compliance with state law are permissible because they provide important insights into the factors driving transmission needs.¹⁰⁰⁰

359. Virginia and North Carolina Commissions argue that the Commission should grant rehearing such that Order No. 1920 would require or allow for one or more "baseline" planning scenarios that exclude all or some policy-driven factors. Virginia and North Carolina Commissions explain that Order No. 1920 requires transmission providers to incorporate seven categories of factors in each Long-Term Scenario, and that the Commission did not allow flexibility for additional scenarios that exclude some or all of these factors. Virginia and North Carolina Commissions contend that, without a "baseline" scenario, Relevant State Entities and other stakeholders will not have adequate

⁹⁹⁹ PJM States Rehearing Request at 4–6; West Virginia Commission Rehearing Request at 14–16.

¹⁰⁰⁰ Ohio Commission Federal Advocate Rehearing Request at 18.

transparency regarding the critical drivers of transmission needs or the costs associated with a particular transmission facility, nor will they be able to evaluate whether cost allocation methods comply with the Commission's cost causation principles.¹⁰⁰¹

360. Finally, in PJM's general request for additional flexibility in the development of Long-Term Scenarios, PJM identified the requirement in Order No. 1920 to conduct a specific sensitivity for each Long-Term Scenario as an example of a requirement that it believes to be overly burdensome.¹⁰⁰² PJM States and West Virginia Commission request that the Commission clarify that—or grant rehearing such that—transmission providers are required, or even permitted, to provide additional sensitivity analyses to the states that best inform them on required transmission facility needs, costs, and benefits based on variations or exclusions of specific factors or categories of factors, including those in the first three categories of factors.¹⁰⁰³

c. Commission Determination

361. We disagree with PJM's rehearing arguments and deny its requested clarification with respect to flexibility regarding the development of Long-Term Scenarios. Specifically, we continue to find that transmission providers must develop at least three distinct Long-Term Scenarios as defined in Order No. 1920, and that transmission providers must incorporate the seven categories of factors set forth in Order No. 1920 into each of those Long-Term Scenarios,¹⁰⁰⁴ as also clarified above.¹⁰⁰⁵ As the Commission held in Order No. 1920, and as we continue to find here, the Commission's regional transmission planning requirements currently fail to adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs, and the incorporation of the seven categories of factors is necessary because these categories of factors are essential to identifying Long-Term Transmission Needs.¹⁰⁰⁶ Failing to require that transmission providers incorporate these categories of factors into the

¹⁰⁰¹ Virginia and North Carolina Commissions Rehearing Request at 4–5.

¹⁰⁰² PJM Rehearing Request at 16.

¹⁰⁰³ PJM States Rehearing Request at 4–5; West Virginia Commission Rehearing Request at 14–16.

¹⁰⁰⁴ Order No. 1920, 187 FERC ¶ 61,068 at PP 409, 559.

¹⁰⁰⁵ See *supra* Long-Term Scenarios Requirements, Stakeholder Process and Transparency section.

¹⁰⁰⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 410.

development of each Long-Term Scenario would increase the likelihood that transmission providers will continue to underestimate—or omit entirely—certain known determinants of Long-Term Transmission Needs in their regional transmission planning processes.¹⁰⁰⁷

362. We also continue to find that transmission providers must assume that legally binding obligations (*i.e.*, federal, federally-recognized Tribal, state, and local laws and regulations) are followed, state-approved integrated resource plans are followed, and expected supply obligations for load-serving entities are fully met.¹⁰⁰⁸ Each Long-Term Scenario must account for and be consistent with factors in these first three categories of factors, because these categories of factors are part of the primary drivers of Long-Term Transmission Needs.¹⁰⁰⁹

363. We disagree with PJM's apparent contention that complying with Order No. 1920 requirements with respect to Long-Term Scenarios will "complicate" PJM's efforts to conduct Long-Term Regional Transmission Planning¹⁰¹⁰ as it is set forth in Order No. 1920.¹⁰¹¹ Instead, we reiterate that Order No. 1920's Long-Term Scenarios requirements strike a reasonable balance between, on the one hand, ensuring that transmission providers identify Long-Term Transmission Needs and identify, evaluate, and select Long-Term Regional Transmission Facilities that would meet those needs, and, on the other hand, providing sufficient flexibility for transmission providers to develop and use Long-Term Scenarios in a way that reflects the unique characteristics of their respective transmission planning regions.¹⁰¹² We continue to find that Order No. 1920's categories of factors requirements strike the right balance between prescriptive requirements and flexibility¹⁰¹³ and that they are sufficiently detailed to address the need for reform without limiting regional flexibility.¹⁰¹⁴ Further, we continue to find that the requirement to develop at least three distinct Long-Term Scenarios

that meet Order No. 1920's requirements strikes the appropriate balance between establishing a sufficient number of Long-Term Scenarios and the associated burden of developing and using Long-Term Scenarios in Long-Term Regional Transmission Planning.¹⁰¹⁵

364. In response to the requests for clarification and/or rehearing of various Order No. 1920 requirements related to Long-Term Scenarios and sensitivities submitted by PJM States, Virginia and North Carolina Commissions, Ohio Commission Federal Advocate, and West Virginia Commission, we clarify that Order No. 1920 allows transmission providers to conduct analyses in addition to those required by Order No. 1920—including additional scenarios or sensitivities¹⁰¹⁶—at the transmission providers' discretion or at the request of the transmission planning region's Relevant State Entities and/or other stakeholders.

365. Specifically, we clarify that transmission providers may develop additional scenarios, beyond the three Long-Term Scenarios that Order No. 1920 requires, to provide Relevant State Entities with information that they can use to inform the application of Long-Term Regional Cost Allocation Method(s) or the development of cost allocation methods through the State Agreement Process(es). We believe that additional analyses may help transmission providers and stakeholders to better understand the potential impact of Long-Term Regional Transmission Facilities on the transmission system, as well as the costs and benefits of Long-Term Regional Transmission Facilities. Particularly, consistent with the flexibility the Commission provided in Order No. 1920 as to cost allocation methods for Long-Term Regional Transmission Facilities (or portfolios of such Facilities), we find that additional analyses may help inform the application of *ex ante* Long-Term Regional Transmission Cost Allocation Methods or the development of cost allocation methods through the State Agreement Process.

366. We further clarify that, when developing these additional analyses or scenarios used to inform cost allocation, transmission providers have the flexibility to depart from Order No. 1920's requirements related to the development of Long-Term Scenarios.

For example, transmission providers may develop scenarios that consider the incremental cost and benefits of Long-Term Regional Transmission Facilities needed to achieve state laws, policies, and regulations beyond the cost and benefits of Long-Term Regional Transmission Facilities needed in the absence of those laws, policies, and regulations. Finally, as discussed below, we clarify that, if the Relevant State Entities wish for the transmission provider to develop a reasonable number of additional scenarios for Long-Term Regional Transmission Planning or Long-Term Regional Cost Allocation, then the transmission providers will develop these scenarios. While transmission providers may conduct such additional analyses, additional analyses that do not meet Order No. 1920's Long-Term Scenario requirements are not considered Long-Term Scenarios as defined in Order No. 1920.¹⁰¹⁷ In other words, transmission providers may not use any such additional analyses to identify Long-Term Transmission Needs, identify Long-Term Regional Transmission Facilities, or to meet the requirement that transmission providers estimate the costs and measure the benefits of Long-Term Regional Transmission Facilities for purposes of selection (*i.e.*, to apply the transmission provider's selection criteria). Transmission providers also may not, consistent with the requirement that transmission providers have the opportunity to select more efficient or cost-effective Long-Term Regional Transmission Facilities to meet Long-Term Transmission Needs, condition the selection of a Long-Term Regional Transmission Facility on the information provided in these additional analyses.

367. Next, we clarify that, when requested by Relevant State Entities in a transmission planning region, transmission providers are required to conduct a reasonable number of additional analyses or scenarios. On

¹⁰⁰⁷ *Id.* P 411.

¹⁰⁰⁸ We continue to find that it is appropriate for transmission providers to assume that legally binding obligations are met, unless and until there is a change in law. *Id.* P 512.

¹⁰⁰⁹ *Id.* PP 507, 512.

¹⁰¹⁰ PJM Rehearing Request at 18–19.

¹⁰¹¹ To the extent that PJM was requesting that the Commission address in this order PJM's proposed long-term transmission planning process, we decline to address such a request here because doing so would be premature and more properly the subject of compliance.

¹⁰¹² Order No. 1920, 187 FERC ¶ 61,068 at P 298.

¹⁰¹³ *Id.* P 417.

¹⁰¹⁴ *Id.* P 421.

¹⁰¹⁵ *Id.* P 559.

¹⁰¹⁶ The use of "scenarios" in this context indicates that these analyses are not required to meet Order No. 1920's requirements as to the development of Long-Term Scenarios and therefore are not "Long-Term Scenarios" within the meaning provided in Order No. 1920.

¹⁰¹⁷ Generally, to comply with Order No. 1920, including as clarified herein, transmission providers must develop at least three Long-Term Scenarios and perform at least one sensitivity analysis for each such Long-Term Scenario; identify Long-Term Transmission Needs using those Long-Term Scenarios and sensitivities thereto; identify Long-Term Regional Transmission Facilities (or portfolios of Long-Term Regional Transmission Facilities) that meet the identified Long-Term Transmission Needs; use and measure the seven required benefits of Long-Term Regional Transmission Facilities within those Long-Term Scenarios and sensitivities; otherwise evaluate those Long-Term Regional Transmission Facilities in the manner prescribed by Order No. 1920; and make a selection decision as to the Long-Term Regional Transmission Facilities identified and evaluated by transmission providers.

compliance, transmission providers may propose processes to determine when Relevant State Entities have requested additional analyses and how to determine what a reasonable number of additional analyses may be.¹⁰¹⁸ We reiterate that any cost allocation method—whether an *ex ante* Long-Term Regional Transmission Cost Allocation Method or a cost allocation method developed through the State Agreement Process for a specific Long-Term Regional Transmission Facility or portfolio thereof—that results from such additional analyses or scenarios must satisfy the cost causation principle.¹⁰¹⁹

368. Finally, in response to the request for rehearing from PJM related to sensitivity analyses required by Order No. 1920 to account for uncertain operational outcomes that determine the benefits of and/or need for transmission facilities during multiple concurrent and sustained generation and/or transmission outages due to an extreme weather event across a wide area, we disagree with the arguments on rehearing and decline to provide clarification. We continue to find that Order No. 1920's requirements in this regard are necessary to ensure just and reasonable Commission-jurisdictional rates. In particular, extreme weather events have occurred more frequently in recent years, represent periods during which regional transmission facilities have particularly high value, and create stressed system conditions that transmission providers can readily compare with non-stressed scenarios to determine the value of specific transmission facilities under these types of conditions.¹⁰²⁰ PJM did not provide adequate information to explain why additional flexibility in developing sensitivities for each Long-Term Scenario is necessary, and we are unconvinced that PJM's regional circumstances justify flexibility on this issue. To the extent that PJM's regional

circumstances require other specific sensitivities, we reiterate that we encourage transmission providers to assess the need to develop other sensitivities as part of Long-Term Regional Transmission Planning.¹⁰²¹

C. Evaluation of the Benefits of Regional Transmission Facilities

1. Requirement for Transmission Providers To Use and Measure a Set of Seven Required Benefits

a. Order No. 1920 Requirements

369. In Order No. 1920, the Commission required transmission providers in each transmission planning region to measure a set of seven required benefits (required benefits) for Long-Term Regional Transmission Facilities under each Long-Term Scenario and to use these measured benefits to evaluate Long-Term Regional Transmission Facilities.¹⁰²² The Commission required transmission providers to measure and use the following required benefits in Long-Term Regional Transmission Planning: (1) avoided or deferred reliability transmission facilities and aging infrastructure replacement; (2) a benefit that can be characterized and measured as either reduced loss of load probability or reduced planning reserve margin; (3) production cost savings; (4) reduced transmission energy losses; (5) reduced congestion due to transmission outages; (6) mitigation of extreme weather events and unexpected system conditions; and (7) capacity cost benefits from reduced peak energy losses.¹⁰²³

370. The Commission found that the record demonstrated that, in order to ensure just and reasonable Commission-jurisdictional transmission rates, it was necessary to require transmission providers to measure and use in Long-Term Regional Transmission Planning a set of particular benefits so that they may identify, evaluate, and select regional transmission facilities that are more efficient or cost-effective transmission solutions to Long-Term Transmission Needs. Further, the Commission found that the benefits that Long-Term Regional Transmission Facilities generally provide extend beyond the benefits that transmission providers currently consider as part of their regional transmission planning and cost allocation processes, and without consideration of such benefits, Long-Term Regional Transmission Planning could not be reasonably

expected to identify, evaluate, and select more efficient or cost-effective regional transmission solutions to address Long-Term Transmission Needs.¹⁰²⁴ The Commission concluded that requiring the measurement and use of the seven required benefits in Long-Term Regional Transmission Planning ensured that transmission providers will consider a sufficiently broad range of benefits when determining whether to select a Long-Term Regional Transmission Facility as a more efficient or cost-effective regional transmission solution to Long-Term Transmission Needs. In contrast, the Commission found that not requiring transmission providers to use any specific benefits in Long-Term Regional Transmission Planning, as proposed in the NOPR, would fail to ensure that transmission providers consider the broader set of benefits provided by, and the beneficiaries receiving the benefits of, Long-Term Regional Transmission Facilities, and, thus, may fail to identify the potentially more efficient or cost-effective regional transmission solution(s) to specific Long-Term Transmission Needs.¹⁰²⁵

371. The requirement that transmission providers measure and use the required benefits in Long-Term Regional Transmission Planning was a change from the NOPR proposal.¹⁰²⁶ In the NOPR, the Commission did not propose to require the use of any specific benefits and instead acknowledged the benefits of regional flexibility, and consistent with Order No. 1000, proposed to consider such matters on review of compliance proposals.¹⁰²⁷ The NOPR included a non-exhaustive list of 12 benefits¹⁰²⁸ that the Commission stated could be considered by transmission providers in Long-Term Regional Transmission Planning and cost allocation processes.¹⁰²⁹ The Commission also sought comment on “whether public utility transmission providers should be required to use some or all of the Long-Term Regional Transmission Benefits as a minimum set of benefits for their Long-Term Regional Transmission Planning process.”¹⁰³⁰

¹⁰¹⁸ For example, in Order No. 890, the Commission required that stakeholders be given the right to request that transmission providers conduct a certain number of economic planning studies, to be determined on a regional basis, and the Commission offered the “merely illustrative” example of five to ten such studies. Order No. 890, 118 FERC ¶ 61,119 at P 547 & n.323.

¹⁰¹⁹ Order No. 1920, 187 FERC ¶ 61,068 at PP 1472, 1477.

¹⁰²⁰ *Id.* P 596. See also *Transmission Sys. Plan. Performance Requirements for Extreme Weather*, Order No. 896, 88 FR 41262 (June 23, 2023), 183 FERC ¶ 61,191, at P 2 (2023) (explaining that extreme heat and cold weather events have occurred more frequently in recent years); *One-Time Informational Reps. on Extreme Weather Vulnerability Assessments Climate Change, Extreme Weather, & Elec. Sys. Reliability*, Order No. 897, 88 FR 41477 (June 27, 2023), 183 FERC ¶ 61,192, at P 2 (2023) (same).

¹⁰²¹ Order No. 1920, 187 FERC ¶ 61,068 at P 597.

¹⁰²² Order No. 1920, 187 FERC ¶ 61,068 at P 719.

¹⁰²³ *Id.* P 720.

¹⁰²⁴ *Id.* P 722.

¹⁰²⁵ *Id.* P 723.

¹⁰²⁶ *Id.*

¹⁰²⁷ NOPR, 179 FERC ¶ 61,028 at P 183 (citation omitted).

¹⁰²⁸ *Id.* P 185.

¹⁰²⁹ *Id.* P 184.

¹⁰³⁰ *Id.* P 188.

b. Logical Outgrowth

i. Requests for Rehearing and Clarification

372. East Kentucky and NRECA argue that Order No. 1920 violates the APA's notice-and-comment requirements because it mandates that transmission providers use a set of seven benefits for evaluating Long-Term Regional Transmission Facilities, a requirement that East Kentucky and NRECA argue is not a logical outgrowth of the NOPR, which proposed non-mandatory and non-exhaustive examples of benefits that transmission providers could use.¹⁰³¹ NRECA asserts that the NOPR made clear that the list of potential benefits was neither mandatory nor exhaustive and that transmission providers would have flexibility to determine what benefits they use in their Long-Term Regional Transmission Planning.¹⁰³² NRECA describes the final rule's seven required benefits as "nationwide, mandatory, [and] one-size-fits all" and the "exact opposite" of the proposed rule.¹⁰³³

ii. Commission Determination

373. We disagree with the argument that the Commission failed to provide adequate notice and opportunity to comment on Order No. 1920's requirement that transmission providers measure a set of seven required benefits for Long-Term Regional Transmission Facilities under each Long-Term Scenario as part of Long-Term Regional Transmission Planning and use these measured benefits to evaluate Long-Term Regional Transmission Facilities.¹⁰³⁴ As courts have explained, "[n]otice suffices when [an agency] has 'expressly asked for comments on a particular issue or otherwise made clear that the agency was contemplating a particular change.'"¹⁰³⁵ NRECA acknowledges that the NOPR sought comment on whether transmission providers should be required to use some or all of the potential benefits described in the NOPR as a minimum set of benefits for their Long-Term Regional Transmission Planning process.¹⁰³⁶ By requesting comment on whether to make mandatory some or all

of the benefits in the NOPR, the Commission sufficiently put parties on notice that the Commission was considering *the exact change* that East Kentucky and NRECA now argue was unanticipated and violated the APA's notice-and-comment requirements. Thus, in adopting the requirement that transmission providers measure and use the set of seven required benefits in Long-Term Regional Transmission Planning, the Commission adhered to the APA's notice-and-comment requirements.

c. Flexibility Regarding Benefits Rather Than a Minimum Set

i. Requests for Rehearing and Clarification

374. Dominion requests rehearing and argues that the seven required benefits are not directly tied or correlated to the seven categories of factors establishing Long-Term Transmission Needs.¹⁰³⁷ Dominion contends that the seven required benefits "are generic, almost inherent benefits of all transmission," whereas the seven categories of factors that transmission providers must incorporate in the development of Long-Term Scenarios "are mostly restatements of public policy driven needs for transmission facilities."¹⁰³⁸ Dominion states that it "is not suggesting that Factor Category No. 1 must match Benefit No. 1, etc.; rather, individually, and as a whole, the[se] seven Factor Categories do not correlate to any or all of the seven Benefits."¹⁰³⁹ Dominion opines that, because the seven required benefits do not correspond to the seven categories of factors, regardless of the public policy issues driving the need for a transmission facility, Order No. 1920's requirement that transmission providers use the seven required benefits in determining whether to select a transmission facility will likely result in a public policy project always being selected.¹⁰⁴⁰ Further, Dominion opines that, because the seven required benefits do not correspond to the seven categories of factors, the seven required benefits are "secondary or incidental" to the primary purpose of the Long-Term Regional Transmission Facilities. Dominion states that the United States Court of Appeals for the Seventh Circuit "rejected the use of 'incidental' benefits because 'the incidental-benefits tail mustn't be allowed to wag the primary-

benefits dog.'"¹⁰⁴¹ Dominion contends that Order No. 1920 should have required that Long-Term Transmission Needs and the benefits of Long-Term Regional Transmission Facilities correspond to each other, and failure to impose such a requirement was not reasoned decision making.¹⁰⁴² Dominion states that the Commission should provide flexibility to transmission providers to allow them to identify the benefits that they will measure in their compliance filings and ensure that those benefits are tied to the underlying needs.¹⁰⁴³

375. PJM requests rehearing and argues that Order No. 1920 is arbitrary and capricious because the requirement that transmission providers measure and use seven required benefits to evaluate Long-Term Regional Transmission Facilities is an unexplained departure from the NOPR's recognition of the value of allowing regional flexibility with respect to benefits.¹⁰⁴⁴ PJM argues that the Commission should provide flexibility to transmission providers to allow them to identify the benefits that they will measure in their compliance filings (except for Final Rule Benefits 1, 2, and 3, which PJM agrees should be required).¹⁰⁴⁵ PJM asserts that Final Rule Benefits 4 and 5 are additional benefits that RTOs could add as they gain experience and determine to be quantitatively important. PJM also argues that Final Rule Benefit 6 has three different subcomponents and could be very cumbersome to measure if each one of them must be quantified.¹⁰⁴⁶

376. Designated Retail Regulators and Undersigned States request rehearing and assert that the benefit metrics used to evaluate Long-Term Regional Transmission Facilities should be developed as part of RTO stakeholder processes, not mandated by the Commission.¹⁰⁴⁷ NRECA alleges that by prescribing the required benefits that transmission providers must use for evaluation and selection of Long-Term Regional Transmission Facilities, the final rule will likely change the results of the evaluation and selection processes in unanticipated ways.¹⁰⁴⁸

¹⁰³¹ East Kentucky Rehearing Request at 1–2 (citing 5 U.S.C. 553(b)); NRECA Rehearing Request at 4, 10–13 (citing 5 U.S.C. 553(b)).

¹⁰³² NRECA Rehearing Request at 10 (quoting NOPR, 179 FERC ¶ 61,028 at P 183).

¹⁰³³ *Id.* at 11.

¹⁰³⁴ See Order No. 1920, 187 FERC ¶ 61,068 at P 719.

¹⁰³⁵ *Brennan v. Dickson*, 45 F.4th 48, 69 (D.C. Cir. 2022) (quoting *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1081 (D.C. Cir. 2009)).

¹⁰³⁶ See NRECA Rehearing Request at 10 (citing NOPR, 179 FERC ¶ 61,028 at P 188).

¹⁰³⁷ Dominion Rehearing Request at 18.

¹⁰³⁸ *Id.* at 20.

¹⁰³⁹ *Id.* at 19 n.83.

¹⁰⁴⁰ *Id.* at 20.

¹⁰⁴¹ *Id.* (alteration omitted) (quoting *ICC v. FERC III*, 756 F.3d at 564).

¹⁰⁴² *Id.*

¹⁰⁴³ *Id.* at 18–19, 21.

¹⁰⁴⁴ PJM Rehearing Request at 5, 26–27 & n.106.

¹⁰⁴⁵ *Id.* at 26–29, 42.

¹⁰⁴⁶ *Id.* at 29.

¹⁰⁴⁷ Designated Retail Regulators Rehearing Request at 29; Undersigned States Rehearing Request at 29.

¹⁰⁴⁸ NRECA Rehearing Request at 11–12.

ii. Commission Determination

377. We are not persuaded by arguments raised on rehearing that the Commission should not require transmission providers to use and measure the seven required benefits. We continue to find that allowing transmission providers to determine which benefits they will use and measure, rather than requiring the measurement and use of a minimum set of benefits, may result in transmission providers not measuring important potential benefits of Long-Term Regional Transmission Facilities.¹⁰⁴⁹ This, in turn, would not resolve the deficiencies that the Commission identified in the final rule, such as transmission providers failing to adequately consider the benefits of regional transmission facilities and thereby not selecting the more efficient or cost-effective solutions, leading to unjust and unreasonable Commission-jurisdictional rates.¹⁰⁵⁰ Additionally, as the Commission noted in Order No. 1920, requiring transmission providers to measure and use a required set of benefits will help improve interregional transmission coordination among different transmission planning regions.¹⁰⁵¹

378. We disagree with Dominion's argument that Order No. 1920 does not constitute reasoned decision making or is arbitrary and capricious because the seven required benefits are not tied or correlated to the seven categories of factors that Order No. 1920 requires transmission providers to incorporate into the development of Long-Term Scenarios. We understand Dominion's argument to be that, even though Long-Term Regional Transmission Facilities address Long-Term Transmission Needs that are driven primarily by the incorporation of certain categories of factors that Dominion considers to be "public policy issues," the required

benefits, which Dominion contends are designed to measure a broader range of benefits of transmission facilities unrelated to public policy-related factors, will likely result in a public policy project always being selected. We disagree with this argument. We first note that Dominion provides only speculation that such a result will occur. As the Commission found in Order No. 1920, while state policies make up some of the drivers of Long-Term Transmission Needs, they do not comprise the entirety of those drivers.¹⁰⁵² Accordingly, Long-Term Transmission Needs will be driven by factors (e.g., resource retirements and trends in fuel costs) in addition to and unrelated to "public policy issues," and Long-Term Transmission Facilities will likely be designed to address multiple Long-Term Transmission Needs. In any case, Order No. 1920 does not require that transmission providers select any particular Long-Term Regional Transmission Facility, even where it meets the transmission provider's selection criteria,¹⁰⁵³ which this order maintains on rehearing.¹⁰⁵⁴

379. We disagree with Dominion's assertion that the seven required benefits are "secondary or incidental" to Long-Term Transmission Needs. As the Commission explained in Order No. 1920, the drivers of transmission needs are diverse and include, but are not limited to, grid reliability, changes in the resource mix, and increased demand for electricity.¹⁰⁵⁵ As discussed in the Requirement for Transmission Providers To Use the Seven Required Benefits To Help To Inform Their Identification of Long-Term Transmission Needs section above, we clarify in this order that Long-Term Transmission Needs as defined in Order No. 1920 are driven by both reliability and economic considerations and, as such, both reliability and economic considerations must inform transmission providers' identification of Long-Term Transmission Needs. The seven required benefits measure distinct, well-understood benefits of potential Long-Term Regional

Transmission Facilities and are well supported in the record.¹⁰⁵⁶ Because the seven required benefits reflect many of the reliability and economic benefits that Long-Term Regional Transmission Facilities can provide, we disagree with Dominion that such benefits are secondary or incidental to Long-Term Transmission Needs. Further, the Commission noted in Order No. 1920 that, "[w]e find that the benefits that Long-Term Regional Transmission Facilities generally provide extend beyond the benefits that transmission providers currently consider as part of their regional transmission planning and cost allocation processes, and without consideration of such benefits, Long-Term Regional Transmission Planning cannot be reasonably expected to identify, evaluate, and select more efficient or cost-effective regional transmission solutions to address Long-Term Transmission Needs."¹⁰⁵⁷ The Commission also stated that "[b]y requiring the measurement and use of the seven enumerated benefits in Long-Term Regional Transmission Planning, we ensure that transmission providers will consider a sufficiently broad range of benefits when determining whether to select a Long-Term Regional Transmission Facility as a more efficient or cost-effective regional transmission solution to Long-Term Transmission Needs."¹⁰⁵⁸

380. Finally, the Commission found in Order No. 1920, and we continue to find here, that transmission providers must measure, at a minimum, this set of seven required benefits and then use them to evaluate Long-Term Regional Transmission Facilities in order to ensure just and reasonable rates.¹⁰⁵⁹ The Commission noted:

The record in this proceeding shows that, in order to ensure just and reasonable Commission-jurisdictional transmission rates, it is necessary to require transmission providers to measure and use in Long-Term Regional Transmission Planning a set of particular benefits so that they may identify,

¹⁰⁴⁹ Order No. 1920, 187 FERC ¶ 61,068 at PP 723–724.

¹⁰⁵⁰ See *id.* P 123 ("Failing to adequately identify and consider the benefits of [Long-Term Regional Transmission Facilities] may lead to relatively inefficient or less cost-effective transmission development. In particular, the cost-benefit analyses that transmission providers often use as part of the evaluation process may fail to identify more efficient or cost-effective regional transmission facilities for selection because they provide an inaccurate portrayal of the comparative benefits of different transmission facilities. Thus, the failure to adequately consider the benefits of regional transmission facilities results in, among other things, transmission customers forgoing benefits that may significantly outweigh their costs, which results in less efficient or cost-effective transmission investments and, in turn, contributes to Commission-jurisdictional rates that are unjust and unreasonable."); *id.* P 723.

¹⁰⁵¹ *Id.* P 729 (citations omitted).

¹⁰⁵² *Id.* P 1478. The Commission recognized that state policy goals do not necessarily need to be given the same weight as state laws and regulations when determining the assumptions that will be used in the development of Long-Term Scenarios because government entities have an interest and ability to ensure that the requirements of state laws and regulations are fully achieved. *Id.* PP 512, 516.

¹⁰⁵³ *Id.* P 1026 (citations omitted).

¹⁰⁵⁴ See *infra* No Selection Requirement section.

¹⁰⁵⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 299. See also *id.* PP 39, 299 (defining Long-Term Transmission Needs as "transmission needs identified through Long-Term Regional Transmission Planning by, among other things . . . running scenarios and considering the enumerated categories of factors").

¹⁰⁵⁶ *Id.* P 724 (noting that the seven required benefits "have a proven track record"); *id.* P 746 (Final Rule Benefit 1), PP 749–750 (Final Rule Benefit 2), P 761 (Final Rule Benefit 3), P 782 (Final Rule Benefit 4), P 784 (Final Rule Benefit 5), P 791 (Final Rule Benefit 6), P 812 (Final Rule Benefit 7); see also *id.* P 731 ("[A]ll seven required benefits have either been approved for use in regional transmission planning in at least one non-RTO/ISO transmission planning region or may be implemented by building upon the modeling or techniques used to measure benefits in RTO/ISO or non-RTO/ISO regions, or both."); *id.* P 732 (explaining that the Commission has accepted the use of several of the seven benefits to evaluate transmission facilities and projects).

¹⁰⁵⁷ *Id.* P 722.

¹⁰⁵⁸ *Id.* P 723.

¹⁰⁵⁹ *Id.* P 721.

evaluate, and select regional transmission facilities that are more efficient or cost-effective transmission solutions to Long-Term Transmission Needs. We find that the benefits that Long-Term Regional Transmission Facilities generally provide extend beyond the benefits that transmission providers currently consider as part of their regional transmission planning and cost allocation processes, and without consideration of such benefits, Long-Term Regional Transmission Planning cannot be reasonably expected to identify, evaluate, and select more efficient or cost-effective regional transmission solutions to address Long-Term Transmission Needs.¹⁰⁶⁰

381. Indeed, as Dominion concedes, the seven benefits that Order No. 1920 requires transmission providers to use and measure when evaluating Long-Term Regional Transmission Facilities are “inherent benefits of all transmission.”¹⁰⁶¹

382. In addition, we disagree with PJM’s assertion that Order No. 1920 is arbitrary and capricious because the requirement that transmission providers measure and use seven required benefits to evaluate Long-Term Regional Transmission Facilities is an unexplained departure from the NOPR’s recognition of the value of allowing regional flexibility with respect to benefits. We continue to find that the requirement for transmission providers to measure and use the minimum set of seven required benefits in Long-Term Regional Transmission Planning is necessary to ensure that Commission-jurisdictional rates are just and reasonable.¹⁰⁶² Specifically, absent a requirement that transmission providers measure and use a sufficiently broad range of the benefits of Long-Term Regional Transmission Facilities when evaluating them for potential selection, transmission providers may not identify, evaluate, and select more efficient or cost-effective regional transmission solutions to Long-Term Transmission Needs, which may lead to relatively inefficient or less cost-effective transmission development. Therefore, we find that allowing the regional flexibility that PJM suggests would fail to remedy the deficiencies in existing regional transmission planning and cost allocation processes—namely, the failure to require transmission providers to adequately consider the broader set of benefits of regional transmission facilities planned to meet Long-Term Transmission Needs¹⁰⁶³—that the Commission identified in the

final rule.¹⁰⁶⁴ We also note that PJM itself previously recognized that certain benefits should be required; in its comments on the NOPR, PJM called for the adoption of a nationwide consideration of benefits that are similar to certain benefits that the Commission adopted in Order No. 1920 as part of the set of seven required benefits that transmission providers must measure and use in Long-Term Regional Transmission Planning.¹⁰⁶⁵

383. In response to Designated Retail Regulators’ and Undersigned States’ requests for flexibility to establish the benefits for transmission providers to measure through RTO/ISO stakeholder processes, we reiterate that the measurement and use of certain benefits in Long-Term Regional Transmission Planning is essential to ensuring just and reasonable Commission-jurisdictional rates.¹⁰⁶⁶ As such, we find that it is necessary for the Commission to mandate the measurement and use of these benefits—the required benefits—in Long-Term Regional Transmission Planning rather than deferring to RTO/ISO stakeholder processes.¹⁰⁶⁷

¹⁰⁶⁴ Contrary to PJM’s assertion, in Order No. 1920 the Commission explained its reasons for not adopting the more flexible approach proposed in the NOPR. The Commission found:

[A]dopting the more flexible approach proposed in the NOPR would not address the identified deficiencies in existing regional transmission planning and cost allocation processes because such an approach would fail to ensure that transmission providers consider the broader set of benefits provided by, and the beneficiaries receiving the benefits of, Long-Term Regional Transmission Facilities, and thus, may fail to identify the potentially more efficient or cost-effective regional transmission solution. We find that failing to use the set of benefits that we require in this final rule to evaluate Long-Term Regional Transmission Facilities for potential selection could render resulting Commission-jurisdictional rates unjust and unreasonable. We find that not requiring transmission providers to use certain benefits to evaluate Long-Term Regional Transmission Facilities would be expected to lead to relatively inefficient and less cost-effective transmission development, as Long-Term Regional Transmission Facilities that provide significant net benefits may not be selected.

Id. P 723; *see also id.* P 728 (“We conclude that it would be inappropriate to provide flexibility not to consider this required set of benefits in Long-Term Regional Transmission Planning because . . . requiring the measurement and use of these benefits ensures that transmission providers are able to identify, evaluate, and select regional transmission solutions to more efficiently or cost-effectively address Long-Term Transmission Needs, and thereby ensures just and reasonable rates.”).

¹⁰⁶⁵ PJM NOPR Initial Comments at 96 (“[T]he following benefit categories should be considered on a nationwide basis: (i) Enhanced Reliability; (ii) Avoided or Deferred Reliability Transmission Projects and Aging Infrastructure Replacement; (iii) Deferred Capacity Investment; and (iv) Production Cost Savings.”).

¹⁰⁶⁶ *See* Order No. 1920, 187 FERC ¶ 61,068 at PP 722–723, 725, 727–728.

¹⁰⁶⁷ *Id.* PP 723, 728.

384. We also are not persuaded by NRECA’s assertion that, by prescribing the required benefits that transmission providers must use for evaluation and selection of Long-Term Regional Transmission Facilities, the final rule will likely change the results of the evaluation and selection processes in unanticipated ways. NRECA does not explain what unanticipated consequences it foresees arising, and we find this assertion speculative and unsupported.

d. Overlap and Double-Counting

i. Order No. 1920 Requirements

385. In Order No. 1920, the Commission noted that, “rather than requiring transmission providers to measure and use all 12 benefits enumerated in the NOPR, we only require transmission providers to measure and use seven specific benefits that have a proven track record, can be discretely measured, and are unlikely to cause duplication.”¹⁰⁶⁸ In response to concerns raised by commenters regarding the potential for overlap and double-counting, the Commission further noted:

We believe that the seven benefits that we include in the required set of benefits that transmission providers must measure and use in Long-Term Regional Transmission Planning are distinct enough that they will not overlap in a way that results in double-counting. Nonetheless, to the extent that transmission providers are concerned that any possibility of double-counting remains, we provide transmission providers with flexibility on the measurement of such benefits and expect that transmission providers can use such flexibility to develop methods for measuring each required benefit that address those concerns.¹⁰⁶⁹

386. With respect to Final Rule Benefit 3, Production Cost Savings, the Commission in Order No. 1920 explained why it did not believe that this benefit would result in double-counting of benefits merely because such benefits may also be considered in state resource planning.¹⁰⁷⁰ Specifically, the Commission found that while integrated resource planning processes, where they exist, may consider similar benefits compared to those required by Order No. 1920, the consideration of benefits in a state-jurisdictional process does not result in the double-counting of benefits within any Commission-jurisdictional transmission planning process.¹⁰⁷¹

387. The Commission in Order No. 1920 also offered guidance regarding the

¹⁰⁶⁰ *Id.* P 722.

¹⁰⁶¹ Dominion Rehearing Request at 20.

¹⁰⁶² Order No. 1920, 187 FERC ¶ 61,068 at P 727.

¹⁰⁶³ *Id.* P 122.

¹⁰⁶⁸ *Id.* P 724.

¹⁰⁶⁹ *Id.* P 735.

¹⁰⁷⁰ *Id.* P 770.

¹⁰⁷¹ *Id.*

manner of measurement of certain aspects of Final Rule Benefit 6, mitigation of extreme weather events and unexpected system conditions, to avoid double-counting. The Commission noted, for example, that “to avoid double-counting of similar circumstances, transmission providers must account for extreme weather events and unexpected system conditions that are separate and distinct such that the benefits of mitigating each system condition can be combined into a single benefit measure.”¹⁰⁷²

ii. Requests for Rehearing and Clarification

388. Designated Retail Regulators and Undersigned States request rehearing and assert that Order No. 1920’s requirements to use seven required factors and seven required benefits will result in unjust and unreasonable rates. They argue that the seven required factors and seven required benefits overlap and will double-count or exaggerate the potential benefits of Long-Term Regional Transmission Facilities, with Undersigned States adding that this renders the rule arbitrary and capricious.¹⁰⁷³

389. Designated Retail Regulators and Undersigned States assert that with respect to the seven required benefits, it is unclear whether these metrics will result in double-counting of potential benefits.¹⁰⁷⁴

iii. Commission Determination

390. We disagree with Designated Retail Regulators and Undersigned States that the seven required benefits will overlap and will double-count or exaggerate the potential benefits of Long-Term Regional Transmission Facilities. As an initial matter, the Commission found in Order No. 1920, and we continue to find here, that “the seven benefits that we include in the required set of benefits that transmission providers must measure and use in Long-Term Regional Transmission Planning are distinct enough that they will not overlap in a way that results in double-counting.”¹⁰⁷⁵ Designated Retail

Regulators and Undersigned States fail to provide evidence in support of their arguments to the contrary, and they do not provide any specific examples of the alleged overlap. Given the descriptions of the required benefits adopted in Order No. 1920,¹⁰⁷⁶ we conclude that each of these required benefits captures a different type of benefit that Long-Term Regional Transmission Facilities may provide. However, we reiterate, as the Commission stated in the final rule, that Order No. 1920 provides transmission providers with flexibility on the measurement of the required benefits, and we expect that transmission providers can use such flexibility to develop methods for measuring each required benefit that address any concerns about the possibility of double-counting benefits.¹⁰⁷⁷

391. Moreover, the Commission explained in Order No. 1920 that transmission providers’ evaluation of Long-Term Regional Transmission Facilities must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility (or portfolio of Long-Term Regional Transmission Facilities) was selected or not selected.¹⁰⁷⁸ The Commission also explained that this determination must include the estimated costs and measured benefits of each alternative Long-Term Regional Transmission Facility (or portfolio of Long-Term Regional Transmission Facilities) that transmission providers evaluated in the Long-Term Regional Transmission Planning process, regardless of whether or not the Long-Term Regional Transmission Facility (or portfolio of such Facilities) is selected.¹⁰⁷⁹ We find that these requirements will further safeguard against potential overlap and double-counting of benefits.

392. With respect to Undersigned States’ and Designated Retail Regulators’ concerns regarding the relationship between benefits and factors, we address this issue in the Requirement for Transmission Providers to Use the Seven Required Benefits to Help to Inform Their Identification of Long-Term Transmission Needs section above. As noted there, we are setting aside Order No. 1920’s requirement for transmission providers to use the set of seven required benefits to help to

inform their identification of Long-Term Transmission Needs. As such, we find that there is no overlap between the categories of factors that transmission providers must incorporate into the development of Long-Term Scenarios, which are developed prior to the identification of Long-Term Transmission Needs and Long-Term Regional Transmission Facilities to address those needs, and the required benefits, which are subsequently used to evaluate the identified Long-Term Regional Transmission Facilities.

393. With respect to Designated Retail Regulators’ and Undersigned States’ concerns about potential overlaps between the seven required benefits and other benefits that transmission providers may use and measure, we find that Order No. 1920 provides for sufficient transparency to prevent any such overlap. Specifically, Order No. 1920 requires transmission providers to describe how they will measure the seven required benefits in OATT filings.¹⁰⁸⁰ Additionally, it requires transmission providers to measure and use any additional benefits beyond those included in the required set of benefits, including on a transmission facility or plan-specific basis, in a manner that is consistent with their obligations under Order No. 890 and Order No. 1000 transmission planning principles to be open and transparent as to their transmission planning processes.¹⁰⁸¹ As such, stakeholders will have the information necessary to identify any potential double-counting of the required benefits and any other benefits that transmission providers choose to measure and use in Long-Term Regional Transmission Planning.

e. Conflicts With State Authority

i. Requests for Rehearing and Clarification

394. Designated Retail Regulators assert that the seven required benefits conflict with the state authority reflected in both the transmission planning principles adopted by OMS that project metrics should be quantifiable, subject to accurate measurement, verifiable, non-duplicative, and forward looking and the Entergy Regional State Committee’s adoption of “even more stringent requirements to ensure that any metrics adopted reflected actual, not hypothetical, value that would justify major transmission investment.”¹⁰⁸²

¹⁰⁷² *Id.* P 804.

¹⁰⁷³ Designated Retail Regulators Rehearing Request at 8 (citation omitted); Undersigned States Rehearing Request at 8 (citation omitted).

¹⁰⁷⁴ Designated Retail Regulators Rehearing Request at 29; Undersigned States Rehearing Request at 29.

¹⁰⁷⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 735. As noted above, the Commission also addressed arguments relating to double-counting and/or overlap between Final Rule Benefit 3 and integrated resource planning processes and provided guidance regarding the manner of measurement of certain aspects of Final Rule Benefit 6, mitigation of

extreme weather events and unexpected system conditions, to avoid double-counting.

¹⁰⁷⁶ *Id.* PP 745, 756, 758, 767, 781, 788, 800, 817.

¹⁰⁷⁷ *Id.* P 735.

¹⁰⁷⁸ *Id.* P 954.

¹⁰⁷⁹ *Id.* PP 954, 966.

¹⁰⁸⁰ *Id.* P 837.

¹⁰⁸¹ *Id.* P 822.

¹⁰⁸² Designated Retail Regulators Rehearing Request at 31–33 (citing Organization of MISO

For instance, Designated Retail Regulators state that the Entergy Regional State Committee (E-RSC) adopted stringent requirements to ensure that any metrics adopted reflected actual, not hypothetical, value that would justify major transmission investment:

The cost-benefit and other analyses that are used to inform the business case and cost allocation for Tranche 3 shall be based only on accurate, objective, measurable, quantifiable, non-duplicative, forward-looking, and replicable metrics that are supported by data;

Tranche 3 costs shall be allocated using an exclusive list of benefit metrics identified by the E-RSC, with advice from MISO and MISO South Stakeholders, that meet the criteria identified in Paragraph 3 above. These metrics shall be memorialized after being approved by the E-RSC;

Each Tranche 3 project must individually satisfy the cost-benefit analysis used for the business case and cost allocation on a stand-alone basis. Where two or more transmission facility upgrades combine to address a specific transmission issue, they may be evaluated as a single project for the purpose of analysis and cost allocation.¹⁰⁸³

395. NESCOE requests that the Commission grant rehearing to require transmission providers to defer to states in the identification of benefits that Long-Term Regional Transmission Facilities may provide when the driver of the Long-Term Transmission Need is related to satisfying state laws, regulations, or policies.¹⁰⁸⁴

ii. Commission Determination

396. We are not persuaded by requests for rehearing that argue that the Commission's establishment of a set of required benefits in Order No. 1920 impermissibly or improperly intrudes upon state authority. We continue to find that, while the Long-Term Regional Transmission Planning required in Order No. 1920 may be more comprehensive than the status quo, as a matter of the Commission's jurisdiction, it is fundamentally no different than the regional transmission planning already required by the Commission and upheld

by the appellate courts.¹⁰⁸⁵ Using the required benefits to evaluate Long-Term Regional Transmission Facilities is an incremental improvement to the Commission's Order No. 890 and Order No. 1000 reforms requiring processes for evaluating the merits of proposed transmission solutions offered by potential developers.¹⁰⁸⁶ The D.C. Circuit upheld the Commission's Order No. 1000 regional transmission planning reforms against challenges rooted in similar misunderstandings of the Commission's jurisdiction as those advanced by the rehearing parties.¹⁰⁸⁷

397. Further, we reiterate the Commission's finding in Order No. 1920 that some benefits are so essential to Long-Term Regional Transmission Planning that they must be required and not left to the discretion of stakeholders, whether RTOs/ISOs or state committees.¹⁰⁸⁸ Order No. 1920, for example, found that requiring the measurement and use of Final Rule Benefit 1, Avoided or Deferred Reliability Transmission Facilities and Aging Transmission Infrastructure Replacement, as described, is necessary because Long-Term Regional Transmission Facilities may obviate or delay the need for reliability transmission facilities identified in the near term, or the need for later replacements of aging transmission infrastructure.¹⁰⁸⁹ Moreover, as discussed in the Flexibility Regarding Benefits Rather than a Minimum Set section above, the Commission found in Order No. 1920 that the requirement for transmission providers to measure and use the seven required benefits in Long-Term Regional Transmission Planning is necessary to ensure that Commission-jurisdictional rates are just and reasonable.¹⁰⁹⁰ We sustain this finding and, as a result, continue to find that the measurement and use of these minimum set of required benefits in Long-Term Regional Transmission Planning cannot be left to the discretion of transmission providers or stakeholders.

398. We also question the degree of intrusion cited by certain rehearing

parties. We note, for example, that many of the OMS and Entergy Regional State Committee transmission planning principles cited by Designated Retail Regulators are similar to provisions governing the measurement and use of the required benefits in Order No. 1920. For example, Order No. 1920's findings and requirements with respect to the seven required benefits are consistent with the second of OMS's transmission planning principles¹⁰⁹¹ that benefit metrics be quantifiable,¹⁰⁹² capable of replication,¹⁰⁹³ non-duplicative,¹⁰⁹⁴ and forward-looking.¹⁰⁹⁵

399. With respect to Designated Retail Regulators' assertions regarding the Entergy Regional State Committee requirements, we note that many of the metrics for analysis raised by the first cited requirement¹⁰⁹⁶ are similar to those required by the final rule and by OMS. With respect to the second requirement ("Tranche 3 costs shall be allocated using an exclusive list of benefit metrics identified by the E-RSC"), we note that transmission providers are free to measure and use additional benefits in Long-Term Regional Transmission Planning so long as they also measure and use the required benefits and measure and use any other benefits in a manner that is

¹⁰⁹¹ Organization of MISO States, Inc., *Organization of MISO States Statement of Principles: Cost Allocation for Long Range Transmission Planning Projects*, https://www.misostates.org/images/PositionStatements/OMS_Position_Statement_of_Principles_Cost_Allocation_for_LRTPs.pdf.

¹⁰⁹² Order No. 1920, 187 FERC ¶ 61,068 at P 724 ("[W]e only require transmission providers to measure and use seven specific benefits that . . . can be discretely measured.").

¹⁰⁹³ *Id.* P 837 ("[We] require transmission providers in each transmission planning region to include in their OATTs a general description of how they will measure each of the seven benefits included in the required set of benefits . . .").

¹⁰⁹⁴ *Id.* P 735 ("We believe that the seven benefits that we include in the required set of benefits that transmission providers must measure and use in Long-Term Regional Transmission Planning are distinct enough that they will not overlap in a way that results in double-counting.").

¹⁰⁹⁵ *Id.* P 859 ("[We] require transmission providers in each transmission planning region, as part of Long-Term Regional Transmission Planning, to calculate the benefits of Long-Term Regional Transmission Facilities over a time horizon that covers, at a minimum, 20 years starting from the estimated in-service date of the transmission facilities . . .").

¹⁰⁹⁶ Entergy Regional State Committee, *Resolution of the Entergy Regional State Committee*, at 3 (adopted June 30, 2023), <https://cdn.misoenergy.org/20230630%20-%20ERSC%20Resolution%20re%20MISO%20South%20Cost%20Allocation%20for%20Tranche%203629421.pdf> ("The cost-benefit and other analyses that are used to inform the business case and cost allocation for Tranche 3 shall be based only on accurate, objective, measurable, quantifiable, non-duplicative, forward-looking, and replicable metrics that are supported by data.").

States, Inc., *Organization of MISO States Statement of Principles: Cost Allocation for Long Range Transmission Planning Projects*, https://www.misostates.org/images/PositionStatements/OMS_Position_Statement_of_Principles_Cost_Allocation_for_LRTPs.pdf.

¹⁰⁸³ Designated Retail Regulators Rehearing Request at 32–33 (quoting Entergy Regional State Committee, *Resolution of the Entergy Regional State Committee*, 3 (adopted June 30, 2023), <https://cdn.misoenergy.org/20230630%20-%20ERSC%20Resolution%20re%20MISO%20South%20Cost%20Allocation%20for%20Tranche%203629421.pdf>).

¹⁰⁸⁴ NESCOE Rehearing Request at 11 (citation omitted).

¹⁰⁸⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 277 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 68–69).

¹⁰⁸⁶ See Order No. 1000, 136 FERC ¶ 61,051 at P 315 (citing Order No. 890, 118 FERC ¶ 61,119 at P 494; Order No. 890–A, 121 FERC ¶ 61,297 at PP 215–216).

¹⁰⁸⁷ See *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 63 ("Taken together, these points support the Commission's assertion of authority over transmission planning matters in the challenged orders, notwithstanding petitioners' contention that the orders intrude on the States' authority.").

¹⁰⁸⁸ See Order No. 1920, 187 FERC ¶ 61,068 at PP 722–723, 725, 728.

¹⁰⁸⁹ *Id.* P 745.

¹⁰⁹⁰ *Id.* P 727.

consistent with their obligations under Order No. 890 and Order No. 1000 transmission planning principles to be open and transparent as to their transmission planning processes.¹⁰⁹⁷ With respect to the third requirement,¹⁰⁹⁸ the final rule noted the potential to use cost-benefit metrics as a means for evaluating and selecting Long-Term Regional Transmission Facilities.¹⁰⁹⁹

400. We are also unpersuaded by NESCOE's request that we defer to state preferences regarding benefits when the driver of the Long-Term Transmission Need is related to satisfying state laws, regulations, or policies. As noted above, the measurement and use of the required benefits in Long-Term Regional Transmission Planning is essential to ensuring just and reasonable Commission-jurisdictional rates such that the Commission cannot defer to states on this point. However, we note that Order No. 1920 requires consultation with the states regarding aspects of Long-Term Regional Transmission Planning, including a requirement that transmission providers consult with and seek the support of Relevant State Entities regarding the evaluation process, including selection criteria, that transmission providers propose to use to identify and evaluate Long-Term Regional Transmission Facilities and that provide transmission providers with the opportunity to select Long-Term Regional Transmission Facilities to address Long-Term Transmission Needs, including those related to satisfying state laws, regulations, or policies.¹¹⁰⁰ Further, as clarified in this order in the Stakeholder Process and Transparency section above, transmission providers must provide states with a meaningful opportunity to provide timely input on the development of Long-Term Scenarios, including factors and data inputs, and an opportunity to explain

how their own policies and planning affect Long-Term Transmission Needs.¹¹⁰¹

f. Individual Benefits

i. Final Rule Benefit 2(a): Reduced Loss of Load Probability; or Final Rule Benefit 2(b): Reduced Planning Reserve Margin

(a) Order No. 1920 Requirements

401. With respect to Final Rule Benefit 2, the Commission stated that this benefit can be characterized and measured as Final Rule Benefit 2(a), Reduced Loss of Load Probability, or as Final Rule Benefit 2(b), Reduced Planning Reserve Margin, two different methods for measuring the same underlying benefit. The Commission found that because there is an overlap between the reduced loss of load probability benefits and reduced planning reserve margin benefits, for purposes of Long-Term Regional Transmission Planning, transmission providers must either measure reduced loss of load events by holding the planning reserve margin constant or measure the reduction in planning reserve margins by holding loss of load events constant but may not measure both simultaneously for purposes of using and measuring Final Rule Benefit 2(a) or 2(b).¹¹⁰²

(b) Requests for Rehearing and Clarification

402. SERTP Sponsors argue that the Commission should clarify that it does not intend to require transmission providers to establish a planning reserve margin other than the planning reserve margin established by the resource planners and load-serving entities on that transmission provider's system. SERTP Sponsors also assert that the Commission should clarify that any analysis under Final Rule Benefit 2 should not be used as a basis to challenge the planning reserve margin of a resource planner or load-serving entity established through state resource planning processes, and that the use of such an analysis is only intended for the purpose of evaluating potential Long-Term Regional Transmission Facilities that may under certain planning scenarios suggest a potential benefit.¹¹⁰³

¹¹⁰¹ Further, as discussed in the General Benefits Requirements Related to Cost Allocation section below, transmission providers can consider additional benefits for cost allocation purposes, including, but not limited to, those agreed to by Relevant State Entities and described elsewhere in Order No. 1920, provided that costs are allocated in a way that is at least roughly commensurate with estimated benefits.

¹¹⁰² Order No. 1920, 187 FERC ¶ 61,068 at P 755.

¹¹⁰³ SERTP Sponsors Rehearing Request at 18.

(c) Commission Determination

403. We clarify that Order No. 1920 does not require transmission providers to establish a different planning reserve margin than the one established by resource planners or load-serving entities in a particular transmission provider's system, including in measuring Final Rule Benefit 2. We underscore here that any calculation of this benefit will only serve to support the benefits assessment of potential Long-Term Regional Transmission Facilities during the Long-Term Regional Transmission Planning process. While the Commission described examples of how transmission providers could measure certain benefits, the Commission did not require a specific measurement method for any of the required benefits.¹¹⁰⁴ Further, the Commission noted that Final Rule Benefit 2 can be measured in one of two ways: (a) using reduced loss of load probability or (b) reduced planning reserve margin.¹¹⁰⁵ In light of this clarification, we need not reach SERTP Sponsors' alternative argument that, absent this clarification, Order No. 1920 would raise concerns that the Commission has exceeded its jurisdiction.¹¹⁰⁶

404. In response to SERTP Sponsors' request to clarify that any analysis under Final Rule Benefit 2 should not be used as the basis for challenging a resource planner's or load-serving entity's planning reserve margin established through state resource planning processes, we clarify that any state resource planning process is a separate process subject to state jurisdiction and is beyond the scope of Order No. 1920.

ii. Final Rule Benefit 3: Production Cost Savings

(a) Order No. 1920 Requirements

405. In Order No. 1920, the Commission required transmission providers in each transmission planning region to measure and use Final Rule Benefit 3 in Long-Term Regional Transmission Planning. The Commission described this benefit as savings in fuel and other variable operating costs of power generation that are realized when transmission facilities allow for displacement of higher-cost supplies through the increased dispatch of suppliers that have lower incremental costs of production, as well as a

¹¹⁰⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 727.

¹¹⁰⁵ *Id.* P 748.

¹¹⁰⁶ See SERTP Sponsors Rehearing Request at 18 n.46, 43 (Issue Statement 15) (citations omitted).

¹⁰⁹⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 822.

¹⁰⁹⁸ Entergy Regional State Committee, *Resolution of the Entergy Regional State Committee*, at 3 (adopted June 30, 2023), <https://cdn.misoenergy.org/20230630%20-%20ERSC%20Resolution%20re%20MISO%20South%20Cost%20Allocation%20for%20Tranche%203629421.pdf> ("Each Tranche 3 project must individually satisfy the cost-benefit analysis used for the business case and cost allocation on a stand-alone basis.")

¹⁰⁹⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 966 (noting that transmission provider evaluation processes must result in determinations that "include the estimated costs and measured benefits of each alternative Long-Term Regional Transmission Facility (or portfolio of such Facilities) evaluated by the transmission providers, whether or not the Long-Term Regional Transmission Facility (or portfolio of such Facilities) is selected").

¹¹⁰⁰ See *id.* PP 914, 994.

reduction in market prices as lower-cost suppliers set market clearing prices.¹¹⁰⁷

406. In Order No. 1920, the Commission disagreed with the assertion made in comments that production cost savings may not always be applicable, such as where financial transmission rights fully hedge the cost of congestion. The Commission stated that financial transmission rights are required in RTO/ISO markets and allow the market participant that owns the right to mitigate the congestion charge along an existing transmission path for the capacity of that path. The Commission further stated that a new transmission facility could reduce congestion and allow that market participant to purchase more electricity, exceeding the capacity of the transmission path for the financial transmission right, at a lower price. The Commission observed that this reduced congestion allows load to access lower cost resources and results in more efficient dispatch of resources and, thus, provides avoided production cost benefits that are distinct from the avoided congestion charges associated with financial transmission rights.¹¹⁰⁸

(b) Requests for Rehearing and Clarification

407. SERTP Sponsors argue that the Commission should clarify that production cost analysis from state-approved integrated resource plans may be used to the extent feasible to satisfy the requirement to consider Final Rule Benefit 3. SERTP Sponsors further argue that, in the event of conflict, state-regulated integrated-resource-plan planning must control in accordance with FPA section 201.¹¹⁰⁹

408. Designated Retail Regulators assert that the Commission was mistaken in stating that a load-serving entity may benefit from reduced production costs associated with transmission construction even when its congestion costs are fully hedged. Designated Retail Regulators argue that as congestion is eliminated by transmission construction, the value of the load-serving entity's financial transmission rights decreases, and the load-serving entity incurs additional transmission charges associated with the new transmission facilities. Designated Retail Regulators assert that any benefit based on adjusted production cost must therefore consider congestion to determine if a load-serving entity receives any benefit or

harm from transmission construction.¹¹¹⁰

(c) Commission Determination

409. In response to SERTP Sponsors, we note that Order No. 1920 does not require a specific measurement method for any of the seven required benefits. We clarify that if transmission providers in a transmission planning region believe they can use production cost savings from one or more state integrated resource plans as an appropriate method to measure the value of Final Rule Benefit 3, they may propose to do so on compliance. As a general matter, we agree that states have authority over generation resource adequacy, which may include evaluation of production cost savings in state-regulated integrated resource plans. Order No. 1920, however, addresses transmission planning practices directly affecting Commission-jurisdictional rates, including by requiring that transmission providers consider the broader set of benefits (such as Final Rule Benefit 3) associated with Long-Term Regional Transmission Facilities. We therefore decline SERTP Sponsors' request to clarify that transmission providers must, in all circumstances, rely on such state evaluations of production cost savings in assessing the benefits associated with such facilities.¹¹¹¹

410. We decline Designated Retail Regulators' request for clarification regarding Final Rule Benefit 3 with respect to financial transmission rights. We continue to find that financial transmission rights allow the market participant that owns the right to mitigate the congestion charge along an existing path for the capacity of that path and note that a new transmission facility could reduce congestion and allow that market participant to purchase more electricity, exceeding the capacity of the transmission path for the financial transmission right, at a lower price. While the extent of production cost savings from any Long-Term Regional Transmission Facility or portfolio of such Facilities may vary among representative transmission

providers, and transmission providers may propose on compliance to consider the effects of financial transmission rights on Final Rule Benefit 3, we decline to prospectively determine how any load-serving entity may or may not benefit from a reduction in regional production costs, including whether the degree to which a particular load-serving entity may have hedged against congestion would affect such benefits.

2. Measurement and Use of Other Benefits

a. Order No. 1920 Requirements

411. In Order No. 1920, the Commission declined to require transmission providers to measure and use the remaining five benefits described in the NOPR in Long-Term Regional Transmission Planning (*i.e.*, mitigation of weather and load uncertainty, generation capacity investments, access to lower-cost generation, increased competition, and increased market liquidity), but permitted transmission providers to measure and use additional benefits beyond the set of seven required benefits (other benefits), including on a transmission facility or plan-specific basis, subject to the requirement that they do so in a manner that is consistent with their obligations under Order No. 890 and Order No. 1000 transmission planning principles to be open and transparent as to their transmission planning processes.¹¹¹² The Commission stated that, in particular, the evaluation process must result in a determination that is sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility (or portfolio of such Facilities) was selected or not selected to address Long-Term Transmission Needs, which necessarily means that stakeholders must understand which benefits transmission providers considered in the evaluation process, including any beyond the seven benefits that the Commission required transmission providers to include in their OATTs.¹¹¹³

b. Requests for Rehearing and Clarification

412. PIOs assert that the Commission erred by not requiring transmission providers to measure and use the five additional benefits identified in the NOPR.¹¹¹⁴ PIOs assert that the Commission ignores its own evidence in the NOPR that the five additional

¹¹¹⁰ Designated Retail Regulators Rehearing Request at 30–31.

¹¹¹¹ In light of this clarification, we continue to conclude that Order No. 1920 is a lawful exercise of the Commission's statutory authority and does not intrude into areas of reserved state jurisdiction. See *supra* Statutory Authority section; SERTP Sponsors Rehearing Request at 18–19 nn.46 & 48, 43 (Issue Statement 15) (citations omitted). To the extent that transmission providers propose a different evaluation of production cost savings than reflected in state-regulated integrated resource plans, they will be doing so in the context of Order No. 1920's regulation of Commission-jurisdictional transmission planning processes.

¹¹⁰⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 767.

¹¹⁰⁸ *Id.* P 773 (citations omitted).

¹¹⁰⁹ SERTP Sponsors Rehearing Request at 19.

¹¹¹² Order No. 1920, 187 FERC ¶ 61,068 at PP 821–822.

¹¹¹³ *Id.* P 737.

¹¹¹⁴ PIOs Rehearing Request at 26–27.

proposed benefits have a proven track record, can be discretely measured, and are unlikely to cause duplication.¹¹¹⁵

413. TAPS asserts that Order No. 1920's lack of a requirement for transmission providers to fully explain and justify additional benefits used to evaluate Long-Term Regional Transmission Facilities is an unjustified departure from the NOPR and inconsistent with the final rule's directive requiring transmission providers to describe how they will measure each of the seven required benefits on compliance. TAPS states that the final rule invites transmission providers to supplement Order No. 1920's required benefits, seemingly abandoning concerns about double-counting. TAPS further argues that the flexibility regarding additional benefits also provides an opportunity to selectively apply additional benefits on a transmission facility or plant-specific basis, inviting discrimination.¹¹¹⁶ TAPS also asserts that it is unclear whether the final rule's requirements for transmission providers to be "open and transparent" applies to the process of deciding whether to use and how to measure additional benefits or to the implementation of the additional benefits for specific projects. TAPS contends that it should apply to both.¹¹¹⁷

c. Commission Determination

414. We are not persuaded by PIOs' rehearing request concerning the Commission's decision in Order No. 1920 to not require the measurement and use of benefits other than the seven required benefits, such as the five additional benefits identified by the Commission in the NOPR. The Commission determined that measurement and use of the set of seven required benefits constituted the just and reasonable replacement rate. Furthermore, the Commission explained its reasoning in Order No. 1920 for only requiring the measurement and use of seven required benefits and not other benefits, including recognizing commenters' concerns about duplication of certain benefits and the difficulty of measuring certain benefits.¹¹¹⁸ The Commission also explained that the list of seven required benefits only requires transmission providers to measure and use seven specific benefits that have a proven track record, can be discretely

measured, and are unlikely to cause duplication.¹¹¹⁹

415. With respect to TAPS' concerns regarding a lack of a requirement for transmission providers to explain and justify other benefits on compliance, we believe that the approach in the final rule is reasonable because it provides transmission providers with greater flexibility to consider potential additional benefits of Long-Term Regional Transmission Facilities beyond the seven required benefits. We further find that, by providing transparency, the requirements of the final rule are sufficient to avoid undue discrimination. Specifically, Order No. 1920 requires transmission providers that measure and use any other benefits beyond the set of seven required benefits to do so in a manner that is consistent with their obligations under Order No. 890 and Order No. 1000 transmission planning principles to be open and transparent as to their transmission planning processes.¹¹²⁰ Moreover, the Commission stated that the evaluation process must result in a determination that is sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility (or portfolio of such Facilities) was selected or not selected to address Long-Term Transmission Needs, which necessarily means that stakeholders must understand which benefits transmission providers considered in the evaluation process, including any beyond the seven benefits that the Commission required transmission providers to include in their OATTs.¹¹²¹ Such transparency will limit the opportunities for transmission providers to measure and use in Long-Term Regional Transmission Planning any benefits in addition to the required benefits in an unduly discriminatory manner.

416. We therefore grant TAPS' request for clarification that the final rule's requirements for transmission providers to be "open and transparent" applies to the process of deciding whether to use and how to measure other benefits in addition to the required benefits as well as to the implementation of other benefits for specific Long-Term Regional Transmission Facilities, as discussed above.

3. Identification, Measurement, and Evaluation of Benefits

a. Order No. 1920 Requirements

417. In Order No. 1920, the Commission required transmission

providers in each transmission planning region to include in their OATTs a general description of how they will measure each of the set of seven required benefits, sufficient only to enable stakeholders to understand the manner by which transmission providers will measure these benefits.¹¹²² Order No. 1920 provided flexibility to transmission planners to specify the method for measuring each of the seven required benefits,¹¹²³ as well as discretion to measure and use additional benefits that go beyond the set of seven required benefits, subject to the requirement that they do so in a manner that is consistent with their obligations under Order No. 890 and Order No. 1000 transmission planning principles to be open and transparent as to their transmission planning processes.¹¹²⁴

b. Requests for Rehearing and Clarification

418. SERTP Sponsors request that the Commission clarify that it did not intend for transmission providers to engage in generation or resource planning as part of the Long-Term Regional Transmission Planning process, as doing so would violate FPA section 201 because it would intrude upon state-jurisdictional resource decisions. SERTP Sponsors also request clarification that it is reasonable for transmission providers to establish protocols by which they can rely, to the extent available, on resource planners and load-serving entities for data in support of generation-based benefits.¹¹²⁵

c. Commission Determination

419. In response to SERTP Sponsors' request, we clarify that Order No. 1920 does not require transmission providers to engage in generation or resource planning as part of Long-Term Regional Transmission Planning. The requirement for transmission providers to measure and use the set of seven required benefits in Long-Term Regional Transmission Planning is necessary for transmission providers to consider a sufficiently broad range of benefits when evaluating and determining whether to select a Long-Term Regional Transmission Facility as the more efficient or cost-effective regional transmission solution to Long-Term Transmission Needs and for purposes of conducting Long-Term Regional Transmission Planning, and not as a

¹¹¹⁵ *Id.* at 27 (citing NOPR, 179 FERC ¶ 61,028 at PP 208–209, 213–225).

¹¹¹⁶ TAPS Rehearing Request at 12–13.

¹¹¹⁷ *Id.* at 11.

¹¹¹⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 724.

¹¹¹⁹ *Id.* P 724.

¹¹²⁰ *Id.* PP 821–822.

¹¹²¹ *Id.* P 737.

¹¹²² *Id.* PP 837, 840.

¹¹²³ *Id.* P 839.

¹¹²⁴ *Id.* P 822.

¹¹²⁵ SERTP Sponsors Rehearing Request at 17–18.

basis to cause transmission providers to engage in resource planning.¹¹²⁶

420. Further, as requested by SERTP Sponsors, we clarify that Order No. 1920 does not prohibit transmission providers from proposing to establish protocols by which they can rely, to the extent available, on resource planners and load-serving entities for generation-based data and information in satisfying the requirement to measure the benefits of Long-Term Regional Transmission Facilities. In Order No. 1920, the Commission provided flexibility to transmission providers to specify the method for measuring each of the seven required benefits and did not mandate any specific method for measuring those seven benefits. Order No. 1920 also provided the flexibility for transmission providers to establish protocols to obtain data, to the extent available, from resource planners and load-serving entities to measure the benefits of specific Long-Term Regional Transmission Facilities. However, we re-emphasize that, whether the transmission providers themselves measure the benefits of Long-Term Regional Transmission Facilities, or instead establish protocols by which they can rely on resource planners or load-serving entities for generation-based data and information to measure the benefits, the general description in the OATT of the method that the transmission provider uses to measure each of the required benefits must be sufficient to enable stakeholders to understand the manner by which transmission providers will measure those benefits, as noted in Order No. 1920.¹¹²⁷

4. Benefits Horizon

a. Order No. 1920 Requirements

421. In Order No. 1920, the Commission required transmission providers in each transmission planning region, as part of Long-Term Regional Transmission Planning, to calculate the benefits of Long-Term Regional Transmission Facilities over a time horizon that covers, at a minimum, 20 years starting from the estimated in-service date of the transmission facilities, and the Commission stated that this minimum 20-year benefit horizon must be used both for the evaluation and selection of Long-Term Regional Transmission Facilities.¹¹²⁸ In

addition, in Order No. 1920, the Commission stated that, while transmission providers may discount the benefits calculated for purposes of determining a present value of those benefits, they may not further discount those benefits to reflect uncertainty over the minimum 20-year time horizon for calculating benefits.¹¹²⁹

422. In prohibiting transmission providers from discounting benefits to reflect uncertainty over the 20-year benefits horizon, the Commission stated that Order No. 1920 affords transmission providers with considerable flexibility in how to address uncertainty in Long-Term Regional Transmission Planning through the process to develop Long-Term Scenarios.¹¹³⁰ In addition, the Commission noted that transmission providers have the flexibility to evaluate Long-Term Regional Transmission Facilities and their measured benefits across the different Long-Term Scenarios and sensitivities in a manner that addresses the inherent uncertainty in Long-Term Regional Transmission Planning, for example, through the use of a least-regrets or a weighted-benefits approach.¹¹³¹ As a result, the Commission determined that transmission providers have considerable flexibility in how to address uncertainty in Long-Term Regional Transmission Planning, including the calculation of benefits under different future scenarios, and that transmission providers did not need additional flexibility that would be realized by discounting benefits over time specifically due to future uncertainty.¹¹³²

b. Requests for Rehearing and Clarification

423. SERTP Sponsors request rehearing of the Commission's determination in Order No. 1920 to prohibit discounting of the measured benefits of Long-Term Regional Transmission Facilities based on uncertainty over the minimum 20-year benefit horizon. According to SERTP Sponsors, by requiring a 20-year benefits estimation without permitting discounting to reflect uncertainty, while also allowing a weighted-benefits approach to account for uncertainty, Order No. 1920's requirement and authorization are unclear and contradictory, and therefore arbitrary

and capricious.¹¹³³ Similarly, Dominion states that the Commission must provide transmission providers with the flexibility to discount the measured benefits to reflect uncertainty over the minimum 20-year horizon for purposes of selection and evaluation of projects.¹¹³⁴

c. Commission Determination

424. We sustain the finding in Order No. 1920 that, while transmission providers may discount the value of the benefits calculated for purposes of determining the present value of those benefits, they may not further reduce the estimates of those benefits to reflect uncertainty over the minimum 20-year time horizon for calculating benefits. We disagree with SERTP Sponsors that Order No. 1920 is contradictory in allowing the use of a weighted-benefits approach for evaluating Long-Term Regional Transmission Facilities while also prohibiting the reduction in estimates of measured benefits based on uncertainty over the minimum 20-year horizon. These two techniques are not the same, and allowing one but prohibiting the other is not contradictory. Permitting transmission providers to use a weighted-benefits approach for Long-Term Regional Transmission Facilities allows transmission providers to measure the estimated total benefits that a particular Long-Term Regional Transmission Facility may provide across a range of Long-Term Scenarios, each with a different probability of occurrence.¹¹³⁵ This method can help account for uncertainty in the total benefits that a Long-Term Regional Transmission Facility may provide and help to balance an over-reliance on any particular Long-Term Scenario. While we understand that applying a probability to a Long-Term Scenario, and its resulting benefits, may reduce

¹¹³³ SERTP Sponsors Rehearing Request at 19–20, 43 (Issue Statement 16) (citations omitted); *see also id.* at 43 (Issue Statement 15) (citations omitted) (asserting that failure to grant clarification of the issues in Section II.C.3 of SERTP Sponsors' argument would result in the Commission intruding on state-jurisdictional resource decisions).

¹¹³⁴ Dominion Rehearing Request at 21–25.

¹¹³⁵ Under a weighted-benefits approach, transmission providers that use three Long-Term Scenarios with expected likelihoods of, for example, 30%, 30%, and 40%, would attribute these expected likelihoods to the benefits that the transmission provider measures under each Long-Term Scenario. The total estimated benefits of the Long-Term Regional Transmission Facility would then be calculated by summing the probability-adjusted benefits across these three Long-Term Scenarios (*i.e.*, the sum of the measured benefits in the first Long-Term Scenario multiplied by its 30% probability, plus the second Long-Term Scenario's benefits multiplied by 30%, plus the third Long-Term Scenario's benefits multiplied by 40%).

¹¹²⁶ In light of this clarification, we need not reach SERTP Sponsors' alternative argument that, absent this clarification, Order No. 1920 would raise concerns that the Commission has exceeded its jurisdiction. *See id.* at 19 n.48, 43 (Issue Statement 15) (citations omitted).

¹¹²⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 840.

¹¹²⁸ *Id.* P 859.

¹¹²⁹ *Id.* P 865.

¹¹³⁰ *Id.* PP 861, 865.

¹¹³¹ *Id.* P 862.

¹¹³² *Id.* PP 862, 865.

the benefits measured for that particular Long-Term Scenario, when aggregated, the probability-weighted benefits measured across all Long-Term Scenarios results in a representative estimate of the total benefits of the Long-Term Regional Transmission Facility as a whole while also accounting for uncertainty regarding the likelihood of different Long-Term Scenarios being realized.

425. On the other hand, we continue to find that allowing transmission providers to reduce the estimates of certain benefits based only on the relative certainty over the 20-year benefits horizon is unnecessary given other flexibilities provided to transmission providers to manage uncertainty in planning over a minimum of 20 years, for the reasons discussed in Order No. 1920.¹¹³⁶ For example, in addition to the use of a weighted-benefits approach, transmission providers have flexibility in how they account for the factors that go into Long-Term Scenario development once, as discussed elsewhere in this rule, transmission providers consult with Relevant State Entities and their authorized representatives as to how to account for factors related to state policy when determining the assumptions that will be used in the development of Long-Term Scenarios, as well as in determining *how* to account for such a state-related factor when developing Long-Term Scenarios when such state input is available.¹¹³⁷

426. As a result, we continue to believe that prohibiting the discounting of benefits based on relative certainty over the 20-year benefits horizon is reasonable and strikes an appropriate balance between preventing an excessive undercounting of benefits and allowing transmission providers to account for uncertainty in measuring benefits of Long-Term Regional Transmission Facilities across Long-Term Scenarios. For these reasons, we also disagree with Dominion that transmission providers must be afforded the flexibility to discount benefits based on the uncertainty in planning over a minimum 20-year horizon.

427. SERTP Sponsors do not explain how, in the absence of their requested clarification regarding discounting the benefits of Long-Term Regional Transmission Facilities, Order No. 1920 would “intrude[] upon state-

jurisdictional resource decisions.”¹¹³⁸ Regardless, we would be unpersuaded by this argument on its merits because, as described above, Order No. 1920 falls comfortably within the Commission’s jurisdiction to regulate practices directly affecting Commission-jurisdictional rates.¹¹³⁹ The manner in which benefits of Long-Term Regional Transmission Facilities are assessed is such a Commission-jurisdictional practice.

5. Evaluation of the Benefits of Portfolios of Transmission Facilities

a. Order No. 1920 Requirements

428. In Order No. 1920, the Commission allowed, but not did not require, transmission providers in each transmission planning region to use a portfolio approach when evaluating the benefits of Long-Term Regional Transmission Facilities. Further, the Commission required transmission providers that propose to use a portfolio approach when evaluating the benefits of Long-Term Regional Transmission Facilities to include provisions in their OATTs regarding their use of the portfolio approach.¹¹⁴⁰

b. Requests for Rehearing and Clarification

429. PIOs request rehearing of the Commission’s decision in Order No. 1920 to not require transmission providers to use a portfolio approach when evaluating the benefits of Long-Term Regional Transmission Facilities.¹¹⁴¹ PIOs state that the record in this docket includes widespread commenter support and substantial evidence, ranging from expert reports to examples of existing processes, demonstrating the benefits of using a portfolio approach when evaluating the benefits of Long-Term Regional Transmission Facilities.¹¹⁴² PIOs argue that by allowing transmission providers to continue to evaluate the benefits of Long-Term Regional Transmission Facilities on a facility-by-facility basis, the Commission undermines Order No. 1920’s central purpose of requiring planning for system-wide transmission needs on a comprehensive and regional basis and leaves in place unjust and unreasonable rates.¹¹⁴³ PIOs state that

the Commission could provide transmission providers with flexibility while meeting the goals of Order No. 1920 by establishing a rebuttable presumption that Long-Term Regional Transmission Facilities be assessed on a portfolio basis, which transmission providers could overcome by demonstrating that the portfolio approach is inapplicable in a particular instance.¹¹⁴⁴

430. Undersigned States¹¹⁴⁵ and Designated Retail Regulators request rehearing of Order No. 1920’s decision to allow transmission providers to use a portfolio approach when evaluating the benefits of Long-Term Regional Transmission Facilities.¹¹⁴⁶ Designated Retail Regulators and Undersigned States opine that the Commission should prohibit transmission providers from using the portfolio approach because, by allowing the bundling of economic and uneconomic facilities such that all facilities in a portfolio appear economic on a collective basis, the portfolio approach spreads uneconomic project costs to non-beneficiaries.¹¹⁴⁷ Designated Retail Regulators and Undersigned States further argue that the portfolio approach results in the unjust and unreasonable recovery of costs exceeding benefits and that every facility approved for construction should be economic and meet the required benefits-to-cost ratio on a stand-alone basis.¹¹⁴⁸

c. Commission Determination

431. We are unpersuaded by PIOs’, Undersigned States’, and Designated Retail Regulators’ requests for rehearing of the Commission’s decision to allow, but not require, transmission providers in each transmission planning region to use a portfolio approach when evaluating the benefits of Long-Term Regional Transmission Facilities. We disagree with PIOs’ arguments that the Commission’s decision not to require transmission providers to use a portfolio approach undermines the goals or purpose of Order No. 1920 or leaves unjust and unreasonable rates in

¹¹⁴⁴ *Id.* 47–48 (citing US DOE NOPR Initial Comments at 34–35).

¹¹⁴⁵ Undersigned States note that the state of North Dakota does not join in the portion of Undersigned States’ request for rehearing that addresses the final rule’s determinations concerning the portfolio approach. Undersigned States Rehearing Request at 29 n.19.

¹¹⁴⁶ Designated Retail Regulators Rehearing Request at 33–34; Undersigned States Rehearing Request at 29–30.

¹¹⁴⁷ Designated Retail Regulators Rehearing Request at 34; Undersigned States Rehearing Request at 30.

¹¹⁴⁸ Designated Retail Regulators Rehearing Request at 34; Undersigned States Rehearing Request at 30.

¹¹³⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 865.

¹¹³⁷ See *supra* Long-Term Scenarios Requirements, Stakeholder Process and Transparency section.

¹¹³⁸ SERTP Sponsors Rehearing Request at 43 (Issue Statement 15) (citations omitted); *id.* at 37–41 (generic argument that failure to grant certain clarifications intrudes on state jurisdiction or may implicate the major questions doctrine, without discussion of discounting benefits).

¹¹³⁹ See *supra* Statutory Authority section.

¹¹⁴⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 889.

¹¹⁴¹ PIOs Rehearing Request at 47 (citations omitted).

¹¹⁴² *Id.* at 44–46.

¹¹⁴³ *Id.* at 47.

place.¹¹⁴⁹ We continue to find that the advantages of a portfolio approach to evaluating benefits must be balanced against other considerations and that it is appropriate to provide transmission providers in each transmission planning region with flexibility as to whether to use a portfolio approach, subject to the requirement that transmission providers that propose to use a portfolio approach include provisions in their OATTs regarding their use of the portfolio approach.¹¹⁵⁰

432. Specifically, we find that the advantages of a portfolio approach to evaluating benefits—including administrative efficiencies related to economies of scale and a more stable or even distribution of benefits, which is likely to facilitate agreement on regional cost allocation—must be weighed against the fact that a portfolio approach may not be appropriate in all instances. For example, a facility-by-facility approach may be more appropriate if Long-Term Scenarios reveal the same or nearly identical constraints in discrete and isolated areas of the transmission system where system upgrades would be beneficial. We find that transmission providers are in the best position to determine in any given circumstance whether a portfolio or facility-by-facility approach to evaluate the benefits of Long-Term Regional Transmission Facilities is more appropriate. Therefore, we sustain the determination in Order No. 1920 to provide transmission providers in each transmission planning region with flexibility as to whether to use a portfolio approach, subject to the requirement that transmission providers that propose to use a portfolio approach when evaluating the benefits of Long-Term Regional Transmission Facilities include provisions in their OATTs regarding their use of the portfolio approach.

433. We are also unpersuaded by Designated Retail Regulators' and Undersigned States' requests that the Commission prohibit transmission providers from using a portfolio approach to evaluate the benefits of

Long-Term Regional Transmission Facilities. We note that the Commission has previously accepted the use of the portfolio approach to the evaluation of transmission facilities.¹¹⁵¹ In response to Undersigned States' claim that the portfolio approach allocates uneconomic project costs to non-beneficiaries, we note that the measurement and use of the benefits of Long-Term Regional Transmission Facilities, whether on a portfolio or facility-by-facility basis, is a requirement for the evaluation of Long-Term Regional Transmission Facilities for the purposes of potential selection. Order No. 1920 provides transmission providers with flexibility as to the consideration of benefits in their cost allocation methods for Long-Term Regional Transmission Facilities, subject to the requirement that transmission providers demonstrate that such cost allocation methods allocate costs in a manner that is at least roughly commensurate with estimated benefits.¹¹⁵² Thus, Designated Retail Regulators' and Undersigned States' arguments that the portfolio approach to evaluation of benefits will result in the allocation of costs for uneconomic facilities are unfounded.

D. Evaluation and Selection of Long-Term Regional Transmission Facilities

1. Minimum Requirements

a. Order No. 1920 Requirements

434. In Order No. 1920, the Commission required transmission providers in each transmission planning region to include in their OATTs an evaluation process, including selection criteria, that they will use to identify and evaluate Long-Term Regional Transmission Facilities for potential selection to address Long-Term Transmission Needs.¹¹⁵³ The Commission further held that the transmission developer of a selected Long-Term Regional Transmission Facility will be eligible to use the applicable cost allocation method for that Long-Term Regional Transmission Facility.

435. The Commission provided flexibility to transmission providers to propose, after consultation with Relevant State Entities and other stakeholders, evaluation processes,

including selection criteria,¹¹⁵⁴ provided that they (1) are transparent and not unduly discriminatory;¹¹⁵⁵ (2) aim to ensure that more efficient or cost-effective Long-Term Regional Transmission Facilities are selected to address Long-Term Transmission Needs;¹¹⁵⁶ and (3) seek to maximize benefits accounting for costs over time without over-building transmission facilities.¹¹⁵⁷

436. As to the requirement that transmission providers' evaluation processes, including selection criteria, are transparent and not unduly discriminatory, the Commission explained that transmission providers' evaluation of Long-Term Regional Transmission Facilities must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility (or portfolio of Long-Term Regional Transmission Facilities) was selected or not selected.¹¹⁵⁸ The Commission also explained that this determination must include the estimated costs and measured benefits of each Long-Term Regional Transmission Facility (or portfolio of Long-Term Regional Transmission Facilities) that transmission providers evaluated in the Long-Term Regional Transmission Planning process, regardless of whether the Long-Term Regional Transmission Facility (or portfolio of such Facilities) is selected.¹¹⁵⁹ The Commission further explained that, where transmission providers employ a portfolio approach to evaluating and selecting Long-Term Regional Transmission Facilities, transmission providers may provide the measured benefits included in this determination on an aggregate basis.¹¹⁶⁰

437. As to the requirement that transmission providers' evaluation processes, including selection criteria, must aim to ensure that more efficient or cost-effective Long-Term Regional Transmission Facilities are selected to address Long-Term Transmission Needs, the Commission explained that evaluation processes must: (1) identify one or more Long-Term Regional Transmission Facilities (or portfolio of Long-Term Regional Transmission Facilities) that address the Long-Term Transmission Needs that transmission providers identify in Long-Term Regional Transmission Planning; (2)

¹¹⁴⁹ See PIOs Rehearing Request at 47.

¹¹⁵⁰ Order No. 1920, 187 FERC ¶ 61,068 at PP 889–890. Order No. 1920 requires transmission providers that propose to use a portfolio approach to indicate in their proposed OATTs that they will use a portfolio approach. However, Order No. 1920 does not require transmission providers to indicate whether they will use a portfolio approach for all Long-Term Regional Transmission Facilities or only in certain specified instances, nor to describe how they will analyze the benefits of Long-Term Regional Transmission Facilities under a portfolio approach, as such requirements could impede transmission provider consideration and development of portfolio approaches. *Id.* P 889.

¹¹⁵¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at PP 221–222 (2010), *order on reh'g and compliance filing*, 137 FERC ¶ 61,074 (2011), *aff'd in part, dismissed in part and remanded in part sub nom. Ill. Com. Comm'n v. FERC*, 721 F.3d 764, 780 (7th Cir. 2013).

¹¹⁵² See Order No. 1920, 187 FERC ¶ 61,068 at PP 1478, 1506 (citing *ICC v. FERC I*, 576 F.3d at 477; *ICC v. FERC III*, 756 F.3d at 564).

¹¹⁵³ Order No. 1920, 187 FERC ¶ 61,068 at P 911.

¹¹⁵⁴ *Id.* P 924.

¹¹⁵⁵ *Id.* P 954.

¹¹⁵⁶ *Id.* P 955.

¹¹⁵⁷ *Id.* P 964.

¹¹⁵⁸ *Id.* P 954.

¹¹⁵⁹ *Id.* PP 954, 966.

¹¹⁶⁰ *Id.* P 966 n.2121.

estimate the costs and measure the benefits of Long-Term Regional Transmission Facilities that are identified or proposed for potential selection; (3) designate a point in the evaluation process that is no later than three years following the beginning of the Long-Term Regional Transmission Planning cycle at which transmission providers will determine to select or not to select identified or proposed Long-Term Regional Transmission Facilities; and (4) culminate in determinations that are sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility (or portfolio of Long-Term Regional Transmission Facilities) was selected or not selected.¹¹⁶¹ The Commission also provided transmission providers with flexibility to determine how they will evaluate whether Long-Term Regional Transmission Facilities more efficiently or cost-effectively address Long-Term Transmission Needs, including by using benefit-cost ratios, assessing their net benefits, and/or using some other method. Consistent with cost allocation principle (3), however, the Commission prohibited transmission providers from imposing as a selection criterion a minimum benefit-cost ratio that is higher than 1.25-to-1.00.¹¹⁶²

438. Finally, as to the requirement that transmission providers' evaluation processes, including selection criteria, must seek to maximize benefits accounting for costs over time without over-building transmission facilities, the Commission stated that transmission providers could adopt evaluation processes and selection criteria that would allow transmission providers to make selection decisions while addressing the uncertainty inherent in Long-Term Regional Transmission Planning. For example, transmission providers could include features that minimize the future risk of developing a previously selected Long-Term Regional Transmission Facility that is not the more efficient or cost-effective regional transmission solution to Long-Term Transmission Needs, such as by using a least-regrets or weighted-

benefits approaches.¹¹⁶³ The Commission explained that, consistent with this requirement, transmission providers may not disregard benefits that they are required to use and measure, and may not do so even where those benefits only are measured under certain transmission system conditions.¹¹⁶⁴ The Commission further explained that transmission providers may not adopt an approach under which a Long-Term Regional Transmission Facility would be required to meet the selection criteria in every Long-Term Scenario and sensitivity.¹¹⁶⁵

b. Requests for Rehearing and Clarification

439. NRECA argues that the Commission violated the APA's notice-and-comment requirements because the NOPR did not propose the "prescriptive" requirements set forth in Order No. 1920 related to the evaluation of Long-Term Regional Transmission Facilities.¹¹⁶⁶ These include the requirement that transmission providers identify Long-Term Regional Transmission Facilities that address Long-Term Transmission Needs, estimate the costs and measure the benefits of such facilities, and designate a point in the evaluation process, no later than three years from the date when the Long-Term Regional Transmission Planning cycle begins, at which time the transmission provider will determine whether to select or not select those identified Long-Term Regional Transmission Facilities.¹¹⁶⁷

440. NRECA also requests that the Commission grant rehearing and require that transmission providers' selection criteria ensure the selection of Long-Term Regional Transmission Facilities that meet the reasonable needs of load-serving entities, which NRECA argues that they must do under FPA section 217(b)(4). Further, NRECA contends that FPA section 217(b)(4) requires that selection criteria enable load-serving

entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.¹¹⁶⁸

441. PIOs request rehearing of the Commission's determination to allow transmission providers to adopt benefit-cost ratios as high as 1.25-to-1.00 and request that the Commission require benefit-cost ratios no higher than 1.00-to-1.00. PIOs contend that a 1.25-to-1.00 benefit-cost ratio does not work in the context of scenario-based planning using a portfolio approach because some Long-Term Regional Transmission Facilities may, in isolation, be below 1.25-to-1.00 despite raising the value of a portfolio of Long-Term Regional Transmission Facilities above such a threshold.¹¹⁶⁹ PIOs also argue that the measured benefits of certain Long-Term Regional Transmission Facilities may depend on the Long-Term Scenario or sensitivity within which benefits are measured, and that it does not make sense to apply a benefit-cost ratio threshold to Long-Term Regional Transmission Facilities whose benefits are not fixed.¹¹⁷⁰

442. ITC requests rehearing of the Commission's decision to allow, but not to require, transmission providers to adopt least-regrets approaches to selecting Long-Term Regional Transmission Facilities. ITC argues that, given other requirements in Order No. 1920, a least-regrets approach would hedge against the inherent uncertainty of Long-Term Regional Transmission Planning by ensuring that selected Long-Term Regional Transmission Facilities provide robust benefits over a wide variety of future system conditions.¹¹⁷¹

443. Dominion states that Order No. 1920 is clear that transmission providers "can compare calculated benefits [of Long-Term Regional Transmission Facilities] to costs for purposes of project evaluation and selection."¹¹⁷²

¹¹⁶¹ *Id.* P 955. As to the identification of Long-Term Regional Transmission Facilities, Order No. 1920 requires, consistent with Order Nos. 890 and 1000, that nonincumbent transmission developers be able to propose transmission facilities in Long-Term Regional Transmission Planning, and that therefore transmission providers make clear in their OATTs the point in the Long-Term Regional Transmission Planning evaluation process at which they will accept Long-Term Regional Transmission Facility proposals from stakeholders, including nonincumbent transmission developers. *Id.*

¹¹⁶² *Id.* P 958 (citation omitted).

¹¹⁶³ *Id.* P 967. The Commission explained that, under a least-regrets approach, transmission providers would select Long-Term Regional Transmission Facilities if those facilities are net beneficial in more than one Long-Term Scenario and sensitivity analysis even if other transmission facilities have a higher benefit-cost ratio or provide more net benefits in a single Long-Term Scenario or particular sensitivity. Under a weighted-benefits approach, transmission providers would select a Long-Term Regional Transmission Facility based on its probability-weighted average benefits, where probabilities have been assigned to each Long-Term Scenario or sensitivity thereof that is studied. *Id.*

¹¹⁶⁴ *Id.* P 965.

¹¹⁶⁵ *Id.* P 968.

¹¹⁶⁶ NRECA Rehearing Request at 14.

¹¹⁶⁷ NRECA Rehearing Request at 14–15 (citing Order No. 1920, 187 FERC ¶61,068 at PP 381, 955).

¹¹⁶⁸ See NRECA Rehearing Request at 39–43. As with its arguments related to the discretion provided under Order No. 1920 for transmission providers to determine that factors in Factor Category Three may not affect Long-Term Transmission Needs, NRECA also argues with respect to selection criteria that the Commission should revisit its conclusion that *South Carolina Public Service Authority v. FERC* remains good law on the meaning of FPA section 217(b)(4). *Id.* at 40–41.

¹¹⁶⁹ PIOs Rehearing Request at 48–49 (citing PIOs NOPR Initial Comments, ex. A at 12–17).

¹¹⁷⁰ *Id.* at 48–49.

¹¹⁷¹ ITC Rehearing Request at 11–12.

¹¹⁷² Dominion Rehearing Request at 25 (emphasis added) (citing Order No. 1920, 187 FERC ¶61,068 at PP 955, 964–965).

Dominion requests that the Commission clarify that transmission providers may weigh measured benefits against “other factors” and that transmission providers may propose “what factors will be considered,” provided that transmission providers’ selection criteria are “sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility was selected or not selected.”¹¹⁷³ Dominion further requests that the Commission clarify what different “costs” transmission providers can consider and weigh against measured benefits beyond the direct costs of the construction and operation of the specific Long-Term Regional Transmission Facility. By way of example, Dominion explains that some Long-Term Regional Transmission Facilities may allow for the delivery of more generation to an area of high load demand, while also creating reliability issues on another transmission facility. If upgrades to that transmission facility are made in response to those reliability issues, Dominion requests clarification that transmission providers can consider the costs of those upgrades to be a “cost” of the Long-Term Regional Transmission Facility.¹¹⁷⁴

444. Finally, TAPS requests rehearing of the Commission’s decision not to require that transmission providers calculate and provide to the transmission planning region’s stakeholders TAPS’s proposed “affordability metrics.” TAPS explains that this proposed requirement would include the projected incremental transmission rate impact that each Long-Term Regional Transmission Facility would provide, if selected, and the projected total transmission rate that transmission customers would pay if all selected Long-Term Regional Transmission Facilities are placed in service. TAPS explains that transmission providers should make these calculations on the basis of the default *ex ante* Long-Term Regional Transmission Cost Allocation Method (in the absence of any state agreement), covering a period extending at least 20 years after the Long-Term Regional Transmission Facility is expected to be in commercial operation, and would be required to share their assumptions and calculations. TAPS explains that transmission providers should also provide a process for stakeholders to submit questions and verify information. TAPS argues that the Commission’s rejection of affordability metrics was “conclusory” and did not

satisfy the Commission’s obligation to engage with comments.¹¹⁷⁵

c. Commission Determination

445. We disagree with the rehearing arguments submitted by NRECA. First, the Commission did not violate the APA’s notice-and-comment requirements when it modified the NOPR proposal to be more “prescriptive”¹¹⁷⁶ by requiring that the evaluation and selection processes that transmission providers propose must: (1) identify Long-Term Regional Transmission Facilities that address the Long-Term Transmission Needs they have identified; (2) estimate the costs and measure the benefits of such facilities; and (3) designate a point in the evaluation process when the transmission provider will determine whether to select or not select those facilities. Agency final rules need not be identical to proposed rules, and notice is sufficient if the final rule represents a “logical outgrowth” of the proposed rule.¹¹⁷⁷

446. The final rule is a logical outgrowth of the NOPR in this regard. The Commission described Long-Term Regional Transmission Planning in the NOPR as regional transmission planning that: (1) identifies transmission needs driven by changes in the resource mix and demand; (2) evaluates transmission facilities that meet such needs; and (3) identifies and evaluates such transmission facilities for potential selection to meet those needs.¹¹⁷⁸ The NOPR also proposed to require that transmission providers’ selection criteria “aim to ensure that more efficient or cost-effective transmission facilities are selected in the regional transmission plan for purposes of cost allocation to address transmission needs driven by changes in the resource mix

and demand.”¹¹⁷⁹ In Order No. 1920, the Commission modified the NOPR proposal “to provide additional clarity as to how transmission providers’ evaluation processes must aim to ensure the selection of more efficient or cost-effective Long-Term Regional Transmission Facilities to address Long-Term Transmission Needs.”¹¹⁸⁰ The Commission then set forth procedural requirements that require transmission providers to meet the NOPR definition of Long-Term Regional Transmission Planning by: (1) identifying Long-Term Regional Transmission Facilities that address Long-Term Transmission Needs; (2) estimating the costs and measuring the benefits of such facilities as part of the evaluation process; and (3) designating a point when transmission providers will make a decision to select or not select such facilities.¹¹⁸¹ These additional procedural clarifications satisfy the logical outgrowth test because the requirements in Order No. 1920 achieve the same ends using very similar means to those proposed in the NOPR. Accordingly, we find that the evaluation requirements follow logically from the NOPR and that the NOPR adequately framed the subjects for discussion such that a reasonable member of the regulated class would anticipate the general aspects of the final rule.¹¹⁸²

447. Second, we disagree with NRECA’s rehearing argument that, in order to satisfy FPA section 217(b)(4), the Commission must impose a specific requirement that transmission providers’ selection criteria ensure the selection of Long-Term Regional Transmission Facilities that meet the reasonable needs of load-serving entities and enable load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs. Fulfilling the requirements of FPA section 217(b)(4) does not require that the Commission impose the selection criterion that NRECA prefers, and we find that the criteria that the Commission required represent a superior and, in any case, just and reasonable and not unduly discriminatory or preferential approach to this issue. Moreover, the Commission explained in Order No. 1920 that, “[t]hrough the requirements of this final rule, we seek to ensure that adequate

¹¹⁷⁵ TAPS Rehearing Request at 20–22 (“[T]he ‘Commission cannot satisfy its mandate to engage with parties’ comments by relying on conclusory statements that dismissed a party’s concerns without providing reasoned analysis.” (internal quotation and alteration omitted) (quoting *Cal. Pub. Utils. Comm’n v. FERC*, 20 F.4th 795, 804 (D.C. Cir. 2021)).

¹¹⁷⁶ NRECA Rehearing Request at 14.

¹¹⁷⁷ *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174–75 (2007) (*Long Island Care*). See also *Am. Paper Inst. v. EPA*, 660 F.2d 954, 959 n.13 (4th Cir. 1981) (“An agency may make even substantial changes in its original proposed rule without a further comment period if the changes are in character with the original proposal and are a logical outgrowth of the notice and comments already given.”) (emphasis added).

¹¹⁷⁸ See NOPR, 179 FERC ¶ 61,028 at P 68. Order No. 1920 adopted a definition of Long-Term Transmission Needs that includes transmission needs driven by changes in the resource mix and demand. See Order No. 1920, 187 FERC ¶ 61,068 at P 299 (describing the drivers of Long-Term Transmission Needs as including changes in the resource mix and changes in demand).

¹¹⁷⁹ NOPR, 179 FERC ¶ 61,028 at P 245.

¹¹⁸⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 955.

¹¹⁸¹ *Id.*

¹¹⁸² *Conn. Light & Power Co. v. Nuclear Regul. Comm’n*, 673 F.2d 525, 533 (D.C. Cir. 1982); *Telesat Canada v. FCC*, 999 F.3d 707, 713–14 (D.C. Cir. 2021).

¹¹⁷³ *Id.* at 25–26 (punctuation omitted) (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 737).

¹¹⁷⁴ *Id.*

transmission capacity is built to allow load-serving entities to meet their service obligations and facilitate the planning of a reliable grid, consistent with FPA section 217(b)(4).”¹¹⁸³

448. We further disagree with the rehearing arguments submitted by PIOs, and we sustain the Commission’s holding that, consistent with Order No. 1000 regional cost allocation principle (3), transmission providers may not impose as a selection criterion a minimum benefit-cost ratio that is higher than 1.25-to-1.00.¹¹⁸⁴ We do not agree with PIOs that this holding is inconsistent with the use of a portfolio approach to selecting Long-Term Regional Transmission Facilities. While PIOs are correct that the benefits of Long-Term Regional Transmission Facilities may depend on the Long-Term Scenario or sensitivity in which they are measured, Order No. 1920 does not require transmission providers to apply benefit-cost ratios within specific Long-Term Scenarios or sensitivities.¹¹⁸⁵ Further, the fact that the measured benefits of Long-Term Regional Transmission Facilities may differ among the Long-Term Scenarios or sensitivities studied does not render the use of benefit-cost ratios incompatible with Long-Term Regional Transmission Planning. In fact, the least-regrets and weighted-benefits approaches to selecting Long-Term Regional Transmission Facilities described in Order No. 1920 are examples of how transmission providers may make selection decisions notwithstanding the fact that the measured benefits of Long-Term Regional Transmission Facilities may differ depending on the Long-Term Scenario or sensitivity in which they are measured.¹¹⁸⁶

449. We also disagree with the rehearing arguments advanced by ITC. While we agree with ITC that a least-regrets approach to selecting Long-Term Regional Transmission Facilities may

allow transmission providers to address the inherent uncertainty of Long-Term Regional Transmission Planning, we disagree that this is the only such approach,¹¹⁸⁷ and therefore we sustain the Commission’s holding that transmission providers are not required to use this approach.¹¹⁸⁸ Generally, the Commission attempted in Order No. 1920 to ensure that transmission providers have the flexibility that they need to develop evaluation processes, including selection criteria, that meet the minimum requirements set forth in Order No. 1920, and we are not persuaded by PIOs or ITC to limit that flexibility here, either by reducing the maximum benefit-cost ratio that transmission providers may propose to use as a selection criterion in Long-Term Regional Transmission Planning or by requiring a particular selection approach.

450. We grant clarification, in part, to Dominion. As an initial matter, we clarify that transmission providers’ evaluation processes must—not can—compare the measured benefits of Long-Term Regional Transmission Facilities against their estimated costs.¹¹⁸⁹ The purpose of such a comparison is for transmission providers to determine the benefits of Long-Term Regional Transmission Facilities for purposes of applying the transmission provider’s selection criteria.¹¹⁹⁰ We further clarify that, once a transmission provider makes a selection decision, *i.e.*, for each selected Long-Term Regional Transmission Facility (or portfolio of such Facilities), and, if a State Agreement Process is used, once a cost allocation method is agreed upon, transmission providers must make available, on a password-protected portion of OASIS or other password-protected website, a breakdown of how

those estimated costs will be allocated, by zone (*i.e.*, by transmission provider retail distribution service territory/ footprint or RTO/ISO transmission pricing zone), and a quantification of those estimated benefits as imputed to each zone, as such benefits can be reasonably estimated. The increase in transparency from this posting requirement ensures that transmission providers make available information that is sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility was selected or not selected. As to Dominion’s request that the Commission clarify what—aside from project costs—transmission providers may compare to measured benefits, we reiterate here that transmission providers may propose qualitative measures in their evaluation processes or qualitative selection criteria,¹¹⁹¹ provided that they meet the minimum requirements set forth in Order No. 1920 with which transmission providers’ evaluation processes, including selection criteria, must comply.¹¹⁹² We further clarify that, contrary to Dominion’s understanding,¹¹⁹³ transmission providers’ evaluation processes must culminate in a *determination*—not selection criteria—that is sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility (or portfolio of such Facilities) was selected or not selected.¹¹⁹⁴ Finally, we clarify that the Commission generally provides transmission providers with the discretion to use engineering judgment in designing and conducting transmission planning studies, and we therefore decline to address Dominion’s hypothetical in the abstract.

451. Finally, we are not persuaded by the arguments raised on rehearing by TAPS regarding its proposed “affordability metrics.” We find that the potential benefits of requiring that transmission providers make these metrics available are outweighed by the potential burden on transmission providers, who would need to determine on a customer-by-customer basis the effect on incremental rates of

¹¹⁸³ Order No. 1920, 187 FERC ¶ 61,068 at P 1001. See also *id.* PP 283, 447 (discussing Commission’s obligations under FPA section 217(b)(4) and its application to Order No. 1920). We also reject NRECA’s argument that the Commission should revisit its conclusion that *South Carolina Public Service Authority v. FERC* remains good law for the same reasons provided in the Other Specific Required Categories of Factors section above.

¹¹⁸⁴ *Id.* P 958.

¹¹⁸⁵ See *id.* P 956 (requiring transmission providers to make transparent the methods that they used to analyze each individual Long-Term Scenario and the sensitivity or sensitivities applied to each scenario to determine the Long-Term Transmission Needs that exist in the transmission planning region, the Long-Term Regional Transmission Facilities that would resolve those needs, and the benefits of those Long-Term Regional Transmission Facilities for purposes of selection).

¹¹⁸⁶ *Id.* P 967. See *infra* Benefits Horizon section.

¹¹⁸⁷ See *id.* P 967 (describing least-regrets and weighted-benefits approaches to selecting Long-Term Regional Transmission Facilities as potential methods to manage uncertainty).

¹¹⁸⁸ *Id.* P 968.

¹¹⁸⁹ See *id.* P 955 (“Second, transmission providers’ evaluation processes must estimate the costs and measure the benefits of the Long-Term Regional Transmission Facilities (or portfolio of such Facilities) that are identified or proposed for potential selection, *in addition* to evaluating the identified Long-Term Regional Transmission Facilities (or portfolio of such Facilities) using any qualitative or other quantitative selection criteria that the transmission providers in a transmission planning region propose to apply.” (emphasis added)); *id.* P 964 (requiring transmission providers to propose evaluation processes, including selection criteria, that seek to *maximize benefits accounting for costs* over time without over-building transmission facilities) (emphasis added).

¹¹⁹⁰ See *id.* P 956 (holding that transmission providers must make clear the methods they used to analyze the benefits of Long-Term Regional Transmission Facilities for purposes of selection).

¹¹⁹¹ *Id.* P 961.

¹¹⁹² See *id.* PP 954–971.

¹¹⁹³ See Dominion Rehearing Request at 26 (“Dominion Energy understands that the Final Rule gives Transmission Providers an opportunity to propose what factors will be considered so long as the *selection criteria* is ‘sufficiently detailed to understand why a particular Long-Term Regional Transmission Facility . . . was selected or not selected.’”) (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 737) (emphasis added).

¹¹⁹⁴ Order No. 1920, 187 FERC ¶ 61,068 at PP 737, 954–955, 966, 1214.

a wide variety of rate design and cost recovery factors in order to produce a meaningful analysis. Therefore, we decline to adopt any requirement to calculate and make available the “affordability metrics” as described by TAPS. However, even though we do not require transmission providers to calculate rate impacts, as discussed above, we do require transparency regarding the allocation of costs after Long-Term Transmission Facilities are selected.

2. Role of Relevant State Entities

a. Order No. 1920 Requirements

452. In Order No. 1920, the Commission required transmission providers in each transmission planning region to consult with and seek support from Relevant State Entities regarding the evaluation process, including selection criteria, that transmission providers propose to use to identify and evaluate Long-Term Regional Transmission Facilities for selection.¹¹⁹⁵ The Commission declined to adopt the NOPR proposal to require that transmission providers include in their OATTs a process to coordinate with the transmission planning region’s Relevant State Entities in developing selection criteria.¹¹⁹⁶ Instead, the Commission required transmission providers to demonstrate on compliance that they made good faith efforts to consult with and seek support from Relevant State Entities in their transmission planning region’s footprint when developing the evaluation processes and selection criteria that they propose to include in their OATTs.¹¹⁹⁷ The Commission did not require transmission providers to obtain the support of Relevant State Entities before proposing evaluation processes and selection criteria on compliance.¹¹⁹⁸

b. Requests for Rehearing and Clarification

453. Several parties request rehearing or clarification of Order No. 1920’s requirements related to the role that Relevant State Entities will play in developing the evaluation processes, including selection criteria, that transmission providers will propose.¹¹⁹⁹

454. Designated Retail Regulators claim that the Commission violated the APA’s notice-and-comment

requirements because the NOPR required that states approve the selection criteria that transmission providers will propose to use in Long-Term Regional Transmission Planning, whereas the Commission did not require transmission providers to obtain their support in Order No. 1920. As such, Designated Retail Regulators conclude that Order No. 1920 is not a logical outgrowth of the NOPR proposal because it is “surprisingly distant” from the NOPR.¹²⁰⁰ Similarly, NRECA argues that Order No. 1920 is not a logical outgrowth of the NOPR because the Commission declined to adopt the NOPR proposal that transmission providers include a formal tariff process for coordinating with Relevant State Entities regarding transmission providers’ selection criteria.¹²⁰¹

455. Arizona Commission argues that the Commission erred in not requiring transmission providers to obtain the agreement of the State of Arizona as to the evaluation processes, including selection criteria, that transmission providers will propose, and requests rehearing because the Commission did not offer any legitimate legal reason or sufficient justification for not requiring such state approval. Arizona Commission asserts that states alone have the inherent police power to regulate the utilities within their states and that the final rule improperly eliminates the State of Arizona’s role with respect to selection criteria.¹²⁰² NARUC requests that the Commission grant rehearing such that transmission providers would be required to include in their compliance filings any selection criteria that are “promulgated and supported” by Relevant State Entities.¹²⁰³

456. Finally, NESCOE requests that the Commission clarify Order No. 1920 to provide guidance as to what constitutes “good faith efforts” on the part of transmission providers as they consult with and seek support from Relevant State Entities. NESCOE requests further clarification that the requirement that transmission providers “consult with” Relevant State Entities means that there is an “unambiguous pathway” for states’ feedback to be heard and taken into account. Further, NESCOE observes that “consult with” can mean a range of things, from an offer of a one-hour meeting to preview

potential selection criteria to interactive and substantive discussions, and it requests that the Commission confirm that the obligation to consult with Relevant State Entities means something more consequential than the former.¹²⁰⁴

c. Commission Determination

457. We disagree with the arguments raised on rehearing by Designated Retail Regulators and NRECA that Order No. 1920 is not a logical outgrowth of the NOPR proposal. In particular, we disagree with Designated Retail Regulators that the NOPR proposed to require that states approve transmission providers’ selection criteria.¹²⁰⁵ Instead, the NOPR proposed to require that transmission providers “coordinate” with Relevant State Entities in developing selection criteria, and the Commission explained that this would mean that transmission providers “must consult with and seek support from” Relevant State Entities.¹²⁰⁶ Neither statement can be construed as imposing a requirement that states approve the selection criteria to be proposed by transmission providers on compliance. In any event, the Commission adopted the exact proposal from the NOPR, namely, that transmission providers must consult with and seek support from Relevant State Entities, which was subject to a notice and comment period, as required under the APA.

458. Further, while NRECA is correct that in Order No. 1920, the Commission declined to adopt the NOPR proposal for transmission providers to propose on compliance OATT provisions providing for a “process” to coordinate with Relevant State Entities in developing selection criteria,¹²⁰⁷ this does not mean that Order No. 1920 is not a logical outgrowth of the NOPR proposal in this regard. As the D.C. Circuit has explained, “[o]ne logical outgrowth of a proposal is surely . . . to refrain from taking the proposed step.”¹²⁰⁸ The same is true here. Further, the Commission required that transmission providers

¹²⁰⁴ NESCOE Rehearing Request at 12.

¹²⁰⁵ Designated Retail Regulators Rehearing Request at 48–49.

¹²⁰⁶ See NOPR, 179 FERC ¶ 61,028 at PP 241, 244.

¹²⁰⁷ NRECA Rehearing Request at 17–18.

¹²⁰⁸ *N.Y. v. EPA*, 413 F.3d 3, 44 (D.C. Cir. 2005) (per curiam) (quoting *Am. Iron & Steel Inst. v. EPA*, 886 F.2d 390, 400 (D.C. Cir. 1989)). See also *Long Island Care, 551 U.S. at 175* (stating, in the context of rejecting claims that an agency provided legally defective notice because it did not finalize a proposed rule, “[w]e do not understand why such a possibility was not reasonably foreseeable”); *Vanda Pharms., Inc. v. Ctrs. for Medicare & Medicaid Servs.*, 98 F.4th 483, 498 (4th Cir. 2024) (*Vanda Pharms*) (The APA’s “notice-and-comment procedure is designed so that an agency can float a potential rule to the public without committing itself to enacting the proposed rule’s content”).

¹¹⁹⁵ *Id.* P 994.

¹¹⁹⁶ *Id.* P 995.

¹¹⁹⁷ *Id.* P 994.

¹¹⁹⁸ *Id.* P 996.

¹¹⁹⁹ Arizona Commission Rehearing Request at 16; Designated Retail Regulators Rehearing Request at 48–50; NARUC Rehearing Request at 17–21; NESCOE Rehearing Request at 12; NRECA Rehearing Request at 6, 17–19.

¹²⁰⁰ Designated Retail Regulators Rehearing Request at 48–50 (quoting *Int’l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1260 (D.C. Cir. 2005)).

¹²⁰¹ NRECA Rehearing Request at 6, 17–19.

¹²⁰² See Arizona Commission Rehearing Request at 16.

¹²⁰³ NARUC Rehearing Request at 17.

demonstrate good faith efforts as they consult with and seek support from Relevant State Entities.¹²⁰⁹ We continue to believe that these requirements are sufficient to ensure that transmission providers benefit from Relevant State Entities' views. Nevertheless, we note that Order No. 1920 does not prohibit transmission providers from adopting additional approaches for coordinating with Relevant State Entities regarding selection criteria and/or consulting with Relevant State Entities in the selection of particular Long-Term Regional Transmission Facilities, and we encourage transmission providers to do so.¹²¹⁰

459. We also disagree with the rehearing arguments of Arizona Commission and NARUC. Arizona Commission incorrectly claims that the Commission did not offer any "legitimate legal or sufficient justification" for not requiring state approval of evaluation processes.¹²¹¹ As the Commission explained, it is transmission providers who must propose on compliance an evaluation process and selection criteria that comply with the requirements of Order No. 1920, because Long-Term Regional Transmission Planning is the tariff obligation of each transmission provider.¹²¹² As the Commission further explained, achieving consensus may not be possible in every instance, and transmission providers nevertheless must submit compliance filings consistent with Order No. 1920 and the compliance timelines set forth therein.¹²¹³ We deny NARUC's request to require transmission providers to include in their compliance filings any selection criteria that are "promulgated and supported" by Relevant State Entities. That said, we continue to

believe that Long-Term Regional Transmission Planning is more likely to be successful where transmission providers, Relevant State Entities, and other stakeholders collaborate to develop an evaluation process and selection criteria.¹²¹⁴ As such, we strongly encourage transmission providers to consider any selection criteria supported by Relevant State Entities.

460. Finally, we grant in part NESCOE's requests for clarification. We believe that "good faith efforts" is a reasonably well-understood standard that parties use in their contractual dealings with one another.¹²¹⁵ We further believe that the good faith efforts standard is similar to a "reasonable efforts" standard, which can be defined as "one or more actions rationally calculated to achieve a usually stated objective, but not necessarily with the expectation that all possibilities are to be exhausted."¹²¹⁶ We expect that transmission providers can determine how to apply the "good faith efforts" standard as they consult with and seek support from Relevant State Entities as to the evaluation processes and selection criteria they will use in Long-Term Regional Transmission Planning. Therefore, we find that Order No. 1920 requires transmission providers to provide opportunities for Relevant State Entities to provide input on those proposed processes and to consider that feedback.¹²¹⁷ We otherwise deny clarification and decline to address NESCOE's hypothetical interpretation of the standard.

3. Voluntary Funding

a. Order No. 1920 Requirements

461. In Order No. 1920, the Commission required transmission providers in each transmission planning region to include in their OATTs a process to provide Relevant State

Entities and interconnection customers with the opportunity to voluntarily fund the cost of, or a portion of the cost of, a Long-Term Regional Transmission Facility that otherwise would not meet transmission providers' selection criteria.¹²¹⁸

462. The Commission provided transmission providers with flexibility to propose certain features of such a voluntary funding process in their compliance filings, provided that: (1) the process is transparent and not unduly discriminatory or preferential; and (2) they consult with and seek support from Relevant State Entities when developing such processes.¹²¹⁹

463. The Commission further required that transmission providers' proposed OATT provisions must describe: (1) the process by which transmission providers will make voluntary funding opportunities available to Relevant State Entities and interconnection customers, which must ensure that they receive timely notice and a meaningful opportunity; (2) the period during which Relevant State Entities and interconnection customers may exercise the voluntary funding option; (3) the method that transmission providers will use to determine the amount of voluntary funding required to ensure that the Long-Term Regional Transmission Facility meets the transmission providers' selection criteria; and (4) the mechanism through which transmission providers and Relevant State Entities or interconnection customers will memorialize any voluntary funding agreement.¹²²⁰ Finally, the Commission explained that, for any portion of the costs of a selected Long-Term Regional Transmission Facility that is not voluntarily funded, such remaining costs must be allocated according to either the applicable Long-Term Regional Transmission Cost Allocation Method or a cost allocation method resulting from a State Agreement Process.¹²²¹

b. Requests for Rehearing and Clarification

464. SERTP Sponsors request that the Commission clarify that the requirement in Order No. 1920 that transmission providers include in their OATTs a process to provide Relevant State Entities and interconnection customers with voluntary funding opportunities does not imply that the Commission

¹²⁰⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 994.

¹²¹⁰ *Id.* PP 994, 996. We reiterate, however, that transmission providers may not include in their evaluation process or selection criteria any prohibition on the selection of a Long-Term Regional Transmission Facility based on the transmission providers' anticipated response of a state public utility commission or consumer advocates to particular Long-Term Regional Transmission Facilities. *Id.* P 962. Doing so would deny transmission providers the opportunity to select more efficient or cost-effective Long-Term Regional Transmission Facilities to meet Long-Term Transmission Needs, and therefore may lead to failing to address the deficiencies in the Commission's existing regional transmission planning requirements identified in Order No. 1920. *Id.* P 914.

¹²¹¹ See Arizona Commission Rehearing Request at 16.

¹²¹² Order No. 1920, 187 FERC ¶ 61,068 at P 996 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 153 ("[T]he ultimate responsibility for transmission planning remains with . . . transmission providers.")).

¹²¹³ *Id.* P 996.

¹²¹⁴ *Id.* P 996.

¹²¹⁵ See *Zady Natey, Inc. v. United Food & Comm. Workers Int'l Union, Loc. No. 27*, 995 F.2d 496, 499–500 (4th Cir. 1993) (determining whether contractual counterparty made good faith efforts to perform obligation on the basis of facts developed in adjudicating contractual dispute); *Creative Mktg. Assocs., Inc. v. AT&T*, 476 F.3d 536, 538–39 (8th Cir. 2007) (same); *Zinn v. Parrish*, 644 F.2d 360, 366 (7th Cir. 1981) (same); *Taco Bell Corp. v. Bloor Auto., Inc.*, No. 90–1442, 1991 WL 11618, at *6 (6th Cir. Feb. 5, 1991) (same); *Gulati v. Coyne Int'l Enters. Corp.*, 805 F.Supp. 365, 370–71 (E.D. Va. 1992) (same).

¹²¹⁶ *Reasonable Efforts*, Black's Law Dictionary (12th ed. 2024).

¹²¹⁷ As the Commission explained in Order No. 1920, however, the transmission provider's failure to obtain Relevant State Entities' support is not necessarily evidence that transmission providers did not exercise good faith efforts to seek their support. Order No. 1920, 187 FERC ¶ 61,068 at P 997.

¹²¹⁸ *Id.* P 1012.

¹²¹⁹ *Id.*

¹²²⁰ *Id.* P 1013.

¹²²¹ *Id.*

otherwise is prohibiting voluntary funding in other circumstances.¹²²²

c. Commission Determination

465. In response to SERTP Sponsors' request for clarification, we reiterate that Order No. 1920 does not prohibit voluntary funding approaches that are not described therein.¹²²³ Transmission providers may seek to demonstrate on compliance that other voluntary funding approaches are consistent with or superior to Order No. 1920's requirements, or they may submit a filing under FPA section 205 to propose such approaches.¹²²⁴

4. No Selection Requirement

a. Order No. 1920 Requirements

466. In Order No. 1920, the Commission stated that it would not require transmission providers to select any particular Long-Term Regional Transmission Facility, even where it meets the transmission provider's selection criteria.¹²²⁵ The Commission also prohibited transmission providers from adopting an approach under which they would not select a Long-Term Regional Transmission Facility unless it meets their selection criteria in every Long-Term Scenario and sensitivity.¹²²⁶

b. Requests for Rehearing and Clarification

467. SERTP Sponsors request clarification that the Commission's statement, *i.e.*, that "transmission providers may not adopt an approach under which they would not select a Long-Term Regional Transmission Facility unless it meets their selection criteria in every Long-Term Scenario and sensitivity," does not undercut the Commission's determination that Order No. 1920 does not require a transmission provider to select any Long-Term Regional Transmission Facility, even where it meets the transmission provider's selection

criteria.¹²²⁷ PJM also requests that the Commission clarify that PJM is not required to select Long-Term Regional Transmission Facilities under any of the Long-Term Scenarios that it develops.¹²²⁸

c. Commission Determination

468. In response to SERTP Sponsors' and PJM's requests for clarification, we clarify that Order No. 1920 does not require transmission providers to select any Long-Term Regional Transmission Facility, even where it meets the transmission providers' selection criteria.¹²²⁹

5. Reevaluation

a. NOPR Proposal

469. The Commission proposed in the NOPR that, consistent with Order No. 1000, the developer of a transmission facility selected through Long-Term Regional Transmission Planning to address transmission needs driven by changes in the resource mix and demand would be eligible to use the applicable cost allocation method for the Long-Term Regional Transmission Facility. The Commission proposed that the existing transmission developer requirements would apply, including that the developer of the selected regional transmission facility must submit a development schedule that indicates the required steps, such as the granting of state approvals necessary to develop and construct the transmission facility such that it meets the transmission needs of the transmission planning region.¹²³⁰ The Commission proposed that, to the extent the Relevant State Entities in a transmission planning region agree to a State Agreement Process, the development schedule should also include relevant steps related to that process.¹²³¹

¹²²² SERTP Sponsors Rehearing Request at 9–10 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 968, 1026).

¹²²⁸ PJM Rehearing Request at 19.

¹²²⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1026.

¹²³⁰ NOPR, 179 FERC ¶ 61,028 at P 247 (citing Order No. 1000–A, 139 FERC ¶ 61,132 at P 442). The Commission also stated in Order No. 1000–A that, as part of the ongoing monitoring of the progress of a transmission facility once it is selected, the transmission providers in a transmission planning region must establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the facility is selected to address. The Commission stated that if such critical steps have not been achieved by that date, then the transmission providers in a transmission planning region may "remove the transmission project from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution." Order No. 1000–A, 139 FERC ¶ 61,132 at P 442.

¹²³¹ NOPR, 179 FERC ¶ 61,028 at P 247.

470. The Commission noted that, given the longer-term nature of transmission needs driven by changes in the resource mix and demand, the required development schedule for a transmission facility selected may make it unnecessary for the developer to take actions or incur expenses in the near-term if the transmission facility will not need to be in service in the near-term. The Commission also noted that a transmission provider may make that Long-Term Regional Transmission Facility's selection status subject to the outcomes of subsequent Long-Term Regional Transmission Planning cycles, such that the previously selected transmission facility is no longer needed. The Commission proposed that transmission providers include in their selection criteria how they will address the selection status of a previously selected transmission facility based on the outcomes of subsequent Long-Term Regional Transmission Planning cycles.¹²³²

b. Order No. 1920 Requirements

471. In Order No. 1920, the Commission required transmission providers to include in their OATTs provisions that require them to reevaluate previously selected Long-Term Regional Transmission Facilities in three situations, where: (1) delays in the development of a previously selected Long-Term Regional Transmission Facility would jeopardize a transmission provider's ability to meet its reliability needs or reliability-related service obligations; (2) the actual or projected costs of a previously selected Long-Term Regional Transmission Facility significantly exceed cost estimates used in that Long-Term Regional Transmission Facility's selection; or (3) significant changes in federal, federally-recognized Tribal, state, or local laws or regulations cause reasonable concern that a previously selected Long-Term Regional Transmission Facility may no longer meet the transmission provider's selection criteria.¹²³³ The Commission further required transmission providers to include in these reevaluation provisions the specific criteria they will use to determine when one of these situations occurs.¹²³⁴

472. With respect to reevaluation on the basis of development delays, the Commission explained that Order No. 1920's requirement is the same requirement as that set forth by the

¹²³² *Id.* P 248.

¹²³³ Order No. 1920, 187 FERC ¶ 61,068 at PP 1048–1049.

¹²³⁴ *Id.* P 1050.

¹²²² SERTP Sponsors Rehearing Request at 8. SERTP Sponsors further contend that, if the Commission fails to clarify that Order No. 1920 does not prohibit voluntary funding in other circumstances, Order No. 1920 would be arbitrary and capricious and exceed the Commission's authority. *Id.*

¹²²³ Order No. 1920, 187 FERC ¶ 61,068 at P 1017.

¹²²⁴ *Id.* It is unclear whether SERTP Sponsors intended to argue that failure to grant clarification in this respect would result in Order No. 1920 exceeding the Commission's authority; to the extent they intended to do so, we find this argument has not been raised with the specificity required on rehearing. See *supra* Major Questions Doctrine section.

¹²²⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 1026 (citations omitted).

¹²²⁶ *Id.* P 968.

Commission in Order No. 1000.¹²³⁵ The Commission explained that, as is required for regional transmission planning processes under Order No. 1000, transmission providers must have the ability to take action when delays in developing a Long-Term Regional Transmission Facility risk jeopardizing a transmission provider's ability to meet its reliability needs or reliability-related service obligations.¹²³⁶

473. The Commission provided transmission providers with the flexibility to develop these reevaluation criteria.¹²³⁷ provided that, with respect to reevaluation on the basis of significant changes in federal, federally-recognized Tribal, state, or local laws or regulations, transmission providers may not reevaluate a previously selected Long-Term Regional Transmission Facility unless its targeted in-service date was in the latter half of the 20-year transmission planning horizon when it was selected.¹²³⁸ The Commission also required that the reevaluation criteria seek to maximize benefits accounting for costs over time without over-building transmission facilities. The Commission further explained that it expected transmission providers to balance the need to provide transmission developers with adequate investment certainty, absent which more efficient or cost-effective Long-Term Regional Transmission Facilities will not be developed, against the risk that, due to significant changes in circumstances, failing to reevaluate a selected Long-Term Regional Transmission Facility may result in the over-building of transmission.¹²³⁹ The Commission also required transmission providers to designate a point after which all selected Long-Term Regional Transmission Facilities will no longer be subject to reevaluation—*e.g.*, when the facility's transmission developer has secured all relevant permits and authorizations—such that the transmission developer of the selected Long-Term Regional Transmission Facility has adequate certainty to make investment decisions.¹²⁴⁰

¹²³⁵ *Id.* P 1049 n.2250. *See id.* P 1033 & n.2224 (explaining that the Commission proposed in the NOPR that existing transmission developer requirements would apply to Long-Term Regional Transmission Planning and that, if a transmission facility's developer did not achieve development milestones, transmission providers may remove that facility from the regional transmission plan and reevaluate the regional transmission plan to seek an alternative solution).

¹²³⁶ *Id.* P 1056.

¹²³⁷ *Id.*

¹²³⁸ *Id.* P 1051.

¹²³⁹ *Id.* P 1050.

¹²⁴⁰ *Id.*

474. The Commission further required transmission providers to include in their OATTs provisions detailing the process and procedures they will use to reevaluate a previously selected Long-Term Regional Transmission Facility, including the potential outcomes of reevaluation (*e.g.*, taking no action, imposing a mitigation plan, reassigning the Long-Term Regional Transmission Facility to a different transmission developer, modifying the Long-Term Regional Transmission Facility from the regional transmission plan), and in particular the conditions under which they would remove a previously selected Long-Term Regional Transmission Facility from the regional transmission plan.¹²⁴¹

475. The Commission otherwise allowed flexibility as to the design of the reevaluation processes and procedures, subject to three requirements.¹²⁴² First, the Commission stated that any reevaluation on the basis of cost increases or of significant changes in federal, federally-recognized Tribal, state, or local laws or regulations must occur in a subsequent Long-Term Regional Transmission Planning cycle and must take into account not only the updated costs but also the updated benefits of the Long-Term Regional Transmission Facility.¹²⁴³ The Commission stated that, when performing these reevaluations, it expected that transmission providers will use the updated Long-Term Scenarios and associated transmission system models that are developed for the Long-Term Regional Transmission Planning cycle in which the transmission provider reevaluates the selected Long-Term Regional Transmission Facility.¹²⁴⁴ Second, the Commission required transmission providers to include in the reevaluation processes and procedures mechanisms for tracking the costs of Long-Term Regional Transmission Facilities.¹²⁴⁵ Third, the Commission required that the

¹²⁴¹ *Id.* P 1052 (citing MISO, FERC Electric Tariff, MISO OATT, attach. FF (Transmission Expansion Planning Protocol) (90.0.0), § IX.E, which sets forth potential outcomes of MISO's variance analysis procedures).

¹²⁴² *Id.*

¹²⁴³ *Id.*; *see also id.* P 1059 (explaining that the requirement that the reevaluation processes and procedures update not only actual and projected costs but also their calculation of the benefits of the selected Long-Term Regional Transmission Facility will ensure that transmission providers compare the updated costs and benefits when determining whether the Long-Term Regional Transmission Facility continues to be a more efficient or cost-effective regional transmission solution to Long-Term Transmission Needs).

¹²⁴⁴ *Id.* P 1052 n.2254.

¹²⁴⁵ *Id.* P 1052.

reevaluation processes and procedures seek to maximize benefits accounting for costs over time without over-building transmission facilities.¹²⁴⁶

c. Requests for Rehearing and Clarification

i. Logical Outgrowth

476. Several parties argue that the Commission did not provide sufficient notice of, and opportunity to comment on, Order No. 1920's reevaluation requirements.¹²⁴⁷ For example, EEI claims that the Commission cannot require transmission providers to adopt OATT provisions that require them to reevaluate previously selected Long-Term Regional Transmission Facilities without providing notice of and an opportunity to comment on these requirements.¹²⁴⁸ EEI argues that Order No. 1920's reevaluation requirements are not within the scope of the NOPR's reevaluation proposal and therefore were not "reasonably foreseeable" by interested parties and that these requirements cannot stand because they are not a logical outgrowth of the NOPR proposal.¹²⁴⁹ EEI notes that the Commission stated in Order No. 1920 that a number of parties expressed support for the reevaluation requirements in their NOPR comments but contends that applicable precedent makes clear that comments on the proposed rule are not a substitute for the Commission itself providing notice of its intention to impose these requirements.¹²⁵⁰ EEI further notes that the Commission has invited consideration of the reevaluation of previously selected transmission facilities in a different proceeding and states that it would have been more appropriate for the Commission to have acted in that proceeding rather than in Order No. 1920 because the NOPR lacked any description of the range of reevaluation alternatives.¹²⁵¹ EEI states that it does not oppose "reasonable mechanisms" to protect consumers from over-building Long-Term Regional Transmission Facilities and from the possibility of building transmission

¹²⁴⁶ *Id.*

¹²⁴⁷ East Kentucky Rehearing Request at 1–2; EEI Rehearing Request at 4–11; ITC Rehearing Request at 16; MISO TOs Rehearing Request at 8, 19–22; NRECA Rehearing Request at 13–15, 22; WIRES Rehearing Request at 2–4, 6–16.

¹²⁴⁸ EEI Rehearing Request at 5.

¹²⁴⁹ *Id.* at 6–7 (citing *Brennan v. Dickson*, 45 F.4th at 69–70).

¹²⁵⁰ *Id.* (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983)).

¹²⁵¹ *Id.* at 10 (citing Notice Inviting Post-Technical Conference Comments, *Transmission Planning and Cost Mgmt.*, Docket No. AD22–8–000, et al. (Dec. 23, 2022)).

facilities that may not be cost-effective, but asserts that the appropriate remedy in this instance is to return to the NOPR proposal.¹²⁵²

477. NRECA argues that Order No. 1920 departs from the NOPR proposal by adopting “completely new” requirements for the reevaluation of previously selected Long-Term Regional Transmission Facilities.¹²⁵³ NRECA contends that the reevaluation requirements result in an “inflexible, final selection of Long-Term Regional Transmission Facilities for purposes of regional cost allocation in the first three years of each Long-Term Regional Transmission Planning cycle.”¹²⁵⁴ NRECA recommends that, to ensure compliance with the APA’s notice-and-comment requirements, the Commission withdraw the final rule and issue a supplemental NOPR.¹²⁵⁵

478. WIRES asserts that the NOPR did not provide notice to interested parties of Order No. 1920’s “detailed and prescriptive” reevaluation requirements and that these requirements represent major changes from the NOPR proposal.¹²⁵⁶ WIRES asserts that the reevaluation requirements are significant because they could lead to modifying Long-Term Regional Transmission Facilities or removing them from the regional transmission plan, and, as such, the Commission should have clearly and unambiguously set forth a proposal in the NOPR before adopting Order No. 1920’s reevaluation requirements.¹²⁵⁷ WIRES alleges that instead, the Commission adopted “almost word-for-word” a proposal submitted in comments by Large Public Power without first providing notice of and an opportunity to comment on this proposal.¹²⁵⁸

479. Several rehearing parties contend that, while the NOPR proposed a structure that would permit but not require transmission providers to reevaluate previously selected Long-Term Regional Transmission Facilities, Order No. 1920 requires that transmission providers do so and includes a number of prescriptive requirements that were not included in the NOPR.¹²⁵⁹ MISO TOs argue that Order No. 1920 states that it adopted with modification the NOPR proposal, despite the fact that the NOPR proposed a “flexible and open-ended

opportunity” in accordance with which transmission providers could have tailored their compliance proposals, whereas Order No. 1920’s reevaluation requirements are “a wholly new and tightly prescriptive process with new triggering events and new requirements for reassessing facilities.”¹²⁶⁰ WIRES notes that the NOPR did not use the term “reevaluate,” that it proposed to provide flexibility for transmission providers to propose their own processes, and did not include any relevant details or requirements other than to propose that transmission providers “should include in their selection criteria how they will address the selection status of a previously selected transmission facility based on the outcomes of subsequent Long-Term Regional Transmission Planning cycles.”¹²⁶¹

480. Several parties acknowledge that, in setting forth Order No. 1920’s reevaluation requirements, the Commission cited the NOPR proposal that would have allowed transmission providers to make the selection status of previously selected Long-Term Regional Transmission Facilities subject to the outcome of subsequent Long-Term Regional Transmission Planning cycles,¹²⁶² but contend nonetheless that that notice was inadequate. EEI states that the NOPR proposal contained none of the detail or the rationale regarding specific elements of Order No. 1920’s reevaluation requirements, such as the specific situations in which reevaluation would be required or the requirement for transmission providers to include in their OATTs the potential outcomes of reevaluation.¹²⁶³ EEI further argues that, whereas the NOPR proposal focused on how the outcome of subsequent Long-Term Regional Transmission Planning cycles could give rise to the need to reevaluate, the three situations in which Order No. 1920 requires reevaluation do not depend on the results of or actions in a subsequent Long-Term Regional Transmission Planning cycle.¹²⁶⁴

481. NRECA states that it did not oppose the Commission’s NOPR proposal to require transmission providers to participate in a regional transmission planning process that includes Long-Term Regional Transmission Planning—and particularly, the requirements that transmission providers use a 20-year

transmission planning horizon and measure the benefits of transmission facilities over 20 years—because of the NOPR proposal to allow transmission providers to subject the selection status of Long-Term Regional Transmission Facilities to the outcome of subsequent Long-Term Regional Transmission Planning cycles.¹²⁶⁵ NRECA states that it interpreted the NOPR as allowing transmission providers to develop selection criteria under which transmission providers could conditionally select a Long-Term Regional Transmission Facility but delay selecting that Facility for purposes of cost allocation until later.¹²⁶⁶ NRECA states that the Commission did not adopt the NOPR proposal and instead adopted “completely different, prescriptive [reevaluation] requirements.”¹²⁶⁷

482. MISO TOs and ITC each argue that the Commission did not provide adequate notice of or an opportunity to comment on the requirement that transmission providers update their measurement of the benefits of Long-Term Regional Transmission Facilities. MISO TOs state that the NOPR proposed “the option of a routine review” and did not include any requirement for a “general reevaluation of benefits of the facilities,” and that this deprived regulated parties of the fair notice required by the APA.¹²⁶⁸ ITC contends that Order No. 1920’s reevaluation requirements depart substantially from the original reevaluation proposal, and that the Commission has not provided commenters a meaningful opportunity to comment on the requirement “to perform a full update of the calculation of the benefits” resulting in a factual record that does not address the relative merits of this approach.¹²⁶⁹

483. MISO TOs and WIRES each argue that, had the Commission provided notice of and an opportunity to comment, Order No. 1920’s reevaluation requirements would ultimately have been improved. MISO TOs argue that Order No. 1920 is not as clear or as workable as it might have been if MISO TOs and other commenters had fair notice, and that the Commission instead could have adopted “a more nuanced and workable requirement.”¹²⁷⁰ WIRES claims that the Commission did not have the benefit of sufficient input from regulated

¹²⁵² *Id.* at 10–11.

¹²⁵³ NRECA Rehearing Request at 4–6.

¹²⁵⁴ *Id.* at 14.

¹²⁵⁵ *Id.* at 4, 19.

¹²⁵⁶ WIRES Rehearing Request at 3–5.

¹²⁵⁷ *Id.* at 2–4.

¹²⁵⁸ *Id.* at 10.

¹²⁵⁹ *See, e.g.,* EEI Rehearing Request at 7–8; WIRES Rehearing Request at 7–8.

¹²⁶⁰ MISO TOs Rehearing Request at 21–22 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1048).

¹²⁶¹ WIRES Rehearing Request at 6–7 (quoting NOPR, 179 FERC ¶ 61,028 at P 248).

¹²⁶² *See* NOPR, 179 FERC ¶ 61,028 at P 248.

¹²⁶³ EEI Rehearing Request at 5–6.

¹²⁶⁴ *Id.* at 8–9.

¹²⁶⁵ NRECA Rehearing Request at 13 (citing NOPR, 179 FERC ¶ 61,028 at P 248).

¹²⁶⁶ *Id.* at 24.

¹²⁶⁷ *Id.* at 25 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1055 & n.2257).

¹²⁶⁸ MISO TOs Rehearing Request at 19–21.

¹²⁶⁹ ITC Rehearing Request at 16.

¹²⁷⁰ MISO TOs Rehearing Request at 19, 22.

parties. WIRES contends that, while the Commission stated that it set forth Order No. 1920's reevaluation requirements having "carefully reviewed the record developed here and weighed commenters' countervailing arguments," the comments submitted were specific to the NOPR proposal that was not adopted—not Order No. 1920's reevaluation requirements.¹²⁷¹

ii. Other Issues

484. Several parties sought rehearing or clarification of the requirement to update the measurement of benefits when reevaluating a previously selected Long-Term Regional Transmission Facility or Facilities.¹²⁷² MISO TOs argued that the requirement for transmission providers to update their measurement of the benefits of Long-Term Regional Transmission Facilities risks significant disruption to the use of portfolio approaches to selecting such facilities. MISO TOs argued that the Commission had not provided substantial evidence to support requiring transmission providers to update their measurement of the benefits of Long-Term Regional Transmission Facilities during reevaluations, as the Commission acknowledged that updating the measurement of benefits is "not as straightforward as tracking costs," reassessing benefits is different than reassessing costs, and reevaluation could create "unnecessary disruptions and potentially impede the efficient conduct" of Long-Term Regional Transmission Planning.¹²⁷³ MISO TOs requested that, on rehearing, the Commission modify Order No. 1920's requirement such that transmission providers would "consider benefits and the broader needs of the region in the reevaluation process and choose an outcome based on that assessment."¹²⁷⁴

485. ITC argued that, while reevaluating a previously selected Long-Term Regional Transmission Facility on the basis of cost increases is reasonable, Order No. 1920's requirement for transmission providers to update their measurement of the benefits of Long-Term Regional Transmission Facilities will burden transmission providers and deter investment in such facilities. ITC therefore requested that the Commission eliminate the requirement to update the measurement of the benefits or, in the alternative, clarify that transmission

providers may adopt a more qualitative assessment that takes into account the benefits and costs of a Long-Term Regional Transmission Facility in the context of the transmission planning region's Long-Term Transmission Needs, and also that transmission providers may adopt flexible remedial measures such as those available under MISO's variance analysis process.¹²⁷⁵ Similarly, WIRES requested clarification as to whether Order No. 1920 would allow transmission providers flexibility to determine how they will update their measurement of the benefits of Long-Term Regional Transmission Facilities, and argued that transmission providers should have the flexibility to address the concerns raised by the Commission in developing their reevaluation criteria in a manner compatible with their transmission planning process.¹²⁷⁶

486. NRECA requested that the Commission eliminate the requirement for transmission providers to designate a point after which all previously selected Long-Term Regional Transmission Facilities will no longer be subject to reevaluation, *i.e.*, a pencils-down point, such that the transmission developer of the selected facility would have adequate certainty to make investment decisions.¹²⁷⁷

487. Large Public Power and NRECA requested that the Commission require on rehearing that transmission providers reevaluate previously selected Long-Term Regional Transmission Facilities not only when there is a significant increase in costs, but also when there is a significant decrease in the benefits of a particular facility.¹²⁷⁸ Large Public Power further requested that the Commission clarify that Order No. 1920 requires transmission providers to track both the costs and the benefits of previously selected Long-Term Regional Transmission Facilities.¹²⁷⁹ In addition to reevaluation on the basis of cost increases, NRECA argued that transmission providers should be required to reevaluate previously selected Long-Term Regional Transmission Facilities when the

transmission planning region's Long-Term Transmission Needs have changed.¹²⁸⁰

488. ITC, Large Public Power, and NRECA argued that the Commission should grant rehearing and eliminate Order No. 1920's requirements to reevaluate on the basis of significant changes in federal, federally-recognized Tribal, state, or local laws or regulations, because these requirements are either too narrow or too broad.¹²⁸¹

489. ITC stated that Order No. 1920 encourages the use of portfolio approaches to select Long-Term Regional Transmission Facilities, as they generate considerable interdependency among the various Long-Term Regional Transmission Facilities selected in a particular Long-Term Regional Transmission Planning cycle. ITC therefore recommended that the Commission require periodic project portfolio reporting modeled after MISO's Multi-Value Project Triennial Reporting framework, which ITC contended provides a regular check to ensure transmission customers receive the benefits they are promised and allows for regional transmission planning process improvement.¹²⁸² If the Commission did not grant rehearing and eliminate reevaluations on the basis of significant changes in law or regulations, ITC requested that the Commission allow such reevaluation only for Long-Term Regional Transmission Facilities whose targeted in-service date is more than 10 years from the point at which the transmission provider conducts the reevaluation.

490. In contrast, Large Public Power argued that the "blanket ten-year moratorium" is arbitrary and capricious.¹²⁸³ NRECA argued that the Commission provided no rationale for this limitation, which it characterized as "so implausible that it could not be ascribed to a difference in view or the product of agency expertise."¹²⁸⁴

491. Several parties requested that the Commission provide transmission providers with more flexibility to reevaluate previously selected Long-Term Regional Transmission Facilities in other situations. Dominion sought

¹²⁷⁵ ITC Rehearing Request at 15–19.

¹²⁷⁶ WIRES Rehearing Request at 14.

¹²⁷⁷ NRECA Rehearing Request at 33 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1050); *see also* East Kentucky Rehearing Request at 2 (arguing that Order No. 1920 permits arbitrary and unreasonable deadlines on reevaluations).

¹²⁷⁸ Large Public Power Rehearing Request at 17–19; NRECA Rehearing Request at 29–30; *see also* East Kentucky Rehearing Request at 2 (arguing that the Order No. 1920 requirement related to reevaluation on the basis of cost increases is "too narrowly drawn" and inconsistent with other aspects of Order No. 1920).

¹²⁷⁹ Large Public Power Rehearing Request at 17–18 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 1054, 1059).

¹²⁷¹ WIRES Rehearing Request at 14–16 (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 1053).

¹²⁷² MISO TOs Rehearing Request at 4; ITC Rehearing Request at 17; WIRES at 11–12.

¹²⁷³ MISO TOs Rehearing Request at 17–19 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1059).

¹²⁷⁴ *Id.* at 13.

¹²⁸⁰ NRECA Rehearing Request at 30–32.

¹²⁸¹ ITC Rehearing Request at 4–5; Large Public Power Rehearing Request at 19–20; NRECA Rehearing Request at 36; *see also* East Kentucky Rehearing Request at 2 (stating that Order No. 1920 "arbitrarily [and] unreasonably prohibits some reevaluations due to changes in laws or regulations").

¹²⁸² ITC Rehearing Request at 13–14.

¹²⁸³ Large Public Power Rehearing Request at 19–20.

¹²⁸⁴ NRECA Rehearing Request at 36 (quoting *State Farm*, 463 U.S. at 43).

rehearing or, as applicable, clarification of the Commission's reevaluation process to allow transmission providers to reevaluate a previously selected Long-Term Regional Transmission Facility in situations other than those identified in Order No. 1920.¹²⁸⁵

Similarly, SERTP Sponsors requested that the Commission clarify that the three situations described in Order No. 1920 in which reevaluation of previously selected Long-Term Regional Transmission Facilities is required are illustrative, arguing that Order No. 1920 grants transmission providers inadequate flexibility in developing OATT provisions regarding the reevaluation of previously selected Long-Term Regional Transmission Facilities.¹²⁸⁶

d. Commission Determination

i. Logical Outgrowth

492. We disagree with the argument that the Commission failed to provide adequate notice of and opportunity to comment on Order No. 1920's requirement that transmission providers include provisions in their OATTs that require them to reevaluate previously selected Long-Term Regional Transmission Facilities in certain circumstances. As the D.C. Circuit explained recently, "the very premise of agencies' duty to solicit, consider, and respond appropriately to comments is that rules evolve from conception to completion."¹²⁸⁷ Indeed, notice is sufficient if the final rule represents a "logical outgrowth" of the proposed rule.¹²⁸⁸ Order No. 1920's reevaluation requirements are closely related to and fully in character with the NOPR proposal, and represent the kind of reasonable evolution of an initial proposal in response to comments that rehearing parties could have reasonably anticipated.

493. As an initial matter, we note that the NOPR proposed to require the reevaluation of previously selected transmission facilities in certain circumstances. Because Long-Term Regional Transmission Planning is a form of regional transmission planning,¹²⁸⁹ the Commission's regional transmission planning requirements

apply. This includes a requirement that transmission providers describe in their OATTs the circumstances in which and the procedures under which transmission providers will conduct a reevaluation. This reevaluation is necessary to determine how a transmission provider will respond if development delays affecting a previously selected regional transmission facility jeopardize incumbent transmission owners' ability to meet their reliability needs or service obligations.¹²⁹⁰ The Commission made this explicit in the NOPR when it proposed that Order No. 1000's transmission developer requirements would apply to Long-Term Regional Transmission Planning¹²⁹¹ and noted that in the event of development delays, transmission providers may "remove the transmission facility from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution."¹²⁹²

494. The Commission further proposed in the NOPR to allow transmission providers to make the selection status of a previously selected Long-Term Regional Transmission Facility "subject to the outcomes of subsequent Long-Term Regional Transmission Planning cycles," such that it "is no longer needed" and proposed that transmission providers "should include in their selection criteria how they will address the selection status of a previously selected transmission facility based on the outcomes of subsequent Long-Term Regional Transmission Planning cycles."¹²⁹³ The Commission suggested that this proposal was warranted because the development schedule for a Long-Term Regional Transmission Facility may not require its developer to undertake actions or incur expenses in the near-term,¹²⁹⁴ and it explained that the NOPR's proposed reforms were intended to be responsive to "commenters' concerns about overbuilding [transmission facilities] due to uncertainties of future transmission system conditions."¹²⁹⁵ Therefore, although the Commission used other language, the Commission effectively proposed in the NOPR that transmission providers could reevaluate certain Long-Term Regional Transmission Facilities (*i.e.*, those for which near-term

development activities are not necessary) in light of changed circumstances apparent in the subsequent Long-Term Regional Transmission Planning cycle to determine whether to continue developing that facility or find that it was no longer needed.¹²⁹⁶

495. In other words, the NOPR provided adequate notice of and an opportunity to comment on proposals to require reevaluation of previously selected Long-Term Regional Transmission Facilities due to development delays and to permit reevaluation of previously selected Long-Term Regional Transmission Facilities due to changed circumstances from one Long-Term Regional Transmission Planning cycle to the next.

496. Commenters objected to the NOPR proposal on the grounds that providing open-ended allowance for reevaluation of previously selected Long-Term Regional Transmission Facilities would undermine selection as a "reasonably final" step and create too much uncertainty for transmission developers, which would impede the development of the relevant transmission facilities and ultimately could raise concerns about reliability impacts or other consequences.¹²⁹⁷ Upon consideration of the record before it and these comments in particular, the Commission modified the NOPR proposal to allow for the reevaluation of previously selected Long-Term Regional Transmission Facilities due to changed circumstances from one transmission planning cycle to the next. Specifically, Order No. 1920 required the reevaluation of Long-Term Regional Transmission Facilities only in certain circumstances that could affect the need for the facility—*i.e.*, where the costs of the transmission facility significantly exceed estimates or where significant changes in federal, federally-recognized Tribal, state, or local laws or regulations cause reasonable concern that the facility no longer meets selection criteria.¹²⁹⁸ Further, consistent with the Commission's reasoning in the NOPR that reevaluation may be appropriate where near-term development actions or expenditures are not needed in order to meet the targeted in-service date, the Commission limited the availability of reevaluation due to significant changes in laws or regulations to only those facilities that are not needed to be in-service within 10 years (*i.e.*, unless its

¹²⁸⁵ Dominion Rehearing Request at 17.

¹²⁸⁶ SERTP Sponsors Rehearing Request at 20–21.

¹²⁸⁷ *Brennan v. Dickson*, 45 F.4th at 69.

¹²⁸⁸ *Long Island Care*, 551 U.S. at 174–75. See also *Am. Paper Inst. v. EPA*, 660 F.2d at 959 n.13 ("An agency may make even substantial changes in its original proposed rule without a further comment period if the changes are in character with the original proposal and are a logical outgrowth of the notice and comments already given.") (emphasis added).

¹²⁸⁹ NOPR, 179 FERC ¶ 61,028 at P 68; Order No. 1920, 187 FERC ¶ 61,068 at P 224.

¹²⁹⁰ Order No. 1000, 136 FERC ¶ 61,051 at P 329.

¹²⁹¹ NOPR, 179 FERC ¶ 61,028 at P 247.

¹²⁹² *Id.* P 247 n.395 (citing Order No. 1000–A, 139 FERC ¶ 61,132 at P 442).

¹²⁹³ *Id.* P 248.

¹²⁹⁴ *Id.*

¹²⁹⁵ NOPR, 179 FERC ¶ 61,028 at P 245.

¹²⁹⁶ *Id.* P 248.

¹²⁹⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1055 & n.2256.

¹²⁹⁸ *Id.* PP 1048–1055.

targeted in-service date was in the latter half of the 20-year transmission planning horizon during the Long-Term Regional Transmission Planning cycle in which it was selected) and required a “pencils-down” point in the development of a facility at which reevaluation would no longer be permitted.¹²⁹⁹ The Commission’s modifications are not “surprisingly distant” from the proposal so as to be wholly unexpected;¹³⁰⁰ instead, the changes merely refine the proposals included in the NOPR and are thus precisely the kind of tailoring and fine-tuning of a proposed rule in response to comments that is the *raison d’être* for APA notice-and-comment requirements.¹³⁰¹

ii. Other Issues

497. We also disagree with rehearing parties’ substantive objections to the reevaluation requirements. While certain parties object to the reevaluation requirements as too lax,¹³⁰² and other parties object to them as too stringent,¹³⁰³ we conclude that they strike a reasonable balance between providing adequate certainty to transmission developers to support capital investment, such that more efficient or cost-effective Long-Term Transmission Facilities actually may be developed, and mitigating the inherent uncertainty involved in Long-Term Regional Transmission Planning, given that continued selection of Long-Term Regional Transmission Facilities that no longer meet selection criteria could be costly to consumers.¹³⁰⁴ Specifically, though several rehearing parties object that reevaluation should be required in additional circumstances, such as whenever there is a reduction in benefits,¹³⁰⁵ whenever there is a change in transmission needs,¹³⁰⁶ or at points of time beyond the “pencils-down” date,¹³⁰⁷ and others argue that the transmission provider should have more

discretion to determine when to reevaluate previously selected Long-Term Regional Transmission Facilities,¹³⁰⁸ we continue to find that such open-ended allowance for reevaluation would fail to account for the degree of certainty that is needed to support capital investment, and would therefore fail to adequately ensure development of more efficient or cost-effective Long-Term Regional Transmission Facilities.¹³⁰⁹

498. On the other hand, we also reject requests to eliminate the requirement to reevaluate facilities where significant changes in laws or regulations cause reasonable concern that a previously selected Long-Term Regional Transmission Facility may no longer meet the transmission provider’s selection criteria.¹³¹⁰ We remain concerned that, absent an opportunity to determine whether selection of such a facility remains warranted in light of a significant change in laws or regulations, transmission providers may be reluctant to select certain Long-Term Regional Transmission Facilities,¹³¹¹ and we find that requiring reevaluation in such a circumstance helps to mitigate the inherent uncertainty of Long-Term Regional Transmission Planning and the risk of over-building transmission facilities. With the limitations we impose—*i.e.*, that such reevaluation only occur for facilities with a targeted in-service date that is in the latter half of the Long-Term Regional Transmission Planning cycle in which it is selected and that reevaluation may only occur up to the “pencils-down” point in the facility’s development—we are not persuaded that reevaluation under these circumstances will create such uncertainty for transmission developers as to significantly impede the development of more efficient or cost-effective Long-Term Regional Transmission Facilities.

499. While we appreciate rehearing parties’ concerns that assessing a change in a transmission facility’s benefits is more complex than assessing a change in its costs, we decline requests to set aside the requirement to account for updated benefits when transmission providers reevaluate a Long-Term Regional Transmission Facility based on a significant increase in the facility’s estimated costs.¹³¹² We continue to find that such a requirement will help to ensure there is an opportunity to select

more efficient or cost-effective Long-Term Regional Transmission Facilities, because otherwise the transmission provider would compare the facility’s currently determined costs with its previously determined benefits.¹³¹³

500. We further find that rehearing parties’ concerns about the burdens of accounting for updated benefits are misplaced, as Order No. 1920 provided significant flexibility to transmission providers as to how to account for changes in benefits. While Order No. 1920 requires that such reevaluations must only occur during a subsequent Long-Term Regional Transmission Planning cycle (*i.e.*, rather than in between such cycles) because doing so during such a cycle enables transmission providers to make use of updated assumptions, inputs, and the Long-Term Scenarios that must be developed in any event during the subsequent cycle, Order No. 1920 does not prescribe any particular method for assessing updated benefits.¹³¹⁴ We note that, because Order No. 1920 provides transmission providers the flexibility to propose qualitative measures in their evaluation processes and qualitative selection criteria, transmission providers will need flexibility to develop a process for determining if a previously selected Long-Term Regional Transmission Facility continues to meet those selection criteria.

501. We are also not persuaded by rehearing parties’ arguments that the reevaluation requirements will undermine the ability of transmission providers to use a portfolio approach to evaluating benefits or selecting Long-Term Regional Transmission Facilities.¹³¹⁵ As described above, transmission providers have significant flexibility to determine how to update benefits, and they may propose to use a method that accommodates Order No. 1920’s reevaluation requirements in the context of portfolio approaches to selecting Long-Term Regional Transmission Facilities. Likewise, provided the process seeks to maximize benefits accounting for costs over time without over-building transmission facilities, transmission providers have significant flexibility to determine the appropriate outcomes that may result from reevaluation, including the potential mitigation measures that may

¹²⁹⁹ *Id.* PP 1050–1051.

¹³⁰⁰ *Brennan v. Dickson*, 45 F.4th at 69.

¹³⁰¹ We note that, while the reevaluation requirements are one tool to manage the inherent uncertainties of Long-Term Regional Transmission Planning and to limit the risk of over-building transmission in response to speculative transmission needs, we believe that other requirements in Order No. 1920 also address these concerns. The inability to include reevaluation requirements would not have prevented the Commission from issuing Order No. 1920.

¹³⁰² *See e.g.*, East Kentucky Rehearing Request at 2; NRECA Rehearing Request at 33.

¹³⁰³ *See e.g.*, ITC Rehearing Request at 15–19; MISO TOs Rehearing Request at 17–19.

¹³⁰⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1054.

¹³⁰⁵ Large Public Power Rehearing Request at 17–19; NRECA Rehearing Request at 29–30.

¹³⁰⁶ NRECA Rehearing Request at 30–32.

¹³⁰⁷ *Id.* at 33.

¹³⁰⁸ Dominion Rehearing Request at 17; SERTP Sponsors Rehearing Request at 20–21.

¹³⁰⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1053.

¹³¹⁰ ITC Rehearing Request at 4–5.

¹³¹¹ Order No. 1920, 187 FERC ¶ 61,068 at P 1056.

¹³¹² MISO TOs Rehearing Request at 17–19; ITC Rehearing Request at 15–19.

¹³¹³ Order No. 1920, 187 FERC ¶ 61,068 at P 1059.

¹³¹⁴ This clarification resolves WIRES’s request for clarification regarding the flexibility allowed transmission providers to determine how to account for updated benefits. *See* WIRES Rehearing Request at 14.

¹³¹⁵ ITC Rehearing Request at 6–9; MISO TOs Rehearing Request at 17–19.

be regionally appropriate.¹³¹⁶ Thus, transmission providers have scope to tailor both how reevaluation is conducted and the outcomes of the reevaluation process to the portfolio approach.

E. Implementation of Long-Term Regional Transmission Planning

1. Order No. 1920 Requirements

502. In Order No. 1920, the Commission required transmission providers to explain on compliance how the initial timing sequence for Long-Term Regional Transmission Planning interacts with existing regional transmission planning processes. The Commission required transmission providers to provide in their explanations any information necessary to ensure that stakeholders understand this interaction, including at least the following two components. First, the Commission required transmission providers to address the possible interaction between the transmission planning cycles for Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes. The Commission recognized that there may be overlap in the time horizon for Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes and that these processes will likely inform each other.¹³¹⁷ Second, the Commission required transmission providers to address the possible displacement of regional transmission facilities from the existing regional transmission planning processes. The Commission recognized that it is possible that, in some cases, Long-Term Regional Transmission Facilities selected to address Long-Term Transmission Needs may provide near-term reliability or economic benefits, and thus could displace regional transmission facilities that are under consideration as part of existing regional transmission planning processes.¹³¹⁸

503. The Commission found that transmission providers should have the flexibility to integrate the existing regional transmission planning processes with Long-Term Regional Transmission Planning in a manner that mitigates the potential for disruption of the existing regional transmission planning processes. However, the Commission expressed concern that too much flexibility for transmission providers with respect to the date by which they must begin the first Long-

Term Regional Transmission Planning cycle could lead to unnecessary delay in realizing these beneficial reforms for customers. Thus, the Commission required transmission providers in each transmission planning region to propose on compliance a date, no later than one year from the date on which initial filings to comply with the final rule are due, on which they will commence the first Long-Term Regional Transmission Planning cycle. The Commission stated that transmission providers in a transmission planning region may propose to start the first Long-Term Regional Transmission Planning cycle on a date later than one year from the initial compliance filing due date, only to the extent needed to align the Long-Term Regional Transmission Planning cycle with existing transmission planning cycles.¹³¹⁹ While the Commission encouraged transmission providers to align transmission planning cycles if useful, to ensure that there is no inappropriate delay to starting Long-Term Regional Transmission Planning, the Commission stated that transmission providers in a transmission planning region that propose a commencement date of later than one year from the compliance due date must include adequate support explaining how the proposed date to begin the first Long-Term Regional Transmission Planning cycle is necessary and appropriately tailored for their transmission planning region.¹³²⁰

504. The Commission encouraged transmission providers to address in their explanations how their proposed Long-Term Regional Transmission Planning would facilitate moving beyond piecemeal transmission expansion to address relatively near-term transmission needs and toward a more robust, well-planned transmission system.¹³²¹

2. Requests for Rehearing and Clarification

505. PJM states that it recognizes that the long-term transmission planning horizon can and will inform Order No. 1000 processes but argues that it is imperative that these two processes function effectively together so that PJM can respond to short-term needs quickly and nimbly.¹³²² Accordingly, PJM requests flexibility in designing its Long-Term Regional Transmission Planning process in a way that would minimize harmful interaction from the overlap between Order No. 1000 and

Order No. 1920 regional transmission planning processes and would allow for the efficient use of PJM's resources.¹³²³

506. TAPS asserts that Order No. 1920 does not adequately clarify how the Order No. 1000 economic and reliability processes and the Long-Term Regional Transmission Planning process will interact after the initial implementation phase.¹³²⁴ TAPS argues that Order No. 1920 does not address whether, or the circumstances under which, transmission projects may be moved from an Order No. 1000 reliability or economic planning process to the Long-Term Regional Transmission Planning process, or vice versa.¹³²⁵ As a result, TAPS requests that the Commission recognize that these regional transmission planning processes will continue to interact after the initial implementation of Long-Term Regional Transmission Planning and require that transmission providers demonstrate how these processes will interact on an ongoing basis, including how and when transmission projects may be moved between the two processes.¹³²⁶

3. Commission Determination

507. As an initial matter, upon further consideration, we set aside, in part, Order No. 1920's requirement that transmission providers in each transmission planning region must propose on compliance a date, no later than one year from the date on which initial filings to comply with the final rule are due, on which they will commence the first Long-Term Regional Transmission Planning cycle.¹³²⁷ Instead, we require that transmission providers must propose on compliance a date, no later than *two* years from the date on which initial filings to comply with Order No. 1920 are due, on which they will commence the first Long-Term Regional Transmission Planning cycle. We find that this modification balances the need to ensure that transmission providers timely implement Order No. 1920's requirements to avoid unnecessary delay in realizing these beneficial reforms for customers, as explained in Order No. 1920,¹³²⁸ with the need to provide transmission providers with sufficient time to implement Long-Term Regional Transmission Planning and align the Long-Term Regional Transmission Planning cycle with existing

¹³²³ *Id.*

¹³²⁴ TAPS Rehearing Request at 6–9.

¹³²⁵ *Id.* at 8.

¹³²⁶ *Id.* at 6–9.

¹³²⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1072.

¹³²⁸ *See id.*

¹³¹⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1052.

¹³¹⁷ *Id.* P 1071.

¹³¹⁸ *Id.*

¹³¹⁹ *Id.* P 1072.

¹³²⁰ *Id.*

¹³²¹ *Id.* P 1073.

¹³²² PJM Rehearing Request at 41.

transmission planning cycles, which may be longer than a single year.

508. Moreover, we modify Order No. 1920's requirement that transmission providers that propose a commencement date of later than one year from the compliance due date must include adequate support explaining how the proposed date to begin the first Long-Term Regional Transmission Planning cycle is necessary and appropriately tailored for their transmission planning region.¹³²⁹ Instead, we require that regardless of the date that transmission providers propose on compliance, they must explain in their compliance filing why the proposed date on which they will commence the first Long-Term Regional Transmission Planning cycle is necessary and appropriately tailored for their transmission planning region. We find that this modification will allow the Commission to ensure that the proposed date will not unnecessarily delay the realization of Order No. 1920's beneficial reforms for customers.

509. We sustain the requirement that transmission providers must explain on compliance how the initial timing sequence for Long-Term Regional Transmission Planning will interact with the existing regional transmission planning processes under Order No. 1000. As the Commission recognized in Order No. 1920, there may be overlap in the time horizons for these processes, and transmission providers should have the flexibility to integrate the existing regional transmission planning processes with Long-Term Regional Transmission Planning in a manner that mitigates the potential for disruption of the existing regional transmission planning processes.¹³³⁰ While Long-Term Regional Transmission Planning processes must still meet all requirements set forth in Order No. 1920, we believe that this flexibility extends to and addresses concerns raised by PJM, including its request for flexibility to design its Long-Term Regional Transmission Planning process in a way that minimizes potential harmful impacts to existing regional transmission planning processes.

510. In response to TAPS' request for rehearing, we recognize that Long-Term Regional Transmission Planning and existing Order No. 1000 economic and reliability transmission planning processes may continue to interact after the initial implementation of Long-Term Regional Transmission Planning. However, while this interaction is possible, we believe that, after the first

Long-Term Regional Transmission Planning cycle concludes, the overlap between the existing Order No. 1000 regional transmission planning processes and Long-Term Regional Transmission Planning will likely diminish. As the Commission found in Order No. 1920, existing regional transmission planning processes that plan for reliability and economic transmission needs may in the future come to address only residual needs not already addressed through Long-Term Regional Transmission Planning.¹³³¹ As a result, the potential for overlap between Long-Term Regional Transmission Planning and the existing Order No. 1000 regional transmission planning process should decrease. Further, we do not believe that it is necessary to require transmission providers to explain how a transmission facility selected in one regional transmission process may "move" to another regional transmission planning process. Nevertheless, as the Commission stated in Order No. 1920, we encourage transmission providers to address in their explanation on compliance how their proposed Long-Term Regional Transmission Planning process will facilitate moving beyond piecemeal transmission expansion to address relatively near-term transmission needs and toward a more robust, well-planned transmission system.¹³³²

VI. Coordination of Regional Transmission Planning and Generator Interconnection Processes

A. Need for Reform and Overall Requirement

1. Order No. 1920 Requirements

511. In Order No. 1920, the Commission found that there is substantial evidence to support the conclusion that the Commission's existing regional transmission planning requirements are unjust, unreasonable, and unduly discriminatory or preferential because they do not adequately consider certain interconnection-related transmission needs that the transmission provider has identified multiple times in the generator interconnection process but that have never been resolved due to the withdrawal of the underlying interconnection request(s).¹³³³ The Commission made this finding in response to (among other things) evidence in the record that the level of spending on interconnection-related

network upgrades has dramatically increased in recent years and evidence that this trend leads to more interconnection requests withdrawing in the face of significant costs associated with interconnection-related network upgrades.¹³³⁴ The Commission stated that, while interconnection customers may choose to withdraw from the interconnection queue for a number of reasons, in recent years, the deciding factor has increasingly become the interconnection customer's sticker shock at its cost responsibility for interconnection-related network upgrades.¹³³⁵ The Commission also based its finding on evidence that in many cases when an interconnection-related transmission need is not addressed via development of interconnection-related network upgrades in one interconnection queue cycle, the same interconnection-related transmission need—and oftentimes the same or a substantially similar interconnection-related network upgrade—will appear in subsequent interconnection queue cycles.¹³³⁶

512. Consequently, the Commission adopted requirements for transmission providers in each transmission planning region to revise their regional transmission planning processes in their OATTs to evaluate for selection regional transmission facilities that address certain interconnection-related transmission needs associated with specific interconnection-related network upgrades originally identified through the generator interconnection process. In particular, the Commission adopted four qualifying criteria for when transmission providers must evaluate interconnection-related transmission needs in the regional transmission planning process. The Commission found that this requirement will ensure that more efficient or cost-effective transmission expansion can be effectuated through regional transmission planning processes and will eliminate a potential barrier to entry for new generation resources, thereby enhancing competition in wholesale electricity markets and facilitating access to lower-cost generation. The Commission stated that, as a result, this reform will ensure just and reasonable and not unduly discriminatory or preferential Commission-jurisdictional rates.¹³³⁷

¹³²⁹ See *id.*

¹³³⁰ *Id.*

¹³³¹ *Id.* P 245.

¹³³² *Id.* P 1073.

¹³³³ Order No. 1920, 187 FERC ¶ 61,068 at P 1100.

¹³³⁴ *Id.* P 1101.

¹³³⁵ *Id.*

¹³³⁶ *Id.* P 1102.

¹³³⁷ *Id.* PP 1106, 1145.

2. Requests for Rehearing

513. SERTP Sponsors, Large Public Power, and Industrial Customers argue that this reform is premature in light of Order No. 2023, which is intended to, among other things, reduce speculative interconnection requests and withdrawals.¹³³⁸ SERTP Sponsors argue that the Commission should grant rehearing and revisit this reform after experience is gained to determine whether interconnection withdrawals could “reasonably be expected to be indicative of a need for new regional transmission facilities that have ‘a voltage of at least 200 kV and an estimated cost of at least \$30 million.’”¹³³⁹ SERTP Sponsors argue that accordingly, the Commission has not established a rational basis supported by substantial evidence for this requirement.¹³⁴⁰

514. PJM argues that the Commission failed to provide substantial evidence for its conclusion that, nationwide, the deciding factor for interconnection customers’ withdrawals is sticker shock at their assigned network upgrade costs.¹³⁴¹ PJM argues that the Commission ignored its analysis of more than 700 interconnection requests in one transmission zone over a six-year period that demonstrated that only 14 requests or 2% would have likely met the voltage and cost thresholds in Order No. 1920 and that nine of the 14 withdrew before a feasibility study was issued. Additionally, PJM argues that, of the remaining five, two were ultimately responsible for network upgrades of less than \$30 million, thus leaving only three interconnection requests potentially withdrawing due to the cost of network upgrades.¹³⁴² PJM argues that this data suggesting a withdrawal rate of less than one half percent in a large sample indicates insignificant correlation between network upgrade costs, voltage level, and business decisions to withdraw.¹³⁴³

515. PJM further argues that, on the other hand, over the past six years, several dozen generation projects that executed interconnection agreements had associated network upgrades of less

than \$5 million but nonetheless terminated their interconnection agreements. Thus, PJM argues that factors other than sticker shock are common reasons for delay or failure to advance.¹³⁴⁴ PJM argues that the Commission disregarded this evidence and relied on studies in MISO and SPP to justify a one-size-fits-all approach, and it argues that this decision was arbitrary and capricious.¹³⁴⁵ NRECA argues that if the Commission believes that its existing generator interconnection policies are unjust and unreasonable and impose barriers to generation development, it should develop the appropriate evidentiary record, make the required findings, and direct a just and reasonable replacement policy.¹³⁴⁶

3. Commission Determination

516. We continue to find that this reform will ensure just and reasonable and not unduly discriminatory or preferential Commission-jurisdictional rates.¹³⁴⁷ While SERTP Sponsors, Large Public Power, and Industrial Customers argue that this reform is premature in light of Order No. 2023, we find that the scope of the Order No. 1920 coordination reform operates independently of, and is more limited than, the Order No. 2023 reforms. Order No. 2023 adopts reforms to the generator interconnection process through changes to the *pro forma* generation interconnection procedures and agreements. By comparison, Order No. 1920 adopts no changes to the generator interconnection process and instead implements the coordination reform through changes to the transmission planning process and the *pro forma* OATT.

517. Additionally, the purpose of the coordination reform in Order No. 1920 is to address a specific problem—insufficient coordination between the existing generator interconnection processes and regional transmission planning and cost allocation processes regarding interconnection-related transmission needs that are repeatedly identified in the generator interconnection process.¹³⁴⁸ Order No. 1920 recognizes the generator interconnection process is unlikely to result in the construction of transmission facilities that resolve such interconnection-related transmission

needs because of the rate of withdrawal from the interconnection queue, due at least in part to interconnection customers’ cost responsibility for expensive interconnection-related network upgrades.¹³⁴⁹ While Order No. 2023 aims to fix inefficiencies in the generator interconnection process, it does not direct any reforms regarding specific interconnection-related network upgrades that are unlikely to be developed.

518. The Commission reasonably concluded that reforms regarding these types of network upgrades are better addressed through improvement of coordination between the generator interconnection and regional transmission planning processes. The purpose of the Order No. 1920 coordination reform is to (1) require evaluation of regional transmission facilities that address certain (*i.e.*, that qualify under the criteria established in Order No. 1920) interconnection-related transmission needs associated with specific interconnection-related network upgrades in existing Order No. 1000 regional transmission planning and cost allocation processes to determine whether to select such facilities in the regional transmission plan for purposes of cost allocation, and (2) determine whether such facilities may address other regional transmission needs more efficiently or cost-effectively. For a limited set of interconnection-related transmission needs, this reform will allow transmission providers to identify, evaluate, and select the more efficient or cost-effective regional transmission solution independent of the success or failure of a particular interconnection request in the generator interconnection process. Additionally, if this requirement is triggered (*i.e.*, because interconnection-related network upgrades meet all of the established qualifying criteria), that is an indication of the continued existence of the concerns described in Order No. 1920, namely a barrier to entry in locations that, absent sticker shock, are “otherwise desirable for generators to locate.”¹³⁵⁰ Moreover, it may be that eventually, as a result of Order No. 2023, fewer withdrawals from the generator interconnection queue occur and that this provision is triggered less often. Further, there may be fewer instances of this requirement as the Order No. 1920 Long-Term Regional Transmission Planning process proactively addresses transmission needs related to generation additions on a forward-looking basis. These

¹³³⁸ SERTP Sponsors Rehearing Request at 22; Large Public Power Rehearing Request at 23; Industrial Customers Rehearing Request at 46–47.

¹³³⁹ SERTP Sponsors Rehearing Request at 22 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1145).

¹³⁴⁰ *Id.* at 22–23 (citing *Samaritan Health Serv. v. Bowen*, 811 F.2d 1524, 1528 (D.C. Cir. 1987) (finding that agency’s classification of costs had “no rational basis” and was, therefore, arbitrary and capricious)).

¹³⁴¹ PJM Rehearing Request at 31.

¹³⁴² *Id.*

¹³⁴³ *Id.*

¹³⁴⁴ PJM Rehearing Request at 32.

¹³⁴⁵ *Id.* at 32 (citing 5 U.S.C. 706(2); 16 U.S.C. 8251(b); *S.C. Pub. Serv. Auth.*, 762 F.3d at 66–67; *TAPS*, 225 F.3d at 687; *Env’t Def. Fund.*, 2 F.4th 953).

¹³⁴⁶ NRECA Rehearing Request at 48–49.

¹³⁴⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1106.

¹³⁴⁸ *Id.* P 1100.

¹³⁴⁹ *See id.* P 1108.

¹³⁵⁰ *Id.* P 1103.

developments would not, however, address the present concerns that necessitate this coordination requirement. Given the low administrative burden associated with this reform,¹³⁵¹ we conclude that its potential benefits outweigh the costs.

519. We disagree with PJM's claim that the Commission does not provide substantial evidence to demonstrate that existing Order No. 1000 regional transmission planning and cost allocation processes do not adequately address interconnection-related transmission needs associated with withdrawn interconnection requests. PJM's claim is unpersuasive because, as explained above, the Commission has sufficiently demonstrated the need for reform.

520. The Commission in Order No. 1920 also explained why it is appropriate to establish the coordination requirement in existing Order No. 1000 regional transmission planning and cost allocation processes, stating that:

Evaluation of interconnection-related transmission needs in the existing Order No. 1000 regional transmission planning and cost allocation processes is most appropriate because such evaluation would occur at shorter intervals and would likely result in more expeditious development of regional transmission facilities to address the nearer-term interconnection-related transmission needs identified through the generator interconnection process.¹³⁵²

521. Further, courts have recognized the Commission can rely on general findings of systemic conditions to impose an industry-wide remedy under FPA section 206.¹³⁵³ The Commission found that there was substantial evidence to conclude that the Commission's existing regional transmission planning requirements are unjust, unreasonable, and unduly discriminatory or preferential because they do not adequately consider certain interconnection-related transmission needs that the transmission provider has identified multiple times in the generator interconnection process but that have never been resolved due to the withdrawal of the underlying interconnection request(s).¹³⁵⁴

522. We also are not persuaded by the evidence that PJM presented in this proceeding, which it argues demonstrates that only a small fraction of network upgrades that are the subject of its analysis would meet the voltage

and cost thresholds established by Order No. 1920. We do not reach the same conclusions as PJM for multiple reasons. To begin, PJM's evidence pertains only to the Dominion zone in PJM from 2014 to 2020 and is not necessarily reflective of circumstances across the region, or nationwide, or over different time periods. Further, in Order No. 1920, the Commission cited to evidence from the record to support the conclusion that, in recent years, sticker shock over an interconnection customer's assigned network upgrade costs is often the deciding factor that leads to that interconnection customer's withdrawal of its interconnection request.¹³⁵⁵ For instance, the Commission cited analysis from a report showing that between January 2016 and July 2020, 245 generation projects in advanced stages in the MISO generator interconnection process withdrew from the queue, with the project developers citing high interconnection-related network upgrade costs as the primary reason for their withdrawal.¹³⁵⁶

523. We also disagree with PJM's interpretation of its data, namely the claim that there is no need for reform because the data shows that the number of withdrawals due to sticker shock is small. PJM's reasoning suggests that the Commission found that sticker shock is only ever a deciding factor for an interconnection request's withdrawal if the withdrawn interconnection request was allocated interconnection-related network upgrade costs of \$30 million or more or has a voltage of at least 200 kV (*i.e.*, the cost and voltage thresholds established by Order No. 1920 to limit the applicability of this new requirement). However, the Commission did not suggest that interconnection-related network upgrades below this cost threshold or below the 200 kV voltage threshold do not cause sticker shock. Instead, the established qualifying criteria are intended to strike a reasonable balance between precision and workability.¹³⁵⁷ To accomplish this workability, the Commission adopted

requirements that do not require evaluation in the existing Order No. 1000 regional transmission planning and cost allocation processes of all interconnection-related transmission needs that were not addressed because the corresponding interconnection request withdrew in part or entirely due to sticker shock. Instead, as the Commission stated in Order No. 1920, the established criteria are necessary to limit the scope of the requirement to interconnection-related transmission needs associated with high-cost interconnection-related network upgrades "that are likely to persist, . . . not unique to a single interconnection request, and . . . that have the potential to provide more widespread benefits to transmission customers."¹³⁵⁸ We again find that this targeted approach and criteria are "broad enough to capture interconnection-related network upgrades that are likely to produce benefits beyond the interconnection customer" while retaining flexibility for transmission providers.¹³⁵⁹

524. In response to NRECA, we note that the focus of Order No. 1920 is to remedy deficiencies in the regional transmission planning and cost allocation requirements and not the generator interconnection process. Nonetheless, we reiterate the findings in Order No. 1920 that the repeated identification of interconnection-related network upgrades in the generator interconnection process is indicative of a "barrier to accessing the transmission system and [establishes] a known interconnection-related transmission need . . . [that] can hinder the timely development of new generation, thereby stifling competition in wholesale electricity markets and limiting access to lower-cost generation" and that by "failing to consider such interconnection-related transmission needs, the regional transmission planning process is unable to identify the more efficient or cost-effective regional transmission solutions."¹³⁶⁰

B. Qualifying Criteria

1. Order No. 1920 Requirements

525. In Order No. 1920, the Commission required transmission providers to evaluate for selection in their existing Order No 1000 regional transmission planning processes regional transmission facilities to address interconnection-related transmission needs that have been identified in the generator

¹³⁵⁵ See, e.g., *id.* P 1101 (citing *See* ACORE ANOPR Comments at 12; D.C. and Maryland Office of People's Counsel Initial Comments at 16; Invenenergy Reply Comments at 14; Northwest and Intermountain Initial Comments at 14; *see also* *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 88 FR 61014 (Sept. 6, 2023), 184 FERC ¶ 61,054, at 41, *order on reh'g*, Order No. 2023-A, 89 FR 27006 (Apr. 16, 2024), 186 FERC ¶ 61,199, at P 14 (2024).

¹³⁵⁶ *Id.* (citing Jay Caspary et al., ACEG, *Disconnected: The Need for a New Generator Interconnection Policy*, 14 (2021)), <https://cleanenergygrid.org/wp-content/uploads/2021/01/Disconnected-The-Need-for-a-New-Generator-Interconnection-Policy-1.pdf> (ACEG 2021 Interconnection Report) at 17.

¹³⁵⁷ See *id.* P 1147.

¹³⁵¹ See *id.* P 1113.

¹³⁵² *Id.* P 1126.

¹³⁵³ See *TAPS*, 225 F.3d at 687–88 *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 67 (citing *Interstate Nat. Gas Ass'n of Am. v. FERC*, 285 F.3d at 37).

¹³⁵⁴ *Id.* PP 1100–05.

¹³⁵⁸ *Id.* P 1148.

¹³⁵⁹ *Id.* P 1149.

¹³⁶⁰ *Id.* P 1103.

interconnection process by meeting four qualifying criteria. Specifically, the Commission required transmission providers to evaluate interconnection-related network upgrades where: (1) the transmission provider has identified interconnection-related network upgrades in interconnection studies to address those interconnection-related transmission needs in at least two interconnection queue cycles during the preceding five years (looking back from the effective date of the Commission-accepted tariff provisions proposed to comply with this reform, and the later-in-time withdrawn interconnection request occurring after the effective date of the Commission-accepted tariff provisions); (2) an interconnection-related network upgrade identified to meet those interconnection-related transmission needs has a voltage of at least 200 kV *and* an estimated cost of at least \$30 million; (3) such interconnection-related network upgrade(s) have not been developed and are not currently planned to be developed because the interconnection request(s) driving the need for the network upgrade(s) has been withdrawn; and (4) the transmission provider has not identified an interconnection-related network upgrade to address the relevant interconnection-related transmission need in an executed generator interconnection agreement or in a generator interconnection agreement that the interconnection customer requested that the transmission provider file unexecuted with the Commission.¹³⁶¹

526. The Commission found it necessary to establish these criteria to limit the scope of the requirement to those interconnection-related transmission needs that are likely to persist, are not unique to a single interconnection request, and might be addressed by regional transmission facilities that have the potential to provide more widespread benefits to transmission customers.¹³⁶² The Commission found that these criteria strike a reasonable balance between precision and workability, and that each of the four criteria is necessary to identify the appropriate set of interconnection-related transmission needs.¹³⁶³ The Commission further found that the purpose of the criteria established in Order No. 1920 is to limit the number of interconnection-related transmission needs that transmission providers must evaluate to those that

merit consideration in the existing Order No. 1000 regional transmission planning and cost allocation processes.¹³⁶⁴

527. As relevant here, the Commission proposed in the NOPR that part of the criteria regarding interconnection-related transmission needs is met where an interconnection-related network upgrade identified to meet interconnection-related transmission needs in the generator interconnection process has a voltage of at least 200 kV and/or an estimated cost of at least \$30 million.¹³⁶⁵ In Order No. 1920, the Commission found it necessary and just and reasonable to modify the NOPR proposal such that any interconnection-related network upgrade identified to meet that interconnection-related transmission need must have a voltage of at least 200 kV *and* an estimated cost of at least \$30 million (the cost-and-voltage criterion).¹³⁶⁶ The Commission found it necessary to establish a cost threshold that is stringent enough to capture those interconnection-related network upgrades that are likely to have caused the underlying interconnection requests to withdraw and a voltage threshold that is high enough that any regional transmission facility evaluated to address the underlying interconnection-related transmission need(s) is likely to produce benefits that extend beyond the interconnection customer.¹³⁶⁷ The Commission provided additional support for the voltage threshold in stating that the Commission has also previously found, and the record demonstrates, that higher-voltage transmission facilities are more likely to provide widespread benefits to transmission customers.¹³⁶⁸

528. The Commission stated that requiring an interconnection-related network upgrade identified to meet an interconnection-related transmission need to satisfy both the cost and voltage criteria will prevent transmission providers from evaluating interconnection-related transmission needs associated with interconnection-related network upgrades that are less likely to provide more widespread benefits to transmission customers.¹³⁶⁹ The Commission found that requiring both the cost threshold and the voltage threshold be met better limits the scope of the reform compared to the NOPR proposal and thus the reform is more

likely to produce a smaller and more practicable set of interconnection-related needs that transmission providers must evaluate in their existing Order No. 1000 regional transmission planning processes.¹³⁷⁰ The Commission also stated that the change to require that both the cost threshold and the voltage threshold be met addresses commenters' concerns that relying on only one threshold would identify interconnection-related network upgrades that are less likely to provide more widespread benefits to transmission customers.¹³⁷¹

529. In Order No. 1920, the Commission also established as another qualifying criterion that transmission providers must have identified interconnection-related network upgrades in interconnection studies to address the same interconnection-related transmission need in at least two interconnection queue cycles during the preceding five years (repeat identification criterion).¹³⁷² Like for the cost-and-voltage criterion, the Commission stated that the repeat identification criterion provides an important limit on the extent to which evaluation of regional transmission facilities to address interconnection-related transmission needs is required.¹³⁷³ The Commission further explained that repeat identification indicates that the constraint that the interconnection-related network upgrades were identified to address is not unique to a single interconnection request at a single point in time and that the interconnection-related transmission need is likely to persist.¹³⁷⁴ The Commission explained that, if it did not limit the requirements in this way, the burden of evaluation would be greater because transmission providers could have to evaluate more interconnection-related transmission needs.¹³⁷⁵

530. The Commission also clarified the timing of the requirement that transmission providers have identified interconnection-related network upgrades in interconnection studies to address those interconnection-related transmission needs in at least two interconnection queue cycles during the preceding five years.¹³⁷⁶ The Commission explained that this five-year period means looking back from the effective date of the Commission-

¹³⁷⁰ *Id.* P 1146; *id.* P 1151; *id.* P 1153.

¹³⁷¹ *Id.* P 1153 (citing Pine Gate Initial Comments at 32; SEIA Initial Comments at 15; US DOE Initial Comments at 28.).

¹³⁷² *Id.* P 1145.

¹³⁷³ *Id.* P 1150.

¹³⁷⁴ *Id.* PP 1150, 1158.

¹³⁷⁵ *Id.* P 1150.

¹³⁷⁶ *Id.* PP 1145, 1158–1160.

¹³⁶⁴ *Id.* P 1150.

¹³⁶⁵ *Id.* P 1130.

¹³⁶⁶ *Id.* PP 1145, 1150–1151.

¹³⁶⁷ *Id.* P 1151.

¹³⁶⁸ *Id.* P 1146, n. 2433.

¹³⁶⁹ *Id.* P 1152.

¹³⁶¹ *Id.* P 1145.

¹³⁶² *Id.* P 1146.

¹³⁶³ *Id.* PP 1146–1147.

accepted tariff provisions proposed to comply with this reform and the later-in-time withdrawn interconnection request occurring after the effective date of the Commission-accepted tariff provisions.¹³⁷⁷ Separately, the Commission explained that transmission providers must evaluate an interconnection-related transmission need that has been previously identified multiple times within the five years prior to the effective date of the Commission-accepted tariff provisions but never been resolved due to the withdrawal of the underlying interconnection request(s).¹³⁷⁸ The Commission also clarified that if there are no “queue cycles” in the preceding five-year period because the transmission provider uses a first-come, first-served serial interconnection process, then this criterion will be met if the interconnection-related transmission need is identified in at least two individual interconnection studies during the preceding five-year period for interconnection customers that subsequently withdrew from the interconnection queue.¹³⁷⁹ Finally, the Commission stated that evaluation for selection of regional transmission facilities that address certain (*i.e.*, that qualify under the criteria established in Order No. 1920) identified interconnection-related transmission needs must occur in the first Order No. 1000 regional transmission planning and cost allocation processes cycle that commences after the later-in-time withdrawn interconnection request occurring after the effective date of the accepted tariff provisions.¹³⁸⁰

531. For both the cost-and-voltage criterion and the repeat identification criterion, the Commission disagreed with commenters that argued for the adoption of different criteria or for the elimination of one or both criteria and found that requiring both criteria is just and reasonable.¹³⁸¹

2. Requests for Rehearing and Clarification

532. Clean Energy Associations contend that the Commission acted arbitrarily and capriciously and failed to engage in reasoned decision-making by adopting the cost-and-voltage criterion

and repeat identification criterion.¹³⁸² Clean Energy Associations ask that the Commission, at a minimum, only require either a voltage criterion or cost criterion, such that the eligibility threshold is met if an interconnection-related network upgrade has a voltage of at least 200 kV or an estimated cost of at least \$30 million.¹³⁸³ Clean Energy Associations also request that the Commission grant rehearing to change the repeat identification criterion, such that the criterion is met if an interconnection-related network upgrade was identified in at least one interconnection queue cycle.¹³⁸⁴ Separately, Clean Energy Associations ask the Commission to clarify that the time period transmission providers must use to identify interconnection-related network upgrades for inclusion in the initial regional transmission planning cycle exceeds five years, or alternatively, grant rehearing to require so.¹³⁸⁵

533. As to the cost-and-voltage criterion, Clean Energy Associations contend that the Commission acted arbitrarily and capriciously because it failed to explain how interconnection-related network upgrades that satisfy both the voltage threshold and cost threshold (as required in Order No. 1920) are more likely to provide widespread benefits to customers compared to interconnection-related network upgrades that meet only the voltage threshold or only the cost threshold (as proposed in the NOPR).¹³⁸⁶ Clean Energy Associations claim that the Commission ignored record evidence and adopted eligibility criteria that arbitrarily exclude lower voltage facilities that cost more than \$30 million from consideration in regional transmission planning processes regardless of the degree to which those interconnection-related network upgrades benefit transmission customers.¹³⁸⁷ Clean Energy Associations assert that the Commission ignored evidence that requiring both the cost threshold and the voltage threshold to be met is even more harmful in certain parts of the country.¹³⁸⁸

534. Clean Energy Associations also claim that the Commission mischaracterized certain comments

opposing the imposition of a requirement to meet both the cost threshold and the voltage threshold as comments favoring “elimination of one or both criteria” when many of such comments actually support what Clean Energy Associations refer to as the “flexibility” in the NOPR that only required an interconnection-related network upgrade to satisfy one of the thresholds to be eligible for evaluation.¹³⁸⁹ Clean Energy Associations further argue that the record shows that the NOPR’s “flexibility” is more likely to identify interconnection-related transmission needs that warrant evaluation compared to the requirements in Order No. 1920, because Order No. 1920’s requirement to meet both the cost threshold and the voltage threshold unduly limits the universe of transmission solutions in a manner that jeopardizes transmission providers’ ability to evaluate transmission solutions that might be more efficient or cost-effective than other options.¹³⁹⁰ Clean Energy Associations claim that the Commission did not directly address the record evidence and arguments on this issue, which renders this aspect of the Order No. 1920 arbitrary and capricious.¹³⁹¹

535. On the repeat identification criterion, Clean Energy Associations contend that this criterion is arbitrary and inconsistent with Order No. 1920’s goal of removing barriers to entry, increasing competition, and promoting more efficient or cost-effective solutions to interconnection-related transmission needs.¹³⁹² Clean Energy Associations believe that the repeat identification criterion will render Order No. 1920’s reforms to coordinate the regional transmission planning and generator interconnection processes ineffective for several reasons that the Commission failed to address, including the Commission’s shift to cluster-based studies, the self-defeating nature of the repeat identification criterion, and the adverse effects of the repeat identification criterion in conjunction with the cost-and-voltage criterion.¹³⁹³ Clean Energy Associations claim that the Commission also ignored substantial record evidence and arguments relevant to the eligibility criteria and that the Commission’s stated rationale for

¹³⁷⁷ *Id.* P 1145.

¹³⁷⁸ *Id.* P 1159.

¹³⁷⁹ We note that this accommodation will eventually become moot because transmission providers that do not already do so must transition to a cluster study rather than a serial process pursuant to the requirements of Order No. 2023. *See* Order No. 2023, 184 FERC ¶ 61,054 at P 223.

¹³⁸⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 1159.

¹³⁸¹ *Id.* P 1150 (citations omitted).

¹³⁸² Clean Energy Associations Rehearing Request at 13–22.

¹³⁸³ *Id.* at 21–22.

¹³⁸⁴ *Id.*

¹³⁸⁵ *Id.* at 22–26.

¹³⁸⁶ *Id.* at 13–14.

¹³⁸⁷ *Id.* at 15 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1137 (referencing comments of Pattern Energy, Pine Gate, and Shell)).

¹³⁸⁸ *Id.* (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1140 (referencing comments of PJM)).

¹³⁸⁹ *Id.* at 16 (citing Pattern Energy Initial Comments at 28; Pine Gate Initial Comments at 32; Interwest Initial Comments at 3, 11).

¹³⁹⁰ *Id.* at 16–17.

¹³⁹¹ *Id.* at 17.

¹³⁹² *Id.* at 18.

¹³⁹³ *Id.* at 18–21.

adopting its unduly restrictive criteria “does not hold water.”¹³⁹⁴

536. Clean Energy Associations also request clarification on two issues related to the time period for the repeat identification criterion. First, Clean Energy Associations request that the Commission clarify that, for each transmission provider’s initial regional transmission planning cycle under an Order No. 1920-compliant tariff, the review window for identifying interconnection-related network upgrades that are required to be considered as interconnection-related transmission needs may span more than five years in duration.¹³⁹⁵ As an example, Clean Energy Associations state that:

if a transmission provider’s Order No. 1920-compliant tariff takes effect on August 1, 2025, [and] the first regional transmission planning cycle in which interconnection-related transmission needs must be considered commences on August 1, 2027, and the date on which the transmission provider will identify the transmission solutions to be evaluated in that planning cycle is April 1, 2028, then the transmission provider must include for evaluation any network upgrades that were identified in interconnection cycles between August 1, 2020 (*i.e.*, five years before the effective date) and April 1, 2028 (*i.e.*, the date on which transmission solutions are identified for inclusion in the transmission planning process) and that meet the eligibility criteria. In that hypothetical example, the total time-period over which network upgrades could be identified for evaluation as interconnection-related transmission needs is seven years and nine months.¹³⁹⁶

537. Second, noting the requirement in Order No. 1920, Clean Energy Associations request that the Commission clarify that any eligible interconnection-related network upgrade that is identified in any two interconnection cycles within the review window—even if both occurrences took place in the five years prior to the effective date—must be evaluated in the transmission providers’ initial Order No. 1000 regional transmission planning cycle following the effective date of its Order No. 1920 compliance filing.¹³⁹⁷ Clean Energy

Associations argue that there is no reason why the “later in time withdrawn interconnection request” must occur after the “effective date of the Commission-accepted tariff provisions” rather than at any point during the relevant lookback period. Clean Energy Associations claim that, absent the requested clarification, the Commission acted arbitrarily and capriciously and failed to engage in reasoned decision-making by failing to clearly identify the time period at which transmission providers must look to implement this reform.¹³⁹⁸

3. Commission Determination

538. We disagree with Clean Energy Associations’ requests for rehearing and decline to revise the cost-and-voltage criterion and the repeat identification criterion. We continue to find that it is necessary to limit the scope of the requirement to those interconnection-related transmission needs that are likely to persist, are not unique to a single interconnection request, and might be addressed by regional transmission facilities that have the potential to provide more widespread benefits to transmission customers.¹³⁹⁹ We reiterate the Commission’s stated purpose of this reform, which is to address the narrow issue of interconnection-related transmission needs being repeatedly identified yet continuing to go unresolved through the generator interconnection process, even though more efficient or cost-effective regional transmission solutions could be achieved if such needs were evaluated through the regional transmission planning and cost allocation process.¹⁴⁰⁰

539. We disagree with Clean Energy Associations’ argument that the Commission acted arbitrarily and capriciously in adopting the requirement to meet both the cost threshold and the voltage threshold. In Order No. 1920, the Commission explained how the cost threshold is intended to capture interconnection-related network upgrades that cause underlying interconnection requests to withdraw (*i.e.*, are likely to persist), and the voltage threshold is intended to capture interconnection-related transmission needs that are likely to produce more widespread benefits.¹⁴⁰¹ These explanations for requiring that previously identified interconnection-

related network upgrades meet both of these thresholds for an interconnection-related transmission need to satisfy the cost-and-voltage criterion are consistent with the Commission’s stated purpose and the necessary scope of this reform. Namely, the cost threshold identifies interconnection-related transmission needs associated with prohibitive interconnection-related network upgrade costs that contribute to a barrier to accessing the transmission system, and the voltage threshold identifies interconnection-related transmission needs with the potential for transmission benefits that extend beyond the interconnection customer.¹⁴⁰² We also disagree with Clean Energy Associations’ claim that the Commission ignored record evidence on this issue.¹⁴⁰³ As stated above, the Commission adopted this reform and the associated qualifying criteria to address a narrow issue with limited scope, not to address an expansive set of interconnection-related transmission needs as requested by some commenters in response to the NOPR.

540. We disagree with Clean Energy Associations that providing for the “flexibility” of meeting either the cost threshold or the voltage threshold is more consistent with Order No. 1920’s objectives. Allowing such flexibility places Clean Energy Associations’ preferred policy outcome in place of the need for reform articulated by the Commission.¹⁴⁰⁴ The Commission in Order No. 1920 explained that the coordination reform is not intended to create an expansive set of interconnection-related transmission needs that transmission providers must evaluate in the regional transmission planning and cost allocation processes. Instead, this reform is intended to identify a limited set of interconnection-related transmission needs that are likely to persist, are not unique to a single interconnection request, and might be addressed by regional transmission facilities that have the potential to provide more widespread benefits to transmission customers. We believe that requiring transmission providers to consider a more limited set of interconnection-related transmission needs through their existing regional transmission planning and cost allocation processes is warranted

¹³⁹⁴ *Id.* at 20–21 (quoting *e.g.*, Interwest Initial Comments at 11 (“the NOPR imposes so many procedural hurdles that . . . it could not be expected to produce results . . . requiring that the same interconnection upgrades be identified twice . . . is simply impractical”)).

¹³⁹⁵ *Id.* at 23–24.

¹³⁹⁶ *Id.* at 24.

¹³⁹⁷ *Id.* at 25 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1145 (establishing the requirement that the time period is “the preceding five years (looking back from the effective date of the Commission-accepted tariff provisions proposed to comply with this reform, and the later-in-time withdrawn interconnection request occurring after

the effective date of the Commission-accepted tariff provisions”)).

¹³⁹⁸ *Id.* at 3, 25.

¹³⁹⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1146.

¹⁴⁰⁰ *Id.* P 1112.

¹⁴⁰¹ *Id.* P 1151.

¹⁴⁰² *Id.* PP 1103–1104.

¹⁴⁰³ Clean Energy Associations Rehearing Request at 15 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1137 (referencing comments of Pattern Energy, Pine Gate, and Shell); Order No. 1920, 187 FERC ¶ 61,068 at P 1140 (referencing comments of PJM)).

¹⁴⁰⁴ Order No. 1920, 187 FERC ¶ 61,068 at PP 1106–1121.

because a more expansive set could include transmission needs associated with expensive but relatively low voltage interconnection-related network upgrades (which are less likely to provide widespread benefits to transmission customers compared to higher voltage transmission facilities) and transmission needs associated with high voltage but relatively inexpensive network upgrades (which are less likely to remain unbuilt by interconnection customers).

541. As explained in Order No. 1920, in the context of the repeat identification criterion, we are also concerned that relaxing the qualifying criteria would create greater burdens on transmission providers by increasing the number of interconnection-related transmission needs that transmission providers must evaluate in their Order No. 1000 regional transmission planning and cost allocation processes without widespread benefits to transmission customers.¹⁴⁰⁵ Additionally, the repeat identification criterion is meant to refine the evaluation to apply to more actionable and valuable interconnection-related transmission needs that may be better suited for evaluation and development in the existing Order No. 1000 regional transmission planning and cost allocation processes.

542. We disagree with Clean Energy Associations' claim that the requirement to meet both the cost threshold and the voltage threshold unduly limits the universe of transmission solutions in a manner that jeopardizes transmission providers' ability to evaluate transmission solutions that might be more efficient or cost-effective than other options. Clean Energy Associations conflate transmission needs and transmission solutions to address those needs. The purpose of the qualifying criteria adopted in Order No. 1920 is to limit the number of interconnection-related transmission needs that transmission providers must

evaluate to those that merit consideration.¹⁴⁰⁶ Contrary to Clean Energy Associations' claim, the qualifying criteria in Order No. 1920 do not limit the transmission solutions that transmission providers may evaluate to address the identified interconnection-related transmission needs. Instead, the qualifying criteria in Order No. 1920 limit the set of interconnection-related transmission needs that transmission providers must evaluate. We believe requiring transmission providers to evaluate this subset of transmission needs is justified because interconnection-related transmission needs that satisfy both the cost threshold and the voltage threshold can be solved with transmission facilities that are more likely to provide widespread benefits to the transmission system and be selected in the regional transmission for purposes of cost allocation as the more efficient and cost-effective transmission solution, compared to interconnection-related transmission needs that satisfy only the cost threshold, or only the voltage threshold.

543. We also disagree with Clean Energy Associations' claim that the Commission's decision to adopt the repeat identification criterion is arbitrary and inconsistent with the goals of Order No. 1920. Clean Energy Associations' request for rehearing effectively asks the Commission to eliminate the repeat identification criterion to require the evaluation of more interconnection-related transmission needs in regional transmission planning processes, an argument that some commenters made in response to the NOPR and with which the Commission disagreed in Order No. 1920.¹⁴⁰⁷ The Commission explained in Order No. 1920 that the purpose of this criterion is to indicate that an interconnection-related transmission need is likely to persist and to limit the extent to which

evaluation of regional transmission facilities to address interconnection-related transmission needs is required.¹⁴⁰⁸

544. In response to Clean Energy Associations' request to clarify the timing requirements, and as more fully described below, we clarify that the time period that transmission providers use to identify interconnection-related transmission needs for potential consideration during any Order No. 1000 regional transmission planning and cost allocation process cycle will be longer than five calendar years. Additionally, we modify the requirements adopted in Order No. 1920 to resolve ambiguity about timing. We find that these modifications are necessary for transmission providers to determine precisely when the coordination requirements are triggered. Specifically, we modify criterion (1), the repeat identification criterion, and criterion (3), which specifies the maximum time period between withdrawals of interconnection requests associated with the same interconnection-related transmission need (the double withdrawal criterion). We also adopt a new criterion (5), which specifies the timing for identifying withdrawn interconnection requests associated with the same interconnection-related transmission need in the initial and successive Order No. 1000 regional transmission planning and cost allocation cycles (the withdrawal window criterion). The withdrawal window criterion clarifies the intent of the repeat identification criterion in Order No. 1920.¹⁴⁰⁹

545. In particular, we modify the repeat identification criterion to read (with additions in bold and italicized and deletions struck through):

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¹⁴⁰⁸ *Id.* PP 1150, 1158.

¹⁴⁰⁹ We also make a minor modification to criterion (4) to account for the fact that we are adopting an additional qualifying criterion. All the revisions detailed below are reflected in the Attachment K Appendix to this order.

¹⁴⁰⁵ *Id.* P 1150.

¹⁴⁰⁶ *Id.*

¹⁴⁰⁷ *Id.*

(1) Transmission Providers in the transmission planning region have identified the relevant interconnection-related transmission need in interconnection studies in at least two interconnection queue cycles (*or in at least two individual interconnection studies for Transmission Providers that use a first-come, first-served serial generator interconnection process*) ~~during the preceding five years (looking back from the effective date of the accepted tariff provisions proposed to comply with this reform in Order No. 1920, and the later in time withdrawn interconnection request occurring after the effective date of the accepted tariff provisions);~~

We also modify the double read (with additions in bold and withdrawal criterion in Attachment K to italicized and deletions struck through):

(3) ~~the interconnection-related Network Upgrade identified through the generator interconnection process to meet the relevant interconnection-related transmission need is not currently planned to be developed because the interconnection request(s) that led to the identification of the interconnection-related transmission need~~ *in two or more interconnection queue cycles (or two individual interconnection studies if the Transmission Provider uses a first-come, first-served serial generator interconnection process) have* ~~has been withdrawn~~ *and no more than five calendar years have passed between the date of an earlier interconnection request withdrawal and the date of a later interconnection request withdrawal; and*

We make a slight modification to additions in bold and italicized and criterion (4) so that it reads (with deletions struck through):

the Transmission Providers have not identified a different interconnection-related Network Upgrade to meet the relevant interconnection-related transmission need in an executed Generator Interconnection Agreement or in a Generator Interconnection Agreement that the interconnection customer requested that the Transmission Provider file unexecuted with the Commission; *and*

We also add a new criterion (5), the follows (with additions in bold and withdrawal window criterion, as italicized):

(5) The interconnection request withdrawals associated with the repeatedly identified interconnection-related transmission need occurred no earlier than seven calendar years prior to the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle. The initial evaluation should occur in the first Order No. 1000 regional transmission planning and cost allocation cycle to occur after the effective date of the tariff revisions implementing this reform. The transmission provider need not evaluate an interconnection-related transmission need that has been evaluated in a previous Order No. 1000 regional transmission planning and cost allocation cycle.

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546. We make these modifications to resolve confusion about the timing requirements for this reform. The Commission's *pro forma* generator interconnection procedures require an annual cluster request window for interconnection customers to submit interconnection requests.¹⁴¹⁰ Over the span of the interconnection cycle, the transmission provider studies the interconnection requests and provides more refined interconnection study results.¹⁴¹¹ The requirements of this reform provide an opportunity for transmission providers to evaluate interconnection-related transmission needs associated with repeatedly identified interconnection-related network upgrades that are not developed through the generator interconnection process because the interconnection requests associated with interconnection-related network upgrade withdraw from the interconnection queue.¹⁴¹²

¹⁴¹⁰ See *pro forma* LGIP § 3.4.1. As Order No. 1920 recognizes, however, for a transmission provider that operates a serial process and studies interconnection requests on a first-come, first served basis, the criterion will be met if the interconnection-related transmission need is identified in at least two individual interconnection studies during the preceding five-year period for interconnection customers that subsequently withdrew from the interconnection queue. Order No. 1920, 187 FERC ¶ 61,068 at P 1160. As noted above, however, this intricacy will be rendered moot as transmission providers with serial queues come into compliance with Order No. 2023, which requires them to transition to a cluster study process. *Supra* P 530 n.1380; see Order No. 2023, 184 FERC ¶ 61,054 at P 223.

¹⁴¹¹ See, e.g., *pro forma* §§ LGIP 3.1.1 (Study Deposits), 7 (Cluster Study), 8 (Interconnection Facilities Study), 9 (Affected Systems Study), 10 (Option Interconnection Study).

¹⁴¹² Order No. 1920, 187 FERC ¶ 61,068 at P 1108 (because "the high cost of interconnection is increasing the rate at which generators withdraw from the interconnection queue. . . . interconnection customers are unlikely to resolve these interconnection-related transmission needs through the generator interconnection process.")

547. The modifications that we make here clarify that a transmission provider need not evaluate an interconnection-related transmission need if more than five calendar years separate the withdrawal of the earlier and later interconnection requests associated with an interconnection-related transmission need (the double withdrawal criterion). Additionally, the withdrawal window criterion makes clear that a transmission provider need only evaluate an interconnection-related transmission need in its Order No. 1000 regional transmission planning and cost allocation cycle if the withdrawal of the interconnection requests associated with the repeatedly identified interconnection-related transmission need occurred within the seven calendar years prior to the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle.

548. We find that seven years is an appropriate period because it accounts for the time between withdrawn interconnection requests associated with otherwise eligible interconnection-related transmission needs (at most five years, as specified in the double withdrawal criterion) and accounts for the fact that the timing of generator interconnection queue cluster cycles likely does not coincide with the Order No. 1000 regional transmission planning and cost allocation cycle. Additionally, this seven-year period also accounts for the potential lag between the effective date of the Commission-approved tariff revisions and the initial Order No. 1000 regional transmission planning and cost allocation cycle (for the initial Order No. 1000 cycle) or the time between Order No. 1000 cycles (for subsequent Order No. 1000 cycles). Consequently, by establishing a seven-year withdrawal window period, we avoid the possibility of otherwise qualifying interconnection-related transmission needs being

ineligible for evaluation in an Order No. 1000 regional transmission planning and cost allocation cycle due to an inadequate withdrawal window period that does not account for lags between processes.

549. We also believe this seven-year period for the withdrawal window is simpler to calculate than the language that the Commission previously adopted for the repeat identification criterion in Order No. 1920 (before the modifications described here). The reason is that transmission providers will only need to look back seven calendar years from a single date (the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle). Without the modifications adopted here, the first qualifying criterion of the repeat identification criterion in Order No. 1920 established several look-back periods in reference to multiple dates.¹⁴¹³

550. As a result of the modifications above, there is no need to distinguish between the initial Order No. 1000 regional transmission planning and cost allocation cycle and subsequent No. 1000 regional transmission planning and cost allocation cycles. Thus, for the initial implementation of this reform, the transmission provider need only determine if the qualifying criteria are satisfied for the period beginning seven calendar years before the initial Order No. 1000 regional transmission planning and cost allocation cycle commencement date. We acknowledge

¹⁴¹³ *Id.* P 1145 ("(1) the transmission provider has identified interconnection-related network upgrades in interconnection studies to address those interconnection-related transmission needs in at least two interconnection queue cycles during the preceding five years (looking back from the effective date of the Commission-accepted tariff provisions proposed to comply with this reform, and the later-in-time withdrawn interconnection request occurring after the effective date of the Commission-accepted tariff provisions)").

that, in implementation, this start date is likely to be earlier than the start date established in Order No. 1920.¹⁴¹⁴ As a result, transmission providers may need to consider one or two additional years of withdrawn interconnection requests during the initial Order No. 1000 regional transmission planning and cost allocation cycle. However, we believe this departure from Order No. 1920 is necessary to resolve the ambiguity raised on rehearing and to establish clear qualifying criteria for transmission providers to implement going forward.

551. In addition, the withdrawal window criterion makes clear that a transmission provider need not evaluate an interconnection-related need that meets all the qualifying criteria if it has already evaluated that interconnection-related transmission need in an Order No. 1000 regional transmission planning and cost allocation cycle. This modification is necessary to prevent transmission providers from having to evaluate an interconnection-related transmission need in more than one Order No. 1000 regional transmission planning and cost allocation cycle.

552. Consistent with the adoption of the withdrawal window criterion, we clarify for Clean Energy Associations that the time period that transmission providers use to identify interconnection withdrawals is longer than five calendar years. In particular, the withdrawal window criterion requires the transmission provider to determine if the interconnection request withdrawals associated with the repeatedly identified interconnection-related transmission need occur within seven calendar years prior to the commencement of the relevant Order No. 1000 regional transmission planning and cost allocation cycle.

553. To explain how this would work, consider the following hypothetical and assume that the voltage-and-cost threshold criterion is satisfied:

- Transmission provider identifies interconnection-related transmission need A as necessary to interconnect interconnection request A in interconnection cluster cycle 1.
- Interconnection request A withdraws from interconnection cluster cycle 1 on August 1, 2035.
- In interconnection cluster cycle 2, transmission provider identifies interconnection-related transmission need A as necessary to interconnect interconnection request B.
- Interconnection request B withdraws from interconnection cluster cycle 2 on or before August 1, 2040.

- The first Order No. 1000 regional transmission planning and cost allocation cycle following the withdrawal of interconnection request B commences on January 1, 2042.

In this example, the repeat identification criterion would be satisfied because the same interconnection-related transmission need was identified for interconnection request A and interconnection request B in interconnection cluster cycle 1 and interconnection cluster cycle 2, respectively. The double withdrawal criterion would be satisfied because no more than five calendar years have passed between the withdrawal of interconnection request A and interconnection request B. The withdrawal window criterion would be satisfied because the withdrawals of interconnection request A and interconnection request B occurred within seven calendar years prior to the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle. Consequently, the transmission provider would be required to evaluate interconnection-related transmission need A in the Order No. 1000 regional transmission planning and cost allocation cycle that commences on January 1, 2042.

554. We turn now back to Clean Energy Associations' first clarification request and explain these requirements using the dates provided in Clean Energy Associations' example, where the relevant tariff revisions would become effective August 1, 2025, the initial Order No. 1000 regional transmission planning and cost allocation cycle would commence on August 1, 2027, and the transmission solutions to be evaluated will be identified on April 1, 2028.

555. We clarify that the April 1, 2028 date would not be relevant for determining whether a transmission provider must evaluate an interconnection-related transmission need. The relevant dates are the interconnection request withdrawal dates and the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle. In Clean Energy Associations' example, the transmission provider would identify interconnection request withdrawals between August 1, 2020 (seven calendar years prior to the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle provided in this example) and August 1, 2027 (the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle provided in this example). Of those withdrawals, the

repeat identification criterion will be satisfied if no more than five calendar years elapsed between the earlier and later interconnection request withdrawal dates for interconnection requests associated with the same repeatedly identified interconnection-related transmission need. Thus, withdrawals of interconnection requests with the earlier occurring on August 1, 2020 and the later occurring August 1, 2025 would satisfy the double withdrawal criterion. The same is true for withdrawals of interconnection requests with the earlier occurring on August 1, 2022 and the later occurring August 1, 2027. The double withdrawal criterion would not be satisfied, however, if the first withdrawal occurred on August 1, 2020 and the later occurred on August 2, 2025 because more than five calendar years occur between the earlier and later interconnection request withdrawals.

556. Additionally, in response to Clean Energy Associations' second request for clarification, we note that the modifications to the repeat identification criterion adopted here delete the Attachment K language adopted in Order No. 1920 that created confusion.¹⁴¹⁵ Consistent with the modifications adopted here, we clarify that the double withdrawal criterion requires that no more than five calendar years occur between the earlier and later interconnection request withdrawals and that the withdrawal window criterion makes clear that transmission providers need not evaluate an interconnection-related transmission need if the relevant interconnection request withdrawals do not occur within the seven calendar years prior to the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle.

C. Cost Allocation

1. Order No. 1920 Requirements

557. In Order No. 1920, the Commission adopted new coordination requirements to require that transmission providers evaluate regional transmission facilities that address certain interconnection-related transmission needs identified by this reform in the existing Order No. 1000 regional transmission planning and cost allocation processes.¹⁴¹⁶ The Commission also stated that requests to modify existing cost allocation criteria were outside the scope of the proceeding.¹⁴¹⁷ Additionally, the

¹⁴¹⁴ *Id.* P 1159.

¹⁴¹⁵ *See id.* P 1145.

¹⁴¹⁶ *Id.* P 1111.

¹⁴¹⁷ *Id.* P 1112.

Commission stated that transmission providers will still have to evaluate and select any regional transmission facilities that address the interconnection-related transmission needs as the more efficient or cost-effective regional transmission solution as part of the regional transmission planning process in order for any regional cost allocation method to apply. Further, Order No. 1920 did not alter the existing cost allocation methods in either the generator interconnection or existing Order No. 1000 regional transmission planning process.¹⁴¹⁸ The Commission went on to explain that, to the extent that transmission providers wish to propose changes to their Order No. 1000 regional cost allocation method(s) because of this new requirement, they would need to do so in separate FPA section 205 filings rather than on compliance with Order No. 1920.¹⁴¹⁹

2. Requests for Rehearing and Clarification

558. Retail Regulators, Ohio Consumers, NRECA, Undersigned States, and West Virginia Commission argue that Order No. 1920's coordination reform shifts the costs of generator interconnection to load.¹⁴²⁰ In particular, Retail Regulators and Undersigned States argue that this requirement is another means to transfer network upgrade costs necessitated by generator interconnection to load and they contend, along with West Virginia Commission, that shifting these costs is not just and reasonable.¹⁴²¹ Undersigned States further argue that this shift violates the FPA, and that Order No. 1920's failure to account for these effects is arbitrary and capricious.¹⁴²² Relatedly, PJM argues that this reform is arbitrary and capricious because it reopens accepted cost allocation methods in Order Nos. 1000 and 2023 that were built on the premise that the cost causer pays for the interconnection costs.¹⁴²³

559. NRECA states that the Commission has failed to consider that

its policies governing interconnection-related network upgrades—particularly allowing participant funding in RTOs/ISOs—are intended to result in a just and reasonable allocation of the costs of interconnection-related network upgrades.¹⁴²⁴ Industrial Customers argue that Order No. 1920 abruptly abandons participant funding, which it characterizes as a “longstanding” model that sends proper pricing signals for generation developers to select projects close to load while also protecting existing transmission customers from subsidizing interconnection of new generation.¹⁴²⁵ East Kentucky argues that the Commission:

has not provided a reasonable explanation of how this requirement does not result in unjust, unreasonable, and unduly discriminatory transmission rates in violation of Section 206 of the Federal Power Act, 16 U.S.C. 824e, and does not alter, without adequate explanation or evidence, the Commission's existing interconnection pricing and participant funding policies.¹⁴²⁶

560. Industrial Customers state that the Commission ignored arguments that the Commission must rationally explain its decision to depart from the existing just and reasonable “but for” policy of Order No. 2003.¹⁴²⁷ Industrial Customers argue that the Commission should not justify its “cost allocation techniques by arguing that interconnection costs for renewable energy resources are too high and should be socialized across all transmission customers.”¹⁴²⁸ Industrial Customers further argue that Order No. 1920 changes prior Commission policies without setting forth a reasonable and adequate explanation for resulting shifting of costs.¹⁴²⁹

561. Ohio Consumers argue that Order No. 1920 is inconsistent with Order No. 2003 incentives because it shifts network upgrade costs that would have incentivized generation developers to locate in “the right area.”¹⁴³⁰ NRECA argues that requiring evaluation and selection of unbuilt interconnection-related network upgrades in the existing Order No. 1000 regional transmission planning and cost allocation processes gives an undue preferential treatment to generation developers, a group that would ordinarily fund the network

upgrades in the first instance.¹⁴³¹ Further, NRECA states that the Commission has made no finding that the Commission's policies allowing participant funding in RTOs/ISOs for interconnection-related network upgrades have become unjust and unreasonable and should be replaced.¹⁴³²

3. Commission Determination

562. We sustain Order No. 1920 and find that the coordination requirements in Order No. 1920 do not require changes to existing cost allocation methods that transmission providers have adopted in either the generator interconnection or existing Order No. 1000 regional transmission planning and cost allocation processes. Therefore, those existing cost allocation methods adopted by transmission providers remain intact.

563. To this point, in response to Retail Regulators, Ohio Consumers, NRECA, Undersigned States, West Virginia Commission, and PJM, we first note that the coordination reform does not alter existing cost allocation methods or create a new cost allocation method for generator interconnection processes. Rather, the purpose of the coordination reform is to require transmission providers to *evaluate*, in the existing Order No. 1000 regional transmission planning and cost allocation processes, certain (*i.e.*, that qualify under the criteria established in Order No. 1920) interconnection-related transmission needs that were not addressed through the generator interconnection process because the identified interconnection-related network upgrades were never constructed pursuant to that process. If an interconnection customer enters into a generator interconnection agreement, the transmission provider will construct the identified interconnection-related network upgrades and allocate their costs in accordance with the transmission provider's Commission-accepted cost allocation approach for such interconnection-related network upgrades. If an interconnection customer does not enter into a generator interconnection agreement for its interconnection request, however, the identified interconnection-related network upgrades will not be constructed pursuant to the generator interconnection process; thus, the generator interconnection cost allocation approach would not apply.

564. Moreover, in response to NRECA and PJM, the coordination reform does

¹⁴¹⁸ *Id.* P 1117.

¹⁴¹⁹ *Id.* P 1118.

¹⁴²⁰ Retail Regulators Rehearing Request at 43–44; Ohio Consumers Rehearing Request at 8; NRECA Rehearing Request at 45; Undersigned States Rehearing Request at 37; West Virginia Commission Rehearing Request at 16.

¹⁴²¹ Retail Regulators Rehearing Request at 43–44; Undersigned States Rehearing Request at 37; West Virginia Commission Rehearing Request at 16.

¹⁴²² Undersigned States at 37.

¹⁴²³ PJM Rehearing Request at 36 (citing *Midwest ISO Transmission Owners*, 373 F.3d at 1368 (citing 5 U.S.C. 706(2)(A)); *State Farm*, 463 U.S. at 43; *Wis. Gas Co. v. FERC*, 770 F.2d at 1156; *see also* Industrial Consumers Rehearing Request at 48.

¹⁴²⁴ NRECA Rehearing Request at 48.

¹⁴²⁵ Industrial Customers Rehearing Request at 41.

¹⁴²⁶ East Kentucky Rehearing Request at 3.

¹⁴²⁷ Industrial Customer Rehearing Request at 41.

¹⁴²⁸ *Id.* at 43.

¹⁴²⁹ *Id.* at 45.

¹⁴³⁰ Ohio Consumers Rehearing Request at 8–9; *see also* Industrial Consumers Rehearing Request at 42.

¹⁴³¹ NRECA Rehearing Request at 46.

¹⁴³² *Id.* at 48.

not create a new regional cost allocation method for the existing Order No. 1000 regional transmission planning and cost allocation processes. Instead, transmission providers must now, pursuant to this reform, *evaluate* certain interconnection-related transmission needs pursuant to their existing Order No. 1000 regional transmission planning and cost allocation processes. The transmission provider may adopt the evaluation method and selection criteria from any of its existing Order No. 1000 regional transmission planning and cost allocation processes (e.g., economic or reliability process) to evaluate and potentially select transmission facilities that address these transmission needs. To the extent that such a transmission facility is selected, it will have met the selection criteria for the applicable Order No. 1000 regional transmission planning process and be eligible for cost allocation pursuant to a regional cost allocation method that has been found to allocate costs of transmission facilities selected through that process in a manner that is at least roughly commensurate with benefits.

565. We reiterate, however, that there is no obligation for transmission providers to select a transmission facility that addresses the interconnection-related transmission need that must be evaluated pursuant to this reform.¹⁴³³ As the Commission stated in Order No. 1920, in order for the transmission facility associated with the relevant interconnection-related transmission need to be eligible for cost allocation pursuant to transmission providers' existing Order No. 1000 regional cost allocation method, the transmission provider "will still have to evaluate and select any regional transmission facilities that address the interconnection-related transmission needs as the more efficient or cost-effective regional transmission solution."¹⁴³⁴ The Commission also stated that "if a regional transmission facility that addresses identified interconnection-related transmission needs is not selected as part of the regional transmission planning process, then the associated regional cost allocation method would not apply."¹⁴³⁵ The Commission explained that, to the extent that the coordination reform results in transmission providers selecting a transmission facility that, among other things, addresses an interconnection-related transmission need in the existing Order No. 1000

regional transmission planning and cost allocation processes, they would have done so because the selected transmission facility was evaluated and determined by the transmission provider to be eligible for selection in the regional transmission plan for purposes of cost allocation and is the more efficient or cost-effective regional transmission solution. Moreover, we reiterate that the reform adopted here does not compel transmission providers to adopt a new cost allocation method for transmission facilities that address interconnection-related transmission needs.

D. Gaming

1. Order No. 1920 Requirements

566. In Order No. 1920 the Commission did not adopt revisions to the proposed coordination reform in response to assertions that the reform would lead to "gaming," resulting in spurious interconnection requests. The Commission explained that interconnection requests require significant financial commitments from interconnection customers, which the Commission made more stringent in Order No. 2023. Consequently, the Commission considered it unlikely that an interconnection customer would submit multiple interconnection requests in multiple interconnection queue cycles to trigger the requirement for transmission providers to evaluate, as part of their existing Order No. 1000 regional transmission planning and cost allocation processes, regional transmission facilities that may address certain interconnection-related transmission needs. The Commission noted that an interconnection customer would face various risks pursuing such a strategy, including the risk that the regional transmission solution for the interconnection-related transmission need is not selected, and the risk that the newly created interconnection or transmission capacity is allocated to a different transmission or interconnection customer.¹⁴³⁶

2. Requests for Rehearing and Clarification

567. PJM and NRECA argue that Order No. 1920 is arbitrary and capricious because it creates perverse incentives for generation developers to game the interconnection process and shift interconnection-related network upgrade costs in an unduly discriminatory manner onto transmission customers.¹⁴³⁷ PJM and

NRECA argue that the evidence does not support the Commission's reasoning that the stringent financial commitments required in the interconnection process will prevent gaming.¹⁴³⁸

568. PJM states that, in its generator interconnection process, an interconnection customer's initial readiness deposit is only at risk prior to the interconnection customer learning its assigned network upgrade cost responsibility.¹⁴³⁹ PJM further states that, for a hypothetical 300 MW project that would trigger the \$30 million dollar threshold in the final rule,¹⁴⁴⁰ the interconnection customer would only risk its readiness deposit of \$1.2 million prior to withdrawing and having to post an additional deposit.¹⁴⁴¹ PJM asserts that a sophisticated developer can leverage that low risk and enhance its chances of selection for PJM's Regional Transmission Expansion Plan (RTEP) by submitting well-formed and strategically positioned, but specious, interconnection requests.¹⁴⁴² PJM asserts that, as a result, such developers can flood the PJM interconnection process with speculative and larger than necessary interconnection requests and withdraw shortly after the required network upgrade costs are identified.¹⁴⁴³ PJM asserts that this would force it to reconsider RTEP upgrades that would incorporate the needed network upgrades and assign cost responsibility to load rather than to the generation developers.¹⁴⁴⁴

569. PJM asserts that the final rule discounts these concerns despite PJM's demonstration that the risk-to-benefit ratio heavily favors the submission of speculative interconnection requests for a relatively low at-risk deposit. PJM argues that this risk-to-benefit ratio justifies the potential risk of non-selection in RTEP that a developer may face.¹⁴⁴⁵

3. Commission Determination

570. We do not find persuasive arguments raised on rehearing and continue to find that no revisions to Order No. 1920's coordination requirement are necessary to address the speculative gaming concerns raised in this proceeding.¹⁴⁴⁶ With respect to PJM's specific generator interconnection

¹⁴³³ See Order No. 1920, 187 FERC ¶ 61,068 at P 1156.

¹⁴³⁴ *Id.* P 1117.

¹⁴³⁵ *Id.*

¹⁴³⁶ *Id.* P 1119.

¹⁴³⁷ PJM Rehearing Request at 33; NRECA Rehearing Request at 44, 46–47.

¹⁴³⁸ PJM Rehearing Request at 33; NRECA Rehearing Request at 46.

¹⁴³⁹ PJM Rehearing Request at 34.

¹⁴⁴⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 1155.

¹⁴⁴¹ PJM Rehearing Request at 35.

¹⁴⁴² *Id.* at 36.

¹⁴⁴³ *Id.* at 35.

¹⁴⁴⁴ *Id.*

¹⁴⁴⁵ PJM Rehearing Request at 36.

¹⁴⁴⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1119.

process, we disagree with PJM that the risk an interconnection customer faces of losing only its readiness deposit if it withdraws is too low a risk to mitigate gaming concerns. Specifically, PJM's own hypothetical example demonstrates that an interconnection customer would risk losing \$1.2 million for a single interconnection request, a risk that that we do not consider inconsequential. Moreover, for a single interconnection customer to attempt this gaming strategy, it would have to put its study and readiness deposits at risk in at least two interconnection queue cycles, and therefore would put at risk \$2.4 million (\$1.2 million per cycle) for the underlying interconnection-related transmission need to trigger the repeat identification criterion to qualify for evaluation in the Order No. 1000 regional transmission planning and cost allocation processes.¹⁴⁴⁷ Therefore, the risk is higher than what PJM asserts.

571. Additionally, we continue to find it unlikely that an interconnection customer would submit multiple interconnection requests (in multiple interconnection queue cycles) to trigger this requirement because the interconnection customer would face additional uncertainty in that transmission providers may not select a transmission facility that addresses the interconnection-related network upgrade in a regional transmission plan for purposes of cost allocation. We also reiterate that pursuing such a strategy would entail other risks, including the risk that any of the five qualifying criteria will not be met and the possibility that the newly created interconnection or transmission capacity will not benefit the interconnection customer that submitted, and withdrew, the interconnection requests in multiple interconnection queue cycles because the entity that withdrew the interconnection requests has no preferential claim to that capacity.¹⁴⁴⁸ For these reasons, we believe the financial risks and process-related restrictions make it unlikely that a generation developer would risk time and resources to "game" this process in the hope of benefiting from an uncertain process, which is highly unlikely to produce the generation developer's preferred result.

E. Transmission Planning Process Evaluation

1. Order No. 1920 Requirements

572. In Order No. 1920, the Commission required transmission providers in each transmission planning region to evaluate regional transmission facilities that address certain interconnection-related transmission needs in their existing Order No. 1000 regional transmission planning and cost allocation processes instead of in Long-Term Regional Transmission Planning, as was proposed in the NOPR. The Commission explained that by requiring transmission providers to evaluate identified interconnection-related transmission needs in existing Order No. 1000 regional transmission planning and cost allocation processes, such needs will be addressed within a timeframe that is relevant for identifying more efficient or cost-effective near-term regional transmission solutions.¹⁴⁴⁹

573. The Commission agreed with commenters that future interconnection-related transmission needs will be considered as part of Long-Term Regional Transmission Planning and incorporated in the development of Long-Term Scenarios. The Commission disagreed with commenters that asserted that the Commission's coordination proposal is unnecessary because well-executed Long-Term Regional Transmission Planning will identify the transmission needed to support generator interconnections. The Commission anticipated that as transmission providers gain experience with Long-Term Regional Transmission Planning they will identify fewer interconnection-related transmission needs associated with certain interconnection-related network upgrades originally identified through the generator interconnection process because transmission providers will plan to address Long-Term Transmission Needs, including those driven by Factor Category One: federal, federally-recognized Tribal, state, and local laws and regulations that affect the future resource mix and demand; Factor Category Two: federal, federally-recognized Tribal, state, and local laws and regulations on decarbonization and electrification; Factor Category Six: generator interconnection requests and withdrawals, and Factory Category Seven: utility and corporate commitments and federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs, through Long-

Term Regional Transmission Planning.¹⁴⁵⁰

2. Requests for Rehearing and Clarification

574. NRECA and East Kentucky argue that the Commission did not provide sufficient notice and opportunity to comment on the final rule's requirement to evaluate for selection transmission facilities to address identified interconnection-related transmission needs in existing Order No. 1000 regional transmission planning and cost allocation processes rather than in Long-Term Regional Transmission Planning process, as the NOPR proposed.¹⁴⁵¹

575. Clean Energy Associations claim that the Commission failed to engage in reasoned decision-making by not requiring transmission providers to evaluate network upgrades that address interconnection-related transmission needs in Long-Term Regional Transmission Planning.¹⁴⁵² Clean Energy Associations argue that if one assumes that the Order No. 1920 rationale is true, *i.e.*, that the existing Order No. 1000 regional transmission planning and cost allocation processes are a faster and more effective means of getting these facilities built, then such rationale does not justify the Commission's failure to also require evaluation of those upgrades in Long-Term Regional Transmission Planning.¹⁴⁵³ Clean Energy Associations allege that Order No. 1920, by limiting the mandatory consideration of interconnection-related network upgrades to the existing Order No. 1000 regional transmission planning and cost allocation processes, will necessarily fail to require transmission providers to evaluate benefits of transmission facilities that would result from their selection. Clean Energy Associations allege that any transmission upgrade, including interconnection-related network upgrades, is more likely to be selected in the "more robust" Long-Term Regional Transmission Planning, which they believe is consistent with the Commission's justifications of the reform and supported by the record.¹⁴⁵⁴

576. Clean Energy Associations assert that the Commission's expectation that fewer interconnection-related network upgrades would be identified over time, in part due to transmission providers' consideration of Factor Category Six (Generator Interconnection Requests

¹⁴⁴⁷ *Id.* PP 1119, 1145.

¹⁴⁴⁸ *See id.* P 1119.

¹⁴⁴⁹ *Id.* P 1126.

¹⁴⁵⁰ *Id.* P 1127.

¹⁴⁵¹ East Kentucky Rehearing Request at 1–2; NRECA Rehearing Request at 15–16.

¹⁴⁵² Clean Energy Associations Rehearing Request at 4–6.

¹⁴⁵³ *Id.* at 6.

¹⁴⁵⁴ *Id.* at 7.

and Withdrawals), is no grounds to deny a parallel path for transmission providers to evaluate interconnection-related transmission needs through Long-Term Regional Transmission Planning because the categories of factors apply to identifying Long-Term Transmission Needs, rather than evaluating specific facilities for possible selection.¹⁴⁵⁵ Clean Energy Associations claim that the Commission's requirement to evaluate interconnection-related transmission needs is more analogous to the evaluation requirements than to the Long-Term Scenarios requirements of Long-Term Regional Transmission Planning. Clean Energy Associations argue, therefore, that it is not just and reasonable, nor is it comparable, to assume that Factor Category Six is duplicative of evaluating interconnection-related network upgrades in Long-Term Regional Transmission Planning.

577. Clean Energy Associations further argue that evaluating interconnection-related transmission needs in Long-Term Regional Transmission Planning may serve as a needed fail-safe for addressing current interconnection-related transmission needs if a particular transmission provider's existing Order No. 1000 regional transmission planning and cost allocation processes prove to be ineffective for that purpose.¹⁴⁵⁶ Clean Energy Associations assert that to maximize the chances that more efficient or cost-effective projects will be successfully developed, the Commission should require transmission providers to evaluate qualifying interconnection-related network upgrades in both Long-Term Regional Transmission Planning and the existing Order No. 1000 regional transmission planning and cost allocation processes.¹⁴⁵⁷

578. Clean Energy Associations claim that the record demonstrates that interconnection-related network upgrades provide transmission benefits beyond the interconnection customers triggering them, and it is therefore reasonable to require their evaluation with comparable high-voltage, high-cost facilities in Long-Term Regional Transmission Planning.¹⁴⁵⁸ Clean Energy Associations also state that evaluation of interconnection-related network upgrades in Long-Term Regional Transmission Planning is the logical precedent for the voluntary funding option for interconnection

customers because it will provide potential funders of the transmission facilities with a comparable way to evaluate the benefits of that facility.¹⁴⁵⁹

579. Finally, Clean Energy Associations request that, at a minimum, the Commission clarify that Order No. 1920 does not prohibit transmission providers from evaluating interconnection-related transmission needs in Long-Term Regional Transmission Planning.¹⁴⁶⁰

580. Large Public Power argues that by specifying that interconnection applications and withdrawals are the sole criterion for project selection in existing Order No. 1000 regional transmission planning and cost allocation processes, Order No. 1920 will dramatically skew the Order No. 1000 processes and is fundamentally at odds with the Commission's objective of not disrupting planning for reliability and economic needs put in place under Order No. 1000.¹⁴⁶¹ Large Public Power also argues that specifying that interconnection applications and withdrawals are the sole criterion for project selection in existing Order No. 1000 regional transmission planning and cost allocation processes is inconsistent with the approach to developing Long-Term Scenarios, which "call[s] for a holistic analysis which enables system planners to make informed, balanced decisions to address the unique Long-Term Transmission Needs of each planning region."¹⁴⁶² Large Public Power asserts that the Commission failed to explain why generation interconnection application withdrawals should be the only consideration to determine transmission needs under existing Order No. 1000 regional transmission planning and cost allocation processes.¹⁴⁶³

581. PJM claims that the withdrawn and speculative interconnection requests, as potential drivers of regional transmission needs, would insert an unjustified level of uncertainty into its existing Order No. 1000 regional transmission planning and cost allocation processes.¹⁴⁶⁴ PJM also asserts that the final rule is arbitrary and capricious because it requires consideration of withdrawn interconnection requests in its near-term RTEP and provides them undue preference over interconnection requests that have taken all required steps to obtain site control, permits, and

regulatory approvals and have paid deposits.¹⁴⁶⁵ PJM contends that under the final rule, the output of the RTEP process, which is used in the generator interconnection process, "would be inflated by the addition of questionable transmission upgrades."¹⁴⁶⁶ Thus, PJM claims, the RTEP and generator interconnection processes, which are meant to work in tandem, would become unnecessarily separated and infused with dubious inputs and drivers.¹⁴⁶⁷

3. Commission Determination

582. We disagree with NRECA and East Kentucky that the Commission failed to provide adequate notice of and opportunity to comment on Order No. 1920's requirement that transmission providers in each transmission planning region evaluate for selection regional transmission facilities that address certain interconnection-related transmission needs in their existing Order No. 1000 regional transmission planning and cost allocation processes instead of in Long-Term Regional Transmission Planning.¹⁴⁶⁸

583. A final rule is a logical outgrowth of a proposed rule where "a reasonable member of the regulated class" could "anticipate the general aspects of the [final] rule."¹⁴⁶⁹ Order No. 1920 satisfies this standard because the NOPR explicitly requested comment on how the proposed reform "should interact with existing regional transmission planning processes and the Long-Term Regional Transmission Planning proposed herein,"¹⁴⁷⁰ which put parties on notice that the Commission was contemplating the change that NRECA and East Kentucky now argue is not a logical outgrowth of the NOPR. Courts have explained that "[n]otice suffices when [an agency] has 'expressly asked for comments on a particular issue or

¹⁴⁵⁵ *Id.*

¹⁴⁵⁶ *Id.* at 38.

¹⁴⁵⁷ *Id.*

¹⁴⁵⁸ East Kentucky Rehearing Request at 1–2; NRECA Rehearing Request at 15–16.

¹⁴⁵⁹ *Telesat Canada v. FCC*, 999 F.3d at 713–14 (quotations omitted). We note that, while requiring transmission providers to evaluate identified interconnection-related transmission needs in existing Order No. 1000 regional transmission planning and cost allocation processes will allow such needs to be addressed within a timeframe that is relevant for identifying more efficient or cost-effective near-term regional transmission solutions, we believe that evaluating interconnection-related transmission needs in Long-Term Regional Transmission Planning would also be appropriate. The inability to require that transmission providers consider regional transmission facilities to address interconnection-related transmission needs in Order No. 1000 processes would not have prevented the Commission from issuing Order No. 1920.

¹⁴⁶⁰ NOPR, 179 FERC ¶ 61,028 at P 174.

¹⁴⁵⁹ *Id.* at 11–12.

¹⁴⁶⁰ *Id.* at 12–13.

¹⁴⁶¹ Large Public Power Rehearing Request at 21.

¹⁴⁶² *Id.* at 21–22.

¹⁴⁶³ Large Public Power Rehearing Request at 22.

¹⁴⁶⁴ PJM Rehearing Request at 37–38.

¹⁴⁵⁵ *Id.* at 7–8.

¹⁴⁵⁶ *Id.* at 8.

¹⁴⁵⁷ *Id.* at 9.

¹⁴⁵⁸ *Id.* at 10–11.

otherwise made clear that the agency was contemplating a particular change.’’¹⁴⁷¹ Here, by requesting comment on the issue, the Commission put parties on notice that it was continuing to contemplate how the proposed reform should interact with both proposed Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes.

584. Agency final rules need not be identical to proposed rules, and notice is sufficient if the final rule represents a “logical outgrowth” of the proposed rule.¹⁴⁷² The final rule is a logical outgrowth of the NOPR in this regard. In the NOPR, the Commission proposed to require that transmission providers evaluate for selection in the regional transmission plan for purposes of cost allocation regional transmission facilities to address certain interconnection-related needs that meet specific qualifying criteria established by the Commission.¹⁴⁷³ Order No. 1920 adopted this requirement and mandated that such consideration occur in existing Order No. 1000 regional transmission planning and cost allocation processes,¹⁴⁷⁴ rather than in Long-Term Regional Transmission Planning, as the NOPR proposed.¹⁴⁷⁵ The Commission explained that this change will allow interconnection-related transmission needs to be addressed within a timeframe that is relevant for identifying more efficient or cost-effective near-term regional transmission solutions. We find that this change satisfies the logical outgrowth test because while the Commission modified the type of regional transmission planning and cost allocation processes that would be subject to coordination with interconnection-related transmission needs, it retained the underlying requirement that such coordination occur. Thus, Order No. 1920’s requirement “follow[s] logically from” the NOPR because the NOPR “adequately frame[d] the subjects for discussion.”¹⁴⁷⁶

¹⁴⁷¹ *Brennan v. Dickson*, 45 F.4th at 69 (quoting *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d at 1081).

¹⁴⁷² *Long Island Care*, 551 U.S. at 174–75; see also *Am. Paper Inst. v. EPA*, 660 F.2d at 959 n.13 (“An agency may make even substantial changes in its original proposed rule without a further comment period if the changes are in character with the original proposal and are a logical outgrowth of the notice and comments already given.” (emphasis added)).

¹⁴⁷³ NOPR, 179 FERC ¶ 61,028 at P 166.

¹⁴⁷⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1126.

¹⁴⁷⁵ NOPR, 179 FERC ¶ 61,028 at P 167.

¹⁴⁷⁶ *Conn. Light & Power Co. v. Nuclear Regulatory Comm’n*, 673 F.2d at 533.

585. We are unpersuaded by Clean Energy Associations’ assertion that the Commission failed to engage in reasoned decision-making by not requiring transmission providers to evaluate network upgrades that address interconnection-related transmission needs in Long-Term Regional Transmission Planning. We continue to find that evaluating interconnection-related transmission needs associated with this coordination requirement is more appropriate in the existing Order No. 1000 regional transmission planning and cost allocation processes than in Long-Term Regional Transmission Planning because such evaluation would occur at shorter intervals and would be more likely to result in expeditious development of regional transmission facilities to address the nearer-term interconnection-related transmission needs identified through the generator interconnection process.¹⁴⁷⁷ We find that it is unnecessary to require transmission providers to also evaluate interconnection-related transmission needs associated with this coordination requirement in Long-Term Regional Transmission Planning because the coordination requirement in Order No. 1920 is just and reasonable and sufficient to address the need for reform.

586. In addition, we reiterate that transmission providers must consider future interconnection-related transmission needs as a driver of Long-Term Transmission Needs in Long-Term Regional Transmission Planning through the development of Long-Term Scenarios, which must incorporate generator interconnection withdrawals in Factor Category Six (Generator Interconnection Requests and Withdrawals).¹⁴⁷⁸ Factor Category Six allows transmission providers to consider a broader range of potential interconnection-related transmission needs compared to the interconnection-related transmission needs that meet the coordination requirement’s qualifying criteria. Moreover, to the extent that an interconnection-related transmission need is not addressed according to this coordination requirement, transmission providers may choose to consider similar interconnection-related transmission needs as Long-Term Transmission Needs and evaluate Long-Term Regional Transmission Facilities to address those needs in Long-Term Regional Transmission Planning. Therefore, we believe that requiring transmission providers to evaluate interconnection-related transmission

¹⁴⁷⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1126.

¹⁴⁷⁸ *Id.* PP 1127–1128.

needs identified by this coordination requirement in Long-Term Regional Transmission Planning would be redundant to existing Order No. 1920 requirements and could inappropriately limit the scope of the interconnection-related transmission needs that transmission providers consider in Long-Term Regional Transmission Planning.

587. On this point, we disagree with Clean Energy Associations’ claim that it is not just and reasonable, nor is it comparable, to assume Factor Category Six is duplicative of evaluating interconnection-related network upgrades in Long-Term Regional Transmission Planning, and that this coordination requirement is more analogous to the Long-Term Regional Transmission Planning evaluation requirements. Both the qualifying criteria of the coordination requirement and the categories of factors of the Long-Term Scenarios requirements (in Long-Term Regional Transmission Planning) establish how transmission providers identify transmission needs. We recognize that the coordination requirement mandates the evaluation of regional transmission facilities to address interconnection-related transmission needs associated with this coordination requirement, albeit allowing for flexibility in how transmission providers evaluate such facilities for selection, but Long-Term Regional Transmission Planning does not mandate evaluation of a specific type of transmission facility.¹⁴⁷⁹ However, the requirement to evaluate regional transmission facilities associated with the coordination requirement is similar to the Long-Term Regional Transmission Planning requirement for transmission providers to establish a process, including selection criteria, that they will use to identify and evaluate Long-Term Regional Transmission Facilities for potential selection to address Long-Term Transmission Needs (which, as discussed above, will include future interconnection-related transmission needs). This explanation addresses Clean Energy Associations’ concern that Order No. 1920 will necessarily fail to require transmission providers to evaluate benefits of transmission facilities to address interconnection-related transmission needs through Long-Term Regional Transmission Planning.

588. In response to Clean Energy Associations’ request for clarification that Order No. 1920 does not prohibit transmission providers from evaluating

¹⁴⁷⁹ *Id.* P 1111.

interconnection-related transmission needs in Long-Term Regional Transmission Planning, we reiterate that future interconnection-related transmission needs must be considered as part of Long-Term Regional Transmission Planning and incorporated in the development of Long-Term Scenarios.¹⁴⁸⁰ We clarify that Order No. 1920 does not prohibit transmission providers from proposing on compliance how they will identify and evaluate future interconnection-related transmission needs in Long-Term Regional Transmission Planning. However, we will not prejudge Clean Energy Associations' proposal for a "parallel path" for identifying and evaluating interconnection-related transmission needs in Long-Term Regional Transmission Planning using the coordination requirement's qualification criteria.¹⁴⁸¹ If any transmission provider chooses to develop additional processes to address interconnection-related transmission needs in Long-Term Regional Transmission Planning, they must demonstrate that the proposal is consistent with or superior to Order No. 1920's requirements.

589. We are not persuaded by Large Public Power's argument that, in Order No. 1920, the Commission is specifying that interconnection applications and withdrawals are the sole criterion for project selection in existing Order No. 1000 regional transmission planning and cost allocation processes. To this point, we first note that Order No. 1920 adopts not one, but five, criteria for interconnection-related transmission needs to be evaluated through existing Order No. 1000 regional transmission planning and cost allocation processes. That is, evaluation is only required when the interconnection-related network upgrades driving interconnection-related transmission needs meets the five qualification criteria established in Order No. 1920.¹⁴⁸²

590. Furthermore, the evaluation requirement only requires transmission providers to *evaluate* interconnection-related transmission needs in the Order No. 1000 regional transmission planning process. It does not require that transmission providers use interconnection-related transmission needs as a criterion to decide whether to select a regional transmission facility in the Order No. 1000 regional transmission planning process nor does it require that the interconnection-

related transmission need be resolved. As the Commission explained, these requirements provide flexibility in how transmission providers evaluate transmission facilities for selection by allowing them to adopt the evaluation method and selection criteria from any of their existing Order No. 1000 regional transmission planning and cost allocation processes (e.g., economic or reliability processes) to evaluate and potentially select these types of transmission facilities. The Commission thus permitted transmission providers to propose the best method to incorporate this new requirement for their transmission planning region and encouraged transmission providers to consider, as part of the evaluation process, whether regional transmission facilities that address certain identified interconnection-related transmission needs may also address other regional transmission needs more efficiently or cost-effectively.¹⁴⁸³

591. We also disagree with PJM's assertions that the Order No. 1920 requirement is arbitrary and capricious because the requirement would insert an unjustified level of uncertainty into its existing Order No. 1000 regional transmission planning and cost allocation processes by requiring consideration of withdrawn interconnection requests in its near-term RTEP. As explained here and in Order No. 1920, we are not requiring that transmission providers develop transmission facilities through the Order No. 1000 regional transmission planning and cost allocation processes as transmission solutions to address interconnection-related transmission needs. The coordination reform simply creates an avenue for evaluation of qualifying interconnection-related transmission needs in the existing Order No. 1000 regional transmission planning and cost allocation processes. Further, Order No. 1920 gives transmission providers flexibility to "adopt the evaluation method and selection criteria from any of their existing Order No. 1000 regional transmission planning and cost allocation processes (e.g., economic or reliability processes) to evaluate and potentially select these types of transmission facilities"¹⁴⁸⁴

592. Additionally, we disagree with PJM that the Order No. 1920 requirement gives undue preference to withdrawn interconnection requests. Instead, the requirement addresses a barrier to entry for new generation resources, where repeated interconnection requests are

increasingly withdrawn due to sticker shock from the estimated costs of the required interconnection-related network upgrades. The qualifying requirements, however, disqualify from these requirements interconnection-related transmission needs memorialized in generator interconnection agreements (i.e., that are ready to move forward with project development in the generator interconnection process). Consequently, pursuant to the coordination reformation requirements, no interconnection customer would benefit from having the upgrade costs that it would otherwise pay allocated instead through transmission rates. Rather, in the circumstance that Order No. 1920 addresses, no interconnection customer is willing to pay the estimated costs of the interconnection-related network upgrades. Therefore, there would be no undue preference because if the qualifying criteria are met, there is no longer an interconnection request or interconnection customer associated with the qualifying interconnection-related transmission need.

593. Moreover, in response to PJM's assertion that the output of the RTEP process, which is used in its generator interconnection process, "would be inflated by the addition of questionable transmission upgrades," we again note that the Order No. 1920 requirement does not require that transmission providers resolve interconnection-related transmission needs, including resolving them through selection of transmission facilities; that is, Order No. 1920 neither requires nor guarantees a specific outcome. Rather, transmission providers must consider the interconnection-related transmission needs in their existing Order No. 1000 regional transmission planning and cost allocation processes and determine whether there is a more efficient or cost-effective transmission solution, under the existing evaluation and selection criteria in the existing Order No. 1000 regional transmission planning and cost allocation processes.

VII. Consideration of Dynamic Line Ratings and Advanced Power Flow Control Devices

A. Order No. 1920 Requirements

594. In Order No. 1920, the Commission required transmission providers in each transmission planning region to consider, in Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes, the following enumerated alternative transmission technologies for each

¹⁴⁸⁰ *Id.* P 1127.

¹⁴⁸¹ *Id.* P 1145.

¹⁴⁸² *Id.*

¹⁴⁸³ *Id.* P 1111.

¹⁴⁸⁴ *Id.*

identified transmission need: (1) dynamic line ratings; (2) advanced power flow control devices; (3) advanced conductors; and (4) transmission switching.¹⁴⁸⁵ This list of enumerated alternative transmission technologies that the Commission required transmission providers in each transmission planning region to consider expanded on the Commission's proposed list of alternative transmission technologies, which only proposed to require the consideration of dynamic line ratings and advanced power flow control devices.¹⁴⁸⁶ The Commission further required that transmission providers consider each of these enumerated technologies when evaluating new regional transmission facilities, as well as upgrades to existing transmission facilities. Thus, the Commission required that for each identified transmission need, when evaluating regional transmission facilities for potential selection, transmission providers must consider whether regional transmission facilities that incorporate, or solely consist of, any of the enumerated list of alternative transmission technologies would be more efficient or cost-effective than selecting new regional transmission facilities or upgrades to existing transmission facilities that do not incorporate these technologies.¹⁴⁸⁷

595. The Commission further required that transmission providers' evaluation of the enumerated alternative transmission technologies must be consistent with the requirements in their OATTs for other transmission solutions.¹⁴⁸⁸ In response to requests for additional transparency, the Commission adopted the NOPR proposal to expand the existing requirement established in Order No. 1000 for transmission providers' evaluation processes to culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission facility was selected or not selected. Specifically, the Commission required that the determination include an

explanation that is sufficiently detailed for stakeholders to understand why dynamic line ratings, advanced power flow control devices, advanced conductors, and/or transmission switching were or were not incorporated into selected regional transmission facilities.¹⁴⁸⁹

B. Requests for Rehearing and Clarification

1. General Requests for Rehearing and Clarification

a. Requests for Rehearing and Clarification

596. Large Public Power requests clarification that transmission providers may use engineering judgment in considering which transmission elements should be analyzed as candidates for alternative transmission technologies. Specifically, Large Public Power explains that, while it does not challenge the Commission's general approach to alternative transmission technologies, requiring transmission providers to conduct resource intensive and detailed production cost simulations for each technology for each existing transmission element would be burdensome and expensive. Large Public Power asks the Commission to clarify that planning engineers may exercise informed discretion regarding the planning horizon within which alternative transmission technologies are of value. Finally, Large Public Power states that it understands that all relevant judgments must be supported and subject to examination and review.¹⁴⁹⁰

597. On rehearing, NESCOE argues that the Commission should require transmission providers to prioritize alternative transmission technologies to serve as the starting point for addressing identified transmission needs.¹⁴⁹¹ NESCOE states that, absent such prioritization of alternative transmission technologies, rates remain at risk of being unjust and unreasonable.¹⁴⁹² NESCOE asks the Commission to direct transmission providers to incorporate tariff procedures establishing a rebuttable presumption that the incorporation of alternative transmission technologies as a solution to an identified Long-Term Transmission Need or existing Order No. 1000 transmission need would result in a more efficient or cost-effective transmission solution.

NESCOE asserts that such a directive would both maintain the flexibility envisioned by Order No. 1920 and place the burden on transmission providers to demonstrate why alternative transmission technologies are not, either alone or as a solution component, a more efficient or cost-effective solution.¹⁴⁹³

b. Commission Determination

598. We grant, in part, Large Public Power's request for clarification regarding "engineering judgment" in analyzing transmission elements for alternative transmission technologies.¹⁴⁹⁴ In particular, we do not require detailed production cost simulations to demonstrate costs and benefits of each alternative transmission technology for each existing transmission element, and we clarify that transmission providers have flexibility to apply good engineering judgment to identify the specific transmission elements that are likely candidates for specific enumerated alternative transmission technologies. We recognize that a transmission provider's consideration of alternative transmission technologies will likely depend on the particulars of the transmission provider's transmission system. In that context, transmission providers may be able to rapidly determine if a certain alternative transmission technology is inappropriate for further study on a specific transmission element.¹⁴⁹⁵

599. We reiterate, however, that transmission providers in each transmission planning region must consider, as discussed above, dynamic line ratings, advanced power flow control devices, advanced conductors, and transmission switching for each identified transmission need during Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes. We further reiterate that transmission providers must consider each of those alternative transmission technologies when evaluating new regional transmission facilities, as well as upgrades to existing transmission facilities.¹⁴⁹⁶ Such consideration of the enumerated alternative transmission technologies must be consistent with the requirements in their OATTs for other transmission solutions and with the Commission's requirements

¹⁴⁸⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 1198. In Order No. 1920, the Commission defined advanced transmission technologies as "a range of permissible present and future technologies, and is defined relative to conventional aluminum conductor steel reinforced conductors." *Id.* P 1243. The Commission further clarified that "advanced conductors include, but are not limited to, superconducting cables, advanced composite conductors, advanced steel cores, high temperature low-sag conductors, fiber optic temperature sensing conductors, and advanced overhead conductors." *Id.*

¹⁴⁸⁶ NOPR, 179 FERC ¶ 61,028 at P 272.

¹⁴⁸⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1198.

¹⁴⁸⁸ *Id.* P 1199.

¹⁴⁸⁹ *Id.* P 1214.

¹⁴⁹⁰ Large Public Power Request for Rehearing at 13–16.

¹⁴⁹¹ NESCOE Request for Rehearing at 6, 22–25, 34.

¹⁴⁹² *Id.* at 25.

¹⁴⁹³ *Id.* at 24–25.

¹⁴⁹⁴ Large Public Power Request for Rehearing at 13–16.

¹⁴⁹⁵ We note that this is consistent with the Commission's findings in Order No. 2023. *See, e.g.,* Order No. 2023, 187 FERC ¶ 61,068 at P 1590.

¹⁴⁹⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1198.

established in Order No. 1920.¹⁴⁹⁷ Finally, consistent with Large Public Power's understanding,¹⁴⁹⁸ nothing in this clarification obviates the requirement for transmission providers to support their determinations,¹⁴⁹⁹ the Commission's transparency requirements, or the potential to challenge a transmission provider's consideration of the enumerated alternative transmission technologies.¹⁵⁰⁰

600. We deny NESCOE's request that the Commission establish a rebuttable presumption in favor of alternative transmission technologies.¹⁵⁰¹ Rather, it is the Commission's longstanding policy to remain fuel and technology neutral.¹⁵⁰² As such, and consistent with the Commission's finding in Order No. 2023,¹⁵⁰³ we decline to create a presumption in favor of substituting alternative transmission technologies in either Long-Term Regional Transmission Planning or the existing Order No. 1000 regional transmission planning processes. There is insufficient evidence in the record to presume that an alternative transmission technology would be the more efficient or cost-effective solution as a replacement for a traditional wires-based solution or that the addition of an alternative transmission technology to a potential transmission solution would necessarily result in a more efficient or cost-effective solution in all instances. Consequently, Order No. 1920 mandates a process for the consideration of alternative transmission technologies, not specific outcomes.¹⁵⁰⁴

2. Technology Specific Requests for Rehearing and Clarification

a. Requests for Rehearing and Clarification

601. Clean Energy Associations and PIOs assert that the Commission failed to engage in reasoned decision-making by not requiring transmission providers to evaluate storage resources that perform a transmission function as alternative transmission technologies.¹⁵⁰⁵ Clean Energy Associations and PIOs disagree that the Commission's finding that "whether an electric storage resource performs a transmission function requires a case-by-case analysis" justifies its exclusion from the list of enumerated alternative transmission technologies because, they argue, all transmission solutions are studied on a case-by-case basis.¹⁵⁰⁶ Clean Energy Associations further argue that whether a particular storage resource is performing a transmission function is completely separate and distinct from the issue of whether a storage resource that *has* been determined on a case-specific basis to be providing a transmission function should be included in the list of enumerated alternative transmission technologies.¹⁵⁰⁷ Clean Energy Associations argue that the proper approach is to require storage resources that would be providing a transmission function be included in the enumerated list of alternative transmission technologies.¹⁵⁰⁸

602. Clean Energy Associations assert that the Commission's decision to exclude storage providing a transmission function is not supported by substantial evidence and is unduly discriminatory.¹⁵⁰⁹ Clean Energy Associations argue that the record evidence demonstrates that storage can provide efficient or cost-effective solutions and that the Commission did not cite evidence that considering storage in transmission planning is potentially detrimental or lacks stakeholder support.¹⁵¹⁰ Clean Energy Associations further argue that the Commission failed to distinguish storage resources providing a transmission function from advanced conductors and transmission switching

technologies, which were added to the advanced technologies enumerated in the final rule. Clean Energy Associations assert that there is no rational basis to exclude storage resources from the list and that it is unduly discriminatory to exclude storage.¹⁵¹¹ Clean Energy Associations state that the Commission should grant rehearing and require transmission providers to consider storage as a transmission asset in Long-Term Regional Transmission Planning.¹⁵¹²

603. PIOs assert that the Commission's omission of storage as a transmission asset from the list of alternative transmission technologies that transmission providers must consider in Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes was arbitrary and capricious because the Commission did not meaningfully engage with commenters or provide a reasoned basis for its decision.¹⁵¹³ PIOs urge the Commission to grant rehearing to require transmission providers to evaluate storage as a part of Long-Term Regional Transmission Planning.¹⁵¹⁴

604. PIOs observe that the Commission has identified considerations that, together, ensure that a selected storage resource will serve a transmission function; nevertheless, they argue the Commission failed to explain why it did not simply note that the use of storage as a transmission asset will ultimately need to comply with these considerations, rather than omitting it as an alternative transmission technology.¹⁵¹⁵ PIOs state that under the Commission's approach in Order No. 1920, in which it explained that "transmission providers are the appropriate entity to identify, evaluate, and select specific solutions to specific transmission needs," it need not dictate how transmission providers evaluate storage as transmission.¹⁵¹⁶

605. CTC Global states that the Commission's definition of advanced conductors allows for the consideration of advanced conductors that are not representative of the capabilities represented by the Commission.¹⁵¹⁷

¹⁵¹¹ *Id.* at 29–30 (citing *FPL Energy Marcus Hook, L.P. v. FERC*, 430 F.3d 441, 449 (D.C. Cir. 2005); *Emera Me.*, 854 F.3d at 22).

¹⁵¹² *Id.* at 30.

¹⁵¹³ PIOs Rehearing Request at 38, 42–43 (citations omitted).

¹⁵¹⁴ *Id.* at 43.

¹⁵¹⁵ *Id.* at 41–42 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1245, n.2671; *Sw. Power Pool, Inc.*, 183 FERC ¶ 61,153, at P 29 (2023)).

¹⁵¹⁶ *Id.* at 41 (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 1210).

¹⁵¹⁷ CTC Global Rehearing Request at 2–3.

¹⁴⁹⁷ *Id.* P 1199.

¹⁴⁹⁸ Large Public Power Request for Rehearing at 16.

¹⁴⁹⁹ See Order No. 1920, 187 FERC ¶ 61,068 at P 1214.

¹⁵⁰⁰ See, e.g., *id.* P 224. The Order No. 890 transmission planning principles include transparency and obligate transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans. See Order No. 890, 118 FERC ¶ 61,119 at PP 435, 471. In Order No. 890, the transparency transmission planning principle also requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes they use to develop their transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. Order No. 890, 118 FERC ¶ 61,119 at P 471.

¹⁵⁰¹ NESCOE Request for Rehearing at 6, 22–25.

¹⁵⁰² See, e.g., Order No. 1920, 187 FERC ¶ 61,068 at P 437 ("We emphasize that the Commission's policies are technology neutral, and we are not establishing a preference for certain types of generation or energy end uses.").

¹⁵⁰³ Order No. 2023, 184 FERC ¶ 61,054 at P 1582 ("This final rule does not create a presumption in favor of substituting alternative transmission technologies for necessary traditional network upgrades, either categorically or in specific cases.").

¹⁵⁰⁴ See *id.*

¹⁵⁰⁵ Clean Energy Associations Rehearing Request at 26–30; PIOs Rehearing Request at 7, 38–43 (citations omitted).

¹⁵⁰⁶ Clean Energy Associations Rehearing Request at 26 (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 1245); PIOs Rehearing Request at 40.

¹⁵⁰⁷ Clean Energy Associations Rehearing Request at 26.

¹⁵⁰⁸ *Id.* at 27.

¹⁵⁰⁹ *Id.* at 26–30.

¹⁵¹⁰ *Id.* at 27–28 (citing *Emera Me.*, 854 F.3d at 22).

CTC Global states that this may allow transmission providers to avoid consideration of the types of advanced conductors that Congress intended to be reviewed in the Energy Policy Act of 2005 and that the US DOE has described in reports.¹⁵¹⁸ For this reason, CTC Global requests clarification, or in the alternative rehearing, that the definition of advanced conductors will ensure that sufficiently advanced conductors—which at a given voltage increase power flow capabilities by at least 1.5 times, decrease losses by 20% or more, and improve conductor sag performance—are included in regional transmission planning processes. CTC Global states that such a clarification is needed to ensure that the conditions that the Commission identified as leading to unjust and unreasonable rates are addressed and argues that failure to do so will continue to result in project identification that may not be more efficient or cost-effective than alternatives.¹⁵¹⁹

606. Invenergy argues that the Commission should clarify that HVDC is an alternative transmission technology that may be considered in long-term and nearer-term regional transmission planning processes.¹⁵²⁰ Invenergy explains that the Commission did not specifically address the use of HVDC, despite PIOs arguing for its consideration as an alternative transmission technology. Invenergy agrees with PIOs' comments and states that PIOs clearly demonstrated in their comments how HVDC can be beneficial.¹⁵²¹ In light of this demonstration, Invenergy asks the Commission to grant clarification that transmission providers are not precluded from considering HVDC like other alternative transmission technologies or other potential solutions that may be considered in long-term and nearer-term regional transmission planning processes.¹⁵²²

b. Commission Determination

607. We sustain the Commission's decision in Order No. 1920 to not include storage as a transmission asset in the enumerated list of alternative transmission technologies that transmission providers must consider.¹⁵²³ We continue to find that the evaluation of whether an electric storage resource performs a

transmission function requires a case-by-case analysis of how a particular electric storage resource would be operated as well as any requirements set forth in an OATT governing selection of such electric storage resources as transmission solutions.¹⁵²⁴ Therefore, we continue to find that it is inappropriate to require the consideration of storage that performs a transmission function on a generic basis. While Clean Energy Associations and PIOs argue that any transmission solution requires a case-by-case analysis, electric storage resources require an *additional* case-by-case analysis that distinguishes them from other transmission solutions and from the enumerated list of alternative transmission technologies.¹⁵²⁵ Namely, that type of analysis would require the transmission provider to determine, among other considerations: (1) that the electric storage resource would strictly act as a transmission asset, connected to the transmission system as a transmission facility solely to support that transmission provider's transmission system; (2) the electric storage resource's cost recovery, by ensuring that the electric storage resource's participation in markets is limited to only charging from, and discharging to, the transmission provider's transmission system as necessary to provide the services for which it was selected based on the cost of the maximum capacity needed to address the identified transmission issue; and (3) that the electric storage resource's construction would not impact the generator interconnection queue.¹⁵²⁶ We reiterate, however, that Order No. 1920 does not preclude transmission providers from considering other alternative transmission technologies that were not included in the enumerated list of alternative transmission technologies, including storage as a transmission asset, in their Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes.¹⁵²⁷

608. In response to CTC Global, we clarify that the requirement to consider alternative transmission technologies necessitates that transmission providers

consider the types of advanced conductors that Congress intended to be reviewed in the Energy Policy Act of 2005 and that the US DOE has described in its reports.¹⁵²⁸ However, we decline to alter the definition of an advanced conductor.¹⁵²⁹ We continue to find that advanced conductors include present and future transmission line technologies whose power flow capacities exceed the power flow capacities of conventional aluminum conductor steel reinforced conductors,¹⁵³⁰ and that advanced conductors include, but are not limited to, superconducting cables, advanced composite conductors, advanced steel cores, high temperature low-sag conductors, fiber optic temperature sensing conductors, and advanced overhead conductors.¹⁵³¹ However, we clarify that transmission providers, rather than considering just one of the six advanced conductor examples listed, must instead consider each of the six advanced conductor examples listed, and, as they determine appropriate, any additional advanced conductor which that transmission provider determines might be more efficient or cost-effective. In doing so, transmission providers must consider a range of advanced conductor options with a variety of performance and cost attributes, including those with the performance capabilities described by CTC Global.¹⁵³² We deny CTC Global's request to add performance metrics to the definition of an advanced conductor because it would limit the scope of advanced conductors required to be considered and thereby eliminate from

¹⁵²⁸ See, e.g., U.S. Dep't of Energy, *Advanced Transmission Technologies* 25–28 (Dec. 2020), <https://www.energy.gov/sites/prod/files/2021/02/f82/Advanced%20Transmission%20Technologies%20Report%20-%20final%20as%20of%2012.3%20-%20FOR%20PUBLIC.pdf>; see also U.S. Dep't of Energy, *Pathways to Commercial Liftoff: Innovative Grid Deployment* 77 (2024), https://liftoff.energy.gov/wp-content/uploads/2024/05/Liftoff_Innovative-Grid-Deployment_Final_5.2-1.pdf; see also 42 U.S.C. 16422(b) (directing the Commission to “encourage, as appropriate, the deployment of advanced transmission technologies”); *id.* § 16422(a) (defining “advanced transmission technology” as “a technology that increases the capacity, efficiency, or reliability of an existing or new transmission facility”).

¹⁵²⁹ See CTC Global Rehearing Request at 4–5 (setting forth proposed modified definition).

¹⁵³⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 1198 n.2553.

¹⁵³¹ *Id.* P 1243.

¹⁵³² CTC Global Rehearing Request at 2–5 (requesting that the Commission clarify that advanced conductors are those that have power flow capabilities that exceed those of conventional aluminum conductor steel reinforced conductors at a given voltage by a factor of at least 1.5 times while decreasing electrical losses by 20% or more, and improve conductor sag performance, at the same or reduced weight per foot).

¹⁵¹⁸ *Id.* (citing Energy Policy Act of 2005, Public Law 109–58, 1223, 119 Stat. 594, 953–954 (2005)).

¹⁵¹⁹ *Id.* at 2–5, 10–17.

¹⁵²⁰ Invenergy Rehearing Request at 10–13.

¹⁵²¹ *Id.* at 11–12 (citing PIOs NOPR Initial Comments at 22, Ex. A at PP 20, 22.).

¹⁵²² *Id.* at 13.

¹⁵²³ Order No. 1920, 187 FERC ¶ 61,068 at P 1245.

¹⁵²⁴ *Id.* In Order No. 2023, the Commission pointed to the process in SPP, which takes into account five considerations that, together, ensure that a selected electric storage resource will serve a transmission function. Order No. 2023, 184 FERC ¶ 61,054 at P 1599 (citing *Sw. Power Pool, Inc.*, 183 FERC ¶ 61,153, at P 29 (2023)).

¹⁵²⁵ Order No. 2023, 184 FERC ¶ 61,054 at P 1599; Order No. 2023–A, 186 FERC ¶ 61,199 at P 640.

¹⁵²⁶ *Sw. Power Pool, Inc.*, 183 FERC ¶ 61,153, at P 29 (2023).

¹⁵²⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1247.

required consideration certain advanced conductors that may be more efficient or cost-effective in specific circumstances.

609. In response to Invenenergy,¹⁵³³ we clarify that transmission providers are not precluded from considering HVDC facilities in Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes. In Order No. 1920, the Commission clarified that transmission providers are not precluded from considering other alternative transmission technologies that are not included in the enumerated list of alternative transmission technologies or other potential solutions in their Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes.¹⁵³⁴ That clarification applies to the consideration of HVDC technologies.

VIII. Regional Transmission Cost Allocation

A. Obligation To File an *Ex Ante* Long-Term Regional Transmission Cost Allocation Method and Its Use as a Backstop

1. Logical Outgrowth

a. NOPR Proposals

610. In the NOPR, the Commission proposed to require transmission providers in each transmission planning region to revise their OATTs to include one of the following: (1) a Long-Term Regional Transmission Cost Allocation Method to allocate the costs of Long-Term Regional Transmission Facilities; (2) a State Agreement Process by which one or more Relevant State Entities may voluntarily agree to a cost allocation method; or (3) a combination thereof.¹⁵³⁵

611. The Commission noted that if states agree to a State Agreement Process instead of a Long-Term Regional Transmission Cost Allocation Method, certain Long-Term Regional Transmission Facilities selected in the regional transmission plan for purposes of cost allocation would lack a clear *ex*

ante cost allocation method,¹⁵³⁶ and sought comment on whether the Commission should require transmission providers to include a Long-Term Regional Transmission Cost Allocation Method in their OATTs, in lieu of the proposed reform.¹⁵³⁷ The Commission requested comment on the appropriate outcome when Relevant State Entities fail to agree on a cost allocation method for all or a portion of Long-Term Regional Transmission Facilities, including whether in such circumstances the transmission providers should be required to establish a Long-Term Regional Transmission Cost Allocation Method.¹⁵³⁸

b. Order No. 1920 Requirements

612. In Order No. 1920, the Commission required transmission providers in each transmission planning region to revise their OATTs to include one or more Long-Term Regional Transmission Cost Allocation Methods¹⁵³⁹ for Long-Term Regional Transmission Facilities that are selected and permitted transmission providers to additionally revise their OATTs to include a State Agreement Process, if Relevant State Entities indicate that they have agreed to such a process. The Commission required that a State Agreement Process cannot be the sole method filed for cost allocation for Long-Term Regional Transmission Facilities, and that if a State Agreement Process fails to result in a cost allocation method agreed to by Relevant State Entities and any other authorized entities, or if the Commission ultimately finds that the cost allocation method that results from a State Agreement Process is unjust, unreasonable, or unduly discriminatory or preferential, then the relevant Long-Term Regional Transmission Cost Allocation Method on file would apply as a backstop.¹⁵⁴⁰

613. In Order No. 1920, the Commission stated that it was not imposing any obligation on transmission providers to file a cost allocation method for Long-Term Regional Transmission Facilities with which they disagree, even if such a method were proposed to the transmission providers pursuant to a

Commission-approved State Agreement Process, unless the transmission providers have clearly indicated their assent to do so as part of a Commission-approved State Agreement Process in their OATTs.¹⁵⁴¹

c. Requests for Rehearing and Clarification

614. Several commenters argue that Order No. 1920 substantially departs from and is not a logical outgrowth of the NOPR because Order No. 1920 does not require transmission providers to adopt a State Agreement Process, consequently denying Relevant State Entities any meaningful opportunity to determine regional cost allocation.¹⁵⁴² Arizona Commission asserts that, contrary to the NOPR, Order No. 1920 “effectively eliminates the use of a voluntary State Agreement Process, such as the one that has been used by PJM since Order No. 1000,” which it asserts is “directly contrary to comments filed by state regulators.”¹⁵⁴³ Idaho Commission argues that “[i]n a substantial departure from the NOPR, Order No. 1920 allows, but does not require, transmission providers in each transmission planning region to adopt a State Agreement Process for allocating the costs of all, or a subset of, Long-Term Regional Transmission Facilities.”¹⁵⁴⁴ Designated Retail Regulators similarly contend that Order No. 1920 “drastically depart[s] from the NOPR” because it gives transmission providers complete discretion to decide whether to file a State Agreement Process or Long-Term Regional Transmission Cost Allocation method in its OATT, even if agreed to by the Relevant State Entities, which would relegate states to a transmission planning role akin to any other stakeholder.¹⁵⁴⁵

615. Designated Retail Regulators and Arizona Commission also contend that Order No. 1920 violates the APA’s notice-and-comment requirements because it requires transmission providers to set an *ex ante* cost allocation method that would apply as a backstop in certain circumstances, reducing states’ bargaining power and setting up a mechanism to impose a regional cost allocation for preferential

¹⁵³³ Invenenergy Rehearing Request at 10–13.

¹⁵³⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1247.

¹⁵³⁵ NOPR, 179 FERC ¶ 61,028 at P 302. The Commission explained that, for example, a “combination” approach may entail (i) providing a Long-Term Regional Transmission Cost Allocation Method for certain types of Long-Term Regional Transmission Facilities and providing a State Agreement Process for others; or (ii) providing for cost allocation for a Long-Term Regional Transmission Facility, portfolio, or type of such facilities partially based on a Long-Term Regional Transmission Cost Allocation Method and partially based on funding contributions in accordance with a State Agreement Process. *Id.* P 302 n.510.

¹⁵³⁶ *Id.* P 315.

¹⁵³⁷ *Id.* P 318.

¹⁵³⁸ *Id.* P 310.

¹⁵³⁹ The Commission defined Long-Term Regional Transmission Cost Allocation Method as an *ex ante* regional cost allocation method for one or more Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) that are selected in the regional transmission plan for purposes of cost allocation. Order No. 1920, 187 FERC ¶ 61,068 at P 1291.

¹⁵⁴⁰ *Id.* PP 1291–1292.

¹⁵⁴¹ *Id.* P 1429.

¹⁵⁴² Arizona Commission Rehearing Request at 19; Idaho Commission Rehearing Request at 2, 5–6.

¹⁵⁴³ Arizona Commission Rehearing Request at 19.

¹⁵⁴⁴ Idaho Commission Rehearing Request at 5 (quotation marks omitted).

¹⁵⁴⁵ Designated Retail Regulators Rehearing Request at 47–50.

policy and corporate-driven projects when states do not consent.¹⁵⁴⁶

d. Commission Determination

616. We find that the Commission's decision in Order No. 1920 not to require that transmission providers adopt a State Agreement Process is a logical outgrowth of the NOPR, and we thus disagree with arguments to the contrary. The NOPR did not propose to require a State Agreement Process but rather proposed to require transmission providers to include in their OATTs *either* a Long-Term Regional Transmission Cost Allocation Method, *or* a State Agreement Process, *or* a combination thereof.¹⁵⁴⁷ Furthermore, contrary to Arizona Commission's arguments, Order No. 1920 did not eliminate the State Agreement Process and instead permits transmission providers to revise their OATTs to include a State Agreement Process, if Relevant State Entities indicate that they have agreed to such a process.¹⁵⁴⁸

617. We also disagree with Arizona Commission's and Designated Retail Regulators' argument that Order No. 1920's requirement for transmission providers to revise their OATTs to include at least one *ex ante* Long-Term Regional Transmission Cost Allocation Method is not a logical outgrowth of the NOPR proposal to allow transmission providers to choose to include either an *ex ante* regional cost allocation method, *or* a State Agreement Process, *or* a combination of both. Although the Commission in the NOPR proposed to allow transmission providers to choose between filing an *ex ante* Long-Term Regional Transmission Cost Allocation Method, a State Agreement Process, *or* some combination of both, the Commission also sought comment on "whether the Commission should require, instead of the reforms proposed in this section of the NOPR, public utility transmission providers to include a Long-Term Regional Transmission Cost Allocation Method in their OATTs."¹⁵⁴⁹ As courts have explained, notice is sufficient when an agency has "expressly asked for comments on a particular issue or otherwise made clear that the agency was contemplating a particular change."¹⁵⁵⁰ By requesting comment on whether the Commission

should require inclusion of an *ex ante* Long-Term Regional Transmission Cost Allocation Method, the Commission put parties on notice that the Commission was considering *the exact change* that it ultimately adopted in Order No. 1920. Therefore, in adopting the requirement that transmission providers file at least one *ex ante* Long-Term Regional Transmission Cost Allocation Method, the Commission adhered to the APA's notice-and-comment requirements.¹⁵⁵¹ To the extent Arizona Commission's and Designated Retail Regulators' argument was based on concerns about the states' role more broadly in Long-Term Regional Transmission Planning and cost allocation processes, we note that we adopt a number of modifications and clarifications herein to strengthen the states' role in those processes.¹⁵⁵²

2. Substantive Issues

a. Order No. 1920 Requirements

618. In Order No. 1920, the Commission required transmission providers in each transmission planning region to revise their OATTs to include one or more *ex ante* cost allocation methods that apply to Long-Term Regional Transmission Facilities that are selected in the regional transmission plan for purposes of cost allocation (Long-Term Regional Transmission Cost Allocation Method).¹⁵⁵³

619. In addition to the required Long-Term Regional Transmission Cost Allocation Method, Order No. 1920 permits transmission providers to revise their OATTs to include a State Agreement Process. However, the

Commission found in Order No. 1920 that any State Agreement Process that transmission providers voluntarily propose to include in their OATTs would not comply with the requirements of Order No. 1920 unless Relevant State Entities indicate to the transmission provider that Relevant State Entities have agreed to that process during the Engagement Period.¹⁵⁵⁴ The Commission also found in Order No. 1920 that a State Agreement Process cannot be the sole method filed for cost allocation for Long-Term Regional Transmission Facilities.¹⁵⁵⁵ The Commission explained in Order No. 1920 that, if a State Agreement Process that transmission providers voluntarily include in their OATTs fails to result in a cost allocation method agreed to by Relevant State Entities and any other authorized entities, or if the Commission ultimately finds the cost allocation method that results from a State Agreement Process is unjust, unreasonable, or unduly discriminatory or preferential, then the relevant Long-Term Regional Transmission Cost Allocation Method on file would apply as a backstop.¹⁵⁵⁶

620. Order No. 1920 does not require transmission providers to obtain state agreement to a cost allocation method for any Long-Term Regional Transmission Facilities and states that the ultimate decision as to which Long-Term Regional Transmission Cost Allocation Method(s) to file on compliance, and whether to file a State Agreement Process to which Relevant State Entities have agreed, lies with transmission providers.¹⁵⁵⁷

b. Requests for Rehearing and Clarification

621. On rehearing, a number of parties argue that the Commission's decision in Order No. 1920 to require transmission providers to file an *ex ante* cost allocation method for Long-Term Regional Transmission Facilities will undermine Relevant State Entities' efforts to determine an alternative cost allocation method through a State Agreement Process.¹⁵⁵⁸ NARUC requests that the Commission adopt the NOPR proposal of mandatory agreement

¹⁵⁴⁶ Arizona Commission Rehearing Request at 18; Designated Retail Regulators Rehearing Request at 47, 49–50.

¹⁵⁴⁷ NOPR, 179 FERC ¶ 61,028 at P 302.

¹⁵⁴⁸ Order No. 1920, 187 FERC ¶ 61,068 at PP 1291–1292.

¹⁵⁴⁹ NOPR, 179 FERC ¶ 61,028 at P 318.

¹⁵⁵⁰ *Brennan v. Dickson*, 45 F.4th at 69 (quoting *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d at 1081).

¹⁵⁵¹ Further, Order No. 1920's requirement that transmission providers revise their OATTs to include at least one *ex ante* Long-Term Regional Transmission Cost Allocation Method separately and independently satisfies the APA's notice-and-comment requirements because courts have indicated that a final rule is a logical outgrowth of a proposal where, as here, an agency adopts only part of a proposal such that "the final rule [is] not wholly unrelated or surprisingly distant" from what the agency initially suggested. *Ariz. Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1297–1300 (D.C. Cir. 2000) (finding sufficient notice where agency first proposed that Indian tribes be required to meet the "same requirements" as states with respect to judicial review of permits issued pursuant to the Clean Air Act, but then adopted a final rule that exempted tribes from some, though not all, such requirements). Order No. 1920 is a logical outgrowth of the NOPR in this respect because the Commission adopted one of three proposed methods for complying with the requirement—*i.e.*, part of the NOPR proposal—and the challenged provision therefore hews closely to the NOPR proposal such that it is "not wholly unrelated or surprisingly distant" from the NOPR proposal. *Id.*

¹⁵⁵² See *supra* Stakeholder Process and Transparency section; Requests for Additional Flexibility Regarding Long-Term Scenarios Requirements section; *infra* Consultation with Relevant State Entities After the Engagement Period section.

¹⁵⁵³ Order No. 1920, 187 FERC ¶ 61,068 at P 1291.

¹⁵⁵⁴ *Id.*; see also *id.* PP 1292, 1403.

¹⁵⁵⁵ *Id.* PP 1292, 1361, 1404.

¹⁵⁵⁶ *Id.* PP 1291–1292.

¹⁵⁵⁷ *Id.* PP 1359, 1429; see also *id.* PP 1296, 1363.

¹⁵⁵⁸ Designated Retail Regulators Rehearing Request at 35–36; Idaho Commission Rehearing Request at 5–6; NARUC Rehearing Request at 12–17; Ohio Commission Federal Advocate Rehearing Request at 8; Undersigned States Rehearing Request at 31–32; Wyoming Commission Rehearing Request at 2–4.

on filed method(s) and/or a State Agreement Process and eliminate the backstop *ex ante* method.¹⁵⁵⁹ NARUC argues that Order No. 1920's requirement that transmission providers have a backstop Long-Term Regional Transmission Cost Allocation Method in their OATTs undermines Relevant State Entities' negotiation of an alternative cost allocation method and turns such negotiations into a "check the box" exercise.¹⁵⁶⁰ NARUC asserts that allowing transmission providers to ignore or not even report on state input is the definition of an arbitrary and capricious action, and constitutes unreasonable decision making.¹⁵⁶¹

622. Ohio Commission Federal Advocate states that Order No. 1920 arbitrarily and capriciously requires an Engagement Period for states to participate in reaching a cost allocation agreement for Long-Term Regional Transmission Facilities while providing no assurance that it will amount to anything since the final rule allows the transmission provider to have the final say.¹⁵⁶² Ohio Commission Federal Advocate argues that, because of this, states ultimately have no authority on cost allocation for Long-Term Regional Transmission Facilities.¹⁵⁶³

623. Designated Retail Regulators and Undersigned States state that Order No. 1920's requirement that transmission providers file one or more *ex ante* cost allocation methods that apply to selected Long-Term Regional Transmission Facilities eliminates the effectiveness of the State Agreement Process, as states are unlikely to agree to a negotiated cost allocation proposal under the State Agreement Process if the default *ex ante* cost allocation results in lower costs for those states.¹⁵⁶⁴ Designated Retail Regulators and Undersigned States argue that if states jointly agree on a cost allocation process, the rules should require the transmission provider to accept those cost allocation processes, subject to Commission approval.¹⁵⁶⁵

624. Wyoming Commission states that the Commission's decision to remove the voluntary state agreement without a backstop reform in the final rule was a significant change from the NOPR, as

the NOPR proposal would have allowed states to represent their public policy interests and, in the event of a conflict, prevent other states from exporting their policy decisions and an unreasonable share of related costs to nonconsenting neighbors. Wyoming Commission argues, however, that as a result of reducing states' roles to mere stakeholders in the final rule, the Commission has forced states into agreeing to unjust and unreasonable cost allocations by defaulting to an *ex ante* cost allocation in lieu of requiring a voluntary agreement of the states as a prerequisite.¹⁵⁶⁶ Wyoming Commission asserts that a voluntary state agreement process is essential to avoid interfering with states' rights with respect to transmission planning and selection, and to prevent nonconsenting states from being "swept up" in their neighbors' identified public policy transmission projects.¹⁵⁶⁷

625. Idaho Commission argues that by permitting, but not requiring, transmission providers to adopt a State Agreement Process in compliance with Order No. 1920, the states lack a meaningful opportunity to determine a reasonable cost allocation.¹⁵⁶⁸ Idaho Commission claims that the Commission's reasoning in not requiring a State Agreement Process is unsupported in the record and ignores that Relevant State Entities have statutory duties to ensure fair, just, and reasonable rates for customers.¹⁵⁶⁹ Idaho Commission further contends that requiring state agreement for cost allocation for Long-Term Regional Transmission Facilities, as the Commission proposed in the NOPR, would have allowed states to represent public policy interests and prevent other states from forcing policy decisions on nonconsenting neighbors. However, Idaho Commission asserts that as a result of Order No. 1920, states now have no meaningful opportunity to determine reasonable cost allocation and will be faced with cost allocation that violates the cost causation principle.¹⁵⁷⁰

c. Commission Determination

626. While we sustain the determination in Order No. 1920 that transmission providers in each transmission planning region must file one or more *ex ante* cost allocation methods that apply to selected Long-

Term Regional Transmission Facilities, we believe that certain modifications adopted in this order help address, at least in part, concerns raised on rehearing by ensuring that the Commission may consider any Long-Term Regional Transmission Cost Allocation Methods supported by Relevant State Entities.¹⁵⁷¹ We believe the balance struck in this order will assist the Commission, with the input of Relevant State Entities, in establishing just and reasonable Long-Term Regional Transmission Cost Allocation Methods that meet the requirements of Order No. 1920.

627. In Order No. 1920, the Commission required that, if a State Agreement Process fails to result in a cost allocation method agreed to by Relevant State Entities and any other entities authorized by Relevant State Entities to participate in a State Agreement Process,¹⁵⁷² a transmission provider chooses not to file an agreed upon cost allocation method, or if the Commission ultimately finds the cost allocation method that results from a State Agreement Process is unjust, unreasonable, or unduly discriminatory or preferential, then the relevant Long-Term Regional Transmission Cost Allocation Method on file would apply as a backstop. While we sustain the requirement to have a backstop Long-Term Regional Transmission Cost Allocation Method on file, we revise the portion of this requirement related to the transmission providers' choice as to whether to file Long-Term Regional Transmission Cost Allocation Methods and/or State Agreement Processes agreed to by Relevant State Entities, as discussed in further detail below.¹⁵⁷³

628. Turning to the rehearing requests challenging the requirement to have an *ex ante* cost allocation method on file, we disagree with Wyoming Commission and Idaho Commission that this requirement forces states into agreeing to unjust and unreasonable cost allocations that allow states to foist the cost of their policy decisions on nonconsenting neighbors.¹⁵⁷⁴ Under the NOPR proposal, the Commission proposed that transmission providers in each transmission planning region file OATTs to include either (1) a Long-

¹⁵⁵⁹ NARUC Rehearing Request at 12–17.

¹⁵⁶⁰ *Id.* at 16.

¹⁵⁶¹ *Id.* at 15.

¹⁵⁶² Ohio Commission Federal Advocate Rehearing Request at 7–8.

¹⁵⁶³ *Id.* at 8.

¹⁵⁶⁴ Designated Retail Regulators Rehearing Request at 35–36; Undersigned States Rehearing Request at 31–32.

¹⁵⁶⁵ Designated Retail Regulators Rehearing Request at 35; Undersigned States Rehearing Request at 31.

¹⁵⁶⁶ Wyoming Commission Rehearing Request at 2–3.

¹⁵⁶⁷ *Id.* at 3.

¹⁵⁶⁸ Idaho Commission Rehearing Request at 5–6.

¹⁵⁶⁹ *Id.*

¹⁵⁷⁰ *Id.*

¹⁵⁷¹ See *infra* Requirements Concerning Relevant State Entities' Preferred Cost Allocation Methods section.

¹⁵⁷² Order No. 1920, 187 FERC ¶ 61,068 at P 1402 (noting that Relevant State Entities have the option to include the participation of other entities in a State Agreement Process).

¹⁵⁷³ See *infra* Requirements Concerning Relevant State Entities' Preferred Cost Allocation Methods section.

¹⁵⁷⁴ See Idaho Commission Rehearing Request at 5–6; Wyoming Commission Rehearing Request at 3.

Term Regional Transmission Cost Allocation Method to allocate the costs of Long-Term Regional Transmission Facilities, or (2) a State Agreement Process by which one or more relevant state entities may voluntarily agree to a cost allocation method, or (3) a combination thereof.¹⁵⁷⁵ Pursuant to the FPA, the Commission may accept only proposed rates, terms, and conditions that are just and reasonable. Therefore, the Commission could not accept a cost allocation method that would force states into agreeing to unjust and unreasonable cost allocations, and any just and reasonable cost allocation method must ensure that the costs of Long-Term Regional Transmission Facilities are allocated in a manner that is at least roughly commensurate with the estimated benefits.¹⁵⁷⁶

629. We also disagree with arguments that the State Agreement Process will ultimately be a “check the box” exercise or that requiring an *ex ante* Long-Term Regional Transmission Cost Allocation Method otherwise limits the effectiveness of a State Agreement Process.¹⁵⁷⁷ Order No. 1920 places an affirmative obligation on transmission providers to supply a forum for states to negotiate cost allocation,¹⁵⁷⁸ providing ample room for states to allocate costs in a manner that they agree to,¹⁵⁷⁹ and, as discussed below, in this order we require transmission providers to include in the transmittal or as an attachment to their compliance filing any Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process that Relevant State Entities agree upon.¹⁵⁸⁰ Relevant State Entities may structure the processes used to determine those cost allocation methods in a manner that would require

a level of agreement of their choosing, including, as one potential option, unanimity.¹⁵⁸¹ In this order, we also establish a requirement that transmission providers shall consult with Relevant State Entities (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es), or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method or process.¹⁵⁸² And as we have already discussed, transmission providers shall develop a reasonable number of additional scenarios, when requested by Relevant State Entities, for the purposes of informing the application of Long-Term Regional Transmission Cost Allocation Method(s) or the development of cost allocation methods through the State Agreement Process(es).¹⁵⁸³

630. To the extent that Wyoming Commission argues that requiring an *ex ante* cost allocation method for Long-Term Regional Transmission Facilities intrudes on states’ rights with respect to transmission planning and selection, we disagree. We note that the D.C. Circuit held that requiring *ex ante* cost allocation methods under Order No. 1000 regional transmission planning does not intrude on state authority.¹⁵⁸⁴ We continue to find that Long-Term Regional Transmission Planning is a subset of regional transmission planning that closes specific gaps of the existing Order No. 1000 framework without otherwise disturbing the regional transmission planning structure required by Order No. 1000, which was fully affirmed on appeal.¹⁵⁸⁵

631. With respect to the assertion that states are unlikely to agree to a negotiated cost allocation proposal under the State Agreement Process if the default *ex ante* cost allocation results in lower costs for those states, we note that Order No. 1920 provides Relevant State Entities with the opportunity to negotiate *ex ante* cost allocation methods in the first instance, and we take steps in this order to further enable states to do so.¹⁵⁸⁶ Further, states are likely to have an incentive to negotiate with other states in order to ensure timely and efficient development of Long-Term Regional Transmission Facilities that benefit their ratepayers, but would not be developed without the support of other states. We find that the opportunity for Relevant State Entities to negotiate *ex ante* cost allocation methods in the first instance and agree to a State Agreement Process, coupled with the benefits of certainty provided by a backstop *ex ante* cost allocation method, strike a reasonable balance, and we otherwise sustain, as explained in greater detail below, the Commission’s finding in Order No. 1920 that requiring transmission providers to include a Long-Term Regional Transmission Cost Allocation Method in their OATTs is necessary to ensure that Commission-jurisdictional rates are just and reasonable.¹⁵⁸⁷

632. We disagree with Idaho Commission’s contention that Order No. 1920 denies Relevant State Entities any meaningful opportunity to determine reasonable cost allocation methods.¹⁵⁸⁸ We recognize the critical role that states play in regional transmission planning and that Relevant State Entities have their own statutory obligations. As discussed in Order No. 1920, and expanded upon here,¹⁵⁸⁹ we are placing an affirmative obligation on transmission providers to provide a meaningful opportunity for Relevant State Entities to share their views on cost allocation during the Engagement Period, during subsequent implementation of a State Agreement Process to which the Relevant State Entities have agreed that has been filed by a transmission provider and accepted by the Commission,¹⁵⁹⁰ and, as described herein, before future cost

¹⁵⁷⁵ NOPR, 179 FERC ¶ 61,028 at P 302.

¹⁵⁷⁶ Order No. 1920, 187 FERC ¶ 61,068 at PP 1510, 1515; *see, e.g., ICC v. FERC I*, 576 F.3d at 476 (“To the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.”); Order No. 1000, 136 FERC ¶ 61,051 at P 690 (“If a regional transmission plan determines that a transmission facility serves several functions, as many commenters point out it may, the regional cost allocation method must take the benefits of these functions of the transmission facility into account in allocating costs roughly commensurate with benefits.”).

¹⁵⁷⁷ NARUC Rehearing Request at 16; Ohio Commission Federal Advocate Rehearing Request at 7–8; Designated Retail Regulators Rehearing Request at 35–36; Undersigned States Rehearing Request at 31–32.

¹⁵⁷⁸ Order No. 1920, 187 FERC ¶ 61,068 at PP 1354, 1356–1357.

¹⁵⁷⁹ *Id.* PP 1415–1416.

¹⁵⁸⁰ *See infra* Requirements Concerning Relevant State Entities’ Preferred Cost Allocation Methods section.

¹⁵⁸¹ Order No. 1920, 187 FERC ¶ 61,068 at P 1418 (“We will not specify the level of agreement among Relevant State Entities or other entities that is necessary before a transmission provider files a cost allocation method derived from a State Agreement Process. As a state-led process, we believe that Relevant State Entities should have the ability to determine this important facet of their State Agreement Process.”).

¹⁵⁸² *See infra* Consultation with Relevant States Entities After the Engagement Period section.

¹⁵⁸³ *See supra* Requests for Additional Flexibility Regarding Long-Term Scenarios Requirements section.

¹⁵⁸⁴ *See S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 55–59, 62–64, 82–89; *id.* at 64 (“[W]e hold that [Order No. 1000] does not interfere with the traditional state authority that is preserved by [FPA] Section 201 . . .”).

¹⁵⁸⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 256 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 55–64 (rejecting arguments that the requirement to engage in regional transmission planning, as prescribed in Order No. 1000, exceeded the Commission’s jurisdiction under FPA section 206, interfered with traditional state authority reserved under FPA section 201, or improperly interpreted and applied FPA section 202(a)).

¹⁵⁸⁶ *See infra* Requirements Concerning Relevant State Entities’ Preferred Cost Allocation Methods section; Duration of the Engagement Period section.

¹⁵⁸⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1293.

¹⁵⁸⁸ Idaho Commission Rehearing Request at 5–6.

¹⁵⁸⁹ *See infra* Requirements Concerning Relevant State Entities’ Preferred Cost Allocation Methods section; Duration of the Engagement Period section.

¹⁵⁹⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 1296.

allocation amendments.¹⁵⁹¹ Relevant State Entities therefore have a meaningful opportunity to participate in cost allocation decisions related to Long-Term Regional Transmission Facilities.

633. We continue to find that if transmission providers were to rely solely on a State Agreement Process to determine the cost allocation for Long-Term Regional Transmission Facilities and that process did not result in agreement on a cost allocation method, there would be no cost allocation method for Long-Term Regional Transmission Facilities selected as the more efficient or cost-effective solutions to Long-Term Transmission Needs.¹⁵⁹² As a result, these selected Long-Term Regional Transmission Facilities would be less likely to be developed, and the benefits that these facilities would provide would not be realized.¹⁵⁹³ Furthermore, we continue to find that, if these selected Long-Term Regional Transmission Facilities were not ultimately built, transmission providers would likely rely on relatively inefficient or less cost-effective transmission facilities to address the identified Long-Term Transmission Needs, or they may not even address these needs at all, leading to unjust and unreasonable Commission-jurisdictional rates.¹⁵⁹⁴

634. In addition, we are concerned that a state-agreement requirement could lead to a situation in which a transmission project was planned based on benefits that it provides to customers in several states, and that, if one or more of those states declined to voluntarily agree to a cost allocation method, it would raise free-ridership concerns.¹⁵⁹⁵ For that reason, sole reliance on a State Agreement Process has the potential to suffer from the same flaws that led the Commission to require *ex ante* cost allocation for selected regional transmission facilities in Order No. 1000, as the allocation of transmission costs can be contentious and prone to litigation in multi-state transmission

planning regions.¹⁵⁹⁶ The level of certainty for transmissions providers in having a Long-Term Regional Transmission Cost Allocation Method on file, even when a State Agreement Process is used, remains critical to the development of needed Long-Term Regional Transmission Facilities.¹⁵⁹⁷

B. Requirements Concerning Relevant State Entities

1. Requested Requirement To Obtain the Agreement of Relevant State Entities

a. Order No. 1920 Requirements

635. In Order No. 1920, the Commission declined to adopt the NOPR proposal to require transmission providers to seek the agreement of Relevant State Entities within the transmission planning region regarding the relevant cost allocation method to be applied to Long-Term Regional Transmission Facilities. Instead, the Commission modified the NOPR proposal to establish a six-month time period (Engagement Period), during which transmission providers must, among other requirements, provide a forum for negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process that enables meaningful participation by Relevant State Entities.¹⁵⁹⁸

b. Requests for Rehearing and Clarification

636. Undersigned States and Designated Retail Regulators argue that the Engagement Period is not a “fair replacement of a requirement for regulator consent” because Order No. 1920 does not require transmission providers to propose on compliance a Long-Term Regional Transmission Cost Allocation Method agreed to by the states.¹⁵⁹⁹ Undersigned States and Designated Retail Regulators further argue that Order No. 1920’s lack of a requirement for transmission providers to obtain the consent of retail regulators on the cost allocation method(s) that apply to Long-Term Regional Transmission Facilities usurps state authority because it enables the ratepayers of non-consenting states to be assessed the costs of the public policy projects of other states and speculative investment based on conjecture about

future resource trends.¹⁶⁰⁰ Designated Retail Regulators argue that existing regulator organizations such as OMS “may not be the best forums to confect state agreements” because the “authority to reach agreement on cost allocation rests in each State” and cannot be delegated to such organizations in order to reach general consensus on issues.¹⁶⁰¹

c. Commission Determination

637. While we sustain our decision not to adopt the NOPR proposal and instead establish the Engagement Period for cost allocation negotiations, we believe that certain modifications in this order help address, at least in part, the concerns raised by Designated Retail Regulators and Undersigned States by providing additional opportunities for Relevant State Entities to help establish just and reasonable cost allocation methods for Long-Term Regional Transmission Facilities.¹⁶⁰²

638. Turning to Designated Retail Regulators’ and Undersigned States’ arguments, the Commission did not propose in the NOPR to require transmission providers to obtain the consent of Relevant State Entities within the transmission planning region regarding the relevant cost allocation method to be applied to Long-Term Regional Transmission Facilities. Rather, the Commission proposed to require transmission providers to seek the agreement of Relevant States Entities within the transmission planning region regarding the relevant cost allocation method to be applied to Long-Term Regional Transmission Facilities.¹⁶⁰³ In Order No. 1920, the Commission did not adopt the requirement for transmission providers to seek the agreement of Relevant State Entities (while affording transmission providers flexibility in the process by which they seek agreement

¹⁵⁹¹ See *infra* Consultation with Relevant State Entities After the Engagement Period section.

¹⁵⁹² Order No. 1920, 187 FERC ¶ 61,068 at P 1293.

¹⁵⁹³ *Id.*

¹⁵⁹⁴ *Id.*

¹⁵⁹⁵ See *El Paso Elec. Co. v. FERC*, 76 F.4th at 361–63 (“No amount of emphasizing other competing interests permits FERC to sacrifice the foundational principle of cost-causation by refusing to allocate costs to those who cause the costs to be incurred and who reap the resulting benefits.” (citations omitted)); Order No. 1000, 136 FERC ¶ 61,051 at P 535 (“[I]f the Commission could not address free rider problems associated with new transmission investment, [i]t could not ensure that rates, terms and conditions of jurisdictional service are just and reasonable and not unduly discriminatory.”).

¹⁵⁹⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1293 (citation omitted).

¹⁵⁹⁷ *Id.*

¹⁵⁹⁸ *Id.* P 1354.

¹⁵⁹⁹ Designated Retail Regulators Rehearing Request at 36; Undersigned States Rehearing Request at 32.

¹⁶⁰⁰ Designated Retail Regulators Rehearing Request at 36–39; Undersigned States Rehearing Request at 32–35.

¹⁶⁰¹ Designated Retail Regulators Rehearing Request at 38.

¹⁶⁰² See *infra* Requirements Concerning Relevant State Entities’ Preferred Cost Allocation Methods section; Duration of the Engagement Period section; Consultation with Relevant State Entities After the Engagement Period section.

¹⁶⁰³ Order No. 1920, 187 FERC ¶ 61,068 at P 1354 (“We decline to adopt the NOPR proposal to require transmission providers to seek the agreement of Relevant State Entities within the transmission planning region regarding the relevant cost allocation method to be applied to Long-Term Regional Transmission Facilities.” (emphasis added)). We address arguments concerning the Commission’s decision not to require transmission providers to seek the agreement of Relevant State Entities in the Requests Arguing the Engagement Period is Inferior to a Requirement that Transmission Providers Seek the Agreement of Relevant State Entities section below.

from the Relevant State Entities) and instead adopted a requirement for transmission providers to provide a forum for states to meaningfully participate in negotiating cost allocation methods.¹⁶⁰⁴

639. With respect to requests that we *require* agreement of state regulators for any cost allocation method for Long-Term Regional Transmission Facilities, we continue to find that the views of state regulators regarding the appropriate cost allocation approach are important, but ultimately the transmission provider is the public utility that must respond and comply with Order No. 1920.¹⁶⁰⁵ Furthermore, the Commission has a statutory responsibility to review the compliance filings from transmission providers to ensure that any proposed cost allocation is just and reasonable and not unduly discriminatory or preferential, and Order No. 1920 recognizes these statutory roles.¹⁶⁰⁶ Nonetheless, we reiterate that robust state engagement can valuably inform a cost allocation approach and, as discussed further below, we take steps in this order to further that engagement.

640. In response to Designated Retail Regulators' and Undersigned States' argument that Order No. 1920's lack of a requirement for transmission providers to obtain the consent of states on the cost allocation method(s) that apply to Long-Term Regional Transmission Facilities enables the ratepayers of non-consenting states to be assessed the costs of other states' public policies and speculative investment,¹⁶⁰⁷ in addition to the steps to further state engagement taken herein, we note that all cost allocation methods for Long-Term Regional Transmission Facilities, including Long-Term Regional Transmission Cost Allocation Methods and cost allocation methods resulting from State Agreement Processes, must allocate the costs of Long-Term Regional Transmission Facilities in a manner that is at least roughly commensurate with the estimated benefits, consistent with legal precedent.¹⁶⁰⁸ We find that this requirement addresses Designated Retail Regulators' and Undersigned States' concern that Order No. 1920's requirements will result in non-consenting states paying for costs they did not cause.

641. In response to Designated Retail Regulators' assertion that the "authority

to reach agreement on cost allocation rests in each State" and that this authority cannot be "delegated to organizations that States participate in to attempt to reach general consensus on issues,"¹⁶⁰⁹ we note that Order No. 1920 did not require transmission providers to use existing mechanisms for state involvement in regional transmission planning and cost allocation processes, such as the SPP Regional State Committee and OMS, as a forum for negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process.¹⁶¹⁰ In fact, Order No. 1920 specified that it is Relevant State Entities—and not transmission providers—who may choose to use such an existing mechanism to negotiate a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process.¹⁶¹¹ Similarly, the Commission left to the Relevant State Entities participating in the Engagement Period matters including what constitutes agreement among Relevant State Entities, how such agreement is reached, and which Relevant State Entities must reach such agreement.¹⁶¹²

2. Requirements Concerning Relevant State Entities' Preferred Cost Allocation Methods

a. Order No. 1920 Requirements

642. In Order No. 1920, the Commission found that, if the Relevant State Entities participating in an Engagement Period agree on a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and provide that Method(s) and/or State Agreement Process to the transmission providers no later than the deadline for communicating agreement, the transmission providers may file the agreed-to Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process on compliance. The Commission noted, however, that the ultimate decision as to whether to file a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process to which Relevant State Entities have agreed will continue to lie with the transmission providers.¹⁶¹³ In addition, the Commission found that its directives in Order No. 1920 regarding the development of a State Agreement Process and any cost allocation methods

to which the Relevant State Entities agree pursuant to that process do not alter existing FPA section 205 filing rights that would govern subsequent filings regarding the cost allocation for Long-Term Regional Transmission Facilities.¹⁶¹⁴ The Commission did not impose any obligation on transmission providers to file a cost allocation method for Long-Term Regional Transmission Facilities with which they disagree, even if such a method were proposed to the transmission providers pursuant to a Commission-approved State Agreement Process, unless the transmission providers have clearly indicated their assent to do so as part of a Commission-approved State Agreement Process in their OATT.¹⁶¹⁵

b. Requests for Rehearing and Clarification

643. NARUC, PJM States, Designated Retail Regulators, Undersigned States, and West Virginia Commission request rehearing of Order No. 1920's decision not to require transmission providers to adopt any cost allocation method that Relevant State Entities agree upon during the Engagement Period.¹⁶¹⁶ NARUC argues that Order No. 1920 "arbitrarily and without adequate explanation removes protections proposed in the NOPR for states and their ratepayers by not requiring [t]ransmission [providers] to incorporate state consensus to cost allocation methods for filing as part of the OATT."¹⁶¹⁷ PJM States argue that, absent such a requirement, state engagement in the development of cost allocation methods for Long-Term Regional Transmission Facilities is not likely to materialize. PJM States argue that, by contrast, incenting state agreement (and the filing of that agreement) makes it more likely that Order No. 1920's goals are met, as a state-agreed upon cost allocation method has a lower burden of proof than a transmission provider filing without state agreement.¹⁶¹⁸ West

¹⁶¹⁴ *Id.* P 1430 ("We further clarify that unless voluntarily waived, a transmission provider retains its FPA section 205 filing rights to submit an *ex ante* cost allocation method for Long-Term Regional Transmission Facilities at any time, consistent with any limitations a transmission provider may have agreed to, for example, as part of its membership in an RTO/ISO.") (citation omitted).

¹⁶¹⁵ *Id.* PP 1359, 1429.

¹⁶¹⁶ NARUC Rehearing Request at 12; PJM States Rehearing Request at 2–3; Designated Retail Regulators Rehearing Request at 35; Undersigned States Rehearing Request at 31; West Virginia Commission Rehearing Request at 13–14.

¹⁶¹⁷ NARUC Rehearing Request at 12.

¹⁶¹⁸ PJM States Rehearing Request at 2–3 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 1469, 1472, 1476).

¹⁶⁰⁴ See *id.* PP 1354, 1357.

¹⁶⁰⁵ *Id.* P 1363.

¹⁶⁰⁶ *Id.*

¹⁶⁰⁷ Designated Retail Regulators Rehearing Request at 37–38; Undersigned States Rehearing Request at 33.

¹⁶⁰⁸ See *supra* P 628 n.1577.

¹⁶⁰⁹ See Designated Retail Regulators Rehearing Request at 38.

¹⁶¹⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 1357.

¹⁶¹¹ *Id.*

¹⁶¹² *Id.* P 1360.

¹⁶¹³ *Id.* PP 1359, 1363.

Virginia Commission agrees with PJM States and argues that the Commission should either require transmission providers to adopt any cost allocation method that Relevant State Entities agree upon during the Engagement Period or “grant the States 205 filing rights as it pertains to State-agreed cost allocation methods.”¹⁶¹⁹

644. PIOs, PJM States, and NARUC request clarification that, where a particular cost allocation method garnered state support during the Engagement Period and the transmission provider elects not to adopt that method in its compliance filing, the transmission provider must include the states’ preferred cost allocation method in its compliance filing and explain why that method was not used.¹⁶²⁰ West Virginia Commission requests the same clarification in the alternative to its request that the Commission require transmission providers to adopt any cost allocation method that Relevant State Entities agree upon during the Engagement Period.¹⁶²¹ West Virginia Commission requests that the Commission require transmission providers to include the states’ preferred cost allocation method “for informational purposes.”¹⁶²² NARUC further requests that the Commission clarify that transmission providers’ compliance filings must also include a general description of the discussions during the Engagement Period, including transmission providers’ outreach to Relevant State Entities.¹⁶²³ Similarly, NARUC, PJM States, and Virginia and North Carolina Commissions request that the Commission clarify that transmission providers must disclose the extent to which states agreed or disagreed with the filed cost allocation method.¹⁶²⁴ PIOs also request that the Commission clarify that: (1) transmission providers must “clearly disclose and explain the outcome” of the Engagement Period; (2) the Commission will carefully evaluate the existence of a state agreement regarding cost allocation and any departure from that agreement in reviewing cost allocation methods proposed by transmission providers on compliance; and (3) transmission

providers must explain how their chosen cost allocation methods are just and reasonable and not unduly discriminatory or preferential. PIOs contend that their requested clarifications would offer states additional confidence that participation in the Engagement Period will be meaningful.¹⁶²⁵

645. NESCOE requests rehearing of Order No. 1920’s decision to not require transmission providers to file states’ preferred cost allocation method along with transmission providers’ own preferred cost allocation method. NESCOE argues that because states are not public utilities, absent language in the transmission providers’ organizational documents or OATTs, states are unable to file cost allocation methods themselves. NESCOE argues that “[r]elegating states to commenting on a transmission provider’s cost allocation filing does not enable the states to put before the Commission their preferred cost allocation method; rather, it shifts the burden to states to show that the transmission provider’s FPA section 205 filing is not just and reasonable.”¹⁶²⁶ NESCOE contends that Order No. 1920 envisions that the only path for states to have their preferred cost allocation method approved would be through a complaint proceeding in which states would bear the burden of first proving that a transmission provider’s Commission-approved cost allocation method is unjust and unreasonable.¹⁶²⁷ NESCOE argues that requiring each transmission provider to file states’ preferred cost allocation method alongside its own would comport with precedent holding that the Commission may not require transmission providers “to cede rights expressly given to them” in FPA section 205.”¹⁶²⁸ In the alternative, NESCOE requests that the Commission strongly encourage transmission providers to “voluntarily codify existing or new approaches on compliance” that would facilitate transmission providers’ filing of alternative region-wide state agreement on cost allocation, such as the approaches used in the NYISO and SPP regions.¹⁶²⁹ NESCOE opines that

“[i]ncluding the state-agreed upon cost allocation method in a transmission provider’s section 205 filing is a lawful and rational means to effectuate in a concrete way the respect for the state role the Commission articulates.”¹⁶³⁰

646. Harvard ELI requests that the Commission grant rehearing by requiring transmission providers to revise their OATTs to include a process for filing all regional cost allocation methods approved by Relevant State Entities.¹⁶³¹ Harvard ELI contends that, by not requiring transmission providers to file all cost allocation methods agreed to by Relevant State Entities, Order No. 1920 fails to remedy unjust and unreasonable cost allocation processes.¹⁶³² Harvard ELI argues that such a requirement would not violate the D.C. Circuit’s holding in *Atlantic City* because it would neither “deny utilities their right to unilaterally file rate and term changes” nor “force public utilities to file particular rates.”¹⁶³³ Harvard ELI argues that, because the Commission “has authority to approve utility filing rights arrangements under FPA section 205,” it also has the authority under FPA section 206 to order changes to filing processes and may do so here to require transmission providers to file all cost allocation methods approved by the Relevant State Entities.¹⁶³⁴ In the alternative, Harvard ELI requests that the Commission clarify that it did not intend to imply that it lacks authority under FPA section 206 to amend the *pro forma* OATT to include a process for filing all regional cost allocation methods approved by Relevant State Entities.¹⁶³⁵

647. NARUC requests that the Commission provide a mechanism to ensure that transmission providers “remain in compliance with the requirement to include [R]elevant [S]tate [E]ntities in cost allocation for Long-Term Regional Transmission Facilities.”¹⁶³⁶ NARUC asserts that the Commission should either require transmission providers to periodically open new Engagement Periods or require transmission providers to file a

(NYISO); SPP, Governing Documents Tariff, Bylaws, First Revised Volume No. 4 (0.0.0), § 7.2)).

¹⁶³⁰ *Id.* at 16.

¹⁶³¹ Harvard ELI Rehearing Request at 1–3.

¹⁶³² *Id.* at 6 (stating that existing cost allocation requirements do not provide a “dedicated process through which states have an opportunity to participate in the development of regional cost allocation methods” (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 126)).

¹⁶³³ *Id.* at 4–5 (alteration omitted) (quoting *Atl. City Elec. Co. v. FERC*, 295 F.3d at 10).

¹⁶³⁴ *Id.* at 4.

¹⁶³⁵ *Id.* at 1, 8–9.

¹⁶³⁶ NARUC Rehearing Request at 21–22.

¹⁶¹⁹ West Virginia Commission Rehearing Request at 13–14.

¹⁶²⁰ NARUC Rehearing Request at 17–18; PIOs Rehearing Request at 55–57; PJM States Rehearing Request at 7–8.

¹⁶²¹ West Virginia Commission Rehearing Request at 9.

¹⁶²² *Id.*

¹⁶²³ NARUC Rehearing Request at 17–18.

¹⁶²⁴ *Id.* at 17; PJM States Rehearing Request at 7; Virginia and North Carolina Commissions Rehearing Request at 10.

¹⁶²⁵ PIOs Rehearing Request at 54–57.

¹⁶²⁶ NESCOE Rehearing Request at 14–15.

¹⁶²⁷ *Id.* Vermont Commission states that it supports the NESCOE Rehearing Request, including strengthening the state role in all phases of Long-Term Regional Transmission Planning, and specifically cost allocation. Vermont Commission Rehearing Request at 1–2.

¹⁶²⁸ NESCOE Rehearing Request at 15 (quoting *Atl. City Elec. Co. v. FERC*, 295 F.3d at 9).

¹⁶²⁹ *Id.* at 15–16 (citing NESCOE NOPR Initial Comments at 69–70 (citing *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040, at P 119 (2015)

modification to their OATTs if states reach the requisite agreement on a different cost allocation method than that reflected in the transmission providers' OATTs.¹⁶³⁷

648. PIOs request clarification that transmission providers may, in their compliance filings, voluntarily commit to a process that will ensure that, where a state agreement on cost allocation exists, the agreed-upon cost allocation method will be put before the Commission for approval.¹⁶³⁸

c. Commission Determination

649. As the Commission recognized in Order No. 1920, and we reiterate in this order, it is critical to the success of the Long-Term Regional Transmission Planning reforms that states have an opportunity to have a significant role in the establishment of just and reasonable Long-Term Regional Transmission Cost Allocation Methods and State Agreement Processes.¹⁶³⁹ At the same time, the Commission has an independent responsibility to ensure that those cost allocation methods conform to the cost causation principle and are otherwise just and reasonable and not unduly discriminatory or preferential.

650. To address these considerations and the concerns raised on rehearing, we simultaneously (1) expand Relevant State Entities' opportunities to inform and provide alternatives to the transmission providers' proposed Long-Term Regional Transmission Cost Allocation Method, and (2) sustain Order No. 1920's determination that transmission providers retain the right to determine which cost allocation methods for Long-Term Regional Transmission Facilities they will propose on compliance. Accordingly, while we decline rehearing parties' requests that the Commission require transmission providers to adopt any cost allocation method that Relevant State Entities agree upon during the Engagement Period, we take steps to ensure that the Commission may consider the Relevant State Entities' preferred Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process, to the extent those differ from the Method(s) filed by transmission providers on compliance.

¹⁶³⁷ *Id.* In the Consultation with Relevant State Entities After the Engagement Period section below, we discuss NARUC's request that the Commission require transmission providers to periodically open a new negotiation period with Relevant State Entities concerning cost allocation for Long-Term Regional Transmission Facilities.

¹⁶³⁸ PIOs Rehearing Request at 55–56.

¹⁶³⁹ *See, e.g.*, Order No. 1920, 187 FERC ¶ 61,068 at P 1415.

651. To that end, we set aside Order No. 1920, in part, and require that when Relevant State Entities notify transmission providers by the deadline for communicating agreement¹⁶⁴⁰ that they agree on a Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process resulting from the Engagement Period, the transmission providers must include that method or process in the transmittal or as an attachment to their compliance filing, even if the transmission providers propose a different Long-Term Regional Transmission Cost Allocation Method or do not propose to adopt a State Agreement Process. We further direct transmission providers to include in the transmittal or as an attachment to their compliance filings any information that Relevant State Entities provide to them regarding the state negotiations during the Engagement Period. We also set aside Order No. 1920, in part, to require that, upon the request of Relevant State Entities, transmission providers must facilitate and participate in a cost allocation discussion during the Engagement Period with Relevant State Entities.

652. At the outset, in response to arguments concerning the Commission's authority to impose the various cost allocation requirements proposed by parties on rehearing,¹⁶⁴¹ we reiterate that the Commission in Order No. 1920 determined that the Commission's existing regional transmission planning and cost allocation requirements are unjust, unreasonable, and unduly discriminatory or preferential under FPA section 206.¹⁶⁴² The Commission thus had both the authority and responsibility to "determine the just and reasonable . . . practice . . . to be thereafter observed and in force,"¹⁶⁴³ consistent with Order No. 1920's findings. Pursuant to its authority under FPA section 206, the Commission required transmission providers to submit on compliance an *ex ante* cost allocation method. This compliance filing submitted pursuant to FPA section 206 is not an FPA section 205

¹⁶⁴⁰ Order No. 1920 requires that transmission providers in each transmission planning region provide notice, such as on its OASIS page or public website, of the deadline for Relevant State Entities to communicate their agreement on a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process, and this deadline must be no earlier than the end date of the Engagement Period. *Id.* P 1356.

¹⁶⁴¹ *E.g.*, Harvard ELI Rehearing Request at 4; NESCOE Rehearing Request at 15.

¹⁶⁴² Order No. 1920, 187 FERC ¶ 61,068 at PP 113–114; *supra* The Overall Need for Reform section.

¹⁶⁴³ 16 U.S.C. 824e(a).

filing,¹⁶⁴⁴ and is thus distinct from any FPA section 205 filing that a transmission provider might file in the future following compliance to propose a change to its cost allocation method(s) for Long-Term Regional Transmission Facilities.¹⁶⁴⁵

653. We believe the balance struck herein should address, at least in part, the concerns driving the rehearing requests of NARUC, PJM States, Designated Retail Regulators, Undersigned States, and West Virginia Commission, who request that the Commission require transmission providers to adopt any cost allocation method that Relevant State Entities agree upon during the Engagement Period, and NESCOE, which argues that the Commission should require transmission providers to propose on compliance Relevant State Entities' preferred cost allocation method along with transmission providers' preferred cost allocation method.¹⁶⁴⁶ While we continue to find that robust state engagement is valuable to informing cost allocation,¹⁶⁴⁷ we also recognize transmission providers, subject to Commission oversight, remain ultimately responsible for transmission planning,¹⁶⁴⁸ which we find is fundamentally linked with cost allocation.¹⁶⁴⁹ Consistent with this responsibility, while reiterating the balance the Commission seeks to strike

¹⁶⁴⁴ *See ISO New England Inc.*, 165 FERC ¶ 61,202 (2018), *order on reh'g*, 173 FERC ¶ 61,204, at P 8 (2020) (clarifying that the Commission would review ISO–NE's proposed tariff revisions as a new FPA section 205 filing, rather than a compliance filing, because the Commission had not previously made "a finding that ISO–NE's tariff was unjust and unreasonable without such revisions, a necessary precursor to the Commission considering ISO–NE's tariff revisions as a compliance filing setting forth a proposed replacement rate").

¹⁶⁴⁵ *See* Order No. 1920, 187 FERC ¶ 61,068 at P 1430. As discussed below in the Consultation with Relevant State Entities After the Engagement Period section, we adopt, as part of this rule, a requirement that transmission providers revise their OATTs to add a requirement that they consult with Relevant State Entities (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es), or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method or process.

¹⁶⁴⁶ NARUC Rehearing Request at 12; NESCOE Rehearing Request at 14–15; PJM States Rehearing Request at 2–3; Designated Retail Regulators Rehearing Request at 35; Undersigned States Rehearing Request at 31; West Virginia Commission Rehearing Request at 13–14.

¹⁶⁴⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1363.

¹⁶⁴⁸ *Id.* *See also* Order No. 1000, 136 FERC ¶ 61,051 at P 153; Order No. 890, 118 FERC ¶ 61,119 at P 454.

¹⁶⁴⁹ Order No. 1000, 136 FERC ¶ 61,051 at P 559 ("[T]here is a fundamental link between cost allocation and planning, as it is through the planning process that benefits, which are central to cost allocation, can be assessed.").

in this order regarding the role of Relevant State Entities, we decline to require transmission providers, on compliance, to propose to adopt a State Agreement Process or Long-Term Regional Transmission Cost Allocation Method to which Relevant State Entities agreed, particularly if transmission providers prefer an alternative approach to cost allocation.

654. However, we are persuaded by PIOs', PJM States', and NARUC's arguments that the Commission should consider any Long-Term Regional Transmission Cost Allocation Method and/or State Agreement process to which the Relevant State Entities agree. We agree that the Commission should require transmission providers to include in the transmittal of their compliance filings any Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process to which the Relevant State Entities agreed but that transmission providers elect not to propose to comply with Order No. 1920.¹⁶⁵⁰ Therefore, we set aside Order No. 1920, in part, and require that, when Relevant State Entities communicate to transmission providers by the deadline for communicating agreement that they agree on a Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process resulting from the Engagement Period, the transmission providers must include that method or process in the transmittal or as an attachment to their compliance filings, even if the transmission providers propose to adopt a different Long-Term Regional Transmission Cost Allocation Method or do not propose to revise their tariffs to include a State Agreement Process.¹⁶⁵¹ We continue to decline to define what constitutes agreement among Relevant State Entities,¹⁶⁵² but we note that, at the choosing of the Relevant State Entities in a transmission planning region, existing relevant state committee processes may guide Relevant State

Entities in defining what constitutes agreement, such as the processes of OMS and NESCOE.

655. We are also persuaded by NARUC's, PIOs', PJM States', and Virginia and North Carolina Commissions' arguments that the Commission should require transmission providers to provide additional information related to Relevant State Entities' participation in the Engagement Period even when transmission providers propose on compliance a separate cost allocation method and/or decline to propose a State Agreement Process,¹⁶⁵³ and we therefore further direct transmission providers to include in the transmittal or as an attachment to their compliance filings any information that any Relevant State Entities provide to them regarding the state negotiations during the Engagement Period. As part of this requirement, we clarify that transmission providers must include any and all supporting evidence and/or justification related to Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process that Relevant State Entities request that transmission providers include in their compliance filing. We expect that the information that Relevant State Entities provide to transmission providers could include, for example, a description of the discussions that took place at the Engagement Period forum for negotiation and whether each Relevant State Entity agreed or disagreed with the cost allocation method proposed on compliance. However, we decline to require transmission providers to independently characterize this information. For example, we do not require transmission providers to separately characterize Relevant State Entities' agreement or independently justify Relevant State Entities' preferred Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process. We find that a requirement for transmission providers to include in the transmittal or as an attachment to their compliance filings the information received from any Relevant State Entities during the Engagement Period will sufficiently capture the results of the Engagement Period.

656. Furthermore, upon review of the requests for rehearing and clarification about the Engagement Period, we also believe that Relevant State Entities

would benefit from the assistance of transmission providers in some cases, as transmission providers may have more experience with the transmission providers' OATTs and with the Commission's processes and precedent. Therefore, we set aside Order No. 1920, in part, and now include a requirement that upon the request of Relevant State Entities, transmission providers must facilitate and participate in a cost allocation discussion during the Engagement Period with Relevant State Entities.

657. We find that these additional requirements will allow the Commission to better evaluate whether transmission providers have complied with Order No. 1920's requirement to provide a forum for negotiation that enables meaningful participation by Relevant State Entities during the Engagement Period.¹⁶⁵⁴ Furthermore, given that we direct these facilitation and informational requirements on compliance pursuant to the Commission's authority under FPA section 206, we find that these requirements do not implicate or infringe upon transmission providers' filing rights under FPA section 205.

658. When acting under FPA section 206, the Commission's statutory burden is to establish a just and reasonable and not unduly discriminatory replacement rate that is supported by substantial evidence.¹⁶⁵⁵ The statute does not necessarily require the Commission to adopt the transmission provider's proposal on compliance, even if that proposal complies with the final rule's requirements. Rather, the Commission need only select a replacement rate that complies with the final rule and that is adequately supported in the record, and then intelligibly explain the reasons for its choice.¹⁶⁵⁶

659. We recognize that the Commission generally does not consider alternate compliance proposals other than those filed by the relevant public utility (here, the transmission provider).¹⁶⁵⁷ Nevertheless, as the Commission explained in Order No. 1920, and as we reiterate on rehearing, there are "good reasons" for considering such alternatives here with respect to

¹⁶⁵⁰ See NARUC Rehearing Request at 17–18; PIOs Rehearing Request at 55–57; PJM States Rehearing Request at 7–8.

¹⁶⁵¹ We clarify that, under this approach, the transmission providers decide what to submit as their actual Order No. 1920 compliance proposal, including relevant tariff language and supporting evidence or arguments, whether they decide to propose the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process or a different Long-Term Regional Transmission Cost Allocation Method. The requirement to include Relevant State Entities' Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process as an addition to the compliance filing does not constitute a "proposal" from the transmission provider.

¹⁶⁵² Order No. 1920, 187 FERC ¶ 61,068 at P 1360.

¹⁶⁵³ NARUC Rehearing Request at 17; PIOs Rehearing Request at 54–57; PJM States Rehearing Request at 7; Virginia and North Carolina Commission Rehearing Request at 10.

¹⁶⁵⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1357.

¹⁶⁵⁵ 16 U.S.C. 824e; 16 U.S.C. 825(b).

¹⁶⁵⁶ See *Entergy Ark., LLC v. FERC*, 40 F.4th 689, 701–02 (D.C. Cir. 2022) (noting that the Commission "is not required to choose the best solution, only a reasonable one") (first quoting *Petal Gas Storage, LLC v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007); and then quoting *EPSCA*, 577 U.S. at 295).

¹⁶⁵⁷ See, e.g., *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134, at P 117 n.175 (2020); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 115 (2007); *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 49 (2005).

cost allocation under Order No. 1920.¹⁶⁵⁸ States play a unique role in Long-Term Regional Transmission Planning, as their laws, regulations, and policies drive the need for Long-Term Regional Transmission Facilities,¹⁶⁵⁹ and they typically will have responsibility to consider and approve the siting, permitting, and construction of Long-Term Regional Transmission Facilities selected in a regional transmission plan. As such, states affect whether Long-Term Regional Transmission Facilities are timely, efficiently, and cost-effectively developed such that customers actually receive the benefits associated with the selection of more efficient or cost-effective transmission solutions.¹⁶⁶⁰ We further find that, given the inherent uncertainty involved in planning to meet Long-Term Transmission Needs,¹⁶⁶¹ state-developed cost allocation methods and State Agreement Process take on heightened importance. This means that the Commission will consider the entire record—including the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process and the transmission provider's proposal—when setting the replacement rate. Specifically, when the Commission reviews transmission providers' compliance filings, the Commission is not required to accept a cost allocation proposal from a transmission provider simply because it may comply with Order No. 1920. Instead, the Commission may adopt any cost allocation method proposed by the Relevant State Entities and submitted on compliance so long as it complies with Order No. 1920.¹⁶⁶²

660. We believe Order No. 1920, as modified here on rehearing, strikes a reasonable balance between, on the one hand, recognizing the rights and responsibilities of the Commission and transmission providers over regional transmission planning and, on the other, the states' critical interests in the resulting Long-Term Regional Transmission Facilities and how the

costs associated with those facilities will be allocated. We also believe that this balance, including the requirement that transmission providers consult with Relevant State Entities (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es), or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method or process,¹⁶⁶³ addresses, at least in part, concerns underlying arguments by Harvard ELI and NARUC that the Commission should establish a prospective mechanism through which transmission providers would be required to file for Commission approval any cost allocation methods approved by Relevant State Entities¹⁶⁶⁴ or if states reach the requisite agreement on a different cost allocation method than that reflected in the OATT then on file.¹⁶⁶⁵

661. Nonetheless, consistent with our findings above with respect to requests that the Commission require transmission providers to adopt any cost allocation method that Relevant State Entities agree upon during the Engagement Period, we decline to adopt Harvard ELI's and NARUC's proposals. Transmission planning is the tariff obligation of each transmission provider and transmission providers retain, subject to Commission oversight, responsibility for regional transmission planning, including Long-Term Regional Transmission Planning, as well as complying with the obligations of Order No. 1920.¹⁶⁶⁶ We disagree with Harvard ELI's contention that Order No. 1920's cost allocation requirements fail to remedy unjust and unreasonable cost allocation processes because Order No.

1920 does not require transmission providers to file all cost allocation methods approved by Relevant State Entities.¹⁶⁶⁷ As discussed below,¹⁶⁶⁸ we find that the Engagement Period established in Order No. 1920 provides the “dedicated process through which states have an opportunity to participate in the development of regional cost allocation methods”¹⁶⁶⁹ that the Commission recognized was absent from existing cost allocation requirements. We further find that, combined with existing opportunities for state engagement in the development of regional cost allocation methods along with those established herein,¹⁶⁷⁰ Order No. 1920's cost allocation requirements remedy the unjust, unreasonable, and unduly discriminatory or preferential existing regional cost allocation requirements.

662. In response to PIOs' request that the Commission clarify that transmission providers may voluntarily commit to a process that will ensure that, where a state agreement on cost allocation exists, the agreed-upon cost allocation will be put before the Commission for approval,¹⁶⁷¹ and NESCOE's request that the Commission strongly encourage transmission providers to commit to such processes,¹⁶⁷² we reiterate that transmission providers may voluntarily adopt a process in their OATTs, whether it be a State Agreement Process or another Commission-approved process, under which they commit to file with the Commission pursuant to FPA section 205 any cost allocation method that garners state agreement subsequent to the Commission's acceptance of transmission providers' filings made in compliance with Order No. 1920.¹⁶⁷³ We also agree with NESCOE's request and strongly encourage transmission providers to commit to a process that will ensure that, where a state agreement on cost allocation exists, the agreed-upon cost allocation will be put before the Commission for approval. As discussed

¹⁶⁵⁸ *FCC v. Fox Television Stations, Inc.*, 556 U.S. at 515.

¹⁶⁵⁹ *Supra* Categories of Factors section.

¹⁶⁶⁰ Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126, 268, 1293, 1362–1364, 1404, 1407, 1410–1411, 1415, 1477, 1515.

¹⁶⁶¹ *Id.* P 227.

¹⁶⁶² We believe that these findings address NESCOE's arguments that Order No. 1920's cost allocation requirements “[r]elegat[ed] states to commenting on a transmission provider's cost allocation filing,” or that the “only path the Commission envision[ed] for approval of the states' cost allocation method would be through the vehicle of a complaint.” NESCOE Rehearing Request at 14.

¹⁶⁶³ See *infra* Consultation with Relevant State Entities After the Engagement Period section.

¹⁶⁶⁴ Harvard ELI Rehearing Request at 1–3. Because we are unpersuaded by Harvard ELI's request for rehearing in this respect, we find it unnecessary to address Harvard ELI's request for clarification in the alternative that FPA section 206 provides the Commission the authority to amend the *pro forma* OATT to include a process for filing all cost allocation methods approved by Relevant State Entities. *Id.* at 8.

¹⁶⁶⁵ NARUC Rehearing Request at 21–22.

¹⁶⁶⁶ See Order No. 1920, 187 FERC ¶ 61,068 at PP 996 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 153), 1363; see also Order No. 890, 118 FERC ¶ 61,119 at P 454 (“[T]ransmission planning is the tariff obligation of each transmission provider.”). To the extent that West Virginia Commission, in stating that the Commission should “grant the States 205 filing rights as it pertains to State-agreed cost allocations,” is requesting that the Commission confer filing rights to states under FPA section 205, West Virginia Commission does not explain the authority or legal theory upon which it believes the Commission could do so. West Virginia Commission Rehearing Request at 14.

¹⁶⁶⁷ Harvard ELI Rehearing Request at 6–7.

¹⁶⁶⁸ See Design and Operation of the Engagement Period section.

¹⁶⁶⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 126.

¹⁶⁷⁰ See *supra* P 654; *infra* Duration of the Engagement Period section; Consultation with Relevant State Entities After the Engagement Period section.

¹⁶⁷¹ PIOs Rehearing Request at 55–56.

¹⁶⁷² NESCOE Rehearing Request at 15–16.

¹⁶⁷³ See Order No. 1920, 187 FERC ¶ 61,068 at P 1412 n.3013 (“[T]ransmission providers may voluntarily agree as part of a State Agreement Process in their OATTs that transmission providers shall file any cost allocation method that meets the requirements of their State Agreement Process, even if those transmission providers do not agree with that method.”).

further below, such a process could satisfy the requirement we establish for transmission providers to consult with Relevant State Entities (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es), or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method or process.¹⁶⁷⁴

C. Design and Operation of the Engagement Period

1. Logical Outgrowth

a. NOPR Proposals

663. To implement the NOPR proposal to require transmission providers to include in their OATTs either a Long-Term Regional Transmission Cost Allocation Method or a State Agreement Process, or a combination thereof, the Commission proposed to require transmission providers to “seek the agreement” of relevant state entities regarding the cost allocation method or methods that will apply to transmission facilities selected in the regional transmission plan for purposes of cost allocation through Long-Term Regional Transmission Planning and to revise their OATTs to include the method or methods.¹⁶⁷⁵ The Commission additionally proposed to afford transmission providers flexibility in the process by which they seek agreement from the Relevant State Entities.¹⁶⁷⁶ The Commission stated that the proposed reforms would enable Relevant State Entities who seek greater involvement in cost allocation for Long-Term Regional Transmission Facilities an opportunity to do so.¹⁶⁷⁷

664. In the NOPR, the Commission also proposed to require transmission providers to establish a process, detailed in their OATTs, to provide a state or states (in multi-state transmission planning regions) a time period to negotiate a cost allocation method for a transmission facility (or portfolio of facilities) selected for purposes of cost allocation through Long-Term Regional Transmission Planning that is different than any *ex ante* regional cost allocation method that would otherwise apply. The Commission proposed that, during that time period, if a state or all states within the transmission planning region in which the selected regional transmission facility would be located

unanimously agree on an alternate cost allocation method, the transmission provider may elect to file it with the Commission.¹⁶⁷⁸ The Commission explained that providing states with a time period to propose alternate cost allocation methods could help facilitate the timely development of more efficient or cost-effective regional transmission facilities.¹⁶⁷⁹

b. Order No. 1920 Requirements

665. In Order No. 1920, the Commission declined to adopt the NOPR proposal to require transmission providers to seek the agreement of Relevant State Entities regarding the cost allocation method to be applied to Long-Term Regional Transmission Facilities.¹⁶⁸⁰ Instead, the Commission established a six-month Engagement Period, during which transmission providers must, among other things, provide a forum for the negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process that enables meaningful participation by Relevant State Entities, and required transmission providers to explain on compliance how they complied with the six-month Engagement Period requirements.¹⁶⁸¹ The Commission also declined to adopt the NOPR proposal to require transmission providers to establish a process, detailed in their OATTs, to provide a state or states (in multi-state transmission planning regions) a time period to negotiate a cost allocation method for a transmission facility (or portfolio of facilities) selected for purposes of cost allocation through Long-Term Regional Transmission Planning that is different than any *ex ante* regional cost allocation method that would otherwise apply.¹⁶⁸²

c. Requests for Rehearing and Clarification

666. NRECA asserts that the requirement in Order No. 1920 for transmission providers to file a Long-Term Regional Transmission Cost Allocation Method with or without the agreement of Relevant State Entities, and to conduct a six-month Engagement Period to provide a forum for negotiation of Long-Term Regional Transmission Cost Allocation Methods and/or a State Agreement Process, is not a logical outgrowth of the NOPR proposal to require the transmission providers in a transmission planning

region to seek agreement with Relevant State Entities as to a Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process.¹⁶⁸³ Undersigned States argue that the NOPR “placed the states in a central role in the regulatory structure by requiring transmission providers to seek the agreement of states for cost allocation,” but that Order No. 1920 “removed the requirement that states give their consent on cost allocation,” which is “‘surprisingly distant’ from the states’ role in the NOPR and is in essence a new rule that requires new opportunities for comment and input.”¹⁶⁸⁴ West Virginia Commission argues that Order No. 1920 “effectively exceeds the substantive notice of the NOPR” by removing realistic opportunities for states to work cooperatively on cost allocation agreements that will be proposed as *ex ante* cost allocation methods and adding “an ineffective substitute for seeking state agreement for cost allocation” by establishing the six-month Engagement Period.¹⁶⁸⁵ Utah Commission similarly contends that the elimination of any requirement that a state agree to a cost allocation that its residents must bear, no matter how detached the states’ residents are from causing the associated costs or from the associated policies, does not constitute a logical outgrowth of the NOPR.¹⁶⁸⁶

d. Commission Determination

667. As discussed elsewhere in this rule, we take steps in this order to expand Relevant State Entities’ opportunities to inform and, as needed, provide alternatives to, transmission providers’ proposed Long-Term Regional Transmission Cost Allocation Method(s). Therefore, while we disagree with rehearing parties’ arguments that the Engagement Period and associated reforms are not a logical outgrowth of the NOPR, we note that certain modifications in this order address, at least in part, concerns that Order No. 1920 diminished the role of states in contrast to the NOPR.¹⁶⁸⁷

668. In the NOPR, the Commission proposed to require transmission

¹⁶⁷⁴ See *Infra* Consultation with Relevant State Entities After the Engagement Period section.

¹⁶⁷⁵ NOPR, 179 FERC ¶ 61,028 at PP 278, 303, 305, 308.

¹⁶⁷⁶ *Id.* P 306.

¹⁶⁷⁷ *Id.* P 314.

¹⁶⁷⁸ *Id.* P 319.

¹⁶⁷⁹ *Id.* P 321.

¹⁶⁸⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 1354.

¹⁶⁸¹ *Id.* PP 1354, 1357.

¹⁶⁸² *Id.* P 1456.

¹⁶⁸³ NRECA Rehearing Request at 17–18.

¹⁶⁸⁴ Undersigned States Rehearing Request at 38 (quoting *Int’l Union, United Mine Workers of Am.*, 407 F.3d at 1259–60).

¹⁶⁸⁵ West Virginia Commission Rehearing Request at 3.

¹⁶⁸⁶ Utah Commission Rehearing Request at 11–12.

¹⁶⁸⁷ See *supra* Requirement Concerning Relevant State Entities’ Preferred Cost Allocation Methods section; *infra* Duration of the Engagement Period section; Consultation with Relevant State Entities After the Engagement Period section.

providers to “seek the agreement”¹⁶⁸⁸ of Relevant State Entities based upon its finding that “providing state regulators with a formal opportunity to develop a cost allocation method for regional transmission facilities selected through Long-Term Regional Transmission Planning could help increase . . . state[] support for those facilities,”¹⁶⁸⁹ thereby framing such a formal opportunity for state regulators as the subject for commenter discussion.¹⁶⁹⁰ Although Order No. 1920 did not adopt the proposed requirement to “seek the agreement” of Relevant State Entities, the Commission adopted a materially similar requirement—the Engagement Period—for transmission providers to provide, over a six-month period, a forum for negotiation of cost allocation methods for Long-Term Regional Transmission Facilities that enables meaningful participation by Relevant State Entities.¹⁶⁹¹ The Engagement Period “provide[s] state regulators with a formal opportunity to develop a cost allocation method for regional transmission facilities selected through Long-Term Regional Transmission Planning,” precisely as contemplated in the NOPR.¹⁶⁹² Indeed, as the Commission explained in Order No. 1920, “requiring an Engagement Period provides the same opportunity for robust engagement in the cost allocation process as the NOPR proposal, and thus has the potential to achieve the same important benefits, but will reduce the practical challenges associated with requiring transmission providers to seek the agreement of Relevant State Entities.”¹⁶⁹³ The Engagement Period, which facilitates the meaningful involvement of Relevant State Entities in determining cost allocation methods for selected Long-Term Regional Transmission Facilities, is in character with, and consequently a logical outgrowth of, the proposal to require transmission providers to “seek the agreement” of Relevant State Entities for the applicable cost allocation method for selected transmission facilities.¹⁶⁹⁴

¹⁶⁸⁸ NOPR, 179 FERC ¶ 61,028 at PP 278, 303, 305, 308.

¹⁶⁸⁹ *Id.* P 299.

¹⁶⁹⁰ *Conn. Light & Power Co. v. Nuclear Regul. Comm’n*, 673 F.2d at 533 (holding that an agency’s proposed rule must “adequately frame the subjects for discussion”).

¹⁶⁹¹ Order No. 1920, 187 FERC ¶ 61,068 at PP 1354, 1357.

¹⁶⁹² See NOPR, 179 FERC ¶ 61,028 at P 299.

¹⁶⁹³ Order No. 1920, 187 FERC ¶ 61,068 at P 1362.

¹⁶⁹⁴ See, e.g., *Am. Paper Inst. v. EPA*, 660 F.2d at 959 n.13 (“An agency may make even substantial changes in its original proposed rule without a further comment period if the changes are in character with the original proposal and are a logical outgrowth of the notice and comments

2. Requests Arguing the Engagement Period Is Inferior to a Requirement That Transmission Providers Seek the Agreement of Relevant State Entities

a. Order No. 1920 Requirements

669. In Order No. 1920, the Commission established a six-month Engagement Period, during which transmission providers must: (1) provide notice of the starting and end dates for the six-month time period; (2) post contact information that Relevant State Entities may use to communicate with transmission providers about any agreement among Relevant State Entities on a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process, as well as a deadline for communicating such agreement; and (3) provide a forum for negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process that enables meaningful participation by Relevant State Entities.¹⁶⁹⁵

b. Requests for Rehearing and Clarification

670. Virginia and North Carolina Commissions and West Virginia Commission request rehearing of Order No. 1920’s decision to not adopt the NOPR proposal to require transmission providers to seek the agreement of Relevant State Entities within the transmission planning region regarding the relevant cost allocation method to be applied to Long-Term Regional Transmission Facilities.¹⁶⁹⁶ West Virginia Commission argues that the Engagement Period is an ineffective substitute for the NOPR proposal to require transmission providers to seek the agreement of Relevant State Entities within the transmission planning region regarding the relevant cost allocation method to be applied to Long-Term Regional Transmission Facilities.¹⁶⁹⁷ Virginia and North Carolina Commissions argue that, to provide the robust engagement required by Order No. 1920, the Commission should specify and bolster transmission providers’ requirements to meaningfully engage with and proactively seek (but not necessarily obtain) the agreement of Relevant State Entities concerning cost

already given.”); *accord Chocolate Mfrs. Ass’n of U.S. v. Block*, 755 F.2d 1098, 1105 (4th Cir. 1985).

¹⁶⁹⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 1354.

¹⁶⁹⁶ West Virginia Commission Rehearing Request at 8; Virginia and North Carolina Commissions Rehearing Request at 8–10.

¹⁶⁹⁷ West Virginia Commission Rehearing Request at 8.

allocation issues during the Engagement Period.¹⁶⁹⁸

c. Commission Determination

671. As discussed in Order No. 1920 and reiterated in this order, it is critical to the success of the Long-Term Regional Transmission Planning reforms that states have an opportunity to have a significant role in the establishment of just and reasonable Long-Term Regional Transmission Cost Allocation Methods and State Agreement Processes. While we are unpersuaded by arguments that the Commission erred in declining to adopt the NOPR proposal to require transmission providers to seek the agreement of Relevant State Entities within the transmission planning region regarding the relevant cost allocation method to be applied to Long-Term Regional Transmission Facilities and instead establishing the Engagement Period,¹⁶⁹⁹ we believe that the requirements related to the Engagement Period, discussed below, that we adopt herein address the concerns underlying those rehearing requests.

672. In Order No. 1920, the Commission carefully weighed the appropriate level of transmission providers’ engagement with Relevant State Entities regarding the cost allocation method to be applied to Long-Term Regional Transmission Facilities by considering the potential challenges inherent in such engagement. Specifically, the Commission found that while “states play a critical role in transmission planning” and “facilitating their engagement in cost allocation may minimize delays and additional costs that can be associated with associated transmission siting proceedings,” mandating that transmission providers seek the agreement of Relevant State Entities on a Long-Term Regional Transmission Cost Allocation Method(s) would present potential difficulties that counseled against adoption of this proposed reform.¹⁷⁰⁰ For example, the Commission considered the possibility that requiring transmission providers to seek the agreement of Relevant State Entities might create disputes over the rights and responsibilities of individual states or state commissions to veto or otherwise hold up needed region-wide transmission plans.¹⁷⁰¹ The

¹⁶⁹⁸ Virginia and North Carolina Commissions Rehearing Request at 9–10.

¹⁶⁹⁹ West Virginia Commission Rehearing Request at 8; Virginia and North Carolina Commissions Rehearing Request at 8–10.

¹⁷⁰⁰ Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 1362.

¹⁷⁰¹ See *id.* P 1362 & n.2906 (citing Minnesota State Entities NOPR Initial Comments).

Commission also considered the challenges of adopting a definition for “agreement” that would be necessary under a requirement for transmission providers to seek the agreement of Relevant State Entities.¹⁷⁰²

673. We continue to find, as stated above, that states “play a critical role in transmission planning” and “facilitating their engagement in cost allocation may minimize delays and additional costs that can be associated with associated transmission siting proceedings,”¹⁷⁰³ and we find that establishing an Engagement Period recognizes that critical role while reducing the potential practical challenges discussed above, as compared to requiring transmission providers to seek the agreement of Relevant State Entities.¹⁷⁰⁴ We also continue to find that the Engagement Period provides the same opportunity for robust engagement in the cost allocation process as the NOPR proposal, and thus has the potential to achieve the same important benefits.¹⁷⁰⁵ Beyond that, the modification we make here, to require transmission providers to submit any cost allocation methods agreed to by Relevant State Entities in the transmittal or as an attachment to their compliance filings, addresses the same concern and provides Relevant State Entities with additional means to demonstrate to the Commission any preferences around the cost allocation of Long-Term Regional Transmission Facilities. We therefore are unpersuaded by arguments raised by West Virginia Commission on rehearing that the Engagement Period is “ineffective” compared to the NOPR proposal.¹⁷⁰⁶ Similarly, with respect to Virginia and North Carolina Commissions’ request that the Commission require transmission providers to “proactively seek” the agreement of Relevant State Entities to the transmission providers’ preferred Long-Term Regional Transmission Cost Allocation Method,¹⁷⁰⁷ we find that Order No. 1920, as modified on rehearing, provides more opportunities for state engagement than a requirement to simply seek agreement with states for a Long-Term Regional Transmission Cost Allocation Method. Specifically,

¹⁷⁰² *Id.* P 1361 (discussing commenter arguments that the Commission adopt different criteria for “agreement,” including a majority, a threshold of one-half of the participating Relevant State Entities, or unanimity).

¹⁷⁰³ *Id.* PP 124, 1362.

¹⁷⁰⁴ *Id.* P 1362.

¹⁷⁰⁵ *Id.*

¹⁷⁰⁶ West Virginia Commission Rehearing Request at 8.

¹⁷⁰⁷ Virginia and North Carolina Commissions Rehearing Request at 10.

transmission providers must (1) provide the opportunity for Relevant State Entities from all states in a transmission planning region to participate in the Engagement Period;¹⁷⁰⁸ (2) upon the request of Relevant State Entities, facilitate and participate in a cost allocation discussion during the Engagement Period with Relevant State Entities;¹⁷⁰⁹ and (3) include, in the transmittal or as an attachment to their compliance filings, any Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process agreed to by Relevant State Entities.¹⁷¹⁰

3. Duration of the Engagement Period

a. Order No. 1920 Requirements

674. In Order No. 1920, the Commission found that limiting the Engagement Period to six months was necessary to ensure that transmission providers have sufficient time to prepare their compliance filings in advance of the compliance deadlines established in Order No. 1920.¹⁷¹¹

b. Requests for Rehearing and Clarification

675. Several rehearing parties request extension of the Engagement Period.¹⁷¹² PJM States and Pennsylvania Commission request that the Commission clarify that the six-month Engagement Period will be extended for up to 12 months if states file a unanimous declaration that they are engaged in, but require additional time to complete, cost allocation discussions.¹⁷¹³ West Virginia Commission requests that the Commission extend the Engagement Period to a minimum of 12 months or, in the alternative, authorize the extension of the Engagement Period if Relevant State Entities submit a declaration stating that they are continuing to engage in cost allocation discussions.¹⁷¹⁴ SERTP Sponsors request that the Commission clarify that, upon unanimous consent of all affected

¹⁷⁰⁸ See *infra* Content of the Engagement Period section.

¹⁷⁰⁹ See *supra* Requirements Concerning Relevant State Entities’ Preferred Cost Allocation Methods section.

¹⁷¹⁰ See *supra* Requirements Concerning Relevant State Entities’ Preferred Cost Allocation Methods section.

¹⁷¹¹ Order No. 1920, 187 FERC ¶ 61,068 at P 1358.

¹⁷¹² PJM States Rehearing Request at 3–4; Pennsylvania Commission Rehearing Request at 1 (adopting PJM States’ arguments); West Virginia Commission Rehearing Request at 13; SERTP Sponsors Rehearing Request at 7–8; Virginia and North Carolina Commissions Rehearing Request at 11 n.27.

¹⁷¹³ PJM States Rehearing Request at 3–4; Pennsylvania Commission Rehearing Request at 1.

¹⁷¹⁴ West Virginia Commission Rehearing Request at 13.

state commissions (and the governing authorities for non-jurisdictional transmission providers), the Commission will allow (or, at a minimum, consider good-cause motions for) an extension of time for the development of *ex ante* state agreements to provide those entities with additional time to negotiate during the Engagement Period.¹⁷¹⁵ PJM States, Pennsylvania Commission, and West Virginia Commission argue that the Commission should permit an extension of the Engagement Period because there are a large number of Relevant State Entities in PJM, there are highly diverse regulatory models used in those Relevant State Entities in PJM, and there are a wide variety of state laws and procedures applicable to those Relevant State Entities.¹⁷¹⁶ Virginia and North Carolina Commissions argue that it would likely be beneficial to afford transmission providers greater flexibility with respect to the “timeline” of the Engagement Period, to the extent this flexibility would facilitate productive engagement with states without unduly delaying or impeding Order No. 1920’s other requirements.¹⁷¹⁷

676. Wyoming Commission asserts that providing states with six months “to reach agreement with the default cost allocation looming is an illusory acknowledgement of state authority.”¹⁷¹⁸ Arizona Commission states that “the provision for states to negotiate acceptable cost allocations among them is limited to six months” and that “[s]ix months is not enough time for the states to establish rate cases.”¹⁷¹⁹ Designated Retail Regulators and Undersigned States argue that “reaching an agreement in MISO within the six-month window” may be difficult given states’ different goals and agendas,¹⁷²⁰ and that six months is an insufficient amount of time to provide the due process required to approve any State Agreement Process.¹⁷²¹

¹⁷¹⁵ SERTP Sponsors Rehearing Request at 7–8.

¹⁷¹⁶ PJM States Rehearing Request at 3; Pennsylvania Commission Rehearing Request at 1; West Virginia Commission Rehearing Request at 13.

¹⁷¹⁷ Virginia and North Carolina Commissions Rehearing Request at 11 n.27.

¹⁷¹⁸ Wyoming Commission Rehearing Request at 7.

¹⁷¹⁹ Arizona Commission Rehearing Request at 17 n.14.

¹⁷²⁰ Designated Retail Regulators Rehearing Request at 35; Undersigned States Rehearing Request at 31.

¹⁷²¹ Designated Retail Regulators Rehearing Request at 9; Undersigned States Rehearing Request at 9.

c. Commission Determination

677. We set aside, in part, Order No. 1920's requirements on the duration of the Engagement Period. In Order No. 1920, the Commission noted that experience with Order No. 1000 has reinforced the critical role that states play in the development of new transmission infrastructure, particularly at the regional level, where transmission projects may physically span, and their costs may be allocated across, multiple states.¹⁷²² Moreover, the Commission found that facilitating state involvement in the regional cost allocation process could minimize delays and additional costs associated with state and local siting proceedings.¹⁷²³ In keeping with these findings, and upon further consideration, we find that extending the Engagement Period may be appropriate when Relevant State Entities represent to the Commission that they need additional time to complete cost allocation discussions.

678. Providing the opportunity for such an extension is consistent with the critical role that states play in addressing these issues and ensuring that they have the time necessary to adequately engage in these issues. Therefore, in response to arguments raised by PJM States, Pennsylvania Commission, and West Virginia Commission, we set aside Order No. 1920's requirements, in part, to specify that the Commission will grant an extension of the required Engagement Period for up to an additional six months when Relevant State Entities, consistent with their chosen method to reach agreement, request additional time to complete cost allocation discussions. We find that such an extension is warranted in that circumstance to ensure that Relevant State Entities have sufficient time to engage in fulsome discussions. We also clarify that in such circumstances, the Commission will also, as appropriate, extend, *sua sponte*, the relevant Order No. 1920 compliance deadlines to accommodate an extension of the Engagement Period and to ensure that any such extension would not conflict with the required compliance deadlines.

4. Content of the Engagement Period

a. Order No. 1920 Requirements

679. In Order No. 1920, the Commission required the transmission providers in each transmission planning region to provide notice, such as on their OASIS pages or public websites, of the opportunity for any Relevant State

Entity to participate in, and the starting and end dates of, the Engagement Period. The Commission required that such notice include contact information for a single point of contact in the transmission planning region that the Relevant State Entities can use to communicate any agreement among Relevant State Entities on a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process, as well as a deadline for communicating such agreement, which must be no earlier than the end date of the Engagement Period.¹⁷²⁴ The Commission also required transmission providers in each transmission planning region to provide a forum for negotiation that enables meaningful participation by Relevant State Entities during the Engagement Period.¹⁷²⁵

680. The Commission required that transmission providers explain on compliance how they complied with the requirement to establish and provide notice of an Engagement Period for Relevant State Entities to negotiate a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process, as well as how they complied with the requirement to provide a forum for such negotiation.¹⁷²⁶

681. The Commission declined to define what constitutes agreement among Relevant State Entities, how such agreement is reached, and which Relevant State Entities must reach such agreement during the Engagement Period, or to establish a minimum set of criteria for a state agreement. Instead, the Commission left such matters, including whether to use existing state processes as a forum for negotiations, to the Relevant State Entities participating in the Engagement Period to determine.¹⁷²⁷ The Commission also declined to expand participation in the Engagement Period beyond Relevant State Entities, stating that it did not find it necessary to allow other stakeholders to participate in the Engagement Period.¹⁷²⁸

b. Requests for Rehearing and Clarification

682. PJM States and NARUC request that the Commission require transmission providers to include in

their compliance filings, at minimum, the setting and communicating of deadlines and the general forum for transmission provider discussions with and outreach to state entities concerning the Engagement Period.¹⁷²⁹ PJM States contend that these and other clarifications would demonstrate the extent to which transmission providers engaged with states during the Engagement Period.¹⁷³⁰

683. PJM States request clarification that the Engagement Period is actually a "State Engagement Period" and that "states are the stakeholder(s) to engage."¹⁷³¹ PJM States explain that any such clarification should not prohibit states from inviting other entities that might be helpful in assisting states in reaching agreement on cost allocation. Rather, PJM States argue that the Commission should make clear that the Engagement Period is "not for the engagement of all stakeholders" but is instead intended to provide a forum for transmission providers and states to attempt to reach agreement on cost allocation.¹⁷³²

c. Commission Determination

684. In response to the requests of PJM States and NARUC for clarification as to the information that transmission providers must include in their compliance filings concerning the Engagement Period,¹⁷³³ we clarify that, in order to comply with the requirement that transmission providers explain how they provided a forum for negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process during the Engagement Period that enables meaningful participation by Relevant State Entities,¹⁷³⁴ transmission providers must at minimum disclose any deadlines set by transmission providers during the Engagement Period and how transmission providers communicated any such deadlines to Relevant State Entities, and provide a general description of the forum for negotiation.¹⁷³⁵

¹⁷²⁹ NARUC Rehearing Request at 17; PJM States Rehearing Request at 7.

¹⁷³⁰ PJM States Rehearing Request at 8.

¹⁷³¹ *Id.* (emphasis in original).

¹⁷³² *Id.* at 8–9.

¹⁷³³ See *id.* at 7; NARUC Rehearing Request at 17–18.

¹⁷³⁴ See Order No. 1920, 187 FERC ¶ 61,068 at P 1357.

¹⁷³⁵ We address the requests of PJM States, NARUC, and other parties that the Commission require transmission providers to include additional information related to the Engagement Period in their compliance filings—such as requests that the Commission require each transmission provider to include states' preferred cost allocation

Continued

¹⁷²² Order No. 1920, 187 FERC ¶ 61,068 at P 124.

¹⁷²³ *Id.*

¹⁷²⁴ *Id.* P 1356. The Commission noted Relevant State Entities must indicate that they have agreed to any State Agreement Process for any such process to be eligible for acceptance by the Commission in compliance with Order No. 1920. *Id.* P 1356 n.2895.

¹⁷²⁵ *Id.* P 1357.

¹⁷²⁶ *Id.*

¹⁷²⁷ *Id.* PP 1360–1361 (citations omitted).

¹⁷²⁸ *Id.* P 1363.

685. With respect to PJM States' argument that the Commission should clarify that the Engagement Period is "not for the engagement of all stakeholders,"¹⁷³⁶ we reiterate that the Commission declined to expand participation in the Engagement Period beyond Relevant State Entities, and did not find it necessary to allow other stakeholders to participate in the Engagement Period.¹⁷³⁷ However, we also reiterate that the Commission allowed Relevant State Entities to permit the participation of other entities subsequently during implementations of a State Agreement Process.¹⁷³⁸ We also reiterate our determination in Order No. 1920 to define Relevant State Entities as any state entity responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state,¹⁷³⁹ and we continue to find that this definition recognizes the important role of states while providing sufficient regional flexibility for effective Engagement Period participation.¹⁷⁴⁰

686. With respect to PJM States' request for clarification that the Engagement Period is actually a "State Engagement Period" and that the states are the stakeholders with which transmission providers must engage during the Engagement Period,¹⁷⁴¹ we grant clarification, in part, and clarify that transmission providers must provide the opportunity for Relevant State Entities from all states in each transmission planning region to participate in the Engagement Period.

5. Consultation With Relevant State Entities After the Engagement Period

a. Order No. 1920 Requirements

687. In Order No. 1920, the Commission declined to require future Engagement Periods, but noted that transmission providers may hold future Engagement Periods if they believe that such periods would be beneficial.¹⁷⁴²

b. Requests for Rehearing and Clarification

688. NARUC and NESCOE request rehearing of Order No. 1920's decision not to require future Engagement

method in its compliance filing above in the Requirements Concerning Relevant State Entities' Preferred Cost Allocation Methods section.

¹⁷³⁶ PJM States Rehearing Request at 8–9.

¹⁷³⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1363.

¹⁷³⁸ *Id.* P 1402.

¹⁷³⁹ *Id.* P 1355.

¹⁷⁴⁰ *Id.* P 1364.

¹⁷⁴¹ PJM States Rehearing Request at 8.

¹⁷⁴² Order No. 1920, 187 FERC ¶ 61,068 at P 1368.

Periods.¹⁷⁴³ NESCOE argues that following the initial Engagement Period, any proposed modification to the transmission planning region's Long-Term Regional Transmission Cost Allocation Method should trigger an obligation to establish a new Engagement Period to provide a forum for Relevant State Entities to discuss the proposed Long-Term Regional Transmission Cost Allocation Method. NESCOE explains that absent this obligation, a transmission provider could undo the efforts of Relevant State Entities in agreeing to a Long-Term Regional Transmission Cost Allocation Method during the initial Engagement Period by filing a new Long-Term Regional Transmission Cost Allocation Method without consulting with Relevant State Entities.¹⁷⁴⁴

689. NARUC requests that the Commission create a mechanism that ensures regular re-examination of the Long-Term Regional Transmission Cost Allocation Method(s) and any State Agreement Process in a transmission provider's OATT. Specifically, NARUC argues that the Commission should require each transmission provider to periodically open a new negotiation period with Relevant State Entities.¹⁷⁴⁵

690. Virginia and North Carolina Commissions argue that it would likely be beneficial to afford transmission providers greater flexibility with respect to the "frequency" of the Engagement Period, to the extent this flexibility would facilitate productive engagement with states without unduly delaying or impeding Order No. 1920's other requirements.¹⁷⁴⁶

c. Commission Determination

691. We are persuaded by NARUC's and NESCOE's arguments raised on rehearing. Accordingly, we set aside Order No. 1920, in part, and require that, as part of transmission providers' obligations with respect to transmission

¹⁷⁴³ NARUC Rehearing Request at 21–22; NESCOE Rehearing Request at 13–14.

¹⁷⁴⁴ NESCOE Rehearing Request at 13–14 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1430 ("We further clarify that unless voluntarily waived, a transmission provider retains its FPA section 205 filing rights to submit an *ex ante* cost allocation method for Long-Term Regional Transmission Facilities at any time, consistent with any limitations a transmission provider may have agreed to, for example, as part of its membership in an RTO/ISO." (citations omitted))).

¹⁷⁴⁵ NARUC Rehearing Request at 21–22. In the Requirements Concerning Relevant State Entities' Preferred Cost Allocation Methods section above, we discuss NARUC's alternative request that the Commission require each transmission provider to file a modification to its OATT if states reach the requisite agreement on a different cost allocation method than that reflected in its OATT.

¹⁷⁴⁶ Virginia and North Carolina Commissions Rehearing Request at 11 n.27.

planning and cost allocation, transmission providers shall consult with Relevant State Entities (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es), or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method or process. The consultation requirement will provide a mechanism through which transmission providers and Relevant State Entities can engage regarding possible future changes via FPA section 205 to cost allocation methods accepted by the Commission in compliance with Order No. 1920.¹⁷⁴⁷ We require transmission providers to include in their OATTs a description of how they will consult with Relevant State Entities in these circumstances. Additionally, for a consultation initiated by the transmission providers, we require transmission providers to document publicly on their OASIS or other public website the results of their consultation with Relevant State Entities prior to filing their amendment. For a consultation initiated by Relevant State Entities, if the transmission providers choose not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es) preferred by Relevant State Entities during the required consultation, we also require transmission providers to document publicly on their OASIS or other public website the results of their consultation with Relevant State Entities, including an explanation for why they have chosen not to propose any amendments.

692. We find that these requirements will ensure that states have the opportunity to be involved in establishing cost allocation methods for Long-Term Regional Transmission Facilities subsequent to the Commission's acceptance of transmission providers' filings made in compliance with Order No. 1920, which has the potential to minimize additional costs and delays in the siting process and to facilitate the development of Long-Term Regional Transmission

¹⁷⁴⁷ We clarify that this consultation requirement neither requires transmission providers to submit, nor prohibits transmission providers from submitting, FPA section 205 filings to modify cost allocation methods accepted in compliance with Order No. 1920, and transmission providers therefore retain their currently effective FPA section 205 rights. That said, as noted below, transmission providers may satisfy the consultation requirement by voluntarily agreeing to submit FPA section 205 proposals supported by Relevant State Entities. *Infra* P 692.

Facilities.¹⁷⁴⁸ While we provide transmission providers flexibility as to the form and duration of their required consultation with Relevant State Entities, we note that one way transmission providers could satisfy the requirement to consult with Relevant State Entities is by revising their OATTs to include a process under which the transmission provider must present to the Commission, in addition to its own FPA section 205 proposal, an alternative cost allocation method proposed by Relevant State Entities for evaluation by the Commission on equal footing.¹⁷⁴⁹ Transmission providers could also satisfy the requirement to consult with Relevant State Entities by revising their OATTs to include mechanisms similar to those used in SPP¹⁷⁵⁰ and MISO.¹⁷⁵¹

D. Design and Operation of State Agreement Processes

1. Definition of Relevant State Entities

a. Order No. 1920 Requirements

693. In Order No. 1920, the Commission defined Relevant State Entities as any state entity responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state. The Commission stated that it modified the NOPR proposal's definition to add the word "electric" before "utility regulation" in order to make clear that Relevant State Entities

are those state agencies responsible for electric utility regulation, and not other types of utility regulation.¹⁷⁵² In Order No. 1920, the Commission declined requests to expand or clarify the definition of Relevant State Entities and did not modify the definition beyond adding the word "electric," but permitted other participants beyond Relevant State Entities to participate in a State Agreement Process, if agreed to by Relevant State Entities.¹⁷⁵³

b. Requests for Rehearing and Clarification

694. APPA contends that the Commission erred in excluding municipal electric regulatory bodies from the Relevant State Entity definition.¹⁷⁵⁴ APPA claims that excluding public power utilities and municipal governing bodies is arbitrary and capricious because: (1) the Commission failed to justify excluding customers served by municipal utilities during the Engagement Period, which is unduly discriminatory;¹⁷⁵⁵ (2) the Commission gave no meaningful rationale for excluding self-regulated public utilities from the Relevant State Entity definition, and inclusion would increase local support and reduce uncertainty and risk for development of Long-Term Regional Transmission Facilities; and (3) the definition of Relevant State Entity conflicts with the FPA's definition of "state commission" as "the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality."¹⁷⁵⁶

695. Large Public Power claims that non-jurisdictional self-regulating non-public utilities under FPA section 201(f) could be profoundly affected by the Engagement Period without representation, and their exclusion from the definition of Relevant State Entity is arbitrary and capricious.¹⁷⁵⁷ Large Public Power states that its members are self-regulating entities that possess many of the same regulatory characteristics as state commissions, undertake retail ratemaking publicly, are not represented by state commissions, and in some states represent a market share larger than most individual investor-owned utilities.¹⁷⁵⁸ Large Public Power states that the FPA explicitly recognizes

political subdivisions' authority through exemptions.¹⁷⁵⁹ Large Public Power argues that the Commission should provide an opportunity for municipal utilities to have a voice equal to that of state utility commissions to ensure that Long-Term Regional Transmission Facilities are not built and paid for by their customers unless such facilities are needed and wanted.¹⁷⁶⁰ Large Public Power states that the most obvious solution to this issue would be to grant municipal utilities representation on a load ratio share basis.¹⁷⁶¹

696. City of New Orleans Council requests clarification to confirm that it meets the definition of a Relevant State Entity.¹⁷⁶² City of New Orleans Council states that it is designated and recognized by the State of Louisiana and the Home Rule Charter of the City of New Orleans as the governmental body that supervises, regulates, and controls public utilities within New Orleans.¹⁷⁶³ City of New Orleans Council states that MISO recognizes the City of New Orleans Council's unique regulatory authority and status.¹⁷⁶⁴ Noting that Order No. 1920 refers to OMS as an existing mechanism for state involvement, City of New Orleans Council states that it is a member of OMS that represents the collective interests of its members, which are state and local regulators within MISO's footprint.¹⁷⁶⁵ City of New Orleans Council states that it is also a member of the Entergy Regional State Committee (ERSC), which is comprised of retail regulators from the MISO-South subregion and recognized in MISO stakeholder forums, and that the ERSC bylaws recognize that the City of New Orleans Council is included as a "state regulatory agency."¹⁷⁶⁶ City of New Orleans Council also argues that its recognition within MISO is consistent with PJM's recognition of the District of Columbia.¹⁷⁶⁷

697. City of New Orleans Council requests rehearing in the event that the Commission does not grant its request

¹⁷⁴⁸ E.g., Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126.

¹⁷⁴⁹ See, e.g., ISO New England Inc., FERC FPA Electric Tariff, ISO New England Inc. Agreements and Contracts, TOA, Transmission Operating Agreement (5.0.0), 3.04(h)(vi)(C); see also *The Governors of Conn., Me., Mass., N.H., R.I., Vt.*, 112 FERC ¶ 61,049, at P 25 (2005).

¹⁷⁵⁰ SPP, Governing Documents Tariff, Bylaws, First Revised Volume No. 4 (0.0.0), 7.2 (Regional State Committee) (providing that the Regional State Committee has primary responsibility for determining regional proposals regarding, among other things, "whether license plate or postage stamp rates will be used for the regional access charge," and that when the Regional State Committee "reaches decisions on the methodology that will be used to address any of these issues, SPP will file this methodology pursuant to Section 205 of the [FPA]"); see also *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at PP 218–220, order on reh'g, 109 FERC ¶ 61,010, at PP 92–94 (2004); *Sw. Power Pool, Inc.*, 108 FERC ¶ 61,003, at P 127 & n.90 (2004), order on reh'g, 110 FERC ¶ 61,138, at P 33 (2005).

¹⁷⁵¹ MISO FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, app. K (Filing Rights Pursuant To Section 205 Of The FPA) (3.0.0), I.I.E.3.a.i–ii (providing the circumstances under which the OMS Committee "shall have the right to request and MISO shall file for a new or an amendment of any regional cost allocation methodology"); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,165, at PP 30, 32 (2013).

¹⁷⁵² Order No. 1920, 187 FERC ¶ 61,068 at P 1355.

¹⁷⁵³ *Id.* PP 1364 & n.2914, 1402.

¹⁷⁵⁴ APPA Rehearing Request at 2.

¹⁷⁵⁵ *Id.* at 4.

¹⁷⁵⁶ *Id.* at 5 (citing 16 U.S.C. 796(15)) (emphasis in original).

¹⁷⁵⁷ Large Public Power Rehearing Request at 11.

¹⁷⁵⁸ *Id.*

¹⁷⁵⁹ *Id.* at 12.

¹⁷⁶⁰ *Id.* at 12–13.

¹⁷⁶¹ *Id.* at 13.

¹⁷⁶² City of New Orleans Council Rehearing Request at 4.

¹⁷⁶³ *Id.* (citing La. Const., art. IV, § 21(c); Home Rule Charter of the City of New Orleans, § 3–130).

¹⁷⁶⁴ *Id.* at 5.

¹⁷⁶⁵ *Id.* (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1357).

¹⁷⁶⁶ *Id.* at 6 (citing Entergy Regional State Committee (ERSC), <https://www.misoenergy.org/engage/committees/entergy-regional-state-committee/> (ERSC Mission Statement); ERSC Bylaws, [https://cdn.misoenergy.org/ERSC%20Bylaws%20\(Amended%202%2014%2022\)%20217600.pdf](https://cdn.misoenergy.org/ERSC%20Bylaws%20(Amended%202%2014%2022)%20217600.pdf) (amended Feb. 14, 2022)).

¹⁷⁶⁷ *Id.* at 6–7.

for clarification, noting that the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans recognize City of New Orleans Council's status as the governmental body with the power of supervision, regulation, and control over public utilities, and noting MISO's recognition of the City of New Orleans Council's status.¹⁷⁶⁸ City of New Orleans Council states that finding that it does not meet the definition of Relevant State Entity would be contrary to such legal and regulatory recognition.¹⁷⁶⁹

698. NESCOE requests that the Commission clarify that Regional State Committees are included in the definition of Relevant State Entities, or in the alternative, NESCOE seeks rehearing.¹⁷⁷⁰ NESCOE states that it is unclear that Regional State Committees, such as NESCOE, which do not necessarily appear in state laws and are not necessarily state agencies, are Relevant State Entities.¹⁷⁷¹ NESCOE states that it appears that the Commission did not deliberately exclude Regional State Committees from the definition of Relevant State Entities, but that the Commission appears to have misapprehended NESCOE's argument in its comments as solely concerned about its unique structure of achieving consensus among the New England states.¹⁷⁷²

699. NRECA states that, even following its comments to the NOPR, the definition of Relevant State Entity excludes cooperatives and public power utilities not subject to regulation by a state utility commission and the Engagement Period includes only Relevant State Entities. NRECA argues that, as a result, Order No. 1920 allows a Relevant State Entity to dictate cost allocation to electric utilities it does not regulate.¹⁷⁷³

c. Commission Determination

700. We deny the requests for clarification and disagree with APPA's and Large Public Power's requests for rehearing asking to expand the definition of Relevant State Entity.¹⁷⁷⁴ As discussed in Order No. 1920, we continue to find that "regional transmission facilities face significant uncertainty and risk of not reaching construction if certain stakeholders—in particular, a state regulator responsible

for permitting transmission facilities—do not perceive the regional transmission facilities' value as commensurate with their costs."¹⁷⁷⁵

701. Municipal electric regulatory bodies and non-public utility entities provide valuable insight as stakeholders in Commission-sanctioned processes. But in defining Relevant State Entities for the purposes of Order No. 1920, we find that state entities responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region are, as discussed above, uniquely situated to influence whether or not a Long-Term Regional Transmission Facility reaches completion. On balance, while we recognize the important role that other stakeholders play in Long-Term Regional Transmission Planning, we continue to find that the definition of Relevant State Entities should encompass only any state entities responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state.¹⁷⁷⁶ In Order No. 1920, the Commission further stated, and we continue to believe, that:

[P]roviding state regulators with a formal opportunity to develop a cost allocation method for Long-Term Regional Transmission Facilities selected through Long-Term Regional Transmission Planning could help increase stakeholder—and state—support for those facilities, which, in turn, may increase the likelihood that those facilities are sited and ultimately developed with fewer costly delays and better ensure just and reasonable Commission-jurisdictional rates.¹⁷⁷⁷

702. For the same reasons, we also do not find it necessary to expand the definition of Relevant State Entities for the purposes of Order No. 1920.

703. In response to City of New Orleans Council's and NESCOE's requests,¹⁷⁷⁸ we will not make a finding on whether an individual state's laws, regulations, and/or policies, or

inclusion in a larger association of regulators, deem a certain entity to be a Relevant State Entity, though we note that state law may be a persuasive or dispositive factor in such determinations.¹⁷⁷⁹ Instead, entities within a state must determine if they qualify as Relevant State Entities based on the definition the Commission provided in Order No. 1920 and based upon their interpretation of their state laws. We also reiterate that Order No. 1920 permits other participants, including municipal electric regulatory bodies and non-public utility entities that do not otherwise meet the definition of a Relevant State Entity, to participate in a State Agreement Process, if agreed to by Relevant State Entities.¹⁷⁸⁰ Finally, we disagree with NRECA's assertion that Order No. 1920 permits Relevant State Entities to dictate cost allocation to utilities they do not regulate.¹⁷⁸¹ Order No. 1920, as modified here on rehearing, provides robust opportunities for Relevant State Entities to participate in the development of Long-Term Regional Transmission Cost Allocation Methods, given the critical role that states will play in the success of Long-Term Regional Transmission Planning. However, it is ultimately the Commission that will determine whether cost allocation methods proposed on compliance are just and reasonable and not unduly discriminatory or preferential, and all interested parties will have a full and fair opportunity to participate both in regional stakeholder proceedings and in compliance proceedings before the Commission.

704. In response to APPA's contention that the definition of Relevant State Entity conflicts with the FPA's definition of "state commission" as "the regulatory body of the State or *municipality* having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or *municipality*,"¹⁷⁸² we find that the definition of Relevant State Entity for purposes of Long-Term Regional Transmission Facility cost allocation is distinct from the purpose of the definition of "state commission" in the

¹⁷⁷⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 1364 (quoting NOPR, 179 FERC ¶ 61,028 at P 297 (footnote omitted)).

¹⁷⁷⁶ As noted below, we make no findings here regarding whether any individual municipal electric regulatory body or non-public utility entity meets the definition of a Relevant State Entity, as those determinations properly rest with entities in a state, based upon their interpretation of their state laws. *Infra* P 703.

¹⁷⁷⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1364 (alterations omitted) (citing NOPR, 179 FERC ¶ 61,028 at P 299).

¹⁷⁷⁸ City of New Orleans Council Rehearing Request at 4, 8; NESCOE Rehearing Request at 17–20.

¹⁷⁷⁹ Order No. 1920 also allows Relevant State Entities to participate in cost allocation negotiations through a regional body. *See, e.g.*, Order No. 1920, 187 FERC ¶ 61,068 at P 999 (declining to impose specific requirements regarding how consultation with Relevant State Entities will occur, and recognizing need for flexibility "based on the specific needs and makeup of their transmission planning region").

¹⁷⁸⁰ *Id.* PP 1364 & n.2914, 1402.

¹⁷⁸¹ NRECA Rehearing Request at 57–58.

¹⁷⁸² APPA Rehearing Request at 5 (citing 16 U.S.C. 796(15)) (emphasis in original).

¹⁷⁶⁸ *Id.* at 8.

¹⁷⁶⁹ *Id.* at 9.

¹⁷⁷⁰ NESCOE Rehearing Request at 17–20.

¹⁷⁷¹ *Id.* at 18–19.

¹⁷⁷² *Id.* at 19.

¹⁷⁷³ NRECA Rehearing Request at 57–58.

¹⁷⁷⁴ APPA Rehearing Request at 2, 4–5; Large Public Power Rehearing Request at 11–13.

FPA and need not align with it. We note, for example, that the FPA defines “state commission” and “state” separately, and in the final rule we use neither of these two definitions.¹⁷⁸³

2. Extensions of Time for Negotiation of Cost Allocation Methods Under State Agreement Processes

a. Order No. 1920 Requirements

705. In Order No. 1920, the Commission required that any State Agreement Process be completed, *i.e.*, any resulting cost allocation method must be filed with the Commission, no later than six months after selection of the applicable Long-Term Regional Transmission Facility (or portfolio of such Facilities).¹⁷⁸⁴ The Commission found that the State Agreement Process can only be effective if there is a limit on the time to reach agreement before defaulting to the Long-Term Regional Transmission Cost Allocation Method that the Commission required transmission providers to include in their OATTs, that the lack of such a deadline could cause delay and increase uncertainty regarding selected Long-Term Regional Transmission Facilities, and that a deadline, bolstered by a default Long-Term Regional Transmission Cost Allocation Method, may increase the incentive for Relevant State Entities to reach agreement on cost allocation for a particular Long-Term Regional Transmission Facility through a State Agreement Process.¹⁷⁸⁵ The Commission found that six months is a reasonable period for State Agreement Process deliberations on a cost allocation method because it balances the need for adequate time for negotiations with transmission providers’ need for finality in their Long-Term Regional Transmission Planning.¹⁷⁸⁶

b. Requests for Rehearing and Clarification

706. Designated Retail Regulators and Undersigned States argue that the State Agreement Process is unreasonable because Order No. 1920 does not provide adequate time for the adoption of a cost allocation method that follows any approved State Agreement Process.¹⁷⁸⁷

707. SERTP Sponsors request that the Commission clarify that upon unanimous consent of state

commissions and relevant governing authorities for SERTP Sponsors not subject to the Commission’s jurisdiction, the Commission will allow an extension of time for the development of methods resulting from a State Agreement Process.¹⁷⁸⁸ SERTP Sponsors request that at a minimum, the Commission clarify that it will consider motions for an extension of time for good cause.¹⁷⁸⁹

c. Commission Determination

708. We believe that the six-month deadline by which transmission providers must file any cost allocation method that results from a State Agreement Process is reasonable and are thus unpersuaded by parties who challenge the sufficiency of this deadline. While we emphasize the benefits of a State Agreement Process, we continue to find that this deadline balances the need for adequate time for Relevant State Entities to conduct negotiations with the need for finality in Long-Term Regional Transmission Planning.¹⁷⁹⁰ Consistent with Order No. 1920, we find that a deadline, coupled with a default Long-Term Regional Transmission Cost Allocation Method, may encourage Relevant State Entities to timely reach agreement on cost allocation for a particular Long-Term Regional Transmission Facility through a State Agreement Process.¹⁷⁹¹ While we grant SERTP Sponsors’ request to clarify that transmission providers may file motions for an extension of time for good cause to the State Agreement Process beyond six months after selection of the applicable Long-Term Regional Transmission Facility (or portfolio of such Facilities), we decline at this time to categorically pre-approve extensions (even if unanimous), and thus we deny SERTP Sponsors’ associated request for clarification. Instead, the Commission will consider any such requests on the record before it at that time.

E. Use of Existing Cost Allocation Methods in Long-Term Regional Transmission Planning or Existing Regional Processes

1. Order No. 1920 Requirements

709. In Order No. 1920, the Commission required that, to the extent transmission providers believe that their existing cost allocation methods comply with the requirements of Order No. 1920, they may demonstrate in their compliance filings that such methods,

as applied to Long-Term Regional Transmission Facilities, would comply with the requirements of Order No. 1920.¹⁷⁹² The Commission also required that transmission providers that wish to continue using existing transmission planning and cost allocation processes to consider transmission needs driven by Public Policy Requirements must demonstrate that continued use of any such processes does not interfere with or otherwise undermine Long-Term Regional Transmission Planning.¹⁷⁹³

2. Requests for Rehearing and Clarification

710. PJM requests that the Commission grant rehearing and confirm that it will consider requests to maintain existing cost allocation methods on compliance unless and until an alternative is filed.¹⁷⁹⁴ PJM argues that the Commission has not justified why Order No. 1920 “categorically prohibit[s] existing cost allocation methodologies from remaining in place” in such circumstances.¹⁷⁹⁵ PJM states that it is concerned that requiring transmission owners to re-justify existing cost allocation methods will set back efforts to implement its Long-Term Regional Transmission Planning Process.¹⁷⁹⁶ PJM argues that the requirement to renegotiate all cost allocation methods undercuts the longstanding and widely-accepted notion that knowing how costs for transmission facilities will be allocated is critical for their development.¹⁷⁹⁷ PJM further states that its existing cost allocation method includes specific cost allocations for reliability-based projects, market efficiency projects, public policy projects addressing state-identified needs, and multi-driver projects.¹⁷⁹⁸ PJM argues that requiring transmission owners to re-justify the existing cost allocation methods undermines the certainty regarding the development of transmission facilities PJM selects to be built.¹⁷⁹⁹ PJM states that its existing cost allocation methods are the result of years of close consultation and extensive work among the states in the PJM region and litigation before the Commission. PJM argues that Order No. 1920 effectively erases these efforts.¹⁸⁰⁰

¹⁷⁹² *Id.* PP 1302–1303.

¹⁷⁹³ *Id.* P 243.

¹⁷⁹⁴ PJM Rehearing Request at 19–23.

¹⁷⁹⁵ *Id.* at 20.

¹⁷⁹⁶ *Id.* at 20–21.

¹⁷⁹⁷ *Id.* at 21 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 124).

¹⁷⁹⁸ *Id.* at 22–23.

¹⁷⁹⁹ *Id.* at 21.

¹⁸⁰⁰ *Id.* at 22–23.

¹⁷⁸³ See 16 U.S.C. 796(15)) and 16 U.S.C. 796(6), respectively.

¹⁷⁸⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1406.

¹⁷⁸⁵ *Id.* P 1413.

¹⁷⁸⁶ *Id.* P 1414.

¹⁷⁸⁷ Designated Retail Regulators Rehearing Request at 9; Undersigned States Rehearing Request at 8.

¹⁷⁸⁸ SERTP Sponsors Rehearing Request at 7–8.

¹⁷⁸⁹ *Id.*

¹⁷⁹⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 1414.

¹⁷⁹¹ *Id.* P 1413.

711. Ohio Commission Federal Advocate asserts that Order No. 1920 arbitrarily and capriciously requires continued use of PJM's State Agreement Approach to be re-approved by the Commission. Specifically, Ohio Commission Federal Advocate argues that the State Agreement Approach has long been approved and used in the PJM region to ensure just and reasonable cost allocation for public policy projects and asks the Commission to revise Order No. 1920 to explicitly allow the continued use of the State Agreement Approach at least to the projects to which it currently applies.¹⁸⁰¹

3. Commission Determination

712. Upon consideration of the rehearing requests, we sustain Order No. 1920's requirement that transmission providers that wish to continue using existing transmission planning and cost allocation processes to consider transmission needs driven by Public Policy Requirements must demonstrate that continued use of any such processes does not interfere with or otherwise undermine Long-Term Regional Transmission Planning. We similarly decline to set aside Order No. 1920's requirement that to use an existing cost allocation method as a Long-Term Regional Transmission Cost Allocation Method, a transmission provider must demonstrate in its compliance filings that such methods, as applied to Long-Term Regional Transmission Facilities, comply with Order No. 1920.

713. We disagree with PJM's request to continue to use existing regional cost allocation methods for Long-Term Regional Transmission Facilities without a showing that such use complies with the requirements of Order No. 1920.¹⁸⁰² However, we note that Order No. 1920 does not prohibit transmission providers from proposing to use existing regional cost allocation methods to comply with the requirements for Long-Term Regional Transmission Cost Allocation Methods, so long as the transmission providers demonstrate that the existing methods are just and reasonable and not unduly discriminatory or preferential when applied to Long-Term Regional Transmission Facilities and comply with the requirements of Order No. 1920 and the cost causation principle.¹⁸⁰³ Nevertheless, given the deficiencies identified in existing transmission

planning and cost allocation processes identified by the Commission in Order No. 1920 and the numerous reforms adopted in Order No. 1920 for Long-Term Regional Transmission Planning to address those deficiencies, it would be unjust and unreasonable for the Commission to accept existing cost allocation methods for Long-Term Regional Transmission Facilities without ensuring that such methods are consistent with Order No. 1920.¹⁸⁰⁴

714. We recognize that it may be just and reasonable to apply existing regional cost allocation methods to Long-Term Regional Transmission Facilities for many of the same reasons that the Commission found these methods to be just and reasonable when initially approving them. For this reason, Order No. 1920 specifically provided that transmission providers may demonstrate in their compliance filings that their existing regional cost allocation methods, as applied to Long-Term Regional Transmission Facilities, would comply with the requirements of Order No. 1920.¹⁸⁰⁵ As such, we disagree with PJM's assertion that Order No. 1920 will ignore past efforts to facilitate consensus on cost allocation methods.¹⁸⁰⁶

715. We disagree with Ohio Commission Federal Advocate's

assertion that Order No. 1920 requires that the continued use of PJM's State Agreement Approach must be re-approved by the Commission and that the final rule limits use of PJM's State Agreement Approach.¹⁸⁰⁷ We note that Order No. 1920 requires reapproval for existing cost allocation methods' use in Long-Term Regional Transmission Planning only if those methods are to be used for compliance with Order No. 1920.¹⁸⁰⁸ PJM's State Agreement Approach is not a regional cost allocation method used to comply with the requirements of Order No. 1000. The Commission approved the existing PJM State Agreement Approach in an order on compliance in the Order No. 1000 proceeding, but did not find that the PJM State Agreement Approach was a regional cost allocation method compliant with the requirements of Order No. 1000.¹⁸⁰⁹ In addition, PJM's State Agreement Approach is different than the "State Agreement Process" as discussed in Order No. 1920. The State Agreement Process referenced in Order No. 1920 is a new construct under which Relevant State Entities may agree to a different cost allocation method for Long-Term Regional Transmission Facilities than the generally applicable Long-Term Regional Transmission Cost Allocation Method on file. Therefore, we clarify that Order No. 1920 does not prohibit PJM from maintaining its existing State Agreement Approach for transmission facilities that are not selected in either its Order No. 1000 regional transmission planning process or through Long-Term Regional Transmission Planning.¹⁸¹⁰ To clarify further, PJM's State Agreement Approach is supplemental to PJM's existing regional transmission cost

¹⁸⁰⁴ *Id.* PP 124–125 (citations omitted), 1302–1303 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 565; Order No. 1000–A, 139 FERC ¶ 61,132 at P 747).

¹⁸⁰⁵ *Id.* PP 1302–1303. In Order No. 1000, in response to "concerns regarding relitigation of existing Commission-approved transmission cost allocation methods," the Commission declined "to prejudge whether any such existing cost allocation methods compl[ie]d with the requirements of [Order No. 1000]," and noted that "[t]o the extent [transmission providers] believe[d] that to be the case with their region, they [could] take such positions during the development of compliance proposals and during Commission review of compliance filings." Order No. 1000, 136 FERC ¶ 61,051 at P 565. On compliance, the Commission found that SPP's existing Balanced Portfolio and Highway/Byway regional cost allocation methods and MISO's existing regional cost allocation methods for Multi-Value Projects (MVPs) and Market Efficiency Projects (MEP) complied with the requirements of Order No. 1000. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at PP 336, 347 (2013), *order on reh'g and compliance*, 149 FERC ¶ 61,048, at P 276 (2014), *order on reh'g and compliance*, 151 FERC ¶ 61,045, *order on compliance*, 152 FERC ¶ 61,106 (2015); *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at PP 420, 434 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,127, at P 404 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,037 (2015), *order on compliance*, Docket No. ER13–187–010 (Mar. 31, 2015) (delegated order).

¹⁸⁰⁶ PJM Rehearing Request at 22–23. With respect to PJM's request to continue using its existing regional cost allocation method for public policy projects addressing state-identified needs outside of Long-Term Regional Transmission Planning, we address this issue above in the Requirement to Participate in Long-Term Regional Transmission Planning section.

¹⁸⁰⁷ Ohio Commission Federal Advocate Rehearing Request at 12–13.

¹⁸⁰⁸ Order No. 1920, 187 FERC ¶ 61,068 at PP 1302–1303.

¹⁸⁰⁹ See *PJM Interconnection, L.L.C.* 142 FERC ¶ 61,214, at P 142 (2013) ("We find PJM's proposed State Agreement Approach is not needed for PJM to comply with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. PJM's State Agreement Approach supplements, but does not conflict or otherwise replace, PJM's process to consider transmission needs driven by public policy requirements as required by Order No. 1000 addressed above. Accordingly, the Commission need not find that the State Agreement Approach and corresponding cost allocation method comply with Order No. 1000."), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

¹⁸¹⁰ See *supra* Requirement to Participate in Long-Term Regional Transmission Planning section (responding to Pennsylvania Commission's and PJM States' requests regarding the PJM State Agreement Approach).

¹⁸⁰¹ Ohio Commission Federal Advocate Rehearing Request at 12–13.

¹⁸⁰² PJM Rehearing Request at 19–23.

¹⁸⁰³ Order No. 1920, 187 FERC ¶ 61,068 at PP 1302–1303.

allocation method and, as a result, is not in any way affected by Order No. 1920.

716. However, if the Relevant State Entities in PJM agree to rely on its existing PJM State Agreement Approach as an Order No. 1920 State Agreement Process that applies to selected Long-Term Regional Transmission Facilities, and if PJM agrees, PJM would have to propose and demonstrate on compliance that its State Agreement Approach complies with all of the State Agreement Process requirements set forth in Order No. 1920. In addition, we reiterate that the *ex ante* Long-Term Regional Transmission Cost Allocation Method(s) that Order No. 1920 prescribes would be used to allocate the costs of selected Long-Term Regional Transmission Facilities if any Order No. 1920-compliant State Agreement Process does not result in a cost allocation method within six months after a project is selected, as described in the final rule. As noted above, the Commission will consider the entire record—including the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process and the transmission provider's proposal—when setting the replacement rate.

717. In addition, more generally, we clarify that we permit continued use of other existing state agreement approaches and similar voluntary measures under Order No. 1920, so long as they are consistent with the requirements stated above.

F. Regional Cost Allocation Principles for Long-Term Regional Transmission Facilities

1. Logical Outgrowth

a. NOPR Proposals

718. In the NOPR, the Commission proposed to require that the Long-Term Regional Transmission Cost Allocation Method and any cost allocation method resulting from the State Agreement Process for Long-Term Regional Transmission Facilities comply with the existing six Order No. 1000 regional cost allocation principles.¹⁸¹¹ The Commission made a preliminary finding that compliance with such principles will help ensure that Commission-jurisdictional rates resulting from any State Agreement Process will be just and reasonable and not unduly discriminatory or preferential.¹⁸¹² The six regional transmission cost allocation principles adopted in Order No. 1000 are: principle (1), the costs of

transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits; principle (2), those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities; principle (3), a benefit to cost threshold ratio, if adopted, cannot exceed 1.25 to 1; principle (4), costs must be allocated solely within the transmission planning region unless another entity outside the region voluntarily assumes a portion of those costs; principle (5), the method for determining benefits and identifying beneficiaries must be transparent; and principle (6), there may be different regional cost allocation methods for different types of transmission facilities, such as those needed for reliability, congestion relief, or to achieve Public Policy Requirements.¹⁸¹³

b. Order No. 1920 Requirements

719. In Order No. 1920, the Commission adopted the NOPR proposal, with modification, to require compliance with Order No. 1000 regional cost allocation principles (1) through (5) for Long-Term Regional Transmission Cost Allocation Methods that transmission providers propose but to which Relevant State Entities have not indicated their agreement. The Commission explained that, because compliance with regional cost allocation principle (6) is not required, transmission providers cannot adopt different *ex ante* Long-Term Regional Transmission Cost Allocation Methods for different types of Long-Term Regional Transmission Facilities, such as those needed for reliability, congestion relief, or to achieve Public Policy Requirements.¹⁸¹⁴

720. The Commission additionally determined that compliance with the Order No. 1000 regional cost allocation principles is not required in two situations: (1) Long-Term Regional Transmission Cost Allocation Methods to which Relevant State Entities have agreed as part of the Engagement Period; and (2) cost allocation methods resulting from a State Agreement Process.¹⁸¹⁵ The Commission explained that this decision was consistent with application of Order No. 1000 and past precedent, noting that the Commission has previously found that “Order No.

1000 allows market participants, including states, to negotiate voluntarily alternative cost sharing arrangements that are distinct from the relevant regional cost allocation method(s).”¹⁸¹⁶ Additionally, the Commission noted that where transmission providers have proposed cost allocation methods corresponding to such voluntary arrangements, the Commission has held that it need not find that those cost allocation methods comply with Order No. 1000.¹⁸¹⁷

c. Requests for Rehearing and Clarification

721. Several commenters argue that Order No. 1920 violates the APA's notice-and-comment requirements because, contrary to the NOPR proposal, it does not require cost allocation methods to comply with Order No. 1000's regional cost allocation principle (6) and prohibits transmission providers from adopting different cost allocation methods for different types of transmission facilities.¹⁸¹⁸ NRECA characterizes the change as an “about face” from both the NOPR and existing Commission policy.¹⁸¹⁹

722. NRECA additionally argues that Order No. 1920 violates the APA's notice-and-comment requirements because, contrary to the NOPR, Order No. 1920 does not require a transmission provider's Long-Term Regional Transmission Cost Allocation Method to comply with any of the Order No. 1000 regional cost allocation principles if Relevant State Entities indicate that they agreed to that method as part of the required Engagement Period, and does not require a cost allocation method resulting from the State Agreement Process to comply with any of the Order No. 1000 regional cost allocation principles.¹⁸²⁰ NRECA argues that the “Final Rule's flip-flops on these fundamental requirements for Long-Term Regional Transmission Cost Allocation Methods and the cost allocation methods resulting from a State Agreement Process are not a

¹⁸¹⁶ *Id.* P 1476 (quoting *State Voluntary Agreements to Plan & Pay for Transmission Facilities*, 175 FERC ¶ 61,225, at P 3 (2021)).

¹⁸¹⁷ *Id.* (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at PP 142–143, *order on reh'g and compliance*, 147 FERC ¶ 61,128 at P 92; *ISO New England Inc.*, 143 FERC ¶ 61,150, at P 121 (2013); *Consol. Edison Co. of N.Y., Inc.*, 180 FERC ¶ 61,106, at PP 48–50 (2022)).

¹⁸¹⁸ Arizona Commission Rehearing Request at 17–19; East Kentucky Rehearing Request at 1–2; NRECA Rehearing Request at 6, 16–17.

¹⁸¹⁹ NRECA Rehearing Request at 16–17.

¹⁸²⁰ *Id.* at 6, 17.

¹⁸¹¹ NOPR, 179 FERC ¶ 61,028 at PP 302, 312.

¹⁸¹² *Id.* P 312.

¹⁸¹³ Order No. 1000, 136 FERC ¶ 61,051 at PP 622, 637, 646, 657, 668, 685.

¹⁸¹⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1469.

¹⁸¹⁵ *Id.* P 1470.

logical outgrowth of the NOPR's exactly opposite proposals." ¹⁸²¹

d. Commission Determination

723. We find, and disagree with rehearing requests to the contrary, that the Commission provided adequate notice of and opportunity to comment on the determination in Order No. 1920 to require transmission providers to demonstrate compliance with Order No. 1000 regional cost allocation principles (1) through (5) but not Order No. 1000 regional cost allocation principle (6) for Long-Term Regional Transmission Cost Allocation Methods to which Relevant State Entities have not agreed.

724. Courts applying the logical outgrowth doctrine have permitted agencies to drop elements of proposed rules "even if a resulting final rule effectively abandons an agency's initial proposal" if the result is "reasonably foreseeable." ¹⁸²² Order No. 1920 is a logical outgrowth of the NOPR in this regard, and the APA's notice-and-comment requirements are therefore satisfied. ¹⁸²³ In the NOPR, the Commission expressed concern that transmission providers are not engaging in long-term, more comprehensive regional transmission planning and cost allocation processes like MISO's MVP process, which identifies projects that are projected to provide *multiple* kinds of reliability and economic benefits. ¹⁸²⁴ The Commission proceeded to endorse this kind of transmission planning. ¹⁸²⁵ The Commission also noted expressly that "we preliminarily find that the cost allocation requirements for transmission facilities identified and selected in the regional transmission plan through Long-Term Regional Transmission Planning proposed in this proceeding may differ in part from those established in Order No. 1000." ¹⁸²⁶

725. But allowing transmission providers to establish reliability,

economic, or public policy transmission facility types, which would have been possible under the NOPR proposal, reflects a more siloed approach to regional transmission planning and cost allocation that commenters argued is misaligned with the reforms in Order No. 1920 and urged the Commission to avoid. ¹⁸²⁷ Indeed, the Commission specifically noted its concern that using "only a subset of benefits in assigning the cost of Long-Term Regional Transmission Facilities may contribute to the risk of free rider problems that impede development of the more efficient or cost-effective regional transmission facilities." ¹⁸²⁸ That observation, which was made in the context of benefits used as the basis to allocate the costs of Long-Term Regional Transmission Facilities, further indicated the Commission's concerns with the siloed status quo approach and mirrored the rationale that the Commission adopted in eliminating regional cost allocation principle (6). It was therefore reasonably foreseeable that Order No. 1920 would not require compliance with regional cost allocation principle (6), which allows for project-type-limited Long-Term Regional Transmission Cost Allocation Methods, because such an approach would be inconsistent with Order No. 1920's long-term, forward-looking, more comprehensive regional transmission planning. ¹⁸²⁹ However, as noted below, transmission providers and Relevant State Entities have broad flexibility to recognize the different types of benefits provided by Long-Term Regional Transmission Facilities and allocate costs in proportion to those benefits.

726. Further, courts have held that a final rule satisfies the logical outgrowth standard where an agency either finalizes only part of a multi-segment proposal ¹⁸³⁰ or chooses not to finalize a proposal. ¹⁸³¹ Order No. 1920 is a

logical outgrowth of the NOPR in this regard. Because the NOPR proposed to require compliance with the existing six Order No. 1000 regional cost allocation principles, the Commission's decision to refrain from requiring compliance with one of those principles—principle (6)—could have been reasonably anticipated by commenters, especially given the Commission's frequently stated concerns regarding the siloing of transmission facilities into different categories under Order No. 1000. ¹⁸³² Indeed, in NOPR comments, parties expressed support for modifying Order No. 1000's cost allocation principles. ¹⁸³³ Such comments are evidence that parties had adequate notice that the Commission might refrain from taking the NOPR's proposed step—i.e., requiring compliance with all six regional cost allocation principles. ¹⁸³⁴

727. For similar reasons, we also disagree that the Commission failed to provide adequate notice of and opportunity to comment on the determination in Order No. 1920 to not adopt the requirement that transmission providers demonstrate compliance with any of the six Order No. 1000 regional cost allocation principles for Long-Term Regional Transmission Cost Allocation Methods to which Relevant State Entities have agreed as part of the Engagement Period or for cost allocation methods resulting from a State Agreement Process. In the NOPR, the Commission proposed to require that the Long-Term Regional Transmission Cost Allocation Method and any cost allocation method resulting from the State Agreement Process comply with the six Order No. 1000 regional cost allocation principles. ¹⁸³⁵ As noted above, because "[o]ne logical outgrowth of a proposal is surely . . . to refrain from taking the proposed step," ¹⁸³⁶ the

foreseeable"); *Vanda Pharms.*, 98 F.4th at 498 (finding that the APA's "notice-and-comment procedure is designed so that an agency can float a potential rule to the public without committing itself to enacting the proposed rule's content").

¹⁸³² See NOPR, 179 FERC ¶ 61,028 at PP 67, 325.

¹⁸³³ New Jersey Commission NOPR Initial Comments at 18 (expressing support for a requirement that any cost allocation method comply with the Order No. 1000 regional cost allocation principles except principle (4)); PIOs NOPR Initial Comments at 61 & n.172 (requesting "that the Commission specifically find that cost allocation of public policy projects without consideration of economic and reliability benefits is unjust, unreasonable, and unduly discriminatory").

¹⁸³⁴ *Miami-Dade Cnty. v. EPA*, 529 F.3d 1049, 1059 (11th Cir. 2008) ("[A]lthough they may not provide the only basis upon which an agency claims to have satisfied the notice requirement, comments may be adduced as evidence of the adequacy of notice.").

¹⁸³⁵ NOPR, 179 FERC ¶ 61,028 at P 302.

¹⁸³⁶ *New York v. EPA*, 413 F.3d at 44.

¹⁸²¹ *Id.* at 16–17.

¹⁸²² *Mid Continent Nail Corp. v. U.S.*, 846 F.3d 1364, 1374 (Fed. Cir. 2017) (citing *Long Island Care*, 551 U.S. at 174–75).

¹⁸²³ *Id.* at 1373 ("The dispositive question in assessing the adequacy of notice under the APA is whether an agency's final rule is a 'logical outgrowth' of an earlier request for comment.").

¹⁸²⁴ NOPR, 179 FERC ¶ 61,028 at P 31.

¹⁸²⁵ *Id.* P 33.

¹⁸²⁶ *Id.* P 299. Although the Commission then gave the example of greater state involvement as one way that the cost allocation requirements might differ, that statement was sufficient to put commenters on notice that the Commission would not necessarily adopt in full Order No. 1000's requirements regarding cost allocation. Indeed, as noted below, multiple commenters, including New Jersey Commission and PIOs, expressed support for modifying Order No. 1000's cost allocation principles, indicating their understanding that such potential modifications could be adopted in a final rule.

¹⁸²⁷ See Acadia Center and CLF NOPR Initial Comments at 16–17; Massachusetts Attorney General NOPR Initial Comments at 21; PIOs NOPR Initial Comments at 46, 60–62.

¹⁸²⁸ NOPR, 179 FERC ¶ 61,028 at P 325.

¹⁸²⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1474.

¹⁸³⁰ *Ariz. Pub. Serv. Co. v. EPA*, 211 F.3d at 1297–1300 (finding sufficient notice where agency first proposed that Indian tribes be required to meet the "same requirements" as states with respect to judicial review of permits issued pursuant to the Clean Air Act, but then adopted a final rule that exempted tribes from some, though not all, such requirements).

¹⁸³¹ *New York v. EPA*, 413 F.3d at 44 (per curiam) ("One logical outgrowth of a proposal is surely . . . to refrain from taking the proposed step." (quoting *Am. Iron & Steel Inst. v. EPA*, 886 F.2d at 400); see also *Long Island Care*, 551 U.S. at 175 (stating, in the context of rejecting claims that an agency provided legally defective notice because it did not finalize a proposed rule, "[w]e do not understand why such a possibility was not reasonably

Commission's decision to refrain from adopting the entire proposal as to Long-Term Regional Transmission Cost Allocation Methods to which Relevant State Entities have agreed or for cost allocation methods resulting from a State Agreement Process could have been reasonably anticipated by commenters. Moreover, the decision to refrain from adopting the proposal was all the more foreseeable because, as a result of that decision, the cost allocation requirements adopted in Order No. 1920 are more closely aligned with the Commission's existing cost allocation requirements,¹⁸³⁷ which it had already articulated at the time it issued the NOPR, and under which cost allocation methods corresponding to voluntarily negotiated alternative cost sharing arrangements that are distinct from the relevant regional cost allocation method(s) need not comply with Order No. 1000.¹⁸³⁸

2. Omission of Regional Cost Allocation Principle No. 6 and Ability To Allocate Costs by Type of Project

a. Order No. 1920 Requirements

728. In Order No. 1920, the Commission declined to require transmission providers to demonstrate that any Long-Term Regional Transmission Cost Allocation Methods that they propose complies with Order No. 1000 regional cost allocation principle (6).¹⁸³⁹ The Commission explained that Order No. 1000 regional cost allocation principle (6) allows for cost allocation methods based on different types of transmission facilities (*i.e.*, reliability, economic, or public policy transmission facility types), but that there can be only one cost allocation method for each type of facility, and that method must be determined in advance.¹⁸⁴⁰ The Commission found that project-type-limited Long-Term Regional Transmission Cost Allocation Methods that would be permitted by applying regional cost allocation principle (6) are inconsistent with the long-term, forward-looking, more comprehensive regional transmission planning required in Order No. 1920.¹⁸⁴¹ As a result, unlike under Order No. 1000,

transmission providers cannot adopt different Long-Term Regional Transmission Cost Allocation Methods for different types of Long-Term Regional Transmission Facilities, such as those needed for reliability, congestion relief, or to achieve Public Policy Requirements.¹⁸⁴²

b. Requests for Rehearing and Clarification

729. Many parties argue that the Commission erred in not requiring the application of Order No. 1000 regional cost allocation principle (6) and request that the Commission implement such a requirement so that transmission providers may allocate the cost of Long-Term Regional Transmission Facilities by project type.¹⁸⁴³ Nearly all of these parties argue that not requiring the application of regional cost allocation principle (6) will result in cost allocation that violates cost causation or the "beneficiary pays" principle.¹⁸⁴⁴ Utah Commission asserts that the Commission not requiring the application of regional cost allocation principle (6) in Order No. 1920 violates cost causation principles by flatly enjoining any cost allocation method that distinguishes between projects that are based on economic or engineering necessity and those based on the "public policy" preferences of states, local governments, and corporations.¹⁸⁴⁵ Several parties argue that Order No. 1920 will result in cost allocation that fails to reflect the role of state policy in causing costs and will shift the financial burden away from the cost-causing states that imposed those policies.¹⁸⁴⁶ Idaho Commission argues that Order No. 1920 contradicts the Commission's position in Order No. 1000, which stresses the role of states in

consideration of costs potentially allocated across multiple states with respect to transmission needs driven by states' individual Public Policy Requirements.¹⁸⁴⁷

730. Ohio Commission Federal Advocate argues that the prohibition against transmission providers allocating costs for Long-Term Regional Transmission Facilities based on reliability, economic, and Public Policy Requirement project types is not possible to reconcile with the principle that cost allocation ought to be roughly commensurate with benefits. Ohio Commission Federal Advocate offers as an example a transmission facility that would not exist but for the policy of one or more states, does not affect the power flow in any neighboring states, and does not provide any tangible benefit to any other states, arguing that the Commission ought to clarify that, in this instance, it is wholly appropriate that the sponsoring state or states bear the full cost of the facility and that it would be an unjust and unreasonable result to assign any costs to any other state. Ohio Commission Federal Advocate argues that Ohioans were not afforded the opportunity to weigh in on the policies of other states, nor were they granted a vote on the politicians enacting them, and, as such, should not be assigned any costs associated with those policies.¹⁸⁴⁸

731. Some parties assert that the Commission's decision not to require the application of regional cost allocation principle (6) and the prohibition against Long-Term Regional Transmission Facility types and associated cost allocation methods is arbitrary and capricious¹⁸⁴⁹ because the Commission has not provided a reasonable explanation or any supporting evidence as to how, among other things, this policy will protect consumers from unjust, unreasonable, and unduly discriminatory transmission rates;¹⁸⁵⁰ the Commission did not explain how the rejection of project-type cost allocation is forward-looking or comprehensive;¹⁸⁵¹ and the Commission did not meaningfully distinguish how Long-Term Regional Transmission Planning differs from regional transmission planning under Order No. 1000.¹⁸⁵² Dominion asserts

¹⁸⁴² *Id.* P 1469.

¹⁸⁴³ Arizona Commission Rehearing Request at 18–19; Dominion Rehearing Request at 28–31; East Kentucky Rehearing Request at 3; Idaho Commission Rehearing Request at 2–4; Indicated PJM TOs Rehearing Request at 2–3, 4–6; Montana Commission Rehearing Request at 1, 4–6; Northern Virginia Rehearing Request at 5, 9–13; NRECA Rehearing Request at 49–55; Ohio Commission Federal Advocate Rehearing Request at 13–15; Utah Commission Rehearing Request at 9–10; West Virginia Commission Rehearing Request at 6–8; Wyoming Commission Rehearing Request at 4–6.

¹⁸⁴⁴ Arizona Commission Rehearing Request at 18–19; Idaho Commission Rehearing Request at 2–4; Indicated PJM TOs Rehearing Request at 2–3, 4–6; Montana Commission Rehearing Request at 1, 4–6; Northern Virginia Rehearing Request at 5, 9–13; NRECA Rehearing Request at 53–54; Utah Commission Rehearing Request at 9–10; West Virginia Commission Rehearing Request at 6–8; Wyoming Commission Rehearing Request at 4–6.

¹⁸⁴⁵ Utah Commission Rehearing Request at 9–10.

¹⁸⁴⁶ Idaho Commission Rehearing Request at 3–4; Montana Commission Rehearing Request 5–6; West Virginia Commission Rehearing Request at 7–8; Wyoming Commission Rehearing Request at 5–6.

¹⁸³⁷ *Cf. New York v. EPA*, 413 F.3d at 44 (agency satisfied APA's notice-and-comment requirements where it adopted the approach of the "status quo ante" rather than the proposed approach).

¹⁸³⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 1476 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at PP 142–143, *order on reh'g and compliance*, 147 FERC ¶ 61,128 at P 92; *ISO New England Inc.*, 143 FERC ¶ 61,150 at P 121).

¹⁸³⁹ *Id.* P 1469.

¹⁸⁴⁰ *Id.* P 1474.

¹⁸⁴¹ *Id.*

¹⁸⁴⁷ Idaho Commission Rehearing Request at 3 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 486).

¹⁸⁴⁸ Ohio Commission Federal Advocate Rehearing Request at 13–15.

¹⁸⁴⁹ *E.g.*, Northern Virginia Rehearing Request at 5.

¹⁸⁵⁰ East Kentucky Rehearing Request at 3.

¹⁸⁵¹ Ohio Commission Federal Advocate Rehearing Request at 10.

¹⁸⁵² Dominion Rehearing Request at 29–30.

that Order No. 1920 does not cite any record evidence, nor is it clear whether any commenters to the NOPR requested this change to Order No. 1000's cost allocation principles.¹⁸⁵³

732. Dominion argues that Order No. 1920 inappropriately treats all Long-Term Regional Transmission Facilities as equal for cost allocation purposes under the guise of the holistic transmission planning that Order No. 1920 seeks to foster. Dominion further argues that holistic transmission planning can acknowledge that certain projects provide different types of benefits and serve different needs, but together, as a package, serve a variety of needs. Dominion asserts that, if cost allocation cannot be tied to an identified underlying driver for the project, costs are more likely to be inappropriately socialized to customers who did not cause the need and do not benefit from it. Dominion states that the Commission should continue to allow transmission providers to develop different project types and associated cost allocations, but also require that transmission providers have a category of projects to act as a backstop that accounts for all potential benefits.¹⁸⁵⁴

733. NRECA argues that the Commission's argument in support of its prohibition on using different cost allocation methods for different types of Long-Term Regional Transmission Facilities is essentially that the Commission can restrict cost allocation methods by dictating planning methods.¹⁸⁵⁵ NRECA contends that this prohibition and reasoning is contrary to precedent and the Order No. 1000 regional cost allocation principle (1) that Order No. 1920 adopts because it would result in the costs of transmission facilities being allocated in a manner that is not at least roughly commensurate with estimated benefits.¹⁸⁵⁶ NRECA argues that, if Long-Term Regional Transmission Facilities produce multiple types of benefits that must be accounted for in Long-Term Regional Transmission Planning, this is an argument for a more flexible and more tailored approach to cost allocation with different cost allocation methods, not a more prescriptive and less tailored approach.¹⁸⁵⁷

734. NRECA contends that allocating costs of a Long-Term Regional Transmission Facility built to satisfy

Public Policy Requirements or other expansive factors required by the rule, such as corporate commitments, in the same manner as a facility built for reliability or economic purposes also likely conflicts with Order No. 1000's regional cost allocation principle (2) because those that receive no benefits would likely be involuntarily allocated costs.¹⁸⁵⁸ NRECA argues that costs associated with Long-Term Regional Transmission Facilities built to satisfy transmission needs driven by corporate commitments should be borne by the relevant corporations, not by other transmission customers that do not benefit from the facility.¹⁸⁵⁹

735. NRECA further argues that the omission of principle (6) and prohibition on using different cost allocation methods for different types of Long-Term Regional Transmission Facilities violates Order No. 1000's regional cost allocation principle (4) because it will likely allow the costs of Long-Term Regional Transmission Facilities built to satisfy a state's Public Policy Requirements to be allocated to customers in other states.¹⁸⁶⁰

736. Arizona Commission, Ohio Commission Federal Advocate, and NRECA argue that the Commission's decision not to require the application of regional cost allocation principle (6) and the prohibition against Long-Term Regional Transmission Facility types and associated cost allocation methods replaces flexibility with a one-size-fits-all requirement.¹⁸⁶¹ Idaho Commission contends that Order No. 1920 strays from Order No. 1000's "light touch," highlighted in *South Carolina Public Service Authority v. FERC*, where the Commission did not "dictate how costs are to be allocated."¹⁸⁶²

737. Indicated PJM TOs request that the Commission clarify that, by precluding transmission providers from adopting Long-Term Regional Transmission Cost Allocation Methods for different project types, it did not intend to preclude transmission providers from adopting cost allocation methods that allocate costs based on the

different benefits associated with a particular facility. Indicated PJM TOs argue that such a clarification would be consistent with the Commission's obligation to ensure that the transmission provider allocates the cost in a manner that is at least roughly commensurate with estimated benefits. Indicated PJM TOs state that, if the Commission does not grant this clarification, they seek rehearing of the decision to preclude transmission providers from adopting different Long-Term Regional Transmission Cost Allocation Methods based on a facility's benefits because this outcome is inconsistent with other statements in the NOPR and Order No. 1920 and long-standing cost causation principles and nothing in regional cost allocation principle (6) prevents transmission providers from having this flexibility.¹⁸⁶³

738. Virginia and North Carolina Commissions argue that the Commission should afford transmission providers, in coordination with Relevant State Entities and other stakeholders, the maximum flexibility possible with respect to potential *ex ante* cost allocation methods, so long as such methods are in compliance with the Commission's cost-causation principles. As a result, Virginia and North Carolina Commissions assert that the Commission should clarify on rehearing that Order No. 1920 does not expressly preclude cost allocation methods that allocate costs based on the incremental costs associated with the inclusion of one or more public policy factors.¹⁸⁶⁴

c. Commission Determination

739. We sustain Order No. 1920's decision to not require Long-Term Regional Transmission Cost Allocation Methods to which Relevant State Entities do not agree to comply with Order No. 1000 regional cost allocation principle (6), and also sustain the prohibition of cost allocation methods that allocate costs based solely on one type of benefit, such as reliability, economic, and public policy transmission facility types. However, we note our clarification below that transmission providers and Relevant State Entities may consider different types of benefits provided by Long-Term Regional Transmission Facilities and allocate costs in proportion to those benefits.¹⁸⁶⁵ Recognizing the flexibility

¹⁸⁵³ *Id.* at 29.

¹⁸⁵⁴ *Id.* at 29–31.

¹⁸⁵⁵ NRECA Rehearing Request at 53.

¹⁸⁵⁶ *Id.* (citing *ICC v. FERC I*, 576 F.3d at 477; Order No. 1000, 136 FERC ¶ 61,051 at P 622).

¹⁸⁵⁷ *Id.* at 54.

¹⁸⁵⁸ *Id.*

¹⁸⁵⁹ *Id.* at 55.

¹⁸⁶⁰ *Id.* Order No. 1000 regional cost allocation principle (4) provides that costs must be allocated "solely within th[e] transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs." Order No. 1000, 136 FERC ¶ 61,051 at P 657.

¹⁸⁶¹ Arizona Commission Rehearing Request at 18–19; Ohio Commission Federal Advocate Rehearing Request at 14; NRECA Rehearing Request at 52, 54.

¹⁸⁶² Idaho Commission Rehearing Request at 3 (quoting *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 81).

¹⁸⁶³ Indicated PJM TOs Rehearing Request at 2–3, 4–6.

¹⁸⁶⁴ Virginia and North Carolina Commissions Rehearing Request at 5–6.

¹⁸⁶⁵ See *infra* Concerns Regarding Cost Causation section.

to allocate costs in proportion to different types of benefits, we disagree with arguments raised on rehearing that the Commission should require the application of Order No. 1000 regional cost allocation principle (6) to Long-Term Regional Transmission Cost Allocation Methods to which Relevant State Entities have not agreed and arguments that the Commission's decision on this issue is arbitrary and capricious. First, because of the flexibility the Commission provided to transmission providers to propose different cost allocation methods for Long-Term Regional Transmission Facilities, we disagree that a requirement not to use cost allocation methods that allocate costs based on project types will result in adoption of cost allocation methods that violate the cost causation principle. We reiterate that, as stated in Order No. 1920, the Commission will evaluate each proposed Long-Term Regional Transmission Cost Allocation Method to ensure that it will allocate costs in a manner that is at least roughly commensurate with the estimated benefits that Long-Term Regional Transmission Facilities will provide, which will ensure compliance with the cost causation principle and the just and reasonable standard more broadly.¹⁸⁶⁶ To the extent that a party believes that any Long-Term Regional Transmission Cost Allocation Method submitted on compliance, including those discussed herein, violates the cost causation principle, it will have the opportunity to raise those concerns in response to the compliance filing.

740. Additionally, as the Commission found in Order No. 1920, Long-Term Regional Transmission Facilities are likely to provide a diverse array of benefits,¹⁸⁶⁷ and Order No. 1920 specifically required that transmission providers consider seven economic and reliability benefits,¹⁸⁶⁸ while not prohibiting them from also considering public policy benefits.¹⁸⁶⁹ We conclude

that Long-Term Regional Transmission Facilities will likely have benefits beyond addressing transmission needs driven by Public Policy Requirements and allowing transmission providers to allocate costs based solely on one type of benefit, such as reliability, economic, or public policy transmission project types, would likely underestimate the benefits provided by the project and, for that reason, be inconsistent with the goals underlying long-term, forward-looking, more comprehensive regional transmission planning required in Order No. 1920.¹⁸⁷⁰

741. Nevertheless, we emphasize the fundamental principle that costs must be allocated in a manner that is at least roughly commensurate with estimated benefits, ensuring that ratepayers will not pay for facilities from which they do not benefit.¹⁸⁷¹ Regardless of the factors driving the need for that project, if a customer does not derive benefits from the project or if they derive only trivial benefits in relation to the project's costs, the customer cannot be forced to pay for the costs of the project without violating the cost causation principle.¹⁸⁷²

742. Additionally, contrary to Dominion's argument,¹⁸⁷³ the long-term, forward-looking, more comprehensive nature of Long-Term Regional Transmission Planning distinguishes it from regional transmission planning under Order No. 1000. Order No. 1000 did not establish similarly long-term, forward-looking, or comprehensive regional transmission planning requirements. As a result, the Commission engaged in reasoned decision-making in relying on the different attributes of Long-Term Regional Transmission Planning when not adopting Order No. 1000 regional cost allocation principle (6).

743. As the Commission also found in Order No. 1920, the application of Order No. 1000 regional cost allocation principles (1) through (5) safeguards against cost causation concerns. Notably, the Commission explained:

[P]rinciples (1) and (2) require that benefits received are at least roughly commensurate with costs paid and that costs may not be involuntarily allocated to those that do not benefit, respectively. Further, Order No. 1000 regional cost allocation principle (5), as well as the requirements in this final rule to disclose estimates of the benefits of selected Long-Term Regional Transmission Facilities,

ensures sufficient transparency for stakeholders to understand how the costs of selected Long-Term Regional Transmission Facilities will be allocated to transmission customers in relation to the benefits that they are forecasted to provide.¹⁸⁷⁴

744. Therefore, even if a Long-Term Regional Transmission Facility helps to address a transmission need driven by a state or states' Public Policy Requirements, the costs of that transmission facility will only be allocated to ratepayers in states without those Public Policy Requirements in relation to the benefits they receive. We note that the benefits of a transmission facility go beyond any particular need that it may address.¹⁸⁷⁵ As noted below, where Relevant State Entities agree, one potential cost allocation method that could be proposed to comply with Order No. 1920 would allocate costs commensurate with reliability and economic benefits region-wide, while allocating costs commensurate with additional benefits to a subset of states that agree to such cost allocation.¹⁸⁷⁶

745. For these reasons, we disagree with rehearing arguments that seem to suggest that, for any Long-Term Regional Transmission Cost Allocation Method to satisfy the cost causation principle or, in NRECA's case, not contradict Order No. 1000 principles (1) and (2),¹⁸⁷⁷ transmission providers must disaggregate all disparate drivers of Long-Term Transmission Needs so that each identified Long-Term Regional Transmission Facility may precisely be attributed to a particular policy goal or other driver of the transmission need. As we emphasize throughout this section, transmission providers and Relevant State Entities have broad flexibility to develop cost allocation approaches, provided such approaches comply with the cost causation principle and are otherwise just and reasonable. Consistent with that flexibility, as we clarify below, transmission providers and Relevant State Entities are not precluded from considering in their proposed cost

¹⁸⁶⁶ Order No. 1920, 187 FERC ¶ 61,068 at PP 1305 & n.2786, 1478; see *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1255 (D.C. Cir. 2018) ("Under the [FPA], electric utilities must charge 'just and reasonable' rates. For decades, the Commission and the courts have understood this requirement to incorporate a 'cost-causation principle'—the rates charged for electricity should reflect the costs of providing it." (internal citations omitted)); *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) ("FERC and the courts have added flesh to these bare statutory bones [*i.e.*, the just and reasonable standard], establishing what has become known in Commission parlance as the 'cost-causation' principle.").

¹⁸⁶⁷ Order No. 1920, 187 FERC ¶ 61,068 at PP 123, 126, 722.

¹⁸⁶⁸ See *id.* PP 719–720.

¹⁸⁶⁹ *Id.* PP 737, 822; see also *id.* P 1515 & n.3220.

¹⁸⁷⁰ *Id.* P 1474.

¹⁸⁷¹ *Id.* P 267.

¹⁸⁷² *ICC v. FERC I*, 576 F.3d at 476–77; *ICC v. FERC III*, 756 F.3d at 564–65; see *Coal. of MISO Transmission Customers v. FERC*, 45 F.4th 1004, 1009 (D.C. Cir. 2022); *LSP Transmission Holdings II, LLC v. FERC*, 45 F.4th 979, 984 (D.C. Cir. 2022).

¹⁸⁷³ Dominion Rehearing Request at 30.

¹⁸⁷⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1478.

¹⁸⁷⁵ See *ICC v. FERC I*, 576 at 476 ("To the extent that a utility benefits from the costs of new facilities, it may be said to have 'caused' a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed."). See also Order No. 1000, 136 FERC ¶ 61,051 at P 690 ("If a regional transmission plan determines that a transmission facility serves several functions, as many commenters point out it may, the regional cost allocation method must take the benefits of these functions of the transmission facility into account in allocating costs roughly commensurate with benefits.").

¹⁸⁷⁶ See *infra* Concerns Regarding Cost Causation section.

¹⁸⁷⁷ NRECA Rehearing Request at 53–55.

allocation methods the incremental cost of transmission needed to achieve state laws, policies, and regulations beyond the cost of transmission needed in the absence of those laws, policies, and regulations. Nevertheless, we find that requiring transmission providers to conduct Long-Term Regional Transmission Planning in the manner suggested by NRECA might risk undermining the scaling of Long-Term Regional Transmission Facilities to provide a more efficient or cost-effective solution to multiple transmission needs by encouraging piecemeal transmission expansion (e.g., two separate transmission facilities to address two separate transmission needs may be more expensive than one facility meeting both needs) that caused the need for reform in the first place.¹⁸⁷⁸ In addition, that exercise would likely stymie transmission providers' selection of more efficient or cost-effective transmission solutions by leading them to ignore or otherwise discount the diverse range of benefits that Long-Term Regional Transmission Facilities can provide, likely leading them to underestimate the benefits that the facilities provide to customers.

746. Moreover, we reiterate that Long-Term Regional Transmission Cost Allocation Methods to which Relevant State Entities have not agreed must satisfy Order No. 1000 regional cost allocation principles (1) through (5), such that transmission customers will only pay for Long-Term Regional Transmission Facilities (or portfolios of such Facilities) when the transmission provider has determined that they meet the transmission providers' selection criteria and transmission customers will only be allocated costs that are at least roughly commensurate with the estimated benefits they receive. As Order No. 1920 noted:

[U]nder this final rule, customers pay for a more reliable and economic transmission system as identified through open and transparent Long-Term Regional Transmission Planning, and any state's ratepayers only fund the construction of Long-Term Regional Transmission Facilities that provide them with such benefits that are at least roughly commensurate with the costs of those facilities.¹⁸⁷⁹

747. Consequently, and contrary to certain parties' arguments,¹⁸⁸⁰ these requirements will protect customers from unjust, unreasonable, and unduly

discriminatory or preferential transmission rates.

748. Regarding NRECA's arguments that the cost allocation requirements of Order No. 1920 violate Order No. 1000 regional cost allocation principle (4),¹⁸⁸¹ we disagree. NRECA's arguments are based on an incorrect interpretation of Order No. 1000 regional cost allocation principle (4), which states that "[t]he allocation method for the cost of a transmission facility selected in a regional transmission plan must allocate costs solely within that *transmission planning region* unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs."¹⁸⁸² Order No. 1000 regional cost allocation principle (4) concerns transmission planning regions, not individual states as contemplated by NRECA's arguments, and it does not prohibit allocation of costs among customers in states within a single transmission planning region.

749. We disagree with rehearing parties who argue that the lack of a requirement to apply regional cost allocation principle (6), with its prohibition against adopting different Long-Term Regional Transmission Cost Allocation Methods for reliability, economic, and public policy transmission project types, creates a one-size-fits-all approach,¹⁸⁸³ inappropriately treats all Long-Term Regional Transmission Facilities as equal for cost allocation purposes,¹⁸⁸⁴ or otherwise conflicts with the Commission's "light touch" in Order No. 1000.¹⁸⁸⁵ In particular, NRECA is incorrect that the prohibition against adopting different Long-Term Regional Transmission Cost Allocation Methods for reliability, economic, and public policy transmission project types means that "transmission providers must similarly use a single cost allocation method."¹⁸⁸⁶ Rehearing parties' arguments focus on the prohibition against economic, reliability, and public policy types, but do not recognize the broad flexibility otherwise afforded under Order No. 1920's application of Order No. 1000 regional cost allocation principles (1)–(5) and allowance of multiple cost allocation methods for Long-Term Regional Transmission

Facilities.¹⁸⁸⁷ Under Order No. 1920, transmission providers may craft different *ex ante* cost allocation methods to reflect the different proportion of benefits provided by Long-Term Regional Facilities with different underlying drivers.¹⁸⁸⁸ Thus, we clarify that Order No. 1920's prohibition against types is a prohibition against the allocation of costs based on a single category of benefits—whether reliability, economic, public policy, or another category of benefits. In other words, transmission providers could *not* allocate *all* costs of Long-Term Regional Transmission Facilities on the basis of public policy benefits, if doing so ignores economic and reliability benefits associated with those facilities. Allocating the costs of Long-Term Regional Transmission Facilities entirely on a single category of benefits would likely ignore the diverse range of benefits those Facilities likely provide, as described above, and in doing so violate the cost causation principle.

750. We reiterate the fact that Order No. 1920 provides flexibility previously unafforded in regional transmission planning both in the new types of compliant cost allocation methods (*i.e.*, Long-Term Regional Transmission Cost Allocation Methods agreed to by Relevant State Entities during the Engagement Period and cost allocation methods resulting from a State Agreement Process) and in the lack of restrictions placed on these new state-agreed-to methods (*i.e.*, the only requirement for such methods is compliance with the cost causation principle). We believe the possibilities afforded by state agreement under Order No. 1920 may address the concerns underlying rehearing parties' arguments.

751. Further, we grant Indicated PJM TOs' request for clarification that Order No. 1920 does not preclude transmission providers from adopting Long-Term Regional Transmission Cost Allocation Methods that allocate costs based on the different benefits associated with a particular Long-Term Regional Transmission Facility (or portfolio of Facilities).¹⁸⁸⁹ Transmission

¹⁸⁸⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1475 ("We clarify that this final rule does not preclude the adoption of multiple Long-Term Regional Transmission Cost Allocation Methods, provided that the Long-Term Regional Transmission Cost Allocation Method that will apply to a Long-Term Regional Transmission Facility (or portfolio of such Facilities) is known before selection, *i.e.*, is an *ex ante* cost allocation method, and does not allocate costs by project type.").

¹⁸⁸⁸ *Infra* Concerns Regarding Cost Causation section.

¹⁸⁸⁹ Indicated PJM TOs Rehearing Request at 2–3, 4–6.

¹⁸⁸¹ NRECA Rehearing Request at 55.

¹⁸⁸² Order No. 1000, 136 FERC ¶ 61,051 at P 657 (emphasis added).

¹⁸⁸³ See Arizona Commission Rehearing Request at 18–19; Ohio Commission Federal Advocate Rehearing Request at 14.

¹⁸⁸⁴ See Dominion Rehearing Request at 29–31.

¹⁸⁸⁵ See Idaho Commission Rehearing Request at 3; NRECA Rehearing Request at 52–53.

¹⁸⁸⁶ NRECA Rehearing Request at 53.

¹⁸⁷⁸ Order No. 1920, 187 FERC ¶ 61,068 at PP 85, 112.

¹⁸⁷⁹ *Id.* P 270.

¹⁸⁸⁰ See e.g., East Kentucky Rehearing Request at 3.

providers may propose *ex ante* Long-Term Regional Transmission Cost Allocation Methods that, for example, assign a portion of the costs of a Long-Term Regional Transmission Facility that are associated with reliability benefits to one set of beneficiaries, a portion of the costs associated with economic benefits to another set of beneficiaries, and a portion of costs associated with public policy benefits to a different set of beneficiaries. Such a method would not violate the Commission's decision to not apply regional cost allocation principle (6) because the Long-Term Regional Transmission Cost Allocation Method would not create a cost allocation method that is specific to, for example, a transmission facility that satisfies a transmission need driven by economic benefits. As such, elimination of Order No. 1000 regional cost allocation principle (6) does not yield as inflexible an outcome as rehearing *partis* assert.

752. In response to Virginia and North Carolina Commissions' request that the Commission clarify that Order No. 1920 does not preclude cost allocation methods that allocate costs based on the incremental costs associated with the inclusion of one or more public policy factors,¹⁸⁹⁰ we clarify that Order No. 1920's cost allocation requirements allow for, but do not require, transmission providers to account for the benefits associated with addressing transmission needs driven by Public Policy Requirements in any *ex ante* cost allocation method.¹⁸⁹¹

3. Concerns Regarding Cost Causation

a. Order No 1920 Requirements

753. In Order No. 1920, the Commission required Long-Term Regional Transmission Cost Allocation Methods not agreed to by Relevant State Entities to comply with Order No. 1000 regional cost allocation principles (1) through (5). The Commission found that Order No. 1000 regional cost allocation principles (1) through (5) remain relevant for *ex ante* cost allocation methods for Long-Term Regional Transmission Facilities that transmission providers propose on compliance but for which Relevant State Entities have *not* indicated their agreement.¹⁸⁹²

754. In Order No. 1920, the Commission did not require transmission providers to demonstrate

that Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities indicate they have agreed to or cost allocation methods resulting from a State Agreement Process comply with any of the Order No. 1000 regional cost allocation principles.¹⁸⁹³ The Commission chose not to adopt the NOPR proposal to require adherence to the six Order No. 1000 regional cost allocation principles in these circumstances because cost allocation methods resulting from a State Agreement Process and Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities indicate that they have agreed to are likely to facilitate agreement over development of such Long-Term Regional Transmission Facilities by, for example, making the Relevant State Entities more confident that customers in the state are receiving benefits at least roughly commensurate with their share of the cost of such facilities and by reducing the likelihood that selected Long-Term Regional Transmission Facilities cannot be constructed because they do not receive necessary state regulatory approvals.¹⁸⁹⁴ The Commission further reasoned that affording additional flexibility for these methods by not requiring the application of the six Order No. 1000 regional cost allocation principles may encourage their use, and consequently facilitate the selection of more efficient or cost-effective Long-Term Regional Transmission Facilities.¹⁸⁹⁵ The Commission noted, however, that such methods must still be just and reasonable and not unduly discriminatory or preferential, and must allocate costs in a manner that is at least roughly commensurate with estimated benefits.¹⁸⁹⁶ The Commission further explained that this decision was consistent with past precedent, noting that the Commission has previously found that "Order No. 1000 allows market participants, including states, to negotiate voluntarily alternative cost sharing arrangements that are distinct from the relevant regional cost allocation method(s)." ¹⁸⁹⁷ Additionally, the Commission noted that where transmission providers have proposed cost allocation methods corresponding to such voluntary arrangements, the Commission has held that it need not find that those cost allocation methods

comply with Order No. 1000.¹⁸⁹⁸ Consistent with this precedent, the Commission found that cost allocation methods resulting from a State Agreement Process and Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities indicate they have agreed to and have asked transmission providers to file also qualify as voluntary alternative cost sharing arrangements and, accordingly, the Commission declined to require those methods to adhere to the six Order No. 1000 regional cost allocation principles.¹⁸⁹⁹ However, the Commission did require that any voluntary alternative cost sharing arrangements still comply with the cost causation principle and any other legal requirements for cost allocation.¹⁹⁰⁰

b. Requests for Rehearing and Clarification

755. NRECA argues that Order No. 1920 does not provide a reasonable explanation for its decision not to require a Long-Term Regional Transmission Cost Allocation Method to comply with any of the Order No. 1000 regional cost allocation principles when Relevant State Entities indicate their agreement with such a method as part of the Engagement Period.¹⁹⁰¹ NRECA further argues that Order No. 1920 similarly does not provide a reasonable explanation as to why the Commission did not require a cost allocation method resulting from a State Agreement Process to comply with the Order No. 1000 regional cost allocation principles.¹⁹⁰² NRECA contends that neither Order No. 1920's reliance on a 2021 Commission policy statement nor Order No. 1000 allows the Commission to waive the Order No. 1000 regional cost allocation principles as NRECA alleges the Commission does in the final rule.¹⁹⁰³ NRECA asserts that Order No. 1920's reference to prior instances where the Commission has approved voluntary agreements on a case-by-case basis without finding that their cost allocation methods comply with Order No. 1000 does not constitute precedent for a categorical waiver of Order No. 1000's requirements for future cost

¹⁸⁹⁸ *Id.* (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at PP 142–143, *order on reh'g and compliance*, 147 FERC ¶ 61,128 at P 92; *ISO New England Inc.*, 143 FERC ¶ 61,150 at P 121; *Consol. Edison Co. of N.Y., Inc.*, 180 FERC ¶ 61,106 at PP 48–50).

¹⁸⁹⁹ *Id.*

¹⁹⁰⁰ *Id.*

¹⁹⁰¹ NRECA Rehearing Request at 55.

¹⁹⁰² *Id.* at 55–56.

¹⁹⁰³ *Id.* at 56 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1476; *State Voluntary Agreements to Plan and Pay for Transmission Facilities*, 175 FERC ¶ 61,225).

¹⁸⁹⁰ Virginia and North Carolina Commissions Rehearing Request at 5–6.

¹⁸⁹¹ See *infra* Concerns Regarding Cost Causation section.

¹⁸⁹² Order No. 1920, 187 FERC ¶ 61,068 at PP 1469, 1472–1473.

¹⁸⁹³ *Id.* PP 1470, 1476.

¹⁸⁹⁴ *Id.* P 1477.

¹⁸⁹⁵ *Id.*

¹⁸⁹⁶ *Id.* (citation omitted).

¹⁸⁹⁷ *Id.* P 1476 (quoting *State Voluntary Agreements to Plan & Pay for Transmission Facilities*, 175 FERC ¶ 61,225 at P 3).

allocations methods reached under the State Agreement Process.¹⁹⁰⁴

756. NRECA argues that Order No. 1920 adopts cost allocation requirements that are more prescriptive in some respects (*e.g.*, prohibiting transmission providers from using different cost allocation methods for different project types) but less prescriptive in other respects (*e.g.*, not requiring compliance with any Order No. 1000 regional cost allocation principles when states agree on a cost allocation method). NRECA contends that this results in opaque, lax, and inconsistent standards for cost allocation for Long-Term Regional Transmission Facilities. NRECA asserts that, as a result, the Commission will be unable to enforce the FPA's requirements against unjust, unreasonable, or unduly discriminatory or preferential rates.¹⁹⁰⁵

757. Arizona Commission argues that Order No. 1920 usurps Arizona's constitutional requirements that the Arizona Commission must apply rates that are fair and reasonable and that it must not recover costs from ratepayers that do not cause, or benefit from, a particular cost.¹⁹⁰⁶ Arizona Commission further argues that the cost allocation methods adopted in the final rule are contrary to existing ratemaking principles, which include providing customers with reliable power at the least cost and allocating costs to the entities that cause them.¹⁹⁰⁷ Ohio Consumers similarly claim that Order No. 1920 is arbitrary and capricious and violates policy and precedent that requires that costs be allocated consistent with those who receive benefits.¹⁹⁰⁸

758. Virginia and North Carolina Commissions assert that the Commission must ensure public policies considered in planning criteria and scenarios are also appropriately accounted for in any *ex ante* cost allocation method to avoid cross-subsidization of state public policy goals. Virginia and North Carolina Commissions state that the Commission should clarify on rehearing that to comport with the Commission's cost-causation principles, any proposed *ex ante* cost allocation method must adequately account for not only the benefits resulting from an identified transmission project, but also the cost drivers (or cost causers) that contribute

to the need for the transmission project. Alternatively, Virginia and North Carolina Commissions argue that the Commission should expressly require the same public policy factors included in the Long-Term Scenarios to be considered as potential benefits for cost allocation purposes.¹⁹⁰⁹

759. West Virginia Commission and Wyoming Commission argue that Order No. 1920's transmission planning and cost allocation requirements force transmission providers within their states to plan projects based on decarbonization goals of other states in the region.¹⁹¹⁰ West Virginia Commission and Wyoming Commission further argue that this would require transmission providers in the state to account for abstract assumed benefits for its retail customers.¹⁹¹¹ West Virginia Commission and Wyoming Commission contend that, in the event that the costs allocated to retail customers exceed benefits that their respective state policies realize from regional transmission projects, they will be forced to assign unjust and unreasonable costs to retail customers or deny a utility a potentially significant portion of its expected cost recovery.¹⁹¹² Wyoming Commission argues that this result is contrary to core principles of utility regulation and wrongfully empowers states to exact the costs of their policy initiatives from ratepayers in other states.¹⁹¹³

c. Commission Determination

760. We disagree with NRECA's arguments that the Commission did not provide a reasonable explanation for its decision not to require cost allocation methods resulting from a State Agreement Process or Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities indicate that they have agreed to and have asked transmission providers to file to comply with any of the Order No. 1000 regional cost allocation principles.¹⁹¹⁴ We continue to find that cost allocation methods resulting from a State Agreement Process and Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities

indicate that they have agreed to are likely to facilitate agreement concerning development of such Long-Term Regional Transmission Facilities by, for example, making the Relevant State Entities more confident that customers in the state are receiving benefits at least roughly commensurate with their share of the costs of such facilities and by reducing the likelihood that selected Long-Term Regional Transmission Facilities cannot be constructed because they do not receive necessary state regulatory approvals.¹⁹¹⁵ Further, we continue to find that affording additional flexibility for these methods may encourage their use, which would facilitate the selection of more efficient or cost-effective Long-Term Regional Transmission Facilities.¹⁹¹⁶ In short, we find that the benefits of providing additional flexibility for state-agreed-upon cost allocation methods for Long-Term Regional Transmission Facilities outweigh NRECA's concerns regarding not applying the Order No. 1000 regional cost allocation principles, such that it represents a just and reasonable approach to these issues.

761. Additionally, we highlight that the cost causation principle and Commission precedent require the Commission to evaluate each proposed cost allocation method to determine whether it will allocate costs in a manner that is at least roughly commensurate with estimated benefits and whether the proposed method is just and reasonable and not unduly discriminatory or preferential, as stated in Order No. 1920.¹⁹¹⁷ This is the case whether or not we specifically require these cost allocation methods to comply with the Order No. 1000 regional cost allocation principles.

762. For cost allocation methods resulting from a State Agreement Process or Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities indicate that they have agreed to and have asked transmission providers to file, we continue to find that such methods qualify as voluntary alternative cost sharing arrangements, consistent with the Commission's previous findings that "Order No. 1000 allows market participants, including states, to negotiate voluntarily alternative cost sharing arrangements that are distinct from the relevant regional cost allocation method(s)"¹⁹¹⁸ and that the

¹⁹⁰⁴ *Id.* at 56–57 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1476 n.3150).

¹⁹⁰⁵ *Id.* at 52.

¹⁹⁰⁶ Arizona Commission Rehearing Request at 20–21.

¹⁹⁰⁷ *Id.* at 20.

¹⁹⁰⁸ Ohio Consumers Rehearing Request at 9.

¹⁹⁰⁹ Virginia and North Carolina Commissions Rehearing Request at 3–4.

¹⁹¹⁰ West Virginia Commission Rehearing Request at 10; Wyoming Commission Rehearing Request at 7.

¹⁹¹¹ West Virginia Commission Rehearing Request at 10; Wyoming Commission Rehearing Request at 7.

¹⁹¹² West Virginia Commission Rehearing Request at 10; Wyoming Commission Rehearing Request at 7–8.

¹⁹¹³ Wyoming Commission Rehearing Request at 8.

¹⁹¹⁴ NRECA Rehearing Request at 55–56.

¹⁹¹⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 1477.

¹⁹¹⁶ *Id.* (citation omitted).

¹⁹¹⁷ *See, e.g., id.* P 1506 (citing *ICC v. FERC I*, 576 F.3d at 477; *ICC v. FERC III*, 756 F.3d at 564).

¹⁹¹⁸ *Id.* P 1476 (quoting *State Voluntary Agreements to Plan & Pay for Transmission Facilities*, 175 FERC ¶ 61,225 at P 3).

Commission need not find that cost allocation methods corresponding to such voluntary agreements comply with Order No. 1000.¹⁹¹⁹ Therefore, in response to NRECA, we continue to decline to require such cost allocation methods to adhere to the six Order No. 1000 regional cost allocation principles.¹⁹²⁰

763. We further disagree with NRECA's arguments that the cost allocation requirements adopted in Order No. 1920 will result in inconsistent standards for cost allocation for Long-Term Regional Transmission Facilities and will result in the Commission's inability to enforce the FPA's requirements against unjust, unreasonable, and unduly discriminatory or preferential rates.¹⁹²¹ We recognize that there are different requirements for cost allocation methods resulting from a State Agreement Process or Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities indicate that they have agreed to and have asked transmission providers to file as compared to Long-Term Regional Transmission Cost Allocation Methods to which states do not agree, but we find that the potential for differences is appropriate to give states flexibility.¹⁹²² Regardless, we reiterate that all cost allocation methods must comply with the cost causation principle, as required by the FPA.¹⁹²³ Additionally, we note that nothing in FPA section 206 requires that transmission providers adopt the same or similar proposals on compliance provided that they comply with Order No. 1920.

764. We also disagree with arguments raised by Arizona Commission and Ohio Consumers on rehearing that Order No. 1920's transmission planning and cost allocation requirements are inconsistent with cost causation principles.¹⁹²⁴ All cost allocation methods for Long-Term Regional Transmission Facilities, including Long-Term Regional Transmission Cost Allocation Methods, regardless of whether they are agreed to by Relevant State Entities, and cost allocation methods resulting from Commission-approved State Agreement Processes, must comply with the cost

causation principle and ensure that the costs of transmission facilities are allocated in a manner at least roughly commensurate with estimated benefits.¹⁹²⁵

765. In light of our clarification noted below, we find it unnecessary, as requested by Virginia and North Carolina Commissions,¹⁹²⁶ to require transmission providers to demonstrate on compliance how both the benefits resulting from an identified transmission project and the cost drivers contributing to the need for that project are appropriately accounted for in their proposed Long-Term Regional Transmission Cost Allocation Method, or alternatively to require that the same public policy factors included in Long-Term Scenarios be considered as potential benefits for the purposes of cost allocation. Specifically, we note that our clarification regarding the recognition of benefits below in response to West Virginia Commission and Wyoming Commission's request may address Virginia and North Carolina Commissions' concerns regarding the consideration of public policy factors in cost allocation methods. Further, we find that requiring transmission providers to show that the relevant cost allocation methods comply with cost causation by ensuring that costs are allocated in a manner roughly commensurate with benefits will provide flexibility and account for regional diversity while also ensuring that those cost allocation methods comply with the requirements of the FPA.¹⁹²⁷

766. We disagree with arguments raised on rehearing by West Virginia Commission and Wyoming Commission that Order No. 1920's transmission planning and cost allocation requirements force transmission providers within their states to plan transmission projects based on decarbonization goals of other states in the transmission planning region and require transmission providers to account for abstract assumed benefits.¹⁹²⁸ First, as discussed above, because of the flexibility provided by the Commission regarding cost allocation, it is premature and speculative to assert that a requirement not to use cost allocation methods based

on project type will result in adoption of cost allocation methods that violate cost causation principles. We also reiterate that, in the context of transmission facilities, the cost causation principle requires the Commission to ensure that any cost allocation method allocates costs in a manner roughly commensurate with estimated benefits, meaning that if consumers do not benefit from a project they will not be required to pay for it nor will they be required to bear a share of project costs that does not reflect their share of the project's benefits.¹⁹²⁹

767. Further, we clarify that Order No. 1920 does not prevent transmission providers from recognizing different types of benefits and using them to allocate costs in proportion to those benefits. As an example, one potential cost allocation method that could be proposed to comply with Order No. 1920 would allocate costs commensurate with reliability and economic benefits region-wide, while allocating costs commensurate with additional benefits to a subset of states that agree to such cost allocation. Under this potential cost allocation method, these costs and benefits could be identified based on one or more additional analyses, such as additional scenarios, run by the transmission providers for the purposes of informing cost allocation, e.g., scenarios that consider the incremental cost of transmission needed to achieve state laws, policies, and regulations beyond the cost of transmission needed in the absence of those laws, policies, and regulations. For example, the cost allocation method agreed to by the Relevant State Entities may allocate those incremental costs to states with those applicable laws, policies, and regulations.

768. Noting this clarification, and where Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities agree to are concerned, at the request of the Relevant State Entities in a multistate region, the

¹⁹¹⁹ *Id.* (citing *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at PP 142–143, *order on reh'g and compliance*, 147 FERC ¶ 61,128 at P 92; *ISO New England Inc.*, 143 FERC ¶ 61,150 at P 121; *Consol. Edison Co. of N.Y., Inc.*, 180 FERC ¶ 61,106 at PP 48–50).

¹⁹²⁰ *Id.*

¹⁹²¹ NRECA Rehearing Request at 52.

¹⁹²² *See* Order No. 1920, 187 FERC ¶ 61,068 at P 1477.

¹⁹²³ *Id.* P 1305 & n.2786.

¹⁹²⁴ Arizona Commission Rehearing Request at 20; Ohio Consumers Rehearing Request at 9.

¹⁹²⁵ Order No. 1920, 187 FERC ¶ 61,068 at PP 1305 & n.2786, 1506 (citing *ICC v. FERC I*, 576 F.3d at 477; *ICC v. FERC III*, 756 F.3d at 564).

¹⁹²⁶ Virginia and North Carolina Commissions Rehearing Request at 3–4.

¹⁹²⁷ *See* Order No. 1920, 187 FERC ¶ 61,068 at 1510.

¹⁹²⁸ West Virginia Commission Rehearing Request at 10; Wyoming Commission Rehearing Request at 7.

¹⁹²⁹ *See* Order No. 1920, 187 FERC ¶ 61,068 at P 1305 & n.2786 (“The cost causation principle requires costs to be allocated to those who cause the costs to be incurred and reap the resulting benefits.”) (citation omitted); *ICC v. FERC I*, 576 F.3d at 476 (“To the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.”); *see also* Order No. 1000, 136 FERC ¶ 61,051 at P 690 (“If a regional transmission plan determines that a transmission facility serves several functions, as many commenters point out it may, the regional cost allocation method must take the benefits of these functions of the transmission facility into account in allocating costs roughly commensurate with benefits.”).

following *ex ante* method for cost allocation may be proposed. In providing this example, we are not foreclosing other approaches for allocating the costs of Long-Term Regional Transmission Facilities on either an *ex ante* basis or through a State Agreement Process. Nor are we suggesting that cost allocation methods must adopt a similar approach to this framework in order to comply with the requirements of Order No. 1920. This example is as follows:

(1) For the purposes of cost allocation, transmission providers shall run an additional scenario analysis to identify transmission needs using the same Long-Term Scenarios and sensitivities used in its Long-Term Regional Transmission Planning process, except that the inputs to such additional scenarios shall not include state laws, policies and regulations. Transmission providers shall identify transmission facilities to meet the needs identified in such additional scenario analysis and those facilities' costs. Transmission providers shall then determine the difference in costs between the set of Long-Term Regional Transmission Facilities selected in the regional transmission plan for purposes of cost allocation and the set of transmission facilities that would be selected based upon the additional scenario analysis.

(2) The portion of total selected Long-Term Regional Transmission Facility costs identified in (1) could be cost allocated according to an existing Commission-accepted cost allocation method that may be proposed on compliance with Order No. 1920.

(3) The amount representing the cost difference between the costs of projects selected pursuant to the Long-Term Regional Transmission Planning process and (1) shall be allocated as follows:

a. The transmission providers shall identify by state the specific state laws, policies, and regulations that were used to plan and select the Long-Term Regional Transmission Facilities and shall quantify by state the specific costs of such Facilities.

b. The costs identified in 3(a) shall be allocated solely to the state or states that are the sources of the policies used in planning and selection. The total difference between the costs of Long-Term Regional Transmission Facilities selected pursuant to the Long-Term Regional Transmission Planning process and (1) would be fully accounted for using this method of allocating costs among the states. For RTOs/ISOs, the cost allocation to transmission customers in a transmission pricing zone *within* a state would be developed by the applicable Transmission Owner(s). For non-RTOs/ISOs, the costs allocated to transmission customers in a transmission provider's retail distribution service territory or footprint

within a state would be developed by the applicable transmission provider.

G. General Benefits Requirements Related to Cost Allocation

1. Logical Outgrowth

a. NOPR Proposals

769. In the NOPR, the Commission proposed for consideration a list of Long-Term Regional Transmission Benefits for transmission providers to apply in Long-Term Regional Transmission Planning and cost allocation processes.¹⁹³⁰ Additionally, the Commission proposed to require that transmission providers identify on compliance the benefits they will use in any *ex ante* cost allocation method, how they will calculate those benefits, and how the benefits will reasonably reflect the benefits of regional transmission facilities to meet identified transmission needs driven by changes in the resource mix and demand.¹⁹³¹ The NOPR also proposed to require transmission providers to explain the rationale for using the benefits identified.¹⁹³² Additionally, the Commission requested comment on the proposed requirements, whether the Commission should require that transmission providers account for the full list of benefits contained in the NOPR's Evaluation of the Benefits of Regional Transmission Facilities section, or whether no change to the benefits used in existing regional transmission processes was needed.¹⁹³³

b. Order No. 1920 Requirements

770. In Order No. 1920, the Commission declined to adopt the NOPR proposal regarding the use of benefits in Long-Term Regional Transmission Cost Allocation Methods.¹⁹³⁴ Instead, as discussed above in the Regional Cost Allocation Principles for Long-Term Regional Transmission Facilities section, the Commission required transmission providers in each transmission planning region to demonstrate that any Long-Term Regional Transmission Cost Allocation Method(s) that Relevant State Entities have *not* indicated that they agree to complies with Order No. 1000 regional cost allocation principles (1) through (5). The Commission did not require transmission providers to demonstrate that Long-Term Regional Transmission Cost Allocation Methods that Relevant State Entities indicate they have agreed to or cost allocation methods resulting from a State

Agreement Process comply with any of the Order No. 1000 regional cost allocation principles, but the Commission noted that such methods must still be just and reasonable and not unduly discriminatory or preferential, and must allocate costs in a manner that is at least roughly commensurate with estimated benefits.¹⁹³⁵ The Commission did not require that any particular benefit used in the evaluation and selection of Long-Term Regional Transmission Facilities be reflected in a Long-Term Regional Transmission Cost Allocation Method filed with the Commission.¹⁹³⁶

771. The Commission explained that the modified approach to the relationship of benefits used in Long-Term Regional Transmission Planning and Long-Term Regional Transmission Cost Allocation Methods provides transmission providers with flexibility to propose a Long-Term Regional Transmission Cost Allocation Method(s), allowing for negotiation in the Engagement Period, which the Commission believed will increase the likelihood that Long-Term Regional Transmission Facilities selected as the more efficient or cost-effective regional transmission solution will be developed. The Commission additionally explained that the requirements in Order No. 1920 to disclose estimates of the benefits of selected Long-Term Regional Transmission Facilities will provide transparency and help to ensure cost allocation is just and reasonable.¹⁹³⁷ Additionally, the Commission reasoned that this flexible approach is consistent with the approach the Commission took in Order No. 1000 and in subsequent orders on transmission providers' Order No. 1000 compliance filings, where the Commission allowed a wide variety of cost allocation methods and did not require that such methods specifically account for all benefits used in evaluation and selection processes.¹⁹³⁸

c. Requests for Rehearing and Clarification

772. NRECA contends that Order No. 1920's determination not to require transmission providers to disclose which benefits, if any, they use in their regional cost allocation proposals is not a logical outgrowth of the NOPR.¹⁹³⁹ NRECA argues that the requirement to use a stated set of benefits in evaluating

¹⁹³⁵ *Id.* PP 1470, 1476–1477.

¹⁹³⁶ *Id.* P 1506.

¹⁹³⁷ *Id.*

¹⁹³⁸ *Id.* P 1507 (citing Order No. 1000, 136 FERC ¶ 61,051 at PP 560, 624).

¹⁹³⁹ NRECA Rehearing Request at 12–13.

¹⁹³⁰ NOPR, 179 FERC ¶ 61,028 at PP 185, 326.

¹⁹³¹ *Id.* P 326.

¹⁹³² *Id.*

¹⁹³³ *Id.* P 327.

¹⁹³⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1505.

and selecting Long-Term Regional Transmission Facilities, without requiring transmission providers to disclose which benefits were used in their regional cost allocation proposals, allows cost allocation to be “completely opaque and divorced from the measured benefits.”¹⁹⁴⁰

d. Commission Determination

773. In response to NRECA’s argument that the Commission violated the APA’s notice-and-comment requirements by declining to adopt the NOPR proposal to require transmission providers to disclose the benefits used in Long-Term Regional Transmission Cost Allocation Methods, we note that certain clarifications adopted herein may alleviate the concerns underlying NRECA’s argument. Specifically, as discussed in the Minimum Requirements section above, we clarify in this order that, once transmission providers make a selection decision, *i.e.*, for each selected Long-Term Regional Transmission Facility (or portfolio of such Facilities) and the applicable cost allocation method is determined, transmission providers must make available, on a password-protected portion of OASIS or other password-protected website, a breakdown of how those estimated costs will be allocated, by zone (*i.e.*, by transmission provider retail distribution service territory/ footprint or RTO/ISO transmission pricing zone), and a quantification of the estimated benefits as imputed to each zone, as such benefits can be reasonably estimated, when a cost allocation method is agreed upon under a State Agreement Process or, if no State Agreement Process is used, at the time of project selection.

774. Noting this clarification, we nevertheless disagree with NRECA that the Commission violated the APA’s notice-and-comment requirements. Agency final rules need not be identical to proposed rules, and notice is sufficient if the final rule represents a “logical outgrowth” of the proposed rule.¹⁹⁴¹ Here, the NOPR proposed to require transmission providers to disclose the benefits used in Long-Term Regional Transmission Cost Allocation Methods after noting the Commission’s concern that, among other things, the Commission’s existing regional

transmission planning and cost allocation requirements may result in transmission providers undervaluing the benefits of Long-Term Regional Transmission Facilities for purposes of allocating the costs of such facilities to beneficiaries in a manner that is roughly commensurate with estimated benefits.¹⁹⁴² While Order No. 1920 did not adopt the NOPR proposal, it included safeguards that will ensure an adequate accounting for benefits in cost allocation methods for Long-Term Regional Transmission Facilities, in addition to the new safeguard we adopt in this order, noted above. For instance, Order No. 1920 noted that any cost allocation method for Long-Term Regional Transmission Facilities will be required to comply with cost allocation precedent, including that costs be allocated in a manner at least roughly commensurate with estimated benefits.¹⁹⁴³ That standard requires that transmission providers show, on compliance, that their proposed cost allocation methods match the allocation of costs associated with the project in a manner that is at least roughly commensurate with the estimated benefits of the project. We find that this approach is sufficiently similar, in practice, to the proposal in the NOPR that it can be said to “follow logically from” the NOPR, that the NOPR “adequately frame[d] the subjects for discussion,”¹⁹⁴⁴ and that “a reasonable member of the regulated class” could “anticipate the general aspects of the [final] rule.”¹⁹⁴⁵

2. Substantive Issues

a. Order No. 1920 Requirements

775. In Order No. 1920, the Commission required transmission providers in each transmission planning region to demonstrate on compliance that the required Long-Term Regional Transmission Cost Allocation Method(s) that Relevant State Entities have *not* indicated that they agree to comply with Order No. 1000 regional transmission cost allocation principles (1) through (5) and do not allocate costs by project type (*i.e.*, reliability, economic, or transmission needs driven by Public Policy Requirements).¹⁹⁴⁶

¹⁹⁴² NOPR, 179 FERC ¶ 61,028 at PP 325–326.

¹⁹⁴³ Order No. 1920, 187 FERC ¶ 61,068 at P 1305 & n.2786 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 87; Order No. 1000, 136 FERC ¶ 61,051 at P 10; *ICC v. FERC I*, 576 F.3d at 476).

¹⁹⁴⁴ *Conn. Light & Power Co. v. Nuclear Regul. Comm’n*, 673 F.2d at 533.

¹⁹⁴⁵ *Telesat Canada v. FCC*, 999 F.3d 707, 713 (D.C. Cir. 2021) (quotations omitted).

¹⁹⁴⁶ Order No. 1920, 187 FERC ¶ 61,068 at PP 1505–1506.

b. Requests for Rehearing and Clarification

776. Clean Energy Associations assert that the Commission should clarify the rights, obligations, and limits associated with transmission providers’ adoption of multiple Long-Term Regional Transmission Cost Allocation Methods for comparable transmission facilities within its overall footprint. Further, Clean Energy Associations argue that the Commission should clarify that transmission providers must allocate the costs of similarly situated transmission facilities similarly to avoid undue discrimination and unjust and unreasonable rates.¹⁹⁴⁷ Clean Energy Associations assert that, although presently unclear, it seems plausible that under Order No. 1920, transmission providers could attempt to allocate the costs of two comparable transmission facilities (similar in costs and benefits) using entirely different methods if the transmission provider considers them to be different “types” of projects, based on any categorization rubric other than Order No. 1000’s regional cost allocation principle (6).¹⁹⁴⁸ Clean Energy Associations also request clarification that Order No. 1920 does not preclude transmission providers from adopting a cost allocation approach that seeks to maximize net benefits.¹⁹⁴⁹

777. Dominion seeks clarification on the consideration of the seven required benefits in cost allocation such that if a transmission provider opts to rely on all or some of the seven benefits in its cost allocation method, then it may apply different weighting to different benefits, *e.g.*, based on probability of occurrence and certainty of benefit in later years.¹⁹⁵⁰

c. Commission Determination

778. We deny Clean Energy Association’s request to clarify the rights, obligations, and limits associated with transmission providers’ potential adoption of multiple Long-Term Regional Transmission Cost Allocation Methods for comparable transmission facilities within its overall footprint. Order No. 1920 provided guidance regarding transmission providers’ use of multiple Long-Term Regional Transmission Cost Allocation Methods, including that transmission providers may adopt multiple Long-Term Regional Transmission Cost Allocation Methods, provided that the Long-Term Regional

¹⁹⁴⁷ Clean Energy Associations Rehearing Request at 30–32.

¹⁹⁴⁸ *Id.* at 31.

¹⁹⁴⁹ *Id.* at 32–33.

¹⁹⁵⁰ Dominion Rehearing Request at 26–27.

¹⁹⁴⁰ *Id.*

¹⁹⁴¹ *Long Island Care*, 551 U.S. at 174–75. See also *Am. Paper Inst. v. EPA*, 660 F.2d at 959 n.13 (“An agency may make *even substantial changes* in its original proposed rule without a further comment period if the changes are in character with the original proposal and are a logical outgrowth of the notice and comments already given.” (emphasis added)).

Transmission Cost Allocation Method that will apply to a Long-Term Regional Transmission Facility (or portfolio of such Facilities) is known before selection and does not allocate costs by project type (*i.e.*, reliability, economic, or transmission needs driven by Public Policy Requirements).¹⁹⁵¹

779. In response to Clean Energy Associations' concern that transmission providers could attempt to allocate the costs of two comparable transmission facilities (similar in costs and benefits) using entirely different cost allocation methods if the transmission provider considers them to be different "types" of projects (other than those delineated in Order No. 1000's regional cost allocation principle (6)), we note that even if the costs of similar facilities are allocated using different cost allocation methods, the fundamental requirements associated with a just and reasonable rate (*i.e.*, adherence to the cost causation principle and the requirement that costs be allocated in a manner that is at least roughly commensurate with estimated benefits) remain the same.¹⁹⁵² Therefore, a transmission provider may allocate the costs of two similar transmission facilities using different cost allocation methods and meet the requirements of Order No. 1920. In addition, we note that Order No. 1920 also does not preclude transmission providers from proposing on compliance a cost allocation approach that seeks to maximize net benefits.¹⁹⁵³

780. Regarding Dominion's request for clarification that if a transmission provider opts to rely on all or some of the seven required benefits in its cost allocation method for Long-Term Regional Transmission Facilities, then it may apply different weighting to different benefits, we note that Order No. 1920 includes no limitation on weighting of the seven required benefits for purposes of accounting for such benefits in the cost allocation method for Long-Term Regional Transmission Facilities save that costs must be allocated in a manner that is at least roughly commensurate with estimated benefits. Further, transmission providers can consider additional benefits for cost allocation purposes, including, but not limited to, those agreed to by Relevant State Entities and

those described elsewhere in Order No. 1920, provided that costs are allocated in a way that is at least roughly commensurate with estimated benefits.

H. Additional Cost Allocation Issues

1. Order No. 1920 Requirements

781. In Order No. 1920, the Commission declined to adopt a particular time frame for determining the cost allocation for a Long-Term Regional Transmission Facility. The Commission stated that imposing a standardized time frame to determine cost allocation was unnecessary and could impede the regional flexibility that the Commission provided to transmission providers under Order No. 1920. The Commission added, however, that the determination of the applicable cost allocation must occur by or before selection of a particular Long-Term Regional Transmission Facility (or portfolio of such Facilities) if only a Long-Term Regional Transmission Cost Allocation Method is available for that Facility (or portfolio of such Facilities).¹⁹⁵⁴

782. Also in Order No. 1920, the Commission stated that, following the Engagement Period, Relevant State Entities may agree to, and ask the transmission providers to file, a State Agreement Process, which, if accepted by the Commission, would be the cost allocation process used by the transmission providers in the transmission planning region prior to using the relevant Long-Term Regional Transmission Cost Allocation Method as a backstop.¹⁹⁵⁵ Further, in response to NOPR comments requesting that a beneficiary-pays approach be used rather than a postage stamp load ratio share model for cost allocation methods, the Commission in Order No. 1920 found that any cost allocation method applied to a Long-Term Regional Transmission Facility must ensure that costs are allocated in a manner that is at least roughly commensurate with the estimated benefits of the facility, consistent with cost causation and court precedent, and noted that the Commission will evaluate whether a proposed cost allocation method satisfies this standard on a fact-specific basis, relying on the record in a given proceeding. The Commission found that load ratio share, which charges transmission customers in proportion to their use of the transmission system as measured by their relative share of load, is a cost allocation method that may be

consistent with the beneficiary-pays approach.¹⁹⁵⁶

783. Separately, in Order No. 1920, the Commission found that commenters' statements regarding cost containment were outside the scope of the proceeding.¹⁹⁵⁷ The Commission noted that it is examining issues related to transmission planning and cost containment in other proceedings.¹⁹⁵⁸

2. Requests for Rehearing and Clarification

784. Dominion seeks clarification regarding the deadline imposed by Order No. 1920's requirement that "the determination of the applicable cost allocation must occur by or before its selection."¹⁹⁵⁹ Dominion avers that this requirement implies that there could be situations "when a Long-Term Regional Transmission Facility Cost Allocation Method would not be applied to a Long-Term Regional Transmission Facility."¹⁹⁶⁰ Dominion states that its understanding is that "a Long-Term Regional Transmission Facility Cost Allocation Method must be used, and that method could be one of several methods: the Transmission Provider's default *ex ante* cost allocation method, some other approved *ex ante* cost allocation method, or a State Agreement Process."¹⁹⁶¹ Dominion requests that, to the extent the Commission was referring to the deadline of six months after project selection for submission of cost allocation methods resulting from a State Agreement Process, the Commission provide clarification.¹⁹⁶²

785. Dominion further asks the Commission to clarify whether only the cost allocation method must be determined by project selection, or whether it must be applied (and costs actually allocated) by project selection. Dominion notes its understanding is that only the method must be determined by selection and states that this clarification on timing would help to alleviate the concern about the challenges transmission developers will face in obtaining state regulatory

¹⁹⁵⁶ *Id.* P 1305 (citations omitted).

¹⁹⁵⁷ *Id.* P 1523. Specifically, the Commission was responding to comments by: (1) Joint Commenters in support of a cost management framework overseen by the Commission; and (2) State Water Contractors, who asserted that the need for cost containment is acute for consumers in California and an essential component of the justness and reasonableness of any final rule. *Id.* P 1518.

¹⁹⁵⁸ *Id.* P 1523 (citing Supplemental Notice of Technical Conference, Transmission Planning and Cost Management, Docket No. AD22-8-000 (Oct. 4, 2022)).

¹⁹⁵⁹ Dominion Rehearing Request at 32 (quoting Order No. 1920, 187 FERC ¶ 61,068 at P 1521).

¹⁹⁶⁰ *Id.* (emphasis omitted).

¹⁹⁶¹ *Id.*

¹⁹⁶² *Id.* at 32-33.

¹⁹⁵¹ Order No. 1920, 187 FERC ¶ 61,068 at PP 1475, 1506. *See supra* P 749.

¹⁹⁵² Order No. 1920, 187 FERC ¶ 61,068 at P 1305.

¹⁹⁵³ *See id.* P 964 ("We adopt the NOPR proposal, with modification, to require that transmission providers in each transmission planning region propose evaluation processes, including selection criteria, that seek to maximize benefits accounting for costs over time without over-building transmission facilities.").

¹⁹⁵⁴ *Id.* P 1521.

¹⁹⁵⁵ *Id.* P 1296.

approval for transmission projects designed to meet a predicted need 20 years in the future. Specifically, Dominion states that it is impossible to meet even a “roughly commensurate” standard when projected beneficiaries subject to the cost allocation decision are so far removed from the in-service date of the facilities, particularly in the context of an RTO/ISO in which transmission owning entities are permitted to leave and join.¹⁹⁶³

786. Designated Retail Regulators and Undersigned States argue that any Long-Term Regional Transmission Cost Allocation Method should not include a postage-stamp-type cost allocation, as the costs imposed on non-consenting states should be allocated to cost causers and beneficiaries on as granular a basis as possible. They further argue that postage stamp-type cost allocation method should not be adopted merely to simplify the work of an RTO and to facilitate the construction of such projects.¹⁹⁶⁴

787. Wyoming Commission asserts that if a portion of the costs of a Long-Term Regional Transmission Facility are to be recovered from Wyoming retail customers, the Wyoming Commission must evaluate the costs and benefits derived from the project on a *post hoc* basis to determine that costs allocated to retail customers and rates designed to recover those costs are just and reasonable. Wyoming Commission avers that Order No. 1920 does not accommodate this process.¹⁹⁶⁵

788. Industrial Customers request rehearing of Order No. 1920’s finding that commenters’ statements regarding cost containment are outside the scope of this proceeding, arguing that such a finding is arbitrary and capricious because the Commission failed to meaningfully engage arguments and evidence supporting the current need for cost management and cost containment. According to Industrial Customers, while the Commission in Order No. 1920 stated that it is examining issues related to transmission planning and cost containment in other proceedings, Order No. 1920 does not compel the Commission to act in the proceeding in Docket No. AD22–8–000, which is the only pending proceeding that is sufficiently broad to complement Order No. 1920. Industrial Customers add that Order No. 1920 does not demonstrate that cost containment and cost mitigation measures are unrelated

to the cost issues at hand or are, in fact, outside the scope of Order No. 1920.¹⁹⁶⁶

3. Commission Determination

789. Regarding Dominion’s request for clarification regarding the intent of the requirement that “the determination of the applicable cost allocation must occur by or before its selection,”¹⁹⁶⁷ we clarify that this requirement applies only to Long-Term Regional Transmission Cost Allocation Methods. We further clarify that Long-Term Regional Transmission Cost Allocation Methods refer only to *ex ante* cost allocation methods used to allocate the costs of selected Long-Term Regional Transmission Facilities.¹⁹⁶⁸

790. Dominion requested clarification as to whether “the determination of the applicable cost allocation must occur by or before its selection”¹⁹⁶⁹ means that only the cost allocation method must be determined by a Long-Term Regional Transmission Facility’s selection or whether it must be applied (and costs actually allocated) by project selection. Noting our clarification above that this requirement applies only to Long-Term Regional Transmission Cost Allocation Methods, we clarify that Dominion is correct that only the applicable cost allocation method must be determined by project selection. While it is possible that certain Long-Term Regional Transmission Cost Allocation Methods will be designed in a way that actual costs to be allocated may be known by selection, such a requirement would needlessly limit the flexibility provided to transmission providers and could, in particular, create unnecessary obstacles to transmission providers’ ability pursuant to Order No. 1920 to demonstrate that use of existing cost allocation methods to allocate the cost of Long-Term Regional Transmission Facilities would be compliant with Order No. 1920’s requirements.¹⁹⁷⁰

791. We are not persuaded by arguments raised by Designated Retail Regulators and Undersigned States regarding postage-stamp cost allocation. As in Order No. 1920,¹⁹⁷¹ we continue to find that the record does not support

a blanket prohibition on postage-stamp-type cost allocation. We will evaluate whether a proposed cost allocation method allocates costs in a manner that is at least roughly commensurate with estimated benefits on a case-specific basis, relying on the record to ensure that it complies with the cost-causation principle by allocating costs in a manner that is at least roughly commensurate with estimated benefits. We continue to find that the flexibility that we provide to consider benefits in cost allocation does not prevent transmission providers in a particular transmission planning region from adopting a more granular approach.¹⁹⁷²

792. In response to Wyoming Commission, we reiterate that Order No. 1920 does not change existing mechanisms for cost-recovery through retail rates.¹⁹⁷³ We also emphasize that Order No. 1920 neither aims at nor conflicts with state authority over retail rates.¹⁹⁷⁴ However, we decline to modify Order No. 1920 to enable states to conduct a *post hoc* review of costs allocated to retail customers. Order No. 1920 does not alter the requirement for states to pass through Commission-jurisdictional rates to retail customers.¹⁹⁷⁵

793. Finally, we disagree with Industrial Customers that the Commission failed to engage in reasoned decision making by determining that various NOPR comments regarding cost containment were outside the scope of the proceeding. First, to the extent that Industrial Customers are arguing that the Commission did not consider transmission-related costs to consumers, as noted above, addressing costs to ratepayers was central to the reforms the Commission adopted in Order No. 1920, and the Commission cited evidence that more comprehensive, longer-term regional transmission planning results in the selection of more efficient or cost-effective transmission solutions, which has significant benefits for customers.¹⁹⁷⁶ Second, the NOPR did not propose to address cost containment reform per se, and we continue to find that certain comments regarding cost containment reform, including those proposing a specific cost management

¹⁹⁶⁶ Industrial Customers Rehearing Request at 21–23 (citing *State Farm*, 463 U.S. at 43).

¹⁹⁶⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1521.

¹⁹⁶⁸ *Id.* P 1291.

¹⁹⁶⁹ *Id.* P 1521.

¹⁹⁷⁰ For example, requiring that actual costs be allocated would preclude transmission providers from proposing that DFAX-based or postage-stamp cost allocation methods comply with Order No. 1920 because the amounts each transmission customer will pay are not known at the time of selection for those methods.

¹⁹⁷¹ Order No. 1920, 187 FERC ¶ 61,068 at P 1305 (citing Certain TDUs NOPR Initial Comments at 2, 7, 8–9; R Street NOPR Initial Comments at 4, 12).

¹⁹⁷² *Id.* P 1512.

¹⁹⁷³ *Id.* P 259.

¹⁹⁷⁴ *Id.* P 998.

¹⁹⁷⁵ See *Narragansett Elec. Co. v. Burke*, 381 A.2d 1358, 1361–63 (R.I. 1977) (holding that the state could not inquire into the reasonableness of the Commission-approved wholesale rate and, consequently, must treat it as a reasonable operating expense in the company’s retail cost of service).

¹⁹⁷⁶ See *supra* The Overall Need for Reform section.

¹⁹⁶³ *Id.* at 31, 33–34.

¹⁹⁶⁴ Designated Retail Regulators Rehearing Request at 39; Undersigned States Rehearing Request at 34.

¹⁹⁶⁵ Wyoming Commission Rehearing Request at 8.

framework, are outside the scope of this proceeding.¹⁹⁷⁷ Third, we are unpersuaded by Industrial Customers' unsupported argument that the Commission was required to make a binding commitment to finalize cost containment and cost mitigation measures in another docket—we are unaware of any such requirement. Finally, we disagree that Order No. 1920 is arbitrary and capricious because it failed to meaningfully engage with arguments and evidence supporting the need for transmission cost management and cost containment, in contravention of *State Farm*.¹⁹⁷⁸ *State Farm*, which held that rescission of a prior regulation was arbitrary and capricious because it was done without adequate explanation,¹⁹⁷⁹ did not hold that every aspect of a problem within an agency's jurisdiction must be addressed in a single rulemaking, or that a final rule must include requirements that address comments that were outside the scope of the proceeding.¹⁹⁸⁰

IX. Construction Work in Progress Incentive

A. CWIP

1. Order No. 1920

794. In Order No. 1920, the Commission declined to act to finalize the NOPR proposal to not permit transmission providers to take advantage of the allowance for inclusion of 100% of Construction Work in Progress (CWIP) costs in rate base (CWIP Incentive) for Long-Term Regional Transmission Facilities.¹⁹⁸¹ The Commission concluded that any action on the CWIP Incentive is more appropriately considered in a separate proceeding to allow for a holistic approach to transmission incentives after the Commission has finalized its Long-Term Regional Transmission Planning reforms.¹⁹⁸² The Commission found that, in particular, whether the Commission's incentives are appropriately “benefitting consumers by ensuring reliability and reducing the cost of delivered power” is a question better evaluated by considering the Commission's transmission incentives

comprehensively for all regional transmission facilities.¹⁹⁸³

2. Requests for Rehearing and Clarification

795. Several parties request rehearing on the grounds that the Commission failed to conduct reasoned decision-making in declining to act to finalize the NOPR proposal to limit the availability of the CWIP Incentive for Long-Term Regional Transmission Facilities.¹⁹⁸⁴ NARUC, for instance, states that the Commission not only failed to rebut arguments that ratepayers will have to pay in advance for facilities that may not ever be used, but also simply declined to finalize the NOPR proposal until the Commission can address other incentives at the same time, which NARUC contends is not reasoned decision-making.¹⁹⁸⁵ Ohio Consumers agree, and argue that retaining the CWIP Incentive for Long-Term Regional Transmission Facilities without an analysis on the justness and reasonableness of rates of return is arbitrary and capricious.¹⁹⁸⁶

796. Some parties argue on rehearing that not adopting the NOPR proposal to limit the availability of the CWIP Incentive for Long-Term Regional Transmission Facilities will shift risks to ratepayers.¹⁹⁸⁷ Ohio Consumers state that the failure of the Commission to eliminate the CWIP Incentive for Long-Term Regional Transmission Facilities shifts the risk of long-term transmission planning to consumers who may never benefit from a project if it does not go into service, but who will still be required to pay for it.¹⁹⁸⁸

797. Certain parties request that, if the Commission does not grant rehearing in this proceeding and eliminate the CWIP Incentive for Long-Term Regional Transmission Facilities, the Commission should move quickly to address the CWIP Incentive in a separate proceeding.¹⁹⁸⁹ For instance, Virginia Attorney General implores the

Commission to act with expediency to scale back transmission incentives comprehensively in Docket No. RM20–10–000, or another docket as appropriate, if the Commission does not grant rehearing in this proceeding and limit the availability of the CWIP Incentive for Long-Term Regional Transmission Facilities.¹⁹⁹⁰

798. Arizona Commission argues that “walk[ing] back” the proposal to disallow the CWIP Incentive is not a logical outgrowth of the NOPR, and failure to provide for additional notice and comment on this “fundamental” change is a direct violation of the APA.¹⁹⁹¹

3. Commission Determination

799. We are unpersuaded by arguments raised on rehearing that the Commission erred by failing to limit the availability of the CWIP Incentive for Long-Term Regional Transmission Facilities. We continue to find that any action on the CWIP Incentive is more appropriately considered in a separate proceeding to allow for a holistic approach to transmission incentives,¹⁹⁹² and we disagree with parties that argue that the Commission's decision in Order No. 1920 to defer acting on the CWIP Incentive was arbitrary and capricious. The Commission reviewed all of the comments received on this proposal in response to the NOPR and concluded that whether the Commission's transmission incentives, including the CWIP Incentive, are appropriately “benefitting consumers by ensuring reliability and reducing the cost of delivered power” is a question better evaluated by considering the Commission's transmission incentives comprehensively for all regional transmission facilities.¹⁹⁹³ We continue to reach this conclusion and find that evaluating a single transmission incentive for a regional transmission facility may fail to holistically consider benefits and risks to consumers from transmission incentives.

800. Further, with respect to the argument that the Commission's decision declining to finalize the NOPR proposal to limit the availability of the CWIP Incentive for Long-Term Regional Transmission Facilities was not a logical outgrowth of the NOPR, we disagree. As courts have explained, “[o]ne logical outgrowth of a proposal is surely . . . to refrain from taking the proposed

¹⁹⁸³ *Id.* (quoting 16 U.S.C. 824s(a)).

¹⁹⁸⁴ Industrial Customers Rehearing Request at 24, 26; NARUC Rehearing Request at 5, 8, 10–11; Ohio Consumers Rehearing Request at 11–12.

¹⁹⁸⁵ NARUC Rehearing Request at 9–11.

¹⁹⁸⁶ Ohio Consumers Rehearing Request at 12.

¹⁹⁸⁷ NARUC Rehearing Request at 8–9; Ohio Consumers Rehearing Request at 11; Virginia Attorney General Rehearing Request at 4–5; West Virginia Commission Rehearing Request at 16–17; see Designated Retail Regulators Rehearing Request at 42.

¹⁹⁸⁸ Ohio Consumers Rehearing Request at 11–12.

¹⁹⁸⁹ Designated Retail Regulators Rehearing Request at 42–43; Industrial Customers Rehearing Request at 28; PJM States Rehearing Request at 9; Virginia Attorney General Rehearing Request at 5; West Virginia Commission Rehearing Request at 17; see also Identified Consumer Advocates Rehearing Request at 4, 8–9.

¹⁹⁹⁰ Virginia Attorney General Rehearing Request at 5.

¹⁹⁹¹ Arizona Commission Rehearing Request at 17–19 (citing 5 U.S.C. 706(2)(A), (2)(C), (2)(D)).

¹⁹⁹² Order No. 1920, 187 FERC ¶ 61,068 at P 1547.

¹⁹⁹³ *Id.* (quoting 16 U.S.C. 824s(a)).

¹⁹⁷⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1523.

¹⁹⁷⁸ Industrial Customers Rehearing Request at 23 (citing *State Farm*, 463 U.S. at 43).

¹⁹⁷⁹ *State Farm*, 463 U.S. at 34.

¹⁹⁸⁰ See *N.Y. v. FERC*, 535 U.S. at 27 (holding that “[b]ecause FERC determined that the remedy it ordered constituted a sufficient response to the problems FERC had identified in the wholesale market, FERC had no [FPA section] 206 obligation” to adopt further reforms).

¹⁹⁸¹ Order No. 1920, 187 FERC ¶ 61,068 at PP 1524, 1547.

¹⁹⁸² *Id.* P 1547.

step.”¹⁹⁹⁴ The same is true here. We acknowledge the interest and support for evaluating the CWIP Incentive, particularly among several states, along with other transmission incentives, and note that the Commission will continue to evaluate the appropriate manner for considering transmission incentives, including the CWIP Incentive, for all regional transmission facilities.

X. Exercise of a Federal Right of First Refusal in Commission-Jurisdictional Tariffs and Agreements

A. Order No. 1920 Requirements

801. In Order No. 1920, the Commission stated that, after careful consideration of the record, it was declining to finalize the NOPR proposal to amend Order No. 1000’s findings and nonincumbent transmission developer reforms, in part, to permit the exercise of federal rights of first refusal for selected regional transmission facilities, conditioned on the incumbent transmission provider with the federal right of first refusal for such regional transmission facilities establishing joint ownership of the transmission facilities consistent with certain proposed requirements described in the NOPR. The Commission stated that it will continue to consider potential federal right of first refusal reforms along with other transmission reforms in the future.¹⁹⁹⁵

B. Request for Rehearing

802. NRECA states that declining to adopt the NOPR’s conditional federal right of first refusal proposal was a missed opportunity because it would have encouraged transmission providers to pursue planning and expanding transmission through joint ownership arrangements with load-serving entities.¹⁹⁹⁶

C. Commission Determination

803. The Commission explained in Order No. 1920 that it will continue to consider the NOPR proposal and potential federal rights of first refusal issues in other proceedings, a course of action we continue to find to be

reasonable.¹⁹⁹⁷ As noted in Order No. 1920, comments on the NOPR raised both concerns about whether incumbent transmission providers face perverse investment incentives due to Order No. 1000’s reforms and concerns about whether the NOPR proposal would adequately and appropriately address those incentives.¹⁹⁹⁸

XI. Local Transmission Planning Inputs in the Regional Transmission Planning Process

A. Need for Reform

1. Order No. 1920

804. In Order No. 1920, the Commission found substantial evidence to support the conclusion that existing requirements governing transparency in local transmission planning processes and coordination between local and regional transmission planning processes are unjust, unreasonable, and unduly discriminatory or preferential.¹⁹⁹⁹ Therefore, the Commission adopted the NOPR findings that local transmission planning processes may lack adequate provisions for transparency and meaningful input from stakeholders, and that regional transmission planning processes may not adequately coordinate with local transmission planning processes.²⁰⁰⁰

805. The Commission explained that local and regional transmission planning processes serve essential and complementary roles in ensuring that customers’ transmission needs are identified and met at a just and reasonable cost.²⁰⁰¹ The Commission added that information and transmission solutions developed through local transmission planning serve as a foundation for regional transmission planning, and it is therefore critical that the processes are appropriately designed and aligned to ensure that transmission providers and stakeholders have the information needed, including from the local transmission planning process, to conduct effective regional transmission planning.²⁰⁰² Additionally, the Commission stated that, while the broader reforms directed in Order No. 1920 are focused on improving the

regional transmission planning process, there are discrete deficiencies in the local transmission planning process and its coordination with the regional transmission planning process that must be addressed to ensure Commission-jurisdictional rates are just and reasonable.²⁰⁰³

806. The Commission first found that local transmission planning processes lack adequate provisions for transparency and meaningful input from stakeholders. The Commission recognized the critical role stakeholders serve in effective transmission planning,²⁰⁰⁴ and noted prior reforms to facilitate their meaningful participation in both local and regional transmission planning.²⁰⁰⁵ However, the Commission found that the record demonstrates that existing transparency and coordination requirements in local transmission planning do not consistently provide stakeholders with sufficient information regarding the development of local transmission plans.²⁰⁰⁶ The Commission found that the absence of minimal standards or specified procedures to implement the transmission planning principles required by Order No. 890 contributes to inadequate transparency and opportunities for stakeholders to engage in local transmission planning processes.²⁰⁰⁷ The Commission explained that the combined effect of these deficiencies is that stakeholders who wish to participate in transmission planning, at both the local and regional level, may not be able to effectively do so. More specifically, the Commission found that, when engaging in the regional transmission planning process, stakeholders lack sufficient information about underlying local transmission needs and potential solutions that is necessary to ensure that the more efficient or cost-effective regional transmission solutions are identified, evaluated, and selected.²⁰⁰⁸ The Commission stated that, given the importance of stakeholder participation in effective transmission planning, reforms were needed to ensure that Commission-jurisdictional local and regional transmission planning processes remain just, reasonable, and

¹⁹⁹⁴ *New York v. EPA*, 413 F.3d at 44 (quoting *Am. Iron & Steel Inst. v. EPA*, 886 F.2d at 400); see also *Long Island Care*, 551 U.S. at 175 (stating, in the context of rejecting a claim that an agency provided legally defective notice because it did not finalize a proposed rule, “[w]e do not understand why such a possibility was not reasonably foreseeable”); *Vanda Pharms.*, 98 F.4th at 498 (stating that the APA’s “notice-and-comment procedure is designed so that an agency can float a potential rule to the public without committing itself to enacting the proposed rule’s content”).

¹⁹⁹⁵ Order No. 1920, 187 FERC ¶ 61,068 at PP 1548, 1563–1564.

¹⁹⁹⁶ NRECA Rehearing Request at 2.

¹⁹⁹⁷ Order No. 1920, 187 FERC ¶ 61,068 at PP 1563–1564. NRECA did not request rehearing on this issue or include it in NRECA’s Statement of Issues. See 18 CFR 385.713(c)(2) (any issue not listed in the Statement of Issues will be deemed waived). We nevertheless address NRECA’s concern.

¹⁹⁹⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 1564.

¹⁹⁹⁹ Order No. 1920, 187 FERC ¶ 61,068 at PP 1565, 1569.

²⁰⁰⁰ *Id.* P 1569.

²⁰⁰¹ *Id.* P 1570.

²⁰⁰² *Id.* P 1570.

²⁰⁰³ *Id.* P 1570.

²⁰⁰⁴ *Id.* P 1571 (citing Order No. 890, 118 FERC ¶ 61,119 at P 454; Order No. 1000, 136 FERC ¶ 61,051 at P 152).

²⁰⁰⁵ *Id.* (citing Order No. 890, 118 FERC ¶ 61,119 at PP 454, 488, 557; Order No. 1000, 136 FERC ¶ 61,051 at P 152.).

²⁰⁰⁶ *Id.* (citations omitted).

²⁰⁰⁷ *Id.*

²⁰⁰⁸ P 1572.

not unduly discriminatory or preferential.²⁰⁰⁹

807. The Commission also concluded that additional coordination between the local and regional transmission planning processes regarding the replacement of aging infrastructure is needed. The Commission found that the record showed that many incumbent transmission providers are replacing aging transmission infrastructure as it reaches the end of its useful life. The Commission specifically noted that, in PJM and NYISO, a significant portion of transmission assets either need to be replaced or will soon need to be replaced.²⁰¹⁰ The Commission stated that replacing these transmission facilities will require substantial investment, which will directly affect Commission-jurisdictional rates.²⁰¹¹

808. The Commission stated, however, that because its existing requirements do not obligate transmission providers to share sufficient information regarding these replacement projects, transmission providers in the regional transmission planning process are not consistently evaluating whether those replacement transmission facilities could be modified (*i.e.*, right-sized) to more efficiently or cost-effectively address transmission system needs.²⁰¹² Therefore, the Commission concluded, the lack of a requirement for transmission providers in each transmission planning region to evaluate whether those replacement transmission facilities could be modified (*i.e.*, right-sized) to more efficiently or cost-effectively address Long-Term Transmission Needs results in a regional transmission planning process that fails to identify opportunities to right-size planned in-kind replacement transmission facilities and may result in the development of inefficiently sized or designed, duplicative, or unnecessary transmission facilities that increase costs to customers and render Commission-jurisdictional rates unjust and unreasonable.²⁰¹³

809. The Commission disagreed with claims from commenters that the Commission lacked jurisdiction to impose the requirements in Order No. 1920 or that the Commission did not justify those requirements.²⁰¹⁴ The Commission explained that consistent with Order Nos. 890 and 1000, the

Commission has the authority to establish requirements related to local transmission planning processes and the inputs to regional transmission planning processes.²⁰¹⁵

810. In response to claims from commenters questioning whether the Commission properly demonstrated under FPA section 206 that existing rates are unjust, unreasonable, or unduly discriminatory or preferential in instituting a federal right of first refusal for right-sized replacement transmission facilities, the Commission explained that it found transmission providers' OATTs to be unjust and unreasonable due to the lack of right-sizing requirements that may lead to the identification, evaluation, and selection of more efficient or cost-effective Long-Term Regional Transmission Facilities.²⁰¹⁶

811. Because the Commission found that existing requirements governing transparency in the local transmission planning process and coordination between local and regional transmission planning processes were insufficient to ensure just and reasonable and not unduly discriminatory or preferential rates, the Commission required, pursuant to FPA section 206, transmission providers to adopt, with modifications, the two reforms the Commission identified in the NOPR: (1) enhance the transparency of the local transmission planning process; and (2) require transmission providers to evaluate whether transmission facilities that need replacing can be "right-sized" to more efficiently or cost-effectively address Long-Term Transmission Needs identified in Long-Term Regional Transmission Planning.²⁰¹⁷ The Commission found that the first reform will result in transmission providers providing enhanced transparency for stakeholders while providing those same stakeholders with opportunities to more effectively engage in local and regional transmission planning processes. The Commission found that the second reform will result in transmission providers identifying, evaluating, and selecting replacement transmission facilities that more efficiently or cost-effectively address Long-Term Transmission Needs. Finally, the Commission found that, taken together, these reforms will ensure that Commission-jurisdictional rates are

just and reasonable and not unduly discriminatory or preferential.²⁰¹⁸

812. On rehearing, several parties challenge the Commission's findings. We address their arguments below.

2. Analysis Under FPA Section 206

a. Rehearing Requests

813. Advanced Energy and Competition Coalition contend that the Commission failed to engage in reasoned decision-making, in violation of the APA and the required analysis under FPA section 206, by ignoring relevant considerations, failing to address applicable precedent, and inadequately explaining its decision to grant incumbent transmission providers a right of first refusal for right-sized replacement transmission facilities.²⁰¹⁹ Competition Coalition adds that the Commission has failed to prove that the reform is just and reasonable, supported by substantial evidence, the product of reasoned decision-making, and consistent with the public interest.²⁰²⁰

814. Competition Coalition, Industrial Customers, and Designated Retail Regulators request rehearing on the grounds that, in adopting the reforms in Order No. 1920 regarding enhanced transparency of local transmission planning inputs and identifying opportunities to right-size replacement transmission facilities, the Commission failed to satisfy the requirement to make a finding, supported by substantial evidence, that the existing relevant tariff provisions result in rates that are unjust, unreasonable, or unduly discriminatory.²⁰²¹ Competition Coalition and Industrial Customers, for example, argue that Order No. 1920 does not support with substantial evidence the Commission's claim that the interrelationship between local and regional transmission planning yields unjust, unreasonable, or unduly discriminatory rates, and therefore does not reflect reasoned decision-making.²⁰²² Similarly, Designated Retail Regulators argue that the Commission failed to provide an analysis of the justness and reasonableness of the local transmission planning processes as a prerequisite to adopting the local transmission planning and right-sizing

²⁰¹⁸ *Id.*

²⁰¹⁹ Advanced Energy Rehearing Request at 4; Competition Coalition Rehearing Request at 8.

²⁰²⁰ Competition Coalition Rehearing Request at 59–60.

²⁰²¹ Competition Coalition Rehearing Request at 14 (citing *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) (*Emera Maine*)); Industrial Customers Rehearing Request at 4–5; Designated Retail Regulators Rehearing Request at 7, 41.

²⁰²² Competition Coalition Rehearing Request at 14; Industrial Customers Rehearing Request at 4–5.

²⁰⁰⁹ *Id.*

²⁰¹⁰ *Id.* P 1573 (citations omitted).

²⁰¹¹ *Id.*

²⁰¹² *Id.* P 1574.

²⁰¹³ *Id.* P 1574.

²⁰¹⁴ *Id.* P 1575 (citations omitted).

²⁰¹⁵ *Id.* (citing Order No. 890, 118 FERC ¶ 61,119 at P 435; Order No. 1000, 136 FERC ¶ 61,051 at PP 68, 148, 1520).

²⁰¹⁶ *Id.* P 1576 (citations omitted).

²⁰¹⁷ *Id.* P 1577.

reforms in Order No. 1920.²⁰²³

Competition Coalition contends that Order No. 1920's findings on encouraging transmission providers to provide their best in-kind replacement estimates and removing other disincentives do not provide a basis for satisfying the first prong of FPA section 206.²⁰²⁴

815. Several parties separately assert that the Commission failed to satisfy the first prong of FPA section 206 when it adopted the federal right of first refusal requirement for right-sized replacement transmission facilities.²⁰²⁵ Competition Coalition contends, and Industrial Customers agree, that Order No. 1920 fails to identify the specific regional transmission planning and cost allocation tariff requirements, particularly those that relate to in-kind replacement processes, that are unjust, unreasonable, or unduly discriminatory or preferential as a result of the lack of an incumbent preference.²⁰²⁶ Rather, Competition Coalition argues, the identified concern—lack of transparency in local transmission planning as an input to regional transmission planning—has nothing to do with the lack of a right of first refusal in the regional transmission planning process.²⁰²⁷ Competition Coalition further states that the absence of any nexus between the identified problem in Order No. 1920—that existing regional transmission planning processes are unjust and unreasonable—and the prescribed remedy is glaring as it concerns the federal right of first refusal for right-sized replacement transmission facilities.²⁰²⁸

816. Competition Coalition also asserts that Order No. 1920 fails to provide substantial evidence that the existing regional transmission planning framework as it relates to incumbent public utility preferences for regionally planned, regionally cost allocated projects in existing transmission provider tariff provisions is unjust, unreasonable, or unduly discriminatory or preferential. Competition Coalition also contends that Order No. 1920 does not elaborate on, or support with substantial evidence, the reference to “coordination” in the context of its

finding under the first prong of FPA section 206.²⁰²⁹ Competition Coalition states that substantial evidence is “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.”²⁰³⁰

b. Commission Determination

817. We sustain the finding in Order No. 1920 that existing requirements governing transparency in local transmission planning processes and coordination between local and regional transmission planning processes are unjust, unreasonable, and unduly discriminatory or preferential.²⁰³¹ We continue to find that Order No. 1920's reforms to transparency in local transmission planning inputs and coordination between local and regional transmission planning processes are necessary to ensure that Commission-jurisdictional rates are just, reasonable, and not unduly discriminatory or preferential.

818. We disagree with Competition Coalition and Advanced Energy that the Commission failed to satisfy the required analysis of FPA section 206 in adopting the reforms to enhance the transparency of local transmission planning inputs and coordination between the local and regional transmission planning processes. As the Commission noted in Order No. 1920, reforms to better ensure more consistent implementation of the Order No. 890 transmission planning principles are timely and important in light of the significant investments in transmission infrastructure that now occur through local transmission planning processes.²⁰³² Further, we continue to find that local and regional transmission planning processes serve essential and complementary roles in ensuring that customers' transmission needs are identified and met at just and reasonable rates, including through the identification, evaluation, and selection of more efficient or cost-effective transmission solutions through regional transmission planning.²⁰³³ As the Commission stated in Order No. 1920, information and transmission solutions developed through local transmission planning serve as a foundation for regional transmission planning.²⁰³⁴

819. The Commission supported its findings in Order No. 1920 with comments and studies in the record highlighting that the lack of

transparency and coordination requirements in local transmission planning do not consistently provide stakeholders with sufficient information regarding the development of local transmission plans.²⁰³⁵ Specifically, the Commission also found that additional coordination between the local and regional transmission planning processes regarding the replacement of aging infrastructure is needed, especially in light of the record evidence that incumbent transmission providers across the country are replacing aging transmission infrastructure as it reaches the end of its useful life²⁰³⁶ without considering whether a regional transmission solution could be more efficient or cost-effective. Ultimately, the Commission concluded, based on these findings, that the existing requirements governing transparency in local transmission planning processes and coordination between local and regional transmission planning processes were unjust, unreasonable, and unduly discriminatory or preferential.²⁰³⁷

820. We also disagree with arguments raised by Competition Coalition, Industrial Customers, and Designated Retail Regulators that the Commission's findings under FPA section 206 are not supported by substantial evidence and find that Competition Coalition's reliance on *Emera Maine* is misplaced.²⁰³⁸ Rehearing parties' arguments on this issue ignore the Commission's extensive explanation of the circumstances that have rendered the existing rates and practices affecting those rates unlawful.²⁰³⁹ The Commission first identified a lack of adequate provisions for transparency and meaningful input from stakeholders within local transmission planning processes.²⁰⁴⁰ In support of this finding, the Commission: (1) cited prior final rules recognizing stakeholders' critical role in effective transmission planning; and (2) found that those prior final rules required reforms to provide for stakeholders' meaningful participation in both local and regional transmission planning processes.²⁰⁴¹

821. The Commission next identified the lack of a requirement for transmission providers in each transmission planning region to

²⁰²³ Designated Retail Regulators Rehearing Request at 7.

²⁰²⁴ Competition Coalition Rehearing Request at 18.

²⁰²⁵ *Id.* at 6, 11–19, 36–37; Industrial Customers Rehearing Request at 13–15.

²⁰²⁶ Competition Coalition Rehearing Request at 12–13; Industrial Customers Rehearing Request at 12–13.

²⁰²⁷ Competition Coalition Rehearing Request at 13.

²⁰²⁸ *Id.* at 13.

²⁰²⁹ *Id.* at 13–14.

²⁰³⁰ *Id.* at 9.

²⁰³¹ Order No. 1920, 187 FERC ¶ 61,068 at P 1569.

²⁰³² *Id.* P 1572; *see also id.* P 109.

²⁰³³ *Id.* P 1570.

²⁰³⁴ *Id.*

²⁰³⁵ *Id.* P 1571.

²⁰³⁶ *Id.* P 1573, nn.3363–3365.

²⁰³⁷ *Id.* PP 1573–1574, 1576.

²⁰³⁸ *See Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017).

²⁰³⁹ *Id.* PP 1571, 1572.

²⁰⁴⁰ *Id.* P 1571.

²⁰⁴¹ *Id.* P 1571 (citing Order No. 890, 118 FERC ¶ 61,119 at PP 454, 488, 557; Order No. 1000, 136 FERC ¶ 61,051 at P 152).

evaluate whether replacement transmission facilities could be modified (*i.e.*, right-sized) to more efficiently or cost-effectively address transmission needs. As noted above, the Commission highlighted evidence from the record that, for example, PJM and NYISO anticipate soon replacing a substantial portion of their aging transmission infrastructure as it reaches the end of its useful life, which will directly affect Commission-jurisdictional rates.²⁰⁴² Based on this evidence, the Commission concluded that existing requirements governing transparency in local transmission planning processes and coordination between local and regional transmission planning processes may result in the development of inefficiently sized or designed, duplicative, or unnecessary transmission facilities that increase costs to customers and render Commission-jurisdictional rates unjust and unreasonable.²⁰⁴³ We therefore conclude that the Commission found, based on substantial evidence, that these requirements are unjust, unreasonable, or unduly discriminatory, and determined that the identified deficiencies must be addressed to ensure that Commission-jurisdictional rates are just and reasonable.

822. Order No. 1920 also pointed out that the federal right of first refusal for selected right-sized replacement transmission facilities will provide transmission providers with certainty that they will not lose the opportunity to invest in any in-kind replacement transmission facility that is then selected as a right-sized replacement transmission facility, and this, in turn, will encourage transmission providers to provide their best in-kind replacement estimates.²⁰⁴⁴ Accordingly, the Commission found that that a federal right of first refusal will remove a disincentive for transmission providers to consider right-sizing in Long-Term Regional Transmission Planning. The Commission added that this will help to ensure that transmission providers identify and select the more efficient or cost-effective

regional transmission solution to Long-Term Transmission Needs.²⁰⁴⁵

823. As Competition Coalition points out in its rehearing request, substantial evidence is “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.”²⁰⁴⁶ The above discussion makes clear that the Commission examined the relevant data and articulated a rational connection between the facts found and the choices made in enacting the reforms in Order No. 1920. We thus continue to find that the Commission engaged in reasoned decision-making and considered all important aspects of the problem and meaningfully responded to the arguments raised before it.

3. Departure From Commission Precedent

a. Rehearing Requests

824. Competition Coalition opines that no explanation can be offered for how the right-sizing proposal is not in conflict with FPA section 206 because Order Nos. 1000 and 1000–A required the elimination of federal rights of first refusal.²⁰⁴⁷ Competition Coalition also asserts that Order No. 1920 departs from Commission precedent without explanation.²⁰⁴⁸

b. Commission Determination

825. We are unpersuaded by Competition Coalition’s argument that Order No. 1920 does not provide a reasoned explanation regarding Order No. 1920’s departure from Order Nos. 1000 and 1000–A in establishing a federal right of first refusal for right-sized replacement transmission facilities. In Order No. 1920, the Commission recognized that the establishment of a federal right of first refusal for right-sized replacement transmission facilities is an exception to Order No. 1000’s general requirement for transmission providers to eliminate any federal right of first refusal for regional transmission facilities selected in a regional transmission plan. The Commission then found that requiring a federal right of first refusal for right-sized replacement transmission facilities aligns with Order No. 1000.²⁰⁴⁹

The Commission explained that, in Order No. 1000, transmission providers were required to remove federal rights of first refusal from their OATTs because they undermined the consideration of more efficient or cost-effective potential transmission solutions proposed at the regional level, which could lead to unjust and unreasonable rates for Commission-jurisdictional services.²⁰⁵⁰ The Commission also explained that, in Order No. 1000, it found that federal rights of first refusal created a barrier to entry that discouraged nonincumbent transmission developers from proposing alternative solutions for consideration at the regional level.²⁰⁵¹

826. The Commission further explained that Order No. 1000 did not require the elimination of federal rights of first refusal for local transmission facilities, nor did it alter the rights of incumbent transmission providers to build, own, and recover costs for upgrades to their own transmission facilities, regardless of whether the upgrade is selected in the regional transmission plan for the purposes of cost allocation.²⁰⁵² Because a right-sized replacement transmission facility has the potential to both meet an individual transmission provider’s responsibility to maintain the reliability of its existing transmission system and also address a Long-Term Transmission Need more efficiently or cost-effectively than an in-kind replacement transmission facility or another Long-Term Regional Transmission Facility, which includes the need for replacements of existing transmission facilities via local transmission planning processes, the Commission concluded that the reasons for removing federal rights of first refusal in Order No. 1000 do not apply to right-sized replacement transmission facilities.²⁰⁵³ Specifically, Order No. 1920 found that requiring a federal right of first refusal for right-sized replacement transmission facilities does not undermine the consideration of more efficient or cost-effective potential transmission solutions proposed at the regional level. Rather, the Commission found that a federal right of first refusal will promote the consideration of more efficient or cost-effective potential

²⁰⁴² *Id.* P 1573, nn.3363–3365.

²⁰⁴³ *Id.* P 1574.

²⁰⁴⁴ *Id.* P 1703; *see infra* Identifying Potential Opportunities to Right-Size Replacement Transmission Facilities section. The Commission defined “in-kind replacement estimates” as “estimates of the transmission facilities operating at and above the specified kV threshold that an individual transmission provider that owns the transmission facility anticipates replacing in-kind with a new transmission facility during the next 10 years” Order No. 1920, 187 FERC ¶ 61,068 at P 1677. We clarify that these estimates include, at minimum, identification of the transmission facilities themselves.

²⁰⁴⁵ *See infra* Right of First Refusal for Right-Sized Replacement Transmission Facilities Selected to Meet Long-Term Transmission Needs section.

²⁰⁴⁶ Competition Coalition Rehearing Request at 9 (citing *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 94 (3d Cir. 2014)) (citing *Mars Home for Youth v. NLRB*, 666 F.3d 850, 853 (3rd Cir. 2011)).

²⁰⁴⁷ Competition Coalition Rehearing Request at 36–37 (citing *S. C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 71–76).

²⁰⁴⁸ *Id.* at 37 n.112, 40.

²⁰⁴⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1704.

²⁰⁵⁰ *Id.* P 1705; *infra* Right of First Refusal for Right-Sized Replacement Transmission Facilities Selected to Meet Long-Term Transmission Needs section.

²⁰⁵¹ Order No. 1920, 187 FERC ¶ 61,068 at P 1705 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 257).

²⁰⁵² *See id.* P 1705 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 319.)

²⁰⁵³ *Id.* P 1706; *see infra* Right of First Refusal for Right-Sized Replacement Transmission Facilities Selected to Meet Long-Term Transmission Needs section.

regional transmission solutions to address Long-Term Transmission Needs because it captures both an individual transmission provider's responsibilities and a Long-Term Transmission Need, we believe the right-sizing reform preserves transmission providers' ability to invest in replacements of their own transmission facilities, even if such facilities are right-sized and selected in the regional transmission plan for purposes of cost allocation.²⁰⁵⁴ Furthermore, the Commission noted that the reasons for removing federal rights of first refusal in Order No. 1000 do not apply to right-sized replacement transmission facilities because transmission providers may have existing rights and responsibilities with respect to maintaining and, when necessary, replacing their transmission facilities.²⁰⁵⁵

827. We therefore continue to find that providing for a federal right of first refusal for right-sized replacement transmission facilities aligns with the text and stated purpose of Order No. 1000 by ensuring that transmission providers consider more efficient or cost-effective regional transmission solutions.²⁰⁵⁶ We also reaffirm that the right-sizing reform does not depart, without explanation, from Commission precedent related to an individual transmission provider's ability to proceed with an in-kind replacement transmission facility. Further, we believe that, without a federal right of first refusal, the incumbent transmission provider whose in-kind replacement transmission facility is selected to be right-sized would likely opt to develop the less efficient or cost-effective in-kind replacement transmission facility rather than a right-sized replacement transmission facility.²⁰⁵⁷ Therefore, we continue to find that the establishment of the federal right of first refusal for right-sized replacement transmission facilities that are evaluated and selected as part of Long-Term Regional Transmission Planning is necessary to effectuate this reform and ensure that Commission-jurisdictional rates are just and reasonable.²⁰⁵⁸ As the Commission reasoned in Order No. 1920, by establishing a process that requires

transmission providers to evaluate opportunities to right-size in-kind replacement transmission facilities to meet transmission needs, the right-sizing reform will encourage transmission providers to provide their best in-kind replacement estimates, as they will have certainty that they will not lose the opportunity to invest in any in-kind replacement transmission facility that is then selected as a right-sized replacement transmission facility. The Commission concluded that together, these reforms will enable transmission providers to ensure that the more efficient or cost-effective regional solution to transmission needs is identified, evaluated, and selected, and therefore that Commission-jurisdictional rates are just and reasonable.

4. Commission Authority Under the FPA

a. Rehearing Requests

828. Competition Coalition argues that FPA section 206 cannot support the Commission's adoption of a monopoly preference when FPA section 206 mandates the opposite result (prohibition on unduly discriminatory or preferential rates or practices affected rates).²⁰⁵⁹ Advanced Energy argues that the FPA lacks a plausible textual basis for the Commission to bestow on the incumbent utilities a "monopoly right" to develop and own certain types of transmission infrastructure.²⁰⁶⁰ Thus, Advanced Energy and Competition Coalition assert, the Commission exceeded its authority under FPA section 206.²⁰⁶¹

829. Both Advanced Energy and Competition Coalition assert that the Commission's application of FPA section 206 is inconsistent with U.S. Supreme Court precedent.²⁰⁶² Advanced Energy states that the Commission's reliance on FPA section 206 to bestow a federal right of first refusal raises serious constitutional questions and, therefore, is inconsistent with the constitutional-doubt canon of statutory construction.²⁰⁶³ Advanced

Energy claims that since FPA section 206 contains no explicit language regarding development or ownership of transmission facilities or authorizing the establishment of a federal right of first refusal, relying on FPA section 206 to adopt the right-sizing reform calls into question whether Congress delegated such authority to the Commission and, if so, whether that delegation was proper.²⁰⁶⁴

830. Advanced Energy states that, in enacting FPA section 216, Congress reinforced the FPA's longstanding jurisdictional framework that the Commission does not possess the authority to prevent "any person" from constructing or modifying a transmission facility.²⁰⁶⁵ Advanced Energy argues that, as a result, the Commission exceeded its authority under the FPA by granting incumbents a right of first refusal to develop and own right-sized replacement transmission facilities, to the exclusion of all others.²⁰⁶⁶ Similarly, Competition Coalition attests that Order No. 1920 failed to demonstrate that the Commission has the legal authority under the FPA to mandate the federal right of first refusal of transmission facilities, and further argues that the FPA provides the Commission no authority to do so.²⁰⁶⁷ Undersigned States argue that right-sizing intrudes upon state authority.²⁰⁶⁸

b. Commission Determination

831. We disagree with Advanced Energy's, Competition Coalition's, and Undersigned States' arguments that the reforms in this section, specifically the right-sizing reform and the federal right of first refusal for right-sized replacement transmission facilities, exceed the Commission's authority.²⁰⁶⁹ The Commission's authority under FPA section 201 includes "the transmission of electric energy in interstate commerce," and under FPA section 206 the Commission's authority is to ensure that practices affecting Commission-jurisdictional rates are just and reasonable.²⁰⁷⁰ As explained in *EPISA*, this jurisdiction extends to practices that "directly affect" such rates.²⁰⁷¹ The

²⁰⁵⁴ See *infra* Right of First Refusal for Right-Sized Replacement Transmission Facilities Selected to Meet Long-Term Transmission Needs section.

²⁰⁵⁵ Order No. 1920, 187 FERC ¶ 61,068 at PP 1706–1707; see *infra* Right of First Refusal for Right-Sized Replacement Transmission Facilities Selected to Meet Long-Term Transmission Needs section.

²⁰⁵⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1704.

²⁰⁵⁷ See *infra* Right of First Refusal for Right-Sized Replacement Transmission Facilities Selected to Meet Long-Term Transmission Needs section.

²⁰⁵⁸ Order No. 1920, 187 FERC ¶ 61,068 at PP 1706–1707.

²⁰⁵⁹ Competition Coalition Rehearing Request at 36.

²⁰⁶⁰ Advanced Energy Rehearing Request at 5, 6–7 (citing 16 U.S.C. 824e(a)).

²⁰⁶¹ *Id.* at 5, 8; Competition Coalition Rehearing Request at 22–23.

²⁰⁶² Advanced Energy Rehearing Request at 8–10 (citing *West Virginia*, 597 U.S. at 721, 723, 730; *Whitman v. Am. Trucking Ass'n*, 531 U.S. at 468); Competition Coalition Rehearing Request at 36 (citing *West Virginia*, 597 U.S. at 723).

²⁰⁶³ Advanced Energy Rehearing Request at 10 (citing *Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts* 247–48 (2012) (citing *Crowell v. Benson*, 285 U.S. 22, 62 (1932))).

²⁰⁶⁴ *Id.* at 10, 21 (citing *West Virginia*, 597 U.S. 697).

²⁰⁶⁵ *Id.* at 8 (citing 16 U.S.C. 824p(g)).

²⁰⁶⁶ *Id.* at 5, 8.

²⁰⁶⁷ Competition Coalition Rehearing Request at 7, 21–23.

²⁰⁶⁸ Undersigned States Rehearing Request at 36.

²⁰⁶⁹ See Advanced Energy Rehearing Request at 4–12; Competition Coalition Rehearing Request at 7, 20–40; Undersigned States Rehearing Request at 36.

²⁰⁷⁰ See *supra* Federal/State Division of Authority section.

²⁰⁷¹ 577 U.S. at 278.

federal right of first refusal acknowledges existing precedent recognizing state laws providing an individual transmission provider's ability to proceed with an in-kind replacement transmission facility and encourages transmission providers to provide their best in-kind replacement estimates by preserving the transmission providers' ability to invest in facilities selected as right-sized replacement transmission facilities.²⁰⁷² The Commission explained that the establishment of a federal right of first refusal in this regard will result in transmission providers identifying, evaluating, and selecting replacement transmission facilities that more efficiently or cost-effectively address transmission needs.

832. Indeed, rights of first refusal have generally been found to be practices affecting rates, thus confirming that they are within the Commission's jurisdiction—albeit in the context of their removal.²⁰⁷³ Thus, the Commission's action in Order No. 1920 is entirely consistent with Order No. 1000 in that respect. Advanced Energy and Competition Coalition fail to recognize the inherent contradiction in their arguments. When addressing our statutory authority, the relevant question is whether the Commission can regulate rights of first refusal, not how it chooses to regulate them. The claim that the establishment of a federal right of first refusal for right-sized replacement transmission facilities is beyond the Commission's authority is squarely contrary to Order No. 1000 and *South Carolina*.²⁰⁷⁴

833. We are unpersuaded by arguments that the Commission lacks authority under the FPA to require the right-sizing reform. FPA section 206 provides the Commission with the authority to determine the just and reasonable rate following a finding that any rate, charge, regulation, or practice is unjust, unreasonable, unduly discriminatory or preferential. The D.C. Circuit has recognized that regional transmission planning and cost allocation processes are practices affecting rates subject to the Commission's exclusive jurisdiction.²⁰⁷⁵

and that transmission providers use those processes to “determine which transmission facilities will more efficiently or cost-effectively meet” transmission needs, the development of which directly impacts the rates, terms, and conditions of Commission-jurisdictional service.²⁰⁷⁶

834. We also are unpersuaded by Advanced Energy's and Competition Coalition's claims that the right of first refusal for right-sized replacement transmission facilities requires explicit congressional authorization and find that, notwithstanding references to *West Virginia* in their rehearing requests, the major questions doctrine is not implicated here. As discussed in detail above,²⁰⁷⁷ the major questions doctrine is a context-specific analysis that applies only in “extraordinary cases” where an agency action is so extravagant that it is akin to discovering an “elephant in a mousehole.”²⁰⁷⁸ More specifically, the major questions doctrine comes into play where, despite a “colorable textual basis” for the agency's claim of authority, the agency action was so extravagant when viewed in light of the statutory context that it was unlikely that Congress would have afforded this claimed authority to the agency, and particularly would not have done so in an oblique or subtle way.²⁰⁷⁹

835. The Advanced Energy and Competition Coalition rehearing requests do not meaningfully engage with the context-specific factors associated with the application of the major questions doctrine. Advanced Energy's theory that the doctrine applies boils down to its characterization of the federal right of first refusal as a “monopoly franchise right” and assertion that replacing transmission projects is extremely expensive.²⁰⁸⁰ Competition Coalition similarly relies on a largely conclusory invocation of *West Virginia*, without analysis beyond asserting that this is an “extraordinary case” because the Commission has never previously asserted that Congress granted it this power.²⁰⁸¹

836. We continue to conclude that the major questions doctrine does not apply to Order No. 1920, which is a rulemaking under the Commission's broad authority over transmission planning processes affecting

Commission-jurisdictional rates. Specifically, here, Order No. 1920's inclusion of a federal right of first refusal for right-sized replacement transmission facilities falls well within the Commission's authority under FPA section 206 over “practice[s] . . . affecting” rates, the same grant of statutory authority supporting issuance of Order No. 1920.²⁰⁸² As a result, for all the reasons that we find that the major questions doctrine is inapplicable to Order No. 1920 as a whole,²⁰⁸³ we likewise find that Advanced Energy and Competition Coalition have not shown that the major questions doctrine applies to Order No. 1920's inclusion of a federal right of first refusal for right-sized replacement transmission facilities.

837. We are also unpersuaded by Advanced Energy's claims that Order No. 1920's establishment of a federal right of first refusal for right-sized replacement transmission facilities raises constitutional questions and is therefore inconsistent with the constitutional-doubt canon of statutory construction.²⁰⁸⁴ Advanced Energy does not discuss the substance of this doctrine, cite any authority that relates to this doctrine, or explain how—by authorizing the Commission to regulate practices affecting rates, which includes the local transparency improvements and the right-sizing reform—Congress would have impermissibly delegated legislative power to the Commission.²⁰⁸⁵

838. We also disagree with Advanced Energy that the Commission exceeded its authority under FPA section 216 and find such arguments to be misplaced. FPA section 216 governs the Commission's authority with respect to authorization of a construction permit for a transmission facility located within a National Interest Electric Transmission Corridor under certain circumstances. FPA section 216 does not alter or restrict the Commission's authority to identify a replacement rate under section 206 of the FPA, including the provision for or the removal of a federal right of first refusal, to ensure transmission providers' OATTs are just and reasonable and not unduly discriminatory or preferential. The

²⁰⁷² Order No. 1920, 187 FERC ¶ 61,068 at P 1707.

²⁰⁷³ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 72.

²⁰⁷⁴ *Id.* at 73–76 (finding that the Commission was authorized to regulate the right of first refusal provisions in Commission-jurisdictional tariffs and that the Commission correctly concluded that inclusion of rights of first refusal in tariffs and agreements was a “practice affecting a rate triggering the Commission's authority under FPA section 206.”).

²⁰⁷⁵ Order No. 1920, 187 FERC ¶ 61,068 at P 86 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41

at 55–59, 84; see Order No. 1000–A, 139 FERC ¶ 61,132 at P 577).

²⁰⁷⁶ *Id.* (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 56).

²⁰⁷⁷ See *supra* Major Questions Doctrine section.

²⁰⁷⁸ See *West Virginia*, 597 U.S. at 746.

²⁰⁷⁹ *Id.* at 722–23.

²⁰⁸⁰ Advanced Energy Rehearing Request at 9–10.

²⁰⁸¹ Competition Coalition Rehearing Request at 34, 36.

²⁰⁸² See *EPSA*, 577 U.S. at 277–78; *S.C. Pub. Serv. Auth. v. FERC*, 762 at 56–57; *CAISO*, 372 F.3d at 399–404.

²⁰⁸³ See *supra* Major Questions Doctrine section.

²⁰⁸⁴ See Advanced Energy Rehearing Request at 10 (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 247–48 (2012) (citing *Crowell v. Benson*, 285 U.S. at 62)).

²⁰⁸⁵ *Id.*; see also *supra* Major Questions Doctrine section.

federal right of first refusal for right-sized replacement transmission facilities is not aimed at, nor does it directly regulate, an area of state authority.²⁰⁸⁶ As discussed in Order No. 1920 and above, the Commission is not unlawfully supplanting state authority, including siting and development processes.²⁰⁸⁷ States retain their authority over those processes and the federal right of first refusal for right-sized replacement transmission facilities is not directed at those practices nor does it divest states of their authority. As explained above, the right-sizing processes, including the right of first refusal for right-sized replacement transmission facilities, are directed at Commission-jurisdictional transmission planning processes.

839. We are not persuaded by Advanced Energy's acontextual reading of FPA section 216(g) which posits that—in providing backstop siting authority to the Commission under FPA section 216 and allowing the Commission, in certain circumstances, to grant construction permits for transmission facilities within designated National-Interest Electric Transmission Corridors—Congress was subtly intending to negate the Commission's authority in FPA sections 205 or 206, particularly with respect to the right-sizing rights of first refusal or rights of first refusal more generally. The far more natural interpretation of this provision is that it means what it says, clarifying the impact of “this section” of the FPA: that despite creating such backstop permitting authority residing with the Commission, FPA section 216 does not preclude the construction or modification of transmission facilities in accordance with state law.²⁰⁸⁸

5. Policy Against Anticompetitive Practices

a. Rehearing Requests

840. Both Competition Coalition and Advanced Energy claim that Order No. 1920's establishment of a federal right of first refusal for right-sized replacement transmission facilities is inconsistent with federal policy against

anticompetitive practices.²⁰⁸⁹ Specifically, Advanced Energy asserts that the federal right of first refusal is inconsistent with Supreme Court finding that “the history of Part II of the Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.”²⁰⁹⁰ Competition Coalition contends that the reform is contrary to appellate courts' affirmation that monopoly preferences are against the public interest.

b. Commission Determination

841. Order No. 1920's conclusion that the federal right of first refusal for right-sized replacement transmission facilities is within the Commission's authority is further supported by the history and context of the FPA broadly, and rights of first refusal generally—contrary to the arguments in the rehearing requests. As the Supreme Court has recognized, electric utilities have historically been vertically integrated monopolies, including as to transmission.²⁰⁹¹

842. When Congress enacted the FPA, it charged the Commission with ensuring that rates and practices were “just and reasonable” and not unduly discriminatory or preferential. Within these parameters, the statutory text does not require a particular approach. Thus, Advanced Energy's and Competition Coalition's invocation of a policy against anticompetitive practices is unpersuasive.²⁰⁹² The Commission's authority is defined and delineated by the FPA, not by reference to a general policy that may favor competition. Notably, the case Advanced Energy cites in this context, *Otter Tail*, did not address the Commission's authority under FPA section 205 or 206, and instead considered whether provisions of the FPA implicitly repealed otherwise applicable antitrust laws.²⁰⁹³

6. Other Arguments

a. Rehearing Requests

843. Competition Coalition asserts that Order No. 1920 fails to meaningfully engage with NOPR arguments and rebut arguments

presented in those comments. Competition Coalition also asserts that the phrase federal rights of first refusal is a “made-up phrase” that has no history in the FPA.²⁰⁹⁴ Competition Coalition adds that the federal right of first refusal for right-sized replacement transmission facilities is likely to encourage gaming.²⁰⁹⁵

b. Commission Determination

844. We also find that Competition Coalition's remaining arguments are unpersuasive as they fail to engage with the statutory text or context and, ultimately, have little to do with the Commission's statutory authority, notwithstanding how they are categorized in Competition Coalition's rehearing request.

845. A large swath of Competition Coalition's arguments discuss the history of the phrase “federal right of first refusal,” arguing that “the phrase was nothing more than a made-up general reference for clauses in [Commission]-jurisdictional contracts or tariffs implemented by existing transmission owners to impede independent transmission developers seeking to develop cost-of-service transmission.”²⁰⁹⁶ We find that this discussion has little bearing on the issue of the Commission's authority, which is defined by the statutory text and relevant precedent construing this text. As discussed above, we find that establishing the federal right of first refusal for right-sized replacement transmission facilities is within our authority and consistent with that history. We also note that Order No. 1000 did not require the removal of all rights of first refusal. Thus, Order No. 1000 does not suggest that establishment of a federal right of first refusal for right-sized replacement transmission facilities is beyond the Commission's authority.

846. We also find that most of Competition Coalition's other arguments—although housed in a portion of their request for rehearing contending that Order No. 1920 exceeds the Commission's statutory authority—are mislabeled. On their substance, these arguments amount to disputes over whether the federal right of first refusal for right-sized replacement transmission facilities is just and reasonable and not unduly discriminatory or preferential and whether the Commission departed from

²⁰⁸⁶ See *supra* Federal/State Division of Authority section (explaining that Commission regulations are not unlawful even if they substantially affect areas of reserved state jurisdiction so long as the Commission is directly regulating within its areas of authority under the FPA, rather than attempting to directly regulate within state jurisdiction).

²⁰⁸⁷ See *supra* Federal/State Division of Authority section; See also Order No. 1920, 187 FERC ¶ 61,068 at P 271.

²⁰⁸⁸ We note, further, that Order No. 1920 is not a regulation under FPA section 216 and no part of the right-sizing right of first refusal relies on Commission authority under FPA section 216.

²⁰⁸⁹ Competition Coalition Rehearing Request at 67–68 (citing Exec. Order No. 14,036, 3 CFR 100.1); Advanced Energy Rehearing Request at 10–11.

²⁰⁹⁰ Advanced Energy Rehearing Request at 10–11 (citing *Otter Tail v. U.S.*, 410 U.S. 366, 374 (1973)).

²⁰⁹¹ *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527, 535–36 (2008) (finding that, historically, electric utilities have been monopolies).

²⁰⁹² Advanced Energy Rehearing Request at 10–11.

²⁰⁹³ See *id.* at 10 n.30.

²⁰⁹⁴ Competition Coalition Rehearing Request at 24–29.

²⁰⁹⁵ *Id.* at 61, 68–71.

²⁰⁹⁶ *Id.* at 24–29 (arguing that such provisions were not based on requirements of the FPA or rights inherent in the FPA).

its precedent without adequate explanation, albeit peppered with assertions that the federal right of first refusal for right-sized replacement transmission facilities is not supported by the FPA.²⁰⁹⁷ Throughout this order, we affirm that the replacement rate set by the Commission in Order No. 1920 is just and reasonable and not unduly discriminatory.²⁰⁹⁸ We find that the Commission's authority is plainly stated in FPA section 206 to evaluate rates and practices to determine whether they are unjust and unreasonable or unduly discriminatory or preferential, and, if so, prescribe a replacement rate that is just and reasonable and not unduly discriminatory or preferential. On its face, the federal right of first refusal for right-sized replacement transmission facilities is an exercise of that authority, as discussed above.

B. Enhanced Transparency of Local Transmission Planning Inputs in the Regional Transmission Planning Process

1. Order No. 1920

847. In Order No. 1920, the Commission required transmission providers to revise the regional transmission planning process in their OATTs to enhance the transparency of: (1) the criteria, models, and assumptions that they use in their local transmission planning process; (2) the local transmission needs that they identify through the local transmission planning process; and (3) the potential local or regional transmission facilities that they will evaluate to address those local transmission needs.²⁰⁹⁹

²⁰⁹⁷ See *id.* at 32–40 (arguing that Order No. 1920 departs from the approach of previous Commission orders seeking to curtail transmission provider self-interest and challenging the Commission's rationale for adopting the federal right of first refusal for right-sized replacement transmission facilities); *id.* at 35–36 (arguing that the rationale of *Orangeburg, S.C. v. FERC*, 862 F.3d 1071 (2017), and the Commission's findings in Order No. 1000, require the elimination of disparate treatment of nonincumbent transmission providers); *id.* at 36–40 (arguing that FPA section 206 requires “elimination of preferential rates or practices affecting rates” and that the federal right of first refusal for right-sized replacement transmission facilities is inconsistent with this requirement, that the Commission cannot “ignore its prior declaration that rights of first refusal are unduly discriminatory or preferential,” and that Order No. 1920 is disingenuous in distinguishing precedent or claiming that it is not creating a “new preference”); *cf. id.* at 29–32 (discussing Order Nos. 1000 and 1000–A, arguing that because the Commission rejected “monopoly preference provisions” in those orders, even applying a heightened contract review, there is “no support for an assumption that the Commission enjoys Congressionally granted authority to simply create a federally sanctioned ‘cartel-like’ monopoly preference”).

²⁰⁹⁸ See *supra* The Commission Demonstrated that the Replacement Rate is Just and Reasonable section.

²⁰⁹⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1625.

Specifically, the Commission required that the regional transmission planning process include at least three publicly noticed stakeholder meetings per regional transmission planning cycle concerning the local transmission planning process of each transmission provider that is a member of the transmission planning region before each transmission provider's local transmission plan can be incorporated into the transmission planning region's planning models.²¹⁰⁰ The Commission stated that the requirement to establish this process ensures that stakeholders have meaningful opportunities to participate in and provide feedback on local transmission planning throughout the regional transmission planning process.²¹⁰¹ The Commission also clarified that these requirements applied only to local transmission planning that is within the scope of Order No. 890 and is therefore already subject to Order No. 890 transparency requirements. As such, the Commission stated, this requirement does not apply to asset management projects.²¹⁰²

848. The Commission required that prior to the submission of local transmission planning information to the transmission planning region for inclusion in the regional transmission planning process, transmission providers in each transmission planning region must convene, collectively, as part of the regional transmission planning process, a stakeholder meeting to review the criteria, assumptions, and models related to each transmission provider's local transmission planning (Assumptions Meeting).²¹⁰³ Furthermore, the Commission required that no fewer than 25 calendar days after the Assumptions Meeting, transmission providers in each transmission planning region must convene, collectively, as part of the regional transmission planning process a stakeholder meeting to review identified reliability criteria violations and other transmission needs that drive the need for local transmission facilities (Needs Meeting).²¹⁰⁴ Finally, the Commission required that, no fewer than 25 calendar days after the Needs Meeting, transmission providers in each transmission planning region must

convene, collectively, as part of the regional transmission planning process, a stakeholder meeting to review potential solutions to those reliability criteria violations and other transmission needs (Solutions Meeting).²¹⁰⁵

849. Additionally, the Commission required that the materials for stakeholder review during these three meetings be publicly posted and that stakeholders have opportunities before and after each meeting to submit comments.²¹⁰⁶ Specifically, the Commission required transmission providers to publicly post the meeting materials no fewer than five calendar days prior to each of the three publicly noticed stakeholder meetings to allow time for stakeholders to review materials in advance of each meeting.²¹⁰⁷ The Commission also required that transmission providers allow for a period of no fewer than 25 calendar days following the Solutions Meeting to review and consider stakeholder feedback on the local transmission solutions identified to meet the local transmission needs before the local transmission plan can be incorporated in the transmission planning region's planning models.²¹⁰⁸ Lastly, the Commission required that transmission providers must respond to questions or comments from stakeholders such that it allows stakeholders to meaningfully participate in these three required stakeholder meetings.²¹⁰⁹

850. In Order No. 1920, the Commission declined to adopt alternatives requested by commenters to this set of reforms because such proposals were not included in the NOPR and, as a result, the requests were beyond the scope of the proceeding.²¹¹⁰ The Commission noted, however, that several of these issues may be examined in the Commission's ongoing Transmission Planning and Cost Management proceeding.²¹¹¹

2. Requests for Additional Reforms

a. Requests for Rehearing and Clarification

851. Several parties request rehearing of the Commission's decision to exclude asset management projects from the local transmission planning

²¹⁰⁰ *Id.* P 1626.

²¹⁰¹ *Id.*

²¹⁰² *Id.* P 1625 (citing *S. Cal. Edison Co.*, 164 FERC ¶ 61,160, at PP 30–40 (2018); *Cal. Pub. Utils. Comm'n v. Pac. Gas. & Elec. Co.*, 164 FERC ¶ 61,161, at PP 65–74 (2018) (finding that Order No. 890's local transmission planning requirements do not apply to asset management projects that do not increase capacity or do so incidentally)).

²¹⁰³ *Id.* P 1627.

²¹⁰⁴ *Id.*

²¹⁰⁵ *Id.*

²¹⁰⁶ *Id.*

²¹⁰⁷ *Id.* P 1628.

²¹⁰⁸ *Id.*

²¹⁰⁹ *Id.*

²¹¹⁰ *Id.* P 1648.

²¹¹¹ Transmission Planning and Cost Management, Notice of Technical Conference, Docket No. AD22–8–000 (Apr. 21, 2022).

transparency requirements in the final rule.²¹¹² Old Dominion states that the Commission failed to address the lack of meaningful transparency in local transmission planning by deciding to exclude asset management projects from the local transmission planning transparency requirements, which it argues is an error that will perpetuate unjust and unreasonable rates.²¹¹³ Further, Old Dominion contends that the Commission's assertion that there is not sufficient record evidence or that it would be outside the scope of the proceeding to adopt reforms that were not proposed in the NOPR is unreasonable and inconsistent with other aspects of the final rule where the Commission adopted proposals that were neither supported by sufficient record evidence nor included in the NOPR.²¹¹⁴ Old Dominion states that if the Commission does not grant rehearing on this issue, then the Commission should undertake further reforms for local transmission planning, such as in Docket No. AD22–8–000.²¹¹⁵

852. NESCOE states that the Commission's decision to exclude asset management projects²¹¹⁶ from the scope of the local transmission planning transparency enhancements does not constitute reasoned decision-making, because the final rule does not sufficiently address concerns that asset condition projects are not subject to sufficient transparency, scrutiny, and review requirements.²¹¹⁷ NESCOE further argues that, despite the Commission's acknowledgement that reforms are needed to ensure regional transmission planning and cost allocation are just and reasonable, the Commission's failure to adopt such reforms based on a single-sentence rationale demonstrates that the Commission has not "made a reasoned decision based upon substantial evidence in the record," nor has it "articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made."²¹¹⁸ NESCOE argues that the exemption of asset management

projects from the local transmission planning transparency requirements results in a regulatory gap where transmission costs are unreviewed at both the state and federal level.²¹¹⁹ NESCOE contends that this is a particularly acute concern in New England where, since February 2023, transmission owners have brought \$3.3 billion in asset management projects through ISO-NE's Planning Advisory Committee.²¹²⁰

853. Ohio Commission Federal Advocate argues that the Commission's adoption of "perfunctory" transparency reforms for local planning processes was arbitrary and capricious, and will do nothing to close the regulatory gap or provide oversight for local projects.²¹²¹ Ohio Commission Federal Advocate notes that given the increasing portion of transmission facilities that are considered "supplemental projects"²¹²² in PJM, the reforms adopted in Order No. 1920 do little to shift the scales and the reforms may increase the portion of the transmission system built through a local transmission planning process.²¹²³ As such, Ohio Commission Federal Advocate contends that the Commission neglected its duty under the FPA to ensure just and reasonable rates by imposing reforms that will not curb rising transmission costs or result in holistic transmission planning.²¹²⁴

854. Industrial Customers request rehearing and argue the Commission failed to engage requests that call for implementation of an independent transmission monitor. Given the increase in spending on transmission projects, Industrial Customers argue that clarifying or expanding existing independent market monitor functions or creating an independent transmission monitor would be a timely and appropriate exercise of the Commission's authority to remedy unjust and unreasonable rates.²¹²⁵ Moreover, Industrial Customers contend that Order No. 1920 falls short of ensuring just and reasonable rates because it does not undertake reforms of transmission formula rates or the Commission's prudence standard.²¹²⁶ Industrial Customers argue that since Order No. 1920 failed to implement any

concrete reforms to protect consumers, rehearing is warranted.²¹²⁷

855. PIOs request rehearing arguing that the Commission has sidestepped evidence that they and other parties offered when the Commission concluded that certain suggestions regarding the local transmission planning process were outside the scope of the proceeding.²¹²⁸ PIOs argue that while Order No. 1920's reforms take some steps in the right direction, Order No. 1920 does not actually require the kind of comprehensive information transparency, scenario-based planning, multi-benefit analysis, and process coordination necessary for stakeholders to verify whether local transmission projects are prudent or whether a regional solution is more appropriate.²¹²⁹ PIOs argue that the Commission must require transmission providers to meet their burden under FPA section 205(e) to prove that their local transmission projects are the least-cost way to meet the needs of the transmission system. PIOs further argue the Commission should grant rehearing to ensure that utilities only construct local transmission projects when they are the best option for maintaining reliability and at least cost to consumers.²¹³⁰

b. Commission Determination

856. We sustain the determination in Order No. 1920 to exclude asset management projects from the information on local transmission planning inputs that transmission providers must include for stakeholder review as part of the Assumptions, Needs, and Solutions Meetings. We reiterate that planning for asset management projects, which do not increase transmission capacity or only do so incidentally, is not required to be included within the scope of local transmission planning that is subject to Order No. 890 transparency requirements,²¹³¹ and as such, it was reasonable for the Commission to exclude them from the requirements in Order No. 1920.²¹³² Moreover, the Commission did not propose in the NOPR to require transmission providers

²¹¹² NESCOE Rehearing Request at 26–31; Ohio Commission Federal Advocate Rehearing Request at 21–24; Old Dominion Rehearing Request at 4, 5–9.

²¹¹³ Old Dominion Rehearing Request at 5, 9.

²¹¹⁴ *Id.* at 5–6, 8 (contending that Order No. 1920 prohibits different cost allocation methods for economic, reliability, and public policy requirements, which the Commission did not propose in the NOPR).

²¹¹⁵ *Id.* at 9.

²¹¹⁶ NESCOE notes that these in-kind replacement projects are known as asset condition projects in New England. NESCOE Rehearing Request at 6.

²¹¹⁷ *Id.* at 26–33, 34.

²¹¹⁸ *Id.* at 30–31 (citing *Cal. Pub. Utils. Comm'n v. FERC*, 20 F.4th at 800).

²¹¹⁹ *Id.* at 29.

²¹²⁰ *Id.* at 28.

²¹²¹ Ohio Commission Federal Advocate Rehearing Request at 21–22.

²¹²² In PJM, "supplemental projects" is the term used for local projects. *Id.* at 23.

²¹²³ *Id.* at 23–24.

²¹²⁴ *Id.* at 21, 23.

²¹²⁵ Industrial Customers Rehearing Request at 29–31.

²¹²⁶ *Id.* at 33–34.

²¹²⁷ *Id.* at 38.

²¹²⁸ PIOs Rehearing Request at 50.

²¹²⁹ *Id.* at 51–52.

²¹³⁰ *Id.* at 53–54 (citing *Ky. Mun. Energy Agency v. FERC*, 45 F.4th 162, 178 (D.C. Cir. 2022)) (other citations omitted).

²¹³¹ Order No. 1920, 187 FERC ¶ 1625 (citing *S. Cal. Edison Co.*, 164 FERC ¶ 61,160 at PP 30–40; *Cal. Pub. Utils. Comm'n v. Pac. Gas. & Elec. Co.*, 164 FERC ¶ 61,161 at PP 65–74 (finding that Order No. 890's local transmission planning requirements do not apply to asset management projects that do not increase capacity or do so incidentally)).

²¹³² *Id.* P 1625.

to include information related to asset management projects in the information that they provide as part of the Assumptions, Needs, and Solutions Meetings. Instead, to enhance stakeholders' visibility into local transmission planning inputs as they are integrated into the regional transmission planning process, the Commission proposed in the NOPR—and adopted in the final rule—requirements to enhance the transparency of such inputs, which are already subject to the local transmission planning transparency requirements of Order No. 890, in the regional transmission planning process.²¹³³ We continue to expect these reforms to enhance the transparency between the local and regional transmission planning processes, which will help reduce the possibility that transmission providers will develop local transmission facilities without adequately considering whether there is a more efficient or cost-effective regional transmission solution that could address their local transmission needs.²¹³⁴ That said, we note that nothing in Order No. 1920 prevents transmission providers from choosing to apply Order No. 1920's requirements to enhance the transparency of local transmission planning inputs to asset management projects.

857. We disagree with parties that request rehearing on the grounds that the Commission's decision-making was arbitrary and capricious or failed to consider the record evidence. Further, we disagree with Ohio Commission Federal Advocate that the Commission neglected its duty under the FPA to ensure just and reasonable rates. We continue to find, as we found in Order No. 1920, that the enhanced

transparency requirements are specifically designed to provide needed transparency to ensure that Commission-jurisdictional rates are just and reasonable and not unduly discriminatory or preferential.²¹³⁵ As such, we find that the scope of the relevant reforms required by Order No. 1920 is sufficient to remedy the deficiencies in local transmission planning that the Commission set out to resolve in Order No. 1920, even if some parties would have preferred that the Commission had gone further.²¹³⁶

858. For similar reasons, we are unpersuaded by Industrial Customers' and PIOs' requests for additional reforms to transmission planning processes generally. The proposals raised by these parties in their rehearing requests were not included in either the NOPR or Order No. 1920 and, as noted above, we find that the relevant reforms required pursuant to Order No. 1920 are sufficient to remedy the problem that Order No. 1920 set out to solve.²¹³⁷ The Commission will continue to consider potential additional local transmission planning reforms, such as independent transmission monitors, along with other transmission reforms in the future.²¹³⁸

3. Stakeholder Meeting Clarifications

a. Request for Rehearing and Clarification

859. SERTP Sponsors request clarification that the standard for evaluating transmission providers' obligation to respond to stakeholder feedback is consistent with Order No. 890 and applies equally to local, regional, and Long-Term Regional Transmission Planning.²¹³⁹ Specifically, SERTP Sponsors assert that further clarification is necessary with respect to the Commission's statement that transmission providers are encouraged "to be as responsive as possible to stakeholder comments and questions" because this statement could be read to go beyond standards previously established in Order No. 890 and expand transmission providers' obligation to respond beyond what is necessary to support meaningful participation in stakeholder

meetings.²¹⁴⁰ Thus, SERTP Sponsors request that the Commission clarify that transmission providers are not obligated to incorporate stakeholder proposals or comments into their transmission plans and that the ultimate transmission planning responsibility is with the transmission provider.²¹⁴¹

860. Regarding the Assumptions Meeting, the Needs Meeting, and the Solutions Meeting, SERTP Sponsors also request that the Commission clarify that these meetings of different transmission providers do not need to be held as one. SERTP Sponsors explain that their transmission planning region consists of multiple transmission providers over a 12-state footprint, and they contend that the Commission should clarify that this requirement can be satisfied by a single transmission provider holding separate meetings that include its own Assumptions, Needs, and Solutions Meetings.²¹⁴² SERTP Sponsors assert that, in the event that the Commission does not so clarify, the requirements for the Assumptions Meeting, the Needs Meeting, and the Solutions Meeting may become unduly burdensome and inconsistent with Order No. 1920's requirement, which is based on the model used by PJM's transmission owners to hold separate meetings for different local transmission owners' local plans.²¹⁴³ SERTP Sponsors argue that holding "collective" Assumptions, Needs, and Solutions Meetings is unnecessary to achieve the Commission's transparency objections, and further contends that requiring so would be an unexplained departure from the PJM precedent and otherwise arbitrary and capricious.²¹⁴⁴

b. Commission Determination

861. We clarify, in response to SERTP Sponsors' request, that transmission providers are not obligated to incorporate stakeholder proposals or comments resulting from the stakeholder meeting process into their transmission plans, and we agree with SERTP Sponsors that the ultimate transmission planning responsibility remains with the transmission provider.²¹⁴⁵ In encouraging transmission providers to be as responsive as possible to stakeholder comments and questions as part of the stakeholder meeting process, the Commission in Order No. 1920 did not establish new requirements for

²¹³³ NOPR, 179 FERC ¶ 61,028 at P 398 (identifying the need for reform based in part on a finding that "implementation of [the Order No. 890 local transmission planning principles] in local transmission planning processes appears to remain uneven", and that "reforms to better ensure more consistent implementation of these principles may be timely"); *id.* P 400 (proposing to require transmission providers to revise their OATTs "to enhance transparency of: (1) the criteria, models, and assumptions that they use in their local transmission planning process; (2) the local transmission needs that they identify through that process; and (3) the potential local or regional transmission facilities that they will evaluate to address those local transmission needs."); *id.* P 402 (stating that "requirements are needed to ensure just and reasonable Commission-jurisdictional rates because the information provided will better facilitate the identification of regional transmission facilities"); Order No. 1920, 187 FERC ¶ 61,068 at P 1625 (clarifying that the requirement "applies only to local transmission planning that is within the scope of Order No. 890 and is therefore already subject to Order No. 890 transparency requirements" and does not apply to asset management projects)).

²¹³⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1629.

²¹³⁵ *Id.* P 1632.

²¹³⁶ See *New York v. FERC*, 531 U.S. at 26–27 (affirming that the Commission did not have an obligation extend its open access remedy to bundled retail transmissions because the remedy it ordered constituted a sufficient response to the problems the Commission had identified in the wholesale market).

²¹³⁷ See Order No. 1920, 187 FERC ¶ 61,068 at PP 1648, 1737.

²¹³⁸ We note, for example, the ongoing proceeding in Docket No. AD22–8–000 on Transmission Planning and Cost Management.

²¹³⁹ SERTP Sponsors Rehearing Request at 23–24.

²¹⁴⁰ *Id.* at 24 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1645) (emphasis omitted).

²¹⁴¹ *Id.*

²¹⁴² *Id.* at 24–25.

²¹⁴³ *Id.* at 25.

²¹⁴⁴ *Id.* at 25 (citations omitted).

²¹⁴⁵ *Id.* at 24.

transmission providers that did not previously apply; rather, the description of the requirement that transmission providers respond to questions or comments in a manner that allows stakeholders to meaningfully participate in the stakeholder meetings explains existing requirements established under Order No. 890 and that apply to local transmission planning processes, existing Order No. 1000 regional transmission planning processes, and Long-Term Regional Transmission Planning processes.²¹⁴⁶

862. In response to SERTP Sponsors' request that the Commission clarify that the stakeholder meetings of the different transmission providers do not need to be held collectively as a single meeting,²¹⁴⁷ we agree and clarify that, provided that the transmission provider meets the requirements of Order No. 1920 with respect to public notices and opportunities for stakeholders to submit comments before and after each meeting, transmission providers need not hold a single stakeholder meeting among all transmission providers in a transmission planning region. We recognize that transmission planning regions often cover significant geographic range and are comprised of many diffuse transmission providers, such that imposing a requirement that each stakeholder meeting includes all transmission providers and stakeholders may create undue burden and impede meaningful participation. Instead, transmission providers may hold separate Assumptions Meetings, Needs Meetings, and Solutions Meetings for individual transmission providers within a transmission planning region, provided that the process ensures that stakeholders have meaningful opportunities to participate in and provide feedback on local transmission planning information throughout the regional transmission planning process and otherwise meets all the Order No. 1920 requirements described above.

²¹⁴⁶ See Order No. 890, 118 FERC ¶ 61,119 at P 452 ("Transmission providers are, however, required to craft a process that allows for a reasonable and meaningful opportunity to meet or otherwise interact meaningfully."); *id.* P 454 ("This means that customers must be included at the early stages of the development of the transmission plan and not merely given an opportunity to comment on transmission plans that were developed in the first instance without their input."); *id.* P 488 ("The transmission planning required by this Final Rule is intended to provide transmission customers and other stakeholders a meaningful opportunity to engage in planning along with their transmission providers.").

²¹⁴⁷ SERTP Sponsors Rehearing Request at 25.

C. Identifying Potential Opportunities to Right-Size Replacement Transmission Facilities

1. Eligibility

a. Order No. 1920

863. In Order No. 1920, the Commission required transmission providers, as part of each Long-Term Regional Transmission Planning cycle, to evaluate whether transmission facilities (1) operating above a specified kV threshold and (2) that an individual transmission provider that owns the transmission facility anticipates replacing in-kind with a new transmission facility during the next 10 years, can be "right-sized" to more efficiently or cost-effectively address a Long-Term Transmission Need.²¹⁴⁸ The Commission also required that each transmission provider submit its in-kind replacement estimates (*i.e.*, estimates of the transmission facilities operating at and above the specified kV threshold that an individual transmission provider that owns the transmission facilities anticipates replacing in-kind with a new transmission facility during the next 10 years) for use in Long-Term Regional Transmission Planning sufficiently early in each Long-Term Regional Transmission Planning cycle.²¹⁴⁹

864. The Commission further adopted the NOPR proposal to define "right-sizing" as the process of modifying a transmission provider's in-kind replacement of an existing transmission facility to increase that facility's transfer capability.²¹⁵⁰ The Commission clarified that, for the purposes of the right-sizing reform, an "in-kind replacement transmission facility" is a new transmission facility that: (1) would replace an existing transmission facility that a transmission provider has identified in its in-kind replacement estimate as needing to be replaced; (2) would result in no more than an incidental increase in capacity over the existing transmission facility identified as needing to be replaced; and (3) is located in the same general route as, and/or uses the existing rights-of-way of, the existing transmission facility identified as needing to be replaced.²¹⁵¹

865. Similarly, the Commission also clarified that, for the purposes of the right-sizing reform, a "right-sized replacement transmission facility" is a new transmission facility that: (1) would meet the need to replace an existing transmission facility that a transmission provider has identified in its in-kind

replacement estimate as one that it plans to replace with an in-kind replacement transmission facility while also addressing a Long-Term Transmission Need; (2) results in more than an incidental increase in the capacity of an existing transmission facility that a transmission provider has identified for replacement in its in-kind replacement estimate; and (3) is located in the same general route as, and/or uses or expands the existing rights-of-way of, the existing transmission facility that a transmission provider has identified for replacement in its in-kind replacement estimate.²¹⁵²

866. In Order No. 1920, the Commission also required transmission providers to establish a multi-step process in their OATTs that provides for the implementation of the right-sizing reform. Specifically, the Commission required that transmission providers in each transmission planning region must propose a point sufficiently early in each Long-Term Regional Transmission Planning cycle at which each individual transmission provider in the transmission planning region will submit its in-kind replacement estimates for use in Long-Term Regional Transmission Planning.²¹⁵³ Next, the Commission required that, if transmission providers identify a right-sized replacement transmission facility as a potential solution to a Long-Term Transmission Need as part of Long-Term Regional Transmission Planning, that right-sized replacement transmission facility must be evaluated in the same manner as any other proposed Long-Term Regional Transmission Facility to determine whether it is the more efficient or cost-effective transmission facility to address the transmission need.²¹⁵⁴ The Commission clarified that it is at this stage that transmission providers must use the in-kind replacement estimates to determine if in-kind replacement transmission facilities could be right-sized to more efficiently or cost-effectively address a Long-Term Transmission Need(s).²¹⁵⁵ Finally, the Commission required that, if a right-sized replacement transmission facility addresses the transmission provider's need to replace an existing transmission facility, meets the applicable selection criteria included in Long-Term Regional Transmission Planning, and is found to be the more efficient or cost-effective solution, then the right-sized

²¹⁴⁸ Order No. 1920, 187 FERC ¶ 61,068 at P 1677.

²¹⁴⁹ *Id.*

²¹⁵⁰ *Id.* P 1678 & n.3580.

²¹⁵¹ *Id.* P 1678.

²¹⁵² *Id.* P 1679.

²¹⁵³ *Id.* P 1681.

²¹⁵⁴ *Id.*

²¹⁵⁵ *Id.*

replacement transmission facility must be considered for selection.²¹⁵⁶

867. The Commission further required that, for the purposes of implementing the right-sizing reform, transmission providers must propose on compliance a threshold that does not exceed 200 kV to be used in identifying transmission facilities that an individual transmission provider anticipates replacing in-kind with a new transmission facility during the next 10 years, which it must then include in its in-kind replacement estimates.²¹⁵⁷ The Commission clarified that the 10-year timeframe for in-kind replacement estimates should reflect a transmission provider's estimates of the transmission facilities operating at and above the specified kV threshold that an individual transmission provider that owns the transmission facility anticipates replacing in-kind with a new transmission facility during the next 10 years beginning at the start of each Long-Term Regional Transmission Planning cycle.²¹⁵⁸

b. Requests for Rehearing and Clarification

868. In its rehearing request, Advanced Energy argues that the term “right-sized replacement facility” is too vague.²¹⁵⁹ Competition Coalition argues that the definition of the term ignores Order No. 1000–A because the Commission has already determined in Order No. 1000–A that the replacement of an entire transmission facility is an entirely new transmission facility.²¹⁶⁰ Competition Coalition notes that, in Order No. 1000–A, the Commission addressed the issue of granting a preference for an incumbent transmission owner to build a transmission project for upgrades and not an entirely new transmission facility, determining that an upgrade involves the replacement of only part of an existing facility.²¹⁶¹ Competition Coalition argues that since Order No. 1920 fails to acknowledge the justification for the Commission's departure from existing Commission precedent that limits retention of a

preference only for a regional transmission project that represents a replacement of part of an existing transmission facility and not the replacement of an entire transmission facility, Order No. 1920 is arbitrary and capricious.²¹⁶²

869. Similarly, some petitioners argue that Order No. 1920's findings regarding rights-of-way are flawed or inconsistent with Commission precedent.²¹⁶³ For example, Advanced Energy highlights that language regarding the “same general route as, and/or use [] the existing rights-of-way of, the existing transmission facility identified as needing to be replaced” could require anything from zero land acquisition cost (if the facility is entirely within a wholly owned right-of-way) to millions of dollars (if the facility is entirely outside of an existing right-of-way but follows the same general route).²¹⁶⁴ Advanced Energy argues that, given such vagueness, to have the chance of passing muster under the APA, the Commission should remove this ambiguity by limiting any right of first refusal to a right-sized replacement facility that is entirely within existing, permanent rights-of-way.²¹⁶⁵ NESCOE similarly argues that the final rule's lack of a definition of “general route” or discussion of why it is appropriate to use a vague term in place of the well-established “rights-of-way” necessitates the Commission to act to fulfill its statutory duty under the FPA and that, as written, the right-sizing reform could be interpreted to the detriment of consumers.²¹⁶⁶

870. Competition Coalition argues that the Commission's right-sizing reform contravenes existing Commission precedent regarding the use of rights-of-way, noting that, under Order No. 1000–A, the Commission found that the use of an existing right-of-way is not determinative of whether the facility is a new transmission facility but rather the relevant issue was “whether the new transmission facility is an upgrade to an incumbent transmission provider's own facilities.”²¹⁶⁷ Competition Coalition

further points to Commission rejection of a proposal from MISO to give preference to transmission owners for facilities built on the existing rights-of-way since the Commission determined that issues surrounding rights-of-way is an issue for the authority granting the rights-of-way.²¹⁶⁸

871. Competition Coalition argues that the OATT language associated with the right-sizing reform is ambiguous, unworkable, and will cause confusion and litigation.²¹⁶⁹ Competition Coalition highlights the terms “anticipates,” “right-sizing,” “as discussed in Order No. 1920,” “not to exceed 200 kV,” “more efficiently,” and “cost-effectively” as being undefined in the final rule.²¹⁷⁰ Competition Coalition also contends that the absence of OATT language that gives an independent entity the responsibility to carry out and administer right-sizing opportunities or monitor against potential planning abuses confirms the need for an independent transmission system planner or monitor.²¹⁷¹

872. In its rehearing request, Dominion requests clarification of the proposed 200 kV threshold for determining whether a transmission facility is eligible for right-sizing.²¹⁷² Specifically, Dominion explains that while the Commission refers to a “maximum threshold,” Dominion seeks clarification that the use of the word “maximum” does not foreclose evaluation of projects above and below that threshold. Dominion explains that, in simpler terms, transmission providers must consider for right-sizing purposes all transmission facilities with projected in-kind replacements currently operating at or above 200 kV, but they may propose a lower threshold on compliance.²¹⁷³

c. Commission Determination

873. We sustain our findings in response to Advanced Energy's, Competition Coalition's, and NESCOE's rehearing requests pertaining to the term “right-sized replacement facility.” As the Commission explained in Order No. 1920, the right-sizing reform was adopted, as modified from the NOPR proposal, with additional requirements to ensure that the use of the right-sizing reform addresses *replacement* transmission facilities and not entirely new transmission facilities.²¹⁷⁴ As

²¹⁵⁶ *Id.* As explained in the Right of First Refusal section below, the Commission required the establishment of a federal right of first refusal for a right-sized replacement transmission facility that is selected to meet Long-Term Transmission Needs. *Id.* P 1702.

²¹⁵⁷ *Id.* PP 1677, 1683 & n.3584.

²¹⁵⁸ *Id.* at P 1685.

²¹⁵⁹ Advanced Energy Rehearing Request at 14–15 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1678).

²¹⁶⁰ Competition Coalition Rehearing Request at 51–57 (citing Order No. 1000–A, 139 FERC ¶ 61,132 at P 426; NYISO, 151 FERC ¶ 61,040 at P 96 (additional citation omitted)).

²¹⁶¹ Competition Coalition at 51–52 (citing Order No. 1000–A, 139 FERC ¶ 61,132 at P 426).

²¹⁶² *Id.* at 52.

²¹⁶³ Advanced Energy Rehearing Request at 14–15 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1678); Competition Coalition Rehearing Request at 57–59 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1678; MISO, 147 FERC ¶ 61,127 at P 244; NYISO, 151 FERC ¶ 61,040 at P 96).

²¹⁶⁴ Advanced Energy Rehearing Request at 14 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1678).

²¹⁶⁵ *Id.* at 14–15.

²¹⁶⁶ NESCOE Rehearing Request at 32–33.

²¹⁶⁷ Competition Coalition Rehearing Request at 57–58 (citing Order No. 1000–A, 139 FERC ¶ 61,132 at P 427).

²¹⁶⁸ *Id.* (citing MISO, 147 FERC ¶ 61,127 at P 244).

²¹⁶⁹ *Id.* at 72.

²¹⁷⁰ *Id.* at 73–74.

²¹⁷¹ *Id.* at 74.

²¹⁷² Dominion Rehearing Request at 35.

²¹⁷³ *Id.* at 35–36.

²¹⁷⁴ *Id.* P 1679.

highlighted in Order No. 1920, a right-sized replacement transmission facility would replace the existing transmission facility that the transmission provider included in its in-kind replacement estimate, and extends to any portion of the right-sized replacement facility located within a given transmission provider's retail distribution service territory or footprint.²¹⁷⁵ The Commission found that a right-sized replacement transmission facility has the potential to both meet an individual transmission provider's responsibility to maintain the reliability of its existing transmission system and address a Long-Term Transmission Need more efficiently or cost-effectively than an in-kind replacement transmission facility or another Long-Term Regional Transmission Facility.²¹⁷⁶

874. In response to Competition Coalition's argument that Order No. 1920 is inconsistent with Order No. 1000–A, which specified that upgrades do not include entirely new transmission facilities, we note that the Commission is entitled to change its approach and depart from prior precedent, provided that it acknowledges the change in policy and provides a reasoned explanation for the new approach.²¹⁷⁷ We acknowledge that in Order No. 1920, the Commission, with explanation, departed from its precedent in Order No. 1000–A, as well as in *MISO* and *NYISO*.²¹⁷⁸ In Order No. 1920, the Commission explicitly recognized that “the establishment of a federal right of first refusal for right-sized replacement transmission facilities is an exception to Order No. 1000's general requirement for transmission providers to eliminate any federal right of first refusal for regional transmission facilities selected in a regional transmission plan.”²¹⁷⁹ However, the Commission found that the Commission's reasons for removing

federal rights of first refusal in Order No. 1000 do not apply to right-sized replacement transmission facilities.²¹⁸⁰ The Commission then explained at length why this is the case, satisfying the Commission's obligation to provide a reasoned explanation for its new policy.

875. Specifically, the Commission found that requiring a federal right of first refusal for right-sized replacement transmission facilities does not undermine the consideration of more efficient or cost-effective potential transmission solutions at the regional level; instead, it will *promote* the consideration of potential regional transmission solutions to address Long-Term Transmission Needs.²¹⁸¹ When compared against the alternative of piecemeal development of in-kind replacement facilities, the right-sizing reform ensures that Long-Term Regional Transmission Planning considers a broader set of needs, including needs related to replacement of aging transmission infrastructure.²¹⁸² The Commission further stated that, absent a federal right of first refusal for right-sized replacement transmission facilities, the incumbent transmission provider whose in-kind replacement transmission facility is selected to be right-sized would likely proceed to develop the less efficient or cost-effective in-kind replacement transmission facility because it would prefer the assurance of a federal right of first refusal for the in-kind replacement transmission facility over the uncertainty of subjecting a right-sized replacement transmission facility to the Order No. 1000 competitive transmission development process.²¹⁸³ Thus, the federal right of first refusal for right-sized replacement transmission facilities will remove a barrier to development of more efficient or cost-effective regional solutions that could encompass both replacements of aging transmission infrastructure and regional transmission solutions to address Long-Term Transmission Needs. Similarly, the Commission found that requiring the establishment of a federal right of first refusal for a right-sized replacement transmission facility that is selected to

meet Long-Term Transmission Needs will encourage transmission providers to provide their best in-kind replacement estimates because they will have certainty that they will not lose the opportunity to invest in any in-kind replacement transmission facility that is then selected as a right-sized replacement transmission facility.²¹⁸⁴

876. The Commission found that, given this incentive structure and the fact that the transmission provider holds the leverage as to whether to build a right-sized replacement transmission facility or a less efficient in-kind replacement transmission facility, the establishment of a federal right of first refusal for right-sized replacement transmission facilities is necessary to effectuate the right-sizing reform and ensure that Commission jurisdictional rates are just and reasonable.²¹⁸⁵ We sustain this finding, and we continue to conclude that a federal right of first refusal for right-sized replacement transmission facilities will remove a disincentive for transmission providers to consider right-sizing in Long-Term Regional Transmission Planning, helping to ensure that the more efficient or cost-effective regional transmission solution to Long-Term Transmission Needs is selected and likely built, and therefore that the Commission-jurisdictional rates that customers pay are just and reasonable.²¹⁸⁶ As such, we find that the Commission has provided a reasoned explanation for its decision to depart from prior precedent and require a federal right of first refusal for right-sized replacement transmission facilities.

877. We are unpersuaded by Advanced Energy's, Competition Coalition's, and NESCOE's claims regarding the use of the term “rights-of-way” in defining a right-sized replacement transmission facility. As in Order No. 1000, we find that the retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way,²¹⁸⁷ and nothing in the definition of “in-kind replacement transmission facility” or “right-sized replacement transmission facility” would affect the retention, modification, or transfer of rights-of-way. While we recognize Advanced Energy's argument that a right-sized replacement transmission facility may require additional land for a right-of-way, we decline to speculate on land acquisition costs because land acquisition costs vary from transmission

²¹⁷⁵ *Id.* P 1702.

²¹⁷⁶ *Id.* P 1682.

²¹⁷⁷ *FCC v. Fox Television Stations, Inc.*, 556 U.S. at 515–516; *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968); *see also State Farm*, 463 U.S. at 42 (“[W]e fully recognize that regulatory agencies do not establish rules of conduct to last forever.”) (internal quotations omitted); *Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (an agency may change its course as long as it “suppl[ies] a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.”), *cert. denied*, 403 U.S. 923 (1971).

²¹⁷⁸ *See MISO*, 147 FERC ¶ 61,127 at P 238; *NYISO*, 151 FERC ¶ 61,040 at P 96. In Order No. 1000–A, the Commission clarified that “the term upgrade means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term upgrades does not refer to an entirely new transmission facility.” Order No. 1000–A, 139 FERC ¶ 61,132 at P 426.

²¹⁷⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1704.

²¹⁸⁰ *Id.* P 1706; *see also* Order No. 1920, 187 FERC ¶ 61,068 at P 1705 (explaining that Order No. 1000 required transmission providers to remove federal rights of first refusal from their OATTs because they undermined the consideration of more efficient or cost-effective potential transmission solutions proposed at the regional level and created a barrier to entry that discouraged nonincumbent transmission developers from proposing alternative solutions at the regional level) (citations omitted).

²¹⁸¹ *Id.* P 1706.

²¹⁸² *Id.*

²¹⁸³ *Id.*

²¹⁸⁴ *Id.* P 1703.

²¹⁸⁵ *Id.* P 1706.

²¹⁸⁶ *See id.* P 1703.

²¹⁸⁷ *Id.* P 319.

facility to transmission facility. In any case, the fact that there may be additional land acquisition costs does not, as Advanced Energy argues, render the definition of a right-sized replacement transmission facility vague. We note, however, that transmission providers could consider the potential for such costs when they are evaluating whether a particular right-sized replacement transmission facility is a more efficient or cost-effective regional transmission solution to address Long-Term Transmission Needs.

878. Moreover, we disagree that Order No. 1920's inclusion of the term "general route" in the definition of "in-kind replacement transmission facility" and "right-sized replacement transmission facility" renders those definitions vague. Rather, we find the term "general route," when read in the context of Order No. 1920's example detailing which transmission facilities would be eligible for right-sizing,²¹⁸⁸ makes clear that the right-sizing reform considers existing topology of the transmission system to ensure that the right-sizing reform applies to *replacement* transmission facilities only.²¹⁸⁹ We find that it is important to include this term to provide a reasonable bound of the definition of both in-kind replacement transmission facilities and right-sized replacement transmission facilities. Further, a right-sized replacement transmission facility may require changes to or expansions of rights-of-way to accommodate that right-sized replacement transmission facility, and it is not feasible to list every type or circumstance that may bear upon existing rights-of-way. Accordingly, we find that the requirement for a right-sized replacement transmission facility to also be located in the same general route as the existing transmission facility identified for replacement provides a reasonable limitation on the location of such a right-sized replacement transmission facility. For example, if a transmission provider anticipates replacing an existing transmission facility because it has reached the end of its useful life and the replacement transmission facility (either in-kind or right-sized) requires modifications to that facility's rights-of-way to accommodate other infrastructure projects or avoid environmentally sensitive areas, those modifications to existing rights-of-way are permitted under the term "same general route." We note that Order No. 1920's example relied on interconnection points to describe

which in-kind replacement transmission facilities would be eligible for right-sizing,²¹⁹⁰ specifically, that a right-sized replacement transmission facility that connects the same interconnection points to which an in-kind replacement transmission facility connects qualifies under the term "same general route." We reiterate that these limitations are appropriate to ensure that the right-sizing reform applies to *replacement* transmission facilities only. For example, a new transmission facility would not qualify as a right-sized replacement transmission facility if it has significantly different interconnection points than the in-kind replacement facility.

879. Furthermore, we find Competition Coalition's contention that the definition of "right-sized replacement transmission facility" is inconsistent with Order No. 1000 regarding the use of rights-of-way to be inapposite. In Order No. 1000, the Commission stated that the requirement to "eliminate a federal right of first refusal does not apply to any upgrade, even where the upgrade requires the expansion of an existing right-of-way."²¹⁹¹ The Commission stated that "[t]he issue is not whether the upgrade would be located in an existing right-of-way, but whether the new transmission facility is an upgrade to an incumbent transmission provider's own facilities."²¹⁹² In other words, the Commission found in Order No. 1000 that whether a regional transmission facility does or does not require the expansion of an existing right-of-way is not relevant to whether that facility is an upgrade. In contrast, for the reasons discussed directly above, in Order No. 1920 the Commission found it necessary that, to qualify as a right-sized replacement transmission facility, a transmission facility must be located in the same general route as, and/or use or expand the existing rights-of-way of, the existing transmission facility that a transmission provider has identified for replacement in its in-kind replacement estimate.

880. We are unpersuaded by Competition Coalition's arguments regarding specific terminology in the right-sizing reform. However, we provide additional context for certain terms and phrases included in the right-sizing reform. We sustain the definition of "right-sizing" to mean "the process of modifying a transmission provider's in-kind replacement of an existing transmission facility to increase that

facility's transfer capability."²¹⁹³ The Commission noted that right-sizing could include, for example, increasing the transmission facility's voltage level, adding circuits to the towers (*e.g.*, redesigning a single-circuit line as a double circuit line), or incorporating advanced technologies (such as advanced conductor technologies).²¹⁹⁴ Regarding the other terms highlighted by Competition Coalition, we find that, read in the context of the right-sizing reform, as well as Order No. 1920, these terms are clear, and we disagree with Competition Coalition that the absence of independent transmission monitor language confirms the need for such an entity in the context of right-sizing.²¹⁹⁵

881. We grant clarification to Dominion's requests regarding the 200 kV threshold for determining whether a transmission facility is eligible for right-sizing. We clarify that the Commission's finding in Order No. 1920 that the kV threshold must not exceed 200 kV means that transmission providers must include in their in-kind replacement estimates all transmission facilities operating at or above 200 kV that they anticipate replacing in-kind during the next 10 years. We also clarify that transmission providers may establish a threshold *lower* than 200 kV to ensure that a larger number of transmission facilities may be included. Put simply, transmission providers may propose a threshold for all transmission facilities that are eligible to be right-sized, so long as that threshold is under 200 kV.

2. Right of First Refusal for Right-Sized Replacement Transmission Facilities Selected To Meet Long-Term Transmission Needs

a. Order No. 1920

882. In Order No. 1920, the Commission required the establishment of a federal right of first refusal for a right-sized replacement transmission facility that is selected to meet Long-Term Transmission Needs.²¹⁹⁶ In adopting a federal right of first refusal requirement for a right-sized replacement transmission facility, the Commission noted that a federal right of first refusal is an exception to Order No. 1000's general requirement for transmission providers to eliminate any

²¹⁹³ Order No. 1920, 187 FERC ¶ 61,068 at P 1678.

²¹⁹⁴ *Id.* P 1678 n.3580.

²¹⁹⁵ The Commission will continue to consider potential additional local transmission planning reforms, such as independent transmission monitors, along with other transmission reforms in the future. See *supra* Enhanced Transparency of Local Transmission Planning Inputs in the Regional Transmission Planning Process section.

²¹⁹⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1702; see also *supra* Analysis under Section 206 section.

²¹⁸⁸ *Id.* P 1680.

²¹⁸⁹ *Id.* PP 1678, 1679.

²¹⁹⁰ *Id.* P 1680.

²¹⁹¹ Order 1000–A, 139 FERC ¶ 61,132 at P 427.

²¹⁹² *Id.*

federal right of first refusal for regional transmission facilities selected in a regional transmission plan.²¹⁹⁷ The Commission explained that requiring a federal right of first refusal for right-sized replacement transmission facilities does not undermine the consideration of more efficient or cost-effective potential transmission solutions proposed at the regional level; rather, the Commission found that it will *promote* the consideration of more efficient or cost-effective potential regional transmission solutions to address Long-Term Transmission Needs. Further, the Commission explained that, when compared against the alternative of piecemeal development of in-kind replacement transmission facilities, the right-sized replacement transmission facility represents the more efficient or cost-effective regional transmission solution to address Long-Term Transmission Needs (otherwise it would not be selected).²¹⁹⁸

883. Additionally, the Commission explained that, in requiring a federal right of first refusal for a right-sized replacement transmission facility, Order No. 1000 did not alter the rights of incumbent transmission providers to build, own, and recover costs for upgrades to their own transmission facilities, regardless of whether the upgrade is selected.²¹⁹⁹

b. Requests for Rehearing and Clarification

884. Certain parties request rehearing of Order No. 1920's establishment of a federal right of first refusal for a right-sized replacement transmission facility that is selected to meet Long-Term Transmission Needs, on the grounds that the Commission deviated from prior precedent without reasoned explanation and, therefore, such requirements are arbitrary and capricious.²²⁰⁰ For example, Advanced Energy states that the Commission failed to explain how providing for a right of first refusal for right-sized replacement transmission facilities in Order No. 1920 was consistent with prior Commission findings that granting an incumbent utility a federal right of first refusal can

lead to rates that are unjust and unreasonable.²²⁰¹

885. Advanced Energy further argues that the Commission's provision of a federal right of first refusal for right-sized replacement transmission facilities is inconsistent with the general federal policy against anticompetitive practices.²²⁰²

886. Relatedly, Advanced Energy, Competition Coalition, and PIOs argue that the inclusion of a federal right of first refusal as part of the right-sizing reform will create incentives for incumbent transmission owners to use the local transmission planning processes to undermine the regional transmission planning process, resulting in less efficient or cost-effective solutions and, therefore, unjust and unreasonable rates.²²⁰³ For instance, Competition Coalition argues that a profit-motivated incumbent transmission owner will have incentives to add even more in-kind replacements into its local transmission plan because of the possibility that the transmission planning region will then right-size those projects into an even larger facility in which the incumbent utility would be allowed to invest without any competition, thus preserving, reinforcing, and expanding its monopoly position.²²⁰⁴

c. Commission Determination

887. We are unpersuaded by rehearing requests arguing that Order No. 1920's establishment of a federal right of first refusal for right-sized replacement transmission facilities selected to meet Long-Term Transmission Needs is arbitrary and capricious. In Order No. 1000, the Commission required transmission providers to eliminate federal rights of first refusal because those federal rights of first refusal allowed transmission providers to undermine the consideration of more efficient or cost-effective potential transmission solutions proposed at the regional level, which could lead to unjust and unreasonable rates for Commission-jurisdictional services.²²⁰⁵ Moreover, in Order No. 1000 the Commission found that federal rights of first refusal created a barrier to entry

that discouraged nonincumbent transmission developers from proposing alternative solutions at the regional level.²²⁰⁶

888. In Order No. 1920, the Commission found that that a right-sized replacement transmission facility has the potential to both meet an individual transmission provider's responsibility to maintain the reliability of its existing transmission system and to address a Long-Term Transmission Need more efficiently or cost-effectively than an in-kind replacement transmission facility or another Long-Term Regional Transmission Facility.²²⁰⁷ The Commission further explained that, compared to the alternative of piecemeal development of in-kind replacement transmission facilities, a federal right of first refusal for right-sized transmission facilities is appropriate because right-sized replacement transmission facilities represent the more efficient or cost-effective regional transmission solution to address Long-Term Transmission Needs (otherwise, they would not be selected).²²⁰⁸

889. We recognize that requiring the federal right of first refusal for right-sized replacement transmission facilities is a departure from the Order No. 1000's requirement that transmission providers eliminate federal rights of first refusal for transmission facilities selected in a regional transmission plan for purposes of cost allocation. However, we find the departure, in this instance, to be necessary in order to shift the balance of transmission facility construction and remove a barrier to the selection of more efficient or cost-effective regional transmission facilities. As the Commission found, the existing piecemeal approach to upgrading the transmission system results in inefficiencies and increased rates for consumers.²²⁰⁹ The Commission is improving the efficiency of the transmission planning process and ensuring rates are just and reasonable by promoting the consideration of right-sized replacement transmission facilities, subject to evaluation and selection processes in Long-Term Regional Transmission Planning, and by establishing the availability of the federal right of first refusal for such right-sized replacement transmission facilities.²²¹⁰

²¹⁹⁷ *Id.* P 1704 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 313).

²¹⁹⁸ *Id.* P 1706.

²¹⁹⁹ *Id.* P 1705 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 319 (internal citation omitted)).

²²⁰⁰ Advanced Energy Rehearing Request at 15–16; Competition Coalition Rehearing Request at 40–43; Designated Retail Regulators Rehearing Request at 41–42; Industrial Customers Rehearing Request at 9.

²²⁰¹ Advanced Energy Rehearing Request at 16 (citing Order No. 1000–A, 139 FERC ¶ 61,132 at P 360; *FCC v. Fox Television Stations*, 556 U.S. at 515).

²²⁰² *Id.* at 10–11; *see also* Competition Coalition Rehearing Request at 67–68.

²²⁰³ Advanced Energy Rehearing Request at 13–14; Competition Coalition Rehearing Request at 69–71; PIOs Rehearing Request at 51–54.

²²⁰⁴ Competition Coalition Rehearing Request at 69–70.

²²⁰⁵ Order No. 1000, 136 FERC ¶ 61,051 at PP 253, 256, 313.

²²⁰⁶ *Id.* P 257.

²²⁰⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1682.

²²⁰⁸ *Id.* P 1706.

²²⁰⁹ *Id.* PP 1574, 1706.

²²¹⁰ Although we find that the Commission has supported the inclusion of the right-sizing reforms

890. We sustain Order No. 1920's finding that the right-sizing reform will promote the consideration of more efficient or cost-effective potential regional transmission solutions to address Long-Term Transmission Needs. Specifically, the federal right of first refusal will provide transmission providers with certainty that they will not lose the opportunity to invest in any in-kind replacement transmission facility that is then selected as a right-sized replacement transmission facility, and this, in turn, will encourage transmission providers to provide their best in-kind replacement estimates.²²¹¹ Accordingly, we continue to find that a federal right of first refusal will remove a disincentive for transmission providers to consider right-sizing in Long-Term Regional Transmission Planning, helping to ensure that the more efficient or cost-effective regional transmission solution to Long-Term Transmission Needs is identified and selected, and therefore that Commission-jurisdictional rates are just and reasonable.

891. In Order No. 1920, the Commission explained that, in the context of the right-sizing reform, a federal right of first refusal will *promote* the consideration of more efficient or cost-effective potential regional transmission solutions to address Long-Term Transmission Needs because, absent the right-sizing reform, those needs would be addressed in a piecemeal manner.²²¹² This will in turn benefit consumers by helping to ensure that the rates that they pay are just and reasonable. Furthermore, we believe that providing a federal right of first refusal for selected right-sized replacement transmission facilities is consistent with Order No. 1920's finding that the absence of sufficiently long-term, forward-looking, and comprehensive transmission planning requirements causes transmission providers to fail to appropriately evaluate the benefits of transmission infrastructure, and results in piecemeal transmission expansion to address relatively near-term transmission needs.²²¹³ As such, as discussed in the Eligibility section above, we find that it is appropriate to alter the Commission's

as a component of a just and reasonable replacement rate, we consider these reforms as an enhancement to, rather than essential to, the Long-Term Regional Transmission Planning process. Absent the right-sizing reforms, the Commission would have established the other Long-Term Regional Transmission Planning requirements as a sufficient just and reasonable replacement rate.

²²¹¹ Order No. 1920, 187 FERC ¶ 61,068 at P 1703.

²²¹² *Id.* P 1706.

²²¹³ *Id.* P 85.

policy regarding the removal of the federal right of first refusal by providing a federal right of first refusal for selected right-sized replacement transmission facilities. This is particularly true because the reforms that we require here serve a similar purpose as removing the federal right of first refusal for regional transmission facilities selected in the regional transmission plan for purposes of cost allocation in Order No. 1000. In each instance, the Commission's goal was to ensure that the more efficient or cost-effective regional transmission facilities are considered, thereby ensuring that Commission-jurisdictional rates are just and reasonable—in Order No. 1000, that was accomplished by removing the federal right of first refusal for selected regional transmission facilities in certain instances, while in Order No. 1920, it was by establishing a federal right of first refusal in the limited instances where it incentivizes transmission providers to consider right-sized replacement transmission facilities as more efficient or cost-effective regional transmission solutions to Long-Term Transmission Needs. The reforms related to the federal right of first refusal in Order Nos. 1000 and 1920 each seek to ensure that more efficient or cost-effective regional transmission facilities are considered thereby resulting in just and reasonable rates. Protecting consumers and ensuring Commission-jurisdictional rates are just and reasonable are fundamental requirements of the Federal Power Act and we believe that the reforms in Order No. 1920 accomplish these mandates.

892. We also note that this federal right of first refusal applies only to selected right-sized replacement transmission facilities, which, absent the right-sizing reform, would likely not otherwise be identified for potential selection in either the existing Order No. 1000 regional transmission planning process or the Long-Term Regional Transmission Planning process. That is because there is currently no requirement for transmission providers to submit their in-kind replacement transmission facilities to the regional transmission planning process for potential right-sizing. In addition, as the Commission explained in Order No. 1920, the right-sizing reform does not alter existing laws related to an individual transmission provider's ability to proceed with an in-kind replacement transmission facility, and we continue to find that, absent a federal right of first refusal, the incumbent transmission provider whose in-kind replacement transmission

facility is selected to be right-sized would likely proceed to develop the less efficient or cost-effective in-kind replacement transmission facility.²²¹⁴ This is because, absent the federal right of first refusal, the incumbent transmission provider would not be assured that it would have the opportunity to invest in the right-sized replacement transmission facility and therefore very likely would choose to build the less efficient or cost-effective in-kind replacement transmission facility. Therefore, the right-sizing reform's federal right of first refusal provides the needed incentives to ensure that in-kind replacement transmission facilities are considered in the Long-Term Regional Transmission Planning process and selected when they are more efficient or cost-effective transmission solutions while also not substantially reducing the number of transmission facilities that would otherwise be subject to a competitive transmission development process.

893. We are also unpersuaded by Advanced Energy's arguments that the federal right of first refusal associated with the right-sizing reform is inconsistent with federal policies against anticompetitive practices. As we note above, given the existing federal rights of first refusal that transmission owners have and that we are not altering here, it is unlikely that right-sized replacement transmission facilities would ever be considered in competitive transmission development processes. Therefore, we do not believe that the right-sizing reform will significantly decrease competition compared to the status quo.

894. We are unpersuaded by rehearing requests that argue that the federal right of first refusal associated with the right-sizing reform will create incentives for incumbent transmission providers to use local transmission planning processes to undermine regional transmission planning processes. Under Order No. 1920's right-sizing reforms, incumbent transmission owners will have an incentive to identify in-kind replacement transmission facilities that could be right-sized to retain a federal right of first refusal over regional transmission facilities, but that incentive does not undermine the regional transmission planning process. Instead, it will enhance regional transmission planning by expanding the range of potential regional transmission solutions to Long-Term Transmission Needs considered through Long-Term Regional Transmission Planning, facilitating the identification and

²²¹⁴ *Id.* P 1706.

selection of more efficient or cost-effective regional transmission facilities and helping to ensure just and reasonable Commission-jurisdictional rates. Moreover, because Order No. 1920 requires that a right-sized replacement transmission facility be evaluated in the same manner as any other proposed Long-Term Regional Transmission Facility to determine whether it is the more efficient or cost-effective transmission facility to address the transmission need,²²¹⁵ a right-sized replacement transmission facility will be selected only where it is the more efficient or cost-effective transmission solution. As such, there is no guarantee that an in-kind replacement transmission facility that a transmission provider identifies in its in-kind replacement estimates list will be right-sized and selected. To the extent that the evaluation of a transmission provider's in-kind replacement transmission facility determines that the in-kind replacement transmission facility cannot be right-sized to more efficiently or cost-effectively address Long-Term Transmission Needs, then it will not be selected as a right-sized replacement transmission facility.

3. Confidentiality of In-Kind Replacement Estimates

a. Order No. 1920

895. In Order No. 1920, the Commission explained that to the extent customers or stakeholders request access to a transmission provider's list of in-kind replacement estimates, that transmission provider may subject access to that list of in-kind replacement estimates to confidentiality provisions. However, the Commission added that, once transmission providers have determined, as part of Long-Term Regional Transmission Planning, that an in-kind replacement transmission facility can be right-sized to constitute a right-sized replacement transmission facility, the transmission providers must make public the underlying in-kind replacement transmission facility.²²¹⁶

b. Requests for Rehearing and Clarification

896. In their rehearing requests, Dominion and Indicated PJM TOs argue that the Commission's decision on confidentiality for in-kind replacement estimate lists fails to adequately address concerns regarding the possible harm caused by release of the in-kind replacement estimate lists.²²¹⁷ Both

Dominion and Indicated PJM TOs argue that considering the Commission's determination that once a replacement transmission facility can be right-sized, that information will be made publicly available to stakeholders, there is limited value in providing the in-kind replacement estimate list to others.²²¹⁸

897. Further, Indicated PJM TOs argue that confidentiality agreements or provisions do not provide adequate protection against the damage of disclosure of in-kind replacement estimate lists since non-disclosure agreements do not impose any specific safeguards on the information disclosed.²²¹⁹ Indicated PJM TOs note that the Commission's general Non-Disclosure Agreement for CEII provides that violations of that agreement "may result in criminal or civil sanctions" against the recipient, and the Commission's Model Protective Order provides that "[a]ny violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission."²²²⁰ Indicated PJM TOs argue that the requirement that a transmission owner make public 10-years' worth of replacement information before transmission plans are made public as part of the Long-Term Regional Transmission Planning process gives competing developers a competitive advantage that is inconsistent with the FPA's prohibition on undue discrimination and preferences.²²²¹

c. Commission Determination

898. In response to Dominion's and Indicated PJM TOs' arguments regarding the possible harm caused by release of the in-kind replacement estimate lists, we continue to find that existing rules governing confidential or commercially sensitive information provide for the safekeeping of that information. We note that Order No. 890 required transmission providers, in consultation with affected parties, to develop mechanisms like confidentiality agreements and password-protected access to information, in order to manage confidentiality and CEII concerns.²²²² To the extent that transmission providers believe that

existing provisions are inadequate, they may submit an FPA section 205 filing with additional protections, and the Commission will evaluate them to ensure they are just and reasonable and otherwise comply with the applicable requirements. Moreover, in determining that disclosure of in-kind replacement estimate lists may occur subject to confidentiality provisions, the Commission balanced concerns about disclosure against the importance of transparency and meaningful stakeholder participation in regional transmission planning and cost allocation processes, as required under Order Nos. 890 and 1000. We continue to find, consistent with prior precedent, that disclosure subject to appropriate mechanisms for confidentiality strikes an appropriate balance between these interests.²²²³

XII. Interregional Transmission Coordination

A. Order No. 1920

899. In Order No. 1920, the Commission required transmission providers in each transmission planning region to revise their existing interregional transmission coordination procedures to reflect the Long-Term Regional Transmission Planning reforms adopted in Order No. 1920. More specifically, the Commission required transmission providers in neighboring transmission planning regions to revise their existing interregional transmission coordination procedures (and regional transmission planning processes, as needed) to provide for: (1) the sharing of information regarding their respective Long-Term Transmission Needs, as well as Long-Term Regional Transmission Facilities to meet those needs; and (2) the identification and joint evaluation of interregional transmission facilities that may be more efficient or cost-effective transmission facilities to address Long-Term Transmission Needs.²²²⁴ Additionally, the Commission required transmission providers in neighboring transmission planning regions to revise their interregional transmission coordination procedures (and regional

²²¹⁸ Dominion Rehearing Request at 36–37; Indicated PJM TOs Rehearing Request at 7–8.

²²¹⁹ Indicated PJM TOs Rehearing Request at 8–9.

²²²⁰ *Id.* at 9 (citing FERC, CEII General Non-Disclosure Agreement (Apr. 19, 2020), <https://www.ferc.gov/media/1928>; FERC, Model Protective Order (May 11, 2020), available at <https://www.ferc.gov/administrative-litigation-0>).

²²²¹ *Id.* at 10.

²²²² Order No. 890, 118 FERC ¶ 61,119 at P 460.

²²¹⁵ *Id.* P 1681.

²²¹⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1736.

²²¹⁷ Dominion Rehearing Request at 36–37; Indicated PJM TOs Rehearing Request at 6–7.

²²²³ *Tri-State Generation & Transmission Ass'n*, 170 FERC ¶ 61,222, at P 27 (2020); see also *Astoria Generating Co. v. N.Y. Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,155, at PP 21–25 (2011) (adopting protective order and directing respondent to file confidential information and simultaneously release the information to parties who signed non-disclosure certificate); *Pac. Gas Transmission Co.*, 44 FERC ¶ 61,209, at 61,766–67 (1988) (remanding matter to administrative law judge with direction to balance potential harm of disclosing confidential business information sought during discovery against the requesting parties' need for the information).

²²²⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1751.

transmission planning processes, as needed) to allow an entity to propose an interregional transmission facility in the regional transmission planning process as a potential solution to Long-Term Transmission Needs.²²²⁵

900. The Commission also required transmission providers in each transmission planning region to provide certain additional information concerning Long-Term Regional Transmission Planning on their public websites or through the email list used for communication of information related to interregional transmission coordination procedures.²²²⁶

B. Comments

901. In its comments, Grid United argues that Order No. 1920 does not solve the challenges of developing transmission, including interregional transmission, and requests that the Commission open a new proceeding focused on interregional transmission and its challenges.²²²⁷

C. Commission Determination

902. Although we acknowledge Grid United's request that the Commission continue to build upon the progress in Order No. 1920 for regional transmission planning by addressing interregional transmission, we decline to open a new docket at this time, as requested by Grid United.²²²⁸ We find that Order No. 1920 adequately addressed the interregional transmission coordination reforms needed to account for the rule's Long-Term Regional Transmission Planning reforms.²²²⁹ In particular, we continue to find that the reforms in Order No. 1920, taken together, will ensure that Long-Term Transmission Needs identified through Long-Term Regional Transmission Planning can be considered in existing interregional transmission coordination and cost allocation processes, and that there is an opportunity for transmission providers in neighboring transmission planning regions to consider whether there are interregional transmission facilities that could more efficiently or cost-effectively address the identified Long-Term Transmission Needs, helping to ensure just and reasonable Commission-jurisdictional rates.²²³⁰

Furthermore, as the Commission found in Order No. 1920, and we reiterate here, the Commission currently has an open proceeding in Docket No. AD23–3–000 to consider whether and how to establish a minimum requirement for Interregional Transfer Capability including the transmission planning and cost allocation related to such a requirement.²²³¹ To the extent that the Commission determines that further investigation of this issue is warranted, it can open a new docket at an appropriate time or consider such issues in pending proceedings,²²³² as appropriate.

XIII. Compliance Procedures

A. Order No. 1920

903. In Order No. 1920, the Commission required each transmission provider to submit a compliance filing revising its OATT and other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets all of the requirements adopted in Order No. 1920, except those adopted in the Interregional Transmission Coordination section above, within 10 months of the effective date of Order No. 1920. The Commission explained that a 10-month compliance period allows transmission providers to fully develop proposals to comply with Order No. 1920 and allows stakeholders, including Relevant State Entities, to meaningfully engage in the process of developing such proposals. Additionally, the Commission required transmission providers in each transmission planning region to propose an effective date for the OATT revisions necessary to comply with Order No. 1920 that is no later than the date on which they will commence the first Long-Term Regional Transmission Planning cycle.²²³³ The Commission

noted, however, that transmission providers may propose an earlier effective date for some or all parts of their revised OATTs to allow them to begin implementing any aspects of the required reforms sooner than the one-year deadline to commence the first Long-Term Regional Transmission Planning cycle.²²³⁴

904. The Commission further required each transmission provider to submit a compliance filing revising its OATT and other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the interregional transmission coordination requirements within 12 months of the effective date of Order No. 1920. The Commission explained that a longer compliance timeframe will allow transmission providers to coordinate with the transmission providers in each of their neighboring transmission planning regions to develop interregional transmission coordination proposals.²²³⁵

905. Additionally, the Commission required transmission providers that are not public utilities to adopt the requirements of Order No. 1920 as a condition of maintaining the status of their safe harbor tariffs or otherwise satisfying the reciprocity requirement of Order No. 888.²²³⁶

906. Finally, in Order No. 1920, the Commission explained that it made no changes to the standards used to judge requested variations, as described in Order Nos. 888, 2000, 890, and 1000 and, accordingly, declined a request to apply the independent entity variation standard, rather than the "consistent with or superior to" standard, for proposed deviations from the requirements of Order No. 1920.²²³⁷ The Commission stated that, consistent with findings in Order No. 890, the Commission will continue to apply the "consistent with or superior to" standard in the context of transmission planning.²²³⁸ The Commission explained that, to the extent that a transmission provider believes that it already complies with any of the requirements in Order No. 1920, it should describe in its compliance filing how the relevant requirements are satisfied, including by referencing

²²³¹ See Supplemental Notice of Staff-Led Workshop, *Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirements*, Docket No. AD23–3–000 (Nov. 30, 2022).

²²³² See Order No. 1920, 187 FERC ¶ 61,068 at P 1758 ("[W]e note that the Commission currently has an open proceeding in Docket No. AD23–3–000 to consider whether and how to establish a minimum requirement for Interregional Transfer Capability, and may consider further reforms in other proceedings, as appropriate.").

²²³³ Order No. 1920, 187 FERC ¶ 61,068 at P 1768. The Commission noted that Order No. 1920 required transmission providers in each transmission planning region to propose on compliance a date, no later than one year from the date on which initial filings to comply with Order No. 1920 are due, on which they will commence the first Long-Term Regional Transmission Planning cycle (unless additional time is needed to align the first Long-Term Regional Transmission Planning cycle with existing transmission planning cycles). *Id.*

²²³⁴ *Id.* P 1768.

²²³⁵ *Id.* P 1770.

²²³⁶ *Id.* P 1771 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760–63).

²²³⁷ *Id.* P 1772 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,769–70; Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,164; Order No. 890, 118 FERC ¶ 61,119 at P 109; Order No. 1000, 136 FERC ¶ 61,051 at P 815).

²²³⁸ *Id.* P 1772 (citing Order No. 890, 118 FERC ¶ 61,119 at P 160).

²²²⁵ *Id.* P 1752.

²²²⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1753.

²²²⁷ Grid United June 12, 2024 Comments at 1–2.

²²²⁸ As noted above, the pleading filed by Grid United is deficient under 18 CFR 385.712(c)(2). Nevertheless, we address Grid United's arguments to provide clarity. See *infra* Introduction and Background section.

²²²⁹ Order No. 1920, 187 FERC ¶ 61,068 at PP 1740–1758.

²²³⁰ *Id.* P 1754.

specific tariff sheets already on file with the Commission.²²³⁹

B. Requests for Rehearing and Clarification

907. Dominion and NARUC request rehearing of Order No. 1920's compliance timeframes.²²⁴⁰ Dominion argues that the Commission failed to consider that many of the same personnel responsible for implementing Order No. 2023 are also responsible for managing the implementation of Order No. 1920's requirements.²²⁴¹ NARUC asserts that Order No. 1920's 10-month compliance deadline is insufficient to allow state entities to meaningfully engage on developing cost allocation proposals given existing state retail regulatory duties, the steep learning curve on issues related to Order No. 1920, and internal legal and procedural issues they will need to sort through. NARUC suggests that the record justifies a 14-month compliance period.²²⁴²

908. Dairyland and PJM request rehearing of Order No. 1920's requirement that transmission providers demonstrate proposed deviations from the requirements of Order No. 1920 are "consistent with or superior to" the requirements of Order No. 1920.²²⁴³ Both Dairyland and PJM request that the Commission adopt an independent entity variation standard for compliance with the final rule. Dairyland argues that the Commission failed to consider information and arguments submitted in support of the independent entity variation²²⁴⁴ and made no attempt to explain why the precedent of Order No. 2003, which identified bases for a different compliance standard for independent entities, is distinguishable or should not be used here.²²⁴⁵ Along similar lines, PJM argues that aspects of Order No. 1920 are arbitrary and capricious because: (1) the final rule is internally inconsistent given the Commission's recognition of the need for regional flexibility while also including "numerous prescriptive requirements" and rejecting requests to apply an "independent entity variation" standard of review and instead applying the "consistent with or superior to" standard for proposed deviations from

the final rule;²²⁴⁶ and (2) the Commission failed to consider the evidence offered by ISO/RTOs that they need flexibility to implement Long-Term Regional Transmission Planning.²²⁴⁷

909. APPA and TAPS request clarification of Order No. 1920's requirements for consultation with stakeholders.²²⁴⁸ APPA requests that the Commission clarify that transmission providers have an obligation to consult with stakeholders—including public power entities and load-serving entities—in developing compliance filings.²²⁴⁹ TAPS requests the Commission to clarify that Order No. 1000's general obligation to consult with stakeholders in developing the associated transmission provider's compliance filing applies to all aspects of Order No. 1920 compliance filings, including the evaluation process, selection criteria, and the calculation of benefits.²²⁵⁰

910. In its rehearing request, Large Public Power argues that the Commission should clarify that non-public utilities can satisfy the reciprocity requirement of Order No. 888 through one of three means: (1) providing service to a public utility transmission provider under a safe harbor tariff; (2) providing service under a bilateral agreement; or (3) seeking waiver.²²⁵¹

911. SPP requests clarification from the Commission that SPP can deviate from the specific requirements of Order No. 1920 and propose its own Consolidated Planning Process. SPP requests that the Commission clarify that a transmission provider may propose on compliance a new transmission planning process and cost allocation method that deviates from the requirements of Order No. 1920, and that the Commission could issue an order approving such a cost allocation process as consistent with or superior to the requirements of Order No. 1920.²²⁵²

912. WIRES states that the Commission should grant clarification or, in the alternative, rehearing, that transmission providers are not required to implement the proposed tariff revisions submitted in compliance with Order No. 1920 until the Commission issues "a final order on

compliance."²²⁵³ WIRES states that Order No. 1920 could be read to create a scenario where transmission providers would be required to begin implementing their OATT provisions submitted in compliance with the requirements of Order No. 1920 *before* receiving a Commission order on compliance accepting such revised Tariff provisions. WIRES argues that this would put transmission providers in the untenable position of expending a significant amount of time and resources in implementing Long-Term Regional Transmission Planning cycles that the Commission could find in a later order are not compliant with Order No. 1920.²²⁵⁴

913. Versant Power requests that the Commission clarify, or in the alternative grant rehearing, regarding: (1) what is generally required for a transmission provider to receive a waiver of Order No. 1920's requirements; and (2) whether and how waivers of previous, relevant orders affect Order No. 1920's requirements for transmission providers with those waivers.²²⁵⁵

C. Commission Determination

914. We sustain Order No. 1920's requirement that each transmission provider submit a compliance filing within 10 months of the effective date of Order No. 1920 revising its OATT and other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the requirements adopted in Order No. 1920, except those requirements adopted in the Interregional Transmission Coordination section above. As we noted in Order No. 1920, we continue to find that a 10-month compliance period will allow transmission providers adequate time to fully develop proposals to comply with Order No. 1920.²²⁵⁶ We also sustain Order No. 1920's requirement that each transmission provider submit a separate compliance filing within 12 months of the effective date of Order No. 1920 revising its OATT and other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the interregional transmission coordination requirements adopted in Order No. 1920.²²⁵⁷ Nevertheless, as noted above

²²³⁹ *Id.* P 1773.

²²⁴⁰ Dominion Rehearing Request at 37–39; NARUC Rehearing Request at 18–21.

²²⁴¹ Dominion Rehearing Request at 38 (citing *State Farm*, 463 U.S. at 43).

²²⁴² NARUC Rehearing Request at 20–21.

²²⁴³ Dairyland Rehearing Request at 3–7; PJM Rehearing Request at 10–14.

²²⁴⁴ Dairyland Rehearing Request at 4.

²²⁴⁵ *Id.* at 3–4, 6–7; *see also* PJM Rehearing Request at 13 n.60.

²²⁴⁶ PJM Rehearing Request at 10–11, 41; *see also* Dairyland Rehearing Request at 7.

²²⁴⁷ PJM Rehearing Request at 11–14, 42.

²²⁴⁸ APPA Rehearing Request at 6–7; TAPS Rehearing Request at 14–19.

²²⁴⁹ APPA Rehearing Request at 7.

²²⁵⁰ TAPS Rehearing Request at 18–19.

²²⁵¹ Large Public Power Rehearing Request at 23–24.

²²⁵² SPP Rehearing Request at 2–4.

²²⁵³ WIRES Rehearing Request at 5–6, 16–18.

²²⁵⁴ WIRES Rehearing Request at 16–18.

²²⁵⁵ Versant Power Rehearing Request at 9–16. Versant Power notes that its request for clarification may be withdrawn because of a separate waiver filing. *Id.* at 1 n.4. Versant Power withdrew its rehearing request on September 10, 2024.

²²⁵⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 1768.

²²⁵⁷ *Id.* P 1770.

in the Duration of the Engagement Period section above, if we grant an extension of the required Engagement Period when Relevant State Entities make a showing that they require additional time to finalize cost allocation discussions, we will also, as appropriate, extend, *sua sponte*, the relevant Order No. 1920 compliance deadlines to ensure that any extension of the Engagement Period would not conflict with the required compliance deadlines.

915. We clarify that the effective date associated with this order on rehearing and clarification does not extend the relevant compliance deadlines associated with Order No. 1920. In calculating the required dates for compliance filings (*e.g.*, 10 months for revisions to a transmission provider's OATT and other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the requirements adopted in Order No. 1920, and 12 months for revisions to a transmission provider's OATT and other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the interregional transmission coordination requirements adopted in Order No. 1920), transmission providers should use the effective date of Order No. 1920 (*i.e.*, August 12, 2024) and not the effective date for the changes to Order No. 1920 made in this order on rehearing and clarification.

916. We are unpersuaded by Dominion's and NARUC's arguments that the Commission should require a longer compliance period. We note that in Order No. 1920 the Commission modified the NOPR proposal for an eight-month compliance period to allow an additional two months.²²⁵⁸ While we appreciate Dominion's concerns regarding personnel responsible for implementing both Order Nos. 1920 and 2023, we believe that we have provided sufficient time for transmission providers to develop compliance filings.

917. We also sustain Order No. 1920's requirement that, consistent with the Commission's findings in Order No. 890, transmission providers must demonstrate that proposed deviations from the requirements of Order No. 1920 are "consistent with or superior to" the requirements in Order No. 1920.²²⁵⁹

918. We disagree with Dairyland's assertion that the Commission's use of the "consistent with or superior to" standard in Order No. 1920 is an

unexplained departure from Commission precedent.²²⁶⁰ To the contrary, in Order No. 1920, the Commission made no changes to the standard used to judge requested variations in the context of transmission planning, including in Order Nos. 888, 2000, 890, and 1000,²²⁶¹ and instead followed precedent in applying the "consistent with or superior to" standard of review to proposed new and existing variations from its transmission planning and cost allocation requirements.²²⁶² Rather, allowing for the use of the independent entity variation standard of review in this proceeding, as Dairyland and PJM request, would be a departure from this line of precedent and an importation of the independent entity variation standard from the interconnection context into the transmission planning context that would require further explanation.²²⁶³ As discussed below, neither Dairyland nor PJM justify such a departure.

919. Further, we disagree with PJM's and Dairyland's claims that Order No. 1920 is internally inconsistent because it recognizes the need for regional flexibility while also including prescriptive requirements without allowing for independent entity variations.²²⁶⁴ In a number of areas, Order No. 1920 provides transmission providers with the flexibility to accommodate regional differences, and this flexibility can be incorporated into the regional transmission planning requirements.²²⁶⁵ Although in other areas the Commission provided less flexibility, we believe that the Commission struck a reasonable overall balance in Order No. 1920 between, on the one hand, transmission providers' need for flexibility in implementing

Long-Term Regional Transmission Planning in their transmission planning regions and, on the other hand, ensuring that transmission providers adopt reforms that will result in transmission providers identifying, evaluating, and selecting more efficient or cost-effective regional transmission facilities to address Long-Term Transmission Needs and thus Commission-jurisdictional rates that are just and reasonable and not unduly discriminatory or preferential.²²⁶⁶

920. We are unpersuaded by PJM's and Dairyland's arguments that the rationale for application of the independent entity variation standard to RTOs/ISOs in the interconnection context in Order No. 2003 applies equally to the circumstances of Order No. 1920.²²⁶⁷ The requirements of Order No. 2003 were established to achieve greater standardization of interconnection terms and conditions and to address evidence of undue discrimination in interconnection processes.²²⁶⁸ The Commission granted independent entities greater flexibility to deviate from the provisions of the *pro forma* OATT on the basis that these entities do not own generation and therefore face fewer incentives to act in an unduly discriminatory or preferential manner toward certain generators.²²⁶⁹ That rationale does not apply to the requirements in Order No. 1920, which were adopted to address deficiencies in regional transmission planning processes, as those processes fail to identify, evaluate, and select regional transmission facilities that can more efficiently or cost-effectively meet Long-Term Transmission Needs and therefore to ensure just and reasonable rates.²²⁷⁰ The need for regional transmission planning processes that meet the

²²⁶⁰ Dairyland Rehearing Request at 3, 6.

²²⁶¹ Order No. 1000, 136 FERC ¶ 61,051 at P 815; Order No. 890, 118 FERC ¶ 61,119 at P 109; Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,164; Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,769–70.

²²⁶² Order No. 1920, 187 FERC ¶ 61,068 at P 1772.

²²⁶³ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. at 515.

²²⁶⁴ PJM Rehearing Request at 11–12; Dairyland Rehearing Request at 7.

²²⁶⁵ For example, Order No. 1920 provides for flexibility such as: (1) allowing transmission providers to measure and use additional benefits in Long-Term Regional Transmission Planning; (2) allowing transmission providers to develop evaluation processes and selection criteria that can accommodate regional differences; and (3) declining to impose a selection requirement as transmission providers require the flexibility to balance competing interests in the transmission planning region and to exercise engineering judgment to ensure the reliable operation of the transmission system and compliance with a variety of regulatory requirements. See Order No. 1920, 187 FERC ¶ 61,068 at PP 729, 924, 1027.

²²⁶⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 237.

²²⁶⁷ PJM Rehearing Request at 13 n.60 (citing *Standardization of Generator Interconnection Agreements & Procs.*, Order No. 2003, 68 FR 49846 (Aug. 19, 2003), 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003–A, 69 FR 15932 (Mar. 26, 2004), 106 FERC ¶ 61,220, at PP 756, 759, *order on reh'g*, Order No. 2003–B, 70 FR 265 (Jan. 4, 2005), 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003–C, 70 FR 37661 (June 30, 2005), 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 475 F.3d 1277; *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 88 FR 61014 (Sept. 6, 2023), 184 FERC ¶ 61,054, at P 1764, *order on reh'g*, 185 FERC ¶ 61,063 (2023), *order on reh'g*, Order No. 2023–A, 89 FR 27006 (Apr. 16, 2024), 186 FERC ¶ 61,199, *errata notice*, 188 FERC ¶ 61,134 (2024)); Dairyland Rehearing Request at 5, 6 (citing MISO NOPR Reply Comments at 5–8).

²²⁶⁸ Order No. 2003, 104 FERC ¶ 61,103 at PP 11–12.

²²⁶⁹ *Id.* PP 822, 827; Order No. 2003–A, 106 FERC ¶ 61,220 at P 759.

²²⁷⁰ See Order No. 1920, 187 FERC ¶ 61,068 at PP 87, 89.

²²⁵⁸ *Id.* P 1768.

²²⁵⁹ *Id.* P 1772 (citing Order No. 890, 118 FERC ¶ 61,119 at P 160).

Commission's requirements in Order No. 1920 applies to all transmission providers to the same extent regardless of their independence or complexity. Beyond noting the independence and complexity of RTOs/ISOs, neither PJM nor Dairyland have justified or offered evidence of why RTOs/ISOs should be treated differently than other transmission providers for purposes of compliance with Order No. 1920's requirements.

921. However, in light of PJM's and Dairyland's arguments, we clarify that, in analyzing Order No. 1920 compliance filings, we will apply the "consistent with or superior to" standard to proposed variations from *all* requirements of Order No. 1920 and not limit the standard to proposed variations from *pro forma* OATT provisions developed in Order No. 1920. Consistent with Commission practice,²²⁷¹ it is appropriate to apply the "consistent with or superior to" standard both to variations from *pro forma* OATT provisions and to variations from requirements not accompanied by *pro forma* OATT provisions (*i.e.*, those requirements that transmission providers must satisfy by developing or revising their own OATT provisions). The "consistent with or superior to" standard "is a tool for ensuring that a proposed tariff revision will still meet the standards of the FPA" despite varying from the "minimum provisions necessary" to ensure just, reasonable, and not unduly discriminatory or preferential Commission-jurisdictional rates.²²⁷²

Both *pro forma* OATT provisions and requirements not accompanied by *pro forma* OATT provisions set "common starting point[s]"²²⁷³ to ensure that Commission-jurisdictional rates satisfy the requirements of the FPA. The Commission will review proposed variations from requirements established in Order No. 1920 to ensure that they continue to meet the requirements of FPA sections 205 and 206.

922. In response to SPP's clarification request regarding its own Consolidated Planning Process, we reiterate that Order No. 1920 requires transmission providers to demonstrate that proposed deviations from Order No. 1920 are "consistent with or superior to" the requirements in Order No. 1920.²²⁷⁴ To the extent that a transmission provider, like SPP, believes that its existing practices or potential provisions submitted as part of its compliance filing deviate from Order No. 1920's requirements, it must demonstrate that any such deviations, including any existing processes or OATT provisions, are consistent with or superior to the requirements of Order No. 1920.

923. We grant APPA's and TAPS' requests for clarification on the role of stakeholders in developing transmission providers' compliance filings. Specifically, we clarify that transmission providers must consult with their stakeholders to develop the processes, procedures, and OATT revisions necessary to comply with Order No. 1920.²²⁷⁵ We note that this requirement is consistent with the approach that the Commission took in Order Nos. 890 and 1000.²²⁷⁶

at 61,822 n.4 (1998) (rejecting proposed deviations from the *pro forma* OATT and explaining that the "consistent with or superior to" inquiry does not impermissibly supplant or narrow the "just and reasonable" standard; rather, it evaluates whether a proposed deviation from the "common starting point" set out in a rule is consistent with or superior to that "common starting point" and therefore remains just and reasonable); *Commonwealth Edison Co.*, 83 FERC ¶ 61,274, at 62,143 (1998) (citing *N.Y. State Elec. & Gas Corp.*, 82 FERC at 61,822 & n.4). See also *Xcel Energy Servs. Inc. v. FERC*, 41 F.4th 548, 557–58 (D.C. Cir. 2022) (explaining that the Commission has used its "broad discretion" to craft the "consistent with or superior to" standard to assess whether proposed deviations are just, reasonable, and not unduly discriminatory).

²²⁷³ *N.Y. State Elec. & Gas Corp.*, 82 FERC at 61,822 n.4.

²²⁷⁴ Order No. 1920, 187 FERC ¶ 61,068 at P 1772.

²²⁷⁵ We note that the requirement for transmission providers to consult with stakeholders to develop their compliance filings is separate from and in addition to Order No. 1920's requirement for transmission providers to conduct an Engagement Period for Relevant State Entities, as discussed in the Cost Allocation section above.

²²⁷⁶ See, e.g., Order No. 890, 118 FERC ¶ 61,119 at P 582; Order No. 1000, 136 FERC ¶ 61,051 at PP 151, 206, 227, 336, 588, 793.

924. We grant Large Public Power's clarification request regarding reciprocity. Order No. 1920 required that transmission providers that are not public utilities must adopt the requirements of Order No. 1920 as a condition of maintaining the status of their safe harbor tariffs or otherwise satisfy the reciprocity requirement of Order No. 888.²²⁷⁷ As relevant to Large Public Power's clarification request, Order No. 888 provides that a non-public transmission provider may satisfy the reciprocity condition in one of three ways: (1) it may provide service under a tariff that has been approved by the Commission under the voluntary "safe harbor" provision of the *pro forma* OATT; (2) it may provide service to a public utility transmission provider under a bilateral agreement; or (3) it may seek a waiver of the reciprocity condition from the transmission provider.²²⁷⁸

925. Issues concerning effective dates are most appropriately addressed in specific compliance proceedings and, therefore, we decline to grant WIRES' clarification request. However, as explained in the Implementation of Long-Term Regional Transmission Planning section above, we set aside, in part, Order No. 1920's requirement that transmission providers in each transmission planning region must propose on compliance a date, no later than one year from the date on which initial filings to comply with the final rule are due, on which they will commence the first Long-Term Regional Transmission Planning cycle.²²⁷⁹ and instead require transmission providers to propose on compliance a date, no later than *two* years from the date on which initial filings to comply with Order No. 1920 are due, on which they will commence the first Long-Term Regional Transmission Planning cycle. Because we sustain Order No. 1920's requirement that transmission providers must propose an effective date for the OATT revisions necessary to comply with Order No. 1920 that is no later than the date on which they will commence the first Long-Term Regional Transmission Planning cycle,²²⁸⁰ we note that this modification should help to address WIRES' concern.

926. We note that Versant Power's rehearing request has been

²²⁷⁷ Order No. 1920, 187 FERC ¶ 61,068 at P 1771 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760–63).

²²⁷⁸ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760–63.

²²⁷⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1072.

²²⁸⁰ Order No. 1920, 187 FERC ¶ 61,068 at P 1768.

²²⁷¹ See, e.g., *Pub. Util. Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 84 FR 65281 (Nov. 27, 2019), 169 FERC ¶ 61,139, at P 66 n.101 (2019), *order on reh'g*, Order No. 864–A, 85 FR 27681 (May 11, 2020), 171 FERC ¶ 61,033 (2020); *Uplift Cost Allocation & Transparency in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 844, 83 FR 18134 (Apr. 25, 2018), 163 FERC ¶ 61,041, at P 103 (2018); *Settlement Intervals & Shortage Pricing in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 825, 81 FR 42882 (June 30, 2016), 155 FERC ¶ 61,276, at PP 88, 90 (2016); Order No. 1000, 136 FERC ¶ 61,051 at P 583 n.452; *Demand Response Comp. in Organized Wholesale Energy Mkts.*, 76 FR 16658 (Mar. 24, 2011), Order No. 745, 134 FERC ¶ 61,187, at P 4 n.7; *order on reh'g & clarification*, Order No. 745–A, 137 FERC ¶ 61,215 (2011), *reh'g denied*, Order No. 745–B, 138 FERC ¶ 61,148 (2012), *vacated sub nom. Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *rev'd & remanded sub nom. EPSA*, 577 U.S. 260; *Regional Transmission Orgs.*, Order No. 2000, 65 FR 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089, at 31,164 (1999) (amending 18 CFR 35.34(k)(1)–(2), (k)(4), (k)(6)–(7)), *order on reh'g*, Order No. 2000–A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

²²⁷² *N.Y. State Elec. & Gas Corp.*, 78 FERC ¶ 61,114 (1997), *order on reh'g*, 82 FERC ¶ 61,209,

withdrawn.²²⁸¹ Nevertheless, we clarify that, consistent with Order No. 890 and Order No. 1000, entities that have existing waivers of the obligation to file an OATT or otherwise offer open access transmission service in accordance with Order No. 888, as well as entities that have been granted waiver of the regional transmission planning requirements of Order No. 1000, do not also have to seek waiver of Order No. 1920.²²⁸² This clarification, however, is not meant to affect the ability of an entity that does not have an existing waiver to seek one. The Commission will consider requests for waiver of Order No. 1920 on a case-by-case basis from any entity that believes it meets the criteria for such waiver.

XIV. Overarching Logical Outgrowth Challenges

A. Requests for Rehearing

927. Several rehearing parties argue broadly that Order No. 1920 is not a logical outgrowth of the NOPR and therefore violates the notice-and-comment requirements of the APA.²²⁸³ Arizona Commission asserts that the Commission failed to provide notice of and opportunity to comment on six “fundamental” changes between the NOPR and Order No. 1920 and that, because such changes are not logical outgrowths of the NOPR, the Commission violated the APA’s notice-and-comment requirements, rendering Order No. 1920 unlawful.²²⁸⁴ Specifically, Arizona Commission

alleges that Order No. 1920, unlike the NOPR: (1) imposed preferential and corporate-driven costs on consumers in non-consenting states by requiring the filing of one or more *ex ante* cost allocation methods to apply to selected Long-Term Transmission Facilities; (2) mandated a specific set of “planning criteria” and purported benefits, which is “simply a way of ‘pre-cooking’ outcomes”; (3) abandoned regional cost allocation principle (6); (4) effectively eliminated the use of a voluntary State Agreement Process; (5) left the CWIP incentive intact; and (6) made local transmission planning less transparent.²²⁸⁵

928. NRECA alleges that Order No. 1920 violated the APA’s notice-and-comment requirements by: (1) mandating that transmission providers use a set of seven required benefits for evaluating and selecting Long-Term Regional Transmission Facilities; (2) imposing specific requirements for limited reevaluation of previously selected Long-Term Regional Transmission Facilities; (3) requiring that certain interconnection-related transmission needs must be evaluated for selection in existing Order No. 1000 regional transmission planning and cost allocation processes; (4) not requiring Long-Term Regional Transmission Planning cost allocation methods to comply with all of the Commission’s six regional cost allocation principles; and (5) substantially diminishing the proposed role of state regulators in Long-Term Regional Transmission Planning and cost allocation.²²⁸⁶ NRECA requests that the Commission withdraw Order No. 1920 and issue a supplemental NOPR because “so many of [Order No. 1920’s] key provisions” are “brand new” and were not subjected to public comment.²²⁸⁷

929. Designated Retail Regulators contend that Order No. 1920 contains a number of significant changes that drastically depart from the NOPR, rendering the final rule “surprisingly distant” from and not a logical outgrowth of the NOPR, in violation of the APA’s notice-and-comment requirements.²²⁸⁸ Designated Retail Regulators add that Order No. 1920 “is in essence a new rule that requires new opportunities for comment and input.”²²⁸⁹ Designated Retail Regulators

claim that Order No. 1920 differs from the NOPR because Order No. 1920: (1) declined to adopt the NOPR proposal requiring transmission providers to seek the agreement of Relevant State Entities and substantially diminished Relevant State Entity involvement in cost allocation; (2) provided transmission providers complete discretion to decide whether to file a State Agreement Process or Long-Term Regional Transmission Cost Allocation Method in its tariff, even if agreed to by Relevant State Entities; and (3) did not require transmission providers to obtain the support of Relevant State Entities prior to proposing an evaluation process and selection criteria on compliance.²²⁹⁰

B. Commission Determination

930. We disagree with Arizona Commission’s, Designated Retail Regulators’, and NRECA’s arguments that Order No. 1920 violates the APA’s notice-and-comment requirements and is not a logical outgrowth of the NOPR. Relatedly, we decline to adopt NRECA’s suggestion that the Commission withdraw Order No. 1920 in its entirety and issue a supplemental NOPR. As an initial matter, rehearing parties’ conclusory arguments lack the specificity required to satisfy FPA section 313(a), which states that an “application for rehearing shall set forth *specifically* the ground or grounds upon which such application is based.”²²⁹¹ In claiming that Order No. 1920 violated the APA’s notice-and-comment requirements, rehearing parties merely point to sections or provisions of Order No. 1920 that allegedly run afoul of those requirements and then assert, without support or further explanation, that Order No. 1920, as a whole, violates the APA’s notice-and-comment provision. Arizona Commission, Designated Retail Regulators, and NRECA do not cite, and we are unaware of, any precedent supporting what appears to be their claim that cumulative logical outgrowth challenges to individual provisions would compel a finding that Order No. 1920, as a whole, is not a logical outgrowth of the NOPR. Accordingly, we reject this sweeping argument as lacking the specificity required on rehearing.²²⁹²

931. In any event, these arguments also lack merit. As discussed throughout this order, the individual provisions of

²²⁸¹ See Versant Power September 10, 2024 Notice of Withdrawal. Pursuant to Rule 216 of the Commission’s Rules of Practice and Procedure, the withdrawal of any pleading is effective at the end of 15 days from the date of the filing if no motion in opposition to the notice of withdrawal is filed within that period and if the Commission takes no action disallowing withdrawal. 18 CFR 385.216. No motion in opposition to Versant Power’s Notice of Withdrawal has been filed, and its request for rehearing accordingly is withdrawn.

²²⁸² Order No. 1000–A, 139 FERC ¶ 61,132 at P 753 & n.880 (2012); see also Order No. 890, 118 FERC ¶ 61,119 at P 135 n.105 (“The Commission clarifies that existing waivers of the obligation to file an OATT or otherwise offer open access transmission service in accordance with Order No. 888 shall remain in place. The reforms to the pro forma OATT adopted in this Final Rule therefore do not apply to transmission providers with such waivers, although we expect those transmission providers to participate in the regional planning processes in place in their regions, as discussed in more detail in section V.B. Whether an existing waiver of OATT requirements should be revoked will be considered on a case-by-case basis in light of the circumstances surrounding the particular transmission provider.”).

²²⁸³ Arizona Commission Rehearing Request at 18–19 (citing 5 U.S.C. 706(2)(A), (C), (D)); Designated Retail Regulators Rehearing Request at 44, 49 (citing 5 U.S.C. 553); NRECA Rehearing Request at 6, 19 (citing 5 U.S.C. 553).

²²⁸⁴ Arizona Commission Rehearing Request at 18–19.

²²⁸⁵ Arizona Commission Rehearing Request at 18–19. *Id.*

²²⁸⁶ NRECA Rehearing Request at 6.

²²⁸⁷ *Id.* at 19.

²²⁸⁸ Designated Retail Regulators Rehearing Request at 46–50 (quoting *Int’l Union, United Mine Workers of Am. v. Mine Safety and Health Admin.*, 407 F.3d 1250, 1260 (D.C. Cir. 2005)).

²²⁸⁹ *Id.* at 10.

²²⁹⁰ *Id.* at 46–50.

²²⁹¹ 16 U.S.C. 825/(a) (emphasis added).

²²⁹² A rehearing request must set forth with specificity the grounds on which the request is based. 16 U.S.C. 825/(a); 18 CFR 385.713(c)(2) (2024); see *ZEP Grand Prairie Wind, LLC*, 183 FERC ¶ 61,150, at P 10; *Ind. Util. Regul. Comm’n v. FERC*, 668 F.3d at 738–40.

Order No. 1920, which certain rehearing parties claim the Commission adopted without adequate notice and opportunity to comment, are, in fact, logical outgrowths of the NOPR and otherwise satisfy the APA's notice-and-comment requirements.²²⁹³ Thus, given that the constituent components of Order No. 1920 satisfy the APA's notice-and-comment requirements, the sum of those components—*i.e.*, Order No. 1920 as a whole—necessarily also satisfies these requirements, and rehearing parties have not shown otherwise.

XV. Information Collection Statement

932. The Paperwork Reduction Act²²⁹⁴ requires each Federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information directed to 10 or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in final rules published in the **Federal Register**.²²⁹⁵ Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this order on rehearing will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

933. *Summary*: On rehearing of Order No. 1920, the Commission is further revising the *pro forma* OATT to remedy deficiencies in the Commission's existing regional transmission planning and cost allocation and local transmission planning requirements. This order on rehearing addresses arguments raised on rehearing, sets aside, in part, and clarifies Order No. 1920. The information collection requirements included in Order No. 1920 were previously approved by OMB under the FERC information collection number FERC-917: *Electric Transmission Facilities* (OMB Control No. 1902-0233). Order No. 1920 required transmission providers to

conduct Long-Term Regional Transmission Planning to ensure the identification, evaluation, and selection, as well as the allocation of the costs, of more efficient or cost-effective regional transmission solutions to address Long-Term Transmission Needs.

934. Previously, the Commission submitted to OMB the information collection requirements arising from Order No. 1920, and OMB approved those requirements. In this order on rehearing, the Commission makes five substantive changes to those requirements. In Order No. 1920, the Commission required transmission providers in each transmission planning region to incorporate seven specific categories of factors in the development of Long-Term Scenarios.²²⁹⁶ Here, we set aside, in part, the requirement for transmission providers to incorporate seven specific categories of factors in the development of Long-Term Scenarios by excluding corporate commitments from Factor Category Seven. We no longer require transmission providers to separately identify corporate commitments as a factor in their development of Long-Term Scenarios given that the effects of such commitments will be sufficiently incorporated in Long-Term Regional Transmission Planning through the incorporation of other Factor Categories.

935. In Order No. 1920, the Commission required transmission providers in each transmission planning region to develop, at least once during the five-year Long-Term Regional Transmission Planning cycle, at least three distinct Long-Term Scenarios.²²⁹⁷ Here, we clarify that transmission providers, when requested by Relevant State Entities in a transmission planning region, are required to conduct a reasonable number of additional analyses or scenarios, to provide Relevant State Entities with information that they can use to inform the application of Long-Term Regional Cost Allocation Method(s) or the development of cost allocation methods through the State Agreement Process(es).

936. In Order No. 1920, the Commission required transmission providers in each transmission planning region to revise the regional transmission planning process in their OATTs to outline an open and transparent process that provides stakeholders, including federally-recognized Tribes and states, with a meaningful opportunity to propose potential factors and to provide timely

input on how to account for specific factors in the development of Long-Term Scenarios.²²⁹⁸ In addition, the Commission required transmission providers to post this information after stakeholders, including states, have had the meaningful opportunity to propose potential factors and to provide input on how to account for specific factors in the development of Long-Term Scenarios.²²⁹⁹ Here, we clarify that transmission providers must consult with and consider the positions of the Relevant State Entities and any other entity authorized by a Relevant State Entity as its representative as to how to account for factors related to states' laws, policies, and regulations when determining the assumptions that will be used in the development of Long-Term Scenarios.

937. In Order No. 1920, the Commission required transmission providers' evaluation processes, including selection criteria, to be transparent and not unduly discriminatory, and the Commission explained that transmission providers' evaluation of Long-Term Regional Transmission Facilities must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular Long-Term Regional Transmission Facility (or portfolio of Long-Term Regional Transmission Facilities) was selected or not selected.²³⁰⁰ Here, we clarify that, once a transmission provider makes a selection decision, *i.e.*, for each selected Long-Term Regional Transmission Facility (or portfolio of such Facilities), and, if a State Agreement Process is used, once a cost allocation method is agreed upon, transmission providers must make available, on a password-protected portion of OASIS or other password-protected website, a breakdown of how those estimated costs will be allocated, by zone (*i.e.*, by transmission provider retail distribution service territory/footprint or RTO/ISO transmission pricing zone), and a quantification of those estimated benefits as imputed to each zone, as such benefits can be reasonably estimated.

938. In Order No. 1920, the Commission declined to require future Engagement Periods, but noted that transmission providers may hold future Engagement Periods if they believe that such periods would be beneficial.²³⁰¹ Here, we set aside Order No. 1920, in part, and require that, as part of

²²⁹³ See *supra* Requirement for Transmission Providers to Use and Measure a Set of Seven Required Benefits section; Minimum Requirements section; Role of Relevant State Entities section; Reevaluation section; Transmission Planning Process Evaluation section; Obligation to File an *Ex Ante* Long-Term Regional Transmission Cost Allocation Method and Its Use as a Backstop section; Design and Operation of the Engagement Period section; Regional Cost Allocation Principles for Long-Term Regional Transmission Facilities section; General Benefits Requirements Related to Cost Allocation section; CWIP section.

²²⁹⁴ 44 U.S.C. 3501–3521.

²²⁹⁵ See 5 CFR 1320.12 (2024).

²²⁹⁶ Order No. 1920, 187 FERC ¶ 61,068 at P 409.

²²⁹⁷ *Id.* P 559.

²²⁹⁸ *Id.* P 528.

²²⁹⁹ *Id.* P 533.

²³⁰⁰ *Id.* P 954.

²³⁰¹ Order No. 1920, 187 FERC ¶ 61,068 at P 1368.

transmission providers' obligations with respect to transmission planning and cost allocation, transmission providers shall consult with Relevant State Entities (1) prior to amending the Long-Term Regional Transmission Cost

Allocation Method(s) and/or State Agreement Process(es), or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method or process.

939. *Public Reporting Burden:* The estimated burden and cost for the requirements contained in this order on rehearing follow.

CHANGES DUE TO ORDER ON REHEARING IN DOCKET NO. RM21-17-001²³⁰²

A. Area of modification	B. Annual number of respondents	C. Total annual estimated number of responses	D. Average burden hours & cost ²³⁰³ per response	E. Total estimated burden hours & total estimated cost (column C × column D)
FERC-917, Electric Transmission Facilities (OMB Control No. 1902-0233)				
Establish a six-month time period during which transmission providers must, among other things, provide a forum for negotiation that enables participation by Relevant State Entities and to discuss potential Long-Term Regional Transmission Cost Allocation Methods and/or a State Agreement Process. Also require transmission providers to consult with Relevant State Entities prior to amending Long-Term Regional Transmission Cost Allocation Methods and/or State Agreement Process on file with the Commission.	48 transmission providers with OATTs.	48	<i>One Time:</i> 390 hours; \$36,307 <i>Ongoing:</i> 39 hours per year; \$3,631 per year.	<i>One Time:</i> 18,720 hours; \$1,742,734. <i>Ongoing:</i> 1,872 hours per year; \$174,274 per year.
Participate in Long-Term Regional Transmission Planning, which includes creating and updating datasets, developing Long-Term Scenarios, evaluating the benefits of Long-Term Regional Transmission Facilities, and establishing criteria in consultation with Relevant State Entities and stakeholders to select Long-Term Regional Transmission Facilities in the regional transmission plan for purposes of cost allocation.	48 transmission providers with OATTs.	48	<i>One Time:</i> 0 hours; \$0 <i>Ongoing:</i> 4,995 hours per year; \$465,010 per year.	<i>One Time:</i> 0 hours; \$0. <i>Ongoing:</i> 239,760 hours per year; \$22,320,457 per year.
	77 transmission providers without OATTs.	77	<i>One Time:</i> 0 hours; \$0 <i>Ongoing:</i> 202 hours per year; \$18,805 per year.	<i>One Time:</i> 0 hours; \$0. <i>Ongoing:</i> 15,554 hours per year; \$1,448,000 per year.
Total new burden for FERC 917 (due to Docket No. RM21-17-001).	48 transmission providers with OATTs.	48	<i>One Time:</i> 1,113 hours; \$103,614. <i>Ongoing:</i> 5,329 hours per year; \$496,103 per year.	<i>One Time:</i> 53,424 hours; \$4,973,495 <i>Ongoing:</i> 255,792 hours per year; \$23,812,956 per year
	77 transmission providers without OATTs.	77	<i>One Time:</i> 20 hours; \$1,862 <i>Ongoing:</i> 262 hours per year; \$24,391 per year.	<i>One Time:</i> 1,540 hours; \$143,366. <i>Ongoing:</i> 20,174 hours per year; \$1,878,099 per year.
	Totals for all 125 transmission providers			<i>One Time:</i> 54,964 hours; \$5,116,861. <i>Ongoing:</i> 275,966 hours per year; \$25,691,055 per year.

940. Order No. 1920 estimated the ongoing total burden and cost for the 48 transmission providers with OATTs to be 230,160 total hours per year and \$21,426,693 per year. Similarly, Order No. 1920 estimated the ongoing total burden and cost for the 77 transmission providers without OATTs to be 20,020 total hours per year and \$1,863,757 per year. Given the prior discussion regarding excluding corporate commitments from Factor Category Seven and clarifications related to the potential for additional scenarios, additional consultation with Relevant State Entities, and posting or making

available certain details of a selection decision on OASIS or other password-protected website, we estimate that these changes will result in an increase of burden hours. Therefore, we estimate that the ongoing total burden and cost, as revised herein, for the 48 transmission providers with OATTs to be 255,792 total hours per year and \$23,812,956 per year. Similarly, we estimate that the ongoing total burden and cost, as revised herein, for the 77 transmission providers without OATTs to be 20,174 total hours per year and \$1,878,099 per year. No other information collection requirements

contained in Order No. 1920 are affected by this order on rehearing.

941. *Title:* Electric Transmission Facilities (FERC-917).

942. *Action:* Revision of collections of information in accordance with Docket No. RM21-17-001.

943. *OMB Control No.:* 1902-0233 (FERC-917).

944. *Respondents:* Transmission providers, including RTOs/ISOs.

945. *Frequency of Information Collection:* One time during Year 1. Occasional times during subsequent years, at least once every five years.

²³⁰² In the table, Year 1 figures are one-time implementation hours and cost. "Subsequent years" show ongoing burdens and costs starting in Year 2.

²³⁰³ The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics (BLS) for three positions involved in the reporting and recordkeeping requirements. These figures include

salary (based on BLS data for May 2022, issued April 25, 2023, http://bls.gov/oes/current/naics2_22.htm) and benefits (based on BLS data for September 2023; issued December 15, 2023, <http://www.bls.gov/news.release/ecoc.nr0.htm>) and are Manager (Occupation Code 11-0000, \$122.48/hour), Electrical Engineer (Occupation Code 17-2071,

\$89.04/hour), and File Clerk (Occupation Code 43-4071, \$42.43/hour). The hourly cost for the reporting requirements (\$105.76) is an average of the hourly cost (wages plus benefits) of a manager and engineer. The hourly cost for recordkeeping requirements uses the cost of a file clerk.

946. *Necessity of Information:* The modifications in this order on rehearing will correct deficiencies in the Commission's existing regional transmission planning and cost allocation and local transmission planning requirements to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.

947. *Internal Review:* We have reviewed the requirements set forth in this order on rehearing that impose information collection burdens and have determined that such requirements are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. We have specific, objective support for the burden estimates associated with the information collection requirements.

948. Interested persons may obtain information on the reporting requirements by contacting Kayla Williams, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 via email (DataClearance@ferc.gov) or telephone (202) 502-6468.

949. Comments concerning the collection of information and the associated burden estimates may also be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: oira_submission@omb.eop.gov. Comments submitted to OMB should refer to FERC-917 (OMB Control No. 1902-0233). Copies of the comments can be sent to the Commission (identified by Docket No. RM21-17-001 and the specific FERC collection number (FERC-917) electronically through <https://www.ferc.gov>. For those unable to file electronically, comment copies may be filed by USPS mail or by hand (including courier) delivery: Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Or hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

XVI. Environmental Analysis

950. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.²³⁰⁴ The Commission has categorically excluded certain actions from this requirement including approval of actions under FPA sections 205 and 206 relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.²³⁰⁵ Because the final rule promulgated by Order No. 1920, and revised herein, falls within this categorical exclusion, preparation of an environmental assessment or an environmental impact statement is not required.

XVII. Regulatory Flexibility Act

951. The Regulatory Flexibility Act of 1980 (RFA)²³⁰⁶ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,²³⁰⁷ RTOs/ISOs, transmission planning regions, and transmission owners all fall under the category of Electric Bulk Power Transmission and Control (NAICS code 221121), with a size threshold of 950 employees (including the entity and its associates).²³⁰⁸

952. In Order No. 1920, the Commission, pursuant to RFA section 605(b), certified that the final rule would not have a significant economic impact on a substantial number of small

²³⁰⁴ *Reguls. Implementing the Nat'l Env'l Pol'y Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

²³⁰⁵ 18 CFR 380.4(a)(15).

²³⁰⁶ 5 U.S.C. 601-612.

²³⁰⁷ 13 CFR 121.201.

²³⁰⁸ The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. The SBA's regulations define the threshold for a small Electric Bulk Power Transmission and Control entity (NAICS code 221121) to be 950 employees. 13 CFR 121.201; *see* 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632).

entities.²³⁰⁹ This order on rehearing does not disturb that conclusion. For the same reasons cited in Order No. 1920,²³¹⁰ the final rule, as revised herein, would not have a significant economic impact on a substantial number of small entities.

XVIII. Document Availability

953. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>).

954. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

955. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

XIX. Effective Date

956. The changes to Order No. 1920 made in this order on rehearing and clarification are effective January 6, 2025.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission. Commissioner Christie is concurring in part with a separate statement attached. Commissioner See is not participating.

Issued: November 21, 2024.

Debbie-Anne A. Reese,
Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

²³⁰⁹ Order No. 1920, 187 FERC ¶ 61,068 at P 1788.

²³¹⁰ *See id.*

Appendix A: Abbreviated Names of Parties

Abbreviation	Rehearing party(ies)
Advanced Energy	Advanced Energy United.
Alabama Commission	Alabama Public Service Commission.
APPA	American Public Power Association.
Arizona Commission	Arizona Corporation Commission.
Cher Gilmore	Cher Gilmore.
City of New Orleans Council	Council of the City of New Orleans.
Clean Energy Associations	Advanced Energy United; American Clean Power Association; American Council on Renewable Energy; Solar Energy Industries Association.
Clean Energy Buyers	Clean Energy Buyers Association.
Competition Coalition	Electricity Transmission Competition Coalition; Resale Power Group of Iowa; LS Power Grid, LLC.
CTC Global	CTC Global Corporation.
Dairyland	Dairyland Power Cooperative.
Designated Retail Regulators	Louisiana Public Service Commission; Mississippi Public Service Commission; Arkansas Public Service Commission; South Dakota Public Utilities Commission.
Dominion	Dominion Energy Services, Inc.
E. Andrews	E. Andrews.
East Kentucky	East Kentucky Power Cooperative, Inc.
EEL	Edison Electric Institute.
Gary Andrews	Gary Andrews.
Georgia Commission	Georgia Public Service Commission.
Grid United	Grid United LLC.
Harvard ELI	Harvard Electricity Law Initiative.
Idaho Commission	Idaho Public Utilities Commission.
Identified Consumer Advocates	Office of the Massachusetts Attorney General; Connecticut Office of Consumer Counsel; Maine Office of Public Advocate; Maryland Office of People's Counsel; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers.
Illinois Commission	Illinois Commerce Commission.
Indicated PJM TOs	American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc.; Dayton Power and Light Company; Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Duquesne Light Company; East Kentucky Power Cooperative; Exelon Corporation on behalf of its affiliates Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, PECO Energy Company, and Potomac Electric Power Company; FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, Potomac Edison Company, Monongahela Power Company, Keystone Appalachian Transmission Company, and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; UGI Utilities Inc.
Industrial Customers	American Forest & Paper Association; Coalition of MISO Transmission Customers; Industrial Energy Customers of America; PJM Industrial Customer Coalition.
Invenergy	Invenergy Solar Development North America LLC; Invenergy Thermal Development LLC; Invenergy Wind Development North America LLC; Invenergy Transmission LLC.
ITC	International Transmission Company; Michigan Electric Transmission Company, LLC; ITC Midwest LLC; ITC Great Plains, LLC.
Large Public Power	Large Public Power Council.
MISO TOs	Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power, Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; Wolverine Power Supply Cooperative, Inc.
Minnesota Commission	Minnesota Public Utilities Commission.
Missouri Commission	Missouri Public Service Commission.
Montana Commission	Montana Public Service Commission.
NARUC	National Association of Regulatory Utility Commissioners.
NESCOE	New England States Committee on Electricity.
Northern Virginia	Northern Virginia Electric Cooperative, Inc.
NRECA	National Rural Electric Cooperative Association.
Ohio Commission Federal Advocate	Public Utilities Commission of Ohio's Office of the Federal Energy Advocate.
Ohio Consumers	Office of the Ohio Consumers Council.
Old Dominion	Old Dominion Electric Cooperative.
Pennsylvania Commission	Pennsylvania Public Utility Commission.
PIOs	Appalachian Voices; Energy Alabama; Environmental Defense Fund; Environmental Law & Policy Center; Natural Resources Defense Council; North Carolina Sustainable Energy Association; Sierra Club; South Carolina Coastal Conservation League; Southern Alliance for Clean Energy; Southern Renewable Energy Association; Sustainable FERC Project.
PJM	PJM Interconnection, L.L.C.
PJM States	Organization of PJM States, Inc.

Abbreviation	Rehearing party(ies)
PJM Utilities	East Kentucky Power Cooperative, Inc.; Buckeye Power, Inc.; Old Dominion Electric Cooperative; Wabash Valley Power Association.
SERTP Sponsors	Associated Electric Cooperative, Inc.; Dalton Utilities; Duke Energy Carolinas, LLC and Duke Energy Progress, LLC; Georgia Transmission Corporation; Louisville Gas and Electric Company and Kentucky Utilities Company; Municipal Electric Authority of Georgia; PowerSouth Energy Cooperative; Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, and Mississippi Power Company; Tennessee Valley Authority.
SPP	Southwest Power Pool, Inc.
State Regulatory Commissioners	Riley Allen (Commissioner, State of Vermont Public Utility Commission); Philip L. Bartlett II (Chair, Maine Public Utilities Commission); Kumar P. Barve (Commissioner, Maryland Public Service Commission); Eric Blank (Chairman, Colorado Public Utilities Commission); Alessandra Carreon (Commissioner, Michigan Public Service Commission); Michael T. Carrigan (Commissioner, Illinois Commerce Commission); David W. Danner (Chair, Washington Utilities and Transportation Commission); Megan Decker (Chair, Oregon Public Utilities Commission); Milt Doumit (Commissioner, Washington Utilities and Transportation Commission); Sarah Freeman (Commissioner, Indiana Utility Regulatory Commission); Andrew French (Chairperson, Kansas Corporation Commission); Marissa P. Gillett (Chairman, Connecticut Public Utilities Regulatory Authority); Hwikwon Ham (Commissioner, Minnesota Public Utilities Commission); Frederick H. Hoover (Chair, Maryland Public Service Commission); Darcie Houck (Commissioner, California Public Utilities Commission); Davante Lewis (Commissioner, Louisiana Public Service Commission); Ann McCabe (Commissioner, Illinois Commerce Commission); Valerie Means (Commissioner, Minnesota Public Utilities Commission); Stacey Paradis (Commissioner, Illinois Commerce Commission); Katherine Peretick (Commissioner, Michigan Public Service Commission); Les Perkins (Commissioner, Oregon Public Utilities Commission); Ann E. Rendahl (Commissioner, Washington Utilities and Transportation Commission); Alice Reynolds (President, California Public Utilities Commission); Michael T. Richard (Commissioner, Maryland Public Service Commission); Doug P. Scott (Chairman, Illinois Commerce Commission); Dan Scripps (Chair, Michigan Public Service Commission); Katie Sieben (Chair, Minnesota Public Utilities Commission); Bonnie A. Suchman (Commissioner, Maryland Public Service Commission); Joseph Sullivan (Vice Chair, Minnesota Public Utilities Commission); Letha Tawney (Commissioner, Oregon Public Utilities Commission); Emile C. Thompson (Chairman, District of Columbia Public Service Commission); Ted Trabue (Commissioner, District of Columbia Public Service Commission); John Tuma (Commissioner, Minnesota Public Utilities Commission).
Susann Rizzo	Susann Rizzo.
TAPS	Transmission Access Policy Study Group.
Undersigned States	Texas Attorney General; Alabama Attorney General; Arkansas Attorney General; Florida Attorney General; Georgia Attorney General; Idaho Attorney General; Iowa Attorney General; Kansas Attorney General; Kentucky Attorney General; Louisiana Attorney General; Mississippi Attorney General; Montana Attorney General; Nebraska Attorney General; North Dakota Attorney General; Oklahoma Attorney General; South Carolina Attorney General; South Dakota Attorney General; Tennessee Attorney General; Utah Attorney General.
Utah Commission	Utah Public Service Commission.
Vermont Commission	Vermont Public Utility Commission.
Versant Power	Versant Power.
Virginia Attorney General	Virginia Office of the Attorney General, Division of Consumer Counsel.
Virginia and North Carolina Commissions	Virginia State Corporation Commission; North Carolina Utilities Commission.
West Virginia Commission	Public Service Commission of West Virginia.
WIRES	WIRES.
Wyoming Commission	Wyoming Public Service Commission.

Appendix B: Pro Forma Open Access Transmission Tariff Attachment K

Note: Proposed deletions are in brackets and proposed additions are in italics.

Attachment K

Transmission Planning Process

Local Transmission Planning

The Transmission Provider shall establish a coordinated, open, and transparent local transmission planning process with its Network and Firm Point-to-Point Transmission Customers and other interested parties to ensure that the Transmission System is planned to meet the needs of both the Transmission Provider and its Network and Firm Point-to-Point Transmission Customers on a comparable and not unduly discriminatory basis. The Transmission Provider's coordinated, open, and transparent local transmission planning process shall be provided as an attachment to the Transmission Provider's Tariff. The Transmission Provider's local transmission planning process shall provide stakeholders with meaningful opportunities to participate and provide feedback, and shall satisfy the following nine principles, as defined in

Order No. 890: coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation for new transmission projects. The local transmission planning process also shall include the procedures and mechanisms for considering transmission needs driven by Public Policy Requirements consistent with Order No. 1000. The local transmission planning process also shall provide a mechanism for the recovery and allocation of transmission planning costs consistent with Order No. 890. The description of the Transmission Provider's local transmission planning process must include sufficient detail to enable Transmission Customers to understand:

- (i) The process for consulting with customers;
- (ii) The notice procedures and anticipated frequency of meetings;
- (iii) The methodology, criteria, and processes used to develop a transmission plan;
- (iv) The method of disclosure of criteria, assumptions, and data underlying a transmission plan;

(v) The obligations of and methods for Transmission Customers to submit data to the Transmission Provider;

(vi) The dispute resolution process;

(vii) The Transmission Provider's study procedures for economic upgrades to address congestion or the integration of new resources;

(viii) The Transmission Provider's procedures and mechanisms for considering transmission needs driven by Public Policy Requirements, consistent with Order No. 1000; and

(ix) The relevant cost allocation method or methods.

Regional Transmission Planning

The Transmission Provider shall participate in a regional transmission planning process through which transmission facilities and non-transmission alternatives may be proposed and evaluated. The regional transmission planning process also shall develop a regional transmission plan that identifies the transmission facilities necessary to meet the needs of transmission providers and transmission customers in the transmission planning region. The regional transmission planning process must be consistent with the provision of Commission-

jurisdictional services at rates, terms, and conditions that are just and reasonable and not unduly discriminatory or preferential, as described in Order Nos. 1000 and 1920. The regional transmission planning process shall be described in an attachment to the Transmission Provider's Tariff.

The Transmission Provider's regional transmission planning process shall satisfy the following seven principles, as established in Order Nos. 890 and 1000: coordination, openness, transparency, information exchange, comparability, dispute resolution, and economic planning studies. The description of the regional transmission planning process in the Tariff also shall include the procedures and mechanisms for considering transmission needs driven by Public Policy Requirements, consistent with Order No. 1000. The regional transmission planning process shall provide a mechanism for the recovery and allocation of "transmission planning costs" consistent with Order Nos. 890 and 1000.

The regional transmission planning process shall include a clear enrollment process for public and non-public utility transmission providers that make the choice to become part of a transmission planning region. The regional transmission planning process shall be clear that enrollment will subject enrollees to cost allocation if they are found to be beneficiaries of new transmission facilities selected in the regional transmission plan for purposes of cost allocation. Each Transmission Provider shall maintain a list of enrolled entities in the Transmission Provider's Tariff.

The regional transmission planning process must include at least three stakeholder meetings concerning the local transmission planning process of each Transmission Provider that is a member of the transmission planning region. The three meetings must occur before each Transmission Provider's local transmission planning information can be incorporated into the transmission planning region's transmission planning models. The three stakeholder meetings for local transmission planning information are the Assumptions Meeting, the Needs Meeting, and the Solutions Meeting, and the three stakeholder meetings must meet the requirements in Order No. 1920.

As part of the regional transmission planning process, the Transmission Providers in each transmission planning region shall conduct Long-Term Regional Transmission Planning, meaning regional transmission planning on a sufficiently long-term, forward-looking, and comprehensive basis to identify Long-Term Transmission Needs, identify transmission facilities that meet such needs, measure the benefits of those transmission facilities, and evaluate those transmission facilities for potential selection in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective regional transmission facilities to meet Long-Term Transmission Needs. As part of this Long-Term Regional Transmission Planning, the Transmission Providers in each transmission planning region shall meet the requirements set forth in Order No. 1920, including: (1)

identifying Long-Term Transmission Needs and Long-Term Regional Transmission Facilities to meet those needs through the development of Long-Term Scenarios that satisfy the requirements set forth in Order No. 1920; (2) measuring the required seven benefits consistent with the requirements set forth in Order No. 1920; (3) using the measured benefits to evaluate Long-Term Regional Transmission Facilities; and (4) using selection criteria consistent with the requirements set forth in Order No. 1920 that provide the opportunity for Transmission Providers to select Long-Term Regional Transmission Facilities in the regional transmission plan for purposes of cost allocation that more efficiently or cost-effectively address Long-Term Transmission Needs.

The process through which the Transmission Providers in each transmission planning region develop Long-Term Scenarios must comply with the following six transmission planning principles established in Order No. 890: coordination; openness; transparency; information exchange; comparability; and dispute resolution. The Transmission Providers in each transmission planning region shall outline in their Tariffs an open and transparent process that provides stakeholders, including states, with a meaningful opportunity to propose potential factors and to provide input on how to account for specific factors in the development of Long-Term Scenarios. The Transmission Providers in each transmission planning region shall also outline in their Tariffs an open and transparent process that provides stakeholders, including states, with a meaningful opportunity to propose which future outcomes are probable and can be captured through assumptions made in the development of Long-Term Scenarios.

Transmission Providers shall consult with and consider the positions of the Relevant State Entities, and any other entity authorized by a Relevant State Entity as its representative, as to whether a specific state policy must be accounted for as a factor within each category, how to account for the specific state policy in the development of Long-Term Scenarios, and how to adjust the treatment of the specific state policy across Long-Term Scenarios. When requested by Relevant State Entities in a transmission planning region, Transmission Providers shall conduct a reasonable number of additional analyses or scenarios to inform the application of Long-Term Regional Cost Allocation Method(s) or the development of cost allocation methods through the State Agreement Process(es). Transmission Providers shall not use any such additional analyses to identify Long-Term Transmission Needs, identify Long-Term Regional Transmission Facilities, or to meet the requirement that Transmission Providers estimate the costs and measure the benefits of Long-Term Regional Transmission Facilities for purposes of selection. Transmission Providers also shall not condition the selection of a Long-Term Regional Transmission Facility on the information provided in these additional analyses.

The Transmission Providers in each transmission planning region shall include in their Tariffs a general description of how they will measure each of the seven required benefits used to evaluate Long-Term Regional Transmission Facilities. The Transmission Providers in each transmission planning region shall measure and use the seven benefits, as described in Order No. 1920, in Long-Term Regional Transmission Planning.

As part of Long-Term Regional Transmission Planning, the Transmission Providers in each transmission planning region shall include in their Tariffs an evaluation process, including selection criteria, that: (1) is transparent and not unduly discriminatory; (2) aims to ensure that more efficient or cost-effective transmission facilities are selected in the regional transmission plan for purposes of cost allocation; (3) seeks to maximize benefits accounting for costs over time without overbuilding transmission facilities; and (4) otherwise satisfies the requirements set forth in Order No. 1920. *Once Transmission Providers make a selection decision, and, if a State Agreement Process is used, once a cost allocation method is agreed upon, Transmission Providers shall make available, on a password-protected portion of OASIS or other password-protected website, a breakdown of how the estimated costs of a Long-Term Regional Transmission Facility will be allocated, by zone, and a quantification of the Long-Term Regional Transmission Facility's estimated benefits as imputed to each zone, as such benefits can be reasonably estimated.*

The Transmission Providers in each transmission planning region shall include in their Tariffs one or more Long-Term Regional Transmission Cost Allocation Methods, which is an ex ante regional cost allocation method for one or more Long-Term Regional Transmission Facilities (or portfolio of such Facilities) that are selected in the regional transmission plan for purposes of cost allocation and that complies with the requirements set forth in Order No. 1920. The Transmission Providers in each transmission planning region may also, subject to (1) the agreement of Relevant State Entities and (2) Commission acceptance, include in their Tariffs a State Agreement Process. A State Agreement Process is a process by which one or more Relevant State Entities may voluntarily agree to a cost allocation method for Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) either before or no later than six months after the facilities are selected in the regional transmission plan for purposes of cost allocation. The Tariff must describe how the State Agreement Process will result in a cost allocation being filed, including which entities can participate in the State Agreement Process; what constitutes an agreement on cost allocation in that process; how agreement is communicated to the T[transmission P]rovider; and the circumstances under which, or the information necessary for, a T[transmission P]rovider to file or to consider filing the agreed cost allocation.

Transmission Providers shall include in their Tariffs a description of how they will

consult with Relevant State Entities (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es), or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the Transmission Provider to amend that method or process. For a consultation initiated by the Transmission Providers, Transmission Providers shall document publicly on their OASIS or other public website the results of their consultation with Relevant State Entities prior to filing their amendment. For a consultation initiated by Relevant State Entities, if the Transmission Providers choose not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es) preferred by Relevant State Entities during the required consultation, Transmission Providers shall document publicly on their OASIS or other public website the results of their consultation with Relevant State Entities, including an explanation for why they have chosen not to propose any amendments.

As part of evaluating new regional transmission facilities, as well as upgrades to existing transmission facilities, the Transmission Providers in each transmission planning region shall consider in all of their regional transmission planning and cost allocation processes whether selecting transmission facilities that incorporate the following technologies would be more efficient or cost-effective than selecting new regional transmission facilities or upgrades to existing transmission facilities that do not incorporate these technologies: dynamic line ratings, as defined in 18 CFR 35.28(b)(14), advanced power flow control devices, advanced conductors, and/or transmission switching. Specifically, such consideration must include both: (1) whether incorporating dynamic line ratings, advanced power flow control devices, advanced conductors, and/or transmission switching into existing transmission facilities could meet the same regional transmission need more efficiently or cost-effectively than other potential transmission facilities; and (2) when evaluating transmission facilities for potential selection in the regional transmission plan for purposes of cost allocation, whether incorporating dynamic line ratings, advanced power flow control devices, advanced conductors, and/or transmission switching as part of any potential regional transmission facility would be more efficient or cost-effective. Transmission Providers must evaluate the benefits of incorporating the enumerated alternative transmission technologies into Long-Term Regional Transmission Facilities in a manner consistent with the requirements in the Evaluation of Benefits of Regional Transmission Facilities and Evaluation and Selection of Long-Term Regional Transmission Facilities sections of Order No. 1920.

The Transmission Providers in each transmission planning region shall evaluate for potential selection in the regional transmission plan for purposes of cost allocation regional transmission facilities that address interconnection-related transmission

needs originally identified through the generator interconnection process. This requirement applies in the existing Order No. 1000 regional transmission planning processes. The Transmission Providers must modify their Tariffs to include these requirements. The interconnection-related transmission needs that Transmission Providers must evaluate in the existing Order No. 1000 regional transmission planning process are those for which:

(1) Transmission Providers in the transmission planning region have identified the relevant interconnection-related transmission need in interconnection studies in at least two interconnection queue cycles *(or in at least two individual interconnection studies for Transmission Providers that use a first-come, first-served serial generator interconnection process)* [during the preceding five years (looking back from the effective date of the accepted tariff provisions proposed to comply with this reform in Order No. 1920, and the later-in-time withdrawn interconnection request occurring after the effective date of the accepted tariff provisions)];

(2) the interconnection-related Network Upgrade identified through the generator interconnection process to meet the relevant interconnection-related transmission need has a voltage of at least 200 kV and an estimated cost of at least \$30 million;

(3) [the interconnection-related Network Upgrade identified through the generator interconnection process to meet the relevant interconnection-related transmission need is not currently planned to be developed because] the interconnection request[(s)] that led to the identification of the interconnection-related transmission need in *two or more interconnection queue cycles (or two individual interconnection studies if the Transmission Provider uses a first-come, first-served serial generator interconnection process)* have [has] been withdrawn and *no more than five calendar years have passed between the date of an earlier interconnection request withdrawal and the date of a later interconnection request withdrawal*; and]

(4) the Transmission Providers have not identified a different interconnection-related Network Upgrade to meet the relevant interconnection-related transmission need in an executed Generator Interconnection Agreement or in a Generator Interconnection Agreement that the interconnection customer requested that the Transmission Provider file unexecuted with the Commission[.]; and

(5) The interconnection request withdrawals associated with the repeatedly identified interconnection-related transmission need occurred no earlier than seven calendar years prior to the commencement date of the Order No. 1000 regional transmission planning and cost allocation cycle. The initial evaluation should occur in the first Order No. 1000 regional transmission planning and cost allocation cycle to occur after the effective date of the tariff revisions implementing this reform. The Transmission Provider need not evaluate an interconnection-related transmission need that has been evaluated in a previous Order No. 1000 regional

transmission planning and cost allocation cycle.

The description of the regional transmission planning process must include sufficient detail to enable Transmission Customers to understand:

- (i) The process for enrollment in the regional transmission planning process;
- (ii) The process for consulting with customers;
- (iii) The notice procedures and anticipated frequency of meetings;
- (iv) The methodology, criteria, and processes used to develop a transmission plan;
- (v) The method of disclosure of criteria, assumptions, and data underlying a transmission plan;
- (vi) The obligations of and methods for transmission customers to submit data;
- (vii) The process for submission of data by nonincumbent developers of transmission projects that wish to participate in the regional transmission planning process and seek regional cost allocation;
- (viii) The process for submission of data by merchant transmission developers that wish to participate in the regional transmission planning process;
- (ix) The dispute resolution process;
- (x) The study procedures for economic upgrades to address congestion or the integration of new resources; and
- (xi) The relevant cost allocation method or methods.

The regional transmission planning process must include cost allocation methods that satisfy the requirements set forth in Order Nos. 1000 and 1920.

Identifying Potential Opportunities to Right-Size Replacement Transmission Facilities

As part of each Long-Term Regional Transmission Planning cycle, Transmission Providers in each transmission planning region shall evaluate whether transmission facilities operating at or above a voltage threshold not to exceed 200 kV that an individual Transmission Provider that owns the transmission facility anticipates replacing in-kind with a new transmission facility during the next 10 years can be “right-sized” to more efficiently or cost-effectively address Long-Term Transmission Needs, as discussed in Order No. 1920. The process to identify potential opportunities to right-size replacement transmission facilities must follow the process outlined in Order No. 1920. The Transmission Providers in each transmission planning region shall include in their Tariffs a cost allocation method for right-sized replacement transmission facilities that are selected in the regional transmission plan for purposes of cost allocation.

Interregional Transmission Coordination

The Transmission Provider, through its regional transmission planning process, must coordinate with the public utility transmission providers in each neighboring transmission planning region within its interconnection to address transmission planning coordination issues related to interregional transmission facilities. The interregional transmission coordination procedures must include a detailed

description of the process for coordination between public utility transmission providers in neighboring transmission planning regions (i) with respect to each interregional transmission facility that is proposed to be located in both transmission planning regions and (ii) to identify possible interregional transmission facilities that could address transmission needs more efficiently or cost-effectively than separate regional transmission facilities. The interregional transmission coordination procedures shall be described in an attachment to the Transmission Provider's Tariff.

The Transmission Provider must ensure that the following requirements are included in any applicable interregional transmission coordination procedures:

(1) A commitment to coordinate and share the results of each transmission planning region's regional transmission plans (including information regarding the Long-Term Transmission Needs and potential transmission facilities to meet those needs) to identify possible interregional transmission facilities that could address transmission needs more efficiently or cost-effectively than separate regional transmission facilities, as well as a procedure for doing so;

(2) A formal procedure to identify and jointly evaluate transmission facilities that are proposed to be located in both transmission planning regions, including those that may be more efficient or cost-effective transmission solutions to Long-Term Transmission Needs;

(3) An agreement to exchange, at least annually, planning data and information; and

(4) A commitment to maintain a website or email list for the communication of information related to the coordinated planning process, including:

(a) the Long-Term Transmission Needs discussed in the interregional transmission coordination meetings;

(b) any interregional transmission facilities proposed or identified in response to the Long-Term Transmission Needs;

(c) the voltage level, estimated cost, and estimated in-service date of the interregional transmission facilities proposed or identified as part of Long-Term Regional Transmission Planning;

(d) the results of any cost-benefit evaluation of such interregional transmission facilities, with results including both any overall benefits identified, as well as any benefits particular to each transmission planning region; and

(e) the interregional transmission facilities, if any, selected in the regional transmission plan for purposes of cost allocation to meet Long-Term Transmission Needs.

The Transmission Provider must work with transmission providers located in neighboring transmission planning regions to develop a mutually agreeable method or methods for allocating between the two transmission planning regions the costs of a new interregional transmission facility that is located within both transmission planning regions. Such cost allocation method or methods must satisfy the six interregional cost allocation principles set forth in Order No. 1000 and must be included in the Transmission Provider's Tariff.

United States of America

Federal Energy Regulatory Commission

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation

Docket No. RM21–17–001

(Issued November 21, 2024)

CHRISTIE, Commissioner, *concurring in part*:

1. Today's order makes major changes to Order No. 1920. I am deeply grateful to my colleagues for their willingness to negotiate in good faith and ultimately to agree to these changes.

2. Order No. 1920 was based on purported authority derived from section 206 of the Federal Power Act (FPA).¹ Section 206 essentially requires that two prongs must be satisfied: First, the complainant, here the Commission, bears the burden to prove that existing rates—in this case, the transmission planning procedures of every transmission provider in the country, both Regional Transmission Organization (RTO)/Independent System Operator (ISO) and non-RTO/ISO—are unjust, unreasonable and/or unduly discriminatory or preferential. If the first prong (burden of proof) is met, in the second prong, the Commission must establish a just and reasonable replacement rate.² I concur with this order solely as to specific changes made in Order No. 1920–A to the replacement rate established in Order No. 1920.³

3. In my dissent to Order No. 1920, I made it clear that one of my major areas of disagreement was that it failed to fulfill the promise of a necessary and appropriate role for the states that was established in the Notice of Proposed Rulemaking (NOPR) that preceded Order No. 1920.⁴ This promised state role was the primary reason I voted for the NOPR. As I have said repeatedly,

¹ 16 U.S.C. 824e.

² *Id.* (“Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. . . .” (emphasis added)).

³ The specific changes which I support and to which I concur are described in the Appendix to this statement.

⁴ *Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation & Generator Interconnection*, NOPR, 179 FERC ¶ 61,028 (2022) (Christie, Comm'r, concurring at PP 5, 11, 14).

state utility regulators are the first line of defense for their consumers and must have the authority to protect their consumers from unwarranted or excessive transmission costs, which are the fastest rising part of most consumers' monthly power bills and are reaching ever more burdensome levels.⁵ The changes made today in Order No. 1920–A to the replacement rate set by Order No. 1920 go a *long* way towards restoring the state role to what the NOPR promised, and I am pleased to support these changes. Among them are the following positive and fundamental changes:

4. *Submission of State-Agreed Alternative.* In contrast to Order No. 1920, Order No. 1920–A requires that, if the states in a region agree to a cost allocation proposal, the transmission provider *must* include that agreement in its compliance filing. Furthermore, the Commission can choose the state agreement over the transmission provider's proposal.⁶

5. *Pre-Amendment State Consultation.* In addition, states *must* be consulted before the transmission provider considers any future changes to the cost allocation method or state agreement processes or if the states seek to amend the cost allocation method or state agreement processes.⁷

6. *Cost Allocation Flexibility.* In contrast to Order No. 1920, states are given far more flexibility to develop and agree to cost allocation processes and *ex ante* formulae that will suit their needs in diverse multistate regions such as PJM Interconnection, L.L.C. (PJM), Midcontinent Independent System Operator, Inc., and the Southeastern Regional Transmission Planning region. For example, states in PJM will now have explicit assurance that the PJM State Agreement Approach, in use for more than a decade, is preserved as an option for allocating to the sponsoring states the costs of public policy-driven projects, such as New Jersey's offshore wind and others that would not be selected for regional cost allocation.⁸

7. *State Input on Factors.* As part of the planning process, transmission providers must consult with the states before running the scenarios required by Order No. 1920 and must consider the views of the states as to how to account for and weigh the factors related to, or derived from, state public policies.⁹

⁵ *Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 (2024) (Christie, Comm'r, dissenting at P 15 & nn.49–54).

⁶ See Appendix at P 1.

⁷ *Id.* P. 2.

⁸ *Id.* at P. 7.

⁹ *Id.* P. 4.

8. *State Input on Baseline Scenarios.* Order No. 1920–A also clarifies that, for purposes of cost allocation, states in PJM and other diverse multistate regions can now choose a new *ex ante* process that will enable the states to request that the transmission provider run additional scenarios, including a baseline scenario that contains only optimal reliability or economic projects and excludes public policy-driven projects, so that states can compare the costs of the baseline scenario versus the larger, multi-driver scenarios that include public policy-driven projects. Most importantly, states can agree that the difference in costs between the baseline scenario and the larger, multi-driver scenarios that include projects derived from state policies or other policy goals will be allocated to the states whose policies are the source of the added costs and will not be regionally cost allocated.¹⁰

9. *Removal of Corporate Power Preferences and Cost-Shifting.* The requirement in Order No. 1920 that large corporate power-purchasing preferences must be a factor in planning long-term scenarios is explicitly removed.¹¹ That was one of the most unconscionable, special-interest driven features of Order No. 1920, directing transmission providers to plan hundreds of billions of dollars of transmission projects to subsidize the power-purchasing preferences of huge multinational corporations and shifting the costs to residential and small-business consumers already struggling to pay their monthly power bills.

10. *New Required Transparency.* Order No. 1920–A also emphasizes transparency and clarifies that the purported benefits of one or more states' public policies are clearly identified and quantified. This will enable states to determine whether they are being charged for other states' public policies, which benefits they are paying for, and how much.¹²

11. Collectively, these changes give the states a much bigger toolbox containing far more effective tools they can use to protect their consumers and the interests of their states. I urge state regulators to use them aggressively. Further, let me emphasize that, if the process of compliance—always complicated and challenging even with rulemakings of far smaller size and less complexity than this one—demonstrates that state flexibility and authority remain materially insufficient, further

action by the Commission may become necessary.

12. And on the issue of compliance, I would add that the broad purpose of these changes is to allow the states sufficient flexibility and authority to protect their consumers from paying unfair or unnecessary costs. *That purpose should and must inform the compliance process.*

13. For these reasons, I respectfully concur to these changes established in Order No. 1920–A that are listed specifically in the Appendix. Again, I express my deep appreciation to my colleagues for their willingness to engage in good-faith negotiations leading to these important changes to the replacement rate.

For these reasons I respectfully concur in part.

Mark C. Christie,
Commissioner.

Appendix—Major Changes Incorporated in Order No. 1920–A

1. *Require transmission providers to include in their filings state agreements on cost allocation, with enough detail so that any separate proposals can be considered and enable the Commission to adopt the states' agreement on compliance.*

The order directs transmission providers to include in the transmittal of their compliance filings any Long-Term Regional Transmission Cost Allocation Method(s), and/or State Agreement Process(es) agreed to by Relevant State Entities, during the Engagement Period. The order also clarifies that transmission providers must include such cost allocation methods and/or State Agreement Processes in the transmittal of their compliance filings even when transmission providers propose on compliance a separate cost allocation method and/or declined to propose a State Agreement Process.

As part of this requirement, the order clarifies that transmission providers must include any and all supporting evidence and/or justification related to Relevant State Entities' agreed-upon cost allocation method and/or State Agreement Process that Relevant State Entities request that transmission providers include in their compliance filing. However, the order clarifies that transmission providers are not required to separately characterize Relevant State Entities' agreement or independently justify Relevant State Entities' preferred cost allocation.

When acting under FPA section 206, the Commission's statutory burden is to establish a just and reasonable and not unduly discriminatory replacement rate that is supported by substantial evidence and is the product of reasoned decision making. In satisfying this burden with respect to cost allocation, it is not the case that the Commission necessarily must adopt the transmission provider's proposal if that proposal complies with the final rule's requirements; rather, the Commission need only weigh competing views (if they exist), select an approach with adequate support in

the record, and then intelligibly explain the reasons for its choice.

To be clear, this means that the Commission will consider the entire record—including the Relevant State Entities' agreed-upon cost allocation and the transmission provider's proposal. Specifically, when the Commission reviews transmission providers' compliance filings, the Commission is not required to accept a cost allocation proposal from a transmission provider simply because it may comply with Order No. 1920. Instead, the Commission may accept any cost allocation method proposed by the Relevant State Entities and submitted on compliance so long as it complies with Order No. 1920.

2. *Require transmission providers to revise their OATTs to add a requirement that they consult with Relevant State Entities before making a future filing under FPA section 205 to revise the Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process(es) that is on file.*

The order requires that, as part of transmission providers' obligations with respect to transmission planning and cost allocation, transmission providers shall consult with Relevant State Entities prior to amending the *ex ante* Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process(es) agreed to by Relevant State Entities, or if Relevant State Entities seek to amend that method or process. The order requires transmission providers to document publicly on their website the results of that consultation prior to submitting their amendment. In addition, transmission providers must describe their reasoning for not using the results of the consultation with the Relevant State Entities. As an example, a jumpball framework, such as exists in MISO, SPP, and ISO–NE, could satisfy these requirements.

3. *If Relevant State Entities request additional scenarios to inform their consideration of cost allocation methods, transmission providers shall develop those additional scenarios.*

The order clarifies that transmission providers may develop additional scenarios, beyond the three Long-Term Scenarios that Order No. 1920 requires, to provide Relevant State Entities with information that they can use to inform the development of Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process(es). The order further clarifies that, when developing these additional scenarios used to inform cost allocation, transmission providers have the flexibility to depart from Order No. 1920's requirements related to the development of Long-Term Scenarios. For example, transmission providers may develop scenarios that consider the incremental cost of transmission needed to achieve state laws, policies, and regulations beyond the cost of transmission needed in the absence of those laws, policies, and regulations. The order further clarifies that, if the Relevant State Entities wish for the transmission provider to develop a reasonable number of additional scenarios for cost allocation, then the transmission providers will develop these scenarios.

4. *Clarify that, while transmission providers have discretion over how to*

¹⁰ *Id.* PP 3, 8–11.

¹¹ *Id.* P 6.

¹² *Id.* P 10.

consider the effects of factors, transmission providers must consult with Relevant State Entities regarding factors related to state public policies.

The order clarifies that transmission providers must consult with and consider the positions of the Relevant State Entities as to how to account for factors related to state public policies in transmission planning assumptions. Specifically, the transmission provider shall consult with Relevant State Entities as to how to run the Long-Term Scenarios mandated by the final rule, as they may incorporate planning for state laws, policies, and regulations, including assumptions of transmission needs that may be attributable to, or derived from, state or local policies, such as assumptions about changing generation resources.

5. Allow states six additional months for the engagement period, upon request.

The order clarifies that, if Relevant State Entities, consistent with their chosen method to reach agreement, request additional time to complete cost allocation discussions, the Commission will extend the Engagement Period for up to an additional six months. The order finds that such an extension is warranted in that circumstance to ensure that Relevant State Entities have sufficient time to engage in fulsome discussions. The order also clarifies that the Commission will extend the relevant compliance deadlines, as appropriate, to accommodate an extension to the Engagement Period.

6. Exclude corporate commitments from Factor Category Seven.

The order eliminates the requirement for transmission providers to incorporate corporate commitments in Factor Category Seven when developing Long-Term Scenarios. The order finds that requiring transmission providers to consider corporate commitments when developing Long-Term Scenarios may introduce the risk of one class of transmission users cross-subsidizing another class of transmission users.

7. Expressly permit continued use of both new and/or existing state agreement approaches and similar voluntary measures.

The order clarifies that Order No. 1920 does not require reapproval of PJM's State Agreement Approach. The order clarifies that the Commission interprets PJM's State Agreement Approach to be supplemental to PJM's existing regional transmission cost allocation method. As a result, it is not in any way affected by the final rule. The order further clarifies (see #1 above) that, in their

compliance filings, transmission providers shall include any State Agreement Process(es) agreed to by Relevant State Entities.

8. Transmission providers will allocate the costs of a Long-Term Regional Transmission Facility commensurate to its benefits.

The order clarifies that Order No. 1920 does not prevent transmission providers from recognizing different types of benefits and using them to allocate costs in proportion to those benefits. One potential cost allocation method that could be proposed to comply with Order No. 1920 would allocate costs commensurate with reliability and economic benefits region-wide, while allocating costs commensurate with additional benefits to a subset of states that agree to such cost allocation. Under this potential cost allocation method, these costs and benefits could be identified based on one or more additional scenarios run by the transmission planner for the purposes of informing cost allocation, e.g., scenarios that consider the incremental cost of transmission needed to achieve state laws, policies, and regulations beyond the cost of transmission needed in the absence of those laws, policies, and regulations. For example, the cost allocation method agreed to by the Relevant State Entities may allocate those incremental costs to states with those applicable laws, policies, and regulations.

9. Clarify that states and/or transmission providers may define additional benefits to those enumerated in Order No. 1920.

Further, the order clarifies that costs borne by ratepayers must be roughly commensurate with benefits received. Transmission providers can consider additional benefits for cost allocation purposes, including as agreed to by Relevant State Entities and described elsewhere in this rule, provided that costs are allocated in a way that is at least roughly commensurate with estimated benefits.

10. Clarify that, for a selected project or tranche of projects, transmission providers shall, for each pricing zone, quantify the benefits and costs associated with such project or tranche.

The order clarifies that, for each selected project or tranche of projects, each transmission provider is required to make publicly available, on OASIS or other password-protected website, a breakdown of the allocated costs, by transmission pricing zone, and a quantification of the benefits imputed to each zone, as such benefits can be reasonably estimated.

11. Include, as an example of an approach that could be proposed to comply with Order No. 1920, the below *ex ante* cost allocation method language for Relevant State Entities. The inclusion of this example does not foreclose states from agreeing to other cost allocation approaches, each of which shall be evaluated on its own merits.

At the request of the Relevant State Entities in a multistate region, the following *ex ante* method for cost allocation may be proposed. In providing this example, the order is not foreclosing other approaches for allocating the costs of Long-Term Regional Transmission Facilities on either an *ex ante* or project-specific basis. Nor is the order suggesting that cost allocation methodologies must adopt a similar approach to this framework in order to comply with the requirements of this final rule:

(1) For purposes of cost allocation, the transmission providers shall run a scenario that otherwise complies with the Long-Term Regional Transmission Planning requirements of Order No. 1920 but does not include state laws, policies, and regulations and quantify the costs of the projects that would be selected from this scenario.

(2) The costs identified in (1) could be cost allocated according to an alternative *ex ante* formula filed by the transmission owners for the region.

(3) The amount representing the cost difference between the costs of projects selected pursuant to the Long-Term Regional Transmission Planning process and (1) shall be allocated as follows:

a. The transmission provider shall identify by state the specific state laws, policies, and regulations that were used to plan and select the facilities and shall quantify *by state* the specific costs of such facilities.

b. The costs identified in 3(a) shall be allocated solely to the state or states that are the sources of the policies used in planning and selection. The total difference between the costs of projects selected pursuant to the Long-Term Regional Transmission Planning process and (1) would be fully accounted for using this method of allocating costs among the states. The costs by zone *within* a state (Intrastate Costs) would be developed and filed by the applicable Transmission Owner(s).

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Lifejacket Approval Harmonization; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 181

46 CFR Parts 25, 28, 108, 117, 133, 141, 160, 169, 180 and 199

[Docket No. USCG–2022–0120]

RIN 1625–AC62

Lifejacket Approval Harmonization

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the approval requirements and follow-up program requirements for lifejackets by incorporating new standards to replace existing legacy standards. The Coast Guard further amends lifejacket and personal flotation device (PFD) carriage requirements to allow for the use of equipment approved to the new standards and removes obsolete equipment approval requirements. The amendments streamline the process for the approval of PFDs and allow manufacturers the opportunity to produce innovative equipment that complies with standards in both Canada and the United States. Manufacturing firms also stand to benefit through a reduced production-inspections burden.

DATES:

Effective dates: This final rule is effective January 6, 2025. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 6, 2025.

Compliance date: The Coast Guard will begin enforcing this rule on June 4, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to www.regulations.gov, type USCG–2022–0120 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Jacqueline Yurkovich, Coast Guard; telephone 571–607–4931, email Jacqueline.M.Yurkovich@uscg.mil.

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I. Abbreviations

- ANSI American National Standards Institute
 CFR Code of Federal Regulations
 DHS Department of Homeland Security
 FR Federal Register
 FRFA Final Regulatory Flexibility Analysis
 IBR Incorporation by reference
 ISO International Organization for Standardization
 NAICS North American Industry Classification System
 NBSAC National Boating Safety Advisory Committee
 NIH National Institutes of Health
 NPRM Notice of proposed rulemaking
 OMB Office of Management and Budget
 PFD Personal flotation device
 QMS Quality management system
 RA Regulatory analysis
 RFA Regulatory Flexibility Act
 § Section
 SBA Small Business Administration
 SME Subject matter expert
 SOLAS International Convention for the Safety of Life at Sea
 U.S.C. United States Code

II. Background, Basis, and Purpose

The Coast Guard has statutory authority under Title 46 of the United States Code (U.S.C.), Sections 3306(a) and (b), 4102(b), 4302(a) and (c), and 4502(a) and (c)(2)(B), to prescribe regulations for the design, construction, performance, testing, carriage, use, and inspection of lifesaving equipment on commercial and recreational vessels. Under Department of Homeland Security (DHS) Delegation 00170.1, Revision No. 01.4, paragraph (II)(92)(b), the Secretary delegated authority under these statutes to the Commandant of the Coast Guard.

With this rulemaking, we are incorporating the American National Standards Institute (ANSI) standards ANSI/CAN/UL 12402–5 for Level 50 and Level 70 personal flotation devices (PFDs), ANSI/CAN/UL 12402–4 for Level 100 PFDs, and ANSI/CAN/UL 9595 for quality assurance. In addition, we are incorporating the ANSI/UL 1123 and ANSI/UL 1175 standards for marine buoyant devices and inherently buoyant and inflatable throwable PFDs, respectively. The Coast Guard currently approves some inherently buoyant and inflatable throwable PFDs that meet

these standards because we have determined that a throwable PFD meeting the requirements in ANSI/UL 1123 or ANSI/UL 1175 provides an equivalent level of safety as a throwable PFD currently described in 46 CFR 160.064. Therefore, incorporating these standards in the Code of Federal Regulations (CFR) will not result in any changes in practice but will improve transparency.

We are also removing portions of title 46 in part 160 of the CFR, where the new incorporated standards supersede the previous standards or requirements. Additionally, we are adding amendments to lifesaving equipment carriage requirements that permit the use of Level 50, Level 70, and Level 100 PFDs approved to the new standards.

The Coast Guard actively participates in the development of ANSI-accredited industry consensus standards for lifesaving equipment. In that capacity, the Coast Guard worked with Transport Canada and United States and Canadian stakeholders in the development of the suite of harmonized ANSI/CAN/UL standards to streamline the process for approval of PFDs. Additionally, the harmonization allows manufacturers the opportunity to produce more innovative equipment that meets approval requirements in both Canada and the United States.

On September 22, 2014, the Coast Guard published a final rule in the **Federal Register** titled Personal Flotation Devices Labeling and Standards (79 FR 56491).¹ That rule removed references to type codes in its regulations on the carriage and labeling of Coast Guard approved PFDs to facilitate the future incorporation by reference (IBR) of new industry consensus standards. In April 2017, the Coast Guard and Transport Canada signed a Memorandum of Understanding outlining an intended cooperation for the approval of personal lifesaving appliances that comply with mutually acceptable standards, are tested by mutually accepted conformity assessment bodies or independent test laboratories, and are covered by a mutually acceptable follow-up program.²

On April 3, 2012, the Coast Guard published a final rule titled Inflatable Personal Flotation Devices (77 FR 19937), incorporating by reference updated revisions of industry consensus

¹ <https://www.federalregister.gov/documents/2014/09/22/2014-22373/personal-flotation-devices-labeling-and-standards> (last accessed November 15, 2024).

² <https://downloads.regulations.gov/USCG-2018-0565-0002/content.pdf> (last accessed November 15, 2024).

standards for PFDs including UL 1180, “UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices,” Second Edition (including revisions through December 3, 2010).³ The discussion and response to comments in that rulemaking included a discussion on inflatable PFDs for users less than 16 years of age. UL 1180 limits the approval of inflatable PFDs to persons of at least 16 years of age, and thus the 2012 final rule retained that age limit for approved users of inflatable PFDs. No age limit was included in the regulatory text to allow for a possible future rulemaking to incorporate by reference a standard that sufficiently addresses the needs of younger wearers.

On August 17, 2018, the Coast Guard published a notice in the **Federal Register** (83 FR 41095) regarding a policy letter and deregulatory savings analysis on accepting the standard ANSI/CAN/UL 12402–5 for Level 70 PFDs, not including inflatable PFDs for use by persons less than 16 years old.⁴ On November 15, 2019, the Coast Guard published a notice (84 FR 62546) that finalized this policy.⁵

III. Discussion of Comments

On April 7, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Lifejacket Approval Harmonization (88 FR 21016) requesting comments on the proposed changes implemented by this final rule.⁶ In response to the NPRM, we received 390 written submissions, nearly all of which were supportive of this rulemaking. Several commenters observed that performance-based standards such as those incorporated by this final rule allow manufacturers to design more innovative, comfortable, and stylish personal flotation devices and give manufacturers more flexibility when selecting materials, design, and construction. Others commented that aligning standards with Canada would promote consistency and enhance boating safety through improved lifejacket usage. We appreciate these supportive comments.

We received 370 comments as part of a write-in campaign. Of these comments, 368 were identical or nearly

identical in content and supported the harmonization of lifejacket standards between the United States and Canada. The commenters noted several benefits of harmonization, including streamlined processes, reduced costs, and enhanced cooperation between the United States and Canada.

Two commenters submitted comments that were nearly identical to the content of the write-in comments but offered opposition or an additional comment. One commenter used the supportive content of the write-in letter but indicated he was writing against the proposed changes. This commenter did not offer any reasoning for opposing the changes and cited the same benefits of harmonization as the other write-in commenters.

The other commenter wrote “not in support” of the rule, but also used the full text of the write-in letter, including the referenced benefits of harmonization. However, this commenter added a comment that urged the Coast Guard to actively develop our own standard. The standards were not developed solely by Canada, but also by the Coast Guard, Transport Canada, and industry organizations from both countries working in coordination. The Coast Guard actively participates in the development of lifejacket standards, including the standards being incorporated here.

One commenter suggested that if the new Level 50 devices do result in increased lifejacket usage and thus more lives saved, then the Coast Guard should consider mandating lifejacket wear in other circumstances. We may consider this suggestion for a future rulemaking.

One commenter questioned why 33 CFR subchapters N and NN were omitted from this rulemaking. These subchapters are out of scope for this rulemaking. Lifejackets approved under approval series 160.255 will not satisfy the requirements of 33 CFR 142.45 or 149.316 at this time. However, we thank the commenter and may consider updates to subchapters N and NN in a future rulemaking.

One commenter questioned what this rule means for current PFD devices, and specifically wondered if PFDs currently in use will need to be replaced. As explained in this preamble, PFDs that satisfied carriage requirements prior to publication of this final rule will continue to do so. It is not necessary for owners and operators to purchase new equipment if their current equipment is in good and serviceable condition.

One commenter stated that PFDs should not be mandated by any government. The Coast Guard considers

PFDs critical lifesaving equipment, for each person on each vessel. With this rulemaking, the Coast Guard amends current carriage requirements to include new approval series to allow owners, operators, and users the option of using PFDs approved to newly incorporated standards. We have not modified the requirement to carry PFDs; doing so would be outside the scope of this rulemaking.

One commenter noted that several subsections of the proposed rule reference 46 CFR 159.010, which in turn includes references to the older International Organization for Standardization (ISO) standard ISO/IEC 17025:2005 (covering accreditation of third party independent laboratories), with ISO/IEC 17025:2017 being the most current standard. The Coast Guard thanks the commenter for their thorough review, but criteria for acceptance, recognition, and accreditation of third party independent laboratories are outside the scope of this rulemaking project. Therefore, we did not make changes in response to this comment.

One commenter fully supported the rulemaking but suggested some minor corrections. The commenter noted that § 160.077 is referenced in §§ 199.620 and 169.539, but those sections do not include an additional effective date requirement. We did not make changes in response to this comment. The Coast Guard does not believe it is necessary to include an effective date requirement in either of those sections, since an effective date is only needed in sections mentioning a commercial hybrid PFD. The commenter also noted that the definition of *inspector* in 46 CFR 160.060–3 references § 160.255–15, but instead should reference § 160.060–15. That was an error in the NPRM which is corrected in this final rule. In addition to the reference in § 160.060–3 identified by the commenter, we discovered similar errors in §§ 160.055–3 and 160.064–3 and corrected the reference in those sections.

One commenter stated that the changes proposed in the NPRM were “great” but sought clarification on the replacement of the two-word term “life jacket” with the one-word term “lifejacket” and asked us to use the two-word term rather than the proposed one-word term. The commenter asserted that the two-word term has always been used in the United States and suggested this clarification avoids the appearance that this document is proposing that the United States needs to change the way the term “life jacket” is spelled in so many other places. We did not make changes based on this suggestion. The two-word term has not always been

³ <https://www.federalregister.gov/documents/2012/04/03/2012-7791/inflatable-personal-flotation-devices> (last accessed November 15, 2024).

⁴ <https://www.federalregister.gov/documents/2018/08/17/2018-17799/lifejacket-approval-harmonization>. (last accessed November 7, 2024).

⁵ <https://www.federalregister.gov/documents/2019/11/15/2019-24836/lifejacket-approval-harmonization>. (last accessed November 7, 2024).

⁶ <https://www.federalregister.gov/documents/2023/04/07/2023-06504/lifejacket-approval-harmonization>. (last accessed November 7, 2024).

used in the United States. The Coast Guard, industry, stakeholders, and user groups use the terms “lifejacket” and “life jacket” interchangeably. In the NPRM, the Coast Guard proposed to standardize the term to the one-word variation and we are finalizing that proposal here. We specifically selected the one-word term for use in our regulations to align with the use of the one-word term in the ANSI/CAN/UL 12402 standard, which is one of the standards incorporated by reference. However, industry, stakeholders, and user groups can continue to use the term “life jacket” if that is their preference.

One commenter fully supported the rule, specifically noting that PFDs would become stylish, comfortable, and appealing to the boating public, ultimately saving lives because they will wear them. The commenter suggested that the Coast Guard should permit anyone over 13 years old to wear an inflatable PFD to fulfill the mandated PFD carriage requirements. We agree with the commenter. The proposed rule did not include an age restriction for inflatable PFDs, which is finalized in this final rule.

One commenter noted that there seemed to be inconsistencies in the proposed requirements for back-up chambers, specifically that back-up chambers are required for lifejackets in 46 CFR 117.71 and 180.71 but not elsewhere. Another commenter requested clarification on why back-up chambers are required for lifejackets in 46 CFR 117.71, 180.71, and 199.620, but not 46 CFR 141.340.⁷ These differences are intentional. Because the incorporated standard ANSI/CAN/UL 12402–4 does not require back up chambers for inflatable Level 100 lifejackets, the proposed rule included the additional requirement that inflatable Level 100 lifejackets must have a back-up chamber to meet carriage requirements for passenger vessels, and this final rule retains that requirement.

One commenter supported the amendments to Requirements for Instruction Pamphlets for PFDs and suggested that the Coast Guard engage the Technical Committee 1123 to develop a “label standard” to address outstanding issues, such as the prospect that the placard would not effectively replace the pamphlet for products with legacy labels. The Coast Guard is fully engaged in UL Technical Committee 1123—Personal Flotation Devices and

would be open to the development of a label standard in the future.

The Coast Guard notes the suggestion from another commenter to include an icon on the lifejacket itself indicating Coast Guard approval. While there is no Coast Guard icon required to be printed directly on the device, the device must be marked with the words “USCG Approved” followed by the unique approval number and must also be marked with the laboratory’s certification mark. Additionally, the information placard at the point of sale clearly indicates with a check mark if the device is Coast Guard approved.

IV. Discussion of the Rule

A. General Discussion

By means of this final rule, the Coast Guard makes seven main amendments to our regulations:

(1) Adding new subpart 160.255, which incorporates by reference ANSI/CAN/UL 12402–4 for approval of Level 100 PFDs, and removing sections of subpart 160.055 related to materials and construction, marking, and procedure for approval because no new approvals will be granted under approval series 160.055;

(2) Adding new subparts 160.264 (Wearable Recreational PFDs) and 160.276 (Wearable Recreational Inflatable PFDs), both of which incorporate by reference ANSI/CAN/UL 12402–5 for approval of Level 50 and Level 70 PFDs without additional buoyancy or age restrictions; removing the sections of subparts 160.060, 160.064, and 160.076 pertaining to the approval of new wearable PFDs; relocating the sections pertaining to throwable PFDs from subpart 160.064 to new subpart 160.045 and incorporating by reference ANSI/UL 1123 and ANSI/UL 1175; and removing subpart 160.077 (Hybrid Inflatable PFDs) in its entirety;

(3) Incorporating by reference ANSI/CAN/UL 9595 for quality assurance requirements in subparts 160.045, 160.055, 160.060, 160.064, 160.076, 160.255, 160.264, and 160.276;

(4) Removing subparts 160.001, 160.002, 160.005, 160.006, 160.047, 160.048, and 160.052, as these subparts are mostly or entirely obsolete, and moving the remaining relevant material from subpart 160.001 to subpart 160.055;

(5) Amending lifesaving equipment carriage requirements to include the new approval categories, where appropriate, and removing any remaining references to type codes;

(6) Amending the requirements for instruction pamphlets for PFDs to also include the placard specified in part 181

subpart G in subparts 160.055, 160.060, 160.076, 160.255, 160.264, and 160.276, while retaining the option of instruction pamphlets for lifejackets approved under subparts 160.055, 160.060, 160.064, and 160.076; and

(7) Amending the existing regulatory text to make editorial corrections and increase clarity.

We provide additional details and discussion on each of these seven main categories of amendments below. Under 46 U.S.C. 4302(b), the effective (implementation) date of provisions in this final rule applying to recreational vessels must be at least 180 days after publication. For simplicity, the implementation date of the entire rule will be 180 days after the date of publication. While we have specified an effective date 30 days after publication of this final rule, we have also specified that we will not enforce these regulations until 180 days after publication in the **DATES** section above.

We consulted the National Boating Safety Advisory Committee (NBSAC) regarding the updated standards in this rule, as shown by NBSAC Resolutions 2009–83–01⁸ and 2011–87–01,⁹ and the revalidation of those resolutions found in Resolution 2022–03–01.¹⁰

1. Add New Subpart, 46 CFR 160.255, Incorporate by Reference ANSI/CAN/UL 12402–4, and Remove Sections of Subpart 160.055

We are adding a new subpart, 160.255, to 46 CFR. PFDs approved under this new subpart meet the carriage requirements for wearable PFDs for three groups: (1) inspected vessels; (2) uninspected commercial vessels over 40 feet (12m) in length; and (3) uninspected passenger vessels.

New subpart 160.255 contains structural and performance requirements for approval of Level 100 PFDs, as well as requirements for production inspections and quality control, markings, information pamphlets, and associated manuals. ANSI/CAN/UL 12402–4 is incorporated by reference. PFDs approved under this subpart rely upon inherently buoyant material, inflation, or a combination of

⁸ Available at https://homeport.uscg.mil/Lists/Content/Attachments/449/NBSAC%20Resolution%202009-83-01%20Changes%20to%20Approval%20Process%20for%20PFD_s.pdf (last accessed November 12, 2024).

⁹ Available at https://homeport.uscg.mil/Lists/Content/Attachments/459/NBSAC%202011-87-01%20-%20Signed_2.pdf (last accessed November 12, 2024).

¹⁰ Available at <https://homeport.uscg.mil/Lists/Content/Attachments/75876/Recommendation-2022-03-01--Signed.pdf> (last accessed November 12, 2024).

⁷ The commenter actually specified 46 CFR 141.349, a section which does not exist. From context, we assume this was a typographical error and the commenter actually meant 46 CFR 141.340.

the two to achieve the minimum buoyancy.

A Level 100 PFD has the same basic requirements as a PFD meeting current 46 CFR 160.055 (life preservers). The minimum amount of buoyancy, basic mechanical properties, and in-water performance requirements are the same. However, ANSI/CAN/UL 12402–4 is less prescriptive regarding the design requirements of a Level 100 PFD, so manufacturing firms can develop more innovative designs. The marking requirements in ANSI/CAN/UL 12402–4 specify pictorial graphics to communicate the performance of the PFD and warnings for use. The Coast Guard conducted research and focus groups to identify issues with the Type code labels and to evaluate multiple new pictorial labeling options. Our research indicated that people consistently preferred pictorial markings.¹¹ Therefore, we expect this marking format to be more easily understandable to both English-speaking and non-English-speaking populations.

ANSI/CAN/UL 12402–4 does not require fully or partially inflatable Level 100 PFDs to provide redundant back-up inflation chambers. Current regulations require inflatable lifejackets under approval series 160.176 to have at least two inflation chambers¹² and to reach minimum in-water performance with any one chamber deflated.¹³ These inflatable lifejackets meet the International Maritime Organization Life-Saving Appliance Code and are intended for use on vessels subject to SOLAS.

Back-up chambers were originally required for inflatable lifejackets intended for use on inspected vessels as an additional safety measure in case the primary inflation chamber failed to inflate (see 54 FR 50316, 50322, Dec. 5, 1989). In the 1989 interim final rule “Approval of Inflatable Lifejackets” preamble, the Coast Guard noted that we would continue discussions with industry, standards organizations, and state boating law administrators regarding the reliability of inflatable PFDs (54 FR 50317). We also indicated that when new developments or innovations reduced the risk of inflation failure to an acceptable level, we could address this issue with a subsequent rulemaking. Since the publication of that rule in 1989, the Coast Guard has no evidence that a well-maintained PFD

with a single inflation chamber is less reliable in the event of an emergency than an inherently buoyant PFD. Additionally, the Coast Guard has approved inflatable PFDs without back-up chambers under approval series 160.076. Such devices have been in use in the United States on uninspected commercial vessels less than 12 meters in length, and by recreational vessels and in Canada on small vessels, for over a decade. Therefore, the Coast Guard believes that the material testing of the PFD components coupled with the required annual servicing of inflatable Level 100 PFDs is sufficient, and that redundant back-up inflation chambers are not necessary to provide an equivalent level of safety to PFDs meeting current 46 CFR 160.055.

Because new subpart 160.255 supersedes the requirements for life preservers in subpart 160.055, we are removing structural and performance requirements for approval of life preservers in subpart 160.055, but maintaining the requirements for production inspections, tests, and quality assurance. Manufacturers can continue to produce life preservers currently approved under subpart 160.055, while all new lifejackets will require Coast Guard approval under new subpart 160.255.

At the same time, we are restructuring subpart 160.055 to include a statement of the subpart’s scope and to mirror the structure of other PFD-related subparts. We are adding sections for scope in § 160.055–1 and definitions in § 160.055–3, and standards incorporated by reference are moved from § 160.055–1 to § 160.055–5. Because no new approvals are granted under § 160.055, we are removing existing requirements for materials and construction, marking, and procedure for approval, including current 46 CFR 160.055–3, 160.055–4, 160.055–5, 160.055–6, 160.055–8, and 160.055–9. We are adding independent laboratory requirements in new § 160.055–11. We move sampling, tests, and inspections from § 160.055–7 to newly created § 160.055–15 and include pamphlet requirements in new § 160.055–19. We include procedures for the approval of design or material changes in new § 160.055–23 and information on suspension or termination of approval in new § 160.055–25.

2. Add New Subparts 46 CFR 160.045, 160.264, and 160.276, Incorporate by Reference ANSI/CAN/UL 12402–5, ANSI/UL 1123, and ANSI/UL 1175, Remove Sections of Subparts 160.060, 160.064, and 160.076, and Remove Subpart 160.077 in Its Entirety

We are adding three new subparts in 46 CFR: 160.045, 160.264, and 160.276. PFDs approved under these subparts meet the carriage requirements for recreational boats, in accordance with 33 CFR part 175. Wearable PFDs approved under subparts 160.264 and 160.276 also meet the carriage requirements for uninspected commercial vessels less than 40 feet (12m) in length and not carrying passengers for hire in accordance with 46 CFR subpart 25.25.

New subpart 160.264 contains structural and performance requirements for approval of Level 50 and Level 70 inherently buoyant PFDs, as well as requirements for production inspections and quality control, markings, information placards, and associated manuals. New subpart 160.276 contains structural and performance requirements for approval of Level 50 and Level 70 fully and partially inflatable recreational PFDs, as well as requirements for production inspections and quality control, associated manuals, information placards, and markings. ANSI/CAN/UL 12402–5 is incorporated by reference in both subparts.

ANSI/CAN/UL 12402–5 prescribes minimum performance requirements instead of prescribing design requirements. This performance-based standard allows manufacturing firms to design more innovative, comfortable, and stylish PFDs. New PFD designs could lead to more individuals choosing to wear their PFDs, resulting in fewer drownings.¹⁴ Drowning is the leading cause of death in recreational boating accidents, accounting for 79 percent of all recreational boating casualties where the cause of death is known.¹⁵ Of those

¹⁴ Readers should reference the National Center for Biotechnology Information, which is part of the National Library of Medicine at the National Institutes of Health (NIH), and perform a literature search for articles on the topic of PFDs and their usage. Readers can access this website at <https://pubmed.ncbi.nlm.nih.gov>. More specifically, readers should reference the following articles for further information: “Personal, social, and environmental factors associated with lifejacket wear in adults and children: A systematic literature review” (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5931488>) and “Barriers to life jacket use among adult recreational boaters.” (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4310692>) (last accessed April 23, 2024).

¹⁵ United States Coast Guard, “2019 Recreational Boating Statistics.” <https://safe.menlosecurity.com/>

¹¹ “Revision of Labeling and Classification for Personal Flotation Devices (PFDs),” *Applied Safety & Ergonomics, Inc.*, December 28, 2004, Young et al.

¹² 46 CFR 160.176–9(a)(1).

¹³ 46 CFR 160.176–13(j)(3).

who drowned, 86 percent were not wearing lifejackets. Wearing a lifejacket is one of the best means available of preventing accidental drowning in recreational boating. Unfortunately, recreational boaters only wear lifejackets about 24 percent of the time.¹⁶

Discomfort, whether real or perceived, is negatively associated with PFD wear.¹⁷ ANSI/CAN/UL 12402–5 allows manufacturers more flexibility when selecting materials, design, and construction of new PFDs. Because manufacturers will be less limited in the materials, design, and construction, we expect that new PFDs might be slimmer, lighter in weight, or more comfortable to wear than PFDs approved under the current requirements.

In our 2018 policy letter, CG–ENG Policy 02–18, titled Adoption of ANSI/CAN/UL 12402–5 and 9,¹⁸ the Coast Guard determined that Level 70 inherently buoyant devices, Level 70 inflatable devices, and Level 70 multi-chamber devices that meet the requirements of ANSI/CAN/UL 12402–5 provide equivalent performance to wearable PFDs meeting the requirements in current 46 CFR 160.064 or 160.076.¹⁹

The Coast Guard has now determined that a Level 50 PFD, when worn and used in accordance with the label, provides an equivalent level of safety as a wearable PFD that meets current subpart 160.064 or 160.076 requirements. A Level 50 PFD has a lower minimum amount of buoyancy than the current minimum requirement for Coast Guard approved PFDs. However, ANSI/CAN/UL 12402–5 requires that a Level 50 PFD keep the user's airway above the water, as demonstrated by in-water performance testing. A Level 50 PFD is intended for use by those who can swim and who have help or rescue nearby. As required

in ANSI/CAN/UL 12402–5, Level 50 PFDs must be marked: “Not recommended for weak or non-swimmers.” Every PFD offered for sale must have a placard providing users with information on how to select the appropriate PFD and reminding users to try the PFD on in the water to ensure proper fit and performance. To satisfy requirements of ANSI/CAN/UL 12402–5, Level 50 PFDs must be worn and must be marked: “Approval conditions state that this device must be worn to be counted as equipment required by vessels meeting Transport Canada or USCG regulations.” A Level 50 PFD, when worn by a person who can swim and used in accordance with ANSI/CAN/UL 12402–5, provides an equivalent level of safety as a PFD meeting the current requirements in 46 CFR 160.064 or 160.076. By approving Level 50 PFDs, the Coast Guard provides a critical level of oversight to the currently unregulated Level 50 competition watersports PFDs, resulting in safer products for the public.

In this final rule, we are not adding requirements that limit users of inflatable PFDs based on age. There are already requirements in ANSI/CAN/UL 12402–5 addressing inflatable PFDs for users less than 16 years of age. To be certified as meeting ANSI/CAN/UL 12402–5, an inflatable PFD intended for wearers less than 16 years of age must automatically inflate, must not require secondary donning, must be worn, and must include a warning statement about adult supervision. The Coast Guard believes these requirements are adequate to ensure safety for wearers less than 16 years of age, so we are fully incorporating ANSI/CAN/UL 12402–5 without any additional age restrictions beyond those included in the standard.

New subparts 160.264 and 160.276 supersede the requirements for foam buoyant vests in subpart 160.060, marine buoyancy devices in subpart 160.064, inflatable recreational personal flotation devices in subpart 160.076, and hybrid inflatable personal flotation devices in subpart 160.077.

We are removing the structural and performance requirements for the approval of foam buoyant vests, marine buoyant devices, and inflatable recreational flotation devices in subparts 160.060, 160.064, and 160.076, respectively, but retaining the requirements for production inspections, tests, and quality control of wearable PFDs. We are deleting subpart 160.077 entirely and modifying the scope of subpart 160.076 to include PFDs previously approved under subpart 160.077. By retaining the requirements for production

inspections, tests, and quality control, we ensure that manufacturing firms producing PFDs currently approved under approval series 160.060, 160.064, 160.076, or 160.077 can continue to manufacture and sell these PFDs, but the Coast Guard will not approve new products under these approval series. At the same time, we are reformatting the remaining text of subparts 160.060, 160.064, and 160.076, without amending the language, to align with the other subparts related to PFDs and increase the ease of understanding for the reader.

To eliminate confusion over approval categories, we are relocating the requirements for throwable PFDs from subpart 160.064 to new subpart 160.045. The new subpart 160.045 is dedicated to throwable PFDs intended for carriage on recreational boats. We permit the use of inflatable compartments to meet the minimum required buoyancy in § 160.045–7. This new subpart incorporates by reference the ANSI/UL 1175 standard for inherently buoyant and inflatable throwable PFDs and the ANSI/UL 1123 standard for marine buoyant devices. The Coast Guard already approves throwable PFDs to these standards; we are formally incorporating them by reference in this rulemaking to increase clarity and transparency of the approval requirements.

3. Incorporate by Reference ANSI/CAN/UL 9595

We are incorporating by reference new industry consensus standard ANSI/CAN/UL 9595, “Standard for factory follow-up of Personal Flotation Devices (PFDs)” (First Edition, June 4, 2020), into subparts 160.045, 160.055, 160.060, 160.064, 160.076, 160.255, 160.264, and 160.276. This standard covers the basic elements of a production inspection program for various types of PFDs.

The Coast Guard currently requires a satisfactory follow-up (production testing and inspection) program administered by an independent laboratory recognized by the Coast Guard for each approved PFD. A task group of experts and stakeholders convened over the past decade to develop ANSI/CAN/UL 9595 to improve the consistency of follow-up programs among different recognized independent laboratories and to provide a binational harmonized standard for production testing acceptable to the Coast Guard and Transport Canada.

ANSI/CAN/UL 9595 establishes a set of Process Ratings (A, B, and C) based on the quality management system (QMS) at each facility. Process Rating A is reserved for facilities that have

doc/docview/viewer/docN0C8787B5BC27b941976de80db865a89b27e43db4732447826e405d5b93b8a0a1dd64625cf817 (last accessed April 23, 2024).

¹⁶ United States Coast Guard, “2019 Life Jacket Wear Rate Observation Study.” <https://uscgboating.org/library/national-live-jacket-wear-study/2019-Life-Jacket-Wear-Rate-Report.pdf> (last accessed April 23, 2024).

¹⁷ Amy Peden, Daniel Demant, Martin Hagger, and Kyra Hamilton, “Personal, social, and environmental factors associated with lifejacket wear in adults and children: A systematic literature review.” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5931488/> (last accessed April 23, 2024).

¹⁸ <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/Design%20and%20Engineering%20Standards/Life%20Saving%20and%20Fire%20Safety/Docs/L%20A%20HARM%20POLICY%2020180801-Signed.pdf?ver=2018-08-01-131843-173> (last accessed April 23, 2024).

¹⁹ 83 FR 41095

demonstrated a superior QMS meeting ISO standard ISO 9001. Process Rating B is assigned to facilities with a good QMS including a Quality Manual that incorporates the requirements in ANSI/CAN/UL 9595 but is not approved by a third party. Process Rating C provides a minimum requirement for production inspections that is equivalent to current industry practice for follow-up programs and meets the minimum requirements currently accepted by the Commandant.

At Process Ratings A and B, ANSI/CAN/UL 9595 provides the option for the manufacturer to implement a QMS to reduce the number of inspections required. ANSI/CAN/UL 9595 lists roles and responsibilities; required tests, sample sizes, and acceptability criteria; and specific requirements for inspection frequency, traceability of components, critical dimensions verification, visual inspection of completed PFDs, and review of records. Annex A provides test methods and Annex B provides information on the elements of a QMS.

We include ANSI/CAN/UL 9595 in the new subparts 160.045, 160.255, 160.264, and 160.276 and in existing subparts 160.055, 160.060, 160.064, and 160.076, to allow manufacturers that implement a QMS to be evaluated as Process Rating A or B, resulting in fewer required inspections. A QMS can result in greater production consistency, a reduction in defects and errors, increased efficiency, and continuous improvement.

4. Remove Obsolete Material and Relocate Pertinent Material

We are removing subparts 160.002, 160.005, 160.006, 160.047, 160.048, and 160.052, while also removing or relocating the entirety of subpart 160.001. Subpart 160.001 provides general requirements for all life preservers. Most of this information is either obsolete or found elsewhere in the CFR. We are removing subpart 160.001, while preserving the still-pertinent information on production oversight by relocating it to § 160.055–15.

Subpart 160.006 provides two paragraphs related to the repairing of life preservers. Subpart 160.006 is no longer relevant and is not referenced in any approval or carriage requirement; therefore, we are removing it.

Subparts 160.002, 160.005, 160.047, and 160.048 provide specifications and requirements for kapok and fibrous glass life preservers. Subpart 160.052 provides specifications and requirements for a unicellular plastic foam buoyant vest. Manufacturers no longer produce any of these types of life

preservers due to the unavailability of material, the advancement of foam technology, and improvements to the fit and function of PFDs industry-wide.

With no current approvals for equipment under any of these subparts, these approval categories have become obsolete. Therefore, we are removing subparts 160.002, 160.005, 160.047, 160.048, and 160.052. All new PFD approvals will have to meet the requirements in subparts 160.255, 160.264, and 160.276, which incorporate current industry standards.

5. Amend Lifesaving Equipment Carriage Requirements

Where existing carriage requirements specify approval series for PFDs, we are adding the new approval series, as applicable. The affected subchapters are subchapter C (Uninspected Commercial Vessels), subchapters K and T (Small Passenger Vessels), subchapter L (Offshore Supply Vessels), subchapter M (Towing Vessels), and subchapter W (Lifesaving Appliances for Certain Inspected Vessels). If we identify other affected subchapters in the future, we could address them in a future rulemaking or guidance document.

For example, according to the existing requirements under subchapter C, an uninspected vessel carrying passengers for hire must have at least one PFD approved under approval series 160.055, 160.155, or 160.176 for each person on board (46 CFR 25.25–5). We are adding approval series 160.255 to the list of approval series to permit the use of PFDs approved under this new approval series. We are not removing any of the currently accepted approval series from the carriage requirements. Therefore, it will not be necessary for owners and operators to purchase new equipment if their current equipment is in good and serviceable condition.

We are also removing references to PFDs approved under approval series 160.177 because there have never been any approvals granted under that series. All new commercial PFDs, including commercial hybrid PFDs, will be approved under approval series 160.255.

6. Amend the Requirements for Instruction Pamphlets for PFDs

We are amending the requirements for instruction pamphlets for PFDs in 33 CFR 181 to allow both pamphlets and placards to meet the requirements for information furnished with each PFD sold or offered for sale for use on recreational boats. As previously described, we are incorporating both ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 with respect to the

approval of PFDs. Both standards require that a PFD include an informational placard in a pictographic format containing specific information on PFD performance, selection, approval, and maintenance, as well as general water safety information. To permit the placard to be used in place of the currently required pamphlet, the Coast Guard is adding the term “placard” to 33 CFR 181.702. We are also removing 33 CFR 181.703, which requires that placards conform with UL 1123, and adding text to 33 CFR 181.702 specifying that a pamphlet or placard must meet the requirements in the applicable subpart of 46 CFR part 160 or be accepted by the Commandant. All currently approved PFDs have pamphlets or placards that have been accepted by the Commandant. Removing 33 CFR 181.703 eliminates all references to UL 1123 in this subpart, so we are removing 33 CFR 181.4, which incorporates that standard, as well. Finally, we are removing the separate requirements for hybrid and inflatable PFDs in 33 CFR 181.704 and 181.705, respectively, and including requirements for all PFDs in 33 CFR 181.702.

7. Amend the Existing Regulatory Text To Make Editorial Corrections and Increase Clarity

We are updating the introductory IBR text, in accordance with current practice, in 46 CFR 160.055, 160.060, 160.064, and 160.076. We are amending Table 28.110 to replace “Do” (meaning “ditto”) with the actual text to clarify the requirements in plain language, and to remove references to type codes from the table without modifying the intent or application of the requirements. We are also removing reference to approval series 160.177 in 46 CFR 108, 133 and 199 because this approval series has never been used, and removing outdated provisions allowing cork and balsa wood lifejackets until March 11, 1999, from 46 CFR 117 and 180. Finally, we are consistently using the term “lifejacket” by amending instances of “life jacket” from two words to one.

B. Standards Incorporated by Reference To Be Updated or Added

Following this paragraph, we include an alphabetical list of the standards we are adding, each with a listing of the sections in which they appear in 46 CFR. For each standard listed, we describe the topics covered by the standard, the edition adopted, and a list of subparts or sections that reference the standard.

- ANSI/CAN/UL 9595, Standard for Safety Factory Follow-Up on Personal

Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021). This standard is incorporated by reference in §§ 160.045–15, 160.055–15, 160.060–15, 160.064–15, 160.076–29, 160.255–15, 160.264–15, and 160.276–15. This binational standard covers the basic elements of a production inspection program for various types of PFDs, and formalizes and modifies current industry standards.

- ANSI/CAN/UL 12402–4, Standard for Safety Personal Flotation Devices—Part 4: Lifejackets, Performance Level 100—Safety Requirements, First Edition, July 9, 2020. This standard is incorporated by reference in §§ 160.255–7, 160.255–13, 160.255–17, 160.255–19, and 160.255–21. This binational standard specifies the safety requirements for lifejackets that provide face-up flotation for use in sheltered or calm water, where users may have to wait for rescue. A lifejacket meeting the requirements of ANSI/CAN/UL 12402–4 provides an equivalent level of safety to a lifejacket currently approved under current 46 CFR subpart 160.055.

- ANSI/CAN/UL 12402–5, Standard for Safety Personal Flotation Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements, First Edition, December 31, 2015 (including revisions through January 27, 2022). This standard is incorporated by reference in §§ 160.264–7, 160.264–13, 160.264–17, 160.264–19, 160.264–21, 160.276–7, 160.276–13, 160.276–17, 160.276–19, and 160.276–21. This binational standard specifies the safety requirements for buoyancy aids used in sheltered waters with help and rescue nearby. A PFD meeting the requirements of ANSI/CAN/UL 12402–5 provides an equivalent level of safety as a PFD currently approved under 46 CFR 160.064 or 160.076.

- ANSI/UL 1123, Standard for Safety Marine Buoyant Devices, Seventh Edition, October 1, 2008 (including revisions through November 23, 2020). This standard is incorporated by reference in §§ 160.045–7 and 160.045–13. ANSI/UL 1123 provides requirements for Type II, Type III, and Type IV marine buoyant devices, including vests, jackets, horseshoe buoys and ring buoys, with or without lifelines, intended for recreational use, and throwable cushions.

- ANSI/UL 1175, Standard for Safety Buoyant Cushions, Fourth Edition, April 20, 2007 (including revisions through January 10, 2020). This standard is incorporated by reference in §§ 160.045–7 and 160.045–13. This standard provides requirements for throwable PFDs using inherent or

inflatable buoyancy that are intended to be used in accordance with applicable Coast Guard regulations.

C. Standards Incorporated by Reference To Be Removed

Following this paragraph, we include an alphabetical list of the standards we are removing as a result of this final rule. These standards are being removed because the regulatory text applying to these standards has been removed, and the newly incorporated standards supersede and replace these standards.

- ASTM B117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus.

- ASTM D413–82, Standard Test Methods for Rubber Property—Adhesion to Flexible Substrate.

- ASTM D570–95, Standard Test Method for Water Absorption of Plastics.

- ASTM D751–95, Standard Test Method for Coated Fabrics.

- ASTM D882–97, Standard Test Method for Tensile Properties of Thin Plastic Sheeting.

- ASTM D1004–94a, Standard Test Method for Initial Tear Resistance of Plastic Film and Sheeting.

- ASTM D1434–82 (Reapproved 2009), Standard Test Method for Determining Gas Permeability Characteristics of Plastic Film and Sheeting.
- CCC–C–426D, Cloth, Cotton Drill.
- CCC–C–700G, Cloth, Coated, Vinal, Coated (Artificial Leather).

- Color Names Dictionary, “The Universal Color Language” and “The Color Names Dictionary” in Color: Universal Language and Dictionary of Names, National Institute of Standards Special Publication 440.

- Federal Standard No. 595A, Color.
- Federal Standards No. 751 and 751A, Stitches, Seams, and Stitchings.

- Federal Test Method Standard No. 191, Textile Test Methods, including:
 - Method 5100, Strength and Elongation, Breaking of Woven Cloth; Grab Method;

- Method 5132, Strength of Cloth, Tearing; Falling-Pendulum Method;
 - Method 5134, Strength of Cloth, Tearing; Tongue Method;

- Method 5804.1, Weathering Resistance of Cloth; Accelerated Weathering Method; and
 - Method 5762, Mildew Resistance of Textile Materials; Soil Burial Method.

- L–P–375 and L–P–375C, Plastic Film, Flexible, Vinyl Chloride.

- MIL–C–43006D, Cloth and Strip Laminated, Vinyl-Nylon High Strength, Flexible.

- MIL–L–24611(SH), Life Preserver Support Package for Life Preserver, MK 4.

- MIL–B–2766 and MIL–R–2766B, Batt, Fibrous Glass, Lifesaving Equipment.

- MIL–T–3530E, Thread and Twine; Mildew Resistant or Water Repellent Treated.

- MIL–W–530 and MIL–W–530F, Webbing, Textiles, Cotton, General Purpose, Natural and in Colors.

- MIL–W–17337D, Webbing, Woven, Nylon.

- UL 1123, UL Standard for Safety for Marine Buoyant Devices.

- UL 1180, UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices.

- UL 1191, Components for Personal Flotation Devices.

- UL 1517, Standard for Hybrid Personal Flotation Devices.

D. Changes to the Regulatory Text From the NPRM

As discussed in Section III of this preamble, Discussion of Comments, we corrected three errors in cross-references that were the result of typographical errors in the NPRM. We updated the definition for *inspector* in 46 CFR 160.055–3 to now cross-reference § 160.055–15 rather than § 160.255–15; in § 160.060–3 to now cross-reference § 160.060–15 rather than § 160.255–15; and in § 160.064–3 to now cross-reference § 160.064–15 rather than § 160.264–15. We also corrected the definition for *inspector* in 46 CFR 160.276–15 to cross-reference § 160.276–15 rather than “part 15 of this guideline.”

In § 160.076–1 (“Scope”), we added a paragraph, (c), to help explain and clarify the applicability of subpart 160.076. We also added additional amendatory instructions that were inadvertently missed in the NPRM. These include removing § 160.076–3 and redesignating § 160.076–3 as § 160.076–5, redesignating § 160.076–11 as § 160.076–5, and revising the newly redesignated § 160.076–5.

There are no other changes to the regulatory text from the NPRM.

V. Incorporation by Reference

Material for incorporation by reference appears in 46 CFR 160.045–5, 160.055–5, 160.060–5, 160.064–5, 160.076–5, 160.255–5, 160.264–5, and 160.276–5 and is summarized in section IV.B of this preamble, *Standards Incorporated by Reference to be Updated or Added*. Copies of the material are available either at the publisher’s web address listed in the incorporation by reference sections in 46 CFR 160.045–5, 160.055–5, 160.060–5, 160.064–5, 160.076–5, 160.255–5, 160.264–5, and 160.276–5, or by

contacting the publisher listed for those standards. We reviewed and updated all the publisher's web addresses listed in the parts to ensure they are current. You may also contact the person in the **FOR FURTHER INFORMATION CONTACT** section for additional direction on how to obtain access to electronic copies of the materials.

We believe industry already has access to and uses these new standards. The affected industry, in particular recognized independent laboratories, typically obtains the most recent editions of standards in the course of their business to address advancements in technology.

The Director of the Federal Register approved the material in 46 CFR 160.045–5, 160.055–5, 160.060–5, 160.064–5, 160.076–5, 160.255–5, 160.264–5, and 160.276–5 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and

Executive orders related to rulemaking. We have prepared a full regulatory analysis (RA) based on these statutes and Executive orders and have placed it in the docket where indicated under the **ADDRESSES** portion of the preamble. A summary of our analysis follows. Where we mention the analysis in the RA, we are referring the reader to the RA in the docket.

A. Regulatory Planning and Review

Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and Executive Order 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Two additional Executive orders promote the goals of Executive Order 13563: Executive Order 13609 (Promoting International Regulatory Cooperation) and Executive Order 13610 (Identifying and Reducing Regulatory Burdens). Executive Order 13609 targets international regulatory cooperation to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. Executive Order 13610 aims to modernize the regulatory systems and to reduce unjustified regulatory burdens and costs on the public.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). A summary of the RA follows; see the docket for our full analysis.

TABLE 1—SUMMARY OF IMPACTS OF THE FINAL RULE

Category	Summary	
Applicability	IBR of ANSI/CAN/UL 9595, ANSI/CAN/UL 12402–5, and ANSI/CAN/UL 12402–4.	
Affected Population	2 recognized independent laboratories (1 U.S. and 1 foreign), 61 PFD manufacturing firms (39 U.S. and 22 foreign), the Coast Guard, recreational vessel operators, and commercial vessel operators.	
Costs to American Firms (\$2023, 2% discount rate)	10-year	\$1,865,564
	Annualized	207,687
Costs to Foreign Firms (\$2023, 2% discount rate)	10-year	455,782
	Annualized	50,741
Total Costs (\$2023, 2% discount rate)	10-year	2,321,343
	Annualized	258,427
Benefits to American Firms (\$2023, 2% discount rate)	10-year	8,871,985
	Annualized	987,687
Benefits to Foreign Firms (\$2023, 2% discount rate)	10-year	2,222,303
	Annualized	247,401
Benefits to the United States Government (\$2023, 2% discount rate)	10-year	38,895
	Annualized	4,330
Total Benefits to All Entities (\$2023, 2% discount rate)	10-year	11,133,183
	Annualized	1,239,419
Net Benefits to American Firms (\$2023, 2% discount rate)	10-year	7,006,423
	Annualized	780,001
Net Benefits to Foreign Firms (\$2023, 2% discount rate)	10-year	1,766,522
	Annualized	196,661
Net Benefits to the United States Government (\$2023, 2% discount rate)	10-year	38,895
	Annualized	4,330
Net Benefits to All Entities (\$2023, 2% discount rate)	10-year	8,811,839
	Annualized	980,991
Unquantified Benefits	The newer performance-based standards will allow for the development of more innovative PFD designs that might better meet boaters' needs. New PFD designs that may be more form fitting, in addition to the requirement that Level 50 devices be worn to count for carriage, could lead to higher PFD wear rates and additional lives saved from drowning. Placards are cheaper to produce than pamphlets and provide pictorial instructions, understandable by non-English reading populations.	

By means of this final rule, the Coast Guard harmonizes its approval process for PFDs with that of Canada, resulting in cost savings from eliminating a second set of approval requirements for PFD manufacturers wishing to sell in both Canada and the United States and reducing the required amount of product inspections depending on the quality management system in place at a given manufacturing facility. This rule removes barriers to entry for future innovative personal flotation devices and will save manufacturers money from reducing regulatory burdens without sacrificing quality. On net, the Coast Guard projects that manufacturers and the Coast Guard will save over \$1,000,000 annually on reduced production inspections.

Additionally, the Coast Guard expects that the introduction of Level 50 devices, coupled with the requirement to wear them if they are to count for the purposes of PFD carriage requirements, will lead to an unquantifiable increase in PFD wear rates among recreational boaters, and thereby potentially decrease the rate of drowning in the event of an accident. Only Coast Guard approved devices are eligible to count for PFD carriage requirements, and, for Level 50 devices to count, they must be worn. The Coast Guard therefore expects that recreational boaters purchasing Level 50 PFDs for the purposes of carriage are more likely to wear them. Drowning is the leading cause of death in recreational boating accident and a study of drowning incidents found that, 86 percent of the time, individuals who drowned were not wearing a PFD.²⁰ Absent these regulations, Level 50 devices cannot be sold as Coast Guard approved devices, and the expected increase in PFD wear rates among recreational boaters will not materialize.

The final rule introduces harmonized performance standards instead of design standards for PFDs. It amends PFD approval and follow-up program requirements by incorporating three new binational standards into regulations, amending PFD carriage requirements to allow for the use of equipment approved to the new standards, and removing obsolete equipment approval requirements. The performance-based standards are more

current and intended to replace the legacy design standards. The amendments allow manufacturers to produce more innovative equipment that meets the approval requirements of Canada and the United States and reduce the burden for manufacturers in the approval process and follow-up program.

Specifically, the Coast Guard incorporates by reference the following binational industry consensus standards:

(1) ANSI/CAN/UL 12402–4. This binational standard specifies the safety requirements for lifejackets that provide face-up flotation for use in sheltered or calm water, where users may have to wait for rescue. A lifejacket meeting the requirements of ANSI/CAN/UL 12402–4 provides an equivalent level of safety to a lifejacket currently approved under 46 CFR subpart 160.055.

(2) ANSI/CAN/UL 12402–5. This binational standard specifies the safety requirements for buoyancy aids used in sheltered waters with help and rescue nearby. A PFD meeting the requirements of ANSI/CAN/UL 12402–5 provides an equivalent level of safety as a PFD currently approved under 46 CFR 160.064 or 160.076.

(3) ANSI/CAN/UL 9595. This binational standard covers the basic elements of a production inspection program for various types of PFDs and formalizes and modifies current industry standards.

Additionally, the Coast Guard incorporates two national standards (ANSI/UL 1123 and ANSI/UL 1175) and amends numerous CFR parts to remove obsolete PFD design standards and update carriage requirements to include PFDs approved to the new subparts. As mentioned earlier, ANSI/UL 1123 and ANSI/UL 1175 are both currently in use as a matter of policy and are being incorporated by reference for the sake of clarity. We do not estimate any costs or benefits from their incorporation by reference into the CFR. Similarly, we do not anticipate any quantifiable costs or benefits from the removal of obsolete design standards, as these design standards are not currently in use.

In moving from the NPRM to this final rule, we made the following changes to the RA and small entities section:

(1) Updated wage figures to use the most recently available data.

(2) Updated deflators and costs to 2023.

(3) Added a Final Regulatory Flexibility Act Analysis (FRFA).

(4) Updated the affected population numbers based on more recent data.

(5) Included descriptions of public comments that supported assumptions we made in the NPRM. As noted above, public comments overwhelmingly supported this rule. Some of those comments supported assumptions we made in the NPRM. We did not receive any comments that disagreed with our assumptions or offered new information that would require changes to the analysis.

Affected Population

To determine the affected population of the rule, it is first necessary to describe the economic impacts from this final rule. The economic impacts stem from the following four provisions:

(1) The IBR of ANSI/CAN/UL 12402–4 in 46 CFR 160.255 to replace the design requirements in 46 CFR 160.055;

(2) The IBR of ANSI/CAN/UL 12402–5 in 46 CFR 160.264 and 160.276 to replace the design standards in 46 CFR 160.064, 160.076, and 160.077;

(3) The IBR of ANSI/CAN/UL 9595 for follow-up service into the PFD approval requirements of existing subparts 46 CFR 160.055, 160.060, 160.064, 160.076 and new subparts of 46 CFR 160.045, 160.255, 160.264, and 160.276; and

(4) The edits to 33 CFR 181 subpart G, which permit manufacturers of all PFDs to provide placards instead of information pamphlets.

These four provisions affect PFD manufacturers, the two recognized independent laboratories, and the Coast Guard. Before we present the affected population for each of these provisions, we present the overall PFD manufacturing firm population.

As of 2023, there are over 800 models of PFDs approved by the Coast Guard, manufactured by 61 separate manufacturing firms worldwide.²¹ Based on a review of publicly available information across the 61 manufacturing firms, the Coast Guard estimates that 39 are U.S. firms and 22 are foreign firms. Market share and production volumes are not equal across the firms.²²

²¹ The Coast Guard lists all approved products on the Coast Guard Maritime Information Exchange website, <https://cgmix.uscg.mil/>. Last accessed April 25, 2024.

²² We used the headquarters location of a firm's parent company, as indicated on the company website, to determine whether a firm was U.S. or foreign.

²⁰ United States Coast Guard. "2019 Recreational Boating Statistics." <https://uscgboating.org/library/accident-statistics/Recreational-Boating-Statistics-2019.pdf> (last accessed April 22, 2024).

TABLE 2—DISTRIBUTION OF MARKET SHARE OF PFD MANUFACTURERS

Manufacturing firms	Total market share (%)	U.S. firm market share (%)	Foreign firm market share (%)
Top 5 Manufacturing Firms	75	65.00	10.00
Manufacturing Firms 6–13	20	12.50	7.50
All Other Manufacturing Firms	5	3.125	1.875
Total	100	80.625	19.375

The first provision, the IBR of ANSI/CAN/UL 12402–4, affects three populations:

(1) PFD manufacturers that seek approval to manufacture devices meeting the requirements of ANSI/CAN/UL 12402–4;

(2) The two recognized independent laboratories that review and certify these devices; and

(3) The Coast Guard, which corresponds with the recognized independent laboratories and manufacturers on device approval. In table 3, we list the number of PFD manufacturing firms that are affected by

ANSI/CAN/UL 12402–4. We estimate that each of the top 13 firms that produce ANSI/CAN/UL 12402–4 devices or components of those devices at 2 facilities each and firms outside of the top 13 firms that produce ANSI/CAN/UL 12402–4 devices at 1 facility each.²³

TABLE 3—MANUFACTURING FIRMS AND FACILITIES IMPACTED BY ANSI/CAN/UL 12402–4

Firm ownership	U.S. firms	Foreign firms	U.S. associated facilities	Foreign facilities	Total facilities
Firms in top 13	5	3	10	6	16
All other firms	4	2	4	2	6
Total facilities	9	5	14	8	22

In the second provision, by incorporating by reference ANSI/CAN/UL 12402–5, the Coast Guard introduces new categories for youth inflatables and Level 50 PFDs for approval. Permitting youth inflatables and Level 50 devices affects three populations:

(1) PFD manufacturers that seek Coast Guard approval to produce youth inflatables or Level 50 devices;

(2) The two recognized independent laboratories that review and certify youth inflatables and Level 50 devices; and

(3) The boating public that purchases youth inflatables or Level 50 devices instead of Level 70 or Type III devices, because youth inflatables and Level 50 devices are likely to be more form-fitting than Level 70 or Type III devices.

In the third provision, the Coast Guard intends to incorporate by reference ANSI/CAN/UL 9595, covering production inspections and inspection frequency, into multiple new and existing subparts in 46 CFR, as listed in table 4.

TABLE 4—PFDs IMPACTED BY ANSI/CAN/UL 9595

Subpart	PFD type	New or existing subpart
160.045	Throwable PFDs	New.
160.255	Level 100 PFDs	New.
160.264	Inherently Buoyant Level 50 and Level 70 PFDs	New.
160.276	Inflatable Level 50 and Level 70 PFDs	New.
160.055	Life Preservers	Existing.
160.060	Buoyant Vests	Existing.
160.064	Marine Buoyant Devices	Existing.
160.076	Inflatable PFDs	Existing.

ANSI/CAN/UL 9595 establishes a set of Process Ratings (A, B, and C) based on the QMS at each facility. Process Rating A is reserved for facilities that have demonstrated a superior QMS.

Process Rating B is assigned to facilities with a good QMS. Process Rating C is assigned to facilities with a minimally compliant QMS. The requirements for Process Rating C are equivalent to the

current minimum requirements. Because Process Rating C is equivalent to current industry practice, the affected population for the IBR of ANSI/CAN/UL 9595 are any PFD manufacturer

²³ The PFD manufacturing firm does not necessarily own the facilities where its products are produced. Instead, the facility may be producing PFDs on contract for the PFD manufacturing firm.

Additionally, much production for U.S. firms occurs at overseas facilities. We call these “U.S. Associated Facilities” not because they are in the United States but because they have a longstanding

relationship with U.S. firms, while “Foreign Facilities” have longstanding relationships with foreign firms.

producing a device approved under one of the subparts listed in table 4 and eligible to gain a Process Rating of A or B.

In table 5, we estimate the market share likely to be at Process Rating A, B, or C and whether they are foreign or domestic firms.²⁴ Because a QMS

system is expensive to set up, industry stakeholders informed the Coast Guard that firms are not expected to develop a QMS solely to secure the cost savings of ANSI/CAN/UL 9595. However, a number of firms have already established QMS systems at their facilities because of other benefits, such

as production consistency and quality control. The firms that have already established a QMS system will experience net cost savings from the IBR of ANSI/CAN/UL 9595. As a result, we estimated the process rating distribution recorded in table 5.

TABLE 5—MARKET SHARE OF PRODUCTION LIKELY TO BE AT EACH PROCESS RATING

Firm category	Process rating	Market share (%)
U.S. Firms	A	26.5
Foreign Firms	A	15.0
U.S. Firms	B	51.0
Foreign Firms	B	2.5
U.S. and Foreign Firms	C	5.0
Total		100.0

The fourth provision, permitting the option for placards to replace instruction pamphlets, affects all firms

manufacturing PFDs approved to any of the categories in table 6 that list

placards as permitted under the final rule.

TABLE 6—DEVICE CATEGORY AND PERMITTED INSTRUCTION TYPES

Device category	Types of instructions allowed by the final rule	Types of instructions currently in use
New Level 50 Devices (ANSI/CAN/UL 12402–5)	Placard	N/A because these devices are not yet produced.
New Level 70 Devices (ANSI/CAN/UL 12402–5)	Placard	Placard.
New Level 100 Devices (ANSI/CAN/UL 12402–4)	Placard	N/A because these devices are not yet produced.
Existing Type I Commercial Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type II Recreational Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type III Recreational Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type IV Throwable Devices	Information Pamphlet	Information Pamphlet.

Costs and Cost Savings of the Four Provisions of This Rule

1. ANSI/CAN/UL 12402–4

Costs

There are two sources of costs from this provision: (1) independent laboratories will need to train their staff to these new standards and (2)

manufacturing firms that intend to sell in only one market (the United States or Canada) will experience additional costs due to an increase in the cost of testing according to ANSI/CAN/UL 12402–4 when compared to the cost of testing to the legacy standards.²⁵

We provide our estimate for the total costs of the IBR of ANSI/CAN/UL 12402–4 to U.S. firms in table 7. These

costs include \$29,500 paid by independent laboratories in the first year to develop the instructions and manuals on how to conduct the new ANSI/CAN/UL 12402–4 testing and the estimated \$1,659 per year manufacturers will spend on the more expensive ANSI/CAN/UL 12402–4 certification as opposed to the legacy certification.²⁶

²⁴ The process rating applies to a facility owned by a PFD manufacturing firm. The lowest process rating is C; if manufacturers seek a higher process rating of A or B, then an independent laboratory must certify that each facility owned by a manufacturing firm meets the standard of the higher rating, which is determined through an audit of a facility. A PFD manufacturing firm incurs the cost of a higher process rating at each facility. A PFD manufacturing firm who currently has a QMS (at least partially in place) will be able to seek a higher process rating, A or B, for each facility it owns (process rating C is the current baseline or default

rating and represents the current inspection volume at facilities). A separate QMS inspection or audit is necessary for this to occur. A higher process rating will result in a reduction in the inspection volume at facilities, which will save PFD manufacturing firms money.

²⁵ We estimate the increase in the cost of testing based upon data provided by representatives of independent laboratories.

²⁶ We estimate the cost of Level 100 testing and approval to be about \$52,250 and we estimate the cost for the new Type I approval to be about \$47,200. The Coast Guard estimates 0.45 new

approvals annually for products intended for sale exclusively in the United States. Therefore, the total additional cost to manufacturers for the more expensive Level 100 certification will be about \$2,273. There are currently 51 products approved as Type I devices under 46 CFR part 160.055, of which 37 (73 percent) are produced by U.S. PFD firms and 14 (27 percent) are produced by foreign PFD firms. Therefore, we estimate the cost to U.S. PFD firms for the new UL 12402–4 approval will be about \$1,659 annually. We estimate the cost to foreign PFD firms will be about \$614 annually.

TABLE 7—ESTIMATED COSTS TO U.S. FIRMS FOR LEVEL 100 DEVICES UNDER STANDARD ANSI/CAN/UL 12402–4
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs
		2%
1	\$31,159	\$30,548
2	1,659	1,595
3	1,659	1,563
4	1,659	1,533
5	1,659	1,503
6	1,659	1,473
7	1,659	1,444
8	1,659	1,416
9	1,659	1,388
10	1,659	1,361
Total	46,090	43,824
Annualized .....	.....	4,879

We present the 10-year total costs to foreign firms from the IBR of ANSI/CAN/UL 12402–4 in table 8. Foreign firms will experience additional approval costs of \$614 per year.

TABLE 8—ESTIMATED COSTS TO FOREIGN FIRMS FOR LEVEL 100 DEVICES UNDER STANDARD ANSI/CAN/UL 12402–4
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs
		2%
1	\$614	\$602
2	614	590
3	614	579
4	614	567
5	614	556
6	614	545
7	614	535
8	614	524
9	614	514
10	614	504
Total	6,140	5,515
Annualized .....	.....	614

We present the 10-year total costs to U.S. and foreign firms from the IBR of ANSI/CAN/UL 12402–4 in table 9.

TABLE 9—ESTIMATED TOTAL COST TO ALL FIRMS FOR LEVEL 100 DEVICES UNDER STANDARD ANSI/CAN/UL 12402–4
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs
		2%
1	\$31,773	\$31,150
2	2,273	2,185
3	2,273	2,142
4	2,273	2,100
5	2,273	2,059
6	2,273	2,018
7	2,273	1,979
8	2,273	1,940
9	2,273	1,902

TABLE 9—ESTIMATED TOTAL COST TO ALL FIRMS FOR LEVEL 100 DEVICES UNDER STANDARD ANSI/CAN/UL 12402–4—Continued

[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs
		2%
10	2,273	1,865
Total	52,230	49,339
Annualized .....	.....	5,493

Cost Savings

By adopting ANSI/CAN/UL 12402–4, the Coast Guard can harmonize commercial PFD requirements of the United States with those of Transport Canada. Harmonization of commercial PFD standards will lead to cost savings for PFD manufacturing firms through less expensive approval requirements and less frequent ongoing facility inspections.

Additionally, as a performance-based standard, ANSI/CAN/UL 12402–4 allows for more innovative designs than the current standards and regulations, which might better meet boater needs. Seven commenters noted that permission to create more innovative designs is a benefit. The adoption of a performance-based standard spares the Coast Guard from making the

equivalency determinations frequently necessary when using the current prescriptive requirements. Consequently, the Coast Guard will experience time savings from reducing the review time of new device applications during the approval process.

In total, we estimate three sources of quantified cost savings associated with the IBR of ANSI/CAN/UL 12402–4:

(1) The Coast Guard will spend less time reviewing approval applications and making equivalency determinations for the approval of innovative PFDs because ANSI/CAN/UL 12402–4 is a performance-based rather than prescriptive standard and allows more innovative designs to meet the standard;

(2) All firms that apply for approval in both United States and Canadian

markets will save the difference between one certification to ANSI/CAN/UL 12402–4 and separate United States and Canadian certifications to legacy standards; and

(3) Manufacturing facilities producing devices meeting the requirements of ANSI/CAN/UL 12402–4 for the United States and Canadian markets will be able to be inspected just once for approval, instead of the current requirement to be inspected twice; once for United States approval and once for Canadian approval.

We summarize the total quantified benefits for the cost savings of the IBR of ANSI/CAN/UL 12402–4 by reporting the annual undiscounted cost savings in table 10.

TABLE 10—ESTIMATED ANNUAL COST SAVINGS OF ANSI/CAN/UL 12402–4 TO THE INDUSTRY AND THE U.S. GOVERNMENT

[2023 Dollars]

Annual cost savings item	Cost savings to U.S. entities	Cost savings to foreign entities
Value of Coast Guard time saved	\$4,330	\$0
Canadian and United States approval savings	27,779	10,274
Billed facility inspection savings	15,372	8,784
Quality manager's time saved	3,359	1,334
Total	50,840	20,392

In table 11 and table 12, we record the 10-year cost savings from the adoption of ANSI/CAN/UL 12402–4 to U.S. and

foreign firms, respectively. In table 13, we record the total 10-year cost savings

from this provision to the U.S. Government.

TABLE 11—ESTIMATED COST SAVINGS TO U.S. FIRMS FROM ANSI/CAN/UL 12402–4

[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$46,510	\$45,598
2	46,510	44,704
3	46,510	43,827
4	46,510	42,968
5	46,510	42,126

TABLE 11—ESTIMATED COST SAVINGS TO U.S. FIRMS FROM ANSI/CAN/UL 12402–4—Continued
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
6	46,510	41,300
7	46,510	40,490
8	46,510	39,696
9	46,510	38,917
10	46,510	38,154
Total	465,100	417,780
Annualized .....	.....	46,510

TABLE 12—ESTIMATED COST SAVINGS TO FOREIGN FIRMS FROM ADOPTING ANSI/CAN/UL 12402–4
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$20,392	\$19,992
2	20,392	19,600
3	20,392	19,216
4	20,392	18,839
5	20,392	18,470
6	20,392	18,108
7	20,392	17,752
8	20,392	17,404
9	20,392	17,063
10	20,392	16,729
Total	203,920	183,173
Annualized .....	.....	20,392

TABLE 13—ESTIMATED COST SAVINGS TO THE U.S. GOVERNMENT OF ANSI/CAN/UL 12402–4
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$4,330	\$4,245
2	4,330	4,162
3	4,330	4,080
4	4,330	4,000
5	4,330	3,922
6	4,330	3,845
7	4,330	3,770
8	4,330	3,696
9	4,330	3,623
10	4,330	3,552
Total	43,300	38,895
Annualized .....	.....	4,330

In table 14, we record the total discounted 10-year cost savings to the U.S. and foreign PFD industry for the ANSI/CAN/UL 12402–4 portion of this

final rule. We estimate that this provision saves the U.S. and foreign PFD industry about \$66,902 annually and produces cost savings for the

industry of about \$600,953 over a 10-year period of analysis using a 2-percent discount rate.

TABLE 14—TOTAL ESTIMATED COST SAVINGS TO INDUSTRY OF THE FINAL RULE FOR ANSI/CAN/UL 12402–4
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$66,902	\$65,590
2	66,902	64,304
3	66,902	63,043
4	66,902	61,807
5	66,902	60,595
6	66,902	59,407
7	66,902	58,242
8	66,902	57,100
9	66,902	55,981
10	66,902	54,883
Total	669,020	600,953
Annualized .....	.....	66,902

2. ANSI/CAN/UL 12402–5 Costs

The PFD industry also incurs an increase in costs from this final rule because, based on consultation with industry experts, we estimate that this rule will increase the PFD market by 5 percent, meaning manufacturing firms would seek new device approvals and produce more devices.²⁷ (In the NPRM, we requested public comment on the possibility that this rule would increase the PFD market by 5 percent, and no commenter disagreed with this estimate.) We estimate the costs of this

provision as the costs of the additional device approvals and the costs of the additional production inspections for the greater volume of production that we expect this rule to generate.²⁸

In table 15, table 16, and table 17, we present the discounted costs of introducing Level 50 devices over the 10-year period of analysis to U.S. firms, foreign firms, and all firms, respectively. The tables include the estimated costs of Level 50 devices approved and inspected under the current inspections regime. In Year 1, the undiscounted costs are only the costs of Level 50 approval for manufacturers, or \$610,299

for U.S. manufacturers and \$146,661 for foreign manufacturers. For Year 2, the undiscounted costs are the costs of Level 50 approvals to manufacturers (\$610,299 for U.S. firms and \$146,661 for foreign firms) plus the cost of inspections (\$33,900 for U.S. firms and \$7,587 for foreign firms), for a total of about \$644,199 (\$610,299 + \$33,900) for U.S. firms and \$154,248 (\$146,661 + \$7,587) for foreign firms. The estimated 10-year cost, discounted at 2 percent, is \$1,694,898, or \$188,687 annualized, for U.S. firms, and \$398,884, or \$44,406 annualized, for foreign firms.

TABLE 15—ESTIMATED COSTS TO U.S. FIRMS FROM INTRODUCING LEVEL 50 DEVICES
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost	Discounted cost
		2%
1	\$610,299	\$598,332
2	644,199	619,184
3	67,800	63,889
4	67,800	62,637
5	67,800	61,409
6	67,800	60,204
7	67,800	59,024
8	67,800	57,867
9	67,800	56,732
10	67,800	55,620
Total	1,796,898	1,694,898
Annualized .....	.....	188,687

²⁷ As part of our discussion with PFD manufacturing firms, we asked their representatives whether the introduction of Level 50 devices would lead to a net growth in the PFD market (inclusive of substitution out of existing types of products). Manufacturing firm representatives stated that they

would expect the PFD market would grow by about 5 percent from this provision. We interpret the 5-percent growth as a one-time growth in the level of manufacturing spread over a 2-year period.

²⁸ We estimate the additional production inspections based on the current production

inspection requirements, and we estimate the reduction in these inspections through the incorporation by reference of ANSI/CAN/UL 9595 in its associated section.

TABLE 16—ESTIMATED COSTS TO FOREIGN FIRMS FROM THE INTRODUCTION OF LEVEL 50 DEVICES
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost	Discounted cost
		2%
1	\$146,661	\$143,785
2	154,248	148,258
3	15,174	14,299
4	15,174	14,018
5	15,174	13,744
6	15,174	13,474
7	15,174	13,210
8	15,174	12,951
9	15,174	12,697
10	15,174	12,448
Total	422,301	398,884
Annualized .....	.....	44,406

TABLE 17—TOTAL ESTIMATED COSTS TO PFD MANUFACTURERS FROM THE INTRODUCTION OF LEVEL 50 DEVICES
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost	Discounted cost
		2%
1	\$756,960	\$742,118
2	798,447	767,442
3	82,974	78,188
4	82,974	76,655
5	82,974	75,152
6	82,974	73,679
7	82,974	72,234
8	82,974	70,818
9	82,974	69,429
10	82,974	68,068
Total	2,219,199	2,093,782
Annualized .....	.....	233,093

Qualitative Benefits

The Coast Guard believes that the introduction of Level 50 devices, coupled with the requirement to wear them if they are to count for the purposes of PFD carriage requirements, may lead to an unquantifiable increase in PFD wear rates among recreational boaters and thereby potentially decrease the rate of drowning. Drowning is the leading cause of death in recreational boating accidents, accounting for 79 percent of all recreational boating casualties where we know the cause of death.²⁹ Of those who drowned, 86 percent were not wearing a lifejacket. Wearing a lifejacket is one of the best means available of preventing accidental drowning in recreational boating. Unfortunately, recreational

boaters only wear lifejackets about 24 percent of the time.³⁰

Level 50 devices are likely to be slimmer, lighter in weight, and more comfortable to wear than current Type III and Level 70 devices. Additionally, the Coast Guard will require recreational boaters to wear Level 50 devices for such devices to count towards PFD carriage requirements. Individuals who purchase Level 50 devices are more likely to wear PFDs than similar individuals who purchase bulkier Type III or Level 70 devices without a requirement that they be worn for the purposes of carriage. The NIH conducted a literature review, and, among other factors, found discomfort to be negatively associated with

lifejacket wear [NIH, 2018].³¹ It is the Coast Guard's view that PFDs worn are more effective than PFDs carried on board if a person overboard situation occurs. As a result, it is possible that the public is safer due to recreational boaters wearing a greater number of PFDs while boating.

Since the Level 50 devices provide a lower level of buoyancy than Level 70 devices, a direct comparison is not possible. However, the view of the subject matter experts (SMEs) in the Coast Guard's Office of Boating Safety is that the wearing of Level 50 PFDs by recreational boaters and the general boating public improves safety on the water. Recreational boaters fail to wear lifejackets 76 percent of the time,

²⁹ United States Coast Guard, "2019 Recreational Boating Statistics." <https://uscgboating.org/library/accident-statistics/Recreational-Boating-Statistics-2019.pdf> (last accessed April 25th, 2024).

³⁰ United States Coast Guard, "2019 Life Jacket Wear Rate Observation Study." <https://uscgboating.org/library/national-live-jacket-wear-study/2019-Life-Jacket-Wear-Rate-Report.pdf> (last accessed April 25, 2024).

³¹ We cited this review from the NIH earlier in the preamble in footnote number 8. Readers should reference that footnote for a link to this article and other articles by the NIH for more information on PFD usage.

leaving themselves vulnerable to drowning. The Coast Guard believes that, by offering recreational boaters an additional choice of a Level 50 PFD, which is required to be worn, more recreational boaters will choose to wear their lifejacket while engaged in boating activities. A lifejacket that is worn by the user is more effective than a lifejacket stowed on the boat.

3. ANSI/CAN/UL 9595

The third provision incorporates by reference the consensus standard ANSI/CAN/UL 9595 to cover follow-up inspections and inspection frequency for Coast Guard approved PFDs. Currently, when a manufacturing firm produces a Coast Guard approved PFD, there is a required follow-up inspection regime to ensure that the devices continue to meet the specifications under which the Coast Guard approved them. Although the Coast Guard has not previously published a substantive minimum requirement for what constitutes a follow-up inspections regime, we set out general requirements in 46 CFR 159, 160.064–4, and 160.076–29. The Coast Guard reviews each recognized independent laboratory’s follow-up services program to ensure compliance with these regulations.

Incorporating by reference ANSI/CAN/UL 9595 provides a few key benefits to the regulated public and the testing laboratories. First, ANSI/CAN/UL 9595 is one standard, ensuring consistency across all accepted and recognized independent laboratories. Second, ANSI/CAN/UL 9595 is a standard that is widely available to the industry and transparently clarifies guidance on what constitutes a follow-up inspection regime. Third, and most importantly, ANSI/CAN/UL 9595 establishes a rating system for each facility, which results in cost savings for the firms manufacturing at facilities with a good or superior QMS rating.

Costs

There are three cost items associated with the adoption of ANSI/CAN/UL 9595. These costs are based on input from PFD industry SMEs on how ANSI/CAN/UL 9595 is likely to be implemented.

(1) The two recognized independent laboratories will need to train their staff to implement ANSI/CAN/UL 9595.

(2) Manufacturing firms could request a special inspection in the first year to certify their QMS at a given facility meets the requirements for Process Rating of A or B. We expect the top 13

firms to request this certification across all 27 facilities at which they manufacture. This special inspection is expected to be in addition to the regular production inspections required for Process Rating C.

(3) After the first year, where the QMS inspection is supplemental to standard inspections, the QMS inspection could replace one of the mandatory inspections, but could cost more than a standard inspection, at the top 13 firms with 27 facilities.

We estimate the 10-year discounted cost for inspections under this provision that are associated with U.S. firms is approximately \$126,840, or \$14,121 annualized using a 2-percent discount rate. We estimate the total 10-year discounted cost for inspections that are associated with foreign firms is approximately \$51,382, or \$5,720 annualized using a 2-percent discount rate. In total, we estimate the 10-year discounted costs from ANSI/CAN/UL 9595 are \$178,223 or \$19,841 annualized using a 2-percent discount rate. We present these costs to U.S., foreign, and both U.S. and foreign firms in table 18, table 19, and table 20, respectively.

TABLE 18—ESTIMATED QMS INSPECTION COSTS TO U.S. FIRMS FROM ANSI/CAN/UL 9595
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost	Discounted cost
		2%
1	\$61,296	\$60,094
2	8,341	8,017
3	8,341	7,860
4	8,341	7,706
5	8,341	7,555
6	8,341	7,407
7	8,341	7,261
8	8,341	7,119
9	8,341	6,979
10	8,341	6,843
Total	136,365	126,841
Annualized .....	.....	14,121

TABLE 19—ESTIMATED QMS INSPECTION COSTS TO FOREIGN FIRMS FROM ANSI/CAN/UL 9595
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost	Discounted cost
		2%
1	\$23,744	\$23,278
2	3,512	3,376
3	3,512	3,309
4	3,512	3,245
5	3,512	3,181
6	3,512	3,119
7	3,512	3,057

TABLE 19—ESTIMATED QMS INSPECTION COSTS TO FOREIGN FIRMS FROM ANSI/CAN/UL 9595—Continued
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost	Discounted cost
		2%
8	3,512	2,997
9	3,512	2,939
10	3,512	2,881
Total	55,352	51,382
Annualized .....	.....	5,720

TABLE 20—TOTAL ESTIMATED QMS INSPECTION COSTS FOR ANSI/CAN/UL 9595
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost	Discounted cost
		2%
1	\$85,040	\$83,373
2	11,853	11,393
3	11,853	11,169
4	11,853	10,950
5	11,853	10,736
6	11,853	10,525
7	11,853	10,319
8	11,853	10,116
9	11,853	9,918
10	11,853	9,724
Total	191,717	178,223
Annualized .....	.....	19,841

Cost Savings

The IBR of ANSI/CAN/UL 9595 generates benefits in the form of cost savings for PFD manufacturing firms who have a QMS in place. Manufacturers with an audited QMS can secure a higher Process Rating, which, in turn, reduces the frequency of

production inspections for PFDs based upon their higher Process Rating.

We estimate this provision to generate cost savings for U.S. firms of \$8,454,204, or \$941,177, annualized, over a 10-year period of analysis using a 2-percent discount rate. We similarly estimate cost savings of \$2,039,131, or \$227,009, annualized, to foreign firms over a 10-year period of analysis, discounted at 2

percent. In total, we estimate \$10,493,335, or \$1,168,187 annualized, in cost savings to all firms under this provision using a 10-year period of analysis and a 2-percent discount rate. We present these 10-year cost savings to U.S., foreign, and both U.S. and foreign firms in table 21, table 22, and table 23, respectively.

TABLE 21—ESTIMATED COST SAVINGS TO U.S. FIRMS FROM ANSI/CAN/UL 9595
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$0	\$0
2	1,037,396	997,113
3	1,059,092	998,006
4	1,059,092	978,437
5	1,059,092	959,252
6	1,059,092	940,443
7	1,059,092	922,003
8	1,059,092	903,925
9	1,059,092	886,201
10	1,059,092	868,824
Total	9,510,132	8,454,204
Annualized .....	.....	941,177

TABLE 22—ESTIMATED COST SAVINGS TO FOREIGN FIRMS FROM ANSI/CAN/UL 9595
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$0	\$0
2	250,371	240,649
3	255,429	240,696
4	255,429	235,977
5	255,429	231,350
6	255,429	226,814
7	255,429	222,366
8	255,429	218,006
9	255,429	213,732
10	255,429	209,541
Total	2,293,803	2,039,131
Annualized .....	.....	227,009

TABLE 23—ESTIMATED COST SAVINGS TO ALL FIRMS FROM ANSI/CAN/UL 9595
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$0	\$0
2	1,287,767	1,237,761
3	1,314,521	1,238,702
4	1,314,521	1,214,414
5	1,314,521	1,190,602
6	1,314,521	1,167,257
7	1,314,521	1,144,370
8	1,314,521	1,121,931
9	1,314,521	1,099,932
10	1,314,521	1,078,365
Total	11,803,935	10,493,334
Annualized .....	.....	1,168,186

4. Placards in Lieu of Information Pamphlets

The fourth provision in the rule comes from details contained within ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5. These standards specify requirements for a placard to be attached to all devices certified to those standards. The placard provides information on PFD performance,

selection, and approval, warnings, maintenance, and general water safety information in a pictographic format. This rule amends 33 CFR 181 to permit manufacturing firms to use a placard in lieu of the informational pamphlet.

Costs

For the convenience of the reader, table 24 reproduces table 6 from the

Affected Population section of this preamble to list the various types of PFDs impacted by this rule, and whether they are required to use placards to convey safety instructions or whether they could use either placards or information pamphlets.³²

TABLE 24—DEVICE CATEGORY AND PERMITTED INSTRUCTION TYPES

Device category	Types of instructions allowed by the final rule	Types of instructions currently in use
New Level 50 Devices (ANSI/CAN/UL 12402–5)	Placard	N/A because these devices are not yet produced.
New Level 70 Devices (ANSI/CAN/UL 12402–5)	Placard	Placard.
New Level 100 Devices (ANSI/CAN/UL 12402–4)	Placard	N/A because these devices are not yet produced.

³² Current marking requirements require a pamphlet, while the new marking requirement will be for a placard or pamphlet. Because these placards and pamphlets are both produced in

factories, the Coast Guard estimates that it will take the same amount of time to produce and include either a pamphlet or a placard with a newly manufactured PFD for sale. As a result, we do not

estimate there will be any changes in the Paperwork Reduction Act burden brought on by the switch from pamphlets to placards.

TABLE 24—DEVICE CATEGORY AND PERMITTED INSTRUCTION TYPES—Continued

Device category	Types of instructions allowed by the final rule	Types of instructions currently in use
Existing Type I Commercial Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type II Recreational Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type III Recreational Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type IV Throwable Devices	Information Pamphlet	Information Pamphlet.

As shown in table 24, the changes in instruction information either applies to PFD categories not yet produced or permits an additional compliance option. No devices would have fewer options for instruction materials than under current regulations. As a result, we estimate no additional costs from replacing safety information pamphlets with placards because firms could either continue their current activities or produce placards instead.

Unquantified Benefits

There are two sources of unquantified benefits from the requirement for the use of placards on new device categories and the permitting of placard use on existing device categories. The first source of unquantified benefits occurs because a placard may be less expensive to produce than an information pamphlet. A representative from the PFD manufacturing industry stated that

the placard could be around \$0.05 cheaper to produce than the information pamphlet, because the placard contains fewer materials than the information pamphlet. However, we did not find (nor did we receive) any data on the costs to produce information pamphlets and the costs to produce placards, so we cannot determine the relative size of this cost savings. We believe, based on the full discussion in the RA, that the \$0.05 estimate expresses the fact that placards are slightly less expensive than information pamphlets but, ultimately, about the same price. Additionally, we have no way of estimating how large a share of current production will switch from producing information pamphlets to placards, as placards will not be required. Due to these factors, we did not produce a quantitative estimate of the cost savings due to placards.

The second unquantified benefit comes from the fact that placards use

pictorial images to communicate safety information, while information pamphlets use English-language text. Pictorial information is superior to text at communicating information to non-English-reading audiences. We do not have a way of quantifying this benefit but would like to note that approximately 21 percent of the U.S. population has a “low” level of English literacy. For those populations, pictorial information may be better than text-based information.³³

Total Costs

We display the total costs from this final rule to U.S. entities, foreign entities, and both U.S. and foreign entities, using a 10-year period of analysis, discounted at 2 percent, in table 25, table 26, and table 27, respectively.

TABLE 25—ESTIMATED COSTS FOR U.S. FIRMS
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs
		2%
1	\$702,754	\$688,975
2	654,199	628,796
3	77,800	73,313
4	77,800	71,875
5	77,800	70,466
6	77,800	69,084
7	77,800	67,730
8	77,800	66,402
9	77,800	65,100
10	77,800	63,823
Total	1,979,353	1,865,564
Annualized .....	.....	207,687

TABLE 26—ESTIMATED COSTS FOR FOREIGN FIRMS
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs
		2%
1	\$171,019	\$167,666
2	158,374	152,224

³³ U.S. Department of Education, “Data Point: Adult Literacy in the United States” (July 2019).

<https://nces.ed.gov/pubs2019/2019179.pdf> (last accessed April 25, 2024).

TABLE 26—ESTIMATED COSTS FOR FOREIGN FIRMS—Continued
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs
		2%
3	19,300	18,187
4	19,300	17,830
5	19,300	17,481
6	19,300	17,138
7	19,300	16,802
8	19,300	16,472
9	19,300	16,149
10	19,300	15,833
Total	483,793	455,782
Annualized .....	.....	50,741

TABLE 27—TOTAL ESTIMATED COSTS FOR U.S. AND FOREIGN FIRMS
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs
		2%
1	\$873,773	\$856,640
2	812,573	781,020
3	97,100	91,499
4	97,100	89,705
5	97,100	87,946
6	97,100	86,222
7	97,100	84,531
8	97,100	82,874
9	97,100	81,249
10	97,100	79,656
Total	2,463,146	2,321,343
Annualized .....	.....	258,427

Total Cost Savings

We display the total cost savings from this final rule to U.S. firms, the U.S.

government, foreign firms, and all entities using a 10-year period of analysis discounted at 2 percent in table

28, table 29, table 30, and table 31, respectively.

TABLE 28—TOTAL ESTIMATED COST SAVINGS TO U.S. FIRMS
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$46,510	\$45,598
2	1,083,906	1,041,817
3	1,105,602	1,041,833
4	1,105,602	1,021,405
5	1,105,602	1,001,378
6	1,105,602	981,743
7	1,105,602	962,493
8	1,105,602	943,621
9	1,105,602	925,118
10	1,105,602	906,979
Total	9,975,232	8,871,985
Annualized .....	.....	987,687

TABLE 29—TOTAL ESTIMATED COST SAVINGS TO FOREIGN FIRMS
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$20,392	\$19,992
2	270,763	260,249
3	275,821	259,912
4	275,821	254,816
5	275,821	249,820
6	275,821	244,921
7	275,821	240,119
8	275,821	235,411
9	275,821	230,795
10	275,821	226,269
Total	2,497,723	2,222,303
Annualized .....	.....	247,401

TABLE 30—TOTAL ESTIMATED COST SAVINGS TO THE U.S. GOVERNMENT
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$4,330	\$4,245
2	4,330	4,162
3	4,330	4,080
4	4,330	4,000
5	4,330	3,922
6	4,330	3,845
7	4,330	3,770
8	4,330	3,696
9	4,330	3,623
10	4,330	3,552
Total	43,300	38,895
Annualized .....	.....	4,330

TABLE 31—TOTAL ESTIMATED COST SAVINGS TO U.S. AND FOREIGN MANUFACTURING FIRMS AND THE U.S.
GOVERNMENT
[2023 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings
		2%
1	\$71,232	\$69,835
2	1,358,999	1,306,227
3	1,385,753	1,305,826
4	1,385,753	1,280,222
5	1,385,753	1,255,119
6	1,385,753	1,230,509
7	1,385,753	1,206,381
8	1,385,753	1,182,727
9	1,385,753	1,159,536
10	1,385,753	1,136,800
Total	12,516,255	11,133,183
Annualized .....	.....	1,239,419

Net Cost Savings

We display the total net cost savings from this final rule to U.S. firms, the

U.S. government, foreign firms, and all entities using a 10-year period of analysis discounted at 2 percent in table

32, table 33, table 34, and table 35, respectively.

TABLE 32—TOTAL ESTIMATED NET COST SAVINGS TO U.S. FIRMS
[2023 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted cost savings
		2%
1	–\$656,244	–\$643,376
2	429,707	413,021
3	1,027,802	968,521
4	1,027,802	949,530
5	1,027,802	930,912
6	1,027,802	912,659
7	1,027,802	894,763
8	1,027,802	877,219
9	1,027,802	860,019
10	1,027,802	843,156
Total	7,995,879	7,006,423
Annualized .....	.....	780,001

TABLE 33—TOTAL ESTIMATED NET COST SAVINGS TO FOREIGN FIRMS
[2023 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted cost savings
		2%
1	–\$150,627	–\$147,674
2	112,389	108,025
3	256,521	241,725
4	256,521	236,986
5	256,521	232,339
6	256,521	227,783
7	256,521	223,317
8	256,521	218,938
9	256,521	214,645
10	256,521	210,437
Total	2,013,930	1,766,522
Annualized .....	.....	196,661

TABLE 34—TOTAL ESTIMATED COST SAVINGS TO THE U.S. GOVERNMENT
[2023 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted cost savings
		2%
1	\$4,330	\$4,245
2	4,330	4,162
3	4,330	4,080
4	4,330	4,000
5	4,330	3,922
6	4,330	3,845
7	4,330	3,770
8	4,330	3,696
9	4,330	3,623
10	4,330	3,552
Total	43,300	38,895

TABLE 34—TOTAL ESTIMATED COST SAVINGS TO THE U.S. GOVERNMENT—Continued
[2023 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted cost savings
		2%
Annualized		4,330

TABLE 35—TOTAL ESTIMATED NET COST SAVINGS TO ALL ENTITIES
[2023 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted cost savings
		2%
1	– \$802,541	– \$786,805
2	546,426	525,208
3	1,288,653	1,214,327
4	1,288,653	1,190,516
5	1,288,653	1,167,173
6	1,288,653	1,144,287
7	1,288,653	1,121,850
8	1,288,653	1,099,853
9	1,288,653	1,078,287
10	1,288,653	1,057,144
Total	10,053,109	8,811,839
Annualized .....	.....	980,991

Alternatives

We identified three alternatives to this final rule:

(1) Incorporate ANSI/CAN/UL 12402–5 for the approval of Level 70 PFDs only, prohibiting the approval of Level 50 PFDs;

(2) Require placards for existing Type I, II, and III PFDs instead of providing the option to continue the use of informational pamphlets; and

(3) Adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy.

Alternative 1: Incorporate ANSI/CAN/UL 12402–5 for Level 70 PFDs Only

We considered an alternative that would incorporate ANSI/CAN/UL 12402–5, but limit approval to Level 70 PFDs only. Level 50 PFDs would not be eligible for Coast Guard approval and would not meet carriage requirements on any vessel. If the Coast Guard were to choose this alternative, the market for Level 50 devices would not be viable because Level 50 devices would no longer meet carriage requirements. Without a viable market, the costs of compliance estimated in the section of ANSI/CAN/UL 12402–5 would not exist. However, the benefits from a new market and increased wear-rates would be lost were these devices to not be sold. We would also be restricting

recreational boaters to one category of PFD when Level 50 PFDs could better suit their purposes. As a result, we rejected this alternative because we expect that wear rates, and therefore benefits, would be lower without the option of a Level 50 PFD.

Alternative 2: Require placards Instead of the Option of Placards or Pamphlets

Under this final rule, we require that only new Level 50, 70, and 100 devices use placards. We considered the alternative of requiring that PFD manufacturers use placards instead of information pamphlets for all existing PFDs and not just new devices. While we observe that the cost of producing a placard is generally less than the cost of producing an information pamphlet, we also observe that some manufacturers may have already printed pamphlets or may not choose to use placards. As a result, we rejected this alternative.

Alternative 3: Adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by Policy

Another alternative we considered would be to adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy instead of incorporating them by reference into the CFR. Under 46 CFR 159.005–7(c), the Coast Guard has the authority to approve an item of

equipment that does not meet all the requirements of 46 CFR 160.055 if it has equivalent performance characteristics. The Coast Guard has already used this authority to partially adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy. Because this authority is limited to the approval of equipment with equivalent performance characteristics, we cannot adopt the portion of standards not already equivalent to existing types of equipment. In particular, Level 50 PFDs, youth inflatable PFDs, and inflatable Level 100 PFDs could not be approved by policy because they are not equivalent to any current Coast Guard standards. For that reason, we rejected this alternative.

B. Small Entities

Under the Regulatory Flexibility Act, (RFA) 5 U.S.C. 601–612, we have considered whether this rule has a significant economic impact on a substantial number of small entities.

The RFA (Public Law 96–354) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to

regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

When an agency promulgates a final rule under section 553 of the RFA, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency must prepare a final Regulatory Flexibility Analysis (FRFA) or have the head of the agency certify pursuant to RFA section 605(b) that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA prescribes the content of the FRFA in section 604(a), which we discuss as follows.

In accordance with the RFA (5 U.S.C. 601–612), the Coast Guard prepared this FRFA that examines the impacts of the final rule on small entities (5 U.S.C. 601, *et seq.*). A small entity may be:

- A small independent business, defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act (5 U.S.C. 632);
- A small not-for-profit organization; and
- A small governmental jurisdiction (locality with fewer than 50,000 people).

This FRFA addresses the following:

- (1) A statement of the need for, and objectives of, the rule;
- (2) A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- (4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (5) A description of the projected reporting, recordkeeping and other

compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Below is a discussion of FRFA analysis by each of these six elements:

(1) A statement of the need for, and objectives of, the rule.

The Coast Guard amends the lifejacket approval requirements and follow-up program requirements by incorporating three new binational standards. At the same time, the Coast Guard amends lifejacket and PFD carriage requirements to allow for the use of equipment approved to the new standards, and to remove obsolete equipment approval requirements. The new standards are state-of-the-art and are intended to replace the legacy standards. The amendments will streamline the process for approval of PFDs and allow manufacturers to produce more innovative equipment that meets the approval requirements of both the United States and Canada; and will reduce the burden for manufacturers in both the approval process and follow-up program. Absent this regulation, the United States and Canada would continue to have two different PFD standards, resulting in additional costs for manufacturers.

(2) A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

The Coast Guard received no public comments in response to the initial Regulatory Flexibility Analysis.

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule, and a detailed statement

of any change made to the proposed rule in the final rule as a result of the comments.

The Coast Guard received no comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule.

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This rule has four major provisions: (1) The incorporation by reference of ANSI/CAN/UL 12402–4 replacing Type I device approval with Level 100 device approval; (2) The incorporation by reference of ANSI/CAN/UL 12402–5 introducing new Level 50 device approvals; (3) The incorporation by reference of ANSI/CAN/UL 9595 for new follow-on production inspection standards; and (4) The option to use placards in lieu of information pamphlets on currently approved devices and the requirement to use placards for new Level 50, Level 70, and Level 100 devices. Across these four provisions, we estimate that this rule affects two Coast Guard recognized laboratories and 61 PFD manufacturers.

We researched these two Coast Guard recognized independent laboratories and 61 PFD manufacturers to determine if they are U.S. companies or foreign companies based on the location of their parent company's headquarters. We found one Coast Guard recognized laboratory to be a U.S. company and one to be a foreign company. We found 39 of the 61 PFD manufacturers to be U.S. companies and 22 to be foreign companies. We then researched each of these 40 U.S. companies (1 testing laboratory and 39 PFD manufacturers) to determine its North American Industry Classification System (NAICS) code and its size standard using the SBA's size standard table. Next, we reviewed each U.S. parent company's revenue or employee information to determine whether the company is small or not small, according to SBA size standards. We present the results of our research in table 36. The Coast Guard recognized independent laboratory is not a small entity. Of 39 U.S. manufacturers, 32 are small entities according to SBA size standards. We did not find any U.S. small entities to be small governmental jurisdictions or not-for-profit organizations.

TABLE 36—NUMBER OF SMALL ENTITIES AFFECTED BY THE RULE

NAICS code	NAICS code and industry type	Size standard type	Size standard used*	Number of U.S. companies	Number of small entities
314910	Textile Bag and Canvas Mills	Employees	500	1	1
314999	All Other Miscellaneous Store Retailers (except Tobacco Stores).	Revenue	\$8.0	2	2
315280	Other Cut and Sew Apparel Manufacturing	Employees	750	1	1
315990	Apparel Accessories and Other Apparel Manufacturing	Employees	500	1	1
326199	All Other Plastics Product Manufacturing	Employees	750	2	0
326299	All Other Rubber Product Manufacturing	Employees	500	1	1
327120	Clay Building Material and Refractories Manufacturing	Employees	750	1	1
336612	Boat Building	Employees	1,000	2	2
339920	Sporting and Athletic Goods Manufacturing	Employees	750	4	3
339999	All Other Miscellaneous Manufacturing	Employees	500	1	1
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers.	Employees	100	1	1
441222	Boat Dealers	Revenue	\$35.0	5	4
448140	Family Clothing Stores	Revenue	\$41.5	1	0
448150	Clothing Accessories Stores	Revenue	\$16.5	2	1
451110	Sporting Goods Stores	Revenue	\$16.5	2	2
452319	All Other General Merchandise Stores	Revenue	\$35.0	1	1
453930	Manufactured (Mobile) Home Dealers	Revenue	\$16.5	1	0
541380	Testing Laboratories	Revenue	\$16.5	1	0
541870	Advertising Material Distribution Services	Revenue	\$16.5	1	1
561990	All Other Support Services	Revenue	\$12.0	1	1
713930	Marinas	Revenue	\$8.0	1	1
Unknown	Unknown	Unknown	Unknown	7	7
				40	32

* Some size standards are based on the number of employees and others on the firm's total revenue.

Each of the four provisions in this final rule affects a different subset of the 32 small entities and has a different distribution of costs and cost savings across those small entities. We discuss each provision separately in the following sections, and then summarize each provision's impacts.

Provision 1: Incorporation by Reference of ANSI/CAN/UL 12402–4

The first provision, ANSI/CAN/UL 12402–4, affects seven small entities, six of which have known revenues. The first provision results in costs to small entities that intend to sell Level 100 devices in only one market (United States or Canada). Firms wishing to sell Level 100 devices in both United States and Canadian markets will reduce costs by no longer conducting duplicative approvals and facility inspections.

Whether small entities will or will not experience cost savings depends on whether each small entity prefers to sell their device in only the United States or Canada or in both markets. The Coast Guard does not know which small entities will prefer a cheaper set of product approval tests with only the ability to sell in one market and which will prefer a more expensive set of product approval tests with the ability to sell in both markets. Therefore, we compare both the costs and cost savings estimates to each small entity.

In the RA, we estimate the Level 100 approval to be \$5,050 more expensive than the current Type I approval. We estimate that testing laboratories receive an application for approval to Level 100 standards 0.45 times per year. Each small entity will apply for an approval once they develop a new device and will experience this cost only when they submit a new application. The Coast Guard cannot predict when each small entity might submit a new application; instead, we use the cost of \$5,050 as an estimate of a one-time (initial-year cost) per-small-entity-cost of ANSI/CAN/UL 12402–4.

We estimate the cost savings for small entities that wish to sell in two markets as \$42,150 per new Level 100 approval, \$5,594 per modification of an existing approval with testing, and \$1,373 per revision of an existing approval without testing. As with the costs of ANSI/CAN/UL 12402–4, each small entity will experience the cost savings only when it submits each application. The Coast Guard does not know when small entities might seek new approvals or revisions in the future, so we estimate these as one-time cost savings to small entities from ANSI/CAN/UL 12402–4. Specifically, we estimate that each small entity will experience a one-time total cost savings of \$41,638 for each approval, which is the sum of the Level 100 approvals and revisions to

approvals with or without testing (\$42,150 + \$7,605 + \$1,373). These seven small entities will also experience an ongoing (annual) cost savings of \$1,338.00 from reduced facility inspection frequency.³⁴

Provision 2: Incorporation by Reference of ANSI/CAN/UL 12402–5

Incorporating by reference ANSI/CAN/UL 12402–5 permits small entities to seek Coast Guard approval to produce and sell Level 50 devices. The Coast Guard has not previously approved these devices. We estimate that this provision affects all 32 small entities, 24 of which have known revenues.

In the RA, we estimate that the introduction of Level 50 devices will cause the North American PFD market to grow by 5 percent. We interpret the 5-percent growth in terms of the number of approved devices (a growth of 38 device approvals). The initial approvals represent a one-time (initial year) cost to small entities. Small entities will also experience an annual cost of additional production inspections based on the volume of Level 50 PFDs produced.

³⁴ Facility inspections last 4 hours and include the billed cost of an inspector's time, or \$274.50, and the opportunity cost of a Quality Manager's time, or \$60 per hour as a loaded weighted average. The cost savings is therefore 4 × \$274.50 + 4 × \$60 or \$1,338. Readers should refer to section 7 of the RA discussing the ANSI/CAN/UL 12402–4 standard for more detail.

We estimate a new Level 50 device approval costs a small entity about \$39,840. We do not know which small entities will seek Coast Guard approval for a Level 50 device or how many devices each small entity might seek approval for. As a result, we treat each small entity as seeking approval for one Level 50 device costing \$39,840. This will be a one-time (initial year) cost to small entities.

Production is not distributed equally across the small entities that produce PFDs for the North American market. Instead, some small entities produce vastly more PFDs than others. In the RA, we estimate the market share of the 13 largest firms to be collectively about 95 percent. We estimate the remaining 44 firms' market share collectively to be about 5 percent. We do not know the relative market share of the 44 firms, so we divide the 5 percent equally across the 44 firms. Therefore, we treat each of the 44 firms as accounting for about 0.11 percent of the PFD market.³⁵

For the 32 small entities that would use the ANSI/CAN/UL 12402-5 standard, 24 are in the set of 44 firms collectively having 5 percent market share, and therefore we assume each has a market share of 0.11 percent. Based on conversations with PFD manufacturing executives, we estimate 5 of the 32 firms have a market share of 2.5 percent each, 1 has a market share of 7.5 percent, 1 has a market share of 15 percent, and 1 has a market share of 25 percent. We could not find revenue data for eight

small entities. We display this information in table 37 below.

TABLE 37—MARKET SIZE OF SMALL ENTITIES AFFECTED BY THE RULE

Number of small entities	Market share of each entity (%)
24	0.11
5	2.5
1	7.5
1	15
1	25

In the RA, we estimate the annual cost of production inspections across the whole industry to be \$82,974. Because we do not know which small entities will seek Level 50 approval, we estimate the additional costs from production inspections from Level 50 device sales for each small entity by multiplying each small entity's market share by the total costs. For example, if we use a small entity that has a market share of 0.11 percent, then we estimate the small entity's additional production inspection costs to be about \$91.27 ($\$82,974 \times 0.0011$, rounded) annually.

Provision 3: Incorporation by Reference of ANSI/CAN/UL 9595

Incorporating ANSI/CAN/UL 9595 by reference establishes production testing standards for the PFD manufacturing industry. ANSI/CAN/UL 9595 will lead to reductions in testing frequency for PFD manufacturing entities with a QMS

in place. We estimate that eight small entities would be affected by this provision, seven of which have known revenue.

Small entities will experience one-time costs of an initial QMS inspection, and ongoing costs because a QMS inspection is more expensive than the facility inspection it replaces in subsequent years. We estimate that each small entity has two facilities, with the largest small entity having three facilities, and QMS inspection costs occur per facility. In the RA, we estimate that the total costs to U.S. firms for the ANSI/CAN/UL 9595 standard will be about \$61,296 for 19 facilities. We estimate that 7 of the firms in the top 13 are small entities, including the top firm. Because we do not know where each small entity's facilities are located, to estimate each small entity's one-time costs, we multiply \$61,296 by each small entity's share of the 19 facilities, yielding \$6,452 ($((2 \div 19) \times \$61,296)$ for all but the largest small entity and \$9,678 ($((3 \div 19) \times \$61,296)$ for the largest small entity. We estimate annual costs to be about \$439 per facility, which is the difference between 8 hours of billed QMS inspector time and 8 hours of a regular inspector's time.³⁶ The largest small entity has three facilities, so will experience \$1,316 ($\$439 \times 3$) in additional costs. All the other small entities have two facilities, and they will experience \$878 ($\$439 \times 2$) in annual costs. We reflect this information in table 38.

TABLE 38—COSTS PER SMALL ENTITY FROM UL 9595

Entity type	Number of facilities	Total one-time costs	Annual costs
The Largest	3	\$9,678	\$1,317
All Others	2	6,452	878

Small entities that achieve a higher process rating according to the ANSI/CAN/UL 9595 standard will also experience annual cost savings based on each small entity's market share and the rigor of the QMS system in place. As mentioned previously, we estimate that only the top 13 firms will experience savings from ANSI/CAN/UL 9595, and we estimate that 7 of those firms are small entities.

Cost savings will be different for each of the seven small entities. To estimate the cost savings per small entity, we need to estimate the number of reductions in inspections per small

entity and then multiply by \$2,712 (\$2,196 of billed inspector time and \$516 of weighted average quality manager loaded wages). To calculate the reductions in inspections for each small entity, we take the share of current inspections for each small entity and then estimate the number of inspections that would take place under Process Rating A or B for each small entity. Next, we subtract the reduced inspection frequency per small entity from the current inspection frequency, yielding a reduction in inspection frequency for current production. In the RA, we also estimate that U.S. firms will

experience 16 fewer inspections on Level 50 devices that they do not yet produce, resulting in cost savings from reduced inspection frequency. We then multiply the 16 inspections by each small entity's share of reduction in current inspections.

For example, assume that a small entity had a 10-percent market share, half of which would be at Process Rating A and half of which would be at Process Rating B. We first take the total number of current inspections on U.S. firms (587) and multiply by the small entity's market share relative to the total affected U.S. market share, or 10 percent

³⁵ We divided 5 percent or 0.05 by 44 companies to obtain 0.11 percent of the market for each one.

³⁶ Independent laboratories bill QMS inspections at \$329.40 per hour, while they bill normal inspections at \$274.50 per hour. Thus, the

additional cost is \$54.90 per hour (\$329.40 – \$274.50), or \$439 in an 8-hour workday (\$54.90 × 8). See section 9.1.2 in the RA.

$\div 77.5$ percent $\times 587$, yielding 76 rounded. Then we derive the reduced number of inspections at B and the reduced number of inspections at A by multiplying the reduced inspection frequency at B (194) by the share of the small entity's Process Rating at B relative to all other U.S. firms at B, or 5 percent $\div 51$ percent, yielding 19 rounded. To estimate the reduced inspection frequency at A, we take the number of facilities at A (one) and multiply by two, accounting for the number of inspections that occur once the facility is at Process Rating A. Next,

we add to it the multiplication of the number of commercial PFD production inspections at A (7) and the small entity's relative share of production at A, or 5 percent $\div 26.5$ percent, yielding 3 rounded (2×1) + (7×5 percent $\div 26.5$ percent). Taken together, the small entity's reduced inspection frequency is 22 ($19 + 3$), meaning the small entity experiences 54 fewer production inspections annually ($76 - 22$). To calculate the number of reduced Level 50 inspections for each small entity, we take the small entity's share of U.S. firm inspection reduction divided by the

total estimated reduction in U.S. firm inspections from Table 42 in the RA ($54 \div 376$) and multiply by the 16 total reduction in inspections, yielding 2 rounded. We add the reduction in Level 50 inspections (2) and the reduction in current inspections (54) together and multiply by the cost of each inspection (\$2,712), yielding \$151,872 ($(2+54) \times \$2,712$), or the small entity's annual cost savings from reduced inspection frequency. We perform this process for each of the eight small entities. We record these calculations in table 39; the results are rounded.

TABLE 39—ANNUAL COST SAVINGS FOR A REPRESENTATIVE SMALL ENTITY IN 2023 DOLLARS

Total market share	Market share at B	Market share at A	Current inspection frequency	Inspection frequency at B	Inspection frequency at A	Total inspection reduction	Reduced level 50 inspections	Total annual cost savings
A	$B = A \div 2$	$C = A \div 2$	$D = 587 \times A \div 77.5\%$	$E = 194 \times B \div 51\%$	$F = (2 \times 1) + (7 \times C \div 26.5\%)$	$G = D - E - F$	$H = G \div 376 \times 16$	$(G + H) \times \$2,712$
10%	5%	5%	76	19	3	54	2	\$151,872

Provision 4: Replacement of Information Pamphlets With Booklets

We did not estimate any costs or cost savings from this provision, so we do

not estimate that there will be any impact on small entities.

We summarize the number of small entities affected, cost impacts, cost

savings impacts, and transfers per provision in table 40.

TABLE 40—NUMBER OF AFFECTED SMALL ENTITIES, COSTS, AND COST SAVINGS PER PROVISION

Provision	PFD manufacturing population affected	Costs	Cost savings
ANSI/CAN/UL 12402–4 ³⁷	7 small entities of the 30; 6 small entities with known revenues.	One-time testing to Level 100 will cost \$5,050 more than testing to Legacy Type I standards for entities wishing to sell in only Canada or the United States.	One-time testing to Level 100 will be \$42,150 less than testing to Type I standards for entities wishing to sell in both the United States and Canada. Small entities will also save costs from cheaper revisions with and without testing, \$5,594 and \$1,373 respectively. Together, small entities will save \$49,117. Small entities will also experience \$1,338 in annual cost savings from reduced facility inspections.
ANSI/CAN/UL 12402–5 ³⁸	32 small entities, 24 small entities with known revenues.	One-time (initial year) testing to Level 50 standards will cost about \$39,840. Additional ongoing costs from inspections will be between \$91.27 and \$20,743.50 based on each small entity's market share (small entities with larger market shares will experience greater costs).	No estimated cost savings for these small entities.
ANSI/CAN/UL 9595 ³⁹	8 small entities, 7 small entities with known revenues.	One-time (initial year) cost from an additional QMS inspection of about \$9,678.32 for the largest small entity based on three facilities and \$6,452.21 for all other small entities with two facilities. Ongoing (annual) costs will result from a QMS inspection and will be more than a regular inspection. We estimate ongoing costs to be about \$439 per facility or \$1,317 for the largest small entity with three facilities and \$878 for each other small entity with two facilities.	Small entities will save through reduced inspection frequencies based on each small entity's market share and each small entity's QMS in place. We estimate these 8 small entities will experience between \$24,408 and \$265,776 in savings per year based upon their market share and QMS ratings.
Information Pamphlets	32 small entities, 24 small entities with known revenues.	No estimated costs	No estimated cost savings.

We provide a list of the range of costs, cost savings, and net cost savings per

entity in table 41. Because each entity

is subject to a different subset of provisions, this table should be interpreted as the minimum and maximum, cost, cost savings, and net cost savings per entity. Specifically, the cost, cost savings, and net cost savings rows are the minimum or maximum observed across the range of entities.

³⁷ See Section 7 of the RA for more detail about the costs and cost savings of ANSI/CAN/UL 12402–4. Numbers in this table may not match precisely numbers in the RA as this FRFA adjust costs to be on a per entity basis accounting for market share.

³⁸ See Section 8 of the RA for more detail about the costs and cost savings of ANSI/CAN/UL 12402–

5. Numbers in this table may not match precisely numbers in the RA as this FRFA adjust costs to be on a per entity basis accounting for market share.

³⁹ See Section 9 of the RA for more detail about the costs and cost savings of ANSI/CAN/UL 9595. Numbers in this table may not match precisely numbers in the RA as this FRFA adjust costs to be on a per entity basis accounting for market share.

Net cost savings is therefore not a function of the cost and cost savings in Table 41. For example, the lowest net cost savings in Table 40, – \$46,292.21, demonstrates a cost greater than the

lowest cost that will be experienced by an entity, or \$39,840, which is why it is not the lowest cost per entity. Similarly, lowest and highest ongoing impacts do not necessarily match to the

lowest and highest one-time impacts. We are simply reporting the lowest and highest impacts per entity across costs, cost savings, and net cost savings.

TABLE 41—RANGE OF IMPACTS PER ENTITY

	One-time impacts		Ongoing impacts	
	Lowest per entity	Highest per entity	Lowest per entity	Highest per entity
Cost	\$39,840.00	\$54,568.32	\$91.27	\$71,177.50
Cost Savings		49,117.00		267,114.00
Net Cost Savings	(46,292.21)	4,227.00	(47,870.27)	195,936.50

In table 42, we report the estimated overall net cost savings revenue impact

per small entity of this final rule across all provisions.

TABLE 42—PERCENTAGE OF ESTIMATED REVENUE IMPACT ON SMALL ENTITIES FROM OVERALL IMPACT (NET COST SAVINGS) OF THIS FINAL RULE

% Revenue impact	One-time net impacts		Ongoing net impacts	
	Small entities with known revenue	Portion of small entities with known revenue (%)	Small entities with known revenue	Portion of small entities with known revenue (%)
<1	17	71	20	83
1–3%	2	8	2	8
>3	5	21	2	8

(5) *A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

(6) *A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

The Coast Guard identified three alternatives:

(1) Incorporate ANSI/CAN/UL 12402–5 for the approval of Level 70 PFDs only, prohibiting the approval of Level 50 PFDs;

(2) Require placards instead of pamphlets; and

(3) Adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy.

Alternative 1: Incorporate by Reference ANSI/CAN/UL 12402–5 for Level 70 PFDs Only

Under the first alternative, we could have chosen to incorporate ANSI/CAN/UL 12402–5 but limit approval to Level 70 PFDs only. Level 50 PFDs would not be eligible for Coast Guard approval and would not meet carriage requirements on any vessel, severely restricting their use. If the Coast Guard chose this alternative, the market for Level 50 devices would not be viable because Level 50 devices would no longer partially substitute for Level 70 or Type III devices. Small entities would be unable to sell these new devices and would not experience a positive revenue impact from this alternative.

As a result, we rejected this alternative because it does not maximize small entities’ revenue.

Alternative 2: Require Placards Instead of Pamphlets

We considered the alternative of requiring that PFD manufacturers use placards instead of information pamphlets for the mandatory PFD instructional materials. While the Coast Guard observes that the cost of producing placards is generally less than the costs of producing information pamphlets, the Coast Guard observes

that some manufacturers may not have switched to producing placards yet. As such, if we required that manufacturers use placards, we could place undue burden on small entities in the PFD industry by requiring that they acquire new equipment to produce placards. We do not know how large these costs could be, but small entities would experience greater compliance costs. As a result, we ultimately rejected this alternative.

Alternative 3: Adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by Policy

The third alternative we considered was to adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy instead of incorporating them by reference in the regulations. Under 46 CFR 159.005–7(c), the Coast Guard has the authority to approve an item of equipment that does not meet all the requirements of 46 CFR 160.055 if it has equivalent performance characteristics. The Coast Guard has utilized this authority to partially adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy. However, because this authority is limited to the approval of equipment with equivalent performance characteristics, we cannot adopt the portion of standards not already equivalent to existing types of equipment. In particular, Level 50 PFDs,

youth inflatable PFDs, and inflatable Level 100 PFDs cannot be approved by policy because they are not equivalent to any current Coast Guard standards. As a result, small entities would not receive the additional revenue from the sale of Level 50 devices or the cost savings on Level 100 inflatable device approvals as compared to Type I device approvals. For these reasons, we rejected this alternative.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 final rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels),

as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. The statutory authorities upon which this rulemaking is based—46 U.S.C. 3306(a), 4102(a), 4302(a), and 4502(a) and (c)(2)(B)—are areas in which Congress intended the Coast Guard to be the sole source of a vessel's obligations and, as such, are within the field foreclosed from regulation by the States. *See, e.g., United States v. Locke*, 529 U.S. 89 (2000) (finding that the states are foreclosed from regulating tanker vessels), *see also Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157 (1978) (state regulation is preempted where “the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it [or where] the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.” (citations omitted)). Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

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. Although this rule does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of

Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards are inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards:

- ANSI/CAN/UL 9595, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021).
- ANSI/CAN/UL 12402–4, Standard for Safety Personal Flotation Devices—Part 4: Lifejackets, Performance Level 100—Safety Requirements, First Edition, July 9, 2020.
- ANSI/CAN/UL 12402–5, Standard for Safety Personal Flotation Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements, First Edition,

December 31, 2015 (including revisions through January 27, 2022).

- ANSI/UL 1123, Standard for Safety Marine Buoyant Devices, Seventh Edition, October 1, 2008 (including revisions through November 23, 2020).
- ANSI/UL 1175, Standard for Safety Buoyant Cushions, Fourth Edition, April 20, 2007 (including revisions through January 10, 2020).

The sections that reference these standards and the locations where these standards are available are listed in 46 CFR 160.045–5, 160.055–5, 160.060–5, 160.064–5, 160.076–5, 160.255–5, 160.264–5, and 160.276–5.

The Director of the Federal Register has approved the material in 46 CFR 160.045–5, 160.055–5, 160.060–5, 160.064–5, 160.076–5, 160.255–5, 160.264–5, and 160.276–5 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in 46 CFR 160.045–5, 160.055–5, 160.060–5, 160.064–5, 160.076–5, 160.255–5, 160.264–5, and 160.276–5.

Consistent with 1 CFR part 51 incorporation by reference provisions, this material is reasonably available. Interested persons have access to it through their normal course of business, may purchase it from the organization identified in 46 CFR 160.045–5, 160.055–5, 160.060–5, 160.064–5, 160.076–5, 160.255–5, 160.264–5, and 160.276–5, or may view a copy by means we have identified in that section.

M. Environment

We have analyzed this rule under Department of Homeland Security Management 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 made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. 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. This final rule is categorically excluded under paragraph L52 and L58 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph L52 pertains to regulations concerning vessel operation safety standards. Paragraph L58 pertains to regulations concerning equipment

approval and carriage requirements. This final rule involves approval requirements and follow-up program requirements for lifejackets by incorporating new standards to replace existing legacy standards. The rule further amends lifejacket and PFD carriage requirements to allow for the use of equipment approved to the new standards and remove obsolete equipment approval requirements. The amendments streamline the process for the approval of PFDs and allow manufacturers the opportunity to produce more innovative equipment that meet approval requirements in both the United States and Canada while also reducing the burden of the approval process and the production inspections on manufacturing firms.

List of Subjects

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 117

Marine safety, Passenger vessels.

46 CFR Part 133

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 141

Marine safety, Occupational health and safety, Reporting and recordkeeping requirements, Towing vessels.

46 CFR Part 160

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 180

Marine safety, Passenger vessels.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 181 and 46 CFR parts 25, 28, 108, 117, 133, 141, 160, 169, 180, and 199 as follows:

Title 33—Navigation and Navigable Waters

PART 181—MANUFACTURER REQUIREMENTS

- 1. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302; DHS Delegation 00170.1, Revision No. 01.4.

§ 181.4 [Removed and Reserved]

- 2. Remove and reserve § 181.4.

Subpart G—Information Pamphlet or Placard for Personal Flotation Devices

- 3. Revise the heading of Subpart G to read as set forth above.

§ 181.701 [Amended]

- 4. Amend § 181.701 by adding the words “Coast Guard approved” after the word “all”.

- 5. Revise § 181.702 to read as follows:

§ 181.702 Information pamphlet or placard: requirement to furnish.

(a) Each manufacturer of a Coast Guard approved personal flotation device (PFD) must furnish, with each PFD that is sold or offered for sale for use on a recreational boat, an information pamphlet or placard accepted by the Commandant (CG–ENG–4) or meeting the requirements in the applicable subpart of 46 CFR part 160.

(b) No person may sell or offer for sale for use on a recreational boat a Coast Guard approved PFD unless an information pamphlet or placard required by this section is attached in such a way that it can be read prior to purchase.

§§ 181.703 through 181.705 [Removed]

- 6. Remove §§ 181.703 through 181.705.

Title 46—Shipping

PART 25—REQUIREMENTS

- 7. The authority citation for part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 2103, 3306, 4102, 4302; DHS Delegation 00170.1, Revision No. 01.4.

- 8. Amend § 25.25–5 by:
- a. Removing in paragraph (b)(2), the text “or 160.176” and adding, in its place, the text “160.176, or 160.255”; and
- b. Revising the introductory text to paragraph (c)(2).

The revision reads as follows:

§ 25.25–5 Life preservers and other lifesaving equipment required.

* * * * *

(c) * * *

(2) On each vessel, regardless of length and regardless of whether carrying passengers for hire, a commercial hybrid PFD approved under former approval series 160.077 prior to January 6, 2025, may be substituted for a PFD approved under approval series 160.055, 160.155, 160.176, or 160.255 if

it is in good and serviceable condition and—

* * * * *

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

- 9. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 8103, 10603; DHS Delegation 00170.1, Revision No. 01.4.

- 10. Revise § 28.110 to read as follows:

§ 28.110 Life preservers or other personal flotation devices.

(a) Except as provided by § 28.305 of this chapter, each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal

flotation device of the proper size for each individual on board as specified in table 1 to § 28.110 and part 25, subpart 25.25 of this chapter. Notwithstanding the provisions of paragraphs (c) and (d) of § 25.25–1 of this chapter, each commercial fishing industry vessel propelled by sail, and each manned barge employed in commercial fishing activities, must meet the requirements of this paragraph.

(b) Each wearable personal flotation device must be stowed so that it is readily accessible to the individual for whom it is intended, from both the individual's normal work station and berthing area. If there is no location accessible to both the work station and the berthing area, an appropriate device must be stowed in both locations.

TABLE 1 TO § 28.110—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS

Applicable waters	Vessel type	Devices required	Other regulations
Seaward of the Boundary Line and North of 32° N or South of 32° S; and Lake Superior. Coastal Waters on the West Coast of the United States north of Point Reyes, CA; Beyond Coastal Waters, cold water; and Lake Superior. All other waters (Includes all Great Lakes except Lake Superior).	Documented Vessel	Immersion suit or exposure suit.	28.135; 25.25–9(a); 25.25–13; 25.25–15.
	All vessels	Immersion suit or exposure suit.	28.135; 25.25–9(a); 25.25–13; 25.25–15.
	40 feet (12.2 meters) or more in length.	Wearable PFD approved under approval series 160.055, 160.155, or 160.176, or 160.255 immersion suit, or exposure suit. ¹	28.135; 25.25–5; 25.25–9(a); 25.25–13; 25.25–15.
	Less than 40 feet (12.2 meters) in length.	Wearable PFD approved under subchapter Q of this chapter, immersion suit, or exposure suit. ¹	28.135; 25.25–5; 25.25–9(a); 25.25–13; 25.25–15.

¹A commercial hybrid approved under former approval series 160.077 prior to [EFFECTIVE DATE OF FINAL RULE] may be substituted for a PFD approved under approval series 160.055, 160.155, 160.176, or 160.255 if it is in good and serviceable condition, used in accordance with the conditions marked on the PFD and in the owner's manual, and labeled for use on commercial vessels.

PART 108—DESIGN AND EQUIPMENT

- 11. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; DHS Delegation 00170.1, Revision No. 01.4.

- 12. Amend § 108.580 by revising paragraph (b) introductory text to read as follows:

§ 108.580 Personal lifesaving appliances.

* * * * *

(b) *Lifejackets*. Each unit must carry lifejackets approved under approval series 160.155 or 160.176. If the unit carries inflatable lifejackets, they must be of the same or similar design and have the same method of operation.

* * * * *

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

- 13. The authority citation for part 117 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; DHS Delegation 00170.1, Revision No. 01.4.

- 14. Amend § 117.71 by:

- a. Revising the section heading and paragraph (c);
- b. Removing paragraph (d); and
- c. Redesignating paragraph (e) as paragraph (d).

The revisions read as follows:

§ 117.71 Lifejackets.

* * * * *

(c) Each lifejacket must be approved under approval series 160.002, 160.005, 160.055, 160.155, 160.176, or 160.255 in subchapter Q of this chapter, or other standard specified by the Commandant. An inflatable lifejacket approved under

approval series 160.255 must include a full back-up inflation chamber.

* * * * *

- 15. Amend § 117.72 by revising the section heading and paragraphs (b) and (d) to read as follows:

§ 117.72 Personal flotation devices carried in addition to lifejackets.

* * * * *

(b) Wearable PFDs approved in accordance with §§ 160.064, 160.076, 160.264, or 160.276 in subchapter Q of this chapter, or other standard specified by the Commandant, may be carried as additional equipment.

* * * * *

(d) A commercial hybrid PFD approved under former approval series 160.077 prior to January 6, 2025 may be carried as additional equipment for use by persons working near or over the water if it is in good and serviceable condition, used in accordance with the

conditions marked on the PFD and in the owner's manual, of the same or similar design, and has the same method of operation as each other hybrid PFD carried on board.

PART 133—LIFESAVING SYSTEMS

■ 16. The authority citation for part 133 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3307; DHS Delegation 00170.1, Revision No. 01.4.

§ 133.70 [Amended]

■ 17. Amend § 133.70(b) introductory text by removing the text “160.177” and adding, in its place, the text “160.255”.

PART 141—LIFESAVING

■ 18. The authority citation for part 141 is revised to read as follows:

Authority: 46 U.S.C. 3103, 3301, 3306, 3308, 3316, 8104, 8904; 33 CFR 1.05; DHS Delegation 00170.1, Revision No. 01.4.

§ 141.340 [Amended]

■ 19. Amend § 141.340 by:

■ a. Removing in paragraph (a) the text “or 160.176,” and adding, in its place, the text “160.176, or 160.255”; and

■ b. Adding paragraph (i).

The addition reads as follows:

§ 141.340 Lifejackets.

* * * * *

(i) Wearable PFDs approved in accordance with §§ 160.064, 160.076, 160.264, or 160.276 in subchapter Q of this chapter, or other standard specified by the Commandant, may be carried as additional equipment. Additional equipment is not acceptable in lieu of any portion of the required lifejackets.

PART 160—LIFESAVING EQUIPMENT

■ 20. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; and DHS Delegation 00170.1, Revision No. 01.4.

Subpart 160.001 [Removed and Reserved]

■ 21. Remove and reserve subpart 160.001, consisting of §§ 160.001–1 through 160.001–5.

Subpart 160.002 [Removed and Reserved]

■ 22. Remove and reserve subpart 160.002, consisting of §§ 160.002–1 through 160.002–7.

Subpart 160.005 [Removed and Reserved]

■ 23. Remove and reserve subpart 160.005, consisting of §§ 160.005–1 through 160.005–7.

Subpart 160.006 [Removed and Reserved]

■ 24. Remove and reserve subpart 160.006, consisting of § 160.006–2.

■ 25. Add subpart 160.045, consisting of §§ 160.045–1 through 160.045–25, to read as follows:

Subpart 160.045—Recreational Throwable PFDs

Sec.

160.045–1 Scope.

160.045–3 Definitions.

160.045–5 Incorporation by reference.

160.045–7 Design, construction, and performance of throwable PFDs.

160.045–9 Approval procedures for throwable PFDs.

160.045–11 Recognized laboratory.

160.045–13 Approval inspections and tests.

160.045–15 Production inspections, tests, and quality control of throwable PFDs.

160.045–17 Marking and Labeling.

160.045–21 PFD manuals.

160.045–23 Procedure for approval of design or material change.

160.045–25 Suspension or termination of approval.

Subpart 160.045—Recreational Throwable PFDs

§ 160.045–1 Scope.

(a) This subpart contains structural and performance standards for approval of throwable PFDs for use on recreational vessels, as well as requirements for production follow-up inspections, associated manuals, information pamphlets or placards, and markings.

(b) Throwable PFDs approved under this subpart may rely entirely on inherently buoyant material, or rely entirely or partially upon inflation to achieve the minimum buoyancy.

(c) Throwable PFDs approved under this subpart are intended to meet the carriage requirements for uninspected commercial vessels under 40 ft (12 m) not carrying passengers for hire and recreational boats, in accordance with 33 CFR part 175.

§ 160.045–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE,

Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with subpart 159.010 of this subchapter, with a valid memorandum of understanding in accordance with § 159.010–7 of this subchapter.

§ 160.045–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email: fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone 847–272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.045–15(e).

(b) ANSI/UL 1123, Standard for Safety Marine Buoyant Devices, Seventh Edition, October 1, 2008 (including revisions through November 23, 2020); IBR approved for §§ 160.045–7(e); 160.045–13(d).

(c) ANSI/UL 1175, Standard for Safety Buoyant Cushions, Fourth Edition, April 20, 2007 (including revisions through January 10, 2020); IBR approved for §§ 160.045–7(e); 160.045–13(d).

§ 160.045–7 Design, construction, and performance of throwable PFDs.

(a) *General*. Every throwable PFD must conform to the requirements as accepted by the Commandant for listing and labeling by a recognized laboratory, and must be of such design, materials, and construction as to meet the requirements specified in this section.

(b) *Designs and constructions*. Throwable PFDs must not provide means for adjustment or close fitting to

the body. Methods of construction must provide strengths, with reinforcements where necessary, to be adequate for the intended use and purpose of the device.

(c) *Materials.* All materials used in any device covered by this subpart must meet the applicable requirements of subpart 164.019 of this chapter, must be all new materials, must be suitable for the purpose intended, and must be at least equivalent to corresponding materials specified for standard buoyant cushions. Hardware or fastenings must be of sufficient strength for the purpose of the device and must be of inherently corrosion-resistant material, such as stainless steel, brass, bronze, certain plastics, etc. Decorative platings of any thickness are permissible. Fabrics, coated fabrics, tapes, and webbing must be either mildew-resistant or treated for mildew resistance. Buoyancy provided by inherently buoyant material must not be dependent upon loose, granulated material.

(d) *Standard construction.* A standard foam cushion that is designed to be thrown must be 2 inches or more in thickness and must have 225 or more square inches of top surface area.

(e) *Nonstandard construction.* A nonstandard throwable PFD must meet the requirements in ANSI/UL 1123 or ANSI/UL 1175 (both incorporated by reference, see § 160.045–5) and any additional requirements that the Commandant may prescribe to approve unique or novel designs.

(f) *Buoyancy.* (1) Ring life buoys must have 16½ pounds or more of buoyancy.

(2) Foam cushions must have 18 pounds or more of buoyancy.

(3) A device other than those standard devices specified in paragraph (f)(1) or (2) of this section must have 20 pounds or more of buoyancy.

(g) *Workmanship.* Throwable PFDs must be of first quality workmanship and must be free from any defects materially affecting their appearance or serviceability.

§ 160.045–9 Approval procedures for throwable PFDs.

(a) Each application for approval of a throwable PFD must be submitted directly to a Coast Guard recognized laboratory.

(b) The recognized laboratory must determine if a throwable PFD with novel design features requires a preliminary review by the Coast Guard prior to testing. Submissions requiring preliminary review must be sent to TypeApproval@uscg.mil, and must include a full description and drawings. Pictures, samples, and preliminary test results may also be submitted.

§ 160.045–11 Recognized laboratory.

(a) The approval inspections and tests required by § 160.045–13, and production inspections, tests, and quality control required by § 160.045–15, must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at: <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

§ 160.045–13 Approval inspections and tests.

(a) Each throwable PFD must be certified by a recognized laboratory as meeting the requirements of this subpart. Approval tests must be conducted or supervised by a recognized laboratory using PFDs constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each throwable PFD design must be visually examined for compliance with the construction and performance requirements of this subpart.

(c) Standard PFDs must be submerged in fresh water for 24 or more continuous hours. The measured buoyancy after the 24 hours of submersion must be the buoyancy specified in § 160.045–7(f).

(d) Non-standard throwable PFDs must be subjected to approval tests specified in ANSI/UL 1123 or ANSI/UL 1175 (both incorporated by reference, see § 160.045–5) or another test program accepted by the Commandant. Approval tests must be conducted or supervised by a recognized laboratory using throwable PFDs constructed in accordance with the plans and specifications submitted with the application for approval.

(e) The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.045–15 Production inspections, tests, and quality control of throwable PFDs.

(a) *Manufacturer's inspection and tests.* Manufacturers of approved throwable PFDs must maintain quality control of the materials used, manufacturing methods and the finished product to meet the applicable requirements, and make sufficient

inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(b) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(c) *Test facilities.* The laboratory inspector, or the Coast Guard marine inspector assigned by the Commander of the District in which the factory is located, or both, must be admitted to any place in the factory where work is being done on listed and labeled products. Either or both inspectors may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(d) *Additional tests, etc.*

Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or by the United States Coast Guard.

(e) *Follow-up program.* A follow-up program in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.045–5) meets the requirements of this section.

§ 160.045–17 Marking and Labeling.

(a) Each throwable PFD must be marked in accordance with the recognized laboratory's listing and labeling requirements in accordance with § 160.045–3(a). At a minimum, all labels must include—

- (1) Size information, as appropriate;
- (2) The Coast Guard approval number;
- (3) Manufacturer's contact information;
- (4) Model name/number;
- (5) Lot number, manufacturer date; and
- (6) Any limitations or restrictions on approval or special instructions for use.

(b) Marking must be of a type that will be durable and legible for the expected life of the device.

(c) The Commandant may prescribe additional marking requirements for special purpose devices or unique or novel designs.

§ 160.045–21 PFD manuals.

(a) An owner's manual must be provided with each fully or partially inflatable throwable PFD sold or offered for sale. The text of each manual is reviewed with the application for approval.

(b) The Commandant may prescribe additional information in the manual for special purpose devices or unique or novel designs.

(c) Additional information, instructions, or illustrations may be included in the owner's manual if there is no contradiction to the required information.

§ 160.045–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing throwable PFD production methods.

(b) Determinations of equivalence of design, construction, and materials may be made only by the Commandant or a designated representative.

§ 160.045–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of a throwable PFD if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

Subpart 160.047 [Removed and Reserved]

- 26. Remove and reserve subpart 160.047, consisting of §§ 160.047–1 through 160.047–7.

Subpart 160.048 [Removed and Reserved]

- 27. Remove and reserve subpart 160.048, consisting of §§ 160.048–1 through 160.048–8.

Subpart 160.052 [Removed and Reserved]

- 28. Remove and reserve subpart 160.052, consisting of §§ 160.052–1 through 160.052–9.

Subpart 160.055—Life Preservers, Unicellular Plastic Foam, Adult and Child, for Merchant Vessels

- 29. Revise § 160.055–1 to read as follows:

§ 160.055–1 Scope.

(a) This subpart contains requirements for production follow-up inspections for life preservers approved under this subpart prior to January 6, 2025.

(b) Life preservers approved under this subpart rely upon inherently buoyant material to achieve the minimum buoyancy.

(c) Life preservers approved under this subpart are intended to meet the carriage requirements for wearable PFDs for uninspected passenger vessels, uninspected commercial vessels over 40 ft (12m), and for inspected vessels.

(d) Each life preserver specified in this subpart is a:

(1) Standard, bib type, vinyl dip coated:

- (i) Model 62, adult (for persons weighing over 90 pounds); or
- (ii) Model 66, child (for persons weighing less than 90 pounds); or
- (2) Standard, bib type, cloth covered:

- (i) Model 63, adult (for persons weighing over 90 pounds); or
- (ii) Model 67, child (for persons weighing less than 90 pounds); or
- (3) Nonstandard, shaped type:

- (i) Model,¹ adult (for persons weighing over 90 pounds); or
- (ii) Model,¹ child (for persons weighing less than 90 pounds).

¹ A model designation for each nonstandard life preserver is to be assigned by the manufacturer. That designation must be different from any standard lifesaving device designation.

§ 160.055–2 [Removed and Reserved]

- 30. Remove and reserve § 160.055–2.

- 31. Revise § 160.055–3 to read as follows:

§ 160.055–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to

perform, supervise, or oversee the duties described in § 160.055–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.055–4 [Removed and Reserved]

- 32. Remove and reserve § 160.055–4.

- 33. Revise § 160.055–5, including the section heading, to read as follows:

§ 160.055–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002 phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.055–15(a).

(b) [Reserved]

§§ 160.055–6 through 160.055–9 [Removed and Reserved]

- 34. Remove and reserve §§ 160.055–6 through 160.055–9.

- 35. Add § 160.055–11 to read as follows:

§ 160.055–11 Independent laboratory.

The production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory accepted by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of accepted independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

- 36. Add § 160.055–15 to read as follows:

§ 160.055–15 Production inspections, tests, and quality control of life preservers.

(a) *General.* Production tests and inspections must be conducted in accordance with this section, subpart 159.007 of this chapter, and the independent laboratory's procedures for production inspections and tests as accepted by the Commandant. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subchapter. A follow-up program in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.055–5), meets the requirements of this subpart.

(b) *Oversight.* In addition to responsibilities set out in part 159 of this chapter and the accepted laboratory procedures for production inspections and tests, each manufacturer of a life preserver and each laboratory inspector must comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Perform all tests and examinations necessary to show compliance with this subpart on each lot before any inspector's tests and inspection of the lot;

(ii) Follow established procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product; and

(iii) Allow an inspector to take samples of completed units or of component materials for tests required by this subpart and for tests relating to the safety of the design.

(2) *Laboratory.* An inspector from the accepted laboratory must oversee production in accordance with the laboratory's procedures for production inspections and tests accepted by the Commandant. During production oversight, the inspector must not perform or supervise any production test or inspection unless—

(i) The manufacturer has a valid approval certificate; and

(ii) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(3) At least quarterly, the inspector must check the manufacturer's compliance with the company's quality control procedures, examine the manufacturer's required records, and observe the manufacturer perform each of the required production tests.

(c) *Test facilities.* The manufacturer must provide a suitable place and apparatus for conducting the tests and inspections necessary to determine compliance of life preservers with this

subpart. The manufacturer must provide means to secure any test that is not continuously observed, such as the 48-hour buoyancy test. The manufacturer must have the calibration of all test equipment checked in accordance with the test equipment manufacturer's recommendation and interval but not less than at least once every year.

(d) *Lots.* A lot must not consist of more than 1000 life preservers. A lot number must be assigned to each group of life preservers produced. Lots must be numbered serially. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. The lot number assigned, along with the approval number, must enable the PFD manufacturer to determine the supplier's identifying information for the component lot.

(e) *Samples.* (1) From each lot of life preservers, manufacturers must randomly select a number of samples from completed units at least equal to the applicable number required by table 1 to § 160.055–15(e)(1) for buoyancy testing. Additional samples must be selected for any tests, examinations, and inspections required by the laboratory's production inspections and tests procedures.

**TABLE 1 TO § 160.055–15(e)(1)—
SAMPLING FOR BUOYANCY TESTS**

Lot size	Number of life preservers in sample
100 and under	1
101 to 200	2
201 to 300	3
301 to 500	4
501 to 750	6
751 to 1,000	8

(2) For a lot succeeding one from which any sample life preserver failed the buoyancy test, the sample must consist of not less than ten specimen life preservers to be tested for buoyancy in accordance with paragraph (f) of this section.

(f) *Buoyancy test.* The buoyancy of the life preservers must be determined by measuring the upward force exerted by the individual submerged unit. The buoyancy measurement must be made at the end of the 48 hours of submersion, during which period the pad inserts must not be disturbed.

(g) *Buoyancy required.* The buoyant pad inserts from Model 3 adult life preservers must provide not less than 25 pounds buoyancy in fresh water, and the pads from Model 5 child life

preservers must provide not less than 16.5 pounds buoyancy.

(h) *Lot inspection.* On each lot, the laboratory inspector must perform a final lot inspection to be satisfied that the life preservers meet this subpart. Each lot must demonstrate—

(1) First quality workmanship;

(2) That the general arrangement and attachment of all components, such as body straps, closures, tie tapes, and drawstrings, are as specified in the approved plans and specifications;

(3) Compliance with the marking requirements; and

(4) The information pamphlet or placard specified in 33 CFR part 181 subpart G, if required, is securely attached to the device, with the PFD selection information visible and accessible prior to purchase.

(i) *Lot acceptance.* When the independent laboratory has determined that the life preservers in the lot are of a type officially approved in the name of the company, and that such life preservers meet the requirements of this subpart, they must be plainly marked in waterproof ink with the independent laboratory's name or identifying mark.

(j) *Lot rejection.* Each nonconforming unit must be rejected. If three or more nonconforming units are rejected for the same kind of defect, lot inspection must be discontinued and the lot rejected. The inspector must discontinue lot inspection and reject the lot if examination of individual units or the records for the lot shows noncompliance with either this subchapter or the laboratory's or the manufacturer's quality control procedures. A rejected unit or lot may be resubmitted for testing and inspection if the manufacturer first removes and destroys each defective unit or, if authorized by the laboratory, reworks the unit or lot to correct the defect. A rejected lot or rejected unit must not be sold or offered for sale under the representation that it meets this subpart or that it is Coast Guard approved.

■ 37. Add § 160.055–19 to read as follows:

§ 160.055–19 Pamphlet or Placard.

Each life preserver sold or offered for sale for use on recreational boats must be provided with a pamphlet or placard that a prospective purchaser can read prior to purchase, as specified in 33 CFR part 181 subpart G.

■ 38. Add § 160.055–23 to read as follows:

§ 160.055–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to typeapproval@uscg.mil for approval before changing life preserver production methods.

(b) Only the Commandant or a designated representative may make determinations of equivalence of design, construction, and materials.

■ 39. Add § 160.055–25 to read as follows:

§ 160.055–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

Subpart 160.060—Specification for a Buoyant Vest, Unicellular Polyethylene Foam, Adult and Child

■ 40. Revise § 160.060–1 to read as follows:

§ 160.060–1 Scope.

(a) This subpart contains requirements for production follow-up inspections for buoyant vests approved under this subpart prior to January 6, 2025.

(b) Buoyant vests approved under this subpart rely upon inherently buoyant material to achieve the minimum buoyancy.

(c) Buoyant vests approved under this subpart are intended to meet the carriage requirements for wearable PFDs for uninspected passenger vessels, uninspected commercial vessels over 40 ft (12m), and for inspected vessels.

(d) Each buoyant vest specified in this subpart is a standard model:

(1) Standard:

(i) Model AY, adult (for persons weighing over 90 pounds); or

(ii) Model CYM, child, medium (for children weighing from 50 to 90 pounds); or

(iii) Model CYS, child, small (for children weighing less than 50 pounds).

(2) Nonstandard:

(i) Model,¹ adult (for persons weighing over 90 pounds); or

(ii) Model,¹ child, medium (for persons weighing from 50 to 90 pounds); or

(iii) Model,¹ child, small (for persons weighing less than 50 pounds).

¹ A model designation for a nonstandard vest is to be assigned by the individual manufactured and must be different from any standard vest.

§ 160.060–2 [Removed and Reserved]

■ 41. Remove and reserve § 160.060–2.

■ 42. Revise § 160.060–3 to read as follows:

§ 160.060–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.060–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.060–3a [Removed and Reserved]

■ 43. Remove and reserve § 160.060–3a.

§ 160.060–4 [Removed and Reserved]

■ 44. Remove and reserve § 160.060–4.

■ 45. Revise § 160.060–5 to read as follows:

§ 160.060–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021)

(“ANSI/CAN/UL 9595”); IBR approved for § 160.060–15(h).

(b) [Reserved]

§§ 160.060–6 through 160.060–9 [Removed and Reserved]

■ 46. Remove and reserve §§ 160.060–6 through 160.060–9.

■ 47. Add § 160.060–11 to read as follows:

§ 160.060–11 Independent laboratory.

(a) The production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under § 159.010 of this subchapter to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

■ 48. Add § 160.060–15 to read as follows:

§ 160.060–15 Production inspections, tests, and quality control.

(a) *General.* Manufacturers of listed and labeled buoyant vests must—

(1) Maintain quality control of the materials used, the manufacturing methods, and the finished product to meet the applicable requirements of this subpart by conducting sufficient inspections and tests of representative samples and components produced;

(2) Make available to the recognized laboratory inspector or the Coast Guard inspector, upon request, records of tests conducted by the manufacturer and records of materials used during production of the device, including affidavits by suppliers; and

(3) Permit any examination, inspection, or test required by the recognized laboratory or the Coast Guard for a produced listed and labeled device, either at the place of manufacture or some other location.

(b) *Lot size and sampling.* (1) A lot must consist of 500 buoyant vests or fewer;

(2) A new lot begins after any change or modification in materials used or manufacturing methods employed;

(3) The manufacturer of the buoyant vests must notify the recognized laboratory when a lot is ready for inspection;

(4) The manufacturer must select samples in accordance with the

requirements in Table 1 to § 160.060–15(b)(4) from each lot of buoyant vests to be tested for buoyancy in accordance with paragraph (e) of this section; and

TABLE 1 TO § 160.060–15(b)(4)—
SAMPLE FOR BUOYANCY TESTS

Lot size	Number of vests in sample
100 and under	1
101 to 200	2
201 to 300	3
301 to 500	4

(5) If a sample vest fails the buoyancy test, the sample from the next succeeding lot must consist of 10 specimen vests or more to be tested for buoyancy in accordance with paragraph (e) of this section.

(c) *Additional compliance tests.* An inspector may conduct an examination, test, and inspection of a buoyant device obtained from the manufacturer or through commercial channels to determine the suitability of the device for listing and labeling, or to determine its conformance to applicable requirements.

(d) *Test facilities.* The manufacturer must admit the inspector to any part of the premises at the place of manufacture of a listed and labeled device to—

(1) Examine, inspect, or test a sample of a part or a material that is included in the construction of the device; and

(2) Conduct any examination, inspection, or test in a suitable place and with appropriate apparatus provided by the manufacturer.

(e) *Buoyancy—(1) Buoyancy test method.* Remove the buoyant inserts from the vests. Securely attach the spring scale in a position directly over the test tank. Suspend the weighted wire basket from the scale in such a manner that the basket can be weighed while it is completely under water. In order to measure the actual buoyancy provided by the inserts, the underwater weight of the empty basket must exceed the buoyancy of the inserts. To obtain the buoyancy of the inserts, proceed as follows:

(i) Weigh the empty wire basket under water.

(ii) Place the inserts inside the basket and submerge it so that the top of the basket is at least 2 inches below the surface of the water. Allow the inserts to remain submerged for 24 hours. The tank must be locked or sealed during this 24-hour submergence period. It is important that after the inserts have once been submerged they remain submerged for the duration of the test, and at no time during the course of the

test removed from the tank or otherwise exposed to air.

(iii) After the 24-hour submergence period, unlock or unseal the tank and weigh the wire basket with the inserts inside while both are still under water.

(iv) The buoyancy is computed as paragraph (e)(1)(i) of this section minus paragraph (e)(1)(iii) of this section.

(2) *Buoyancy required.* The buoyant inserts from adult size buoyant vests must provide not less than 15½ pounds of buoyancy in fresh water; the inserts from the child medium size buoyant vests must provide not less than 11 pounds buoyancy; and the inserts from the child small size buoyant vests must provide not less than 7 pounds buoyancy.

(f) *Body strap test.* The complete body strap assembly, including hardware must be tested for strength by attaching the D-ring to a suitable support such that the assembly hangs vertically its full length. A weight of 150 pounds for an adult size and 115 pounds for a child size must be attached to the other end on the snap hook for 10 minutes. The specified weight must not break or excessively distort the body strap assembly.

(g) *Additional approval tests for nonstandard vests.* Tests in addition to those required by this section may be conducted by the inspector for a nonstandard vest to determine performance equivalence to a standard vest. Such additional tests may include determining performance in water, suitability of materials, donning time, ease of adjustment, and similar equivalency tests. Costs for any additional tests must be assumed by the manufacturer.

(h) *Follow-up program.* A follow-up program in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.060–5) meets the requirements of this section.

■ 49. Add § 160.060–19 to read as follows:

§ 160.060–19 Pamphlet or placard.

Each buoyant vest sold or offered for sale for use on recreational boats must be provided with a pamphlet or placard that a prospective purchaser can read prior to purchase, as specified in 33 CFR part 181 subpart G.

■ 50. Add § 160.060–23 to read as follows:

§ 160.060–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to typeapproval@uscg.mil for approval before changing PFD production methods.

(b) Only the Commandant or a designated representative may make determinations of equivalence of design, construction, and materials.

■ 51. Add § 160.060–25 to read as follows:

§ 160.060–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

Subpart 160.064—Marine Buoyant Devices

■ 52. Revise § 160.064–1 to read as follows:

§ 160.064–1 Scope.

(a) This subpart contains requirements for production follow-up inspections for wearable PFDs and throwable PFDs approved under this subpart prior to January 6, 2025.

(b) PFDs approved under this subpart are intended to meet the carriage requirements for PFDs for uninspected commercial vessels under 40 ft (12m) not carrying passengers for hire and recreational boats, in accordance with 33 CFR 175 and 46 CFR 25.25.

(c) PFDs covered by this subpart are of two general types: those intended to be worn on the body and those intended to be thrown.

§ 160.064–2 [Removed and Reserved]

■ 53. Remove and reserve § 160.064–2.

■ 54. Revise § 160.064–3 to read as follows:

§ 160.064–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First class workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.064–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid

memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.064–4 [Removed and Reserved]

- 55. Remove and reserve § 160.064–4.
- 56. Add § 160.064–5 to read as follows:

§ 160.064–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.064–15(e).

(b) [Reserved]

§§ 160.064–6 and 160.064–7 [Removed and Reserved]

- 57. Remove and reserve §§ 160.064–6 and 160.064–7.
- 58. Add § 160.064–11 to read as follows:

§ 160.064–11 Recognized laboratory.

(a) The production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

- 59. Add § 160.064–15 to read as follows:

§ 160.064–15 Production inspections, tests, and quality control of PFDs.

(a) *Manufacturer’s inspection and tests.* Manufacturers of approved PFDs must maintain quality control of the materials used, manufacturing methods, and the finished product to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(b) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(c) *Test facilities.* The laboratory inspector, or the Coast Guard marine inspector assigned by the Commander of the District in which the factory is located, or both, must be admitted to any place in the factory where work is being done on listed and labeled products. Either or both inspectors may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(d) *Additional tests, etc.* Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or the United States Coast Guard.

(e) *Follow-up program.* A follow-up program in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.064–5) meets the requirements of this section.

- 60. Add § 160.064–23 to read as follows:

§ 160.064–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized

laboratory for approval before changing PFD production methods.

(b) Determinations of equivalence of design, construction, and materials must be made only by the Commandant or a designated representative.

- 61. Add § 160.064–25 to read as follows:

§ 160.064–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of a PFD design if the manufacturer fails to comply with this subpart or the recognized laboratory’s accepted procedures or requirements.

Subpart 160.076—Inflatable Recreational Personal Flotation Devices

- 62. Amend § 160.076–1 by revising paragraphs (a) and (b) and adding new paragraph (c) to read as follows:

§ 160.076–1 Scope.

(a) This subpart contains requirements for production follow-up inspections for inflatable recreational personal flotation devices (PFDs) approved prior to January 6, 2025.

(b) Inflatable PFDs approved under this subpart rely partially or entirely upon inflation for buoyancy.

(c) PFDs approved under this subpart are intended to meet the carriage requirements for wearable PFDs for recreational vessels and uninspected recreational submersible vessels, in accordance with 33 CFR 175.15 and 175.17.

§ 160.076–3 [Removed]

- 63. Remove § 160.076–3.

§ 160.076–5 [Redesignated as § 160.076–3]

- 64. Redesignate § 160.076–5 as § 160.076–3.

§ 160.076–11 [Redesignated as § 160.076–5]

- 65. Redesignate § 160.076–11 as § 160.076–5.
- 66. Revise newly redesignated § 160.076–5 to read as follows:

§ 160.076–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S.

Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.076–29(a).

(b) [Reserved].

§ 160.076–13 [Removed and Reserved]

■ 67. Remove and reserve § 160.076–13.

§ 160.076–21 [Removed and Reserved]

■ 68. Remove and reserve § 160.076–21.

§ 160.076–23 [Removed and Reserved]

■ 69. Remove and reserve § 160.076–23.

§ 160.076–25 [Removed and Reserved]

■ 70. Remove and reserve § 160.076–25.
 ■ 71. Amend § 160.076–29 by:
 ■ a. Revising paragraphs (a) and (c)(1)(i);
 ■ b. Removing paragraphs (c)(5) and (6), (e)(3) through (5), (f), and (g); and
 ■ c. Redesignating paragraph (h) as paragraph (f).

The revisions read as follows:

§ 160.076–29 Production oversight.

(a) Production tests and inspections must be conducted in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.076–5) or an alternative follow-up procedure accepted by the Commandant. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

* * * * *

(c) * * *

(1) * * *

(i) Perform all required tests and examinations on each PFD lot before any required inspector’s tests and inspection of the lot;

* * * * *

■ 72. Amend § 160.076–31 by:

- a. Revising paragraphs (a), (b)(1) and (2);
- b. Removing paragraph (c);
- c. Redesignating paragraphs (d) and (e) as (c) and (d); and
- d. Revising newly redesignated paragraph (c)(1) introductory text.

The revisions read as follows:

§ 160.076–31 Production tests and examinations.

(a) Samples used in testing must be selected in accordance with the sampling plan accepted by the Commandant.

(b) On each sample selected—

(1) The manufacturer must conduct the tests specified in the follow-up program accepted by the Commandant;

(2) The recognized laboratory inspector must conduct or supervise the tests specified in the follow-up program accepted by the Commandant; and

* * * * *

(c) *Final lot examination and inspection*—(1) *General*. On each PFD lot that passes production testing, the manufacturer must perform a final lot examination and, on every fifth lot, a laboratory inspector must perform a final lot inspection. Each final lot must demonstrate—

* * * * *

§ 160.076–33 [Amended]

■ 73. Amend § 160.076–33 by removing paragraph (b)(6), and redesignating paragraphs (b)(7), (8), and (9) as paragraphs (b)(6), (7), and (8).

■ 74. Revise § 160.076–35 to read as follows:

§ 160.076–35 Information pamphlet or placard.

A pamphlet or placard accepted by the Commandant must be attached to each inflatable PFD sold or offered for sale in such a way that a prospective purchaser can read the pamphlet prior to purchase. The pamphlet or placard text and layout must be submitted to the Commandant for approval. The text must be printed in each pamphlet or placard exactly as approved by the Commandant. Additional information, instructions, or illustrations must not be included within the approved text and layout. Sample pamphlet text and layout may be obtained by contacting the Commandant. This pamphlet or placard may be combined with the manual required by § 160.076–37 if PFD selection and warning information is provided on the PFD packaging in such a way that it remains visible until purchase.

■ 75. Revise § 160.076–37 to read as follows:

§ 160.076–37 Owner’s manual.

(a) *General*. The manufacturer must provide an owner’s manual with each inflatable PFD sold or offered for sale.

(b) *Manual contents*. The manual must contain the information as approved by the Commandant. If the PFD is conditionally approved, an explanation of the meaning of and

reasons for the approval conditions must be included.

■ 76. In § 160.076–39, revise the introductory text to read as follows:

§ 160.076–39 Marking.

Each inflatable PFD must be marked as approved by the Commandant. At a minimum, all labels must include—

* * * * *

Subpart 160.077 [Removed and Reserved]

■ 77. Remove and reserve subpart 160.077, consisting of §§ 160.077–1 through 160.077–31.

■ 78. Add subpart 160.255, consisting of §§ 160.255–1 through 160.255–27, to read as follows:

Subpart 160.255—Commercial Lifejackets

Sec.

160.255–1 Scope.

160–255–3 Definitions.

160.255–5 Incorporation by reference.

160.255–7 Design, construction, and performance of lifejackets.

160.255–9 Approval procedures for lifejackets.

160.255–11 Recognized laboratory.

160.255–13 Approval inspections and tests.

160.255–15 Production inspections, tests, and quality control of lifejackets.

160.255–17 Marking and labeling.

160.255–19 Placard.

160.255–21 Lifejacket manuals.

160.255–23 Procedure for approval of design or material change.

160.255–25 Suspension or termination of approval.

160.255–27 Servicing for fully and partially inflatable lifejackets.

Subpart 160.255—Commercial Lifejackets

§ 160.255–1 Scope.

(a) This subpart contains structural and performance standards for approval of Level 100 lifejackets, as well as requirements for production follow-up inspections, markings, information placards, and associated manuals.

(b) Lifejackets approved under this subpart must rely upon inherently buoyant material, inflation, or a combination to achieve the minimum buoyancy.

(c) Lifejackets approved under this subpart are intended to meet the carriage requirements for wearable PFDs for uninspected passenger vessels, uninspected commercial vessels over 40 ft (12m) and for inspected vessels.

§ 160.255–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards

Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.255–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.255–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.255–15(a).

(b) ANSI/CAN/UL 12402–4:2020, Standard for Safety Personal Flotation Devices—Part 4: Lifejackets, Performance Level 100—Safety Requirements, First Edition, July 9, 2020 (“ANSI/CAN/UL 12402–4”); IBR approved for §§ 160.255–7(a); 160.255–13(a) and (b); 160.255–17(a); 160.255–19; 160.255–21(a).

§ 160.255–7 Design, construction, and performance of lifejackets.

(a) Each Level 100 lifejacket design must—

(1) Meet the requirements in ANSI/CAN/UL 12402–4 (incorporated by

reference, see § 160.255–5) for a Level 100 device, and the requirements of this subpart; and

(2) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(b) Lifejackets must be of first quality workmanship and must be free from any defects materially affecting their appearance or serviceability.

(c) Lifejackets must not provide means intended for fastening or securing the device to a boat.

§ 160.255–9 Approval procedures for lifejackets.

(a) Each application for approval of a Level 100 lifejacket must be submitted directly to a Coast Guard recognized laboratory.

(b) The recognized laboratory must determine if a lifejacket with novel design features requires a preliminary review by the Coast Guard prior to testing. Submissions requiring preliminary review must be sent to TypeApproval@uscg.mil, and must include a full description and drawings. Pictures, samples, and preliminary test results may also be submitted.

§ 160.255–11 Recognized laboratory.

(a) The approval inspections and tests, production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

§ 160.255–13 Approval inspections and tests.

(a) Each lifejacket must be certified by a recognized laboratory as meeting the requirements of ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5). Approval tests specified in ANSI/CAN/UL 12402–4 must be conducted or supervised by a recognized laboratory using prototype lifejackets constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each lifejacket design must be visually examined for compliance with the construction and performance

requirements of this subpart and ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5).

(c) The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.255–15 Production inspections, tests, and quality control of lifejackets.

(a) *General.* Production tests and inspections must be conducted in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.255–5), or an alternative follow-up procedure accepted by the Commandant. To maintain approval, the manufacturer must be in good standing under an accepted follow-up procedure.

(b) *Manufacturer’s inspection and tests.* Manufacturers of approved lifejackets must maintain quality control of the materials used, manufacturing methods, and the finished product so as to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(c) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(d) *Test facilities.* The inspector must be admitted to any place in the factory where work is being done on listed and labeled products, and the inspector may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(e) *Additional tests, etc.* Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or the United States Coast Guard.

§ 160.255–17 Marking and labeling.

(a) Each lifejacket must be marked with the appropriate label as specified in Figure 6DV of ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5).

(b) The Commandant may prescribe additional marking requirements for special purpose devices or unique or novel designs.

§ 160.255–19 Placard.

Each lifejacket sold or offered for sale must be provided with a placard that a prospective purchaser can read prior to purchase, as specified in Figure 8DV.1.1a and Figure 8DV.1.1b, Choose the Device You Will Want to Wear, of ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5). The required placard text must be printed exactly as set out in ANSI/CAN/UL 12402–4, unless otherwise approved by the Commandant.

§ 160.255–21 Lifejacket manuals.

(a) An owner's manual in accordance with Figure 7DV of ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5), must be provided with each inflatable lifejacket sold or offered for sale. The text of each manual is reviewed with the application for approval.

(b) The Commandant may prescribe additional information in the manual for special purpose devices or unique or novel designs.

(c) Additional information, instructions, or illustrations may be included in the owner's manual if there is no contradiction to the required information.

§ 160.255–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing lifejacket production methods.

(b) Determinations of equivalence of design, construction, and materials must be made only by the Commandant or a designated representative.

§ 160.255–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of a lifejacket design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

§ 160.255–27 Servicing for fully and partially inflatable lifejackets.

(a) *General.* Each lifejacket that relies fully or partially on inflation and is

approved under this subchapter must be serviced at approved facilities at 12-month intervals according to this section.

(1) Each manufacturer of an approved inflatable lifejacket must provide one or more Coast Guard-approved facilities for servicing those lifejackets. The manufacturer must notify the Commandant whenever an approved facility under its organization no longer provides servicing of a lifejacket make and model listed in the guidelines required by paragraph (d) of this section.

(2) Each manufacturer of an approved inflatable lifejacket must make replacement parts available to Coast Guard-approved independent servicing facilities.

(b) *Servicing facilities.* Each Coast Guard-approved servicing facility must meet the requirements of this paragraph and paragraph (d) of this section to receive and keep its approval for each make and model of lifejacket. Approval is obtained according to § 160.255–5(c).

(1) Each servicing facility must conduct lifejacket servicing according to its servicing guidelines and follow the procedures in the service manual required by this section.

(2) Each servicing facility must have a suitable site for servicing that must be clean, well lit, free from excessive dust, drafts, and strong sunlight, and have appropriate temperature and humidity control as specified in the service manual.

(3) Each servicing facility must have the appropriate service, repair, and test equipment and spare parts for performing required tests and repairs.

(4) Each servicing facility must have a current manufacturer's service manual for each make and model of lifejacket serviced.

(5) A servicing facility may have more than one servicing site provided that each site meets the requirements of paragraph (b)(2) of this section.

(6) Each servicing facility must be inspected at intervals not exceeding six months by an accepted independent laboratory, and a report of the inspections must be submitted to the Commandant at least annually. The report must contain enough information to show compliance with paragraphs (b)(1) through (4) of this section and paragraph (d) of this section. Where a facility uses more than one site the report must show compliance at each site at least biennially.

(c) *Service manual.* (1) Each manufacturer of an approved inflatable lifejacket must prepare a service manual for the lifejacket. The service manual

must be approved by the Commandant according to § 160.176–5(b).

(2) The manufacturer must make the service manual, service manual revisions, and service bulletins available to each approved servicing facility.

(3) Each service manual must contain the following:

(i) Detailed procedures for inspecting, servicing, and repackaging the lifejacket;

(ii) A list of approved replacement parts and materials to be used for servicing and repairs, if any;

(iii) A requirement to mark the date and servicing facility name on each lifejacket serviced;

(iv) Frequency of servicing; and

(v) Any specific restrictions or special procedures prescribed by the Coast Guard or manufacturer.

(4) Each service manual revision and service bulletin which authorizes the modification of a lifejacket, or which affects a requirement under this subpart, must be approved by the Commandant. Other revisions and service bulletins are not required to be approved, but a copy of each must be sent to the Commandant when it is issued. At least once each year, the manufacturer must provide to the Commandant and to each servicing facility approved to service its lifejackets a bulletin listing each service manual revision and bulletin in effect.

(d) *Servicing facilities guidelines.* Each servicing facility must have written guidelines that include the following:

(1) Identification of each make and model of lifejacket that may be serviced by the facility as well as the manual and revision to be used for servicing;

(2) Identification of the person, by title or position, who is responsible for the servicing program;

(3) Training and qualifications of servicing technicians;

(4) Provisions for the facility to retain a copy of its current letter of approval from the Coast Guard at each site; and

(5) Requirements to—

(i) Ensure each inflatable lifejacket serviced under its Coast Guard approval is serviced in accordance with the manufacturer's service manual;

(ii) Keep servicing technicians informed of each approved servicing manual revision and bulletin and ensure servicing technicians understand each change and new technique related to the lifejackets serviced by the facility;

(iii) Calibrate each pressure gauge, weighing scale, and mechanically operated barometer at intervals of not more than one year;

(iv) Ensure each inflatable lifejacket serviced under the facility's Coast Guard approval is serviced by or under the supervision of a servicing technician

who meets the requirements of paragraph (d)(3) of this section;

(v) Specify each make and model of lifejacket the facility is approved to service when it represents itself as approved by the U.S. Coast Guard; and

(vi) Not service any lifejacket for a U.S. registered commercial vessel, unless it is approved by the U.S. Coast Guard to service the make and model of lifejacket.

(e) *Servicing records.* Each servicing facility must maintain records of all completed servicing. These records must be retained for at least 5 years after they are made, be made available to any Coast Guard representative and independent laboratory inspector upon request, and include at least the following:

(1) Date of servicing, number of lifejackets serviced, lot identification, approval number, and test results data for the lifejackets serviced;

(2) Identification of the person conducting the servicing;

(3) Identity of the vessel receiving the serviced lifejackets; and

(4) Date of return to the vessel.

■ 79. Add subpart 160.264, consisting of §§ 160.264–1 through 160.264–25, to read as follows:

Subpart 160.264—Wearable Recreational Personal Flotation Devices (PFDs)

Sec.

- 160.264–1 Scope.
- 160.264–3 Definitions.
- 160.264–5 Incorporation by reference.
- 160.264–7 Design, construction, and performance of PFDs.
- 160.264–9 Approval procedures for PFDs.
- 160.264–11 Recognized laboratory.
- 160.264–13 Approval inspections and tests.
- 160.264–15 Production inspections, tests, and quality control of PFDs.
- 160.264–17 Marking and labeling.
- 160.264–19 Placard.
- 160.264–21 PFD manuals.
- 160.264–23 Procedure for approval of design or material change.
- 160.264–25 Suspension or termination of approval.

Subpart 160.264—Wearable Recreational Personal Flotation Devices (PFDs)

§ 160.264–1 Scope.

(a) This subpart contains structural and performance standards for approval of Level 50 and Level 70 inherently buoyant personal flotation devices (PFDs), as well as requirements for production follow-up inspections, markings, information placards, and associated manuals.

(b) PFDs approved under this subpart rely entirely upon inherently buoyant material to achieve the minimum buoyancy.

(c) PFDs approved under this subpart are intended to meet the carriage requirements for wearable PFDs for uninspected commercial vessels under 40 ft (12m) not carrying passengers for hire and recreational boats, in accordance with 33 CFR part 175 and 46 CFR 25.25.

§ 160.264–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.264–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.264–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.264–15(a).

(b) ANSI/CAN/UL 12402–5:2022, Standard for Safety Personal Flotation

Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements, First Edition, December 31, 2015 (including revisions through January 27, 2022) (“ANSI/CAN/UL 12402–5”); IBR approved for §§ 160.264–7(a) and (b); 160.264–13(a) and (b); 160.264–17(a); 160.264–19; 160.264–21(a).

§ 160.264–7 Design, construction, and performance of PFDs.

(a) Each Level 70 PFD design must—

(1) Meet the requirements in ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5) for a Level 70 device; and

(2) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(b) Each Level 50 PFD design must—

(1) Meet the requirements in ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5) for a Level 50 device;

(2) Be marked to indicate that the device must be worn to be counted as equipment required by vessels meeting USCG regulations; and

(3) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(c) Buoyancy is to be provided by inherently buoyant material and not depend on loose, granulated material, gas compartments, or inflation.

(d) PFDs must be of first quality workmanship and must be free from any defects materially affecting their appearance or serviceability.

(e) PFDs must not provide means intended for fastening or securing the device to a boat.

§ 160.264–9 Approval procedures for PFDs.

(a) Each application for approval of a Level 50 or Level 70 PFD must be submitted directly to a Coast Guard recognized laboratory.

(b) The recognized laboratory must determine if a PFD with novel design features requires a preliminary review by the Coast Guard prior to testing. Submissions requiring preliminary review must be sent to TypeApproval@uscg.mil, and must include a full description and drawings. Pictures, samples, and preliminary test results may also be submitted.

§ 160.264–11 Recognized laboratory.

(a) The approval inspections and tests, production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is

available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.264–13 Approval inspections and tests.

(a) Each PFD must be certified by a recognized laboratory as meeting the requirements of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5) for an inherently buoyant Level 50 or Level 70 PFD. Approval tests specified in ANSI/CAN/UL 12402–5 must be conducted or supervised by a recognized laboratory using PFDs constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each PFD design must be visually examined for compliance with the construction and performance requirements of this subpart and ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5).

(c) The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.264–15 Production inspections, tests, and quality control of PFDs.

(a) *General.* Production tests and inspections must be conducted in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.264–5) or an alternative follow-up procedure accepted by the Commandant. To maintain approval, the manufacturer must be in good standing under an accepted follow-up procedure.

(b) *Manufacturer's inspection and tests.* Manufacturers of approved PFDs must maintain quality control of the materials used, manufacturing methods, and the finished product to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(c) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required

by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(d) *Test facilities.* The laboratory inspector, or the Coast Guard marine inspector assigned by the Commander of the District in which the factory is located, or both, must be admitted to any place in the factory where work is being done on listed and labeled products. Either or both inspectors may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(e) *Additional tests, etc.* Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or the United States Coast Guard.

§ 160.264–17 Marking and labeling.

(a) Each PFD must be marked with the appropriate label as specified in Figure 6DV of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5).

(b) The Commandant may prescribe additional marking requirements for special purpose devices or unique or novel designs.

§ 160.264–19 Placard.

Each PFD sold or offered for sale must be provided with a placard that a prospective purchaser can read prior to purchase, as specified in Figure 8DV.1.1a and Figure 8DV.1.1b, Choose the Device You Will Want to Wear, of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5). The required placard text must be printed exactly as set out in ANSI/CAN/UL 12402–5.

§ 160.264–21 PFD manuals.

(a) An owner's manual in accordance with Figure 7DV of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5), may be provided with each inherently buoyant PFD sold or offered for sale. The text of each manual is reviewed with the application for approval.

(b) The Commandant may prescribe additional information in the manual for special purpose devices or unique or novel designs.

(c) Additional information, instructions, or illustrations may be included in the owner's manual if there is no contradiction to the required information.

§ 160.264–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing PFD production methods.

(b) Determinations of equivalence of design, construction, and materials must be made only by the Commandant or a designated representative.

§ 160.264–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of a PFD design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

■ 80. Add subpart 160.276, consisting of §§ 160.276–1 through 160.276–25, to read as follows:

Subpart 160.276—Wearable Recreational Inflatable Personal Flotation Devices

- 160.276–1 Scope.
- 160.276–3 Definitions.
- 160.276–5 Incorporation by reference.
- 160.276–7 Design, construction, and performance of PFDs.
- 160.276–9 Approval procedures for PFDs.
- 160.276–11 Recognized laboratory.
- 160.276–13 Approval inspections and tests.
- 160.276–15 Production inspections, tests, and quality control of PFDs.
- 160.276–17 Marking and labeling.
- 160.276–19 Placard.
- 160.276–21 PFD manuals.
- 160.276–23 Procedure for approval of design or material change.
- 160.276–25 Suspension or termination of approval.

Subpart 160.276—Wearable Recreational Inflatable Personal Flotation Devices

§ 160.276–1 Scope.

(a) This subpart contains structural and performance standards for approval of Level 50 and Level 70 inflatable recreational personal flotation devices (PFDs), as well as requirements for production follow-up inspections, associated manuals, information placards, and markings.

(b) Inflatable PFDs approved under this subpart rely entirely or partially upon inflation to achieve the minimum buoyancy.

(c) PFDs approved under this subpart are intended to meet the carriage requirements for uninspected

commercial vessels under 40 ft (12m) not carrying passengers for hire and recreational boats, in accordance with 33 CFR part 175 and 46 CFR 25.25.

§ 160.276–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.276–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.276–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2022; phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Safety Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.276–15(a).

(b) ANSI/CAN/UL 12402–5:2022, Standard for Safety Personal Flotation Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements, First Edition, December 31, 2015 (including revisions through January 27, 2022) (“ANSI/CAN/

UL 12402–5”); IBR approved for §§ 160.276–7(a) and (b); 160.276–13(a) and (b); 160.276–17(a) and (b); 160.276–19; 160.276–21(a).

§ 160.276–7 Design, construction, and performance of inflatable PFDs.

(a) Each Level 70 inflatable PFD design must—

(1) Meet the requirements in ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5) for a Level 70 device; and

(2) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(b) Each Level 50 inflatable PFD design must—

(1) Meet the requirements in ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5) for a Level 50 device;

(2) Be marked to indicate that the device must be worn to be counted as equipment required by vessels meeting USCG regulations; and

(3) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(c) Buoyancy is to be provided by inflation, or a combination of inherently buoyant material and inflation.

(d) PFDs must be of first quality workmanship and must be free from any defects materially affecting their appearance or serviceability.

(e) PFDs must not provide means intended for fastening or securing the device to a boat.

§ 160.276–9 Approval procedures for PFDs.

(a) Each application for approval of a Level 50 or Level 70 PFD must be submitted directly to a Coast Guard recognized laboratory.

(b) The recognized laboratory must determine if a PFD with novel design features requires a preliminary review by the Coast Guard prior to testing. Submissions requiring preliminary review must be sent to TypeApproval@uscg.mil, and must include a full description and drawings. Pictures, samples, and preliminary test results may also be submitted.

§ 160.276–11 Recognized laboratory.

(a) The approval inspections and tests and production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform

production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

§ 160.276–13 Approval inspections and tests.

(a) Each PFD must be certified by a recognized laboratory as meeting the requirements of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5) for an inflatable Level 50 or Level 70 PFD. Approval tests specified in ANSI/CAN/UL 12402–5 must be conducted or supervised by a recognized laboratory using PFDs constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each PFD design must be visually examined for compliance with the construction and performance requirements of this subpart and ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5).

(c) The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.276–15 Production inspections, tests, and quality control of PFDs.

(a) *General.* Production tests and inspections must be conducted in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.276–5) or an alternative follow-up procedure accepted by the Commandant. To maintain approval, the manufacturer must be in good standing under an approved follow-up procedure.

(b) *Manufacturer's inspection and tests.* Manufacturers of approved PFDs must maintain quality control of the materials used, manufacturing methods, and the finished product to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(c) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(d) *Test facilities.* The laboratory inspector, or the Coast Guard marine inspector assigned by the Commander of the District in which the factory is located, or both, must be admitted to any place in the factory where work is being done on listed and labeled products. Either or both inspectors may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(e) *Additional tests, etc.* Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or the United States Coast Guard.

§ 160.276–17 Marking and labeling.

(a) Each inflatable PFD must be marked as specified in Figure 6DV of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5).

(b) In addition to the information required by ANSI/CAN/UL 12402–5, Figure 6DV, each Level 50 inflatable PFD must be marked with a statement that the device must be worn to be counted as equipment required by vessels meeting USCG regulations; and

(c) The Commandant may prescribe additional marking requirements for special purpose devices or unique or novel designs.

§ 160.276–19 Placard.

Each inflatable PFD sold or offered for sale must be provided with a placard that a prospective purchaser can read prior to purchase, as specified in Figure 8DV.1.1a and Figure 8DV.1.1b, Choose the Device You Will Want to Wear, of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5). The required placard text must be printed exactly as set out in ANSI/CAN/UL 12402–5.

§ 160.276–21 PFD manuals.

(a) An owner's manual in accordance with Figure 7DV of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5), must be provided with each inflatable PFD sold or offered for sale. The text of each manual is reviewed with the application for approval.

(b) The Commandant may prescribe additional information in the manual for special purpose devices or unique or novel designs.

(c) Additional information, instructions, or illustrations may be included in the owner's manual if there is no contradiction to the required information.

§ 160.276–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing PFD production methods.

(b) Determinations of equivalence of design, construction, and materials must be made only by the Commandant or a designated representative.

§ 160.276–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of an inflatable PFD design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

PART 169—SAILING SCHOOL VESSELS

■ 81. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Public Law 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; DHS Delegation 00170.1, Revision No. 01.4; § 169.117 also issued under the authority of 44 U.S.C. 3507.

■ 82. Revise § 169.539 to read as follows:

§ 169.539 Type required.

All personal flotation devices (PFDs) must be:

(a) Approved under subpart 160.002, 160.005, 160.055, or 160.255 of subchapter Q (specification) of this chapter;

(b) Approved specifically for sailing school vessel use under subpart 160.064, 160.077, or 160.264 of Subchapter Q of this chapter; or

(c) Approved under subparts 160.047, 160.052, or 160.060 of part 160 of this chapter or approved under subpart 160.064 or 160.264 of part 160 of this chapter if the vessel carries exposure suits or exposure PFDs, in accordance with § 169.551.

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

■ 83. The authority citation for part 180 is revised to read as follows:

Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; DHS Delegation 00170.1, Revision No. 01.4.

■ 84. Amend § 180.71 by:

■ a. Revising the section heading and paragraph (c);

■ b. Removing paragraph (d); and

■ c. Redesignating paragraph (e) as paragraph (d).

The revisions read as follows:

§ 180.71 Lifejackets.

* * * * *

(c) Each lifejacket must be approved under approval series in subparts 160.002, 160.005, 160.055, 160.115, 160.176, or 160.255 in part 160 of this chapter, or other standard specified by the Commandant. An inflatable lifejacket approved under approval series in subpart 160.255 of part 160 of this chapter must include a full back-up inflation chamber.

* * * * *

■ 85. Amend § 180.72 by revising the section heading and paragraphs (a), (b), and (d) to read as follows:

§ 180.72 Personal flotation devices carried in addition to lifejackets.

(a) Equipment carried under this section is not acceptable in lieu of any portion of the required number of approved lifejackets and must not be substituted for the approved lifejackets required to be worn during drills and emergencies.

(b) Wearable marine buoyant devices approved in accordance with § 160.064, 160.076, 160.264, or 160.276 in subchapter Q of this chapter, or other standard specified by the Commandant, may be carried as additional equipment.

* * * * *

(d) A commercial hybrid approved under former approval series 160.077 prior to January 6, 2025 may be carried as additional equipment for use by persons working near or over the water if it is in good and serviceable condition, used in accordance with the conditions marked on the PFD and in the owner's manual, and of the same or similar design and has the same method of operation as each other hybrid PFD carried on board.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

■ 86. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Public Law 103–206, 107 Stat. 2439; DHS Delegation 00170.1, Revision No. 01.4.

■ 87. Revise § 199.70(b) introductory text to read as follows:

§ 199.70 Personal lifesaving appliances.
* * * * *

(b) *Lifejackets*. Each vessel must carry lifejackets approved under approval series 160.155 or 160.176. If the vessel carries inflatable lifejackets, they must be of the same or similar design and have the same method of operation.

* * * * *

■ 88. Revise § 199.620(c) to read as follows:

§ 199.620 Alternatives for all vessels in a specified service.
* * * * *

(c) *Lifejackets approval series*. As an alternative to a lifejacket meeting the approval requirements in § 199.70, vessels may carry a lifejacket approved under approval series in subparts 160.002, 160.005, 160.055, 160.077, or 160.255 of part 160 of this chapter. An inflatable lifejacket approved under

approval series in subpart 160.255 of part 160 of this chapter must include a full back-up inflation chamber.

* * * * *

Dated: November 26, 2024.

W.R. Arguin,
Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2024–28264 Filed 12–5–24; 8:45 am]

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Part IV

Department of Veterans Affairs

38 CFR Part 71

Amendments to the Program of Comprehensive Assistance for Family Caregivers; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 71

RIN 2900–AR96

Amendments to the Program of Comprehensive Assistance for Family Caregivers

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise the regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC). This proposed rule explains numerous changes VA is considering making that would primarily impact PCAFC, including, but not limited to, removing, adding, and revising definitions; revising criteria related to eligibility, revocations, and discharges; revising certain processes related to reassessments and the timing of reassessments; and relaxing in-home visits during emergencies.

DATES: Comments must be received on or before February 4, 2025.

ADDRESSES: Comments must be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. VA will not post on [Regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at [Regulations.gov](http://www.regulations.gov), under RIN 2900–AR96.

FOR FURTHER INFORMATION CONTACT: Colleen Richardson, PsyD, Executive Director, Caregiver Support Program, Patient Care Services, Veterans Health

Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461–5649. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background and Public Input

A. Statutory Authority

Title I of Public Law 111–163, the Caregivers and Veterans Omnibus Health Services Act of 2010 (hereinafter referred to as the “Caregivers Act”), established section 1720G(a) of title 38 of the United States Code (U.S.C.), which required VA to establish a program of comprehensive assistance for family caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty on or after September 11, 2001, are in need of personal care services, and meet other requirements. The Caregivers Act also required VA to establish a program of general caregiver support services, pursuant to 38 U.S.C. 1720G(b), for caregivers of covered veterans of all eras of military service. VA implemented PCAFC and the Program of General Caregiver Support Services (PGCSS) through its regulations in 38 CFR part 71.

On June 6, 2018, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 (hereinafter referred to as the “VA MISSION Act”) was signed into law, which in part amended 38 U.S.C. 1720G. These amendments included expanding eligibility for PCAFC in a phased approach to Family Caregivers (as that term is defined in 38 CFR 71.15) of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, establishing new benefits for designated Primary Family Caregivers (as that term is defined in § 71.15) of eligible veterans, and making other changes affecting program eligibility and VA's evaluation of PCAFC applications.

B. Recent Program Improvements

VA adopted revisions to 38 CFR part 71 in a final rule dated July 31, 2020, following the enactment of the VA MISSION Act. 85 FR 46226 (July 31, 2020) (hereinafter the July 31, 2020 Final Rule). The July 31, 2020 Final Rule included changes to certain PCAFC eligibility criteria and took effect October 1, 2020.

In parallel to those regulatory changes, VA implemented new processes used within PCAFC. For example, in late 2020, VA implemented

the use of Centralized Eligibility and Appeals Teams (CEATs). CEATs are composed of a standardized group of inter-professional, licensed practitioners, with specific expertise and training in the eligibility requirements for PCAFC and the criteria for the higher stipend level. CEATs make determinations of PCAFC eligibility and, if applicable, determinations on whether the Primary Family Caregiver is eligible for the higher stipend level. Since implementing CEATs, the time required to evaluate PCAFC eligibility and render application determinations has been markedly reduced. At the end of fiscal year 2021, 62.9 percent of PCAFC application determinations were rendered within 90 days of VA receiving the application. By the end of fiscal year 2023, this percentage increased and 98 percent of PCAFC application determinations were rendered within 90 days of VA receiving the application.

Additionally, VA continues concerted efforts to enhance training of staff involved in the evaluation of PCAFC eligibility criteria and delivery of PCAFC. Further, VA continues to institute standardized quality assurance measures to monitor and support accuracy and consistency in decision-making. If VA issues a PCAFC determination that an individual disagrees with, processes are in place for individuals to request a review of or appeal such decision(s). Those processes are not addressed in this proposed rule. Information about options to request review of or appeal a PCAFC decision is available at https://www.caregiver.va.gov/support/PCAFC_Appeals.asp.

Since these regulatory and policy changes have taken effect, access to PCAFC has expanded and the number of eligible veterans and Family Caregivers participating in PCAFC has continued to grow. VA has, however, continued to hear concerns from veterans, caregivers, and other stakeholders about inconsistency in VA's decisions impacting eligibility for PCAFC, and concerns that certain PCAFC eligibility criteria may be too restrictive.

In response to those concerns, in March 2022, VA initiated a review of PCAFC to examine areas within PCAFC for which changes might be considered. This review included engagements with veterans, caregivers, Veterans Service Organizations (VSOs) and others to hear direct feedback about PCAFC.¹ During

¹ See Updates on the Family Caregiver program for legacy participants and applicants, VA press release, April 20, 2022, available at <https://news.va.gov/102672/updates-on-the-family->

this review, VA identified further opportunities for improvement.

C. Consideration of Regulatory Amendments and Executive Order 14095, Increasing Access to High-Quality Care and Supporting Caregivers

Based on the activities outlined above, VA is proposing regulatory changes to more fully address concerns raised by stakeholders relating to PCAFC eligibility criteria and other program requirements. Furthermore, in April 2023, the President issued Executive Order 14095 which, among other things, directed the Secretary of Veterans Affairs to consider issuing a notice of proposed rulemaking to appropriately modify the eligibility criteria for PCAFC. In accordance with this Executive Order and based on feedback from caregivers, veterans, and other stakeholders and VA's internal evaluation of the program, VA has considered appropriate modifications to PCAFC eligibility criteria as well as other program changes, which are reflected in this proposed rule. VA believes the regulatory amendments proposed below, along with changes VA has already made to improve its support of eligible veterans and Family Caregivers, demonstrates VA's unwavering commitment to administering a program that is fair, consistent, and transparent in its decisions.

D. Public Input

VA routinely receives information and feedback about PCAFC from stakeholders. For example, on December 5, 2023, VA conducted a virtual roundtable session with various VSOs and other caregiver advocacy organizations. The session provided these stakeholders an opportunity to share their views on topics related to PCAFC. There were 24 representatives from 15 organizations that attended the virtual roundtable session with 13 individuals providing feedback during the session. Representatives provided information and recommendations on how best to improve PCAFC eligibility criteria, evaluation processes, and other aspects of PCAFC that are governed by regulation. Proposed modifications to part 71, as discussed in this proposed rule, address some of the feedback received prior to and during the December 5, 2023, session. A written transcript of the December 5, 2023, virtual roundtable session, including a list of participating organizations, is publicly available online at

www.regulations.gov under RIN 2900–AR96. While VA did not solicit written statements as part of this event, those received by VA can also be found online at www.regulations.gov under RIN 2900–AR96.

VA welcomes comments from the public on all aspects of its proposed modifications to VA regulations in part 71. VA also seeks specific feedback within certain sections of this proposed rule through targeted questions located at the end of the applicable sections.

II. Proposed Changes to 38 CFR Part 71

As explained in more detail below, VA proposes to revise part 71 by adding, removing, and revising definitions and eligibility criteria; revising the regulations governing reassessments; revising and clarifying certain provisions regarding the application process and the evaluation process for determining eligibility; revising provisions regarding adjustments to the stipend payments; revising and clarifying certain processes regarding revocation and discharge; extending the transition period for legacy participants, legacy applicants, and their Family Caregivers; and making other changes. VA proposes these changes to simplify and clarify certain aspects of VA's administration of PCAFC and to support program integrity. Illustrative examples are included throughout this proposal to assist the reader with understanding VA's intended application of the proposed rule.

A. Transition Period for Legacy Cohort

VA is proposing changes to PCAFC eligibility and stipend level criteria as part of this rulemaking. Under this proposal, VA would extend the transition period for legacy participants and legacy applicants, and their Family Caregivers, as those terms are defined in § 71.15, to allow time for VA to evaluate their PCAFC eligibility and stipend level pursuant to revised regulations that may result from this rulemaking. Specifically, VA proposes to extend their eligibility and the time period for VA to complete their reassessments, through a date that is 18 months after changes from this rulemaking are made final and effective.

As part of the rulemaking that took effect October 1, 2020, VA made changes to the eligibility criteria for PCAFC in § 71.20 and in doing so, set forth a transition plan for legacy participants and legacy applicants, and their Family Caregivers, collectively referred to herein as the legacy cohort. 85 FR 46253 (July 31, 2020). As part of the transition plan, VA established a one-year transition period wherein the

legacy cohort would generally continue to remain eligible for PCAFC while VA completed reassessments to determine their eligibility for PCAFC under the new eligibility criteria. *Id.* Subsequently, through publication of two interim final rules, VA extended the one-year transition period and timeline for VA to conduct all reassessments of the legacy cohort. The first interim final rule, Extension of Program of Comprehensive Assistance for Family Caregivers Eligibility for Legacy Participants and Legacy Applicants, referred to herein as the First PCAFC Extension for Legacy Cohort, was published and effective on September 22, 2021. 86 FR 52614 (September 22, 2021). The First PCAFC Extension for Legacy Cohort extended the transition period by one year. *Id.* VA then published a second interim final rule, Extension of Program of Comprehensive Assistance for Family Caregivers Eligibility for Legacy Participants and Legacy Applicants, referred to herein as the Second PCAFC Extension for Legacy Cohort, which became effective on September 21, 2022, and extended the transition period for the legacy cohort and timeline for completing their reassessments by three additional years—to September 30, 2025. 87 FR 57602 (September 21, 2022).

1. Proposal To Extend Transition Period for Legacy Cohort

VA proposes to further extend the legacy cohort transition period through a date that is 18 months after the date this rulemaking, which proposes changes to PCAFC eligibility and stipend level criteria, becomes final and effective to allow members of the legacy cohort to be reassessed by VA pursuant to such criteria. Without this extension, members of the legacy cohort would be subject to inequitable treatment or unnecessary burden, depending on whether changes to PCAFC eligibility and stipend level criteria resulting from this rulemaking go into effect before or after September 30, 2025.

If changes to the PCAFC eligibility and stipend level criteria are made final and effective under this rulemaking before September 30, 2025, VA would not have sufficient time to complete reassessments of all members of the legacy cohort under the revised criteria before such date. In this scenario, for reassessments not completed under the revised criteria before September 30, 2025, VA would have to carry out discharges and stipend reductions based on reassessments completed under outdated criteria; or alternatively, VA would have to set those determinations aside and complete new reassessments

under the new criteria, which, after September 30, 2025, would result in inequities among members of the legacy cohort. This is because members of the legacy cohort who are reassessed under the new criteria and found to be no longer eligible for PCAFC, or eligible but with a reduced stipend amount, would be impacted at different times based only on when they are reassessed. Neither option would be fair and equitable to all members of the legacy cohort.

If changes to the PCAFC eligibility and stipend level criteria are made final and effective under this rulemaking after September 30, 2025, after that date, VA would have to begin carrying out discharges and stipend reductions for members of the legacy cohort pursuant to criteria VA is proposing to change. Once the revised criteria are made final and effective, such individuals would be required to reapply to be considered under the new criteria. This could be perceived as unnecessarily burdensome, and for those who reapply and are found eligible, this gap would create disruption to the supports and services they receive through PCAFC. Extending the transition period as proposed in this rulemaking would avoid these challenges.

VA proposes a period of 18 months after the effective date of this rulemaking to allow sufficient time to complete reassessments for the legacy cohort under the new PCAFC eligibility and stipend level criteria. Prior to initiating reassessments of PCAFC eligibility, VA would need to inform PCAFC participants, including the legacy cohort, about the changes to PCAFC eligibility and stipend level criteria that become effective under this rulemaking. VA believes 18 months will allow adequate time to provide such notification and would ensure VA can complete these legacy reassessments while also processing a potential influx of new applications that VA may receive following finalization of this rulemaking. There are over 14,500 legacy applicants and legacy participants who have not been determined eligible for PCAFC under the criteria that went into effect on October 1, 2020, or who have been determined eligible under such criteria but at a lower stipend amount, and who could most benefit from a reassessment under revised criteria.

For these reasons, VA proposes to amend part 71 to extend the transition period for the legacy cohort and timeline for VA to complete reassessments of the legacy cohort to a date that is 18 months after the effective

date of a final rule under this rulemaking.

2. Proposed Changes to 38 CFR 71.15, 71.20, 71.30, and 71.40

To effectuate an additional extension to the legacy cohort transition period and timeline for reassessments, VA proposes several amendments to §§ 71.15, 71.20, 71.30, and 71.40. Among other changes, proposed amendments would remove references in current regulatory text to the five-year period beginning on October 1, 2020, and ending on September 30, 2025. VA would instead include language that reflects a period that begins on October 1, 2020, and ends on the date that is 18 months after the effective date of a final rule adopting changes to eligibility and stipend level criteria for PCAFC. These specific proposed changes to the regulations are discussed in greater detail later in this rulemaking.

VA solicits comments from the public on this proposal. In particular, VA requests comments on the following.

1. Should VA consider a different legacy cohort extension period other than the proposed 18-month period after the effective date of this rulemaking which would adopt changes to eligibility and stipend level criteria for PCAFC? If yes, what time period should VA consider and why?

2. What alternative approach(es) should VA consider to reassess the legacy cohort and ensure only those individuals who meet eligibility criteria are participating in PCAFC?

B. 38 CFR 71.10 Purpose and Scope

Current § 71.10 sets forth the purpose and scope of part 71. Paragraph (b) of § 71.10 explains, among other things, that PCAFC and Program of General Caregiver Support Services (PGCSS) benefits are provided only to those individuals residing in a State as that term is defined in 38 U.S.C. 101(20). VA proposes to remove the language “as that term is defined in 38 U.S.C. 101(20)” from 38 CFR 71.10(b) because VA proposes to add a definition for the term *State* in 38 CFR 71.15, as explained in the discussion on proposed changes to § 71.15.

This proposed revision is intended to provide clarity and reduce the burden on the reader by including all definitions in the definitions section under § 71.15.

VA proposes no other changes to § 71.10.

C. 38 CFR 71.15 Definitions

Section 71.15 contains definitions for terms used throughout part 71. VA proposes to amend § 71.15 by adding

definitions for the terms *activity of daily living* or *activities of daily living* (ADL), *State*, and *typically requires*; removing the terms *inability to perform an activity of daily living* (ADL), *need for supervision, protection, or instruction*, and *unable to self-sustain in the community* and their definitions; and revising the definitions of *institutionalization*, *joint application*, *legacy applicant*, *legacy participant*, and *serious injury*. These proposed changes are explained in more detail below in alphabetical order of the terms being added, removed, or revised.

1. Activity of Daily Living or Activities of Daily Living (ADL)

In § 71.15, VA proposes to add a definition for the term *activity of daily living* or *activities of daily living* (ADL). In the current definition of *inability to perform an ADL*, VA includes the following ADL as applying to this term: (1) dressing or undressing oneself; (2) bathing; (3) grooming oneself in order to keep oneself clean and presentable; (4) adjusting any special prosthetic or orthopedic appliance, that by reason of the particular disability, cannot be done without assistance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); (5) toileting or attending to toileting; (6) feeding oneself due to loss of coordination of upper extremities, extreme weakness, inability to swallow, or the need for a non-oral means of nutrition; and (7) mobility (walking, going up stairs, transferring from bed to chair, etc.). Since, as discussed further below, VA proposes to remove the current definition of *inability to perform an ADL* which contains this list of ADL, VA proposes to add a standalone definition of ADL to § 71.15 that would maintain this list of ADL with minor changes. This separate definition is not intended to be a new definition that changes VA's current implementation and use of the term ADL. This proposal does not seek to narrow or expand VA's current interpretation of the term ADL but is intended to improve clarity for purposes of applying and implementing the term ADL as it is used throughout part 71 and in 38 U.S.C. 1720G.

VA proposes to maintain the existing ADL included in the current definition of *inability to perform an ADL* as these are widely recognized in the health care context (for example, they are found in the Katz Basic ADL Scale (see 76 FR 26148 (May 5, 2011)) and have been the ADL used for the purposes of PCAFC since the inception of the program. While VA proposes to maintain the list

of ADL from the definition of *inability to perform an ADL*, this new proposed definition for ADL revises the language used to describe several of the ADL as is discussed below. VA's proposed changes would not materially change the activities included in the definition of an ADL or how VA evaluates them.

In the ADL of *dressing and undressing oneself*, VA proposes to remove the word "oneself". Similarly, VA proposes to remove the phrase "oneself in order to keep oneself clean and presentable" from the description of the ADL of *grooming*. VA also proposes to remove the parenthetical following the ADL of *mobility* that includes examples (that is, walking, going up stairs, transferring from bed to chair, etc.). These words and phrases are not needed when listing the ADL and are commonly understood to be included in the definitions of the identified ADLs.

In developing the definition of *inability to perform an ADL*, VA included additional clarifying language in the descriptions of *adjusting any special prosthetic or orthopedic appliance* and *feeding oneself*, to further explain the cause for why an individual would be unable to perform these two ADLs. In establishing a standalone definition of ADL, these additional clarifications are not needed and if they were to remain may lead to misinterpretation of VA's use of the term ADL as it is referenced throughout 38 CFR part 71. For the ADL of *adjusting any special prosthetic or orthopedic appliance*, VA proposes to remove the phrase "that by reason of the particular disability, cannot be done without assistance". For the ADL of *feeding oneself*, VA proposes to remove the language "due to loss of coordination of upper extremities, extreme weakness, inability to swallow, or the need for a non-oral means of nutrition". In addition, to further simplify and clarify this ADL, VA proposes to use the more commonly used term "eating" in place of *feeding oneself*.

Before proposing to define ADL in this proposed rule, VA conducted a search of title 38 of the CFR to identify other regulatory definitions of ADL used by VA. VA identified several definitions of ADL in title 38 of the CFR, including in §§ 3.278, 17.62, 17.3210, and 51.2, that include descriptive language in addition to identifying specific ADL. While there are similarities among these definitions, the definition of ADL used in § 51.2 uses terminology VA believes best describes the meaning of ADL for purposes of part 71. Section 51.2 defines ADLs to mean "the functions or tasks for self-care usually performed in the

normal course of a day, *i.e.*, mobility, bathing, dressing, grooming, toileting, transferring, and eating." Among other things, this definition is used for purposes of determining eligibility of a veteran for payment of per diem to a State for adult day health care. See 38 CFR 51.52(d)(1) and (3).

Under this proposal, the new definition of ADL would refer to the same ADLs as those currently identified in the definition of *inability to perform an ADL* in § 71.15. VA proposes to add language that is included in the description of ADL in § 51.2 by specifying in the proposed new definition of ADL that ADL means "any of the following functions or tasks for self-care usually performed in the normal course of a day", which is consistent with how VA applies ADL for purposes of 38 U.S.C. 1720G and 38 CFR part 71. VA believes this language would be helpful to include in the proposed definition of ADL in § 71.15 because it clarifies that, for purposes of part 71, ADL are the broad categories of functions and tasks listed and are those activities usually performed in the normal course of a day. VA recognizes that the functions and tasks for self-care that are "usually" performed in the "normal" course of a day depends on the unique individual. VA discusses this in more detail in the context of proposed changes to §§ 71.20(a)(3) and 71.40(c)(4)(i)(A), which outline how VA would apply ADL in the context of those sections. Additionally, the proposed new text of "usually performed in the normal course of a day" does not mandate that each activity must always be completed daily for it to be considered an ADL under this definition. Some ADL may be performed daily, such as feeding and toileting. However, others such as bathing may not always be performed daily. Such ADL would still be considered among those functions or tasks for self-care that are usually performed in the normal course of a day even though an individual may not need to perform such ADL daily in order to maintain their health and well-being. This is consistent with how VA interprets and applies ADL currently within PCAFC. See 85 FR 46226, at 46233 (July 31, 2020).

This proposed definition of ADL (that is, functions or tasks for self-care usually performed in the normal course of a day) would align with other Federal definitions for ADL. For example, the Centers for Medicare & Medicaid Services' (CMS) regulations for its Home and Community-Based Attendant Services and Supports State Plan Option define ADL to mean basic personal

everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring. See 42 CFR 441.505. Additionally, the Department of Housing and Urban Development's regulations for its Congregate Housing Services Program define ADL to mean, in part, an activity regularly necessary for personal care. See 24 CFR 700.105. VA asserts that the proposed definition of ADL in this rulemaking would also align with the plain meaning of the term *activity of daily living* as referring to activities that "occur with some regularity". See *Veteran Warriors, Inc. v. Sec'y of Veterans Affairs*, 29 F.4th 1320, 1339 (Fed. Cir. 2022) ("By using the word daily, Congress required the relevant activities to occur with some regularity. See also 38 CFR 71.15 (promulgating [a] list of activities of daily living, each of which involves regular conduct—like eating or bathing).").

Thus, ADL would be defined to mean any of the following functions or tasks for self-care usually performed in the normal course of a day: (1) Dressing or undressing; (2) Bathing; (3) Grooming; (4) Adjusting any special prosthetic or orthopedic appliance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); (5) Toileting or attending to toileting; (6) Eating; or (7) Mobility.

As explained below, this proposed definition of ADL would be applied in proposed § 71.20(a)(3)(i) and (iii) for purposes of determining whether a veteran or servicemember is in need of personal care services based on the individual typically requiring hands-on assistance to complete one or more ADL or the individual typically requiring regular or extensive instruction or supervision to complete one or more ADL, and in proposed § 71.40(c)(4)(i)(A)(2) as part of the criteria used to determine whether a Primary Family Caregiver (as that term is defined in § 71.15) qualifies for the higher stipend level. VA's later discussions not only provide explanation of its application of the proposed definition of ADL, but also include illustrative examples.

2. Inability To Perform an ADL

In § 71.15 VA proposes to remove the term *inability to perform an ADL* and its definition. *Inability to perform an ADL* is currently defined to mean a veteran or servicemember requires personal care services each time he or she completes one or more of the following: (1) Dressing or undressing oneself; (2)

Bathing; (3) Grooming oneself in order to keep oneself clean and presentable; (4) Adjusting any special prosthetic or orthopedic appliance, that by reason of the particular disability, cannot be done without assistance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); (5) Toileting or attending to toileting; (6) Feeding oneself due to loss of coordination of upper extremities, extreme weakness, inability to swallow, or the need for a non-oral means of nutrition; or (7) Mobility (walking, going up stairs, transferring from bed to chair, etc.).

The term *inability to perform an ADL* is listed in § 71.20(a)(3)(i) as one of the bases for determining PCAFC eligibility consistent with 38 U.S.C. 1720G(a)(2)(C)(i). The term is also referenced in the definition of *unable to self-sustain in the community*, which is applied in 38 CFR 71.40(c)(4)(i)(A)(2) for purposes of determining eligibility of a Primary Family Caregiver for the higher stipend level. As explained in more detail below, VA proposes to implement the statutory criterion in 38 U.S.C. 1720G(a)(2)(C)(i) through regulation text in proposed 38 CFR 71.20(a)(3)(i) and § 71.40(c)(4)(i)(A)(2) without referencing the term *inability to perform an ADL* in § 71.15. Those proposed amendments would eliminate the need for the current definition of *inability to perform an ADL* in § 71.15 and reduce the potential for confusion. Therefore, VA proposes to remove the term *inability to perform an ADL* and its definition from § 71.15.

3. Institutionalization

In § 71.15, VA proposes to revise the current definition of *institutionalization*. This term is used in § 71.45 for purposes of discharge from PCAFC and currently refers to being institutionalized in a setting outside the home residence to include a hospital, rehabilitation facility, jail, prison, assisted living facility, medical foster home, nursing home, or other similar setting. Under this proposal, VA would remove the language “assisted living facility” from this definition because residing in an assisted living facility should not by itself disqualify an eligible veteran or Family Caregiver (as those terms are defined in § 71.15) from PCAFC. VA would also clarify that “other similar settings” must be determined by VA.

VA has found that some eligible veterans residing in assisted living, or other similarly termed settings such as senior living, choose to utilize Family

Caregivers under PCAFC for the provision of their personal care services in lieu of other paid services available from the assisted living facility or other service providers. Some assisted living facilities, and similarly termed environments, may offer room and board with limited additional support as part of the cost of residing in such facility. Other assisted living facilities may offer a menu of add-on services to include assistance with the personal care services that may have been provided by a Family Caregiver through PCAFC. However, in lieu of paying for such personal care services through the assisted living facility or other personal care service provider, an eligible veteran may prefer to receive personal care services from a Family Caregiver under PCAFC. In such cases, the assisted living facility would be considered the eligible veteran’s home for purposes of § 71.20(a)(6) (conditioning PCAFC eligibility on the individual receiving care at home).

Additionally, a Family Caregiver residing in an assisted living facility should not necessarily be precluded from being approved and designated as a Family Caregiver in PCAFC simply because they reside in an assisted living facility. Such individual, for example, may live in the assisted living facility with the eligible veteran and be able to provide the personal care services the eligible veteran requires. The ability of the Family Caregiver to perform required personal care services is based upon the Family Caregiver’s individual abilities, rather than the environment in which they reside.

Thus, to ensure eligible veterans and/or Family Caregivers who reside in assisted living facilities would not be excluded from PCAFC based only on the fact that they reside in an assisted living facility, VA proposes to revise the term *institutionalization* to exclude “assisted living facility,” such that *institutionalization* would instead mean being institutionalized in a setting outside the home residence to include a hospital, rehabilitation facility, jail, prison, medical foster home, nursing home, or other similar setting as determined by VA. However, this change would not nullify any of the eligibility criteria otherwise applicable to the eligible veteran and Family Caregiver. For example, in instances when personal care services that had been provided by the Family Caregiver are instead provided to the eligible veteran by or through the assisted living facility, the veteran would no longer be eligible for PCAFC pursuant to § 71.20(a)(5) (requiring that personal care services that would be provided by

the Family Caregiver will not be simultaneously and regularly provided by or through another individual or entity). In such instances, the Family Caregiver’s designation would be revoked for noncompliance pursuant to § 71.45(a)(1)(ii)(A) (that is, because the eligible veteran would not meet the requirements of § 71.20(a)(5)) when the personal care services that would be provided by the Family Caregiver to the eligible veteran are the same personal care services being provided by or through the assisted living facility to the eligible veteran, unless a different basis of revocation or discharge under § 71.45 applies.

For these reasons, VA proposes to revise the definition of *institutionalization* so as not to exclude from PCAFC eligible veterans and/or Family Caregivers who may be living at an assisted living facility, provided that the eligible veteran and Family Caregiver otherwise qualify for PCAFC. The eligibility criteria in § 71.20(a)(5) and (6), among other requirements, would help to ensure that the eligible veteran and Family Caregiver continue participating in PCAFC only when otherwise eligible to do so.

The definition of *institutionalization* also references “other similar setting”. VA proposes to add the phrase “as determined by VA” after “other similar setting” to clarify that what is considered a “similar” setting is a VA determination. This is consistent with current practice. VA also proposes to replace the phrase “refers to” with the word “means” within the definition of *institutionalization*. This is a non-substantive edit to align with the formatting of other definitions found within § 71.15.

4. Joint Application

In § 71.15, VA proposes to revise the current definition of *joint application*. The term *joint application* is used in the definitions of *legacy applicant* and *legacy participant*, throughout § 71.25(a), in § 71.25(f), in § 71.40(d), and in § 71.45(b)(4)(iii). The term *joint application* is currently defined as an application that has all fields within the application completed, including signature and date by all applicants, with the following exceptions: social security number or tax identification number, middle name, sex, email, alternate telephone number, and name of facility where the veteran last received medical treatment, or any other field specifically indicated as optional.

VA proposed this definition as part of a March 6, 2020 rulemaking proposal. See 85 FR 13356, at 13362 (March 6, 2020) (hereinafter the March 6, 2020

Proposed Rule). VA explained in that rulemaking that an application that does not have all the mandatory sections completed would be considered incomplete, and VA would not be able to begin the application review process because the required sections are necessary for VA to begin that process. *Id.* VA further explained that failure to provide all the required information had led to delays as VA had to take steps to obtain the missing information. *Id.* VA received one public comment in response to its proposed definition of *joint application*. See 85 FR 46237 (July 31, 2020). The commenter suggested, in part, that delays could still result as VA would still need to inform applicants that their applications were incomplete; however, VA made no changes and adopted the definition without change. *Id.* at 46237–46238.

Since implementing this definition of *joint application*, VA continues to receive applications that do not have all the required fields completed. VA has also experienced challenges with timely identification of missing required information which has led to delays in providing notice to applicants about required information. Additionally, while certain minimum information is needed for VA to begin reviewing and evaluating applicants' eligibility for PCAFC (for example, the name of the veteran or servicemember and each Family Caregiver applicant), some required information (for example, date of birth or zip code), can be obtained in the course of evaluating applicants' PCAFC eligibility.

Instead of requiring specific information be included in the joint application in regulation, VA proposes to define the term *joint application* to mean an application for the Program of Comprehensive Assistance for Family Caregivers in such form and manner as the Secretary of Veterans Affairs considers appropriate. This proposed change would be consistent with the statutory text at 38 U.S.C. 1720G(a)(4), which requires that PCAFC applicants "jointly submit to the Secretary an application [for PCAFC] in such form and in such manner as the Secretary considers appropriate." This proposed change to the definition of *joint application* would allow VA to begin evaluating joint applications so long as they contain the minimum information needed for VA to begin such review and evaluation of the applicants' eligibility for PCAFC. This would allow efficient and timely evaluation of joint applications and avoid subsequent delays in rendering decisions. In many cases, if certain information is missing from the joint application, it may be

gathered during VA's evaluations rather than serving as a precursor to such evaluations being initiated.

Furthermore, this proposed definition would permit the Secretary to make changes to the application form, as needed, to ensure that the appropriate information is requested and collected from PCAFC applicants in the joint application.

VA would continue to require the use of VA Form 10–10CG as the joint application. However, to help alleviate challenges identified above, if this proposal is adopted, VA would update the form to ensure that it does not require completion of fields that are not necessary for VA to begin reviewing and evaluating applicants' eligibility for PCAFC.

5. Legacy Applicant and Legacy Participant

In 38 CFR 71.15, VA proposes to revise the definitions of *legacy applicant* and *legacy participant*. These terms are currently used throughout part 71 to describe members of the legacy cohort. *Legacy applicant* is currently defined to mean a veteran or servicemember who submits a joint application for PCAFC that is received by VA before October 1, 2020 and for whom a Family Caregiver(s) is approved and designated on or after October 1, 2020 so long as the Primary Family Caregiver approved and designated for the veteran or servicemember on or after October 1, 2020 pursuant to such joint application (as applicable) continues to be approved and designated as such. *Legacy participant* is defined as an eligible veteran whose Family Caregiver(s) was approved and designated by VA under part 71 as of the day before October 1, 2020 so long as the Primary Family Caregiver approved and designated for the eligible veteran as of the day before October 1, 2020 (as applicable) continues to be approved and designated as such. For both legacy applicants and legacy participants, the definition also states that if a new joint application is received by VA on or after October 1, 2020 that results in approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy applicant or legacy participant, as applicable.

VA proposes to revise the definitions of *legacy applicant* and *legacy participant* to specify that such designation would be a temporary designation. These designations identify individuals who would be subject to the transition period and related requirements VA established for the

legacy cohort through 2020 rulemaking and that VA extended under the First PCAFC Extension for Legacy Cohort and the Second PCAFC Extension for Legacy Cohort. See 85 FR 13362, 86 FR 52614, and 87 FR 57602. VA proposes to state in regulation that following expiration of the transition period for the legacy cohort, which is proposed to conclude 18 months after the effective date of a final rule that implements this rulemaking, a veteran or servicemember will no longer be considered a legacy applicant or legacy participant. VA believes that inclusion of this language would help clarify that following the conclusion of the transition period for the legacy cohort, all individuals applying for and participating in PCAFC will be subject to the same set of criteria and requirements.

VA proposes to add a sentence at the end of the definitions for *legacy applicant* and *legacy participant*, which, as proposed, would state that effective [18 months after EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is no longer considered a legacy applicant or legacy participant, respectively.

6. Need for Supervision, Protection, or Instruction

In 38 CFR 71.15, VA proposes to remove the term *need for supervision, protection, or instruction* and its definition. The term *need for supervision, protection, or instruction* is listed as one of the bases for determining eligibility under § 71.20(a)(3) and is also referenced in the definition of *unable to self-sustain in the community*, which is applied in § 71.40(c)(4)(i)(A)(2) for purposes of determining the amount of the monthly stipend for which the Primary Family Caregiver is eligible. The term *need for supervision, protection, or instruction* is currently defined to mean an individual has a functional impairment that directly impacts the individual's ability to maintain his or her personal safety on a daily basis. This term and its definition were intended to implement, in a combined manner, two of the statutory bases upon which a veteran or servicemember can be determined to be in need of personal care services—specifically, a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, and a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired. 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii).

However, as VA explained in its Interim Final Rule (IFR) dated

September 21, 2022, on March 25, 2022, the U.S. Court of Appeals for the Federal Circuit issued a decision in *Veteran Warriors, Inc. v. Sec'y of Veterans Affairs*, 29 F.4th 1320 (Fed. Cir. 2022) that invalidated VA's definition of *need for supervision, protection, or instruction* in 38 CFR 71.15. See 87 FR 57602–57603 (September 21, 2022). The court determined that the definition was inconsistent with the statutory language in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii). *Veteran Warriors* at 1342–43. Specifically, the court held that VA's decision to create a single frequency requirement for “supervision” under clauses (ii) and (iii) of section 1720G(a)(2)(C) was inconsistent with the statutory language. *Id.* at 1342. The court also found that clauses (ii) and (iii) of section 1720G(a)(2)(C) did not restrict eligibility based on “personal safety” in all cases, such that the “personal safety” requirement in VA's definition was inconsistent with the statutory text. *Id.* at 1342–43. As a result of this ruling, VA has applied clauses (ii) and (iii) of section 1720G(a)(2)(C) in place of the regulatory term *need for supervision, protection, or instruction* and its definition in 38 CFR 71.15 when making determinations under PCAFC regulations that became effective on October 1, 2020. Thus, where the term *need for supervision, protection, or instruction* is referenced, VA applies the statutory language in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) instead.

As explained below, at this time, VA is not proposing a new definition of *need for supervision, protection, or instruction* for purposes of interpreting clauses (ii) and (iii) of 38 U.S.C. 1720G(a)(2)(C). Instead, VA's proposed interpretation of those clauses would be addressed in proposed 38 CFR 71.20(a)(3)(ii) and (iii) for purposes of determining PCAFC eligibility and in proposed § 71.40(c)(4)(i)(A)(2) for purposes of determining eligibility for the higher stipend level. Those amendments, if adopted, would eliminate the need for a new definition of *need for supervision, protection, or instruction* in § 71.15.

For these reasons, VA proposes to remove the term *need for supervision, protection, or instruction* and its definition from § 71.15.

7. Unable to Self-Sustain in the Community

In § 71.15, VA proposes to remove the term *unable to self-sustain in the community* and its definition. *Unable to self-sustain in the community* currently is defined to mean that an eligible veteran: (1) requires personal care

services each time he or she completes three or more of the seven activities of daily living (ADL) listed in the definition of an inability to perform an activity of daily living in § 71.15, and is fully dependent on a caregiver to complete such ADLs; or (2) has a need for supervision, protection, or instruction on a continuous basis. This term and its definition are used for purposes of determining eligibility for the higher stipend level under § 71.40(c)(4)(i)(A)(2). This term and its definition are also used in § 71.30, as reassessments under that section include consideration of whether the eligible veteran is *unable to self-sustain in the community* for purposes of the monthly stipend level determination under § 71.40(c)(4)(i)(A).

As explained below, VA proposes to revise § 71.40(c)(4)(i)(A)(2), which currently explains that if VA determines that the eligible veteran is unable to self-sustain in the community, the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 1.00. In proposed § 71.40(c)(4)(i)(A)(2), VA would list the criteria for the higher stipend level without referencing the term *unable to self-sustain in the community*. Consistent with that change, VA would also remove the term *unable to self-sustain in the community* from § 71.30, as discussed below. As VA would discontinue use of the term *unable to self-sustain in the community* and its definition in part 71, VA proposes to remove them from § 71.15.

8. Serious Injury

In § 71.15, VA proposes to revise the definition of *serious injury*. The current definition in § 71.15 states that *serious injury* means any service-connected disability that: (1) is rated at 70 percent or more by VA; or (2) is combined with any other service-connected disability or disabilities, and a combined rating of 70 percent or more is assigned by VA. This definition is applied by VA when determining whether an individual meets the eligibility criteria in § 71.20(a)(2), which requires the individual to have a *serious injury* incurred or aggravated in the line of duty to qualify for PCAFC.

VA proposes to revise the definition of *serious injury* in § 71.15 to include a total disability rating for compensation based on individual unemployability (IU) assigned by VA. IU ratings allow VA to compensate certain veterans at the 100 percent disability rate even though their service-connected disability or disabilities are not rated as 100 percent disabling by reference to specific rating schedule criteria. Under

§ 4.16(a), total disability ratings may be assigned when a veteran's schedular rating is less than total (which is to say, less than 100 percent) but where the veteran is unable to secure or follow a substantially gainful occupation due to service-connected disabilities. In other words, even though the veteran may not meet the requirements for a total (or 100 percent) disability rating by reference to the VA disability rating schedule criteria, the veteran may be compensated *as if* they were 100 percent disabled if their service-connected disability or the combination of their service-connected disabilities prevents them from engaging in substantial gainful employment.

The requirements for IU include that a veteran either (1) has one service-connected disability rated at least 60 percent disabling, or (2) has two or more service-connected disabilities with at least one rated at least 40 percent disabling and a combined rating of at least 70 percent. See § 4.16(a). VA also allows for extra-schedular consideration for an IU rating in cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet these percentage standards. See § 4.16(b).

In VA's July 31, 2020 Final Rule, VA revised the definition of *serious injury*. 85 FR 46245–46251 (July 31, 2020). In promulgating this definition, VA declined to adopt a recommendation from a commenter who recommended that VA consider including in the definition of *serious injury* service-connected veterans who are in receipt of an IU rating. *Id.* at 46249–46250. IU may encompass veterans with service-connected disabilities rated less than 70 percent, and VA did not believe it would be appropriate to use IU as a substitute for having a single or combined 70 percent rating for the purposes of PCAFC. *Id.* at 46250. VA explained that not all veterans and servicemembers applying for or participating in PCAFC would have been evaluated by VA for such rating, and if VA were to create an exception in the definition of *serious injury* for individuals with an IU rating, VA would also need to consider whether other exceptions should also satisfy the definition. *Id.* Additionally, VA referenced that IU had proven to be a very difficult concept to apply consistently in the context of disability compensation and had been the source of considerable dissatisfaction with VA adjudications and of litigation. *Id.* Observing that importing this standard could introduce potential inconsistency into PCAFC, VA declined to make any changes to incorporate IU into the

definition of *serious injury* in VA's July 31, 2020 Final Rule. *Id.*

Following VA's implementation of the revised definition of *serious injury*, veterans and other stakeholders continued to raise concerns regarding the exclusion of IU from the definition of *serious injury*. VA therefore took another look at this topic and reexamined the exclusion of IU. Upon further review and reconsideration, VA now proposes to include a total disability rating for compensation based on IU within the definition of *serious injury* for purposes of PCAFC, regardless of the schedular disability rating assigned as VA has concluded the advantages of including IU in the definition of *serious injury* outweigh the concerns VA identified with doing so in VA's 2020 final rule.

VA's Schedule for Rating Disabilities (VASRD) percentage ratings represent the average impairment in earning capacity resulting from service-connected disabilities. See § 4.1. When the VASRD does not adequately account for the severity of the veteran's disability and its impact on the veteran's employability, VA may assign a total disability rating by establishing IU when the requirements under § 4.16 are met. An IU determination reflects VA's assessment that even though the veteran has a less than total schedular rating, their service-connected disability, or the combination of their service-connected disabilities, precludes them from engaging in substantial gainful employment and entitles them to payment at the 100 percent disability rate. See § 4.16. VA's assignment of an IU rating establishes that the veteran's service-connected disability or disabilities renders them unemployable and compensable as if they were 100 percent disabled. Therefore, individuals with IU assigned by VA have the same level of impairment in earning capacity as that of an individual with a schedular 100 percent disability rating, regardless of whether the individual's disability picture warrants a 100-percent rating under the rating schedule(s) for the service-connected disability or disabilities.

In proposing this change, VA also reexamined its prior concerns with including IU in the definition of *serious injury*, and VA no longer believes those concerns necessitate the same approach. One such concern was the fact that not all veterans and servicemembers applying for or participating in PCAFC will have been evaluated by VA for IU. See 85 FR 46250 (July 31, 2020). While this is still true, VA notes that any individual who does not currently have a total disability rating, including those

that do not meet the definition of *serious injury* because their service-connected disability rating is less than 70 percent, can file a claim for an increased rating, which may include a request for IU if they believe such a rating is warranted.² There are existing processes for individuals to request consideration for IU, and adding IU to the definition of *serious injury* as proposed would provide an additional opportunity for veterans to satisfy the *serious injury* requirement in § 71.20(a)(2).

VA also considered that IU was a difficult concept to apply consistently in the context of disability compensation. *Id.* While VA knows that IU may be challenging to apply consistently and has been the source of litigation, it does not want to exclude veterans with IU ratings from meeting the definition of *serious injury* based on these challenges and prevent them from participating in PCAFC when all other eligibility requirements are met.

Additionally, VA has examined whether other criteria should meet the definition of *serious injury* (based on disability rating criteria or otherwise). Based on this review, the only criterion VA identified as being equivalent to having a single or combined 70 percent service-connected rating or higher, is a VA rating of IU. However, as indicated below, VA welcomes input from the public on any other VA ratings or other criteria that VA should consider as potentially meeting the definition of *serious injury* for purposes of PCAFC.

Accordingly, VA believes its earlier concerns about including IU in the definition of *serious injury* are now outweighed by the advantages that would result for individuals with an IU rating who satisfy all other PCAFC eligibility criteria. Thus, when VA determines that a veteran's service-connected disability or disabilities are so severe as to render them unable to secure or follow a substantially gainful occupation and grants the veteran entitlement to IU, VA believes such

² An IU rating under 38 CFR 4.16 would not ordinarily be awarded as a proposed rating to a servicemember undergoing medical discharge through the Integrated Disability Evaluation System. However, a servicemember undergoing medical discharge would still be able to meet the definition of *serious injury* for purposes of satisfying the requirement in § 71.20(a)(2), based on a proposed service-connected disability rating of 70 percent or higher. See 85 FR 13356, at 13369 (March 6, 2020) (explaining that "[f]or servicemembers undergoing medical discharge . . . who apply for PCAFC, we would accept their proposed VA rating of disability when determining whether the servicemember has a *serious injury*"). Additionally, VA notes that servicemembers undergoing medical discharge can be considered for an IU rating upon discharge.

disability, or disabilities, should be considered a *serious injury* for purposes of PCAFC. VA believes this is true regardless of the basis for VA's IU rating under § 4.16(a) or (b). Further, VA reached this conclusion, in part, based on continued feedback from VSOs and other stakeholders. VA believes for the reasons set forth above, the proposed inclusion of IU in the definition of *serious injury* is a reasonable expansion of the definition for purposes of PCAFC.

Given the above, VA proposes to revise the definition of *serious injury* in § 71.15 to include a total disability rating for compensation based on IU assigned by VA. VA proposes to revise the definition of *serious injury* by reorganizing the introductory text and paragraphs (1) and (2), including the current criteria from paragraphs (1) and (2) in revised paragraphs (1) and (2), and adding this new basis in a new paragraph (3). This change, if adopted, would allow individuals who do not currently have a single or combined 70 percent disability rating to meet the definition of *serious injury* if they have an IU rating assigned by VA. As proposed, the definition of *serious injury* would state *serious injury* means any of the following as assigned by VA: (1) a service-connected disability rated at 70 percent or more; (2) any service-connected disabilities that result in a combined rating of 70 percent or more; or (3) any service-connected disability or disabilities that result in a total disability rating for compensation based on individual unemployability.

9. State

In § 71.15 VA proposes to add a definition for the term *State*. As explained above, current § 71.10(b) explains, among other things, that PCAFC and PGCSS benefits are provided only to those individuals residing in a State as that term is defined in 38 U.S.C. 101(20). Currently, § 71.10(b) is the only instance in which part 71 refers to the term *State* and its definition in 38 U.S.C. 101(20). However, this rulemaking proposal, if adopted, would add the term *State* in other sections of part 71 as well. Specifically, this term would be used in a new basis for revocation under proposed revisions to 38 CFR 71.45 and regarding State-declared emergencies in proposed § 71.55, as discussed in more detail below. Thus, as the term is proposed to be used in multiple sections in part 71, it would be appropriate to define it in § 71.15. VA's proposed definition would be consistent with current § 71.10(b), as VA would define *State* in proposed § 71.15 to have the meaning given to that term in 38 U.S.C.

101(20). In 38 U.S.C. 101(20), *State* is defined to mean “each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. For the purpose of section 2303 and chapters 34 and 35 of [title 38], such term also includes the Canal Zone.”

As this is the definition VA currently uses for this term in 38 CFR 71.10(b), this change would have no substantive impact on that section. However, to provide clarity and consistency throughout part 71, VA proposes to include a new definition for the term *State* in § 71.15 so that it is easier to locate, understand, and reference the definition of this term.

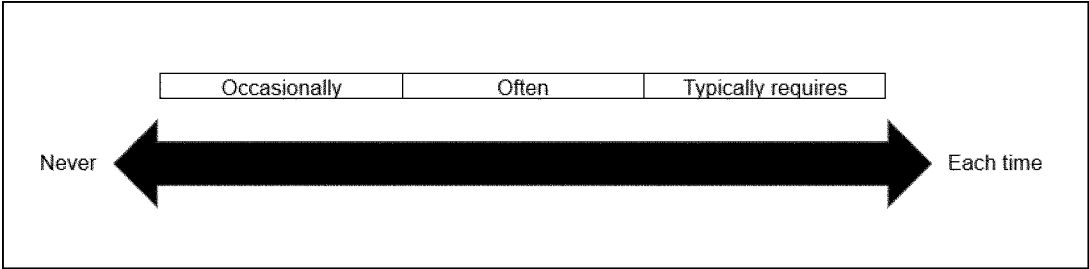
10. Typically Requires

In § 71.15, VA proposes to add a definition for the term *typically requires*. VA proposes to use the term *typically requires* in the bases for PCAFC eligibility in proposed § 71.20(a)(3)(i) and (iii) and the monthly stipend payment criteria in proposed § 71.40(c)(4)(i)(A)(2)(i). As this term is proposed to be used in multiple sections of part 71, and VA intends for this term to have the same meaning when referenced throughout part 71, VA proposes to add a definition for *typically requires* in § 71.15.

VA proposes to add a definition stating that *typically requires* means a clinical determination which refers to that which is generally necessary. Cambridge Dictionary defines “typically” as “in a way that shows all the characteristics that you would

expect from the stated person, thing, or group.”³ The Britannica Dictionary defines “typically” as “generally or normally—used to say what normally happens” and “in the usual way—used to describe what is normal or expected of a certain place, person, situation, etc.”⁴ VA’s use of “typically” denotes frequency for purposes of proposed § 71.20(a)(3)(i) and (iii) and for proposed § 71.40(c)(4)(i)(A)(2)(i) and would be consistent with these dictionary definitions. As frequency occurs on a continuum, to further demonstrate where on the continuum VA’s proposed term *typically requires* would fall in comparison to other terms of frequency, VA provides the below graphic. See also the visual aid published at www.regulations.gov under RIN 2900–AR96.

Figure 1—Typically Requires



Additionally, like the definition of *in the best interest* in § 71.15, VA’s proposed definition of *typically requires* would make clear that it is a clinical determination. This definition would allow VA to consider each individual’s unique functional needs, abilities, and usual routines when making the clinical determination of whether the criteria in proposed § 71.20(a)(3)(i) and (iii) and proposed § 71.40(c)(4)(i)(A)(2)(i) are met. Additional discussion on how VA proposes to use the term *typically requires* is found in VA’s discussion on proposed changes to §§ 71.20 and 71.40 below.

VA solicits comments from the public on all aspects of this proposed rule. In particular, VA asks the following questions on specific aspects of this proposal.

1. Please identify any similarly situated veterans or servicemembers who may not have an IU rating but nonetheless should be found to have a *serious injury* under the definition of that term in § 71.15 based on other VA ratings or other criteria.

2. VA has proposed a definition for the term *typically requires* that, in part, refers to that which is generally necessary. What other phrasing should VA consider as an alternative to generally necessary and why? Are there other criteria with regard to frequency that should be considered in defining *typically requires*?

3. Is there an alternative term other than *typically requires* that would be better defined to mean that which is generally necessary? For example, would the phrasing usually, most of the time, routinely, or ordinarily requires be clearer than the phrasing *typically requires*?

4. What factors should VA consider when determining what is generally necessary?

D. 38 CFR 71.20 Eligible Veterans and Servicemembers

Section 71.20(a) sets forth seven criteria for veterans and servicemembers to be determined eligible for a Primary Family Caregiver or Secondary Family Caregiver under part 71. In this

rulemaking proposal, VA proposes to make substantive revisions to only two of the current criteria in § 71.20(a): (1) the individual is in need of personal care services for a minimum of six continuous months based on an inability to perform an activity of daily living, or a need for supervision, protection, or instruction (see § 71.20(a)(3)); and (2) the individual receives ongoing care from a primary care team or will do so if VA designates a Family Caregiver (see § 71.20(a)(7)). VA also proposes to make technical edits to § 71.20(a), as described in more detail below. VA’s discussions of proposed changes include illustrative examples of how a veteran or servicemember could meet the two referenced criteria; however, this does not guarantee eligibility of the veteran or servicemember or caregiver applicant for participation in PCAFC, particularly as all the other criteria in § 71.20(a) would also have to be met, in addition to meeting other requirements in part 71.

³ Cambridge University Press & Assessment, 2023, <https://dictionary.cambridge.org/dictionary/english/typically> (last visited Feb. 8, 2024) (also defining “typically” as “used when you are giving an average or usual example of a particular thing” and “in a way that shows the characteristics of a particular kind of person or thing; or gives a usual example of a particular thing”).

⁴ The Britannica Dictionary, 2023, <https://www.britannica.com/dictionary/typically> (last visited Feb. 8, 2024).

1. Section 71.20(a)(3)—Bases Upon Which the Individual May Be Determined To Be in Need of Personal Care Services for a Minimum of Six Continuous Months

Current § 71.20(a)(3) requires that the individual be in need of personal care services for a minimum of six continuous months based on (i) an inability to perform an activity of daily living; or (ii) a need for supervision, protection, or instruction. VA established these criteria based on its interpretation of 38 U.S.C. 1720G(a)(2)(C)(i) through (iii). 85 FR 13371–13372 (March 6, 2020). However, VA's use of the term *need for supervision, protection, or instruction*, including its definition, was invalidated by the court's decision in *Veteran Warriors*, as explained in the above discussion on the proposed removal of such term and definition from 38 CFR 71.15. As such, and to make other changes to better clarify the three statutory bases upon which an individual may be determined to be in need of personal care services in 38 U.S.C. 1720G(a)(2)(C)(i) through (iii), VA proposes to amend 38 CFR 71.20(a)(3) by revising the language in paragraphs (i) and (ii) and adding a new paragraph (iii).

As proposed, § 71.20(a)(3) would state the individual is in need of personal care services for a minimum of six continuous months based on any one of the following: (i) the individual typically requires hands-on assistance to complete one or more ADL; (ii) the individual has a frequent need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or (iii) the individual typically requires regular or extensive instruction or supervision to complete one or more ADL.

a. Proposed § 71.20(a)(3)(i)—The Individual Typically Requires Hands-On Assistance To Complete One or More ADL

As explained in the discussion of the definition of the term *inability to perform an ADL*, VA proposes to remove such term and its definition from § 71.15 and address the statutory basis under 38 U.S.C. 1720G(a)(2)(C)(i) (that is, the individual is in need of personal care services because of an inability to perform one or more ADL) in proposed 38 CFR 71.20(a)(3)(i) for purposes of determining a veteran's or servicemember's eligibility for PCAFC.

Therefore, VA proposes to revise § 71.20(a)(3)(i) to remove the current language of an inability to perform an activity of daily living and replace it

with the individual typically requires hands-on assistance to complete one or more ADL. An individual who typically requires hands-on assistance to complete one or more ADL would have an inability to perform such ADL without such assistance, which would be consistent with the criterion in 38 U.S.C. 1720G(a)(2)(C)(i). This would include individuals who require assistance with some, or all of the tasks associated with an ADL, thus permitting individuals who are unable to contribute to the completion of the ADL to meet this criterion. VA explains below how this proposed change would clarify and differ from the current eligibility criterion in § 71.20(a)(3)(i).

i. Hands-On Assistance

First, in determining whether an individual is in need of personal care services under proposed § 71.20(a)(3)(i), VA would consider whether the individual typically requires “hands-on” assistance to complete one or more ADL. VA would require “hands-on” assistance for purposes of proposed paragraph (i), as this would be consistent with how VA has interpreted and applied the term *inability to perform an ADL*, (and remains consistent with 38 U.S.C. 1720G(a)(2)(C)(i)), for purposes of determining whether a veteran or servicemember is in need of personal care services on such basis. See 85 FR 46229, 46233, 46235 (July 31, 2020). In VA's July 31, 2020 Final Rule, VA noted that if an eligible veteran is eligible for PCAFC because they meet the definition of *inability to perform an ADL*, the in-person personal care services required to perform an ADL would be hands-on care. *Id.* at 46229. This is how VA has implemented this requirement since that final rule took effect on October 1, 2020. Individuals who do not meet the “hands-on” requirement may still meet the requirement for being in need of personal care services under current 38 CFR 71.20(a)(3) based on the statutory text in 38 U.S.C. 1720G(a)(2)(C)(ii) or (iii)—even though their needs are related to ADLs. See 85 FR 46235 (July 31, 2020). To provide further clarity and remove uncertainty concerning the type of assistance an individual must typically require in order to meet the criterion in proposed 38 CFR 71.20(a)(3)(i), VA proposes to include the words “hands-on”.

By using the phrase “assistance to complete” in proposed § 71.20(a)(3)(i), in reference to situations in which hands-on assistance is typically required, it is not VA's intent to require any minimum amount of contribution by the veteran or servicemember in

completing the ADL. If a caregiver performs an ADL entirely on behalf of the veteran or servicemember (such as dressing and undressing or bathing a veteran or servicemember who is unable to contribute to the completion of such ADL because of a physical or cognitive disability), the veteran or servicemember could still meet this proposed criterion.

In addition to being consistent with current practice, including the words “hands-on” in proposed § 71.20(a)(3)(i) would also make clear a distinction between proposed § 71.20(a)(3)(i), and proposed § 71.20(a)(3)(ii) and (iii), as proposed paragraph (iii) would set forth an additional explicit basis upon which an individual can be determined to be in need of personal care services related to an ADL, even without a need for “hands-on” assistance with the performance of one or more ADL.

ii. Removal of “Each Time” Requirement

Next, VA proposes to change the requirement that an individual must require personal care services “each time” the veteran or servicemember completes one or more ADL to be determined eligible for PCAFC under the basis in § 71.20(a)(3)(i). To do this, VA proposes to modify the current language in § 71.20(a)(3)(i) to remove reference to the term *inability to perform an ADL*. In current § 71.15, the definition of *inability to perform an ADL* means a veteran or servicemember requires personal care services “each time” they complete one or more ADL. Since VA proposes to remove the term *inability to perform an ADL* and its definition from § 71.15 and instead interpret the statutory requirement in 38 U.S.C. 1720G(a)(2)(C)(i) in proposed 38 CFR 71.20(a)(3)(i), VA believes it is important to acknowledge that VA's proposed revisions to § 71.20(a)(3)(i) would not retain the “each time” requirement for purposes of determining whether an individual typically requires hands-on assistance to complete one or more ADL, as VA has found “each time” to be too restrictive.

In establishing this requirement of “each time”, VA believed that specifying the frequency with which personal care services would be needed (that is, “each time” the veteran or servicemember completes one or more ADL) would establish a clear, objective standard that could be consistently applied throughout PCAFC. See 85 FR 13360–13361 (March 6, 2020); 85 FR 46233 (July 31, 2020). It was also established to align with VA's goal of focusing PCAFC on eligible veterans with moderate and severe needs. *Id.*

However, VA received comments when it originally proposed the “each time” requirement, which included concerns that the “each time” requirement would be too restrictive and may result in denial of eligibility for some individuals with moderate and severe needs. *Id.* at 46232–46234. In the July 31, 2020 Final Rule, VA explained that if, over time, VA found that the definition of *inability to perform an ADL* was as restrictive as the commenters asserted it would be, VA would adjust and revise the definition accordingly in a future rulemaking. *Id.* at 46234.

Since that time, VA has continued to receive feedback from stakeholders that the requirement of “each time” in the current definition of the term *inability to perform an ADL* is too restrictive. For example, this issue was raised by stakeholders that participated in VA’s roundtable listening session conducted on December 5, 2023. (See written transcript of roundtable discussion available online at www.regulations.gov under RIN 2900–AR96). VA agrees based on VA’s review of denied applications. Through exchanges with stakeholders, including veterans, caregivers, VSOs, and members of Congress, and reviews of de-identified PCAFC evaluations that have been completed, VA identified instances of veterans with moderate or severe needs who almost always require assistance with one or more ADL yet, because of occasional episodes of independence, do not meet the current standard of requiring personal care services “each time” the veteran completes one or more ADL. This does not align with VA’s intent to focus PCAFC on individuals with moderate and severe needs. VA provides illustrative examples below to showcase the restrictive nature of the “each time” requirement.

For example, a veteran may experience tremors and weakness due to their disability and consequently, require hands-on assistance from another individual when feeding and dressing on most occasions. However, due to waxing and waning of such symptoms over the course of an occasional day, this veteran can feed and dress themselves without assistance from another individual when they are experiencing limited symptoms. Such episodes in which the veteran experiences limited symptoms are not common for the veteran’s level of function, and the reprieve of symptoms is infrequent. Because this veteran has occasional episodes of independence to complete one or more ADL, the veteran does not meet the current definition of *inability to perform an ADL* because

personal care services are not required “each time” they feed and dress themselves.

Similarly, as another example, a veteran who usually requires hands-on assistance with toileting and mobility may have occasional days when the veteran, following a full night of rest, can perform each of these ADL independently for a limited period of time in the morning. However, as the day progresses, this veteran becomes fatigued and is unable to sustain the level of exertion needed to independently perform these ADL for the remainder of the day, thus requiring the assistance of another individual. This veteran also does not meet the current definition of inability to perform an ADL because they do not require assistance “each time” they perform these ADL.

In these and similar illustrative examples, VA has found that the “each time” standard has excluded individuals from meeting the requirement to be in need of personal care services based on an *inability to perform an ADL* despite having what VA considers to be moderate or severe needs. Such individuals are determined to not meet the current definition of *inability to perform an ADL* because they have episodes of independence that do not result in such individuals requiring personal care services “each time” they perform an ADL and they do not meet the requirement under current § 71.20(a)(3)(i). VA has thus determined that the requirement of “each time” in the current definition of *inability to perform an ADL* is too restrictive.

VA acknowledges that when the “each time” requirement in the definition of *inability to perform an ADL* was established, VA believed that such an objective and clear frequency requirement was necessary to create a consistent standard that could be operationalized across PCAFC. 85 FR 46233 (July 31, 2020). However, VA no longer believes this standard is necessary to create consistency when evaluating an individual’s inability to perform an ADL. This is because VA’s process for evaluating veterans and servicemembers under § 71.20(a)(3) includes comprehensive assessments that are able to identify specific variability in a veteran’s or servicemember’s unique functional needs, abilities, and usual routines. VA therefore asserts it is reasonable and appropriate to propose a standard that is less strict than “each time” in order to accommodate veterans and servicemembers with moderate and severe needs who would otherwise be excluded from PCAFC.

As an alternative to this proposal, VA considered whether to include a specific frequency requirement other than “each time”, and whether that should be a quantitative standard. VA recognizes the importance of ensuring VA’s interpretation of 38 U.S.C.

1720G(a)(2)(C)(i) in proposed 38 CFR 71.20(a)(3)(i) accounts for the unique functional needs, abilities, and usual routines of individual veterans and servicemembers who require hands-on assistance to complete one or more ADL and decided not to propose a quantitative standard and instead focus on what a veteran or servicemember *typically requires*. As discussed in regard to proposed changes to § 71.15, VA proposes to add a definition stating that *typically requires* means a clinical determination which refers to that which is generally necessary.

As identified by the Federal Circuit in *Veteran Warriors*, “[t]here is a statutory gap” as to how often an individual must be unable to perform an ADL under 38 U.S.C. 1720G(a)(2)(C)(i). See *Veteran Warriors* at 1339. Previously, VA adopted the “each time” requirement to fill that gap for purposes of interpreting and applying 38 U.S.C.

1720G(a)(2)(C)(i), and now, VA proposes to modify the requirement by replacing it with *typically requires* in 38 CFR 71.20(a)(3)(i). Inclusion of the term *typically requires* would address such questions as how often a veteran or servicemember must be unable to perform an ADL, how often the inability must be present, and how pervasive the inability must be for purposes of establishing inability to perform an ADL. *Id.*

In proposing to revise § 71.20(a)(3)(i) to focus on what is typically required by each veteran or servicemember rather than use another quantitative standard, VA would avoid setting a specific quantifiable threshold. VA acknowledges that in its July 31, 2020 Final Rule VA stated it did not want to use a non-specific threshold (for example, most or majority of time) for purposes of defining *inability to perform an ADL* because using such thresholds would be vague, subjective, arbitrary, difficult to quantify, and could lead to inconsistencies. 85 FR 46233–46234 (July 31, 2020). However, VA now believes using the term *typically requires* is appropriate because the determination of whether a veteran or servicemember is in need of personal care services based on an inability to perform an ADL is a clinical determination that inherently accounts for the individual’s unique functional needs, abilities, and usual routines. A specific quantifiable threshold that

applies equally to all individuals could potentially result in the exclusion of some veterans and servicemembers with moderate and severe needs from PCAFC as was the case with VA's implementation of the "each time" requirement. This is because such a threshold would not provide the flexibility that would be required to account for each individual's unique functional needs, abilities, and usual routines in making the determination of whether they are in need of personal care services.

iii. Implementation of Proposed § 71.20(a)(3)(i)

A determination that a veteran or servicemember typically requires hands-on assistance to complete one or more ADL under proposed § 71.20(a)(3)(i) would be a clinical determination based on an assessment of the veteran's or servicemember's unique functional needs, abilities, and usual routines and take into consideration the tasks required to complete the ADL. In making this clinical determination VA may consider, for example, the frequency with which the ADL is completed, the functions and tasks performed by the individual to complete the ADL, and the frequency with which hands-on assistance from another individual is needed to complete such ADL, as each of these can vary from person to person.

A. Frequency of the Functions and Tasks Required To Complete an ADL

VA first must determine what functions and tasks are performed by an individual in order to complete an ADL, as this can vary from person to person. VA notes that requiring hands-on assistance only to complete functions or tasks performed on an occasional basis that are not part of the individual's usual self-care routine would not mean the veteran or servicemember typically requires hands-on assistance to complete an ADL. For example, one veteran may shave on a daily basis as part of completing the ADL of grooming, while a different veteran who chooses to maintain a full beard does not shave as part of their grooming routine.

B. Frequency of Need for Hands-On Assistance

VA would not require assistance "each time" the veteran or servicemember completes the ADL, as was explained above. Rather, VA would assess how frequently hands-on assistance is needed in conjunction with how often the ADL is completed. This would be a more expansive basis than what VA applies today.

Failure to meet the proposed criterion in § 71.20(a)(3)(i) would not preclude individuals from being determined to be in need of personal care services under another basis in § 71.20(a)(3). Veterans and servicemembers could also be determined to be in need of personal care services based on proposed § 71.20(a)(3)(ii) or (iii) (that is, the individual has a frequent need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or the individual typically requires regular or extensive instruction or supervision to complete one or more ADL), which are discussed below.

b. Proposed § 71.20(a)(3)(ii)—The Individual Has a Frequent Need for Supervision or Protection Based on Symptoms or Residuals of Neurological or Other Impairment or Injury

Under current § 71.20(a)(3)(ii), an individual may be determined to be in need of personal care services for a minimum of six continuous months based on a need for supervision, protection, or instruction. As explained above, this criterion was intended to implement the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in a combined manner. However, the U.S. Court of Appeals for the Federal Circuit invalidated this term and its definition in the *Veteran Warriors* decision. Since the *Veteran Warriors* decision, in place of the term *need for supervision, protection, or instruction* and its definition in current § 71.15, VA has applied the statutory language in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) when determining whether a veteran or servicemember is in need of personal care services under 38 CFR 71.20(a)(3)(ii).

VA proposes to update its regulations to align with VA's current practice of interpreting the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) separately. To do so, VA proposes to revise 38 CFR 71.20(a)(3)(ii) to align with how VA has implemented the statutory criteria for 38 U.S.C. 1720G(a)(2)(C)(ii) (that is, a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury) as a result of the *Veteran Warriors* decision. For purposes of interpreting 38 U.S.C. 1720G(a)(2)(C)(ii), VA proposes to revise 38 CFR 71.20(a)(3)(ii) by replacing the language "[a] need for supervision, protection, or instruction" with the language "[t]he individual has a frequent need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury". This would be

consistent with the statutory language in 38 U.S.C. 1720G(a)(2)(C)(ii). However, as previously discussed regarding 38 U.S.C. 1720G(a)(2)(C)(i), the statutory language in section 1720G(a)(2)(C)(ii) does not include an explicit frequency requirement; therefore, VA proposes to include the phrase "has a frequent need" in proposed 38 CFR 71.20(a)(3)(ii) to address that gap. Such term would be reflective of how VA has been applying this statutory basis since the *Veteran Warriors* ruling. Consistent with that, VA intends to apply common dictionary definitions of the word "frequent", which refer to an action occurring "repeatedly, "habitually", or "on many occasions", when implementing this new criterion.⁵ VA discusses its proposed implementation of this language in greater detail further below.

In implementing this proposed change, VA would continue to apply the statutory criteria as it relates to the interpretation of "supervision or protection" and "symptoms or residuals of neurological or other impairment or injury" as VA does in current practice. VA discusses this interpretation below.

i. Supervision or Protection

The statutory language in 38 U.S.C. 1720G(a)(2)(C)(ii) does not define supervision or protection. Therefore, VA has relied on common definitions and uses of these terms to inform VA's interpretation of this statutory provision. For instance, consistent with dictionary definitions of the term, VA considers "supervision" to be critical watching of an individual to provide oversight or directing (such as of activities or actions).⁶ For the purposes of proposed 38 CFR 71.20(a)(3)(ii), supervision would not be limited to or dependent upon the veteran's or servicemember's needs related to specific activities or functions, which is in contrast to VA's interpretation of "supervision" under proposed § 71.20(a)(3)(iii), as discussed in more detail below. When VA evaluates a veteran or servicemember on the basis of whether the individual has a frequent

⁵ See Merriam-Webster Dictionary, 2023, <https://www.merriam-webster.com/dictionary/frequent> (last visited Jul. 26, 2024); The Britannica Dictionary, 2023, <https://www.britannica.com/dictionary/frequent> (last visited Jul. 26, 2024); and Oxford English Dictionary, 2023, <https://www.oed.com/search/dictionary/?scope=Entries&q=frequent> (last visited Jul. 26, 2024).

⁶ See Merriam-Webster Dictionary, 2023, <https://www.merriam-webster.com/dictionary/supervision> (last visited Feb. 8, 2024); The Britannica Dictionary, 2023, <https://www.britannica.com/dictionary/supervision> (last visited Feb. 8, 2024); and Oxford English Dictionary, 2023, <https://www.oed.com/search/dictionary/?scope=Entries&q=supervision> (last visited Feb. 8, 2024).

need for supervision based on symptoms or residuals of neurological or other impairment or injury, VA considers their overall need for supervision in general. VA interprets the word “protection” to mean keep, cover, or shield from harm. This is also consistent with common definitions for such term.⁷

VA considers the need for both supervision and protection when evaluating the statutory criterion in 38 U.S.C. 1720G(a)(2)(C)(ii). Although VA recognizes that the terms are distinct, VA does not believe it is necessary in its determinations to parse out whether an individual needs supervision, protection, or both under proposed 38 CFR 71.20(a)(3)(ii) because either one would satisfy this regulatory basis. Additionally, making this distinction would prove challenging because individuals who have a need for protection, generally also have a need for supervision. Likewise, an individual who needs supervision may need such supervision at times as a means of protection; however, at other times, supervision may be needed in the absence of a need for protection. When a caregiver takes action to protect a veteran or servicemember from harm, they may do so in the course of also overseeing (or supervising) that individual. For example, a veteran with a history of hypervigilance and hallucinations and who acts upon such hallucinations may need protection to support their safety during hallucinations. In such instances, the caregiver must provide supervision to identify whether protection is needed.

ii. Symptoms or Residuals of Neurological or Other Impairment or Injury

Next, VA describes its interpretation of the basis for such supervision and protection, that is, symptoms or residuals of neurological or other impairment or injury. Consistent with VA's current practice, in evaluating and determining whether a veteran or servicemember has a frequent need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury under proposed § 71.20(a)(3)(ii), VA would not have a discrete list of symptoms or residuals of neurological or other impairment or injury by which a veteran or servicemember may be determined eligible under this criterion as these can vary by individual. As clinical practices

evolve over time, VA would not want to list in regulation specific symptoms or residuals as doing so could unnecessarily limit VA's ability to find individuals eligible under this criterion. However, examples of symptoms and residuals of neurological or other impairment or injury for which a veteran or servicemember may require supervision or protection may include, but are not limited to, unmanaged impulse control, command hallucinations, uncontrolled seizures, loss of muscular control, or cognitive impairments.

VA does not currently have a discrete list of neurological or other impairments or injuries that would make a veteran or servicemember eligible under this criterion. *See* 85 FR 13363–13364 (March 6, 2020). This is because individuals with similar impairments or injuries may experience a wide variation of symptoms leading to a variety of functional impacts. While VA does not propose to maintain a discrete list of impairments or injuries in regard to this criterion, examples of impairments or injuries for which symptoms or residuals may lead to a veteran or servicemember typically requiring supervision or protection may include, but are not limited to, traumatic brain injury, mental health conditions, Parkinson's disease, dementia, and neuromuscular disorders such as muscular dystrophy, multiple sclerosis, or amyotrophic lateral sclerosis.

iii. Implementation of Proposed § 71.20(a)(3)(ii)

While VA would consider whether an individual has a frequent need for supervision or protection when evaluating whether an individual is in need of personal care services on this basis, VA would not set forth a specific quantitative requirement for the frequency with which a veteran or servicemember may require supervision or protection other than specifying that the need for supervision or protection is frequent. VA has found that there is no uniform frequency of individuals' need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury. The frequency of need varies based on each individual's unique needs and depends on severity of their symptomology.

Therefore, when implementing proposed § 71.20(a)(3)(ii), VA would consider how frequently a veteran or servicemember is in need of personal care services under this basis. VA would consider how symptoms manifest for each unique individual, whether their symptoms are well-controlled, and

whether the veteran or servicemember has a past pattern or history of requiring supervision or protection because of such symptomology. Although a past pattern or history of requiring supervision or protection will be considered, VA notes that it is not necessarily determinative of whether an individual would be determined to meet proposed § 71.20(a)(3)(ii), as such individual may not continue to need supervision or protection on a frequent basis.

In requiring a “frequent need”, VA can allow for variance in the type of need and circumstances presented in each individual case, while still maintaining a consistent standard. This approach differs from the frequency proposed under 38 CFR 71.20(a)(3)(i) and (iii) (that is, *typically requires*). This is because unlike the criteria in proposed § 71.20(a)(3)(i) and (iii), which focus on ADLs, the need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury proposed in § 71.20(a)(3)(ii) does not have a discrete list of needs or circumstances. In this regard, determining what is typically required for an individual would be impractical.

To illustrate how the requirement for a frequent need would be applied, VA provides the following example. There may be two veterans with the same diagnosis of multiple sclerosis who both have symptoms of muscle weakness that require a caregiver to stay in close proximity and intervene if the veteran stumbles, to minimize or prevent falls. In this example, one veteran experiences muscle weakness on a daily, or near daily, basis and has a history of multiple falls, resulting in a daily or near daily need for supervision and/or protection by a caregiver. The other veteran experiences occasional muscle weakness one or two days per week for limited amounts of time following completion of recommended strengthening exercises, resulting in an occasional need for supervision or protection by a caregiver on these days. While these two veterans have the same diagnosis and both experience the same symptoms of muscle weakness, the former veteran may have a frequent need for supervision and protection while the latter veteran may only occasionally have such need. In the case of the second veteran in this example, where the need for supervision or protection only occurs after participating in their recommended strengthening exercises, the veteran may not be considered to have a frequent need for supervision or protection

⁷ See Merriam-Webster Dictionary, 2023, <https://www.merriam-webster.com/dictionary/protect> (last visited Feb. 8, 2024); and The Britannica Dictionary, 2023, <https://www.britannica.com/dictionary/protection> (last visited Feb. 8, 2024).

because such need is infrequent and not generally necessary.

Additionally, under proposed 38 CFR 71.20(a)(3)(ii), VA would consider whether an individual has a demonstrated past pattern or history when determining whether the individual has a frequent need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury. However, a past pattern or history of needing supervision or protection is not necessarily determinative of whether an individual would be determined to meet proposed § 71.20(a)(3)(ii), as such individual may not continue to have a frequent need for supervision or protection.

VA looks forward to receiving public comments on this proposal. Additionally, VA notes that if the changes under proposed § 71.20(a)(3)(ii) become effective, VA would develop trainings and guidance materials to support consistent evaluation of this standard.

c. Proposed § 71.20(a)(3)(iii)—The Individual Typically Requires Regular or Extensive Instruction or Supervision To Complete One or More ADL

As previously explained, the current regulatory text in § 71.20(a)(3)(ii) was intended to implement the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in a combined manner by establishing that an individual could be determined to be in need of personal care services based on a *need for supervision, protection, or instruction*. However, the *Veteran Warriors* decision, issued on March 25, 2022, invalidated VA's definition of *need for supervision, protection, or instruction*. Since that decision, VA has been applying the statutory language in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the criterion in current 38 CFR 71.20(a)(3)(ii). VA discussed its proposed interpretation of 38 U.S.C. 1720G(a)(2)(C)(ii) above and proposes to further interpret 38 U.S.C. 1720G(a)(2)(C)(iii) in proposed modifications to the regulations as discussed in more detail below.

For purposes of interpreting 38 U.S.C. 1720G(a)(2)(C)(iii) (that is, a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired), VA proposes to add 38 CFR 71.20(a)(3)(iii) to state that the individual typically requires regular or extensive instruction or supervision to complete one or more ADL. This proposed interpretation of the statutory criteria deviates from current practice in two ways. The first

is VA's inclusion of the term *typically requires*, which would specify how often a veteran or servicemember would be in need of personal care services on this basis. The second is that VA identified a need to further define its interpretation of the statutory phrase “without which the ability of the veteran to function in daily life would be seriously impaired”. In proposed § 71.20(a)(3)(iii), VA would interpret this statutory phrase to mean “to complete one or more ADL”. VA discusses its interpretation of the statutory language and its proposed criterion in greater detail further below.

i. Typically Requires

Including the term *typically requires* in proposed § 71.20(a)(3)(iii) would specify the frequency with which an eligible veteran would be in need of personal care services on this basis and would align with VA's use of the term *typically requires* in proposed § 71.20(a)(3)(i), as discussed above. Although the words “regular” and “daily” in 38 U.S.C. 1720G(a)(2)(C)(iii) could be viewed in isolation as referring to specific frequencies, for the reasons explained below, VA does not believe that Congress intended those words to establish any frequency requirement in section 1720G(a)(2)(C)(iii). Accordingly, VA proposes to include the term *typically requires* in proposed 38 CFR 71.20(a)(3)(iii) to modify the frequency requirement previously established in the definition of *supervision, protection, or instruction* that referred to a “daily basis”.⁸

ii. Regular or Extensive Instruction or Supervision

In 38 U.S.C. 1720G(a)(2)(C)(iii), Congress did not define what is meant by regular or extensive instruction or supervision. In implementing this statutory criterion, VA has relied upon common definitions of the terms “regular”, “extensive”, “instruction”, and “supervision” to inform VA's interpretation. Today, “regular” has been applied to mean some amount of supervision or instruction while “extensive” has generally been applied to mean a large amount of supervision or instruction. Additionally, to date, VA has applied common definitions of

“instruction” and “supervision” when implementing the statutory criteria under section 1720G(a)(2)(C)(iii). VA now seeks to clarify and further define its interpretation of the statutory criterion and use of these terms.

The term “instruction” commonly refers to the provision of guidance or detailed information to complete or perform an action. It is defined as “something that someone tells you to do,” as “a statement that describes how to do something; an order or command; the action or process of teaching” and “that which is taught; knowledge or authoritative guidance imparted by one person to another.”⁹ VA's use of the term “instruction” in proposed § 71.20(a)(3)(iii) would be consistent with these definitions, as VA would consider the need for instruction to mean the need for detailed information is necessary to perform an activity as VA does in current practice.

VA's interpretation of the meaning of “supervision” is addressed in the discussion above regarding proposed 38 CFR 71.20(a)(3)(ii) (that is, VA considers “supervision” to be critical watching of an individual to provide oversight or directing (such as of activities or actions)).¹⁰ While the term “supervision” has the same meaning in proposed paragraphs (a)(3)(ii) and (iii), in proposed paragraph (a)(3)(iii) supervision would be needed with respect to the veteran's or servicemember's ability to complete one or more ADL, in contrast to supervision under proposed paragraph (a)(3)(ii) which does not include that same requirement.

Additionally, VA recognizes that the terms “instruction” and “supervision” are distinct terms. However, consistent with VA's proposed approach with regard to supervision or protection under proposed 38 CFR 71.20(a)(3)(ii) discussed above, VA does not believe it is necessary in its determinations to parse out whether an individual typically requires instruction, supervision, or both under proposed

⁹ See Cambridge Dictionary, 2023, <https://dictionary.cambridge.org/us/dictionary/english/instruction> (last visited Feb. 8, 2024); The Britannica Dictionary, 2023, <https://www.britannica.com/dictionary/instruction> (last visited Feb. 8, 2024); and Oxford English Dictionary, 2023, <https://www.oed.com/search/dictionary/?scope=Entries&q=instruction> (last visited Feb. 8, 2024).

¹⁰ See Merriam-Webster Dictionary, 2023, <https://www.merriam-webster.com/dictionary/supervision> (last visited Sept. 24, 2023); The Britannica Dictionary, 2023, <https://www.britannica.com/dictionary/supervision> (last visited Feb. 8, 2024); and Oxford English Dictionary, 2023, <https://www.oed.com/search/dictionary/?scope=Entries&q=supervision> (last visited Feb. 8, 2024).

⁸ Even if not viewed as a statutory gap, the language in 38 U.S.C. 1720G(a)(2)(C)(iii) is at least ambiguous as to the frequency with which an individual would need regular or extensive instruction to be determined in need of personal care services on this basis. For the reasons explained below, VA would resolve that ambiguity by establishing in proposed 38 CFR 71.20(a)(3)(iii), that the individual typically requires regular or extensive instruction or supervision to meet this criterion.

§ 71.20(a)(3)(iii) because either one would satisfy this regulatory basis.

Next, VA explains its proposed interpretations of “regular” instruction or supervision and “extensive” instruction or supervision and the distinction between the two. The word “regular” can carry several meanings, such as “characterized by evenness, order, or harmony in physical form, structure, or organization; arranged in or constituting a constant or definite pattern; happening over and over again at the same time or in the same way; happening or done very often; normal or usual.”¹¹ Merriam Webster Dictionary describes “regular” as meaning, “recurring, attending, or functioning at fixed, uniform, or normal intervals; normal, standard; something of average or medium size.”¹² It is this latter meaning, that is, that which is something of average or medium size, which VA interprets to have the most applicability for purposes of evaluating that which is “regular” instruction or supervision under proposed § 71.20(a)(3)(iii). Notably, “regular” is commonly used to refer to a standard or indicative of size, such as regular clothing size versus petite or long, regular warranty versus extended warranty, regular display versus extended display, or an amount, such as with regular (basic) rates of pay.¹³ These common definitions and usages that align with the term meaning a size or degree, inform VA’s interpretation of the statutory language and its use of the term “regular” in proposed § 71.20(a)(3)(iii). This is also consistent with how VA currently interprets this term when applying the statutory criteria today.

VA’s use of the term “regular” in proposed § 71.20(a)(3)(iii) aligns with common usage of the term relating to size or degree, such as a standard amount. VA considered the use of “regular” in terms of frequency. However, Congress did not include a frequency requirement in either of the criteria found in 38 U.S.C.

1720G(a)(2)(C)(i) or (ii). Therefore, VA does not believe that Congress intended to add a frequency requirement in the context of only one basis that an individual could be determined to be in need of personal care services.¹⁴ As previously discussed, VA is proposing to establish a consistent frequency requirement for the two statutory bases VA proposes would apply to the need for personal care services to complete ADLs through VA’s use of the term *typically requires* in the proposed criterion discussed here and the criterion in proposed 38 CFR 71.20(a)(3)(i) discussed above. As referenced in VA’s discussion of proposed § 71.15, *typically requires* would be a clinical determination that would take into consideration an individual’s unique functional needs, abilities, and usual routines when assessing the frequency of the individual’s need for personal care services.

Similarly, VA would continue to interpret the term “extensive” to also account for size or degree but on a larger scale than regular. The term “extensive” commonly refers to that which is large in size or amount, having a wide or considerable extent, or extending over or occupying a large surface or space, covering a large area or being a large amount.¹⁵ Each of these meanings for extensive refers to a size or degree. VA therefore equates “extensive” with a greater size or higher degree of personal care services requiring instruction or supervision than that of “regular” as explained below.

VA interprets the terms regular (something of average or medium size) and extensive (that which is large in size), to reflect different points along a spectrum. VA interprets this difference in size or degree to reflect a distinction in the size or degree of personal care

services required by the veteran or servicemember. This means that a regular need for instruction or supervision is of a lower size or degree than an extensive need for instruction or supervision.

Using this proposed standard, if adopted as final, when applying the criterion in proposed 38 CFR 71.20(a)(3)(iii), VA would interpret the need for extensive instruction or supervision to mean that such instruction or supervision is required throughout the performance of the activity; hence the personal care services (that is, instruction or supervision) required to complete the activity would be of a large size or degree. In contrast, VA would interpret the need for regular instruction or supervision to mean such personal care services are only needed to complete a portion of the activity. Thus, VA would consider “regular” to refer to a lesser size or degree of instruction or supervision than that of “extensive”.

Although VA interprets “regular” and “extensive” to reflect different sizes or degrees of personal care services required by the veteran or servicemember, having either a “regular” or “extensive” need for instruction or supervision to complete one or more ADL would satisfy the criterion in proposed § 71.20(a)(3)(iii). This is consistent with VA’s proposed approach with regard to supervision or protection under proposed § 71.20(a)(3)(ii) and instruction or supervision under § 71.20(a)(3)(iii) discussed above. However, the distinction between “regular” and “extensive” would be relevant to determinations under proposed § 71.40(c)(4)(A)(2)(i) regarding stipend level determinations, as discussed further below.

iii. Ability To Function in Daily Life Would Be Seriously Impaired

Finally, in proposed 38 CFR 71.20(a)(3)(iii), VA also proposes to interpret “without which the ability of the veteran to function in daily life would be seriously impaired” in 38 U.S.C. 1720G(a)(2)(C)(iii) to mean that such individual typically requires regular or extensive instruction or supervision “to complete one or more ADL”. This is a deviation from current practice as currently VA may include other activities or functions in addition to ADL when applying this statutory criterion as is explained below. VA believes it is reasonable to interpret ADL as the “ability of the veteran to function in daily life” contemplated in 38 U.S.C. 1720G(a)(2)(C)(iii). Activities or functions other than ADL for which

¹¹ See Cambridge Dictionary, 2023, <https://dictionary.cambridge.org/us/dictionary/english/regular> (last visited Feb. 8, 2024); The Britannica Dictionary, 2023, <https://www.britannica.com/dictionary/regular> (last visited Feb. 8, 2024); and Oxford English Dictionary, 2023, <https://www.oed.com/search/dictionary/?scope=Entries&q=regular> (last visited Feb. 8, 2024).

¹² See Merriam-Webster Dictionary, 2023, <https://www.merriam-webster.com/dictionary/regular> (last visited Feb. 8, 2024).

¹³ See for example, Regular Military Compensation (RMC) Calculator, Department of Defense, <https://militarypay.defense.gov/calculators/rmc-calculator/> (Describing “regular military compensation” as a basic level of compensation that every servicemember receives.) (last visited Feb. 8, 2024).

¹⁴ One could argue that use of the word “daily” in section 1720G(a)(2)(C)(iii) refers to a frequency requirement and could imply that a veteran or servicemember must experience the need each day. However, in section 1720G(a)(2)(C)(iii) the word “daily” is used to modify the word “life” and is better understood to refer to the types of activities that the veteran or servicemember ordinarily completes to function in the normal course of a day (such as ADL). For this reason, VA does not read the word “daily” in section 1720G(a)(2)(C)(iii) to contain a frequency requirement. Additional discussion of VA’s interpretation of the phrase “ability of the veteran to function in daily life would be seriously impaired” in section 1720G(a)(2)(C)(iii) is below.

¹⁵ See Merriam-Webster Dictionary, 2023, <https://www.merriam-webster.com/dictionary/extensive> (last visited Feb. 8, 2024); The Britannica Dictionary, 2023, <https://www.britannica.com/dictionary/extensive> (last visited Feb. 8, 2024); and Oxford English Dictionary, 2023, <https://www.oed.com/search/dictionary/?scope=Entries&q=extensive> (last visited Feb. 8, 2024).

veterans and servicemembers with moderate or severe needs may be in need of personal care services could be captured under the basis proposed in 38 CFR 71.20(a)(3)(ii) (that is, the individual has a frequent need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury). Therefore, proposed 38 CFR 71.20(a)(3)(iii) would refer to instruction or supervision to complete one or more ADL rather than repeating the verbiage in 38 U.S.C. 1720G(a)(2)(C)(iii).

As VA explained above regarding the term “regular” in section 1720G(a)(2)(C)(iii), VA does not believe Congress intended the term “daily” in such section to establish a frequency requirement—especially one more restrictive than would apply under clauses (i) and (ii) of section 1720G(a)(2)(C). The statute does not say that the veteran or servicemember would have a daily need for regular or extensive instruction or supervision. Rather, it says that without such regular or extensive instruction or supervision, the ability to “function in daily life would be seriously impaired.” In this context, VA interprets “function in daily life” to align with VA’s proposed definition of ADL in 38 CFR 71.15. In proposed § 71.15, ADL would be defined, in part, as the functions or tasks for self-care usually performed in the normal course of a day. VA believes this is consistent with the language 38 U.S.C. 1720G(a)(2)(C)(iii) concerning functioning in daily life, as ADL are typically performed on a daily basis. However, similar to VA’s discussion on proposed 38 CFR 71.20(a)(3)(i) and the proposed definition of ADL in § 71.15, VA would not require that the ADL with which the individual requires regular or extensive instruction or supervision be performed on a daily basis. ADL often occur on a daily basis, but not always (for example, bathing). For purposes of this criterion, VA would apply the proposed definition of ADL in 38 CFR 71.15, and the term *typically requires* would set forth the applicable frequency of need. VA explains its rationale for this interpretation in more detail below.

In determining whether the ability of the veteran or servicemember to function in daily life would be seriously impaired for purposes of 38 U.S.C. 1720G(a)(2)(C)(iii), VA contemplated what other essential functions or activities, beyond or instead of ADL, might be considered functions in daily life that would be seriously impaired without regular or extensive instruction or supervision under proposed 38 CFR 71.20(a)(3)(iii). Specifically, VA considered activities caregivers

commonly assist veterans with beyond ADL. Such activities include but are not limited to meal preparation, shopping for essential needs, managing finances, housework, and coordinating medical care.¹⁶ VA does not believe Congress intended to capture such activities under 38 U.S.C. 1720G(a)(2)(C)(iii) for the reasons discussed below.

First, and most noteworthy, the phrasing of this criterion in 38 U.S.C. 1720G(a)(2)(C)(iii) implies the veteran or servicemember is the individual who performs the activity. To have a need for regular or extensive instruction or supervision *without which* the ability to function in daily life would be seriously impaired suggests that the veteran or servicemember must be capable of performing some activity to function in daily life *with* the provision of such instruction or supervision. This means that if a veteran or servicemember is not capable of performing such activity because that veteran or servicemember is physically or cognitively incapable of doing so, and no amount of instruction or supervision would enable that veteran or servicemember to perform that activity, such veteran or servicemember would not qualify under this basis. This means an individual who may have a greater need, that is, who requires another person to complete the activity necessary for functioning in daily life in its entirety or on behalf of the veteran, would not qualify under this basis, while an individual who can complete the activity with assistance (instruction or supervision) could qualify.¹⁷

Second, VA does not believe Congress intended to include activities classified as instrumental activities of daily living (IADL) such as meal preparation, shopping for essential needs, managing finances, housework, or coordinating medical care within the criterion in 38 U.S.C. 1720G(a)(2)(C)(iii) because such activities are those that may be completed entirely by another individual without the veteran’s or servicemember’s presence or involvement. Therefore, if these activities are not performed by the veteran or servicemember either by choice or inability, and are instead completed by another individual, the veteran’s or servicemember’s

functioning in daily life would not be seriously impaired—with or without instruction or supervision in performing such activities, as they do not perform the activity. This would not mean that individuals who are incapable of performing or who otherwise need assistance with these activities would be excluded from PCAFC. Such individuals may still be in need of personal care services based on meeting the other criteria under proposed § 71.20(a)(3).

Therefore, ADL are the only activities VA identified for which the ability of the veteran or servicemember to function in daily life would be seriously impaired in the absence of regular or extensive instruction or supervision and that pursuant to this interpretation, the criterion in proposed § 71.20(a)(3)(iii) would not unduly disadvantage one group over another. Furthermore, in contrast to the other functions or activities VA considered, ADL cannot be done without the veteran’s or servicemember’s presence or involvement. The veteran’s or servicemember’s physical presence is necessary for the ADL to be completed because the ADL that is completed is performed on, or directly impacts, the veteran’s body. Thus, VA finds it appropriate to interpret 38 U.S.C. 1720G(a)(2)(C)(iii) to mean the individual typically requires regular or extensive instruction or supervision to complete one or more ADL. While there are indeed other activities which could result in a veteran’s or servicemember’s ability to function in daily life being seriously impaired that are not related to ADL, such as but not limited to a veteran or servicemember who requires supervision due to frequent falls, or a veteran or servicemember who requires instruction or supervision to properly self-administer medications, such needs could be captured under proposed 38 CFR 71.20(a)(3)(ii). An illustrative example is provided below when VA addresses multiple bases for being determined to be in need of personal care services.

Although VA did not identify any other life activities or functions that would meet the statutory language beyond that which are ADL and which are not already covered under the other bases (that is, a need for hands-on assistance or a need for regular or extensive supervision or instruction to complete one or more ADL), VA specifically requests comments on this topic from the public on whether there are certain IADL, or other activities or functions in daily life that VA should consider for purposes of determining that an individual is in need of personal

¹⁶ Rajeev Ramchand, et al., *Hidden Heroes: America’s Military Caregivers*. Santa Monica, CA: RAND Corporation (2014), pages 54–56, available at https://www.rand.org/pubs/research_reports/RR499.html.

¹⁷ Note that the individual with a greater need may qualify under a separate criterion under proposed 38 CFR 71.20(a)(3)(i) or (ii) and the failure to qualify under this basis in § 71.20(a)(3)(iii) would not mean that an individual is necessarily ineligible for PCAFC.

care services under 38 U.S.C. 1720G(a)(2)(C)(iii) and proposed 38 CFR 71.20(a)(3)(iii).

iv. Implementation of Proposed § 71.20(a)(3)(iii)

Similar to VA's discussions above regarding proposed 38 CFR 71.20(a)(3)(i), in evaluating whether the individual typically requires regular or extensive instruction or supervision to complete one or more ADL should this proposed regulation text become final, VA would consider the instruction or supervision that is generally necessary when the individual is completing one or more ADL. In determining if an individual typically requires regular or extensive instruction or supervision to complete one or more ADL, VA would consider for each individual, factors such as how often the ADL is completed as well as the frequency with which instruction or supervision is needed to complete such ADL. What is typically required would be a clinical determination based on an assessment of the veteran's or servicemember's needs and would take into consideration things like the individual veteran's or servicemember's unique functional needs, abilities, usual routines, and the tasks required to be able to complete the ADL.

d. Eligibility Under Multiple Proposed Bases

Under VA's proposed interpretation of 38 CFR 71.20(a)(3)(i) through (iii), some veterans and servicemembers may be determined to be in need of personal care services based on more than one criterion. This means that a veteran or servicemember may be determined to be in need of multiple types of personal care services (that is, hands-on assistance with ADL, supervision or protection, and/or instruction or supervision). For example, while both proposed § 71.20(a)(3)(i) and (iii) would require a veteran or servicemember to typically require personal care services with respect to one or more ADL, the type of personal care services that would be required by the veteran to satisfy each proposed criterion differ. Under proposed § 71.20(a)(3)(i), the individual would typically require hands-on assistance, and under proposed § 71.20(a)(3)(iii), the individual would typically require regular or extensive instruction or supervision, which VA would consider to be something other than hands-on assistance. For example, a veteran may typically require hands-on assistance with bathing and also typically require regular or extensive instruction for dressing. In such instance, the veteran

may meet both proposed § 71.20(a)(3)(i) and (iii). This is just one example; however, an individual could be determined to be in need of personal care services based on meeting various combinations of the criteria in proposed § 71.20(a)(3) such as meeting the criterion in proposed § 71.20(a)(3)(i) and (ii) or meeting all three criteria in proposed § 71.20(a)(3)(i) through (iii).

2. Section 71.20(a)(7)—Ongoing Care From a Primary Care Team

Current § 71.20(a)(7) requires that the individual receives ongoing care from a primary care team or will do so if VA designates a Family Caregiver. VA proposes to revise this paragraph to require that the individual receives ongoing care from a primary care team or will do so within 120 days of the date VA designates a Family Caregiver. VA would further propose to state in this paragraph that if the individual is unable to receive such care due, at least in part, to an event or action within VA's control, VA may extend this 120-day period.

As explained in VA's 2011 IFR and 2015 Final Rule implementing PCAFC, the current requirement to receive ongoing care in § 71.20(a)(7) is necessary to enable VA to perform statutorily required functions, including documenting findings related to the delivery of personal care services and ensuring appropriate follow-up. *See* 76 FR 26151 (May 5, 2011) and 80 FR 1363–1364 (January 9, 2015) (citing 38 U.S.C. 1720G(a)(9)).

As proposed, VA would continue to require that the individual receives ongoing care from a primary care team or will do so if VA designates a Family Caregiver. However, VA proposes to add a timeframe, specifically, within 120 days of the date VA designates a Family Caregiver, within which the individual must do so. Requiring the individual to receive ongoing care from a primary care team within a specified time frame would enable VA to ensure that it continues to provide appropriate follow-up and perform statutorily mandated functions within a reasonable amount of time following designation of a Family Caregiver, as described above. This is especially important for those individuals who are not already receiving ongoing care from a primary care team, as that could result in delayed access to necessary care, including supports and services, which could lead to potentially unsafe situations.

VA believes that allowing for 120 days to receive such care is a reasonable amount of time to schedule and receive care from a primary care team following

VA's designation of a Family Caregiver. Furthermore, it would align with the timing within which VA would conduct the first wellness contact, which is generally conducted 120 days after approval. *See* 38 CFR 71.40(b)(2). Wellness contacts include but are not limited to a review of the eligible veteran's well-being and allow VA the opportunity to identify and provide any additional support, services, or referrals for services needed by the eligible veteran or Family Caregiver. *See* 85 FR 13380 (March 6, 2020). Additionally, while eligible veterans and Family Caregivers may request additional supports and services at any time, such requests are often made and discussed during wellness contacts. Ensuring the eligible veteran is receiving ongoing care from a primary care team within 120 days of the date VA designates a Family Caregiver would avoid delay in the eligible veteran obtaining needed services.

Pursuant to proposed paragraph (a)(7), VA would also have the discretion to extend this time period if the individual is unable to receive ongoing care from a primary care team due, at least in part, to an event or action within VA's control. While VA anticipates an individual who seeks to receive care from a primary care team will be able to receive such care within 120 days, VA recognizes there may be extenuating circumstances in which receipt of such care may take longer than 120 days. This provision, as proposed, would continue to allow for some flexibility in such instances.

3. Section 71.20(b) and (c)—Legacy Applicants and Legacy Participants

Currently, under paragraphs (b) and (c) of § 71.20, for five years beginning on October 1, 2020, a veteran or servicemember is eligible for a Primary or Secondary Family Caregiver under part 71 if they are a legacy applicant or legacy participant. As discussed earlier in this rulemaking, VA proposes to extend this transition period for the legacy cohort. To provide for this additional period, VA proposes to amend § 71.20(b) and (c).

First, VA proposes to amend § 71.20(b) and (c) by removing the phrase "For five years beginning on October 1, 2020" and adding in its place, the phrase "Beginning on October 1, 2020 through [18 months after EFFECTIVE DATE OF FINAL RULE]". Additionally, VA would replace "Primary or Secondary Family Caregiver" with "Primary Family Caregiver or Secondary Family Caregiver" to reference those terms as they are defined in § 71.15. Finally, VA

would replace the phrase “he or she” with “veteran or servicemember” to conform to VA’s goal to ensure its regulations are gender neutral.

As proposed, paragraph (b) would state beginning on October 1, 2020 through [18 months after EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is eligible for a Primary Family Caregiver or Secondary Family Caregiver under this part if the veteran or servicemember is a legacy participant. Proposed paragraph (c) would state beginning on October 1, 2020 through [18 months after EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is eligible for a Primary Family Caregiver or Secondary Family Caregiver under this part if the veteran or servicemember is a legacy applicant.

VA solicits comments from the public on all aspects of this proposed rule. In particular, VA asks the following questions on specific aspects of this proposal.

1. What activities or tasks in addition to or other than ADL should VA consider when determining whether a veteran or servicemember has a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired?

2. VA has explained VA’s interpretation of the words “regular” and “extensive” instruction or supervision. How else might “regular” be distinguished from “extensive” instruction or supervision?

3. As explained above, VA would not set forth a specific quantitative requirement for the frequency with which a veteran or servicemember may require supervision or protection other than specifying that the individual has a frequent need for supervision or protection. This is because the need for supervision or protection is not limited to a discrete list of activities or circumstances. VA has found that there is no uniform frequency of individuals’ need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury. The frequency of need varies based on each individual’s unique needs and depends on severity of their symptomology. Is there a different frequency standard VA should consider, and if so, what is that standard?

E. 38 CFR 71.25 Approval and Designation of Primary Family Caregivers and Secondary Family Caregivers

Section 71.25 describes the process for approval and designation of Primary Family Caregivers and Secondary

Family Caregivers. As described below, VA proposes to amend § 71.25(a) and (b) by revising certain terminology, restructuring certain language, and adding additional language to address application and eligibility requirements.

1. Section 71.25(a)—Application Requirement

Current § 71.25(a) explains the requirement for submission of a joint application for approval and designation of a Primary Family Caregiver or Secondary Family Caregiver. In current § 71.25(a)(1), VA requires individuals who wish to be considered for designation by VA as Primary Family Caregivers or Secondary Family Caregivers to submit a joint application, along with the veteran or servicemember. Individuals interested in serving as Family Caregivers must be identified as such on the joint application, and no more than three individuals may serve as Family Caregivers at one time for an eligible veteran, with no more than one serving as the Primary Family Caregiver and no more than two serving as Secondary Family Caregivers.

VA proposes to add a paragraph to § 71.25(a)(1) to address instances of a Secondary Family Caregiver seeking designation as the Primary Family Caregiver and would reorganize § 71.25(a)(1) as a result. As proposed, § 71.25(a)(1) would state that individuals who wish to be considered for designation by VA as Primary Family Caregivers or Secondary Family Caregivers must submit a joint application, along with the veteran or servicemember. However, VA would add two paragraphs to proposed § 71.25(a)(1).

Proposed § 71.25(a)(1)(i) would consist of the second sentence of current paragraph § 71.25(a)(1) without change. Proposed § 71.25(a)(1)(ii) would state a currently approved Secondary Family Caregiver for the eligible veteran may apply for designation as the Primary Family Caregiver by submitting a new joint application along with the eligible veteran.

VA proposes to add § 71.25(a)(1)(ii) to clarify that the joint application requirement still applies when an individual who is currently serving as a Secondary Family Caregiver wishes to be designated as the Primary Family Caregiver. If a Primary Family Caregiver’s designation is revoked, they are discharged from PCAFC, or if the Primary Family Caregiver’s revocation or discharge is pending, then the eligible veteran and their approved and designated Secondary Family Caregiver may want the Secondary Family

Caregiver to be approved and designated as the Primary Family Caregiver. VA’s current practice is to require that the Secondary Family Caregiver submit a new joint application, along with the eligible veteran. VA would continue with its current practice as it ensures the statutory requirements in 38 U.S.C. 1720G(a)(7) are met, including the requirement in section 1720G(a)(7)(B)(iii), that the eligible veteran consents to VA’s designation of the individual as the Primary Family Caregiver for the eligible veteran. By submitting a new joint application, both the eligible veteran and the individual applying as the Primary Family Caregiver make their intentions known and it ensures that both parties are seeking the change in designation. Therefore, new proposed 38 CFR 71.25(a)(1)(ii) would state a currently approved Secondary Family Caregiver for the eligible veteran may apply for designation as the Primary Family Caregiver by submitting a new joint application along with the eligible veteran.

Although this is not a proposed change, it is important to note that if the eligible veteran is a legacy participant or legacy applicant and a new joint application is received by VA on or after October 1, 2020 that results in approval and designation of the same or a new Primary Family Caregiver, the eligible veteran would no longer be considered a legacy participant or legacy applicant as those terms are defined in 38 CFR 71.15. *See* 85 FR 13375–13376 (March 6, 2020).

VA also proposes to amend § 71.25(a)(2)(i) to address evaluation requirements when a current Secondary Family Caregiver seeks designation as a Primary Family Caregiver. Pursuant to current § 71.25(a)(2)(i), upon receiving a joint application, VA (in collaboration with the primary care team to the maximum extent practicable) will perform the evaluations required to determine the eligibility of the applicants under part 71, and if eligible, determine the applicable monthly stipend amount under § 71.40(c)(4). *See* § 71.25(a)(2)(i). Notwithstanding that, VA will not evaluate a veteran’s or servicemember’s eligibility under § 71.20 as part of the application process when a joint application is received seeking to designate a Secondary Family Caregiver for an eligible veteran who has a designated Primary Family Caregiver. *Id.*

VA proposes to add an additional exception when it would not evaluate a veteran’s or servicemember’s eligibility under § 71.20 as part of the application process and proposes to reorganize

§ 71.25(a)(2)(i) as a result. VA proposes to revise § 71.25(a)(2)(i) by adding the phrase “except as provided in paragraphs (a)(2)(i)(A) and (B) of this section,” in the first sentence and adding new paragraphs (A) and (B). In proposed § 71.25(a)(2)(i), VA would refer to the “monthly stipend payment” instead of the term “monthly stipend amount” that appears in the first sentence of current § 71.25(a)(2)(i). This proposed change would ensure consistency with terminology used elsewhere in part 71. VA also proposes to move part of the last sentence in current § 71.25(a)(2)(i) regarding when a joint application is received seeking to designate a Secondary Family Caregiver for an eligible veteran who already has a designated Primary Family Caregiver to new paragraphs (A) and (A)(1). In addition to reorganizing that language into a new paragraph (a)(2)(i)(A) and paragraph (A)(1), VA would add “as part of the application process”, change “add” to “designate”, and add “already”. These proposed edits are intended to be non-substantive technical changes that would further clarify this provision. VA proposes no other changes to that language.

VA also proposes to add new paragraph § 71.25(a)(2)(i)(A)(2) to address situations in which a current Secondary Family Caregiver seeks to change their designation to a Primary Family Caregiver. Under proposed § 71.25(a)(2)(i)(A)(2), VA would not reevaluate an eligible veteran under § 71.20 when an eligible veteran seeks to designate a current Secondary Family Caregiver for the eligible veteran as the Primary Family Caregiver for that same eligible veteran so long as the eligible veteran has already been determined to meet the eligibility criteria found in current § 71.20(a) or proposed § 71.20(a). In proposing this change, VA seeks to eliminate unnecessary evaluations of eligible veterans while also ensuring that VA approves and designates a Primary Family Caregiver only for a veteran or servicemember who has been determined to meet PCAFC eligibility criteria in § 71.20(a). In proposed § 71.25(a)(2)(i)(A)(2), VA would reference the § 71.20(a) criteria that would be in effect as of the effective date of this proposed rulemaking, if adopted, as well as the current § 71.20(a) criteria (which may have included the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the definition of *need for supervision, protection, or instruction*). This is because, those who have been determined to meet the eligibility criteria in current § 71.20(a) would also

meet the eligibility criteria in proposed § 71.20(a). Instead of evaluating eligibility under § 71.20(a) when a joint application is received to change the Secondary Family Caregiver to Primary Family Caregiver, VA proposes to rely on its most recent evaluation of the personal care needs of the eligible veteran to inform the determination of the Secondary Family Caregiver's ability to serve in the role of Primary Family Caregiver, and if eligible, the monthly stipend payment the Primary Family Caregiver would be eligible to receive as set forth in proposed revisions to § 71.40(c)(4)(i)(A). This most recent evaluation of the personal care needs of the eligible veteran would have included the Family Caregiver's assessment of the needs and limitations of the eligible veteran to the extent required by 38 U.S.C. 1720G(a)(3)(C)(iii)(I). In this scenario, re-evaluation of the eligible veteran would be unnecessary. However, at any time after the Secondary Family Caregiver transitions to being approved and designated as the Primary Family Caregiver, the eligible veteran or Primary Family Caregiver may request a reassessment in writing pursuant to proposed § 71.30(c), which is discussed below.

As proposed, § 71.25(a)(2)(i) would state upon receiving such application, except as provided in paragraphs (a)(2)(i)(A) and (B) of § 71.25, VA (in collaboration with the primary care team to the maximum extent practicable) will perform the evaluations required to determine the eligibility of the applicants under part 71, and if eligible, determine the applicable monthly stipend payment under § 71.40(c)(4). Proposed § 71.25(a)(2)(i)(A) would state VA will not evaluate a veteran's or servicemember's eligibility under § 71.20 as part of the application process when: (1) A joint application is received seeking to designate a Secondary Family Caregiver for an eligible veteran who already has a designated Primary Family Caregiver; or (2) A joint application is received that seeks to change the designation of a current Secondary Family Caregiver for an eligible veteran to designation as the Primary Family Caregiver for that same eligible veteran so long as the eligible veteran has already been determined to meet the eligibility criteria under proposed § 71.20(a) or § 71.20(a) (2021) (which may have included the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the criterion in § 71.20(a)(3)(ii)).

Additionally, VA proposes to add new § 71.25(a)(2)(i)(B) to indicate that

the required evaluations for Family Caregiver applicants found in § 71.25 may not all be required when a current approved Secondary Family Caregiver applies to be designated as the Primary Family Caregiver for the same eligible veteran. Proposed § 71.25(a)(2)(i)(B) would state upon receipt of a joint application that seeks to designate a current Secondary Family Caregiver as the Primary Family Caregiver for the same eligible veteran, VA will determine which evaluations under § 71.25 are necessary to assess the individual's eligibility as the Primary Family Caregiver. VA proposes this new paragraph as VA may not require re-evaluation of each eligibility criteria for such individuals, as those serving as a Secondary Family Caregiver for an eligible veteran would have already been determined to meet the eligibility requirements found in § 71.25. The individual designated as a Secondary Family Caregiver would have already completed caregiver training and demonstrated the ability to carry out the specific personal care services, core competencies, and additional care requirements needed by the eligible veteran. For these reasons, VA believes that a more limited evaluation may be warranted to determine eligibility of a current Secondary Family Caregiver to serve as the Primary Family Caregiver.

While VA is not proposing to amend § 71.40(d) regarding the effective date of PCAFC benefits, VA notes that new benefits for Secondary Family Caregivers who are subsequently designated as a Primary Family Caregiver would become effective pursuant to § 71.40(d). This would mean that in the event a Secondary Family Caregiver applies for and is designated as the Primary Family Caregiver for the same eligible veteran, additional benefits exclusive to the role of Primary Family Caregiver, such as the monthly stipend, would become effective pursuant to § 71.40(d) requirements.

Current § 71.25(a)(2)(ii) explains that individuals who apply to be Family Caregivers must complete all necessary eligibility evaluations (along with the veteran or servicemember), education and training, and the initial home-care assessment (along with the veteran or servicemember) so that VA may complete the designation process no later than 90 days after the date the joint application was received by VA. Current § 71.25(a)(2)(ii) further explains that if such requirements are not completed within 90 days from the date the joint application is received by VA, the joint application will be denied, and a new joint application will be required. VA may extend the 90-day period based on

VA's inability to complete the eligibility evaluations, provide necessary education and training, or conduct the initial home-care assessment, when such inability is solely due to VA's action.

VA has had instances in which VA has extended the 90-day timeline based on VA's inability to approve and designate a Family Caregiver solely because of actions taken or not taken by VA. However, VA has found that such inability is rarely because of one discrete event where responsibility for the delay is easily identified and attributed to VA. More often, VA has experienced instances when there may be an initial delay in VA scheduling an evaluation, for example, and because of this delay the veteran (or servicemember) or Family Caregiver applicant may be delayed in completing other requirements, or vice versa. VA proposes to provide flexibility to VA to extend the 90-day period rather than deny the application and require the veteran and Family Caregiver applicant to re-submit a joint application, which would further delay access to PCAFC.

Thus, VA proposes to revise this last sentence of § 71.25(a)(2)(ii) to remove the word solely and explain that VA may extend the 90-day period based on VA's inability to complete the eligibility evaluations, provide necessary education and training, or conduct the initial home-care assessment, when such inability is, *at least in part*, due to VA's action. This proposal, if adopted, would give VA greater flexibility to extend the deadline for completing the designation process, and VA expects that this change would reduce burdens on VA staff as well as PCAFC applicants who would otherwise be required to re-submit a joint application if the designation process was not completed within the 90-day timeline.

VA also proposes to amend § 71.25(a)(3) to address how it would evaluate joint applications if the proposed revisions to the definition of *joint application* under § 71.15 and other proposed changes to eligibility criteria discussed in this proposed rule are made final and effective. Current § 71.25(a)(3) explains how VA will evaluate joint applications received before, on, and after October 1, 2020, which is the date that the July 31, 2020 Final Rule became effective. Joint applications received by VA before October 1, 2020 were evaluated by VA based on 38 CFR 71.15, 71.20, and 71.25 (2019) except that the term *joint application* as defined in current § 71.15 applied to such applications. Joint applications received on or after October 1, 2020 were and are evaluated

based on the criteria in effect on or after such date. § 71.25(a)(3)(ii). Paragraphs (A) and (B) of § 71.25(a)(3)(ii) further address joint applications submitted by veterans and servicemembers seeking to qualify for PCAFC based on the phased expansion of PCAFC eligibility criteria in current § 71.20(a)(2)(ii) and (iii) (codifying the criteria for the phased expansion of PCAFC to qualifying veterans and servicemembers who incurred or aggravated a serious injury in the line of duty before September 11, 2001). *See* 85 FR 13376 (March 6, 2020). As VA has evaluated all joint applications received by VA before October 1, 2020, the regulation text addressing those joint applications in § 71.25(a)(3)(i) is no longer necessary. Similarly, the regulation text found in paragraphs (A) and (B) of § 71.25(a)(3)(ii) is also obsolete as VA has evaluated all joint applications referenced in those paragraphs. Therefore, VA proposes to remove the current text found in § 71.25(a)(3)(i) and (a)(3)(ii)(A) and (B) addressing joint applications received by VA before October 1, 2020 and to further revise these paragraphs as discussed below.

The application process for PCAFC requires evaluation, training, and assessments that occur over a period of time. Given this, VA expects there will be joint applications received by VA prior to the effective date of this proposed rule for which eligibility determinations are still pending on the effective date of the rule. Consistent with the approach taken in the July 31, 2020 Final Rule, VA proposes to review pending joint applications received by VA before the effective date of the final rule, if adopted, using the eligibility criteria in place on the day the joint application was received, unless otherwise noted. 85 FR 13375 (March 6, 2020). Since VA proposes to change certain eligibility criteria, including certain terms and definitions that would affect VA's review of joint applications received, among other things in this proposed rule, VA believes it is reasonable for VA to continue to evaluate joint applications received prior to the effective date of any final rule adopting amendments to eligibility criteria, under the statutes and regulations in effect at the time the joint application was received by VA. This approach would provide transparency for applicants and reduce the likelihood of inconsistencies or delays when rendering a decision as certain evaluations may need to be repeated if VA were to apply the new criteria to joint applications pending on the date a final rule becomes effective. While VA

would seek to mitigate these concerns through applying the statutes and regulations in effect at the time VA received the joint application, VA proposes certain exceptions as explained below.

First, VA would not apply the definition of *joint application* as it currently appears in § 71.15 if this rule is adopted as proposed. Rather VA would apply the new proposed definition of *joint application* discussed above regarding proposed changes to § 71.15. VA discusses the challenges associated with the current definition of this term and VA's rationale for this proposed definition above. If adopted, VA would apply the proposed definition of *joint application* in rendering a determination under the regulations in effect from October 1, 2020, through the effective date of any rule changes, thereby eliminating any use of the current definition once rule changes become final and effective. Given the challenges associated with the current definition of *joint application*, VA sees no reason to maintain its use in evaluating joint applications received prior to the effective date of any rule changes to the definition of *joint application*.

Next, VA proposes to make clear how VA has addressed the term *need for supervision, protection, or instruction* in part 71 since the term was invalidated by *Veteran Warriors*, and how VA would continue to address it when evaluating joint applications received prior to the effective date of any rule changes to delete the definition of *need for supervision, protection, or instruction* in § 71.15. Specifically, this proposed change would codify in regulations the criteria used by VA since the court's ruling in *Veteran Warriors*. As explained above, the *Veteran Warriors* decision, issued on March 25, 2022, invalidated VA's definition of *need for supervision, protection, or instruction* in § 71.15. Since that decision, VA no longer applies this term or its definition when rendering PCAFC decisions. Instead, VA applies the statutory criteria found in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii). As proposed, 38 CFR 71.25(a)(3)(ii) would establish in VA's regulations that for PCAFC applications received between October 1, 2020 and the effective date of a final rule adopting the amendments to part 71 in this proposed rule, VA would not apply the term *need for supervision, protection, or instruction* and would apply the statutory criteria under 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) instead.

To incorporate these changes into 38 CFR 71.25(a)(3), VA proposes to revise

§§ 71.25(a)(3)(i)–(ii) and (a)(3)(ii)(A)–(B) and add new § 71.25(a)(3)(ii)(B)(1)–(2). As proposed, § 71.25(a)(3)(i) would state that a joint application under part 71 is evaluated in accordance with the statutes and regulations in effect on the date VA receives such joint application. Section 71.25(a)(3)(ii) and (a)(3)(ii)(A)–(B) would state notwithstanding paragraph (a)(3)(i) of § 71.25, in rendering a determination under part 71, based on the regulations that were in effect from October 1, 2020 through the effective date of the final rule: (A) the definition of “joint application” in § 71.15 that would become effective on the effective date of the final rule would apply, and (B) the definition of “need for supervision, protection, or instruction” in § 71.15 does not apply. Proposed § 71.25(a)(3)(ii)(B)(1)–(2) would explain that in place of the definition of “need for supervision, protection, or instruction” in § 71.15, the following criteria apply: (1) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or (2) a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.

2. Section 71.25(b)—Eligibility To Serve as Primary Family Caregiver or Secondary Family Caregiver

Current § 71.25(b) explains the requirements to serve as a Primary Family Caregiver or Secondary Family Caregiver. This includes being either a family member or someone who lives with the eligible veteran full-time or will do so if designated as a Family Caregiver. *See* § 71.25(b)(2)(i) and (ii). VA proposes to revise § 71.25(b)(2)(ii) to refer to someone who lives with the eligible veteran full-time or will do so within 120 days of the date VA designates the individual as a Family Caregiver. This proposed change would account for Family Caregiver applicants who are not family members of the veteran or servicemember and who may be living apart from the veteran or servicemember during the application process but who intend to live with them once the Family Caregiver is approved and designated. The personal care needs of a veteran or servicemember applying for PCAFC may be provided by a non-family member who only intends to live with the veteran or servicemember if approved and designated as a Family Caregiver, since doing so would be a condition of participation in PCAFC. Upon approval and designation, VA would not expect the newly designated Family Caregiver to be prepared to move in with the

veteran or servicemember instantly and without advance notice. Rather a period of transition may be needed, and appropriate, so VA proposes to establish a time period for such transition in § 71.25(b)(2)(ii). VA believes a period of up to 120 days is an adequate amount of time for a Family Caregiver or the veteran or servicemember to relocate if necessary. This 120-day period also aligns with the time period within which VA would conduct the first wellness contact, which is generally conducted 120 days after approval and designation. *See* § 71.40(b)(2). During this wellness contact, VA would have the opportunity to confirm the non-family member Family Caregiver is living with the eligible veteran full-time.

Finally, VA proposes to revise the section heading for § 71.25 by replacing the word “Primary” with the term “Primary Family Caregivers”. As proposed, the section heading would state “Approval and designation of Primary Family Caregivers and Secondary Family Caregivers”. VA proposes a similar edit to the heading and introductory sentence for § 71.25(b), which would state “*Eligibility to serve as Primary Family Caregiver or Secondary Family Caregiver*. In order to serve as a Primary Family Caregiver or Secondary Family Caregiver, the applicant must meet all of the following requirements”. If adopted, these changes, along with a similar change to proposed § 71.25(a)(1), discussed above, would be non-substantive technical edits to fully reference the term *Primary Family Caregiver* as such term is defined in § 71.15.

F. 38 CFR 71.30 Reassessment of Eligible Veterans and Family Caregivers

Current § 71.30 describes the process for reassessments of eligible veterans and Family Caregivers under PCAFC. VA proposes to amend § 71.30 to revise the language regarding the frequency of VA-initiated reassessments, incorporate a standard by which eligible veterans and Primary Family Caregivers can request a reassessment and to make other technical and conforming amendments consistent with other changes included in this proposed rule.

1. Proposed Changes to the Frequency of VA-Initiated Reassessments

VA proposes to revise § 71.30 by removing the language that reassessments will occur on an annual basis. Currently, § 71.30(a) requires that, except as provided in paragraphs (b) or (c), each eligible veteran and Family Caregiver will be reassessed by VA (in collaboration with the primary care team to the maximum extent

practicable) on an annual basis to determine their continued eligibility for participation in PCAFC. The reassessment of eligible veterans and Family Caregivers under § 71.30 includes consideration of PCAFC eligibility criteria and, if applicable, the criteria in § 71.40(c)(4)(i)(A) for purposes of the monthly stipend rate. *See* § 71.30(a).

VA believes it is important to conduct reassessments to monitor an eligible veteran’s need for personal care services and the needs and capabilities of the designated Family Caregiver(s), to determine if any of these needs have changed over time. Reassessments also provide Family Caregivers and eligible veterans with an opportunity to provide feedback to VA, which can inform whether additional instruction, preparation, training, or technical support may be warranted. *See* 85 FR 13379 (March 6, 2020). *See also* 38 U.S.C. 1720G(a)(3)(D). The reassessment process may also result in changes to a Primary Family Caregiver’s monthly stipend. VA takes the Family Caregiver’s assessment of the eligible veteran’s needs and limitations into account when determining the Primary Family Caregiver’s monthly stipend payment, if applicable. *See* 85 FR 13379 (March 6, 2020). *See also* 38 U.S.C. 1720G(a)(3)(C)(iii)(I).

Reassessments are necessary to ensure that individuals participating in PCAFC continue to meet eligibility requirements. VA proposes to maintain reassessments but proposes to remove the language in § 71.30(a) which states reassessments will occur on an annual basis, except as provided under paragraphs (b) and (c). VA originally proposed this default frequency for reassessments under § 71.30(a) because it recognized that an eligible veteran’s need for personal care services may change over time, and the reassessments provided an opportunity for VA to consider whether an eligible veteran’s assessed level of need had increased or decreased during the year. 85 FR 13378 (March 6, 2020). In addition, VA believed that requiring annual reassessments would create consistency across the program and ensure that reassessments were generally conducted on a standard timeline. *Id.* at 13378–79.

While applying the provision of annual reassessments provided standardization in the frequency of reassessments, VA no longer believes that annually is the appropriate standard cadence to assess continued eligibility for PCAFC. Although VA has the authority to conduct reassessments more or less frequently than annually pursuant to current § 71.30(b) and (c),

VA believes that this proposal, if adopted in a final rule, would provide transparency for the public that VA intends to no longer maintain a default threshold of an annual reassessment. VA would continue to provide notice to PCAFC participants regarding the timeline for future reassessments through issuance of VA policy and written communication with PCAFC participants. VA also would continue monitoring the results of reassessments over time and use data to inform any changes to the cadence of reassessments within policy.

To remove the default frequency of conducting annual reassessments, VA proposes to revise the first sentence of § 71.30(a) by removing the phrase “on an annual basis”. VA would also remove the phrase “[e]xcept as provided in paragraphs (b) and (c) of this section,” from the first sentence because the exceptions to the annual requirement currently set forth in § 71.30(b) and (c) would no longer be necessary. VA is proposing additional changes to paragraphs (b) and (c), which are discussed further below.

VA also proposes a technical edit to clarify that reassessments are completed for the eligible veteran and all Family Caregivers of the eligible veteran (in cases where there is more than one), by adding the word “each” before “Family Caregiver” in the first sentence of proposed § 71.30(a). Thus, as proposed, the first sentence of § 71.30(a) would state that the eligible veteran and each Family Caregiver will be reassessed by VA (in collaboration with the primary care team to the maximum extent practicable) to determine their continued eligibility for participation in PCAFC under part 71.

Finally, VA proposes to change the second sentence of § 71.30(a) which explains that in the context of reassessments, VA considers whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under § 71.40(c)(4)(i)(A). VA proposes to add the phrase “if applicable” to the end of the second sentence because consideration of the monthly stipend only occurs as part of a reassessment when the eligible veteran and Primary Family Caregiver are determined eligible for PCAFC. Also, in proposed § 71.30(a), VA would refer to the “monthly stipend payment” instead of the term *monthly stipend rate* that appears in the second sentence of current § 71.30(a). The phrase “monthly stipend payment” would refer to the applicable stipend amount authorized under § 71.40(c)(4) and would account for the term *monthly stipend rate* and its

definition in § 71.15. VA also proposes to remove reference to the term *unable to self-sustain in the community* from § 71.30(a), consistent with its proposed removal of such term and its definition from § 71.15 as discussed above and further below in the context of proposed changes to § 71.40(c)(4)(i)(A). As proposed, the second sentence would state that reassessments will include consideration of the monthly stipend payment under § 71.40(c)(4)(i)(A), if applicable.

2. Proposed Changes To Reassessing Eligible Veterans' Continued Eligibility Under § 71.20(a)(3)

Current § 71.20(a)(3) sets forth one of the seven criteria in § 71.20(a) that a veteran or servicemember must meet to be determined eligible for a Family Caregiver under PCAFC, and it requires the individual to be “in need of personal care services for a minimum of six continuous months” based on any one of multiple enumerated bases. VA proposes to limit when VA would reassess an eligible veteran under the criteria in § 71.20(a)(3) through proposed revisions to § 71.30(b).

Section 71.30(b) currently states that reassessments may occur more frequently than annually if a determination is made and documented by VA that more frequent reassessment is appropriate. VA proposes to remove the current regulation text found in § 71.30(b) as it would no longer be necessary if proposed changes to § 71.30(a) are adopted, as explained above. For the reasons explained below, VA proposes to add, in its place, a standard under which VA would reassess an eligible veteran's continued eligibility under § 71.20(a)(3) not more frequently than every two years, with certain exceptions.

VA reviewed findings from reassessments conducted pursuant to § 71.30(a) for participants that joined PCAFC on or after October 1, 2020. Since implementing annual reassessments pursuant to § 71.30(a), VA has found the majority of reassessments conducted have identified minimal changes in an eligible veteran's need for personal care services under § 71.20(a)(3) since their assessment in the previous year. As PCAFC is designed for eligible veterans with moderate and severe needs (85 FR 46228 (July 31, 2020)) who are in need of personal care services for at least six continuous months (§ 71.20(a)(3)), VA believes it is reasonable to expect there would be limited change in the functions and needs of the eligible veterans within a 12-month period. Additionally, when reassessments

require the evaluation of § 71.20(a)(3), the clinical evaluations associated with § 71.20(a)(3) criteria may be lengthy and may be burdensome to veterans and servicemembers. In proposing a standard for reassessing an eligible veteran's continued eligibility under § 71.20(a)(3) of not more frequently than every two years, VA would extend the time period between such evaluations while still providing flexibility for VA to continue to monitor the outcome of such reassessments and extend the cadence beyond every two years, as appropriate, to ensure that individuals participating in PCAFC continue to meet eligibility requirements and have access to the appropriate level of supports. VA believes proposed changes to § 71.30(b) would reduce reassessments that may be unnecessary and would do so in a standardized manner. Given this, VA believes reassessment of an eligible veteran's continued eligibility under § 71.20(a)(3) not more frequently than every two years would be reasonable and appropriate.

Notwithstanding these changes, certain instances exist when VA would need to reassess an eligible veteran under § 71.30(a)(3) on a more frequent basis than every two years. To address these situations, VA proposes to include two exceptions to the “not more frequently than every two years” provision in proposed § 71.30(b).

The first exception would apply when an eligible veteran or Primary Family Caregiver requests a reassessment pursuant to proposed changes to § 71.30(c). To be responsive to the needs of veterans and Primary Family Caregivers, VA would conduct reassessments upon request, even if it has been less than two years since the previous evaluation of the eligible veteran's eligibility under § 71.30(a)(3). More details about how reassessments could be requested under proposed § 71.30(c) and how those requests would be addressed are outlined further below.

The second exception would apply when a reassessment of an eligible veteran's continued eligibility under § 71.20(a)(3) is necessary for VA to evaluate a Family Caregiver's ability to carry out specific personal care services, core competencies, or additional care requirements. Per 38 U.S.C. 1720G(a)(3)(D), the Secretary is required to “periodically evaluate . . . the skills of the family caregiver of such veteran to determine if additional instruction, preparation, training, or technical support” is needed. In these instances, an evaluation of the needs of the eligible veteran pursuant to proposed 38 CFR 71.20(a)(3) may be necessary to

determine whether a Family Caregiver has the ability to carry out the specific personal care services, core competencies, and additional care requirements described in § 71.25(c)(2). This second proposed exception in § 71.30(b) would provide VA with the ability to review the quality of personal care services being provided to an eligible veteran in the context of a reassessment and take corrective action as applicable. *See* 38 U.S.C. 1720G(a)(9)(C)(i)–(ii).

Thus, as proposed, § 71.30(b) would state that except as provided in paragraph (c) of § 71.30, VA will reassess an eligible veteran's continued eligibility under § 71.20(a)(3) not more frequently than every two years unless such a reassessment is necessary for VA to evaluate the Family Caregiver's ability to carry out specific personal care services, core competencies, or additional care requirements.

3. Proposed Changes To Address Requests for Reassessments

Currently, § 71.30(c) states that reassessments may occur on a less than annual basis if a determination is made and documented by VA that an annual reassessment is unnecessary. As noted above, VA proposes to remove the reference to an annual reassessment frequency under § 71.30(a), and as a result, VA would also remove the exception found in § 71.30(c). VA proposes to further revise § 71.30(c) by adding a new provision explaining the option for eligible veterans and Primary Family Caregivers to request reassessment at any time through a written request.

When eligible veterans and Family Caregivers have specifically requested reassessments before an annual reassessment was due, VA has considered such requests when making a determination under current § 71.30(b) that a more frequent than annual reassessment is appropriate. For example, a Primary Family Caregiver may find they are providing physical assistance with more ADL than they were at the time they were designated as the Primary Family Caregiver. In this case, the Primary Family Caregiver may request a reassessment, in part, because they believe they may qualify for a higher monthly stipend.

To make clear the opportunity for an eligible Veteran or Primary Family Caregiver to request a reassessment, VA proposes to establish procedural requirements for these types of requests in proposed § 71.30(c). As proposed, § 71.30(c) would state that reassessments may occur when an eligible veteran or a Primary Family

Caregiver of an eligible veteran submits to VA a written request indicating that a reassessment is requested, and such request contains the signature of the eligible veteran or the Primary Family Caregiver. In accordance with the “[e]xcept as provided in paragraph (c)” clause in proposed § 71.30(b), reassessments requested under proposed § 71.30(c) would include a reassessment of an eligible veteran's continued eligibility under § 71.20(a)(3).

For reassessment requests under proposed § 71.30(c), VA proposes not to mandate use of a specific standardized form because VA would like to provide flexibility to eligible veterans and Primary Family Caregivers. However, VA does propose to require requests be submitted to VA in writing, indicate the nature of the request (that is, a request for reassessment), and contain the signature of the eligible veteran or the Primary Family Caregiver of an eligible veteran. These requirements would ensure that: (1) the request is from an individual authorized to make such a request under proposed § 71.30(c) (that is, an eligible veteran or Primary Family Caregiver), (2) VA has enough information to associate the request with the correct eligible veteran, and (3) VA can understand the nature of the request and intent of the requestor. If verbal requests for reassessment are made, VA would inform eligible veterans and Primary Family Caregivers of the process for submitting a written request for reassessment.

Additionally, requiring a written request for reassessment would provide VA with documentation of the request and VA could formally track receipt of such request. This would be important because if the requested reassessment results in an increase in the monthly stipend payment pursuant to a determination under proposed § 71.40(c)(4)(i)(A)(2), the date the written request under proposed § 71.30(c) is received by VA could be the effective date of the increase under proposed § 71.40(c)(4)(ii)(C)(1)(ii). This is discussed further below regarding proposed changes to § 71.40 under heading “G. 38 CFR 71.40 Caregiver benefits”. In implementing this requirement for a written request in proposed § 71.30(c), if adopted in a final rule, VA would provide further written guidance and instructions to Primary Family Caregivers and eligible veterans about how and where such requests should be submitted.

VA does not propose to include reassessment requests from Secondary Family Caregivers in proposed § 71.30(c). This is because VA does not believe individuals other than the

eligible veteran or Primary Family Caregiver should be able to initiate a process that could uniquely impact the benefits provided to the Primary Family Caregiver. Although certain PCAFC benefits are provided to both Primary Family Caregivers and Secondary Family Caregivers, others are provided only to Primary Family Caregivers, including the monthly stipend.

Additionally, Secondary Family Caregivers who would like to request additional supports or services do not need to request a reassessment under § 71.30 to receive such supports or services. All Family Caregivers who are seeking additional training, education or other PCAFC assistance, can do so without requesting a reassessment. For example, a Family Caregiver who wishes to engage with a peer support mentor under § 71.40(b)(5), can make this request at any time to the local Caregiver Support Program (CSP) Team. Similarly, a Family Caregiver who is seeking other counseling services under § 71.40(b)(5), can make such a request at any time, including during wellness contacts. An increase in the monthly stipend level for Primary Family Caregivers under § 71.40(c)(4)(i)(A), however, can only be provided as a result of a reassessment which includes consideration of an eligible veteran's need for personal care services pursuant to § 71.20(a)(3). For this reason, a Primary Family Caregiver may wish to request a reassessment to be considered for the higher stipend level. Therefore, under proposed § 71.30(c), VA would conduct a requested reassessment only if submitted in writing by the eligible veteran or Primary Family Caregiver (and that meets the other requirements previously described).

Although Secondary Family Caregivers would not be included in proposed § 71.30(c), when a request for reassessment is received from the eligible veteran or Primary Family Caregiver under such paragraph, the reassessment would apply to the eligible veteran and all Family Caregivers of the eligible veteran. This is because reassessments initiated based on the request of an eligible veteran or Primary Family Caregiver, would be carried out using the same processes in § 71.30 for reassessments initiated by VA. In completing reassessments under § 71.30, VA determines the eligibility of the eligible veteran and each Family Caregiver, which necessarily requires consideration of whether each Family Caregiver, including Secondary Family Caregivers, has the ability to carry out the specific personal care services required by the eligible veteran.

4. Proposed Changes to Legacy Reassessments

Current paragraph (e)(1) of § 71.30 requires VA to conduct reassessments of members of the legacy cohort within the five-year period beginning on October 1, 2020 to determine whether the eligible veteran meets the requirements of § 71.20(a). If the eligible veteran meets the requirements of § 71.20(a), the reassessment will take into consideration whether the eligible veteran is unable to self-sustain in the community for purposes of the monthly stipend rate under § 71.40(c)(4)(i)(A). See § 71.30(e)(1).

For reasons discussed earlier in this rulemaking, VA proposes to extend the transition period for continued eligibility of members of the legacy cohort and the timeframe for completing reassessments of this cohort to a date that is 18 months after the effective date of a final rule under this rulemaking. The following conforming amendments to § 71.30(e) are also proposed to extend the timeframe for conducting legacy reassessments.

First, VA proposes to add introduction text to paragraph (e) that would describe a legacy reassessment. Currently, paragraph (e)(1) states the reassessment will be done in collaboration with a primary care team to the maximum extent practicable, may include a visit to the eligible veteran's home, and may include consideration of the monthly stipend. These provisions mirror the requirements for the reassessment under current and proposed § 71.30(a). To provide clarity, VA proposes to remove this language from paragraph (e)(1) and would instead state in the introduction text for paragraph (e) that a legacy reassessment is a reassessment to determine continued eligibility under § 71.20(a) for legacy applicants and legacy participants that is conducted in accordance with the requirements of § 71.30(a).

VA would further revise paragraph (e)(1) to address the timeframe for completing legacy reassessments. VA proposes to remove the phrase “five-year period beginning on October 1, 2020” and add in its place, the phrase “period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE]”. VA would also include the language currently found in paragraph (e)(2) regarding exceptions to this rule. Currently, paragraph (e)(2) states that notwithstanding paragraph (e)(1), a reassessment will not be completed under paragraph (e)(1) if at some point before a reassessment is completed

during the five-year period beginning on October 1, 2020 the individual no longer meets the requirements of § 71.20(b) or (c). VA proposes to move this language to paragraph (e)(1) with minor conforming changes to remove the cross reference to paragraph (e)(1) and reference to the “five-year” period.

As proposed, paragraph (e)(1) would state if the eligible veteran meets the requirements of § 71.20(b) or (c) (*i.e.*, is a legacy participant or a legacy applicant), VA will conduct a legacy reassessment for the eligible veteran and each Family Caregiver within the time period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE]. It would also state that notwithstanding the previous sentence, a legacy reassessment will not be completed if at some point before such reassessment is completed, the eligible veteran no longer meets the requirements of § 71.20(b) or (c).

Finally, VA proposes to revise paragraph (e)(2) to address monthly stipend payments. As part of the legacy reassessment, for eligible veterans who meet the requirements of § 71.20(a), VA considers the monthly stipend payment under § 71.40(c)(4)(i)(A) and eligibility for a one-time retroactive monthly stipend payment under current § 71.40(c)(4)(ii)(C)(2)(i). This one-time retroactive stipend payment is not currently addressed in § 71.30(e). VA believes including a reference to the regulations that govern the one-time retroactive stipend payment within § 71.30(e) would assist the reader in understanding this facet of the legacy reassessment. VA proposes to relocate the provisions currently found in § 71.40(c)(4)(ii)(C)(2)(i) to § 71.40(c)(4)(iii), therefore, this latter citation is proposed to be included in paragraph (e)(2). Accordingly, VA proposes to revise paragraph (e)(2) to state, if the eligible veteran meets the requirements of § 71.20(a), the legacy reassessment will include consideration of the monthly stipend payment under § 71.40(c)(4)(i)(A) and whether the Primary Family Caregiver is eligible for a one-time retroactive stipend payment pursuant to § 71.40(c)(4)(iii).

5. Proposed Technical Edits To Conform With Proposed Changes

VA proposes to add paragraph headings to paragraphs (a) through (e) of § 71.30 to assist the reader. If adopted, the heading for paragraph (a) would state “General.” The heading for paragraph (b) would state “Frequency of reassessment.” The heading for paragraph (c) would state “Requests for reassessment.” The heading for

paragraph (d) would state “Required participation” and the heading for paragraph (e) would state “Legacy reassessments.”

VA solicits comments from the public on all aspects of this proposed rule. In particular, VA asks the following questions on specific aspects of this proposal.

1. Other than the changes proposed, what changes, if any, to the frequency of reassessments should VA consider and why?

2. What models or standards are used by programs other than PCAFC to determine continued eligibility and benefits that could inform the appropriate frequency for PCAFC reassessments?

G. 38 CFR 71.40 Caregiver Benefits

Section 71.40 describes the benefits available to General Caregivers, Secondary Family Caregivers, and Primary Family Caregivers. Section 71.40(c) explains the benefits available to Primary Family Caregivers, which includes a monthly stipend payment. See § 71.40(c)(4). VA proposes changes to the eligibility requirements for the higher stipend level and provisions regarding adjustments to monthly stipend payments.

1. Stipend Level Criteria

Under current § 71.40(c)(4)(i)(A)(1), the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate (as that term is defined in § 71.15) by 0.625. However, if VA determines the eligible veteran is *unable to self-sustain in the community*, the monthly stipend payment is calculated by multiplying the monthly stipend rate by 1.00. See § 71.40(c)(4)(i)(A)(2). These two levels for the monthly stipend payment were intended to align with VA's aim at targeting PCAFC to those veterans and servicemembers with moderate and severe needs, with the higher stipend level provided to Primary Family Caregivers of eligible veterans with severe needs. See 85 FR 13383 (March 6, 2020). Thus, the Primary Family Caregiver of an eligible veteran who is determined to be *unable to self-sustain in the community* would be eligible for the higher stipend level under § 71.40(c)(4)(i)(A)(2).

Currently, *unable to self-sustain in the community* is defined in § 71.15 to mean that an eligible veteran (1) requires personal care services each time he or she completes three or more of the seven activities of daily living (ADL) listed in the definition of an inability to perform an activity of daily living in § 71.15, and is fully dependent

on a caregiver to complete such ADLs; or (2) has a need for supervision, protection, or instruction on a continuous basis. Although the definition of *unable to self-sustain in the community* includes the term *need for supervision, protection, or instruction*, following the *Veteran Warriors* decision, VA no longer applies that term and instead has applied the statutory language in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the term *need for supervision, protection, or instruction* when determining whether a veteran is unable to self-sustain in the community as explained below.

a. Determining the Monthly Stipend Payment Following the Veteran Warriors Decision

As discussed earlier in this rulemaking regarding VA's proposed removal of the term and definition of *need for supervision, protection, or instruction* from § 71.15 and the proposed changes to § 71.20(a)(3), the U.S. Court of Appeals for the Federal Circuit in *Veteran Warriors* invalidated VA's definition of the term *need for supervision, protection, or instruction*. Notably, the court dismissed or denied the petition for review with respect to the other regulatory provisions challenged, including the definition of *unable to self-sustain in the community*. See *Veteran Warriors* at 1348–51. However, because the term *need for supervision, protection, or instruction* is included in the definition of *unable to self-sustain in the community*, following the court's decision, VA has applied the criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the term *need for supervision, protection, or instruction*, when making determinations about whether an eligible veteran is *unable to self-sustain in the community* for purposes of determining the monthly stipend payment. Following the court's decision, a Primary Family Caregiver is eligible for the higher stipend level if the eligible veteran has a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury on a continuous basis or a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired on a continuous basis.

b. Proposed Changes to the Higher Stipend Level Criteria

VA proposes to revise the criteria for determining the monthly stipend payment in § 71.40(c)(4)(i)(A)(2). In proposing to amend

§ 71.40(c)(4)(i)(A)(2), VA would maintain the methodology for calculating the monthly stipend rate, such that the higher stipend level would continue to be calculated by multiplying the monthly stipend rate (as that term is defined in § 71.15) by 1.00. However, VA would revise the criteria under which a Primary Family Caregiver would qualify for the higher stipend level. Specifically, VA proposes to remove the term *unable to self-sustain in the community* from § 71.40(c)(4)(i)(A)(2) and add multiple new bases upon which a Primary Family Caregiver may be eligible for the higher stipend level. VA's new proposed bases for the higher stipend level would align with the proposed bases in § 71.20(a)(3) upon which a veteran or servicemember may be determined to be in need of personal care services.

Instead of proposing to update the current definition of *unable to self-sustain in the community* in § 71.15 to reflect VA's proposed criteria for determining the higher stipend level, VA proposes removing the term *unable to self-sustain in the community* and its definition from § 71.15 and adding the criteria for determining the higher stipend level in proposed § 71.40(c)(4)(i)(A)(2). This approach is consistent with VA's proposed changes to § 71.15 and § 71.20(a)(3), under which VA would remove the terms *inability to perform an ADL* and *need for supervision, protection, or instruction*, and their definitions from § 71.15 and add the bases for being in need of personal care services into proposed § 71.20(a)(3)(i) through (iii) rather than referring to criteria contained mostly in terms and definitions found in § 71.15.

In proposed § 71.40(c)(4)(i)(A)(2), VA would explain how Primary Family Caregivers could be eligible for the higher stipend level for each basis upon which an individual may be determined to be in need of personal care services consistent with 38 U.S.C. 1720G(a)(2)(C) and proposed 38 CFR 71.20(a)(3). VA believes the changes VA proposes to 38 CFR 71.40(c)(4)(i)(A)(2), as explained in more detail in this section, would improve clarity and consistency when determining eligibility for the higher stipend level. They would also ensure each basis upon which an eligible veteran may be determined to be in need of personal care services under proposed 38 CFR 71.20(a)(3) includes a related basis by which a Primary Family Caregiver may be eligible for the higher stipend level. If these proposed changes are adopted, the Primary Family Caregiver could be eligible for the

higher stipend level based on any of the criteria in proposed § 71.40(c)(4)(i)(A)(2), just as eligible veterans could meet more than one of the bases in proposed § 71.20(a)(3)(i) through (iii).

Additionally, in contrast to the current definition of *unable to self-sustain in the community*, which refers exclusively to the needs of the eligible veteran, the criteria in proposed § 71.40(c)(4)(i)(A)(2) would be phrased to reflect both the eligible veteran's needs as well as the amount and degree of personal care services the Primary Family Caregiver provides to the eligible veteran. This change would ensure VA's regulations are reflective of the statutory requirement that the stipend be "based upon the amount and degree of personal care services provided." 38 U.S.C. 1720G(a)(3)(C)(i). VA recognizes that the Primary Family Caregiver may not provide all the personal care services required by an eligible veteran, as the eligible veteran's care needs may also be met, in part, by Secondary Family Caregivers or through other services and supports. However, because it is the Primary Family Caregiver who receives the stipend payment, VA believes it is reasonable to interpret the phrase "personal care services provided" in 38 U.S.C. 1720G(a)(3)(C)(i) to refer to those personal care services provided by the Primary Family Caregiver.

VA does not believe it would be reasonable to base the monthly stipend payment for the Primary Family Caregiver upon the amount and degree of personal care services provided by individuals and entities other than the Primary Family Caregiver. Under 38 U.S.C. 1720G(a)(3)(C)(ii), the Secretary is required to ensure, to the extent practicable, that "the schedule required by clause (i) specifies that the amount of the monthly personal caregiver stipend provided to a primary provider of personal care services for the provision of personal care services to an eligible veteran is not less than the monthly amount a commercial home health care entity would pay an individual in the geographic area of the eligible veteran to provide equivalent personal care services to the eligible veteran." By referring to "an individual" providing "equivalent personal care services to the eligible veteran", this requirement supports VA's proposed interpretation that the monthly stipend payment is based on the personal care services that only the Primary Family Caregiver provides to the eligible veteran and not the personal care services provided by another individual or entity. By referring to the required personal care services that the

eligible veteran receives from the Primary Family Caregiver, proposed 38 CFR 71.40(c)(4)(i)(A)(2) would make clear that the amount of the monthly stipend is based upon the amount and degree of personal care services that the Primary Family Caregiver provides to the eligible veteran.

In addition, VA proposes to add language to proposed paragraph (c)(4)(i)(A)(2) as a technical edit to clarify that the proposed criteria in paragraph (c)(4)(i)(A)(2) would apply notwithstanding paragraph (c)(4)(i)(A)(1). Currently, and under VA's proposed revisions to § 71.40(c)(4)(i)(A), a Primary Family Caregiver's monthly stipend payment is calculated under paragraph (c)(4)(i)(A)(1) (by multiplying the monthly stipend rate by 0.625) unless the criteria in paragraph (c)(4)(i)(A)(2) are met, in which case the Primary Family Caregiver's monthly stipend payment is calculated under paragraph (c)(4)(i)(A)(2) (by multiplying the monthly stipend rate by 1.00). VA also proposes to add a heading to paragraph § 71.40(c)(4)(i)(A)(1) which states "Level 1 Stipend" and a heading to paragraph § 71.40(c)(4)(i)(A)(2) that states "Level 2 Stipend" to further distinguish the two different stipend levels described in these paragraphs.

As proposed, § 71.40(c)(4)(i)(A)(2) would state that notwithstanding paragraph (c)(4)(i)(A)(1) of § 71.40, the Primary Family Caregiver's monthly stipend payment is calculated by multiplying the monthly stipend rate by 1.00 if VA determines that: (i) the eligible veteran typically requires personal care services to complete three or more distinct ADL, and for each distinct ADL, the eligible veteran either is substantially dependent on the Primary Family Caregiver for hands-on assistance or requires extensive instruction or supervision from the Primary Family Caregiver; or (ii) the eligible veteran has a frequent need for supervision or protection on a continuous basis from the Primary Family Caregiver based on the eligible veteran's symptoms or residuals of neurological or other impairment or injury.

The meaning of the term *typically requires* throughout proposed § 71.40(c)(4)(i)(A)(2) would be consistent with its meaning in proposed § 71.20(a)(3)(i) and (iii) based on the proposed definition in § 71.15 (that is, *typically requires* would mean a clinical determination which refers to that which is generally necessary). Please see the discussion of proposed changes to §§ 71.15 and 71.20(a)(3)(i) and (iii) for additional information on the term

typically requires. VA further explains the multiple bases for eligibility for the higher stipend level that VA is proposing under the two criterion in proposed § 71.40(c)(4)(i)(A)(2)(i) and (ii), as well as its proposed use of the term *typically requires* in § 71.40(c)(4)(i)(A)(2)(i), in greater detail below.

i. First Proposed Basis for the Higher Stipend Level Payment

Under this proposal, § 71.40(c)(4)(i)(A)(2)(i) would set forth the first proposed basis upon which a Primary Family Caregiver would be eligible for the higher stipend level payment and would refer to a VA determination that the eligible veteran typically requires personal care services to complete three or more distinct ADL, and for each distinct ADL, the eligible veteran is substantially dependent on the Primary Family Caregiver for hands-on assistance.

If adopted, this would amend the standard applied under the first basis in the current definition of *unable to self-sustain in the community* (that is, an eligible veteran requires personal care services each time he or she completes three or more of the seven ADL listed in the definition of an inability to perform an activity of daily living in § 71.15 and is fully dependent on a caregiver to complete such ADL). That basis was intended to establish the higher stipend level for the Primary Family Caregiver of an eligible veteran with physical impairment. 85 FR 13383 (March 6, 2020). In addition, this proposed basis in § 71.40(c)(4)(i)(A)(2)(i) would align with the eligibility criteria in proposed 38 CFR 71.20(a)(3)(i) (that is, the individual typically requires hands-on assistance to complete one or more ADL). It would therefore account for those Primary Family Caregivers of eligible veterans who are in need of personal care services based on an inability to perform an ADL (38 U.S.C. 1720G(a)(2)(C)(i)) and who have severe needs.

This first proposed basis for the higher stipend level payment would be consistent with the requirement in 38 U.S.C. 1720G(a)(3)(C)(i) to base the monthly stipend payment upon the amount and degree of personal care services provided because it would refer to three or more distinct ADL and it would include a requirement that the eligible veteran be *substantially dependent* upon the Primary Family Caregiver. The proposal to require three or more distinct ADL would address the amount of personal care services provided by the Primary Family Caregiver because a greater amount of

personal care services would be provided if an eligible veteran requires hands-on assistance to complete three or more distinct ADL versus to complete fewer than three ADL. Notably, the eligibility criterion in proposed § 71.20(a)(3)(i) refers to the individual typically requiring hands-on assistance to complete just *one* or more ADL. In addition, the proposed requirement that the eligible veteran be substantially dependent on the Primary Family Caregiver would address the degree of personal care services provided. As discussed below, if adopted in a final rule, VA would apply the term "substantially dependent" in proposed § 71.40(c)(4)(i)(A)(2)(i) to mean that the Primary Family Caregiver puts forth more than half the effort when providing hands-on assistance to the eligible veteran to complete three or more distinct ADL.

As is the case in the first basis of the current definition of *unable to self-sustain in the community*, proposed § 71.40(c)(4)(i)(A)(2)(i) would refer to the eligible veteran requiring personal care services to complete three or more ADL, but VA would specify that the personal care services under this basis must be required for three distinct ADL (as that term is proposed to be defined in § 71.15). VA proposes to use the term "distinct" in front of "ADL" to account for VA's proposal in new § 71.40(c)(4)(i)(A)(2)(i) to include more than one basis upon which a Primary Family Caregiver could be eligible for the higher stipend level related to an eligible veteran's need for personal care services to complete ADL. As discussed separately below, proposed § 71.40(c)(4)(i)(A)(2)(i) would allow for a combination of two different types of personal care services to complete ADL (that is, if the eligible veteran either is substantially dependent on the Primary Family Caregiver for hands-on assistance or requires extensive instruction or supervision from the Primary Family Caregiver), as long as the criteria are met with respect to the completion of three or more distinct ADL. VA's proposal to refer to "three or more distinct ADL" would clarify that an eligible veteran who requires both types of personal care services to perform the same ADL, would not be considered to require personal care services to complete two ADL. This is discussed in more detail below under the heading referring to VA's third proposed basis for the higher stipend level.

Consistent with the discussion of proposed § 71.20(a)(3)(i), VA would not require in proposed § 71.40(c)(4)(i)(A)(2)(i) that personal

care services be required “each time” the eligible veteran completes three or more distinct ADL. While the first basis of the current definition of *unable to self-sustain in the community* requires personal care services be required “each time” the eligible veteran completes three or more ADL, VA proposes not to include such requirement in proposed § 71.40(c)(4)(i)(A)(2)(i). VA’s rationale for proposing to remove the “each time” requirement is explained in the discussion on proposed § 71.20(a)(3)(i).

Additionally, while the first basis in the current definition of *unable to self-sustain in the community* refers to an eligible veteran being “fully dependent” on a caregiver to complete three or more ADL, the first new basis under proposed § 71.40(c)(4)(i)(A)(2)(i) would require that an eligible veteran be “substantially dependent” on the Primary Family Caregiver for hands-on assistance. While this proposed change from “fully dependent” to “substantially dependent” would be a change in terminology, it would be consistent with how VA has applied the first basis in the current definition of *unable to self-sustain in the community* since 2020. Since that time, VA has not required the eligible veteran to have complete dependence on a caregiver to perform three or more ADL, as the term “fully dependent” may imply and how VA described this term in its July 31, 2020 Final Rule.¹⁸ This is because after publication of VA’s July 31, 2020 Final Rule, and prior to implementation, VA determined such an approach would have been unduly restrictive. Dependence occurs on a spectrum based on degrees of need. Upon further review of the requirement to be “fully dependent” on the Primary Family Caregiver, VA found that this would require that an eligible veteran must be at the very highest end of the spectrum of a degree of need, such that no greater degree of need is possible. It is not, and has never been, the intent of VA to require such a standard. Rather, since implementing the first basis in the definition of *unable to self-sustain in the community*, it has been and continues to be VA’s practice that individuals who require a degree of personal care services that is of a lesser degree than that of the very highest degree could and do meet the definition.

VA currently applies the meaning of “substantially” in place of “fully” under the first basis in the definition of *unable*

to self-sustain in the community as VA believes “substantially” more accurately reflects the level of dependence VA requires for a Primary Family Caregiver to be eligible for the higher stipend level. The term “substantially dependent” is commonly used in the health care field and is generally understood to mean an individual provides more than half the effort, when used in the context of assessing levels of assistance provided to an individual to complete daily activities. For example, CMS uses the term “substantial/maximal assistance” when determining the type and level of assistance required for a patient to complete an activity in a post-acute care setting.¹⁹ Specifically, CMS and other organizations define the term “substantial/maximal assistance” to mean a helper does more than half the effort.²⁰ VA proposes to interpret the proposed term “substantially dependent” in a similar manner such that, if VA’s proposed changes to § 71.40(c)(4)(i)(A)(2)(i) are adopted, “substantially dependent” would be applied to mean that the Primary Family Caregiver puts forth more than half the effort when providing hands-on assistance to an eligible veteran to complete three or more distinct ADL. An eligible veteran who is substantially dependent on the Primary Family Caregiver for hands-on assistance with an ADL (that is, who requires a Primary Family Caregiver to perform more than half the effort to complete an ADL), would require a higher degree of personal care services than an eligible veteran whose Primary Family Caregiver provides less than half the effort to complete ADL. Although “substantially dependent” would be applied to mean a lesser degree of dependence than that of the very highest degree, it could also

encompass eligible veterans whose dependence on the Primary Family Caregiver for hands-on assistance with an ADL is at the very highest degree on the spectrum (for example, if the eligible veteran is unable to put forth any effort to complete the ADL). It is not VA’s intent for the term “substantially dependent” in proposed § 71.40(c)(4)(i)(A)(2)(i) to exclude eligible veterans who are fully dependent or entirely dependent on a Primary Family Caregiver for hands-on assistance with an ADL.

For example, an eligible veteran who typically requires hands-on assistance with dressing may require the Primary Family Caregiver to pull a shirt over their head, position both arms into shirt sleeves and pull sleeves down, but the eligible veteran is able to pull the shirt down over their trunk. Additionally, the eligible veteran typically requires hands-on assistance from the Primary Family Caregiver to lift feet and place them through undergarments and pantlegs, pull feet through clothing, and lift undergarments and pants to knees but the eligible veteran is able to pull clothing from knees to waist. The eligible veteran may be determined substantially dependent on the Primary Family Caregiver for dressing. This would be the case if the Primary Family Caregiver is determined to perform more than half the effort to complete the ADL of dressing while the eligible veteran provides less than half the effort. In contrast, an eligible veteran who only typically requires hands-on assistance when dressing to lift both arms into shirtsleeves but is able to independently perform all other tasks related to the ADL of dressing, would not be substantially dependent on the Primary Family Caregiver for hands-on assistance when dressing because the Primary Family Caregiver would not be performing more than half the effort required to complete the ADL of dressing.

An eligible veteran who typically requires hands-on assistance for the ADL of eating such that hand over hand assistance is needed from the Primary Family Caregiver to place food on a fork, to place the fork to the eligible veteran’s mouth, and hold a cup with a straw in proximity to the eligible veteran’s mouth so that the veteran can drink, would be considered substantially dependent upon the Primary Family Caregiver for the ADL of eating because in such case, the Primary Family Caregiver provides more than half the effort to complete the ADL. Conversely, an eligible veteran who typically requires a Primary Family Caregiver to place and adjust adaptive utensils in the

¹⁹ See Outcome and Assessment Information Set OASIS-E Manual, effective January 1, 2023, page 126, Centers for Medicare and Medicaid Services, available at <https://www.cms.gov/files/document/oasis-e-manual-final.pdf> (last visited Feb. 8, 2024).

²⁰ Inpatient Rehabilitation Facility—Patient Assessment Instrument, Version 3.0, effective October 1, 2019, page 7, Centers for Medicare and Medicaid Services, available at https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/Proposed_IRFPAI_Version3_Eff_20191001.pdf (last visited Feb. 8, 2024) (defines Substantial/maximal assistance as “Helper does MORE THAN HALF the effort. Helper lifts or holds trunk or limbs and provides more than half the effort.” (Emphasis in original.)); Section GG Self-Care (Activities of Daily Living) and Mobility Items, 2022, pages 1–3, American Occupational Therapy Association, available at <https://www.aota.org/-/media/Corporate/Files/Practice/Manage/Documentation/Self-Care-Mobility-Section-GG-Items-Assessment-Template.pdf> (last visited Feb. 8, 2024) (defines Substantial/maximal assistance as “Helper does MORE THAN HALF the effort. Helper lifts or holds trunk or limbs and provides more than half the effort.” (Emphasis in original.)).

¹⁸ VA stated “[t]o be fully dependent means the eligible veteran requires the assistance of another to perform each step or task related to completing the ADL” and “[w]hile dependence is considered along a spectrum, fully dependent is at the top of the spectrum.” 85 FR 46274 (July 31, 2020).

eligible veteran's grasp, but the veteran is otherwise able to eat would not be considered substantially dependent upon the Primary Family Caregiver for the ADL of eating because the Primary Family Caregiver would not be providing more than half the effort in order for the eligible veteran to complete the ADL.

Similarly, an eligible veteran who typically requires hands-on assistance with the ADL of adjusting any special prosthetic or orthopedic appliance, may be substantially dependent on the Primary Family Caregiver if the Primary Family Caregiver provides more than half the effort. For example, if the Primary Family Caregiver assists with putting on the prosthetic limb by positioning a sock appropriately, applying a foam liner, and lifting and placing the eligible veteran's stump into the prosthesis, the eligible veteran may be determined to be substantially dependent on the Primary Family Caregiver to complete the ADL. If the eligible veteran only requires assistance from the Primary Family Caregiver to hold the foam lining in place while the eligible veteran applies the sock, lining, and positions their stump into the prosthesis such that the Primary Family Caregiver does not contribute more than half the effort required to perform the ADL, the eligible veteran would not be determined to be substantially dependent on the Primary Family Caregiver to complete the ADL.

An eligible veteran who typically requires hands-on assistance to complete each of the three ADL described in the illustrative examples above, that is dressing, adjusting a prosthetic limb, and eating, and for each such ADL is substantially dependent on the Primary Family Caregiver for such hands-on assistance may be determined to meet this proposed basis such that the Primary Family Caregiver may be eligible for the higher stipend level.

ii. Second Proposed Basis for the Higher Stipend Level Payment

Under proposed new § 71.40(c)(4)(i)(A)(2)(i), the second proposed basis upon which a Primary Family Caregiver would be eligible for the higher stipend level payment would be that the eligible veteran typically requires personal care services to complete three or more distinct ADL, and for each distinct ADL the eligible veteran requires extensive instruction or supervision from the Primary Family Caregiver.

This proposed second basis upon which a Primary Family Caregiver may be determined eligible for the higher stipend level payment would align with

proposed § 71.20(a)(3)(iii), that is, that a veteran may be determined in need of personal care services because the individual typically requires regular or extensive instruction or supervision to complete one or more ADL. A Primary Family Caregiver of an eligible veteran who meets such proposed basis may be eligible for the higher stipend level payment if such eligible veteran typically requires personal care services to complete three or more distinct ADL and for each distinct ADL, requires extensive instruction or supervision from the Primary Family Caregiver. This second proposed basis would be consistent with the language in 38 U.S.C. 1720G(a)(3)(C)(i) stating that the amount of the stipend shall be based upon the amount and degree of personal care services provided through the requirement of "three or more distinct ADL" and the requirement that the eligible veteran requires "extensive" instruction or supervision from the Primary Family Caregiver. As previously noted, the requirement for three or more distinct ADL would address the amount of personal care services provided by the Primary Family Caregiver. This is because a Primary Family Caregiver would provide a greater amount of personal care services when providing instruction or supervision for three or more distinct ADL than when providing instruction or supervision for fewer than three distinct ADL.

Referring to "extensive" instruction or supervision in proposed 38 CFR 71.40(c)(4)(i)(A)(2)(i) would address the degree of personal care services provided by the Primary Family Caregiver and align with VA's proposed interpretation of this term in proposed § 71.20(a)(3)(iii). While proposed § 71.20(a)(3)(iii) would refer to "regular or extensive" instruction or supervision, proposed § 71.40(c)(4)(i)(A)(2)(i) would refer to "extensive" instruction or supervision from the Primary Family Caregiver for purposes of the higher stipend level payment. This is because VA considers those who require regular instruction or supervision to complete one or more ADL to be indicative of those with moderate needs while VA considers those who require extensive instruction or supervision to complete three or more distinct ADL to have severe needs. As explained in, and consistent with, VA's earlier discussion on proposed § 71.20(a)(3)(iii), if this proposed rule is adopted as final, VA would consider the need for extensive instruction or supervision to mean that the instruction or supervision is required throughout the completion of

the ADL. In contrast, VA would consider regular instruction or supervision to mean that the instruction or supervision is required for a portion of completing the ADL rather than throughout the completion of the ADL. Those who require extensive instruction or supervision therefore would be considered to have a greater degree of need than those who require regular instruction or supervision to complete an ADL. VA provides the following illustrative examples to help explain VA's interpretation of how an eligible veteran would meet the requirement of needing "extensive" instruction or supervision to complete three or more distinct ADL. If an eligible veteran requires supervision when determining the amount of shampoo necessary, applying shampoo to head, lathering hair, and rinsing hair but is otherwise able to perform the remaining actions of bathing without assistance, they would not have an extensive need for supervision to complete the ADL of bathing because supervision from the Primary Family Caregiver is not needed throughout the act of bathing. Once the portion of the activity for which supervision is needed was completed, the eligible veteran may be able to function safely and independently for the remainder of completing the activity. In contrast, if such an eligible veteran also required supervision to adjust water temperature at the beginning of the activity, identify body parts to wash, then rinse during the act of bathing, and towel dry at the end of the activity, such eligible veteran may be determined to require extensive supervision from the Primary Family Caregiver to complete the ADL of bathing because assistance would be required throughout the ADL of bathing.

An eligible veteran who is in need of extensive instruction to toilet may require step-by-step instruction throughout the ADL of toileting, such as to position self at the toilet, unfasten clothing, cleanse oneself, and refasten clothing. Such veteran would require extensive instruction from a Primary Family Caregiver because such instruction is needed throughout the activity of toileting. In contrast, if such instruction was only needed to position self at the toilet and unfasten clothing, such need may be a regular need, because instruction is only necessary for a portion of the activity, which is at the beginning, and the eligible veteran is otherwise able to complete the ADL of toileting in the absence of the Primary Family Caregiver.

A veteran who requires step-by-step instruction from a Primary Family Caregiver when eating, such as

instruction to select appropriate utensils to bring food to mouth, chew food prior to swallowing, and to swallow prior to bringing additional food to mouth may be determined to have an extensive need for instruction from a Primary Family Caregiver when eating because such instruction is required throughout the activity of eating. In contrast, if the eligible veteran only requires such instruction for the first two bites of the meal after which such pattern is established, and is able to finish eating independently without further instruction from a Primary Family Caregiver to complete the activity of eating, such veteran may be determined to be in need of regular instruction for the ADL of eating.

An eligible veteran who typically requires extensive instruction or supervision with each of the three distinct ADL described in the examples above, that is bathing, toileting and eating may be determined to meet this second proposed basis under 38 CFR 71.40(c)(4)(i)(A)(2)(i) such that the Primary Family Caregiver may be eligible for the higher stipend level.

iii. Third Proposed Basis for Higher Stipend Level Payment

As proposed, § 71.40(c)(4)(i)(A)(2)(i). would state that for each distinct ADL the eligible veteran either is substantially dependent on the Primary Family Caregiver for hands-on assistance or requires extensive instruction or supervision from the Primary Family Caregiver. VA would consider both types of personal care services when determining whether the Primary Family Caregiver is eligible for the higher stipend level payment on this basis. Therefore, a combination of both types of personal care services, if provided by the Primary Family Caregiver to complete three or more distinct ADL, could establish a third basis for determining eligibility for the higher stipend level pursuant to proposed § 71.40(c)(4)(i)(A)(2)(i).

For a Primary Family Caregiver to be eligible for the higher stipend level under § 71.40(c)(4)(i)(A)(2)(i), the eligible veteran would require at least one of these types of personal care services (that is, be substantially dependent on the Primary Family Caregiver for hands-on assistance, or require extensive instruction or supervision from the Primary Family Caregiver) to complete three or more distinct ADL. VA would not require the eligible veteran to need the same type of personal care services to complete each of the three or more distinct ADL. For example, an eligible veteran who typically requires personal care services

to complete three or more distinct ADL would not have to be substantially dependent on the Primary Family Caregiver for hands-on assistance to complete all three distinct ADL or require extensive instruction or supervision from the Primary Family Caregiver to complete all three distinct ADL. Instead, the Primary Family Caregiver of such an eligible veteran could be eligible for the higher stipend level under § 71.40(c)(4)(i)(A)(2)(i) if, for example, the eligible veteran is substantially dependent on the Primary Family Caregiver for hands-on assistance to complete two ADL and requires extensive instruction from the Primary Family Caregiver to complete an additional distinct ADL. In this example, the eligible veteran typically requires personal care services to complete three or more distinct ADL, and for each distinct ADL, the eligible veteran either is substantially dependent on the Primary Family Caregiver for hands-on assistance or requires extensive instruction or supervision from the Primary Family Caregiver; therefore, the Primary Family Caregiver would be eligible for the higher stipend level under proposed § 71.40(c)(4)(i)(A)(2)(i). In contrast, if an eligible veteran typically requires personal care services to complete only two distinct ADL, the Primary Family Caregiver would not qualify for the higher stipend level under this proposed basis, even if for both such ADL the eligible veteran is both substantially dependent on the Primary Family Caregiver for hands-on assistance and requires extensive instruction from the Primary Family Caregiver.

iv. Fourth Proposed Basis for Higher Stipend Level Payment

The fourth proposed basis would be set forth in proposed § 71.40(c)(4)(i)(A)(2)(ii), which would state that the eligible veteran has a frequent need for supervision or protection on a continuous basis from the Primary Family Caregiver based on the eligible veteran's symptoms or residuals of neurological or other impairment or injury. As VA explained above, following the *Veteran Warriors* decision, a Primary Family Caregiver is eligible for the higher stipend level if an eligible veteran has a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury (38 U.S.C. 1720G(a)(2)(C)(ii)) on a continuous basis. The proposed fourth basis in 38 CFR 71.40(c)(4)(i)(A)(2)(ii) would maintain this criterion but with an added requirement that the eligible

veteran has a frequent need for supervision or protection, consistent with the other proposed bases for the higher stipend level as discussed earlier in this rulemaking.

Consistent with VA's prior and current interpretation (*see* 85 FR 46239–46240 (July 31, 2020)), in making determinations on whether an eligible veteran has a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury on a continuous basis following the *Veteran Warriors* decision, VA considers “continuous” to refer to the amount and degree of personal care services provided. Whether or not the eligible veteran has a frequent need for supervision or protection on a continuous basis would be a clinical determination and would consider the degree of intervention required, how frequently the required intervention is needed, whether such required personal care services are limited or expansive in the extent of assistance required, and whether such personal care services are provided for short durations or occur over an extended period of time.

For example, as these criteria are applied today, an eligible veteran with post-traumatic stress disorder with a demonstrated pattern of severe, uncontrolled panic attacks, who requires a Family Caregiver to actively intervene through verbal and physical intervention to assist the eligible veteran in grounding and de-escalating multiple times during the day may be in need of supervision or protection on a continuous basis. Additionally, an eligible veteran with amyotrophic lateral sclerosis and that consequently has muscle weakness who experiences loss of muscle control throughout the day may be in need of supervision or protection throughout the day, and thus may be determined to have a frequent need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury on a continuous basis.

The phrase “on a continuous basis” for purposes of this proposed basis would not mean that the eligible veteran would require supervision or protection 24 hours per day, seven days per week, and it is not meant to imply that an individual requires hospitalization or nursing home care. Instead, the need for supervision or protection could be demonstrated through, but would not be limited to, a recurring, consistent, and prevalent need.

This requirement of “on a continuous basis” in proposed § 71.40(c)(4)(i)(A)(2)(ii) would address the amount and degree of personal care

services provided, consistent with the language in 38 U.S.C. 1720G(a)(3)(C)(i), as the Primary Family Caregiver who provides supervision or protection on a continuous basis would provide a greater amount and degree of personal care services to the eligible veteran than a Primary Family Caregiver who provides supervision or protection on a less than continuous basis.

For example, an eligible veteran with an uncontrolled seizure disorder may experience seizures on a near daily basis and when such seizures occur, the eligible veteran frequently needs protection from the Primary Family Caregiver to clear the area of hard objects, support the eligible veteran's head, call for medical assistance, if needed, and help the eligible veteran re-orient following the seizure. Such need for supervision or protection may be needed on a continuous basis because such need is recurring, can occur at any time, and could require the Primary Family Caregiver to actively intervene to maintain the safety of the eligible veteran. Such Primary Family Caregiver may be determined eligible for the higher stipend level under proposed § 71.40(c)(4)(i)(A)(2)(ii).

VA provides the foregoing examples as illustrations of its intended application of the proposed rule should it be adopted as final, but VA's determinations would continue to be fact-specific and could differ depending on the facts and circumstances of an individual eligible veteran and their Primary Family Caregiver.

v. Multiple Bases for Eligibility for Higher Stipend Level Payment

Since implementing changes following the *Veteran Warriors* ruling, there are three bases under which a Primary Family Caregiver may be eligible for the higher stipend level. The proposed changes within this proposed rulemaking regarding the criteria for the higher stipend level would provide four bases. Under VA's proposed rule, a Primary Family Caregiver may be eligible for the higher stipend level under multiple bases but would only be required to meet one basis to be eligible for the higher stipend level.

Meeting one proposed basis for the higher stipend level does not preclude a Primary Family Caregiver from meeting one or more additional proposed bases that would also allow them to be eligible for the higher stipend level. So long as VA determines that one of the bases under § 71.40(c)(4)(i)(A)(2) is satisfied, the Primary Family Caregiver would be eligible for the higher stipend level.

c. Proposed Changes To Extend Transition Period for Legacy Cohort

To effectuate VA's proposed extension of the transition period for the legacy cohort as discussed earlier in this rulemaking, VA proposes to revise several paragraphs of § 71.40(c)(4)(i). Specifically, VA would amend the first sentence of the introductory text of § 71.40(c)(4)(i)(B) to remove the phrase "for five-years beginning on October 1, 2020" and add in its place, the phrase "for the time period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE]". VA would make the same edit in paragraphs (c)(4)(i)(C) and (c)(4)(i)(D).

2. Stipend Adjustments

a. Adjustments to Stipend Payments Based on the Office of Personnel Management (OPM) Updates to the General Schedule (GS) Annual Rate

Current § 71.40(c)(4)(ii) explains adjustments to monthly stipend payments. Adjustments to monthly stipend payments that result from OPM's updates to the GS Annual Rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides take effect prospectively following the date the update to such rate is made effective by OPM. § 71.40(c)(4)(ii)(A).

VA proposes to revise current § 71.40(c)(4)(ii)(A) to further clarify this provision and confirm through edits to the regulation text that VA will not make retroactive pay corrections in instances when OPM announces retroactive changes to the General Schedule (GS) Annual Rate tables later in the year. *See* 85 FR at 46267 (July 31, 2020). VA's proposed changes would also provide additional clarification in § 71.40(c)(4)(ii)(A) that VA believes is needed to inform Primary Family Caregivers of the specific month in which they can expect to receive a pay adjustment under this paragraph.

Under this proposal, VA would maintain the requirement in current paragraph (c)(4)(ii)(A) that VA will make stipend payment adjustments based on OPM's updates to the GS Annual Rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides. To further clarify when monthly stipend payment adjustments take effect, VA proposes to revise the language that currently states that such adjustments take effect prospectively following the date the update to such rate is made effective by OPM. VA proposes to explain instead that such adjustments would take effect on the first of the month that changes to the GS

Annual Rate are effective. However, if OPM publishes changes to the GS Annual Rate and such changes have a retroactive effective date, VA proposes to make those adjustments to the stipend payments effective on the first of the month following the month that OPM publishes changes to the GS Annual Rate.

Thus, VA proposes to revise § 71.40(c)(4)(ii)(A) to state that VA will adjust monthly stipend payments based on changes to the General Schedule (GS) Annual Rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides. It would also state that such adjustments will take effect on the first of the month in which changes to the GS Annual Rate are effective. Proposed § 71.40(c)(4)(ii)(A) would further state that notwithstanding the previous sentence, adjustments under this paragraph will take effect on the first of the month following the month OPM publishes changes to the GS Annual Rate if such changes have a retroactive effective date.

These proposed revisions are intended to further clarify when adjustments will be made based on changes to the GS Annual Rate. Pursuant to 5 U.S.C. 5303 and 5304, the GS rates are updated and published on an annual basis by OPM. Information on the GS rates can be found at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>. Updates to the GS Annual Rate are typically effective on the first day of the first applicable pay period beginning on or after January 1 of each calendar year. In the past, OPM has announced and published the updated rates in December prior to implementing the new rates. This has been the case each year since October 2020 when VA implemented the term *monthly stipend rate*, which is defined in § 71.15 to mean the OPM GS Annual Rate for grade 4, step 1, based on the locality pay area in which the eligible veteran resides, divided by 12.

The proposed changes to § 71.40(c)(4)(ii)(A) would provide transparency to Primary Family Caregivers by specifying the month in which they can expect the adjustment to the monthly stipend payment based on changes to the GS Annual Rate to be effective. VA's proposed changes would make clear that if changes to the GS Annual Rate for the following calendar year are announced on December 15 and such changes take effect on January 1 of that following calendar year, VA would make adjustments to the monthly stipend payment based on those changes to the GS Annual Rate effective January 1. Similarly, under this

proposal, if changes to the GS Annual Rate for the following calendar year are announced on December 14 and such changes take effect on January 10 of the following calendar year, VA would make adjustments to the monthly stipend payment based on those changes to the GS Annual Rate effective January 1. This is the practice VA has followed for updates to the GS Annual Rate that were made effective in 2021, 2022, and 2023. Thus, if adopted as proposed, this change would not have a substantive impact upon current PCAFC participants, would clarify the timing of adjustments under paragraph (c)(4)(ii)(A) for Primary Family Caregivers, and reflect VA's current practice. While VA expects OPM will continue to provide notice of GS Annual Rate changes in December with an effective date of the first day of the first applicable pay period beginning on or after January 1 of the following calendar year, updates to and publication of, the GS Annual Rate may not always follow this timeline. In some cases, changes to the GS Annual Rate may be made retroactively. For example, Congress could enact legislation in February that makes adjustments to the GS Annual Rate with a January effective date. As a result, OPM may publish the changes to the GS Annual Rate in March and the effective date may be retroactive to January of that same year. This occurred with the 2019 GS Annual Rate change. The President issued Executive Order 13866 on March 28, 2019, that provided a retroactive pay adjustment to January 2019 as required by the Consolidated Appropriations Act, 2019 (Public Law 116–6).²¹ On these rare occasions that OPM publishes changes to the GS Annual Rate and such changes have a retroactive effective date, VA proposes to make adjustments to monthly stipend payments based on those changes effective the first of the month following the month OPM publishes the changes to the GS Annual Rate.

For example, under this proposal, if changes to the GS Annual Rate are published on April 10 and are made effective retroactive to January 1, VA would apply the changes to the GS Annual Rate to the monthly stipend rate, but they would not take effect until May 1. VA is not proposing to apply the

rate adjustments retroactively to January 1 because this would not be administratively feasible under VA's current systems. The Caregiver Records Management Application (CARMA) is the information technology (IT) system used by CSP to fully support PCAFC and it allows for data assessment and comprehensive monitoring of PCAFC. CARMA's ability to support PCAFC operations includes functionality related to calculations and issuance of the monthly stipend payment. The system, as designed, is not able to apply systematic retroactive calculations. To do so would require manual review and calculation of each Primary Family Caregiver's monthly stipend payment impacted by retroactive payments and would require manual updates to system data to ensure accurate tracking of retroactive payments. Such manual review would be significantly resource-intensive and would likely result in delays not only in applying retroactive adjustments but delays to all monthly stipend payments. Additionally, manual processes generally carry risk for errors and in the case of the monthly stipend payment could result in administrative errors such as incorrect payment calculations. Significant additional developer resources would be needed to perform such manual updates, potentially compromising current and future work towards additional CARMA improvements and enhancements.

Retroactive changes to the GS Annual Rate do not occur often and have not occurred in the last three years. Given the administrative burden, risk to system integrity, and potential for administrative error in payment calculations for many Primary Family Caregivers that would be expected if VA were to make retroactive stipend pay adjustments as discussed above, if OPM publishes changes to the GS Annual Rate with a retroactive effective date, VA proposes to make monthly stipend payment adjustments effective the first of the month following the month OPM publishes changes to the GS Annual Rate.

VA also notes that there also could be instances in which changes to the GS Annual Rate do not take effect because of an intervening event. For example, if changes to the GS Annual Rate are announced in November to take effect in February of the following year, but superseding legislation or an Executive Order makes ineffective such changes to the GS Annual Rate (such as a mandate in December to freeze the GS Annual Rate), no changes to the GS Annual Rate would be made based on the November announcement. Pursuant to the proposed changes to paragraph

(c)(4)(ii)(A), VA would not adjust the monthly stipend payment based on the changes to the GS Annual Rate that were announced in November. In such cases, there would be no changes to the GS Annual Rate so VA would have no basis to adjust monthly stipend payments pursuant to proposed paragraph (c)(4)(ii)(A).

b. Stipend Adjustments Resulting From Reassessments

VA proposes to revise the paragraphs of § 71.40(c)(4)(ii)(C), which address the effective date for changes in the Primary Family Caregiver's monthly stipend payment resulting from a reassessment under § 71.30. VA's proposed changes to § 71.40(c)(4)(ii)(C) would make substantive revisions, such as VA's proposal to authorize a retroactive increase in the monthly stipend payment that would become effective as of the date VA receives a written reassessment request under proposed revisions to § 71.30(c), as discussed above. Other proposed changes to § 71.40(c)(4)(ii)(C), such as VA's proposed revisions to the regulatory text regarding the effective date for a decrease in the monthly stipend payment based on a reassessment, as well as relocation of provisions related to the retroactive stipend payment for Primary Family Caregivers of certain legacy participants and legacy applicants, would primarily maintain the current regulatory requirements but reorganize how those requirements are reflected in VA's regulations. Each of these proposed changes are discussed in more detail below.

i. 38 CFR 71.40(c)(4)(ii)(C)(1) and (2)—Current Requirements for Monthly Stipend Payment Increases and Decreases

Currently, paragraphs (1) and (2) of § 71.40(c)(4)(ii)(C) set forth different requirements for monthly stipend payment increases and decreases resulting from reassessments based on whether the eligible veteran is or is not a legacy participant or legacy applicant as those terms are defined in § 71.15. If the eligible veteran is a legacy participant or legacy applicant (that is, the eligible veteran meets the requirements of § 71.20(b) or (c)), monthly stipend payment increases and decreases resulting from reassessments are governed by current § 71.40(c)(4)(ii)(C)(2). For all other eligible veterans (that is, those determined eligible for PCAFC under the § 71.20(a) eligibility criteria that went into effect on October 1, 2020, and who are not a legacy participant or legacy applicant meeting the

²¹ Executive Order for 2019 Pay Schedules, OPM, available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/executive-order-for-2019-pay-schedules/> (last visited Feb. 8, 2024); Executive Order 13866, Adjustments of Certain Rates of Pay, The White House, March 28, 2019, available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/retroactive-pay-executive-order-2019-adjustments-of-certain-rates-of-pay.pdf> (last visited Feb. 8, 2024).

requirements of § 71.20(b) or (c), respectively), monthly stipend increases and decreases resulting from reassessments are governed by current § 71.40(c)(4)(ii)(C)(1).

Under current § 71.40(c)(4)(ii)(C)(1), if the eligible veteran meets the requirements of § 71.20(a) only and does not meet the requirements of § 71.20(b) or (c), and a reassessment results in an increase in the Primary Family Caregiver's monthly stipend payment, the increase takes effect as of the date of the reassessment.

§ 71.40(c)(4)(ii)(C)(1)(i). For such an eligible veteran, in the case of a reassessment that results in a decrease in the Primary Family Caregiver's monthly stipend payment, the decrease takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver.

§ 71.40(c)(4)(ii)(C)(1)(ii). The effective date of the decrease is no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Primary Family Caregiver. *Id.*

Currently, paragraphs (i) and (ii) of § 71.40(c)(4)(ii)(C)(2) address monthly stipend payment increases and decreases, respectively, resulting from reassessments in the case of legacy participants and legacy applicants, that is, eligible veterans who meet the requirements of § 71.20(b) or (c).

Current paragraph (i) of § 71.40(c)(4)(ii)(C)(2) states that in the case of a reassessment that results in an increase in the monthly stipend payment, the increase takes effect as of the date of the reassessment. In such a case, the Primary Family Caregiver may also be eligible for a retroactive payment. The requirements governing this retroactive payment are contained in current § 71.40(c)(4)(ii)(C)(2)(i). VA provides a detailed description of these requirements later in this rulemaking in VA's discussion of its proposal to relocate these provisions to a revised § 71.40(c)(4)(iii).

Current paragraph (ii) of § 71.40(c)(4)(ii)(C)(2) states that in the case of a reassessment that results in a decrease in the monthly stipend payment and the eligible veteran meets the requirements of § 71.20(a), that is, the legacy participant or legacy applicant meets PCAFC eligibility criteria in § 71.20(a) that became effective on October 1, 2020, the new monthly stipend amount for the Primary Family Caregiver under § 71.40(c)(4)(i)(A) takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will

be no earlier than 60 days after October 1, 2025. § 71.40(c)(4)(ii)(C)(2)(ii). On October 1, 2025, VA will provide advanced notice of its findings to the eligible veteran and Primary Family Caregiver. *Id.*

ii. Proposed 38 CFR 71.40(c)(4)(ii)(C)(1) and (2)—Reorganization of Monthly Stipend Payment Requirements Based on Reassessment

Proposed § 71.40(c)(4)(ii)(C)(1) and (2) would continue to address increases and decreases in the monthly stipend payment that result from reassessments. However, to improve clarity and succinctness, VA proposes to reorganize paragraphs (1) and (2) to separately address monthly stipend payment increases (in revised paragraph (1) with the heading “Increases”) and monthly stipend payment decreases (in revised paragraph (2) with the heading “Decreases”) that may result from reassessments conducted by VA. Rather than separately addressing such increases and decreases based on whether an eligible veteran meets the requirements of § 71.20(a) only or also meets the requirements of § 71.20(b) or (c), proposed § 71.40(c)(4)(ii)(C)(1) and (2) would include provisions regarding monthly stipend payment increases and decreases, respectively, with respect to all eligible veterans and their Primary Family Caregivers.

A. Proposed 38 CFR 71.40(c)(4)(ii)(C)(1)—Effective Date of Monthly Stipend Payment Increases Based on a Reassessment

Proposed § 71.40(c)(4)(ii)(C)(1) would have the heading “Increases” and would exclude references to eligibility requirements and would instead explain that in the case of a reassessment that results in an increase in the monthly stipend payment, the increase takes effect on the earlier of the dates described in paragraphs (i) and (ii). This proposed paragraph would apply to all eligible veterans and their Primary Family Caregivers in the case of a reassessment that results in a monthly stipend payment increase—not just those described in current § 71.40(c)(4)(ii)(C)(1) (that is, those who meet the requirements of § 71.20(a) only and not § 71.20(b) or (c)).

As proposed in paragraph (c)(4)(ii)(C)(1)(i), the first of these two dates would be the date VA issues notice of the decision. This would be referring to the notice of the decision regarding the increase in the monthly stipend payment as a result of the reassessment. Under current § 71.40(c)(4)(ii)(C)(1)(i) and (2)(i), if a reassessment results in an increase in

the monthly stipend payment, the increase takes effect as of the date of the reassessment. Since implementing this provision, VA has interpreted “the date of the reassessment” to mean the date a reassessment determination is made, which aligns with “the date VA issues notice of the decision”. A reassessment can occur over multiple days, but it is not complete until the reassessment determination is made, and VA issues notice of its decision. As the current reference to “date of the reassessment” could be interpreted differently, such as the date VA initiates a reassessment or the date VA completes the final evaluation required for a reassessment, VA proposes to revise the current language to remove ambiguity and clarify VA's interpretation. VA proposes to revise the language to reflect that it is the date VA issues notice of the decision, not the date the reassessment was initiated, or the final evaluation required for the reassessment was completed, that serves as the effective date of the increase in the monthly stipend payment.

Proposed paragraph (ii) would refer to the second of the two dates in proposed § 71.40(c)(4)(ii)(C)(1) on which the increase in the monthly stipend payment may take effect. This would be the date VA received the written request for a reassessment pursuant to proposed § 71.30(c) from the eligible veteran or the Primary Family Caregiver of the eligible veteran. As discussed in the context of proposed changes to § 71.30, VA is proposing to amend § 71.30(c) to provide eligible veterans and Primary Family Caregivers the opportunity to submit a written request for a reassessment. Proposed § 71.40(c)(4)(ii)(C)(1)(ii) would allow for a retroactive increase in the monthly stipend payment back to the date VA received the written request for reassessment pursuant to proposed § 71.30(c), if it is the earlier date under proposed § 71.40(c)(4)(ii)(C)(1). If adopted as proposed, this effective date provision would apply only to reassessment requests under proposed § 71.30(c) that are received by VA on or after the effective date of the final rule adopting the provision, and VA would clarify that in proposed paragraph (c)(4)(ii)(C)(1)(ii). This would mean that the retroactive effective date back to the date of receipt of a request for reassessment for increases in the monthly stipend payment would not apply to requests submitted before the effective date of a final rule adopting this proposal, even if such a request met the requirements in proposed § 71.30(c). Additionally, this proposed paragraph

would only apply to reassessments that result in an increase in the monthly stipend payment. Proposed § 71.40(c)(4)(ii)(C)(2), discussed in more detail below, would provide the effective date for a decrease in the monthly stipend payment based on a reassessment, including a reassessment requested pursuant to proposed § 71.30(c).

Proposed § 71.40(c)(4)(ii)(C)(1)(ii) would account for the period of time between the date VA receives a written request for reassessment under proposed § 71.30(c) and the date VA issues notice of its decision regarding the monthly stipend payment increase resulting from the reassessment. VA would strive to conduct reassessments in a timely manner following a request for a reassessment under proposed § 71.30(c), if adopted in a final rule. However, if VA experiences any delay in conducting a reassessment requested under proposed § 71.30(c), for example, because VA is responding to a surge of new applications and/or requests for reassessment following the effective date of the final rule, proposed § 71.40(c)(4)(ii)(C)(1)(ii) would ensure any monthly stipend payment increase resulting from a written request for reassessment under proposed § 71.30(c) would become effective no later than the date VA received such request. Proposed § 71.40(c)(4)(ii)(C)(1)(ii) would apply to all PCAFC participants, regardless of whether the eligible veteran is or is not a legacy participant or legacy applicant, and it would help ensure equity among eligible veterans and Primary Family Caregivers across PCAFC when a reassessment requested under proposed § 71.30(c) results in a monthly stipend payment increase. Even if there is variability among VA facilities in their ability to conduct reassessments requested under proposed § 71.30(c) in a timely manner, under proposed § 71.40(c)(4)(ii)(C)(1)(ii), the Primary Family Caregiver would receive any increased monthly stipend payment based on the reassessment back to the date VA received the request under proposed § 71.30(c). For example, if a final rule adopting this proposal becomes effective on March 31 and VA Facility A receives a written request for reassessment under proposed § 71.30(c) on April 1, and then on May 1, issues notice that the reassessment resulted in an increased monthly stipend payment, the effective date of the increase would be April 1. If VA Facility B also receives a request for reassessment under proposed § 71.30(c) on April 1, but because of a surge in such requests for reassessments, VA Facility B is not able

to complete such reassessment right away, and on July 1 issues notice that the reassessment resulted in an increased monthly stipend payment, the effective date of the increase would still be April 1. As stated above, under proposed § 71.40(c)(4)(ii)(C)(1), the increase to the monthly stipend payment resulting from a reassessment would take effect on the earlier of either the date VA issues notice of the decision or the date VA received the written request for the reassessment pursuant to § 71.30(c) from the eligible veteran or the Primary Family Caregiver of the eligible veteran, as would be set forth in proposed paragraphs (i) and (ii), respectively.

Because of the changes VA proposes to make in paragraph (c)(4)(ii)(C)(1), VA proposes to revise the first sentence in the note to paragraph (c)(4)(ii)(C)(2) which refers to increases under paragraph (c)(4)(ii)(C)(2)(i) of this section or decreases under paragraph (c)(4)(ii)(C)(2)(ii) of this section. VA proposes to remove the referenced language and in its place, add the phrase “adjusted pursuant to (c)(4)(ii)(C)”. This would be a technical and conforming edit to update the note to paragraph (c)(4)(ii)(C)(2) and provide the reader with one citation for the applicable paragraphs governing both monthly stipend payment increases and decreases resulting from a reassessment. In addition, VA proposes to remove references to October 1, 2025 in the note to paragraph (c)(4)(ii)(C)(2) and would add in their place, the date that is 18 months after the effective date of a final rule implementing this rulemaking. This change would align with VA’s proposal to extend the transition period for members of the legacy cohort as discussed earlier in this rulemaking.

B. Proposed § 71.40(c)(4)(ii)(C)(2)—Effective Date of Monthly Stipend Payment Decrease Based on a Reassessment

Proposed paragraph (c)(4)(ii)(C)(2) would address instances in which a reassessment results in a decrease in the monthly stipend payment. Proposed paragraph (c)(4)(ii)(C)(2)(i) would address the effective date for such decreases generally, by incorporating the requirements from current § 71.40(c)(4)(ii)(C)(1)(ii) and would have the heading “General”. Proposed paragraph (c)(4)(ii)(C)(2)(ii) would set forth the effective date for such decreases specifically with respect to eligible veterans who meet the requirements of § 71.20(a) and (b) or (c) (that is, those legacy participants and legacy applicants who meet the eligibility criteria in proposed

§ 71.20(a)) by incorporating the requirements from current § 71.40(c)(4)(ii)(C)(2)(ii) and would have the heading “Resulting from a legacy reassessment”.

Proposed paragraph (c)(4)(ii)(C)(2)(i) would be almost identical to current § 71.40(c)(4)(ii)(C)(1)(ii), except that the paragraph would include new language referring to the effective date provision in proposed paragraph (c)(4)(ii)(C)(2)(ii) that would be unique to legacy participants and legacy applicants. Accordingly, proposed paragraph (c)(4)(ii)(C)(2)(i) would state that except as provided in § 71.40(c)(4)(ii)(C)(2)(ii), in the case of a reassessment that results in a decrease in the monthly stipend payment, the decrease takes effect as of the effective date provided in VA’s final notice of such decrease to the eligible veteran and Primary Family Caregiver. It would also state that the effective date of the decrease will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Primary Family Caregiver. There would be no substantive change in this effective date with respect to eligible veterans who meet the requirements of § 71.20(a) only (that is, eligible veterans who are not legacy participants or legacy applicants meeting the requirements of § 71.20(b) or (c), respectively) as provided in current paragraph (c)(4)(ii)(C)(1)(ii).

Proposed paragraph (c)(4)(ii)(C)(2)(ii) would incorporate the language from current § 71.40(c)(4)(ii)(C)(2)(ii) but VA would add a reference to § 71.20(b) or (c) to clarify that this paragraph would apply with respect to eligible veterans who are legacy participants and legacy applicants and to update references to the transition period for the legacy cohort to refer to the date that is 18 months after the effective date of a final rule implementing this rulemaking as discussed earlier in this rulemaking. Also, to ensure consistency with terminology used elsewhere in part 71, proposed paragraph (c)(4)(ii)(C)(2)(ii) would refer to the “monthly stipend payment” instead of the term “stipend amount” that appears in the first sentence of current § 71.40(c)(4)(ii)(C)(2)(ii). Accordingly, proposed paragraph (c)(4)(ii)(C)(2)(ii) would state that with respect to an eligible veteran who meets the requirements of § 71.20(a) and (b) or (c), in the case of a reassessment that results in a decrease in the Primary Family Caregiver’s monthly stipend payment, the new monthly stipend payment under § 71.40(c)(4)(i)(A) takes effect as of the effective date provided in VA’s final notice of such decrease to the eligible veteran and Primary Family

Caregiver. It would also state that the effective date of the decrease will be no earlier than 60 days after the date that is 18 months after the effective date of a final rule under this rulemaking and that on such effective date, VA will provide advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

As a result of these proposed changes to the language in proposed paragraphs (c)(4)(ii)(C)(2)(i) and (ii), VA would also revise paragraph (c)(4)(ii)(C)(2) to remove the current language (“If the eligible veteran meets the requirements of § 71.20(b) or (c), the Primary Family Caregiver’s monthly stipend may be adjusted as follows:”) as it would no longer apply. VA would also add a heading in proposed paragraph (c)(4)(ii)(C)(2) that states “Decreases” to further describe the provisions proposed in § 71.40(c)(4)(ii)(C)(2)(i) and (ii).

iii. Proposed Technical Edits to § 71.40(c)(4)(ii)

VA proposes to add headings to the paragraphs of § 71.40(c)(4)(ii) to assist the reader in identifying provisions. VA proposes to add the heading “OPM updates” to § 71.40(c)(4)(ii)(A), the heading “Relocation” to § 71.40(c)(4)(ii)(B), the heading “Reassessments” to § 71.40(c)(4)(ii)(C), and the heading “Effective dates” to § 71.40(c)(4)(ii)(D).

c. Legacy Retroactive Monthly Stipend Payments

Since October 1, 2020, VA has provided the retroactive payments authorized under § 71.40(c)(4)(ii)(C)(2)(i) to ensure that Primary Family Caregivers of legacy participants and legacy applicants determined to meet the requirements of current § 71.20(a) receive the benefit of any monthly stipend payment increase resulting from a reassessment as of October 1, 2020 (the effective date of the July 31, 2020 Final Rule)—regardless of when during the five-year period after October 1, 2020 their reassessment is completed. *See* 85 FR 13389 (March 6, 2020). Because it is currently within the five-year period in which VA intended to reassess legacy participants, legacy applicants, and their Family Caregivers, some reassessments have not yet occurred while others need to be repeated as a result of the *Veteran Warriors* decision. *See* 87 FR 57602 (September 21, 2022). This means there are Primary Family Caregivers of legacy participants and legacy applicants who may still qualify for a retroactive monthly stipend payment. To promote equity among all Primary Family Caregivers of legacy participants and

legacy applicants, VA proposes to continue providing these retroactive monthly stipend payments, which are authorized when a reassessment described in current § 71.40(c)(4)(ii)(C)(2)(i) results in an increase in the monthly stipend payment. VA proposes to set forth the framework for these retroactive monthly stipend payments in a standalone paragraph in § 71.40(c)(4)(iii) that is distinct from the regulatory text in § 71.40(c)(4)(ii)(C) governing monthly stipend payment increases and decreases resulting from a reassessment. VA’s proposed revisions seek to maintain the criteria that VA applies under current § 71.40(c)(4)(ii)(C)(2)(i) for retroactive monthly stipend payments, but also account for proposed changes to §§ 71.15 and 71.20(a)(3) in this proposed rule.

VA proposes to redesignate current paragraphs (c)(4)(iii) and (iv) of § 71.40, as paragraph (c)(4)(iv) and a new paragraph (c)(4)(v), respectively. These paragraphs explain that § 71.40 shall not be construed to create an employment relationship between the Secretary and an individual in receipt of assistance or support under part 71 and that VA will periodically assess the monthly stipend rate to determine whether it meets certain statutory requirements, respectively. VA proposes to add a new paragraph (c)(4)(iii) with the heading “*Legacy retroactive monthly stipend payment*” to account for the retroactive monthly stipend payments authorized under current § 71.40(c)(4)(ii)(C)(2)(i). The introduction text of proposed paragraph (c)(4)(iii) would state that VA will consider eligibility for a one-time legacy retroactive monthly stipend payment in accordance with this paragraph as part of the legacy reassessment conducted under § 71.30(e) of this part.

This proposed change would maintain the current requirements associated with retroactive monthly stipend payments as set forth in current § 71.40(c)(4)(ii)(C)(2)(i). This would include the eligibility criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) that VA has applied in place of the term *need for supervision, protection, or instruction* in 38 CFR 71.20(a)(3) and 71.40(c)(4)(i)(A)(2) since *Veteran Warriors*. Because these specific eligibility criteria VA applies under §§ 71.20(a)(3) and 71.40(c)(4)(i)(A)(2) would be replaced by new regulations if this proposed rule were adopted as final, VA proposes to maintain these specific eligibility criteria in the regulation text of proposed paragraphs (A) and (C)(2) of proposed § 71.40(c)(4)(iii) for purposes of

determining eligibility for the retroactive monthly stipend payment under this paragraph. Maintaining the specific eligibility criteria that are in place today would ensure that VA applies the same criteria when determining eligibility for the retroactive monthly stipend payment for all Primary Family Caregivers of legacy participants and legacy applicants, as applicable, regardless of whether their eligibility for a retroactive monthly stipend payment (and the amount of such payment) is considered by VA before or after any regulation changes in this proposed rule take effect.

Accordingly, proposed § 71.40(c)(4)(iii) would set forth the specific criteria that VA currently applies to determine whether a legacy participant or legacy applicant is eligible under current § 71.20(a)(3), and whether their Primary Family Caregiver qualifies for the higher stipend level payment under current § 71.40(c)(4)(i)(A)(2). To be clear, as proposed, § 71.40(c)(4)(iii) would apply *only* for the purpose of determining eligibility for a one-time retroactive monthly stipend payment to Primary Family Caregivers of legacy participants and legacy applicants.

Proposed paragraph (A) of proposed § 71.40(c)(4)(iii) would set forth who may be eligible for a retroactive monthly stipend payment. Proposed paragraph (B) would incorporate the limitations from current § 71.40(c)(4)(ii)(C)(2)(i) on when the retroactive monthly stipend payment applies, with minor technical changes. Proposed paragraph (C) would set forth the amount of the retroactive payment authorized under current § 71.40(c)(4)(ii)(C)(2)(i) by incorporating the criteria VA applies to determine whether a Primary Family Caregiver qualifies for the higher stipend level payment under current § 71.40(c)(4)(i)(A). Each of these proposed paragraphs is addressed in more detail below.

In proposed § 71.40(c)(4)(iii)(A), VA would explain that, subject to proposed § 71.40(c)(4)(iii)(B), in the case of a reassessment that results in an increase in the Primary Family Caregiver’s monthly stipend payment pursuant to proposed paragraph § 71.40(c)(4)(ii)(C)(1), the Primary Family Caregiver may be eligible for a retroactive payment amount described in proposed paragraph § 71.40(c)(4)(iii)(C) if the eligible veteran is a legacy participant or legacy applicant and meets the criteria VA applies to determine eligibility under current § 71.20(a)(3) (which may include the criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) that VA has

applied since the definition of *need for supervision, protection, or instruction* was invalidated by *Veteran Warriors*). VA proposes to continue to require that legacy participants and legacy applicants be determined to meet the eligibility criteria in current 38 CFR 71.20(a)(3) as a prerequisite for their Primary Family Caregiver to qualify for a retroactive monthly stipend payment.²² Accordingly, proposed § 71.40(c)(4)(iii)(A) would set forth the criteria VA applies to determine eligibility under current § 71.20(a)(3) (that is, the criteria VA has applied since the definition of *need for supervision, protection, or instruction* was invalidated by *Veteran Warriors*). To make clear what those criteria are, proposed paragraph § 71.40(c)(4)(iii)(A) would refer to the eligible veteran being in need of personal care services for a minimum of six continuous months based on any one of the following: (1) an *inability to perform an activity of daily living* as such term is defined in current § 71.15; (2) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or (3) a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired. For additional discussion regarding these criteria, please see VA's discussion above regarding proposed § 71.20(a)(3).

Although VA is proposing to revise two of the seven eligibility criteria found in § 71.20 (criteria in paragraph (a)(3) and (7)), only the criteria that VA applies to determine eligibility under current § 71.20(a)(3) (which may include the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii)) would be included in proposed § 71.40(c)(4)(iii)(A). That is because legacy participants and legacy applicants would already have been determined to meet criteria set forth in current and proposed § 71.20(a)(7). By carrying forward these criteria for purposes of determining whether a Primary Family Caregiver of a legacy participant or legacy applicant qualifies for the retroactive stipend payment, VA would ensure the same criteria apply to such a payment, regardless of whether

the reassessment that results in a stipend increase occurs before or after the effective date of any final rule adopting changes to the regulations. The other eligibility criteria in § 71.20(a) would not be amended by this proposed rule, and thus, would not be included in proposed § 71.40(c)(4)(iii)(A).

Proposed paragraph § 71.40(c)(4)(iii)(B) would be identical to the last two sentences of current § 71.40(c)(4)(ii)(C)(2)(i). However, VA would make the following technical and conforming changes. First, proposed paragraph (B) would cite to the description of the retroactive payment in proposed new paragraph § 71.40(c)(4)(iii)(A), where applicable. Second, because VA proposes to add the criteria that VA has used in place of the definition of *need for supervision, protection, or instruction* in proposed § 71.40(c)(4)(iii)(A), VA would exclude the language that refers to the criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii), the definition of *need for supervision, protection, or instruction*, and the *Veteran Warriors* decision and would instead refer to the criteria in proposed 38 CFR 71.40(c)(4)(iii)(A). Finally, VA would remove the language “was completed by VA before March 25, 2022, and such reassessment”, as such language may inadvertently suggest that it excludes legacy participants, legacy applicants, and their Family Caregivers who did not have a first reassessment completed by VA before March 25, 2022, which was not VA's intent. These changes would maintain current practice and, as was discussed in VA's September 21, 2022 IFR, ensure that the Primary Family Caregivers of all legacy participants and legacy applicants meeting the requirements of current § 71.20(a) receive the benefit of any monthly stipend payment increase as of October 1, 2020, regardless of when the reassessment is completed prior to September 30, 2025. 87 FR 57606 (September 21, 2022). VA would, however, revise the current text to account for the proposed extended transition period for the legacy cohort and the timeline for completing legacy reassessments (as discussed earlier in this rulemaking). VA would replace references to the five-year period beginning on October 1, 2020 with language that reflects a period beginning on October 1, 2020 and ending on the date that is 18 months after the effective date of a final rule under this rulemaking.

With these changes, proposed § 71.40(c)(4)(iii)(B) would state that if there is more than one reassessment for an eligible veteran during the period beginning on October 1, 2020 and

ending on [18 months after EFFECTIVE DATE OF FINAL RULE], the retroactive payment described in proposed paragraph (c)(4)(iii)(A) applies only if the first reassessment during the aforementioned period results in an increase in the monthly stipend payment, and only as the result of the first reassessment during said period. Proposed § 71.40(c)(4)(iii)(B) would further state that notwithstanding the previous sentence, if the first reassessment during the period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE] did not result in an increase in the monthly stipend payment, the retroactive payment described in proposed paragraph (c)(4)(iii)(A) applies to the first reassessment initiated by VA on or after March 25, 2022 that applies the criteria in proposed § 71.40(c)(4)(iii)(A), if such reassessment results in an increase in the monthly stipend payment, and only as a result of such reassessment.

Proposed § 71.40(c)(4)(iii)(C) would incorporate the requirements from current § 71.40(c)(4)(ii)(C)(2)(i) regarding the amount of the retroactive payment, but with conforming and clarifying changes. First, because the effective date of the increase under proposed paragraph § 71.40(c)(4)(ii)(C)(1) could be either of the dates in proposed paragraphs (i) or (ii) of that proposed paragraph, instead of referring to the date of the increase as the “date of the reassessment”, VA would refer to the date of the increase as “the effective date of the increase under paragraph (c)(4)(ii)(C)(1) of this section”. Second, to improve clarity, VA would specify that the amount of the retroactive payment is any difference between the amounts set forth in new proposed paragraphs (1) and (2) of proposed paragraph (c)(4)(iii)(C). Accordingly, in proposed paragraph § 71.40(c)(4)(iii)(C), VA would explain that the retroactive payment amount described in proposed paragraph (c)(4)(iii)(A) would be any difference between the amounts in proposed paragraphs (1) and (2) of paragraph (c)(4)(iii)(C) for the time period beginning on October 1, 2020 up to the effective date of the increase under proposed paragraph (c)(4)(ii)(C)(1), based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on the effective date of the increase under proposed paragraph (c)(4)(ii)(C)(1) and the monthly stipend rate on such date.

Proposed paragraph (1) under § 71.40(c)(4)(iii)(C) would state the first amount that would be used to calculate

²² In the case that a legacy participant or legacy applicant is not determined to be eligible for PCAFC under current § 71.20(a)(3), their Primary Family Caregiver would not be eligible for an increase in their monthly stipend payment under current § 71.40(c)(4)(i)(A) and thus would not qualify for a retroactive monthly stipend payment under current § 71.40(c)(4)(ii)(C)(2)(i) or proposed § 71.40(c)(4)(iii). Instead, such a Primary Family Caregiver would continue to qualify for a monthly stipend payment as set forth in paragraphs (B) or (D) of § 71.40(c)(4)(i).

the retroactive payment amount—the amount the Primary Family Caregiver was eligible to receive under paragraph (c)(4)(i)(B) or (D) of § 71.40, whichever the Primary Family Caregiver received. Primary Family Caregivers eligible for a retroactive monthly stipend payment under proposed paragraph § 71.40(c)(4)(iii) would, up to that point, have been receiving a monthly stipend under § 71.40(c)(4)(i)(B) or (D), so VA would maintain in proposed paragraph § 71.40(c)(4)(iii)(C)(1) this same language from current paragraph § 71.40(c)(4)(ii)(C)(2)(i).

Proposed paragraph (2) under § 71.40(c)(4)(iii)(C) would include the second amount that would be used to calculate the retroactive payment amount. Consistent with the calculation of the monthly stipend payment under current § 71.40(c)(4)(i)(A), this amount would be the monthly stipend rate (as that term is defined in § 71.15) multiplied by 0.625 or 1.00. Under current § 71.40(c)(4)(i)(A), the monthly stipend payment is the monthly stipend rate multiplied by 0.625 unless the eligible veteran is unable to self-sustain in the community, in which case the monthly stipend rate is multiplied by 1.00. As VA proposes to remove the term *unable to self-sustain in the community* and its definition from § 71.15, proposed § 71.40(c)(4)(iii)(C)(2) would include the criteria from that definition, as VA has applied that term and its definition since the definition of *need for supervision, protection, or instruction* was invalidated in *Veteran Warriors*. Please see VA's earlier discussion on the higher stipend level criteria in proposed § 71.40(c)(4)(i)(A)(2) for additional discussion on how VA interpreted and applied that section and the basis for a determination that an eligible veteran is *unable to self-sustain in the community* since the *Veteran Warriors* decision.

Accordingly, proposed paragraph § 71.40(c)(4)(iii)(C)(2) would refer to the monthly stipend rate multiplied by 0.625, but also specify that if the eligible veteran meets at least one of the following criteria, the monthly stipend rate would be multiplied by 1.00: (i) the eligible veteran requires personal care services each time they complete three or more of the seven activities of daily living (ADL) listed in the definition of an “inability to perform an activity of daily living” as such term is defined in 38 CFR 71.15 (2021), and is fully dependent on a caregiver to complete such ADLs; (ii) the eligible veteran has a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury on a continuous basis; or (iii) the

eligible veteran has a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired on a continuous basis. Including this language in proposed § 71.40(c)(4)(iii)(C)(2) would maintain the same criteria that VA applies when determining the retroactive monthly stipend payment under current § 71.40(c)(4)(ii)(C)(2)(i). Maintaining these requirements would promote equity in calculating such payments among all Primary Family Caregivers who qualify to receive them, because the same requirements would apply regardless of whether the reassessment and retroactive monthly stipend payment determination occurs before or after the date that any regulation changes would take effect, if adopted as proposed. To be clear, proposed § 71.40(c)(4)(iii)(C)(2) would apply *only* for the purpose of calculating the retroactive monthly stipend payment for Primary Family Caregivers of legacy participants and legacy applicants when they are eligible to receive such a payment.

H. 38 CFR 71.45 Revocation and Discharge of Family Caregivers

In § 71.45, VA describes the bases for revocation and discharge of a Family Caregiver from PCAFC, the associated effective dates, and instances in which benefits are continued after revocation or discharge, as applicable. In this rulemaking, VA proposes several amendments to § 71.45 to address additional bases for revocation and discharge and to make other substantive and technical edits as explained below.

VA first proposes technical changes to § 71.45 to modify certain references to “days” to instead reference “months”. Specifically, VA proposes to make these changes in VA's regulations that authorize the continuation of caregiver benefits in certain cases of revocation and discharge. These changes would ensure VA's regulations are consistent with the manner in which VA calculates the monthly stipend payment during these continued benefit periods. For reference, the term monthly stipend rate is defined in § 71.15 to refer to the applicable OPM GS Annual Rate divided by 12. Pursuant to this definition, each Primary Family Caregiver's monthly stipend payment is the same amount each month, regardless of the number of days in the month. Accordingly, the IT system supporting CSP, CARMA, applies a monthly rate when VA calculates and issues monthly stipend payments to Primary Family Caregivers, including monthly stipend payments authorized during a period of

continued benefits following revocation and discharge under § 71.45. Although VA's regulations in § 71.45 currently refer to continuation of caregiver benefits for 30, 60, or 90 days, depending on the basis for revocation or discharge, VA currently calculates stipends for those time periods by equating 30, 60, and 90 days to one, two, and three months, respectively. This approach aligns with VA's current IT functionality and avoids manual processes that would be required to apply a prorated daily rate for 30-, 60-, or 90-day periods of continued caregiver benefits, which would be resource intensive and could result in delays and errors. VA believes that the costs associated with applying a prorated daily rate would be significant, especially when compared to the nominal differences between applying the monthly stipend rate as compared to a prorated daily rate in calculating stipends during periods of continued benefits. To ensure VA's regulations conform with current practice, VA proposes to replace references to 30, 60, and 90 days with one, two, and three months, respectively, in the context of § 71.45 provisions that address the continuation of caregiver benefits after revocation or discharge. VA identifies these specific proposed changes throughout the discussion below on proposed changes to § 71.45, where applicable.

1. Proposed Revisions to § 71.45(a) Regarding Revocation of a Family Caregiver

VA proposes to revise § 71.45(a) to add a basis for revocation of a Family Caregiver and, in § 71.45(a)(3), to revise the time period for continuing benefits and to remove the opt out provision.

a. Proposed Basis for Revocation When an Eligible Veteran or Family Caregiver No Longer Resides in a State

Current § 71.45(a)(1) establishes the bases for revocation of a Family Caregiver, and paragraphs (i) through (iii) of § 71.45(a)(1) set forth the bases on which VA may revoke the designation of a Family Caregiver—for cause, noncompliance, and VA error, respectively. VA proposes to add another basis for revocation of a Family Caregiver under a new paragraph (iv) of § 71.45(a)(1).

Proposed § 71.45(a)(1)(iv) would state that VA will revoke the designation of a Family Caregiver when the eligible veteran or Family Caregiver no longer resides in a State. In addition, VA proposes to include a note that states that if an eligible veteran no longer resides in a State, VA will revoke the

designation of each of the eligible veteran's Family Caregivers. As explained above, VA proposes to define the term State in § 71.15 (consistent with the definition of such term in 38 U.S.C. 101(20)). Therefore, the term State in proposed § 71.45 (that is, in proposed § 71.45(a)(1)(iv) and in proposed § 71.45(a)(2)(v), discussed below) would have the meaning set forth in proposed § 71.15 and 38 U.S.C. 101(20).

As explained in current 38 CFR 71.10(b), benefits under PCAFC and PGCSS are provided only to those individuals residing in a State as that term is defined in 38 U.S.C. 101(20). Therefore, an individual residing outside a State is not eligible for PCAFC or the benefits associated with PCAFC, and VA currently revokes the designation of the Family Caregiver when the Family Caregiver or the eligible veteran no longer resides in a State, consistent with 38 CFR 71.10(b). Because current § 71.45 does not contain a specific basis for revocation or discharge based on the Family Caregiver or eligible veteran no longer residing in a State, unless another basis of revocation or discharge applies pursuant to § 71.45(f), revocation on this basis is carried out pursuant to current § 71.45(a)(1)(ii)(E), which is a "catch-all category" for requirements under part 71 that are not otherwise accounted for in § 71.45(a) or (b). 85 FR 13396 (March 6, 2020). VA explained in its March 6, 2020 Proposed Rule that, if VA found that "this basis for revocation is frequently relied upon, then VA would consider proposing additional specific criteria for revocation or discharge under this section in a future rulemaking." *Id.* While the frequency of cases in which a PCAFC participant has moved and resided outside of a State has not been exceedingly high, such instances have occurred with enough frequency that VA believes a specific basis for revocation should apply. This change, if adopted, would help ensure transparency regarding revocation when a PCAFC participant resides outside of a State and, along with proposed § 71.45(a)(2)(v), identify the specific requirements associated with revocation on this basis. VA also asserts that this proposal would improve VA's ability to track the frequency of revocation on this basis. Thus, through this rulemaking, VA proposes to add a basis for revocation based on the eligible veteran or Family Caregiver no longer residing in a State.

VA proposes to establish this as a basis for revocation rather than a basis for discharge. This is because, as discussed in VA's March 6, 2020

Proposed Rule, the term "discharge" is commonly used in health care settings to describe the process that occurs when a patient no longer meets the criteria for the level of care being provided or when a patient is transferred to another facility or program to receive care. *See* 85 FR 13394 (March 6, 2020). VA further explained that revocation would apply to removals based on a VA error or a deliberate action or inaction on the part of the eligible veteran or Family Caregiver. *Id.* Because residing outside of a State is an action taken by an eligible veteran, Family Caregiver, or both, VA believes revocation is the appropriate categorization for this new basis.

Proposed § 71.45(a)(1)(iv) would include a note specifying, consistent with current practice, that in such instances when the eligible veteran no longer resides in a State, VA would revoke the designation of each of the eligible veteran's Family Caregivers. This is because approval and designation of a Family Caregiver is conditioned upon the eligible veteran remaining eligible for PCAFC. *See* 38 CFR 71.25(f). If the veteran or servicemember is no longer eligible for PCAFC, VA would have no basis to continue providing PCAFC benefits to their caregiver(s). Consistent with all other bases for revocation and discharge, if the eligible veteran no longer meets PCAFC eligibility criteria, each of the approved and designated Family Caregivers of the eligible veteran are discharged or revoked as appropriate. However, if a Family Caregiver no longer resides in a State, the eligible veteran could remain eligible for PCAFC if the eligible veteran and at least one Family Caregiver continues to reside in a State.

Current § 71.45(a)(2) explains that benefits available through PCAFC will continue to be provided to the Family Caregiver until the date of revocation and further sets forth the revocation date for the various revocation bases under § 71.45(a)(1).

In order to address the additional basis for revocation VA proposes in paragraph § 71.45(a)(1)(iv), as described above, VA also proposes to add a new paragraph § 71.45(a)(2)(v) to set forth the revocation date in the case of revocation on the basis of a PCAFC participant no longer residing in a State. Proposed § 71.45(a)(2)(v)(A) would explain that in the case of a revocation based on § 71.45(a)(1)(iv) (that is, when the eligible veteran or Family Caregiver no longer resides in a State), the date of revocation would be the earlier of the following dates, as applicable: (1) the date the eligible veteran no longer

resides in a State; or (2) the date the Family Caregiver no longer resides in a State. VA believes that it is reasonable to stop benefits as of the earlier of these two dates because PCAFC is not available to individuals who reside outside of a State.

Proposed § 71.45(a)(2)(v)(B) would explain that if VA cannot identify the date the eligible veteran or Family Caregiver, as applicable, no longer resides in a State, the date of revocation based on paragraph (a)(1)(iv) of § 71.45 would be the earliest date known by VA that the eligible veteran or Family Caregiver, as applicable, no longer resides in a State, but no later than the date on which VA identifies the eligible veteran or Family Caregiver, as applicable, no longer resides in a State.

VA makes determinations that the Family Caregiver or eligible veteran no longer reside in a State based on information a CSP Team receives directly from the eligible veteran and/or Family Caregiver(s), or through information received indirectly such as through information available in medical record documentation. It is expected, and it has been VA's experience, that eligible veterans and/or their Family Caregiver(s) inform VA of a relocation out of a State prior to such move occurring so that VA staff can assist them with planning to transition out of PCAFC. VA staff may be able to offer support or resources regarding transferring the care of the eligible veteran, help facilitate medical appointments prior to an eligible veteran's move, or engage in other such activities to plan for participants to transition out of PCAFC. However, such direct notification to VA of an anticipated move outside of a State may not always occur. In some cases, CSP Teams have learned of a planned move not because the CSP Team was directly informed but through other means. For example, the eligible veteran may update the demographic information contained in their health record to reflect a new address which is outside of a State or may contact their primary care team to cancel an upcoming appointment due to their relocation outside of a State. Similarly, the Family Caregiver may inform an eligible veteran's health care provider after the relocation out of a State has occurred such that they have already moved and no longer reside in a State. This information is usually identified at the time the eligible veteran and Family Caregiver(s) are contacted to schedule a wellness contact.

Overpayments may result in cases of revocation based on proposed § 71.45(a)(1)(iv) and (a)(2)(v) because

information about an eligible veteran's and/or Family Caregiver's relocation out of a State is not always communicated in advance. An overpayment could result when there is a delay between the date an eligible veteran or Family Caregiver no longer resides in a State and the date that VA becomes aware of the relocation and initiates revocation accordingly. Pursuant to §§ 71.45(d) and 71.47, VA would seek to recover overpayments of benefits, as applicable, including in cases of revocation under proposed § 71.45(a)(1)(iv). This is the case when overpayments occur as a result of other bases of revocation or discharge. To prevent situations such as this, VA encourages eligible veterans and Family Caregivers to notify their CSP Team in advance of any changes that may impact their ongoing PCAFC eligibility.

VA would not provide a period of 60-day advanced notice or a period of continued benefits in the case of revocation under this proposed basis. This is because, as VA explained in its July 31, 2020 Final Rule, it is not feasible to provide PCAFC benefits outside of a State, and VA incorporates that discussion by reference here. *See* 85 FR at 46227 (July 31, 2020). VA believes that this proposed approach to effectuate the revocation pursuant to proposed § 71.45(a)(2)(v) and to recover any overpayments is reasonable. Discontinuing benefits as close as possible to the date the individual no longer resides in a State, if not on such date, would minimize the amount of overpayment subject to recoupment.

b. Proposed Revision to Time Period for Continuing Benefits and Removal of Opt Out in § 71.45(a)(3)

Current § 71.45(a)(3) describes the continuation of benefits in the case of revocation based on VA error under § 71.45(a)(1)(iii). Specifically, current paragraph (a)(3) states that in the case of revocation based on VA error under paragraph (a)(1)(iii) of § 71.45, caregiver benefits will continue for 60 days after the date of revocation unless the Family Caregiver opts out of receiving such benefits. Paragraph (a)(3) also states that continuation of benefits under this paragraph will be considered an overpayment and VA will seek to recover overpayment of such benefits as provided in § 71.47.

VA proposes to revise the first sentence in paragraph (a)(3) to correct for challenges VA has experienced associated with the current regulation text. As proposed, the first sentence of paragraph (a)(3) would state that in the case of revocation based on VA error under paragraph (a)(1)(iii) of § 71.45,

caregiver benefits will continue for two months after the date VA issues notice of revocation. VA explains proposed revisions below.

First, VA proposes to replace “after the date of revocation” with “after the date VA issues notice of revocation” in the regulation text. This revision would change the start date for the period of continued benefits. VA’s intent with the current language was to provide advance notice prior to terminating benefits, even if such benefits would be considered an overpayment and subject to recoupment. As explained in the March 6, 2020 Proposed Rule, “[t]his extended period of benefits would give the Family Caregiver time to adjust before benefits are terminated”, as “[i]n such cases, the Family Caregiver may have come to rely on the benefits that were authorized as a result of a VA error.” 85 FR 13397 (March 6, 2020). However, the phrase “60 days after the date of revocation” does not allow for the continuation of benefits if the effective date of revocation is in the past. For example, if in July, VA learns of and initiates revocation based upon a VA error that was made in January, the revocation date would be in January. Providing benefits for 60 days beyond the date of revocation would not allow for the advanced notice period that VA intended to authorize in § 71.45(a)(3) because the 60-day period would already have passed. By replacing “60 days after the date of revocation” with “two months after the date VA issues notice of revocation” in proposed § 71.45(a)(3), VA believes the proposed revised text would permit VA to provide advance notice before PCAFC benefits are discontinued and resolve this issue with the current regulation text and any confusion it has caused.

In the aforementioned example, under proposed paragraph (a)(3), if VA issues notice of revocation in July, the date of revocation would still be in January, but caregiver benefits would continue to be provided for two months after the date in July that VA issues notice of revocation. All benefits provided following the date of revocation in January would still be considered an overpayment, including the benefits provided during the two months after the date in July that VA issues notice of revocation, and VA seeks to recover overpayment of such benefits as provided in § 71.47. As provided in the last sentence of current § 71.45(a)(3), which VA does not propose to revise in this proposed rule, continuation of benefits under § 71.45(a)(3) will be considered an overpayment and VA will seek to recover overpayment of such benefits as provided in § 71.47.

Second, VA proposes to remove the language in § 71.45(a)(3) regarding the ability of the Family Caregiver to opt out of receiving continued benefits for 60 days after the date of revocation, in the case of revocation due to VA error. VA acknowledges that the number of revocations on this basis is very small. However, when they do occur, VA generally does not receive the Family Caregiver's decision to opt out of receiving continued benefits for the 60-day period, specifically the monthly stipend payment, with sufficient time for VA to stop the issuance of the monthly stipend payment. This means that VA, despite not knowing if the Primary Family Caregiver intends to opt out, must either proceed with issuing the continued monthly stipend payment or place a hold on issuing the payment until the Primary Family Caregiver's opt out decision is received, the latter of which effectively pauses the monthly stipend payment and thereby interferes with the intended purpose of this extended benefit period. Because it has proven to be unworkable, VA proposes to remove this language concerning the ability of the Family Caregiver to opt out of receiving continued benefits for the 60 days after the date of revocation. VA believes that the number of instances in which this basis for revocation applies will continue to be very small, and the costs associated with providing the option to opt out outweigh any benefits of maintaining this provision. The current manual process in place to execute the opt out is resource intensive and unsustainable. If this proposed change is adopted in a final rule, VA would ensure the change is communicated to PCAFC participants at the time of approval and designation of a Family Caregiver and periodically throughout their PCAFC participation. Again, continuation of benefits under this paragraph will be considered an overpayment and VA will seek to recover overpayment of such benefits as provided in § 71.47.

Finally, current paragraph (a)(3) provides for 60 days of continued benefits in the case of revocation based on VA error under paragraph (a)(1)(iii). However, VA proposes to remove the language “60 days” and in its place, add the language “two months”. VA’s rationale for this change is explained in more detail above and is proposed because of the manner in which VA calculates monthly stipend payments.

As proposed, paragraph (a)(3) would state that in the case of revocation based on VA error under paragraph (a)(1)(iii) of § 71.45, caregiver benefits will continue for two months after the date VA issues the notice of revocation. It

would also state that continuation of benefits under this paragraph will be considered an overpayment and VA will seek to recover overpayment of such benefits as provided in § 71.47.

2. Proposed Revisions to § 71.45(b) Regarding Discharge of a Family Caregiver

Paragraph (b) of § 71.45 addresses bases for discharge, dates of discharge, rescission of certain discharge requests, and continuation of benefits following discharge. Under paragraph (b)(1), VA proposes to make several changes regarding discharge due to the eligible veteran, including the addition of new bases for discharge. VA also proposes to add an additional basis for discharge due to the Family Caregiver under paragraph (b)(2) and to allow for rescission of a discharge request under paragraph (b)(3). These and other proposed changes to § 71.45(b) are discussed below.

a. Proposed Revisions to Discharge Based on Institutionalization of the Eligible Veteran

Current § 71.45(b)(1) addresses the bases for discharge due to the eligible veteran. Under this paragraph, a Family Caregiver will be discharged when the eligible veteran does not meet the requirements of § 71.20(a)(1) through (4) because of improvement in their condition or otherwise, or when the eligible veteran dies or is institutionalized. *See* § 71.45(b)(1)(i)(A) and (B). VA proposes to make several revisions to paragraph (b)(1) as it relates to discharge based on death or institutionalization.

First, VA would remove the last sentence from current § 71.45(b)(1)(i)(B) that explains that in the instance of institutionalization of the eligible veteran, notification to VA of such institutionalization must indicate whether the eligible veteran is expected to be institutionalized for 90 or more days from the onset of institutionalization. VA has found that it is not necessary for such notice to indicate whether the eligible veteran is expected to be institutionalized for 90 or more days from the onset of institutionalization as VA has other means of collecting this information. What is most critical is that VA receive notification of institutionalization of the eligible veteran. At that point, VA can work with the eligible veteran and/or Family Caregiver to obtain additional information that may be necessary for purposes of determining whether discharge should be initiated and also facilitate other appropriate actions, such

as referrals for additional support, as applicable.

VA therefore proposes to remove the requirement to indicate whether the eligible veteran is expected to be institutionalized for 90 days or more from the onset of institutionalization when providing notice to VA of such institutionalization as VA has found it to be unnecessary and potentially burdensome. VA does not anticipate any changes to PCAFC administration or the practical application of this basis of discharge if this requirement is removed as proposed.

While VA is proposing to remove the last sentence of § 71.45(b)(1)(i)(B), VA's regulations would still include the requirement that VA must receive notification of death or institutionalization of the eligible veteran as soon as possible but not later than 30 days from the date of death or institutionalization. Failure to provide timely notification of death or institutionalization of an eligible veteran, as required by § 71.45(b)(1)(i)(B), could result in overpayments of benefits to the Family Caregiver, which are subject to recoupment pursuant to § 71.47.

VA also proposes to make a clarifying edit to current § 71.45(b)(1)(ii)(B), which explains that for discharges based on paragraph (b)(1)(i)(B) (that is, those discharges due to the death or institutionalization of the eligible veteran), the date of discharge will be the earliest of the specified dates, as applicable, which includes under current paragraph (2), the date that institutionalization begins, if it is determined that the eligible veteran is expected to be institutionalized for a period of 90 days or more.

VA proposes to revise § 71.45(b)(1)(ii)(B)(2) to refer to the date that the institutionalization begins, if it is "known on such date" that the eligible veteran is expected to be institutionalized for a period of 90 days or more. VA proposes to revise the current language from "if it is determined" to "if it is known on such date" to make clear that the discharge would take effect on the date the institutionalization begins under paragraph (b)(1)(ii)(B)(2) only when it is known at the onset of institutionalization that such institutionalization will be for 90 days or more. This aligns with how VA has implemented paragraph (b)(1)(ii)(B)(2) since this provision became effective. Therefore, this proposed change would not result in a change to VA's current practice but would clarify how VA has implemented the date of discharge.

b. Proposed Additional Bases for Discharge of a Family Caregiver Due to the Eligible Veteran

Under § 71.45(b)(1), VA proposes to include two new bases for discharging the Family Caregiver. First, proposed § 71.45(b)(1)(i)(C) would include an existing basis for discharge based on a Family Caregiver's request for discharge due to domestic violence (DV) or intimate partner violence (IPV) perpetrated by the eligible veteran against the Family Caregiver. Current § 71.45(b)(3)(iii)(B) accounts for such basis within the context of discharge based on the request of the Family Caregiver. Such paragraph explains that if the Family Caregiver requests discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver, caregiver benefits will continue for 90 days after the date of discharge when any of the following can be established: (1) the issuance of a protective order, to include interim, temporary and/or final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran; (2) a police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver; or (3) documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (for example, physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist or counselor.

VA would move this basis from current § 71.45(b)(3)(iii) to new proposed paragraphs (b)(1)(i)(C), (b)(1)(ii)(C), and (b)(1)(iii)(B), as this basis for discharge is due to the eligible veteran. VA does not propose to make any substantive changes to the provisions in current paragraph (b)(3)(iii)(B). Using language in current paragraph (b)(3)(iii)(B), proposed paragraph (b)(1)(i)(C) would state that the Family Caregiver will be discharged based on the Family Caregiver requesting discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver. As discussed below, proposed paragraph (b)(1)(ii)(C) would provide the date of discharge on this basis, and proposed paragraphs (b)(1)(iii)(B)(1) through (3) would include the language in current paragraph (b)(3)(iii)(B)(1) through (3) regarding the documentation that would be required to be provided to VA for the

Family Caregiver to receive three months of continued benefits.

Because VA proposes to add new paragraph (b)(1)(i)(C), which would not require a VA determination but rather would be described as a request from the Family Caregiver, VA would make conforming edits to paragraphs (b)(1)(i) and (b)(1)(i)(A). In paragraph (b)(1)(i), VA would remove the language “when VA determines” and replace it with “based on”. Thus, as proposed, paragraph (b)(1)(i) would state that except as provided in paragraph (f) of § 71.45, the Family Caregiver will be discharged from Program of Comprehensive Assistance for Family Caregivers based on any of the following.

Paragraph (b)(1)(i)(A) currently addresses situations where the eligible veteran does not meet the requirements of § 71.20 because of improvement in the eligible veteran’s condition or otherwise. Because of VA’s proposed changes to paragraph (b)(1)(i), VA proposes to add language to make clear that paragraph (b)(1)(i)(A) is a VA determination. Thus, VA proposes to revise § 71.45(b)(1)(i)(A) to add “VA determines”. Proposed paragraph (b)(1)(i)(A) would state that except as provided in paragraphs (a)(1)(ii)(A) and (b)(1)(i)(B) of § 71.45, VA determines the eligible veteran does not meet the requirements of § 71.20 because of improvement in the eligible veteran’s condition or otherwise.

Because proposed paragraph (b)(1)(i) would set forth additional bases for discharge due to the eligible veteran (that is, bases in addition to those set forth in current paragraph (b)(1)(i)(A) and (B)), VA also proposes to remove the “or” at the end of current paragraph (b)(1)(i)(A) and to replace the period at the end of current paragraph (b)(1)(i)(B) with a semicolon. These proposed changes to paragraphs (b)(1)(i) and (b)(1)(i)(A), and to the punctuation at the end of paragraph (b)(1)(i)(B) would be technical revisions that are not intended to have a substantive impact.

The second basis VA proposes to add to § 71.45(b)(1)(i) is for cases where VA determines that unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran against the Family Caregiver. This would be added in a new proposed paragraph (b)(1)(i)(D). This basis of discharge would be applied by VA to initiate discharge due to DV or IPV by the eligible veteran against the Family Caregiver when VA determines that unmitigated personal safety issues exist for the Family Caregiver. Currently in such circumstances, VA may initiate

revocation (rather than discharge) of the Family Caregiver for cause or noncompliance, in which case extended benefits would not be available for the Family Caregiver. VA believes that including this new basis for discharge would better support Family Caregivers who may be determined no longer eligible for PCAFC because of factors resulting from DV or IPV, and proposes to include a provision for extended benefits as discussed below. The addition of this basis for discharge would provide a standard process when VA determines that unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV.

In VA’s experience working with participants in PCAFC, VA has identified instances of severe and/or escalating violence by the eligible veteran directed at the Family Caregiver, but the Family Caregiver does not request discharge and attempts to continue to provide personal care services to the eligible veteran. VA also identified instances where the existence or threat of violence impacts the Family Caregiver’s ability to provide required personal care services, and/or the eligible veteran’s willingness to receive personal care services from the Family Caregiver. VA has also witnessed the detrimental impacts that DV and IPV can have on the well-being of both the Family Caregiver as well as the eligible veteran, which can negatively impact the caregiving relationship. This is not to suggest that any act which may be considered violent or aggressive inherently impacts one’s ability to provide or receive personal care services. DV and IPV occur on a spectrum of frequency and severity and may range from verbal insults to physical violence. Such acts of aggression toward the Family Caregiver may occur when the Family Caregiver is attempting to provide personal care services, or at unrelated and isolated times.

It is not VA’s intent with proposed § 71.45(b)(1)(i)(D) to discharge a Family Caregiver solely due to the presence of DV or IPV. In fact, VA encourages identification and disclosure of DV or IPV and would continue to encourage such disclosure if this proposed change is adopted in a final rule so that additional support and resources can be made available to the Family Caregiver during PCAFC participation. The determination of whether to initiate discharge under this basis would be a clinical determination made by VA that would include consideration of the frequency and/or severity of the DV or IPV. VA would rely on clinical guidelines when making determinations

as to whether unmitigated personal safety issues exist for the Family Caregiver under proposed § 71.45(b)(1)(i)(D). These guidelines would include but are not limited to consideration of the risk of harm or lethality to the Family Caregiver, the impact of DV or IPV on the Family Caregiver’s ability to provide personal care services and the quality of such services. VA also would take into consideration whether the dynamic between the eligible veteran and Family Caregiver poses a safety risk to VA staff such that home visits as part of this program could not be safely conducted, as such a safety risk may be indicative of the frequency and/or severity of the DV or IPV.

VA may become aware of DV or IPV against a Family Caregiver through various means, including but not limited to during evaluations of PCAFC eligibility and wellness contacts, through disclosure to VA by the eligible veteran or Family Caregiver; through observations; through information provided to VA by family members, friends, providers, or others; or through chart reviews. If this proposed basis for discharge is adopted in a final rule and VA identifies DV or IPV, VA would attempt to work with the eligible veteran and Family Caregiver, as applicable, to identify supports and services that may be available to meet their needs, including potential referral to the local IPVAP coordinator, and safety planning.

VA proposes to add this new discharge basis for instances when DV or IPV by the eligible veteran against the Family Caregiver presents personal safety issues for the Family Caregiver, which are unmitigated. As in cases where the Family Caregiver requests discharge pursuant to proposed § 71.45(b)(1)(i)(C), this new proposed discharge basis under § 71.45(b)(1)(i)(D) would also be included under § 71.45(b)(1) because the reason for discharge would be due to the eligible veteran. This would make clear that the behaviors of the eligible veteran are the reason for the discharge on this basis.

VA welcomes and request public comment on this proposed basis for discharge when VA determines that unmitigated safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran and what VA should consider in making these determinations if this proposed basis is adopted in a final rule.

Additionally, because VA proposes to add additional bases for discharge due to the eligible veteran under new proposed paragraphs § 71.45(b)(1)(i)(C) and (D) (that is, when the Family

Caregiver requests discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver and when VA determines unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran against the Family Caregiver), VA proposes to add paragraphs (b)(1)(ii)(C) and (D) to address the dates of discharge associated with these two new proposed bases.

VA proposes to add § 71.45(b)(1)(ii)(C) to state that for discharge based on paragraph (b)(1)(i)(C) (that is, when the Family Caregiver requests discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver), the date of discharge would be the present or future date provided by the Family Caregiver or the date of the Family Caregiver's request for discharge if the Family Caregiver does not provide a date. Proposed § 71.45(b)(1)(ii)(C) would also state that if the request does not include an identified date of discharge, VA would contact the Family Caregiver to request a date, and if unable to successfully obtain this date, discharge would be effective as of the date of the request. This would be consistent with current paragraph (b)(3)(ii) which explains the discharge date in instances when the Family Caregiver requests discharge, including due to DV or IPV.

Proposed § 71.45(b)(1)(ii)(D) would explain that for discharge based on paragraph (b)(1)(i)(D) (that is, discharge of the Family Caregiver based on VA determining that unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran against the Family Caregiver), the date of discharge would be the date VA issues notice of its determination. This would refer to the date VA issues notice of its determination that unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran against the Family Caregiver, such that VA is discharging the Family Caregiver. VA proposes to use the date VA issues notice of its determination because in these situations VA would be making this determination as it sees significant risk to safety and the well-being of the Family Caregiver. Once a determination is made that unmitigated personal safety issues exist for the Family Caregiver, VA does not propose to provide a period of advanced notice prior to discharge. However, VA does not believe that, in general, a decision by VA to discharge on this basis would be unexpected. This is because, as discussed previously, VA encourages identification and disclosure

of DV or IPV at the earliest opportunity so that support and resources can be made available. VA would work with the Family Caregiver, and the eligible veteran, as applicable, to identify needs and options, and through these interactions, would discuss the impact such DV or IPV within the caregiving relationship could have on PCAFC participation. Further, VA would ensure that this basis for discharge is communicated to PCAFC participants upon approval and designation of a Family Caregiver, and periodically throughout their participation in PCAFC, as VA does with all other discharge and revocation reasons. If this basis for discharge is adopted in a final rule, VA would also ensure it is reviewed with the Family Caregiver and eligible veteran when DV or IPV is identified. It is VA's intent that the provision of such information would assist the Family Caregiver in making informed decisions related to their caregiving role.

Current § 71.45(b)(1)(iii) explains that caregiver benefits will continue for 90 days after the date of discharge for those Family Caregivers discharged pursuant to the bases in paragraph (b)(1)(i). Because of the additional bases for discharge that VA proposes to add to paragraph (b)(1)(i) (that is, when the Family Caregiver requests discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver and when VA determines unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran against the Family Caregiver), VA proposes to add new paragraphs (b)(1)(iii)(A) and (B) to address the continuation of benefits for discharges pursuant to proposed paragraph (b)(1)(i). VA would move the current language from § 71.45(b)(1)(iii) into a new proposed paragraph (b)(1)(iii)(A), which would state that except as provided in paragraph (b)(1)(iii)(B) of § 71.45, caregiver benefits will continue for three months after the date of discharge. This proposed text would be consistent with the current extension of benefits in paragraph (b)(1)(iii) for current discharges made pursuant to current § 71.45(b)(1)(i)(A) and (B). However, VA would replace "90 days" with "three months" to align with VA's process for calculating and paying monthly stipend payments. VA's rationale for this change is explained in more detail above.

Because proposed paragraph (b)(1)(iii)(B) would address continuation of benefits for discharges only under proposed paragraph (b)(1)(i)(C), as discussed below, the language in proposed paragraph (b)(1)(iii)(A) would

apply to discharges pursuant to new proposed § 71.45(b)(1)(i)(D) (that is, discharges based on VA determining that unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran against the Family Caregiver). Accordingly, Family Caregivers discharged pursuant to proposed paragraph (b)(1)(i)(D) would receive three months of caregiver benefits after the date of discharge, as set forth in new proposed paragraph (b)(1)(iii)(A). VA proposes to provide caregiver benefits for three months after the date of discharge on the basis of proposed § 71.45(b)(1)(i)(D) to align with the three months of continued benefits that VA would provide to Family Caregivers who request discharge due to DV or IPV pursuant to proposed § 71.45(b)(1)(i)(C) (so long as other requirements are met), as discussed below. This approach would ensure Family Caregivers are eligible for the same period of continued benefits when discharge is due to DV or IPV, regardless of whether VA initiates the discharge pursuant to proposed § 71.45(b)(1)(i)(D) or it is requested by the Family Caregiver under proposed § 71.45(b)(1)(i)(C).

VA recognizes that the monthly stipend payment is a benefit Primary Family Caregivers may rely upon. However, VA does not want the monthly stipend payment to serve as an incentive to remain in an unsafe caregiving relationship. Like the 90-day extension of benefits under current § 71.45(b)(3)(iii)(B), a three-month extension of benefits after discharge under proposed § 71.45(b)(1)(i)(D) may help to mitigate concerns a Family Caregiver may have about the loss of the monthly stipend payment and health care benefits. *See* 85 FR 13401 (March 6, 2020). VA believes that three months is an appropriate period of time to transition out of receiving PCAFC benefits in the case of discharge pursuant to proposed § 71.45(b)(1)(i)(D). Additionally, access to PCAFC benefits, such as counseling services, may be especially useful to support the Family Caregiver during the three-month period following discharge on the basis of proposed § 71.45(b)(1)(i)(D).

Proposed paragraph (b)(1)(iii)(B) would address continuation of benefits for discharges under proposed paragraph (b)(1)(i)(C) (that is, when the Family Caregiver requests discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver). Consistent with current § 71.45(b)(3)(iii), under proposed paragraph (b)(1)(iii)(B), in the case of discharge based on new proposed paragraph (b)(1)(i)(C), caregiver benefits

would continue for one month after the date of discharge unless one of the criteria in proposed paragraph (b)(1)(iii)(B)(1) through (3) is established, in which case caregiver benefits would continue for three months after the date of discharge. VA proposes to move to proposed paragraph (b)(1)(iii)(B) the language regarding continuation of benefits in instances when the Family Caregiver requests discharge due to DV or IPV that is included in current paragraph (b)(3)(iii)(B)(1) through (3), which describes the requirements for the provision of 90 days of continued benefits when the discharge is due to DV or IPV. This language would be added to proposed paragraphs (b)(1)(iii)(B)(1) through (3) with minor modifications. Current paragraphs (b)(3)(iii)(A) and (B) refer to the extended benefit time periods as “30 days” and “90 days”, respectively. However, consistent with VA’s previous explanation, VA proposes to use “one month” and “three months” to describe the time periods for the continued caregiver benefits in new proposed paragraph (b)(1)(iii)(B).

Thus, proposed paragraph (b)(1)(iii)(B) would state that in the case of discharge based on paragraph (b)(1)(i)(C) of § 71.45, caregiver benefits will continue for one month after the date of discharge. Proposed paragraph (b)(1)(iii)(B) would further state that notwithstanding the previous sentence, caregiver benefits will continue for three months after the date of discharge when any of the following can be established: (1) the issuance of a protective order, to include interim, temporary and/or final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran, (2) a police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver, or (3) documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (e.g., physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist, or counselor.

c. Proposed Additional Basis for Discharge of a Family Caregiver Due to the Family Caregiver

Current paragraph § 71.45(b)(2) describes conditions for discharge of the Family Caregiver due to the Family Caregiver. Current paragraph (b)(2)(i) addresses the only basis for such

discharge now—death or institutionalization of the Family Caregiver. VA proposes to revise paragraph (b)(2)(i) to add an additional basis for discharge due to the Family Caregiver being unable to provide personal care services, among other things, and to reorganize the bases for discharge into separate new paragraphs (A) and (B) of § 71.45(b)(2)(i).

This new proposed basis for discharge due to the Family Caregiver would account for instances in which VA determines the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements. To be approved and designated as a Family Caregiver, the individual must demonstrate the ability to carry out the specific personal care services, core competencies, and additional care requirements required by the eligible veteran under § 71.25(c)(2), so VA proposes to use the same language in describing this new basis for discharge in proposed § 71.45(b)(2)(i)(B). To clarify, a situation that would qualify for this new proposed discharge basis, in which a Family Caregiver is unable to carry out the enumerated actions, is intended to be different than a situation in which a Family Caregiver is unwilling to do so. A Family Caregiver who is unwilling to provide personal care services required by the eligible veteran would be subject to revocation pursuant to § 71.45(a)(1)(i)(D) (authorizing revocation for cause when VA determines that the Family Caregiver is unwilling to provide personal care services to the eligible veteran).

Additionally, VA does not presume a Family Caregiver’s inability to carry out the specific personal care services, core competencies, or additional care requirements needed by the eligible veteran is a matter of noncompliance under § 71.45(a)(1)(ii)(E). VA considers noncompliance to be the direct result of a deliberate action or inaction on the part of the eligible veteran or Family Caregiver. *See* 85 FR 13395 (March 6, 2020). Such inability may not be deliberate on the part of the Family Caregiver as such Family Caregiver may be unable to carry out the specific personal care services, core competencies, or additional care requirements despite making significant effort to do so. In these circumstances, for the reasons described below, VA believes a distinct basis for discharge is appropriate and should apply.

This new proposed basis for discharge would not add new criteria or make changes to how criteria are currently evaluated during reassessments. This

proposed change, if made final and effective, would allow VA to provide Family Caregivers with a period of advanced notice and a three-month period of extended benefits when the specific eligibility criteria are determined not to be met. Without this new basis, there is no standard period of extended benefits. As VA explained above, the term “discharge” is commonly used in health care settings to describe what happens when a patient no longer meets criteria for the level of care being provided. *See* 85 FR 13394 (March 6, 2020). Discharge may be appropriate when there is a change in circumstances, such as when VA identifies that the Family Caregiver is unable to carry out personal care services needed by the eligible veteran, which may be due to a decline in their abilities or a change in the eligible veteran’s needs. In each of these cases, the basis for the Family Caregiver not being able to carry out specific personal care services, core competencies or additional care requirements is due to changes in condition (of the eligible veteran or Family Caregiver). For example, a Family Caregiver may find themselves not able to adequately perform hands-on assistance with one or more ADL due to the increased amount of strength required as the eligible veteran’s conditions progress. In such instance, VA believes discharge under proposed § 71.45(b)(2)(i)(B) would be appropriate.

Because VA proposes to add this new basis for discharge due to the Family Caregiver in a new § 71.45(b)(2)(i)(B) and to include the basis for discharge based on death or institutionalization under a new § 71.45(b)(2)(i)(A), VA proposes to revise the introductory text in paragraph (b)(2)(i) to provide a general overview of discharge due to the Family Caregiver. Accordingly, as proposed, § 71.45(b)(2)(i) would state that except as provided in paragraph (f) of § 71.45, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers based on any of the bases for discharge due to the Family Caregiver which VA would list in proposed new paragraphs (A) and (B).

Except as explained below, VA proposes to add the remaining text in current § 71.45(b)(2)(i) in new paragraph (b)(2)(i)(A), which would explain that one basis for discharge under paragraph (b)(2)(i) is death or institutionalization of the Family Caregiver. VA would also include in proposed paragraph (b)(2)(i)(A) the note from current paragraph (b)(2)(i), which explains that VA must receive notification of death or institutionalization of the Family

Caregiver as soon as possible but not later than 30 days from the date of death or institutionalization. However, VA proposes to remove the last sentence of current paragraph (b)(2)(i), which states that notification of institutionalization must indicate whether the Family Caregiver is expected to be institutionalized for 90 or more days from the onset of institutionalization. Consistent with VA's rationale for removing this requirement in proposed revisions to § 71.45(b)(1)(i)(B), which addresses institutionalization of an eligible veteran, VA has found that this information is not necessary for such notice to indicate whether the individual is expected to be institutionalized for 90 days or more from the onset of institutionalization of a Family Caregiver. What is most critical is that VA receives notification of such institutionalization. Once VA has been notified, it can work with the eligible veteran and/or Family Caregiver to obtain additional information that may be necessary for purposes of determining whether discharge should be initiated and also facilitate other appropriate actions, such as referrals for additional support, as applicable. Thus, VA would remove the requirement for a notification of institutionalization to indicate whether the Family Caregiver is expected to be institutionalized for 90 or more days as it would be unnecessary. Also, while VA is proposing to remove the last sentence of current § 71.45(b)(2)(i), VA's regulations (at proposed § 71.45(b)(2)(i)(A)) would still include the requirement that VA must receive notification of death or institutionalization of the Family Caregiver as soon as possible but not later than 30 days from the date of death or institutionalization. Failure to provide timely notification of death or institutionalization of a Family Caregiver, as set forth in current § 71.45(b)(2)(i) and proposed § 71.45(b)(2)(i)(A), or an eligible veteran, as set forth in § 71.45(b)(1)(i)(B), could result in overpayments of benefits to the Family Caregiver, which are subject to recoupment pursuant to § 71.47.

Proposed new paragraph § 71.45(b)(2)(i)(B) would then explain the new additional basis for discharge. Proposed paragraph (B) would explain that a Family Caregiver would be discharged from PCAFC when VA determines the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements. Current § 71.45(b)(2)(ii) provides the date of discharge in cases of discharge based on death or institutionalization of the

Family Caregiver. As explained below, VA proposes to reorganize and revise the language in current § 71.45(b)(2)(ii) and to include in this paragraph VA's proposed discharge date that would apply to the additional basis for discharge in proposed § 71.45(b)(2)(i)(B).

First, VA proposes to keep the title of current paragraph (b)(2)(ii) (that is, "Discharge date"), but move the introductory sentence in current paragraph (b)(2)(ii) to a new paragraph (A) and clarify that it applies to discharges based on proposed paragraph (b)(2)(i)(A) (that is, discharges due to the death or institutionalization of the Family Caregiver). Thus, proposed (b)(2)(ii)(A) would state that in the case of discharge based on paragraph (b)(2)(i)(A) of § 71.45, the date of discharge will be the earliest of the following dates, as applicable. In proposed paragraphs (b)(2)(ii)(A)(1) through (3), VA would add the existing discharge date provisions in the case of death or institutionalization of the Family Caregiver found in current paragraphs (b)(2)(ii)(A) through (C). VA proposes to maintain that language, but make one change, as explained below.

Current § 71.45(b)(2)(ii)(B) states that the date of discharge may be the date that the institutionalization begins, if it is determined that the Family Caregiver is expected to be institutionalized for a period of 90 days or more. As explained above, VA proposes to move this language to proposed paragraph (b)(2)(ii)(A)(2). Consistent with, and for the same reasons provided in VA's discussion above regarding the proposed changes to similar language in § 71.45(b)(1)(ii)(B)(2), VA proposes to revise this language in its new paragraph (proposed paragraph (b)(2)(ii)(A)(2)) to replace "if it is determined" with "if it is known on such date".

Second, because VA is proposing to move language in current paragraph (b)(2)(ii)(B) to paragraph (b)(2)(ii)(A)(2), VA would add new proposed paragraph (b)(2)(ii)(B) to refer to the discharge date applicable to the additional proposed discharge basis in proposed paragraph (b)(2)(i)(B) (that is, discharge based on a VA determination that the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements). Proposed new paragraph (b)(2)(ii)(B) would state that in the case of discharge based on proposed paragraph (b)(2)(i)(B), the date of discharge would be provided in VA's final notice of such discharge to the eligible veteran and Family Caregiver, and that such date would be no earlier

than 60 days after VA provides advanced notice of its findings to the eligible veteran and Family Caregiver that the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements. If discharged under the proposed new basis in § 71.45(b)(2)(i)(B), Family Caregivers would have three months of continued benefits after the date of discharge, as explained below.

The proposed 60-day advanced notice period would allow a period of time between the date VA provides notice of its findings that the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements, and the date of discharge. Such time may allow for further training or evaluation of the Family Caregiver's abilities, as applicable. If the Family Caregiver is able to demonstrate the ability to carry out specific personal care services, core competencies, or additional care requirements prior to VA issuing final notice of discharge, this would obviate VA's issuance of a final notice. A 60-day advanced notice period would also be consistent with advanced notice periods provided in cases of revocation for noncompliance under § 71.45(a)(2)(iii) and discharge under § 71.45(b)(1)(ii)(A).

Because VA is proposing to move language in current paragraph (b)(2)(ii)(C) to proposed paragraph (b)(2)(ii)(A)(3), VA would remove paragraph (C) from § 71.45(b)(2)(ii).

Current § 71.45(b)(2)(iii) addresses continuation of benefits for Family Caregivers who are discharged pursuant to paragraph (b)(2) based on institutionalization of the Family Caregiver. In such cases, benefits continue for 90 days after the date of discharge. VA proposes to revise "90 days" to "three months" in this paragraph consistent with VA's previous explanation about this change. VA would further revise this paragraph to address continuation of benefits with respect to the new basis for discharge in proposed § 71.45(b)(2)(i)(B) (that is, if VA determines the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements), so that those discharged on such basis would also have three months of continued benefits.

Providing three months of continued benefits after the date of discharge would be consistent with VA's current and proposed regulations regarding continuation of benefits when VA initiates discharges. For example, this is consistent with the continued benefits for those discharged under current

paragraph (b)(2)(i) and proposed § 71.45(b)(2)(i)(A) based on institutionalization of the Family Caregiver. This would also be consistent with current § 71.45(b)(1)(iii) and proposed § 71.45(b)(1)(iii)(A) based on improvements in an eligible veteran's condition, among other reasons under § 71.45(b)(1)(i)(A). VA believes there are parallels between a Family Caregiver's discharge when there is a change in the eligible veteran's functioning under paragraph (b)(1)(i)(A) (for example, due to improvement in the eligible veteran's condition) and this new proposed discharge basis due to changes in the Family Caregiver's ability to carry out specific personal care services, core competencies, or additional care requirements needed by the eligible veteran. In both cases, the discharge of the Family Caregiver is not and would not be due to any intentional or willful action but rather a change in an individual's functioning. This change may be due to a change in an eligible veteran's care needs, a change in the abilities of the Family Caregiver, or both. VA therefore proposes to apply the same three-month period of continued benefits for both bases. Thus, in § 71.45(b)(2)(iii), VA proposes to replace "paragraph (b)(2)(ii)(B) or (C)" with "paragraphs (b)(2)(ii)(A)(2) or (3) or (b)(2)(ii)(B)" to refer to discharge based on institutionalization of the Family Caregiver and VA's new proposed basis of discharge based on a VA determination that the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements.

d. Conforming Revisions to § 71.45(b)(3) and Proposed Opportunity for Family Caregiver To Request Rescission

Current § 71.45(b)(3) describes conditions for discharge of the Family Caregiver by request of the Family Caregiver, and current paragraph (i) addresses requests for discharge by the Family Caregiver. As VA proposes to address requests of the Family Caregiver for discharge due to DV or IPV in proposed paragraphs (b)(1)(i)(C), (b)(1)(ii)(C), and (b)(1)(iii)(B), instead of paragraph (b)(3), VA would add a note to paragraph (b)(3)(i) to explain that requests of the Family Caregiver for discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver will be considered under paragraph (b)(1) of § 71.45. This would make clear to the public that, if changes to the regulations are adopted as proposed, such requests would be considered under paragraph (b)(1) and not paragraph (b)(3).

Current § 71.45(b)(3)(iii) sets forth requirements for the continuation of caregiver benefits for discharges under paragraph (b)(3). More specifically, current § 71.45(b)(3)(iii)(A) explains that except as provided in current paragraph (b)(3)(iii)(B) of § 71.45, caregiver benefits will continue for 30 days after the date of discharge, while current paragraph (b)(3)(iii)(B) addresses the continuation of caregiver benefits in instances of a Family Caregiver's request for discharge due to DV or IPV when certain documentation is established. As discussed above, VA is proposing to move the language in current § 71.45(b)(3)(iii)(B)(1) through (3) to proposed paragraphs (b)(1)(iii)(B)(1) through (3). Therefore, VA proposes to remove paragraphs (A) and (B) of § 71.45(b)(3)(iii) and revise paragraph (b)(3)(iii) to state that if the Family Caregiver requests discharge under this paragraph, caregiver benefits would continue for one month after the date of discharge. This would not be expected to be a substantive change because Family Caregivers discharged pursuant to § 71.45(b)(3) would continue to receive the same period of continued benefits—whether under proposed paragraph (b)(3)(iii) or proposed paragraphs (b)(1)(iii)(B). In addition, VA proposes to change "30 days" to "one month" consistent with VA's other proposed changes discussed above.

VA proposes to add new paragraph (iv) to paragraph (b)(3) entitled, "Rescission", to explain that VA will allow the Family Caregiver to rescind their request for discharge and be reinstated if the rescission is made within 30 days of the date of discharge. Proposed paragraph (b)(3)(iv) would further state that if the Family Caregiver expresses a desire to be reinstated more than 30 days from the date of discharge, a new joint application would be required, and that this ability to rescind requests for discharge would not apply to requests for discharge under paragraph (b)(1)(i)(C) of § 71.45. If adopted as proposed, this provision would be consistent with how VA handles and allows rescission of discharge requests from eligible veterans or their surrogates pursuant to current § 71.45(b)(4)(iii).

VA has found that it is not uncommon for an eligible veteran to request discharge of their Family Caregiver as a result of a disagreement or argument. Additionally, it is not uncommon for the eligible veteran to rescind such request a few days later. *See* 85 FR 13402 (March 6, 2020). The same situation could also result when the Family Caregiver requests discharge and then rescinds the request. VA proposes

to provide the same 30-day period that is given to eligible veterans to Family Caregivers to allow for rescission of such a request.

However, VA would also include language in proposed § 71.45(b)(3)(iv) to state that this paragraph would not apply to requests for discharge under proposed paragraph (b)(1)(i)(C). As explained above, proposed paragraph (b)(1)(i)(C) would address Family Caregiver requests for discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver. VA would not allow rescission of such requests under proposed paragraph (b)(3)(iv). This is because a request for discharge by the Family Caregiver due to DV or IPV would be considered an acknowledgement by the Family Caregiver that a safety concern exists, and such safety concern could impact the Family Caregiver's ability and/or willingness to provide the required personal care services to the eligible veteran, as well as the eligible veteran's willingness to receive personal care services from the Family Caregiver. Allowing the rescission of such request could perpetuate a situation where either or both the eligible veteran and Family Caregiver is at risk of harm. Additionally, in some cases when DV or IPV is known to exist, rescission of such request could be due to coercion or other forms of control of the Family Caregiver by the eligible veteran. Although proposed § 71.45(b)(3)(iv) would not allow a Family Caregiver to rescind a discharge request made under proposed paragraph (b)(1)(i)(C), the eligible veteran and Family Caregiver could re-apply for PCAFC by submitting a new joint application, at which point VA would consider their eligibility for PCAFC.

e. Proposed Revisions to Discharge of the Family Caregiver by Request of the Eligible Veteran or Eligible Veteran's Surrogate

Current § 71.45(b)(4) addresses discharge of the Family Caregiver if an eligible veteran or their surrogate requests discharge of the Family Caregiver. Current § 71.45(b)(4)(iv) explains that caregiver benefits will continue for 30 days after the date of discharge, which is the present or future date of discharge provided by the eligible veteran or eligible veteran's surrogate according to § 71.45(b)(4)(ii).

VA proposes to replace the reference to "30 days" with "one month" in § 71.45(b)(4)(iv) consistent with other proposed changes in § 71.45. VA's rationale for this change is explained in more detail above. VA also proposes to add language to § 71.45(b)(4)(iv) to

allow for three months of continued benefits when DV or IPV perpetrated by the eligible veteran against the Family Caregiver can be established based on the requirements in proposed paragraph (b)(1)(iii)(B)(1) through (3).

In the instance that DV or IPV is being perpetrated against the Family Caregiver by the eligible veteran and either one requests discharge, VA believes the same period of continued caregiver benefits should apply—regardless of whether the discharge is requested by the Family Caregiver under proposed paragraph (b)(1)(i)(C) or by the eligible veteran under paragraph (b)(4). If any of the requirements in proposed paragraph (b)(1)(iii)(B)(1) through (3) can be established, VA believes there should be a three-month period of extended benefits for the Family Caregiver after the date of discharge when the eligible veteran requests the discharge. VA believes this change would provide consistency across discharge bases.

To maintain consistency with proposed § 71.45(b)(1)(iii)(B), VA proposes to require the same information as is required under such proposed paragraph to establish that DV or IPV has occurred, when determining whether three months of continued caregiver benefits after the date of discharge should be provided to the Family Caregiver pursuant to proposed § 71.45(b)(4)(iv) when the eligible veteran or their surrogate requests discharge of the Family Caregiver. Thus, this would include by reference, (1) the issuance of a protective order, to include interim, temporary and/or final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran; (2) a police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver; or (3) documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (e.g., physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist, or counselor.

This proposed change to reference the requirements in proposed § 71.45(b)(1)(iii)(B)(1) through (3) under proposed § 71.45(b)(4)(iv) would ensure that a Family Caregiver that is discharged due to DV or IPV perpetrated by an eligible veteran against the Family Caregiver is given the same access to continued benefits when necessary documentation/requirements are met whether it is the Family Caregiver or the

eligible veteran (or their surrogate) that requests discharge from PCAFC.

Thus, as proposed, § 71.45(b)(4)(iv) would state that caregiver benefits will continue for one month after the date of discharge. It would also state that notwithstanding the previous sentence, caregiver benefits will continue for three months after the date of discharge when any of the requirements in paragraph (b)(1)(iii)(B)(1) through (3) can be established.

3. Multiple Bases for Revocation or Discharge

Paragraph (f) of § 71.45 describes how VA addresses instances in which there are multiple bases for revocation or discharge. Current § 71.45(f) states that in the instance that a Family Caregiver may be both discharged pursuant to any of the criteria in paragraph (b) of § 71.45 and have his or her designation revoked pursuant to any of the criteria in paragraph (a) of § 71.45, the Family Caregiver's designation will be revoked pursuant to paragraph (a). Further, it states that in the instance that the designation of a Family Caregiver may be revoked under paragraph (a)(1)(i) and paragraph (a)(1)(ii) or (iii) of § 71.45, the designation of the Family Caregiver will be revoked pursuant to paragraph (a)(1)(i), and that in the instance that the designation of a Family Caregiver may be revoked under paragraphs (a)(1)(ii) and (iii) of § 71.45, the designation of the Family Caregiver will be revoked pursuant to paragraph (a)(1)(iii). Finally, paragraph (f) states that in the instance that a Family Caregiver may be discharged under paragraph (b)(1), (2), (3), or (4) of § 71.45, the Family Caregiver will be discharged pursuant to the paragraph most favorable to the Family Caregiver.

VA proposes to revise § 71.45(f) to require that in instances where multiple bases exist, VA would apply the basis of revocation or discharge with the earliest effective date. VA would no longer necessarily effectuate a revocation over a discharge and would always apply the basis with the earliest effective date, whether the basis falls under discharge or revocation. As proposed, § 71.45(f) would state that in the instance a Family Caregiver may have their designation revoked or be discharged pursuant to one or more of the criteria in paragraphs (a) or (b) of § 71.45, respectively, the Family Caregiver's designation will be revoked or the Family Caregiver will be discharged, as applicable, pursuant to the basis that would result in the earliest date of revocation or discharge.

VA proposes this change for several reasons. First, once a basis for discharge

or revocation exists, VA does not believe it is practical or appropriate to delay the discharge or revocation of a Family Caregiver's designation simply because an additional basis exists. For example, in the event a Family Caregiver submits a request for discharge on July 1 that is to take effect July 21, and the eligible veteran dies on July 15, under proposed § 71.45(f), the date of discharge would be July 15. VA does not believe it would be reasonable to maintain the Family Caregiver's designation after the death of the eligible veteran. Second, it would simplify the existing language in § 71.45(f) as it relates to revocation and discharge by creating a consistent rule that applies to all situations where multiple bases exist thereby accounting for existing and newly proposed bases for revocation and discharge, including those proposed in this rulemaking.

Finally, VA's proposal would remove the standard of "most favorable to the Family Caregiver", which could be subjective and difficult to apply, and would replace it with a more straightforward rule that requires VA to apply the "basis that would result in the earliest date of revocation or discharge", leaving less discretion to VA.

VA acknowledges that its proposed changes to paragraph (f) would change VA's current practice as it relates to discharges. The last sentence of current paragraph (f) states that in the instance that a Family Caregiver may be discharged under paragraph (b)(1), (2), (3), or (4) of this section, the Family Caregiver will be discharged pursuant to the paragraph most favorable to the Family Caregiver. In proposing this language, VA explained that it would address the infrequent instances where multiple requests for discharge are received by VA, and one basis is more favorable to the Family Caregiver. 85 FR 13404 (March 6, 2020). VA proposes to modify this provision and to no longer apply this rule because there are limited instances in which multiple discharge bases exist. When these instances have occurred, they have generally involved a discharge that is requested due to DV or IPV. To address these specific scenarios, VA has proposed changes to § 71.45(b)(4)(iv) and (b)(1)(iii)(B), as discussed above, to allow Family Caregivers to receive three months of continued benefits if DV or IPV is established (and the applicable requirements are met) regardless of whether discharge is requested by the eligible veteran or their surrogate under § 71.45(b)(4)(i) or by the Family Caregiver under proposed § 71.45(b)(1)(i)(C). With these amendments, if the eligible veteran and

Family Caregiver both submit requests to VA for the Family Caregiver to be discharged on July 7, the same period of continued benefits would apply on the basis of either discharge request, such that VA would no longer be faced with determining which discharge basis is “most favorable to the Family Caregiver” and thereby limiting the impact of removing this subjective standard, if proposed changes to § 71.45(f) are adopted in a final rule. VA expects the proposed revisions to § 71.45(f) would provide clarity about which basis for revocation or discharge applies when weighing multiple bases.

VA solicits comments from the public on all aspects of this proposed rule. In particular, VA asks the following question on specific aspects of this proposal.

1. Among other changes to § 71.45, VA has proposed adding as a new basis for discharge, a VA determination that unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran against the Family Caregiver. What models or standards could VA use to determine whether discharge from PCAFC may be appropriate due to DV or IPV?

I. 38 CFR 71.55 Home Visits and Emergency Declarations

Through an IFR published in the FR on June 5, 2020, VA added a new rule under § 71.60 to provide flexibility in the modality by which VA conducted PCAFC home visits for the duration of the National Emergency related to Coronavirus Disease-2019 (COVID-19) declared by the President on March 13, 2020 (COVID-19 National Emergency). 85 FR 34522 (June 5, 2020). Section 71.60 states that notwithstanding the requirements in part 71, for the duration of the National Emergency related to COVID-19 declared by the President on March 13, 2020, VA may complete visits to the eligible veteran’s home under part 71 through videoconference or other available telehealth modalities. This change was intended to help reduce the risk of exposure to and transmission of COVID-19 to individuals involved in PCAFC, as well as members of their households and others with whom they came into contact. 85 FR 34523 (June 5, 2020). This was especially important given the vulnerable population of veterans served by PCAFC. *Id.* As the COVID-19 National Emergency has come to an end, § 71.60 is no longer operable.

The COVID-19 National Emergency demonstrated the importance of mitigating and reducing vulnerabilities for those applying for or participating in PCAFC as well as VA staff in the event

of future emergencies. In the case of in-person home visits, the need for these alternative measures is not limited to emergencies involving public health risks, like the COVID-19 National Emergency. Natural disasters and other weather-related emergencies can also have a direct impact on VA’s ability to safely conduct in-home visits. When emergency conditions are such that travel and/or entry into a person’s home would expose individuals to avoidable safety or public health risks, having alternative options to complete a home visit is vital.

VA therefore proposes to provide flexibility for VA to complete home visits under part 71 through telehealth in cases where a Federal, State, or local authority has declared an emergency involving certain safety or public health risks. In these situations, VA would utilize this flexibility to complete home visits required under part 71 when needed to help protect the health and safety of VA staff and individuals applying for or participating in a program under part 71. This would include home visits required under §§ 71.25(e), 71.30, and 71.40(b)(2).

VA proposes to add § 71.55 to part 71 with the heading, “Home visits and emergency declarations.” Proposed § 71.55 would state that notwithstanding the requirements in part 71, for the duration of and in the locations covered by an emergency declaration, VA may complete home visits under part 71 through telehealth as defined in 38 CFR 17.417(a)(4). It would also state that for purposes of this new proposed section, *emergency declaration* would refer to any emergency, declared by a Federal, State, or local authority, involving a safety or public health risk that impacts in-person interaction between VA staff and individuals applying for or participating in a program under part 71, including but not limited to: (a) natural disasters and weather-related emergencies when travel to, from, or within, or time spent in the affected area would pose a safety risk; and (b) emergencies related to influenza, coronavirus, respiratory illness, or other contagions that pose a public health risk.

As proposed, § 71.55 would align with the text in § 71.60 with some changes and additions. First, § 71.60 refers to “videoconference or other available telehealth modalities.” However, in proposed § 71.55 VA would refer to *telehealth* as that term is defined in 38 CFR 17.417(a)(4). Per § 17.417(a)(4), the term *telehealth* means “the use of electronic information or telecommunications technologies to support clinical health care, patient and

professional health-related education, public health, and health administration.” The phrase “telehealth modalities”, as used in § 71.60, could be interpreted as applying only to traditional telehealth modalities, such as video, store-and-forward, and remote patient monitoring. So as not to suggest that § 71.55 would authorize use of only those specific modalities, proposed § 71.55 would not use that term and would instead reference the broader definition of *telehealth* as it is defined in § 17.417(a)(4). Although proposed § 71.55 would not specifically reference “videoconference” as § 71.60 does, VA believes that through policy, it could establish an expectation that videoconference be the primary mode of *telehealth* used for completing home visits if this proposal is adopted in a final rule. However, in cases where videoconference is not possible, proposed § 71.55 would provide VA with flexibility to use other means of *telehealth*, such as telephone, to complete home visits under this section.

Under proposed § 71.55, VA would also define the term *emergency declaration* for purposes of this section. As proposed, *emergency declaration* would refer, in part, to any emergency declared by a Federal, State, or local authority. This differs from § 71.60 which only applied to the COVID-19 National Emergency even though State and local authorities also issued emergency declarations related to COVID-19.²³ When VA published the IFR that established § 71.60, the COVID-19 National Emergency was applicable nationwide, such that there was no need to reference other emergency declarations and orders related to COVID-19. However, as VA seeks to provide flexibility in the case of emergency declarations that may be more limited in scope than at a national level, VA believes it is prudent for proposed § 71.55 to encompass any Federal, State, or local emergency declaration, so long as it involves a safety or public health risk as described in this proposal. VA also includes the phrase “in the locations covered by an emergency declaration” in the first sentence of proposed § 71.55 to account for emergencies with localized impacts

²³ See, for example, Executive Order 2023–01 (COVID-19 Executive Order No. 116), State of Illinois (Jan. 6, 2023), available at <https://www.illinois.gov/government/executive-orders/executive-order-executive-order-number-01.2023.html> (last visited Feb. 8, 2024) and Orange County, Florida Emergency Executive Order No. 2021–36 Regarding COVID-19, Orange County, Florida (Oct. 20, 2021), available at <https://www.orangecountyfl.net/portals/0/library/Emergency-Safety/docs/coronavirus/2021-36%20EEO-CMcert.pdf> (last visited Feb. 8, 2024).

(for instance, State-wide, or in one or two counties) as well as those on a larger scale (for example, nationwide). This language would make clear that the flexibility under proposed § 71.55 would apply only to those locations covered by the emergency declaration. Additionally, proposed § 71.55 would state that the flexibility would be authorized “for the duration of” the emergency declaration, phrasing which in § 71.60 describes the extent of the flexibility authorized.

Although proposed § 71.55 uses the term *emergency declaration*, the terminology used within emergency declarations may vary. For example, Locality A may “promulgate” or “declare” a state of emergency while Locality B may “order” actions in response to an emergency.²⁴ Additionally, Locality C may use the phrase “state of emergency” while Locality D may use “public emergency”.²⁵ To be inclusive of the various terms used in emergency declarations of Federal, State, and local authorities involving specified safety or public health risks, if proposed § 71.55 were adopted in a final rule, VA would expect to interpret and apply the term *emergency declaration* to encompass terms such as public health emergency, health emergency, and disaster emergency, and VA would expect to interpret and apply the term *declared* to encompass terms such as orders, announcements, proclamations, and pronouncements.

If adopted, VA intends to leverage the flexibilities proposed in § 71.55 specifically during emergencies involving a safety or public health risk that impacts in-person interaction

between VA staff and individuals participating in a program under part 71. In proposed paragraphs (a) and (b) of § 71.55, VA would provide examples of emergencies that involve the types of safety and public health risks that may warrant use of the flexibility afforded by proposed § 71.55, such as natural disasters and weather-related emergencies, and emergencies related to contagions such as the coronavirus or other respiratory illness. However, under proposed § 71.55, the safety or public health risk must also impact in-person interaction between VA staff and individuals applying for or participating in a program under part 71. In this regard, an emergency declaration by the Federal government related to a national supply chain shortage for baby food, for example, would not alone authorize VA to complete part 71 home visits through telehealth under proposed § 71.55, as the risks associated with such an emergency would not impact in-person interaction between VA staff and individuals applying for or participating in a program under part 71 who participate in in-person home visits. On the contrary, an emergency declaration issued by a State or locality because of a hurricane that impacts roadways and the ability to travel safely could involve a safety or public health risk that impacts in-person interaction between VA staff and individuals applying for or participating in a program under part 71 who engage in in-person home visits. For the duration of and in the locations covered by such an emergency declaration, proposed § 71.55 would allow VA to complete home visits through telehealth.

J. Other Technical Edits

VA proposes to make several technical edits to remove and replace gender specific language throughout part 71 with gender-neutral language. These proposed revisions have no substantive impact as they are grammatical and technical corrections that would conform to VA’s goal to ensure its regulations are gender neutral in alignment with Executive Order 13988 of January 20, 2021, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation. *See* 86 FR 7023 (January 25, 2021).

In § 71.15 VA proposes to revise the definition of *personal care services* to replace the language “his or her” with the word “their”. In § 71.20 introductory text, and paragraphs (a), (b), and (c), VA proposes to remove the language “he or she” and add in its place, the language “the veteran or servicemember”. In § 71.45(b)(3)(i), VA

proposes to remove the language “his or her” and add, in its place, the word “their”.

Other technical edits include a proposed amendment to § 71.20(a)(2), to add the word “space” to the list of the branches of the U.S. Armed Forces to account for inclusion of the Space Force and proposed amendment to § 71.25 to add the associated information collection control number to the end of the section. The Office of Management and Budget (OMB) previously approved the information collection associated with § 71.25 under control number 2900-0768 (Program of Comprehensive Assistance for Family Caregivers (PCAFC), VA Form 10-10CG).

III. Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866, Section 3(f)(1), as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

IV. Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is because this rule proposes changes to eligibility requirements in and other updates to 38 CFR part 71, under which VA provides assistance and support

²⁴ Compare, for example, State of Florida, Office of the Governor, Executive Order No. 23–171, Emergency Management—Invest 93L (Aug. 26, 2023), available at <https://www.flgov.com/wp-content/uploads/2023/08/EO-23-171-1.pdf> (last visited Feb. 8, 2024) (in which a “state of emergency” was “declared”) with The State of Georgia, Executive Order 06.22.21.01 (June 22, 2021), available at <https://gov.georgia.gov/document/2021-executive-order/06222101/download> (last visited Feb. 8, 2024) (listing various matters as “ordered” and referring to a “Public Health State of Emergency”).

²⁵ Compare, for example, State of Maine, Proclamation to Renew the State of Civil Emergency (June 11, 2021), available at <https://www.maine.gov/governor/mills/sites/maine.gov/governor.mills/files/inline-files/Proclamation%20to%20Renew%20the%20State%20of%20Civil%20Emergency%20-%20June%202011%202021.pdf> (last visited Feb. 8, 2024) (declaring a “state of civil emergency”); with Government of the District of Columbia, Mayor’s Order No. 2022–043 (Mar. 17, 2022), available at https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/202043-Extension-of-Public-Emergency-for-COVID19.pdf (last visited Feb. 8, 2024) (extending a “public emergency”).

services through PCAFC and PGCSS for certain caregivers of eligible veterans and covered veterans. The beneficiaries of PCAFC and PGCSS are not small entities, and small entities would not be impacted by this proposed rule. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

V. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

VI. Paperwork Reduction Act

This proposed rule includes provisions constituting a revision to a current/valid collection of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521) that requires approval by OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the revised collection of information contained in this rulemaking should be submitted through www.regulations.gov. Comments should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: www.reginfo.gov/public/do/PRAMain.

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a new collection of information in—

- Evaluating whether the revised collection of information is necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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 (for example, permitting electronic submission of responses).

The collections of information associated with this rulemaking contained in 38 CFR 71.25(a), 71.30(c), and 71.45 are described immediately following this paragraph, under their respective titles. This revised information collection has a current PRA clearance under OMB control number 2900–0768.

Title: Program of Comprehensive Assistance for Family Caregivers (PCAFC) (VA Form 10–10CG).

OMB Control No: 2900–0768.

CFR Provision: 38 CFR 71.25(a).

• *Summary of collection of information:* The revised collection of information in proposed 38 CFR 71.25(a) would require veterans, servicemembers and caregivers to submit a new joint application to participate in PCAFC and receive benefits. VA is proposing changes to PCAFC eligibility requirements. These changes are expected to result in an influx of new applications in the initial year of implementation, including from applicants who have previously applied and been denied. The number of applications submitted to VA is expected to fall back to more typical numbers after the initial influx.

• *Description of need for information and proposed use of information:* VA will use the information collected to conduct an assessment of program eligibility for applicants.

• *Description of likely respondents:* Veterans, servicemembers, and caregivers.

• *Estimated number of respondents:* 140,671 annually.

• *Estimated frequency of responses:* Once per year.

• *Estimated average burden per response:* 15 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 35,168 hours.

Title: Program of Comprehensive Assistance for Family Caregivers (PCAFC) (Requests for Reassessment).

OMB Control No: 2900–0768.

CFR Provision: 38 CFR 71.30(c).

• *Summary of collection of information:* The revised collection of information in proposed 38 CFR 71.30(c) would set forth a process for eligible veterans and Primary Family Caregivers to request reassessment for continued eligibility.

• *Description of need for information and proposed use of information:* VA will use the information collected to initiate a reassessment under 38 CFR 71.30 on behalf of the requester. While a written request is not required, if a written request is received, such written request may support an earlier effective date for any increased benefits for which the Family Caregiver may be eligible based on the reassessment.

• *Description of likely respondents:* Veterans, servicemembers, and caregivers.

• *Estimated number of respondents:* 2,800 annually.

• *Estimated frequency of responses:* Once per year.

• *Estimated average burden per response:* 3 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 140 hours.

Title: Program of Comprehensive Assistance for Family Caregivers (PCAFC) (Requests for Discharge).

OMB Control No: 2900–0768.

CFR Provision: 38 CFR 71.45.

• *Summary of collection of information:* The revised collection of information in proposed 38 CFR 71.45 requires veterans, servicemembers and caregivers to submit requests for discharge verbally or in writing to PCAFC. If such request for discharge is due to cases of DV or IPV by the eligible veteran against the Family Caregiver, the provision of a protective order, police report, or documentation by a treating provider of disclosure of DV or IPV may be provided to support the provision of extended benefits to the Family Caregiver upon the discharge.

• *Description of need for information and proposed use of information:* VA will use the information collected to determine the date of discharge for a caregiver.

• *Description of likely respondents:* Veterans, servicemembers, and caregivers.

• *Estimated number of respondents:* 1,710 annually.

- *Estimated frequency of responses:* Once per year.
- *Estimated average burden per response:* 5 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 143 hours.
Total Estimated cost to respondents per year: VA estimates the total annual cost to respondents to be \$1,115,997.48 (35,451 burden hours × \$31.48 per hour).

*To estimate the total information collection burden cost, VA used the May 2023 Bureau of Labor Statistics (BLS) mean hourly wage code—“00–0000 All Occupations,” available at https://www.bls.gov/oes/2023/may/oes_nat.htm.

The time estimate for the Federal Government to process VA Form 10–10CG is 15 minutes. The time estimate for the Federal Government to process requests for reassessment is 3 minutes and requests for discharge is 5 minutes. This equates to a time estimate of 35,451 hours. The annual cost to the Federal Government is estimated at \$1,769,004.90 (35,451 hours × \$49.90 per hour, based on the Atlanta 2024 hourly rate table for a grade 12, step 5 employee).

The annual total cost to the public and the government is expected to be \$2,885,002.38.

List of Subjects in 38 CFR Part 71

Administrative practice and procedure, Claims, Health care, Health facilities, Health professions, Mental health programs, Public assistance programs, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on November 15, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulation Development Coordinator Office of Regulation Policy & Management, Office of General Counsel Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 71 as set forth below:

PART 71—CAREGIVERS BENEFITS AND CERTAIN MEDICAL BENEFITS OFFERED TO FAMILY MEMBERS OF VETERANS

- 1. The authority citation for part 71 continues to read as follows:

Authority: 38 U.S.C. 501, 1720G, unless otherwise noted.

* * * * *

§ 71.10 [Amended]

■ 2. In § 71.10, amend paragraph (b) by removing the language “as that term is defined in 38 U.S.C. 101(20)”.

■ 3. Amend § 71.15 by:

■ a. Adding definitions for “Activity of daily living or activities of daily living (ADL)”, “State”, and “Typically requires” in alphabetical order.

■ b. Removing the definitions of “Inability to perform an activity of daily living (ADL)”, “Need for supervision, protection, or instruction”, and “Unable to self-sustain in the community”.

■ c. Revising the definitions of “Institutionalization”, “Joint application”, “Legacy applicant”, “Legacy participant”, and “Serious injury”.

■ d. In the definition of “Personal care services”, removing the language “his or her” and adding, in its place, the language “their”.

The revisions and additions read as follows:

§ 71.15 Definitions.

Activity of daily living or activities of daily living (ADL) means any of the following functions or tasks for self-care usually performed in the normal course of a day:

- (1) Dressing or undressing;
- (2) Bathing;
- (3) Grooming;

(4) Adjusting any special prosthetic or orthopedic appliance (this does not include the adjustment of appliances that nondisabled persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.);

- (5) Toileting or attending to toileting;
- (6) Eating; or
- (7) Mobility.

* * * * *

Institutionalization means being institutionalized in a setting outside the home residence to include a hospital, rehabilitation facility, jail, prison, medical foster home, nursing home, or other similar setting as determined by VA.

* * * * *

Joint application means an application for the Program of Comprehensive Assistance for Family Caregivers in such form and manner as the Secretary of Veterans Affairs considers appropriate.

Legacy applicant means a veteran or servicemember who submits a joint application for the Program of Comprehensive Assistance for Family Caregivers that is received by VA before October 1, 2020 and for whom a Family

Caregiver(s) is approved and designated on or after October 1, 2020 so long as the Primary Family Caregiver approved and designated for the veteran or servicemember on or after October 1, 2020 pursuant to such joint application (as applicable) continues to be approved and designated as such. If a new joint application is received by VA on or after October 1, 2020 that results in approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy applicant. Effective [18 months after EFFECTIVE DATE OF FINAL RULE], the veteran or servicemember is no longer considered a legacy applicant.

Legacy participant means an eligible veteran whose Family Caregiver(s) was approved and designated by VA under this part as of the day before October 1, 2020 so long as the Primary Family Caregiver approved and designated for the eligible veteran as of the day before October 1, 2020 (as applicable) continues to be approved and designated as such. If a new joint application is received by VA on or after October 1, 2020 that results in approval and designation of the same or a new Primary Family Caregiver, the veteran or servicemember would no longer be considered a legacy participant. Effective [18 months after EFFECTIVE DATE OF FINAL RULE], the veteran or servicemember is no longer considered a legacy participant.

* * * * *

Serious injury means any of the following as assigned by VA:

- (1) A service-connected disability rated at 70 percent or more;
- (2) Any service-connected disabilities that result in a combined rating of 70 percent or more; or
- (3) Any service-connected disability or disabilities that result in a total disability rating for compensation based on individual unemployability.

State has the meaning given that term in 38 U.S.C. 101(20).

Typically requires means a clinical determination which refers to that which is generally necessary.

* * * * *

■ 4. Amend § 71.20 by:

■ a. In the introductory text and paragraph (a) introductory text, removing the language “he or she” and in its place, adding the language “the veteran or servicemember”.

■ b. In paragraph (a)(2), removing the language “or air” and in its place, adding the language “air, or space”.

■ c. Revising paragraphs (a)(3)(i) and (ii), (a)(7), (b), and (c).

■ d. Adding new paragraph (a)(3)(iii).

The revisions and additions read as follows:

§ 71.20 Eligible veterans and servicemembers.

(a) * * *

(3) * * *

(i) The individual typically requires hands-on assistance to complete one or more ADL;

(ii) The individual has a frequent need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or

(iii) The individual typically requires regular or extensive instruction or supervision to complete one or more ADL.

* * * * *

(7) The individual receives ongoing care from a primary care team or will do so within 120 days of the date VA designates a Family Caregiver. If the individual is unable to receive such care due, at least in part, to an event or action within VA's control, VA may extend this 120-day period.

(b) Beginning on October 1, 2020 through [18 months after EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is eligible for a Primary Family Caregiver or Secondary Family Caregiver under this part if the veteran or servicemember is a legacy participant.

(c) Beginning on October 1, 2020 through [18 months after EFFECTIVE DATE OF FINAL RULE], a veteran or servicemember is eligible for a Primary Family Caregiver or Secondary Family Caregiver under this part if the veteran or servicemember is a legacy applicant.

* * * * *

■ 5. Amend § 71.25 by:

■ a. Revising the section heading.

■ b. Adding the words "Family Caregivers" after the word "Primary" in the first sentence of paragraph (a)(1).

■ c. Removing the last sentence of paragraph (a)(1).

■ d. Adding paragraphs (a)(1)(i) and (ii).

■ e. Revising paragraph (a)(2)(i).

■ f. Revising the last sentence of paragraph (a)(2)(ii).

■ g. Revising paragraphs (a)(3)(i) and (ii).

■ h. Revising paragraph (b) introductory text.

■ i. Revising paragraph (b)(2)(ii).

■ j. Adding the information collection control number to the end of the section.

The revisions and additions read as follows:

§ 71.25 Approval and designation of Primary Family Caregivers and Secondary Family Caregivers.

(a) * * *

(1) * * *

(i) Individuals interested in serving as Family Caregivers must be identified as such on the joint application, and no more than three individuals may serve as Family Caregivers at one time for an eligible veteran, with no more than one serving as the Primary Family Caregiver and no more than two serving as Secondary Family Caregivers.

(ii) A currently approved Secondary Family Caregiver for the eligible veteran may apply for designation as the Primary Family Caregiver by submitting a new joint application along with the eligible veteran.

(2) * * *

(i) Upon receiving such application, except as provided in paragraphs (a)(2)(i)(A) and (B) of this section, VA (in collaboration with the primary care team to the maximum extent practicable) will perform the evaluations required to determine the eligibility of the applicants under this part, and if eligible, determine the applicable monthly stipend payment under § 71.40(c)(4).

(A) VA will not evaluate a veteran's or servicemember's eligibility under § 71.20 as part of the application process when:

(1) A joint application is received to designate a Secondary Family Caregiver for an eligible veteran who already has a designated Primary Family Caregiver; or

(2) A joint application is received that seeks to change the designation of a current Secondary Family Caregiver for an eligible veteran to designation as the Primary Family Caregiver for that same eligible veteran so long as the eligible veteran has been determined to meet the eligibility criteria under § 71.20(a) or § 71.20(a) (2021) (which may have applied the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the criterion in § 71.20(a)(3)(ii)).

(B) Upon receipt of a joint application that seeks to designate a current Secondary Family Caregiver as the Primary Family Caregiver for the same eligible veteran, VA will determine which evaluations under this section are necessary to assess the individual's eligibility as the Primary Family Caregiver.

(ii) * * * VA may extend the 90-day period based on VA's inability to complete the eligibility evaluations, provide necessary education and training, or conduct the initial home-care assessment, when such inability is, at least in part, due to VA's action.

(3) * * *

(i) A joint application under this part is evaluated in accordance with the

statutes and regulations in effect on the date VA receives such joint application.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, in rendering a determination under this part, based on the regulations that were in effect from October 1, 2020 through [EFFECTIVE DATE OF FINAL RULE]:

(A) The definition of "joint application" in § 71.15 that became effective [EFFECTIVE DATE OF FINAL RULE] applies.

(B) The definition of "need for supervision, protection, or instruction" in § 71.15 does not apply. In its place, the following criteria apply:

(1) A need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; or

(2) A need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.

(b) *Eligibility to serve as Primary Family Caregiver or Secondary Family Caregiver.* In order to serve as a Primary Family Caregiver or Secondary Family Caregiver, the applicant must meet all of the following requirements:

* * * * *

(2) * * *

(ii) Someone who lives with the eligible veteran full-time or will do so within 120 days of the date VA designates the individual as a Family Caregiver.

* * * * *

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900-0768)

■ 6. Amend § 71.30 by:

■ a. Revising paragraphs (a), (b), and (c).

■ b. Adding a heading to paragraph (d).

■ c. Revising paragraph (e).

The revisions and additions read as follows:

§ 71.30 Reassessment of Eligible Veterans and Family Caregivers.

(a) *General.* The eligible veteran and each Family Caregiver will be reassessed by VA (in collaboration with the primary care team to the maximum extent practicable) to determine their continued eligibility for participation in PCAFC under this part. Reassessments will include consideration of the monthly stipend payment under § 71.40(c)(4)(i)(A), if applicable. Reassessments may include a visit to the eligible veteran's home.

(b) *Frequency of reassessment.* Except as provided in paragraph (c) of this section, VA will reassess an eligible veteran's continued eligibility under § 71.20(a)(3) not more frequently than

every two years unless such a reassessment is necessary for VA to evaluate the Family Caregiver's ability to carry out specific personal care services, core competencies, or additional care requirements.

(c) Requests for reassessment.

Reassessments may occur when an eligible veteran or a Primary Family Caregiver of an eligible veteran submits to VA a written request indicating that a reassessment is requested, and such request contains the signature of the eligible veteran or the Primary Family Caregiver.

(d) Required participation. * * *

(e) Legacy reassessments. For purposes of this paragraph, a legacy reassessment is a reassessment of an eligible veteran who meets the requirements of § 71.20(b) or (c) (*i.e.*, is a legacy participant or a legacy applicant) that is conducted to determine whether such individual meets the requirements of § 71.20(a) for purposes of continued eligibility. Legacy reassessments are conducted in accordance with the requirements outlined in paragraph (a) of this section.

(1) If the eligible veteran meets the requirements of § 71.20(b) or (c) (*i.e.*, is a legacy participant or a legacy applicant), VA will conduct a legacy reassessment for the eligible veteran and each Family Caregiver within the time period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE]. Notwithstanding the previous sentence, a legacy reassessment will not be completed if at some point before such reassessment is completed the eligible veteran no longer meets the requirements of § 71.20(b) or (c).

(2) If the eligible veteran meets the requirements of § 71.20(a), the legacy reassessment will include consideration of the monthly stipend payment under § 71.40(c)(4)(i)(A) and whether the Primary Family Caregiver is eligible for a one-time retroactive stipend payment pursuant to § 71.40(c)(4)(iii).

■ 7. Amend § 71.40 by:

- a. Adding a heading to paragraph (c)(4)(i)(A)(1).
- b. Revising paragraph (c)(4)(i)(A)(2).
- c. Revising the first sentence of paragraphs (c)(4)(i)(B) introductory text, (c)(4)(i)(C), and (c)(4)(i)(D).
- d. Revising paragraph (c)(4)(ii)(A).
- e. Adding headings to paragraphs (c)(4)(ii)(B) and (C) introductory text.
- f. Revising paragraphs (c)(4)(ii)(C)(1) and (2), and the note to paragraph (c)(4)(ii)(C)(2).
- g. Adding a heading to paragraph (c)(4)(ii)(D).
- h. Redesignating paragraphs (c)(4)(iii) and (iv) as paragraphs (c)(4)(iv) and (v).

■ i. Adding new paragraph (c)(4)(iii).

The revisions and additions read as follows:

§ 71.40 Caregiver benefits.

* * * * *

(c) * * *

(4) * * *

(i) * * *

(A) * * *

(1) *Level 1 Stipend.* * * *

(2) *Level 2 Stipend.* Notwithstanding paragraph (c)(4)(i)(A)(1) of this section, the Primary Family Caregiver's monthly stipend is calculated by multiplying the monthly stipend rate by 1.00 if VA determines that:

(i) The eligible veteran typically requires personal care services to complete three or more distinct ADL, and for each distinct ADL, the eligible veteran either is substantially dependent on the Primary Family Caregiver for hands-on assistance or requires extensive instruction or supervision from the Primary Family Caregiver; or

(ii) The eligible veteran has a frequent need for supervision or protection on a continuous basis from the Primary Family Caregiver based on the eligible veteran's symptoms or residuals of neurological or other impairment or injury.

(B) Except as provided in paragraph (c)(4)(i)(C) of this section, for the time period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(b) or (c), (*i.e.*, is a legacy participant or a legacy applicant), the Primary Family Caregiver's monthly stipend is calculated based on the clinical rating in 38 CFR 71.40(c)(4)(i) through (iii) (2019) and the definitions applicable to such paragraphs under 38 CFR 71.15 (2019).

* * * * *

(C) For the time period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(a) and (b) or (c), the Primary Family Caregiver's monthly stipend is the amount the Primary Family Caregiver is eligible to receive under paragraph (c)(4)(i)(A) or (B) of this section, whichever is higher.

* * *

(D) Notwithstanding paragraphs (c)(4)(i)(A) through (C) of this section, for the time period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE], if the eligible veteran meets the requirements of § 71.20(b), the Primary Family Caregiver's monthly

stipend is not less than the amount the Primary Family Caregiver was eligible to receive as of the day before October 1, 2020 (based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on such date) so long as the eligible veteran resides at the same address on record with the Program of Comprehensive Assistance for Family Caregivers as of the day before October 1, 2020. * * *

(ii) * * *

(A) *OPM updates.* VA will adjust monthly stipend payments based on changes to the General Schedule (GS) Annual Rate for grade 4, step 1 for the locality pay area in which the eligible veteran resides. Such adjustments will take effect on the first of the month in which changes to the GS Annual Rate are effective. Notwithstanding the previous sentence, adjustments under this paragraph will take effect on the first of the month following the month OPM publishes changes to the GS Annual Rate if such changes have a retroactive effective date.

(B) *Relocation.* * * *

(C) *Reassessments.* * * *

(1) *Increases.* In the case of a reassessment that results in an increase in the monthly stipend payment based on paragraph (c)(4)(i)(A) of this section, the effective date of the increase is the earlier of the following dates:

(i) The date VA issues notice of the decision.

(ii) In the case of a written request for reassessment pursuant to § 71.30(c) that is received by VA on or after [EFFECTIVE DATE OF FINAL RULE], the date VA received such request from the eligible veteran or the Primary Family Caregiver of the eligible veteran.

(2) *Decreases—(i) General.* Except as provided in paragraph (c)(4)(ii)(C)(2)(ii) of this section, in the case of a reassessment that results in a decrease in the monthly stipend payment, the decrease takes effect as of the effective date provided in VA's final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

(ii) *Resulting from a legacy reassessment.* With respect to an eligible veteran who meets the requirements of § 71.20(a) and (b) or (c), in the case of a reassessment that results in a decrease in the Primary Family Caregiver's monthly stipend payment, the new stipend amount under paragraph (c)(4)(i)(A) of this section takes effect as of the effective date provided in VA's

final notice of such decrease to the eligible veteran and Primary Family Caregiver. The effective date of the decrease will be no earlier than 60 days after [18 months after EFFECTIVE DATE OF FINAL RULE]. On [18 months after EFFECTIVE DATE OF FINAL RULE], VA will provide advanced notice of its findings to the eligible veteran and Primary Family Caregiver.

Note 1 to paragraph (c)(4)(ii)(C)(2): If an eligible veteran who meets the requirements of § 71.20(b) or (c) is determined, pursuant to a reassessment conducted by VA under § 71.30, to not meet the requirements of § 71.20(a), the monthly stipend payment will not be adjusted under paragraph (c)(4)(ii)(C) of this section. Unless the Family Caregiver is revoked or discharged under § 71.45 before the date that is 60 days after [18 months after EFFECTIVE DATE OF FINAL RULE], the effective date for discharge of the Family Caregiver of a legacy participant or legacy applicant under § 71.45(b)(1)(ii) will be no earlier than 60 days after [18 months after EFFECTIVE DATE OF FINAL RULE]. On [18 months after EFFECTIVE DATE OF FINAL RULE], VA will provide advanced notice of its findings to the eligible veteran and Family Caregiver.

(D) *Effective dates.* * * *

(iii) *Legacy retroactive monthly stipend payment.* VA will consider eligibility for a one-time legacy retroactive monthly stipend payment in accordance with this paragraph as part of the legacy reassessment conducted under § 71.30(e) of this part.

(A) Subject to paragraph (c)(4)(iii)(B) of this section, in the case of a reassessment that results in an increase in the Primary Family Caregiver's monthly stipend payment pursuant to paragraph (c)(4)(ii)(C)(1) of this section, the Primary Family Caregiver may be eligible for a retroactive payment amount described in paragraph (c)(4)(iii)(C) of this section if the eligible veteran is a legacy participant or legacy applicant and is in need of personal care services for a minimum of six continuous months based on any one of the following:

(1) An *inability to perform an activity of daily living* as such term is defined in 38 CFR 71.15 (2021).

(2) A need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury.

(3) A need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired.

(B) If there is more than one reassessment for an eligible veteran during period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE],

the retroactive payment described in paragraph (c)(4)(iii)(A) applies only if the first reassessment during the aforementioned period results in an increase in the monthly stipend payment, and only as the result of the first reassessment during said period. Notwithstanding the previous sentence, if the first reassessment during the period beginning on October 1, 2020 and ending on [18 months after EFFECTIVE DATE OF FINAL RULE] did not result in an increase in the monthly stipend payment, the retroactive payment described in paragraph (c)(4)(iii)(A) of this section applies to the first reassessment initiated by VA on or after March 25, 2022 that applies the criteria in paragraph (c)(4)(iii)(A) of this section, if such reassessment results in an increase in the monthly stipend payment, and only as a result of such reassessment.

(C) The retroactive payment amount described in paragraph (c)(4)(iii)(A) of this section is any difference between the amounts in paragraphs (1) and (2) of this paragraph (c)(4)(iii)(C) of this section for the time period beginning on October 1, 2020 up to the effective date of the increase under paragraph (c)(4)(ii)(C)(1) of this section, based on the eligible veteran's address on record with the Program of Comprehensive Assistance for Family Caregivers on the effective date of the increase under paragraph (c)(4)(ii)(C)(1) of this section and the monthly stipend rate on such date.

(1) The amount the Primary Family Caregiver was eligible to receive under paragraph (c)(4)(i)(B) or (D) of this section, whichever the Primary Family Caregiver received; and

(2) The monthly stipend rate multiplied by 0.625. Notwithstanding the previous sentence, if the eligible veteran meets at least one of the following criteria, the monthly stipend rate is multiplied by 1.00:

(i) The eligible veteran requires personal care services each time they complete three or more of the seven activities of daily living (ADL) listed in the definition of an "inability to perform an activity of daily living" as such term is defined in 38 CFR 71.15 (2021), and is fully dependent on a caregiver to complete such ADLs.

(ii) The eligible veteran has a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury on a continuous basis.

(iii) The eligible veteran has a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life

would be seriously impaired on a continuous basis.

* * * * *

■ 8. Amend § 71.45 by:

■ a. Adding paragraphs (a)(1)(iv) and (a)(2)(v).

■ b. Revising the first sentence in paragraph (a)(3).

■ c. Revising paragraphs (b)(1)(i).

■ d. Revising paragraph (b)(1)(ii)(B)(2).

■ e. Adding paragraphs (b)(1)(ii)(C) and (D).

■ f. Revising paragraph (b)(1)(iii).

■ g. Revising paragraphs (b)(2)(i) through (iii).

■ h. In paragraph (b)(3)(i), removing the language "his or her" and adding in its place the language "their".

■ i. Adding a note to paragraph (b)(3)(i).

■ j. Revising paragraph (b)(3)(iii).

■ k. Adding paragraph (b)(3)(iv).

■ l. Revising paragraphs (b)(4)(iv), and (f).

The revisions and additions read as follows:

§ 71.45 Revocation and discharge of Family Caregivers.

(a) * * *

(1) * * *

(iv) *Residing outside a State.* VA will revoke the designation of a Family Caregiver when the eligible veteran or Family Caregiver no longer resides in a State. Note: If an eligible veteran no longer resides in a State, VA will revoke the designation of each of the eligible veteran's Family Caregivers.

(2) * * *

(v)(A) In the case of a revocation based on paragraph (a)(1)(iv) of this section, the date of revocation will be the earlier of the following dates, as applicable:

(1) The date the eligible veteran no longer resides in a State.

(2) The date the Family Caregiver no longer resides in a State.

(B) If VA cannot identify the date the eligible veteran or Family Caregiver, as applicable, no longer resides in a State, the date of revocation based on paragraph (a)(1)(iv) of this section will be the earliest date known by VA that the eligible veteran or Family Caregiver, as applicable, no longer resides in a State, but no later than the date on which VA identifies the eligible veteran or Family Caregiver, as applicable, no longer resides in a State.

(3) *Continuation of benefits.* In the case of revocation based on VA error under paragraph (a)(1)(iii) of this section, caregiver benefits will continue for two months after the date VA issues the notice of revocation. * * *

(b) * * *

(1) * * *

(i) *Bases for discharge.* Except as provided in paragraph (f) of this section,

the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers based on any of the following:

(A) Except as provided in paragraphs (a)(1)(ii)(A) and (b)(1)(i)(B) of this section, VA determines the eligible veteran does not meet the requirements of § 71.20 because of improvement in the eligible veteran's condition or otherwise;

(B) Death or institutionalization of the eligible veteran. Note: VA must receive notification of death or institutionalization of the eligible veteran as soon as possible but not later than 30 days from the date of death or institutionalization;

(C) The Family Caregiver requests discharge due to domestic violence (DV) or intimate partner violence (IPV) perpetrated by the eligible veteran against the Family Caregiver; or

(D) VA determines unmitigated personal safety issues exist for the Family Caregiver due to DV or IPV by the eligible veteran against the Family Caregiver.

(ii) * * *

(B) * * *

(2) Date that the institutionalization begins, if it is known on such date that the eligible veteran is expected to be institutionalized for a period of 90 days or more.

* * * * *

(C) For discharge based on paragraph (b)(1)(i)(C) of this section, the date of discharge will be the present or future date provided by the Family Caregiver or the date of the Family Caregiver's request for discharge if the Family Caregiver does not provide a date. If the request does not include an identified date of discharge, VA will contact the Family Caregiver to request a date. If unable to successfully obtain this date, discharge will be effective as of the date of the request.

(D) For discharge based on paragraph (b)(1)(i)(D) of this section, the date of discharge will be the date VA issues notice of its determination.

(iii) *Continuation of benefits.* (A) Except as provided in paragraph (b)(1)(iii)(B) of this section, caregiver benefits will continue for three months after the date of discharge.

(B) In the case of discharge based on paragraph (b)(1)(i)(C) of this section, caregiver benefits will continue for one month after the date of discharge. Notwithstanding the previous sentence, caregiver benefits will continue for three months after the date of discharge when any of the following can be established:

(1) The issuance of a protective order, to include interim, temporary and/or

final protective orders, to protect the Family Caregiver from DV or IPV perpetrated by the eligible veteran.

(2) A police report indicating DV or IPV perpetrated by the eligible veteran against the Family Caregiver or a record of an arrest related to DV or IPV perpetrated by the eligible veteran against the Family Caregiver.

(3) Documentation of disclosure of DV or IPV perpetrated by the eligible veteran against the Family Caregiver to a treating provider (e.g., physician, dentist, psychologist, rehabilitation therapist) of the eligible veteran or Family Caregiver, Intimate Partner Violence Assistance Program (IPVAP) Coordinator, therapist, or counselor.

(2) * * *

(i) *Bases for discharge.* Except as provided in paragraph (f) of this section, the Family Caregiver will be discharged from the Program of Comprehensive Assistance for Family Caregivers based on any of the following:

(A) Death or institutionalization of the Family Caregiver. Note: VA must receive notification of death or institutionalization of the Family Caregiver as soon as possible but not later than 30 days from the date of death or institutionalization.

(B) VA determines the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements.

(ii) *Discharge date.* (A) In the case of discharge based on paragraph (b)(2)(i)(A) of this section, the date of discharge will be the earliest of the following dates, as applicable:

(1) Date of death of the Family Caregiver.

(2) Date that the institutionalization begins, if it is known on such date that the Family Caregiver is expected to be institutionalized for a period of 90 days or more.

(3) Date of the 90th day of institutionalization.

(B) In the case of discharge based on paragraph (b)(2)(i)(B) of this section, the date of discharge will be provided in VA's final notice of such discharge to the eligible veteran and Family Caregiver, and such date will be no earlier than 60 days after VA provides advanced notice of its findings to the eligible veteran and Family Caregiver that the Family Caregiver is not able to carry out specific personal care services, core competencies, or additional care requirements.

(iii) *Continuation of benefits.* Caregiver benefits will continue for three months after date of discharge in paragraph (b)(2)(ii)(A)(2) or (3) or (b)(2)(ii)(B) of this section.

(3) * * *

(i) * * *

Note to paragraph (b)(3)(i): Requests of the Family Caregiver for discharge due to DV or IPV perpetrated by the eligible veteran against the Family Caregiver will be considered under paragraph (b)(1) of this section.

* * * * *

(iii) *Continuation of benefits.* Caregiver benefits will continue for one month after the date of discharge.

(iv) *Rescission.* VA will allow the Family Caregiver to rescind their request for discharge and be reinstated if the rescission is made within 30 days of the date of discharge. If the Family Caregiver expresses a desire to be reinstated more than 30 days from the date of discharge, a new joint application is required. This ability to rescind requests for discharge does not apply to requests for discharge under paragraph (b)(1)(i)(C) of this section.

(4) * * *

(iv) *Continuation of benefits.* Caregiver benefits will continue for one month after the date of discharge. Notwithstanding the previous sentence, caregiver benefits will continue for three months after the date of discharge when any of the requirements in paragraph (b)(1)(iii)(B)(1) through (3) can be established.

* * * * *

(f) *Multiple bases for revocation or discharge.* In the instance that a Family Caregiver may have their designation revoked or be discharged pursuant to one or more of the criteria in paragraphs (a) or (b) of this section, respectively, the Family Caregiver's designation will be revoked or the Family Caregiver will be discharged, as applicable, pursuant to the basis that would result in the earliest date of revocation or discharge.

■ 9. Add § 71.55 to read as follows:

§ 71.55 Home visits and emergency declarations.

Notwithstanding the requirements in this part, for the duration of and in the locations covered by an emergency declaration, VA may complete home visits under this part through telehealth as defined in 38 CFR 17.417(a)(4). For purposes of this section, *emergency declaration* refers to any emergency, declared by a Federal, State, or local authority, involving a safety or public health risk that impacts in-person interaction between VA staff and individuals applying for or participating in a program under this part, including but not limited to:

(a) Natural disasters and weather-related emergencies when travel to, from, or within, or time spent in the

affected area would pose a safety risk;
and
(b) Emergencies related to influenza, coronavirus, respiratory illness, or other

contagions that pose a public health risk.

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