



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 36**

**[CC Docket No. 80-286, FCC No. 18-182]**

**Jurisdictional Separations and Referral to the Federal-State Joint Board**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission amends its part 36 jurisdictional separations rules by extending for up to six years the freeze of separations category relationships and allocation factors that it originally adopted in 2001. As a result, the freeze will remain in effect until the earlier of December 31, 2024, or the completion of comprehensive reform of the part 36 jurisdictional separations rules. The Commission also amends its part 36 jurisdictional separations rules by providing rate-of-return carriers that elected to freeze their separations category relationships in 2001 a one-time opportunity to unfreeze and update those relationships so that they can categorize their costs based on current circumstances.

**DATES:** These rules are effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], except for the amendment to 47 CFR 36.3(b) which is delayed. The Commission will publish a document in the **Federal Register** announcing the effective date.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

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**SUPPLEMENTARY INFORMATION:** This is a final rule summary of the Commission's Report and Order, released December 17, 2018. A full-text version of this document can be obtained from the following internet address: <https://www.fcc.gov/document/fcc-extends-jurisdictional-separations-freeze-six-years>.

**Synopsis**

## I. INTRODUCTION

1. In 1970, when monopoly rate-of-return local exchange carriers (LECs) provided telephone services primarily over circuit-switched, voice networks, the Commission codified its jurisdictional separations rules. Those rules required each LEC to divide its cost of providing service between the interstate and intrastate jurisdictions in a manner reflecting each jurisdiction's relative use of the LEC's network. In an era when the Commission and its State counterparts set virtually all telephone rates based on actual costs, the separations rules helped ensure that each LEC had the opportunity to recover its expenses and earn a reasonable return on its investments.

2. Today, phone companies deliver voice, data, and video services that are increasingly being provided over Internet Protocol-based networks. New digital technologies blur the lines between interstate and intrastate communications, making last century's jurisdictional separations rules inadequate and outmoded vis-à-vis their intended purpose. Moreover, the relevance of the cost-separation rules has diminished, as the Commission has incrementally replaced burdensome rate-of-return regulation with the efficiencies of incentive regulation. Currently, only a small percentage of Americans receive their telecommunications services from providers subject to rate-of-return regulation and the cost separation rules. Nevertheless, the Commission's separations rules continue to play an important role in determining how rate-of-return carriers recover some of their costs.

3. In 1997, the Commission recognized the need to comprehensively reform the separations rules and referred separations reform to the Federal-State Joint Board on Jurisdictional Separations (Joint Board) for a recommended decision. More than twenty years later, the Joint Board has not reached agreement on comprehensive separations reform. And so, starting in 2001, originally at the behest of the Joint Board, the Commission has completed several rulemaking proceedings to freeze the separations rules to stabilize and simplify the separations process pending reform. Most recently, the Commission extended the freeze until December 31, 2018.

4. Today, the Commission breaks this cycle. Because so little progress has been made on comprehensive separations reform over the past 20 years, the Commission extends the separations freeze

for up to six years so that it and the Joint Board can devote their resources to substantive reform, rather than to extending artificial deadlines. And because previous attempts at comprehensive reform have failed, the Commission requests that the Joint Board approach the challenge incrementally. The Commission asks that, in the short term, the Joint Board focus on how best to amend the separations rules to recognize that they impact only rate-of-return carriers and on whether any other separations rules or recordkeeping requirements can be modified or eliminated in light of that limited application. Coming to a decision on these issues will reduce the Joint Board's work over the longer term as it seeks to replace the existing jurisdictional separations process with a simplified system for reasonably allocating costs between the interstate and intrastate jurisdictions. The Commission begins this incremental reform by allowing rate-of-return carriers that elected to freeze their separations category relationships in 2001 to opt out of that freeze.

## **II. BACKGROUND**

### **A. The Jurisdictional Separations Process**

5. Jurisdictional separations is the third step in a four-step regulatory process. First, a rate-of-return carrier records its costs and revenues in various accounts using the Uniform System of Accounts prescribed by the Commission's part 32 rules. Second, the carrier divides the costs and revenues in these accounts between regulated and nonregulated activities in accordance with the Commission's part 64 rules, a step that helps ensure that the costs of nonregulated activities will not be recovered through regulated interstate rates. Third, the carrier separates the regulated costs and revenues between the interstate and intrastate jurisdictions using the Commission's part 36 jurisdictional separations rules. Finally, the carrier apportions the interstate regulated costs among the interexchange services and the rate elements that form the cost basis for its exchange access tariffs. Carriers subject to rate-of-return regulation perform this apportionment in accordance with the Commission's part 69 rules.

6. To comply with these rules, rate-of-return incumbent LECs perform annual cost studies that include jurisdictional separations. The jurisdictional separations analysis begins with the categorization of the incumbent LEC's regulated costs and revenues, requiring the incumbent LEC to

assign the regulated costs and revenues recorded in its part 32 accounts to various investment, expense, and revenue categories. Part 36 (or separations) category relationships are percentages of costs recorded in a part 32 account that are assigned to separations categories corresponding to that account. The incumbent LEC then allocates the costs or revenues in each category between the interstate and intrastate jurisdictions. Amounts in categories that are used exclusively for interstate or intrastate communications are directly assigned to the appropriate jurisdiction. Amounts in categories that support both interstate and intrastate services are divided between the jurisdictions using allocation factors that reflect relative use or a fixed percentage.

**B. Attempts at Jurisdictional Separations Reform and the Separations Freeze**

7. In 1997, recognizing that “changes in the law, technology, and market structure of the telecommunications industry” necessitated a thorough reevaluation of the jurisdictional separations process, the Commission initiated a proceeding to comprehensively reform the separations rules. At the same time, pursuant to section 410(c) of the Communications Act of 1934, as amended (the Communications Act), the Commission referred the matter of jurisdictional separations reform to the Joint Board for a recommended decision. Section 410(c) requires the Commission to “refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it initiates pursuant to a notice of proposed rulemaking” to a Joint Board. Section 410(c) further specifies that after such a referral the Joint Board “shall prepare a recommended decision for prompt review and action by the Commission.”

8. Since the Commission initiated this proceeding in 1997, the Joint Board—comprised of both State and federal members—has been attempting to develop recommendations for comprehensive reform. In response to the Commission’s initial referral, the State members of the Joint Board filed a report identifying issues they believed should be addressed. Over the years, the State members filed policy papers setting out options for reform, the Commission or the Joint Board sought comment, and the Joint Board held hearings and meetings to consider the various proposals. In 2009, the Commission made a second referral of comprehensive jurisdictional separations reform to the Joint Board and asked that

“the Joint Board prepare a recommended decision regarding whether, how, and when the Commission’s jurisdictional separations rules should be modified.” In 2010, the State members of the Joint Board submitted a limited interim proposal, and the Joint Board sought comment on their behalf. Despite two Commission referrals seeking a recommended decision on comprehensive separations reform, the Joint Board has not advanced a recommended decision on comprehensive reform to the Commission.

9. In the course of considering comprehensive reform, the Joint Board did issue a recommendation, in 2000, that the Commission freeze the part 36 category relationships and jurisdictional allocation factors pending resolution of comprehensive reform. The Commission sought comment on that Recommended Decision; and based on the record before it, the Commission adopted the 2001 Separations Freeze Order. The Commission concluded that a freeze would stabilize the separations process pending reform by minimizing any impact of cost shifts on separations results due to circumstances—such as the growth of Internet usage, new technologies, and local competition—not contemplated by the rules. The Commission also concluded that a freeze would simplify the separations process by eliminating the need for many separations studies until separations reform was implemented.

10. The Commission agreed with the Joint Board’s Recommended Decision to freeze all part 36 category relationships and allocation factors for price cap carriers and to freeze all allocation factors for rate-of-return carriers. The Commission also agreed with the Joint Board that requiring rate-of-return carriers to freeze their category relationships could potentially harm these carriers. The Commission therefore provided rate-of-return carriers a one-time option to freeze their category relationships, enabling each of these carriers to determine whether such a freeze would be beneficial “based on its own circumstances and investment plans.” Presently, rate-of-return carriers in about 45 study areas operate under the category relationships freeze.

11. In the 2001 Separations Freeze Order, the Commission specified that the freeze would last for five years or until the Commission completed comprehensive separations reform, whichever came first. The Commission also concluded that, prior to the expiration of the five-year period, the Commission would, in consultation with the Joint Board, determine whether the freeze period should be

extended. The Commission specified that “the determination of whether the freeze should be extended at the end of the five-year period shall be based upon whether, and to what extent, comprehensive reform of separations has been undertaken by that time.”

12. Since then, the Commission has extended the separations freeze seven times, for periods ranging from one year to three years, with the most recent extension expiring on December 31, 2018. In advance of all but one of the freeze extensions, the Commission sought comment on extending the freeze, but it has not referred the specific issue of freeze extensions to the Joint Board. In the 2009 Separations Freeze Extension Order and Second Referral, the Commission asked the Joint Board to consider whether the Commission should allow carriers to unfreeze their separations category relationships and requested that the Joint Board prepare a recommended decision on that matter. The Joint Board has not made a recommendation on that request.

13. In repeatedly extending the freeze, the Commission has explained that the freeze would stabilize and simplify the separations process while the Joint Board and the Commission continued to work on separations reform. In its most recent freeze extension order, the Commission also explained that an extension until December 31, 2018, would provide the Joint Board with sufficient time to consider what effects the Commission’s reforms to the high-cost universal service program and intercarrier compensation should have on the separations rules.

14. Earlier this year, the Commission issued a Further Notice of Proposed Rulemaking (Further Notice), 83 FR 35582, July 27, 2018, proposing to extend the jurisdictional separations freeze for 15 years and inviting comment on that proposal. The Commission also sought comment on whether a shorter freeze extension would be preferable and on whether it should alter the scope of the referral to the Joint Board regarding comprehensive separations reform. In so doing, the Commission recognized that the issues before the Joint Board are extremely complex and stated the Commission’s preference not to move forward on separations reform without a Joint Board recommendation on an approach to such reform. The Commission also recognized that as a practical matter it would have to choose between extending the separations freeze and requiring changes to long-unchanged allocation factors and, for some

carriers, category relationships to take effect on January 1, 2019.

15. The Commission also proposed and sought comment on allowing rate-of-return carriers that had elected to freeze their category relationships in 2001 to opt out of that freeze. The Commission explained that the category relationships freeze has lasted 17 years instead of no more than five years as the Commission and the Joint Board originally had contemplated. The Commission also explained that since opting into the category relationships freeze many rate-of-return carriers had invested in network upgrades or were considering doing so, and that, as a result of the category relationships freeze, these carriers may be unable to recover the costs of those investments from ratepayers that benefit from the upgrades or from the Universal Service Fund. Consequently, the Commission pointed out, these carriers may lack incentives to improve service and deploy advanced technologies like broadband for their customers.

### **C. Declining Applicability of Jurisdictional Separations Results**

16. Over the course of the last decade, the jurisdictional separations rules have become irrelevant to the carriers that provide most Americans with telecommunications services. The separations rules were never applicable to wireless carriers. In 2008, the Commission granted price cap carriers forbearance from the separations rules; and recently the Commission extended this forbearance to rate-of-return carriers that receive fixed or model-based high-cost universal service support (fixed support carriers) and that elect incentive regulation for their business data services. As a result, by the middle of next year, the separations rules will apply only to rate-of-return carriers serving about 800 study areas.

17. Even for the carriers that remain subject to the separations rules, separations results have only limited applicability because of recent reforms by the Commission. As part of comprehensive reform and modernization of the universal service and intercarrier compensation systems, the Commission adopted rate caps (including a transition to bill-and-keep for certain rate elements) for switched access services for rate-of-return carriers, thereby severing the relationship between costs and switched access rates. In addition, in 2016, the Commission gave rate-of-return carriers the option of receiving high-cost universal service support based on the Alternative Connect America Cost Model

(A-CAM). More than 200 carriers opted to receive A-CAM support, which eliminated the need for those carriers to perform cost studies that required jurisdictional separations to quantify the amount of high-cost support for their common line offerings. Also as part of universal service reform, the Commission established rules to provide support for loop costs associated with broadband-only services offered by rate-of-return carriers.

18. As a result of these reforms, the Commission currently uses separations results only for carriers subject to rate-of-return regulation and only for the following limited purposes of calculating: (a) business data services rates; (b) the charge assessed on residential and business lines, known as a subscriber line charge, allowing carriers to recover part of the costs of providing access to the telecommunications network; (c) the rate for Consumer Broadband-Only Loop service; and (d) the interstate common line and Consumer Broadband-Only Loop support for non-fixed support carriers. The administrator of the universal service support program, the Universal Service Administrative Company also uses separations categorization results for calculating high-cost loop support for certain non-fixed support carriers, but without applying jurisdictional allocations. States also use separations results to determine the amount of intrastate universal service support and to calculate regulatory fees, and some states perform rate-of-return ratemaking using intrastate costs.

### **III. DISCUSSION**

19. Based on the record in this proceeding, and cognizant of the impacts, both on rate-of-return carriers subject to the separations freeze and on the Commission, of the seven separations freeze extensions over the last 17 years, the Commission now extends for up to six years the freeze on part 36 category relationships and jurisdictional cost allocation factors that the Commission adopted in the 2001 Separations Freeze Order. This extension will begin on January 1, 2019, and will continue until the earlier of December 31, 2024, or the completion of comprehensive reform of the part 36 jurisdictional separations rules. The Commission also provides carriers that opted to freeze their separations category relationships in 2001 a one-time opportunity to unfreeze and update those relationships so that they can categorize their costs based on current circumstances.

**A. Further Extending the Separations Freeze**

20. The Commission finds, consistent with the recommendation of the State members of the Joint Board and the overwhelming consensus among the commenters, that an extension of the separations freeze beyond its December 31, 2018, expiration date will serve the public interest. As the Commission recognized in the Further Notice, this impending deadline compels the Commission to make a choice between extending the freeze further or allowing long-unused separations rules to take effect on January 1, 2019. The Commission finds that not extending the freeze would impose significant burdens on rate-of-return carriers that would far exceed the benefits, if any, of requiring those carriers to comply with rules that they have not implemented since 2001.

21. In particular, the Commission agrees with those commenters that argue that rate-of-return carriers, particularly smaller rural carriers, would find it extremely difficult, if not impossible, to perform all of the studies needed for full compliance. The Commission has previously found that allowing the existing freeze to lapse and frozen separations rules to be reinstated would impose undue instability and administrative burdens on affected carriers. The record in this proceeding confirms that is still the case.

22. First, the Commission agrees with commenters that developing “traffic factors” to jurisdictionally separate costs assigned to voice-related services is “an arcane science” and that, after 17 years of not performing traffic factor studies, carriers would be required to incur substantial training and other costs to reestablish the expertise necessary to perform them. This expense would hit smaller, rural carriers with limited resources the hardest. The Commission cannot justify imposing such a burden on small carriers particularly given that the impact of such traffic factors is continuing to diminish as investment in voice services decreases due to growing deployment of broadband services.

23. Moreover, as NTCA explains, even if full compliance were possible, “these smaller providers would be forced to return to a regulatory environment that last operated in full nearly two decades ago.” The Commission cannot justify the costs of such compliance, given the outdated nature of the rules with which these small providers would have to comply. Furthermore, as the Commission previously explained, reinstating these largely outmoded rules in full measure could produce negative

consequences by causing significant disruptions in carriers' regulated rates, cost recovery, and other operating conditions.

24. The Commission therefore rejects the Irregulators' argument that it should not extend the freeze. The Irregulators express concern that the freeze has led "to improper decision-making at various levels," with, for example, State governments basing policy on obsolete numbers that over-allocate costs to the intrastate jurisdiction. Yet, they fail to explain how ending the freeze would alleviate any such misallocation. Instead, the Irregulators propose two options for completely revamping the jurisdictional separations process. While those proposals may be useful to the Joint Board's consideration of comprehensive separations reform, they are beyond the scope of the question before the Commission today of whether to extend the separations freeze beyond December 31, 2018.

25. The Commission also finds that another short-term freeze extension will not provide the Joint Board, the Commission, and interested stakeholders sufficient time to complete comprehensive separations reform. Indeed, several commenters support a fifteen-year freeze. By contrast, NARUC and the Colorado PUC both advocate for a freeze of no more than two years. In considering how long to extend the freeze, the Commission agrees with the State members of the Joint Board that an extension of up to six years is appropriate. A freeze of up to six years balances the competing considerations—the difficulty of comprehensive separations reform and the need to focus on that reform rather than on repeated freeze extensions—better than a longer or shorter extension period.

26. The difficulty of comprehensively reforming the separations rules cannot be overstated. The current rules focus on allocating between the interstate and intrastate jurisdictions the costs of circuit-switched voice services provided over primarily copper networks. Those rules have largely been in place since 1969, with some revisions in 1987, and minor revisions earlier this year to harmonize the part 36 rules with changes the Commission made to the part 32 rules. Since the freeze was first put in place, many rate-of-return carriers have converted much of their networks to packet-based technologies that provide telecommunications, information, and video services over fiber facilities. Comprehensive reform, as previously envisioned by the Commission, would entail rewriting the separations rules in a

manner that recognizes these technological changes and is consistent with changes to the high-cost universal service program and intercarrier compensation systems. As the Commission's track record of repeated extensions demonstrates, such reform is not a short-term project.

27. Accordingly, the Commission rejects NARUC's argument that it should extend the freeze "on an interim basis for no more than two years to engage timely and substantively [with the Joint Board] on separations issues." Given the Commission's past experience with short-term separations freezes and stalled attempts at separations reform, the Commission finds that a two-year extension would almost certainly do nothing more than continue the cycle of repeated short-term freeze extensions that has diverted industry, State, and Commission resources away from substantive reform, forcing a break in whatever momentum toward meaningful separations reform the Commission and the Joint Board achieve, long before that reform is complete. The Commission believes instead that an extension of up to six years makes separations reform more likely because it will halt that cycle and provide sufficient time for the Joint Board to focus on short-term and long-term steps toward comprehensive reform.

28. The Commission also declines to extend the freeze indefinitely, as USTelecom urges. USTelecom argues that the separations rules "have become increasing[ly] irrelevant and unnecessary" and that the Commission should therefore focus on substantive intercarrier compensation and universal service reforms, rather than on separations reform. Although the Commission agrees that the separations rules are irrelevant to price cap carriers, they remain applicable to, and impose substantial obligations on, rate-of-return carriers serving about 800 study areas. The Commission therefore believes that there is value to continuing to work towards reform of those rules.

#### **B. Allowing a One-Time Category Relationships Unfreeze**

29. In the Rate-of-Return Business Data Services Order, the Commission allowed carriers subject to the category relationships freeze that receive model-based and other forms of fixed high-cost support and elect incentive regulation for business data services to opt out of that freeze and update their category relationships. In this proceeding, the Commission grants all other rate-of-return carriers operating under the category-relationships freeze the opportunity to opt out of it and update their category

relationships—enabling those carriers to better recover network upgrade costs from ratepayers that benefit from those upgrades and to take greater advantage of universal service programs that incent broadband deployment.

30. Category Relationships Unfreeze. The rate-of-return carriers that elected to freeze their category relationships in 2001 did so based, in part, on the Commission’s representation that the freeze would last no more than five years. Those carriers did not and could not have anticipated that the category relationships freeze would be in place for more than 17 years. Yet, the Commission’s current rules prohibit carriers that elected the freeze from withdrawing from it. The result is that some, if not all, carriers with frozen category relationships are unable to recover their business data services costs from business data services customers or from NECA traffic sensitive pool settlements.

31. Rate-of-return carriers that chose to freeze their category relationships in 2001 assign costs within part 32 accounts to categories using their separations category relationships from 2000. Consequently, these companies are still categorizing their costs based on the technologies and services that were in place in 2000, instead of being able to adjust the amounts assigned to separations categories to reflect current network costs and services. This circumstance, in turn, distorts revenue requirements and resulting rates. Allowing carriers to unfreeze and update their category relationships will enable them to more closely align their business data services and Consumer Broadband-Only Loop service rates with the underlying costs of these services. It also will encourage those carriers to expand and upgrade their networks, thus enhancing their capability to provide these services.

32. The Commission also agrees with commenters that allowing affected carriers to opt out of the freeze will enable these carriers to take better advantage of universal service programs that promote broadband growth. As commenters point out, the category relationships freeze undermines incentives for certain carriers to move toward broadband-only services. Endeavor, for example, explains that, without an opportunity to unfreeze and re-categorize investment levels, the ability of carriers to qualify for support of broadband-capable network loops through the Connect America Fund – Broadband Loop Service (CAF-BLS) program is significantly reduced. Unfreezing category relationships will allow a

carrier to assign broadband-only loop costs to the consumer broadband-only revenue requirement and also receive CAF-BLS support based on these costs, as carriers seek to meet consumer demand for broadband-only lines.

33. In addition, consistent with the Commission's finding in the Rate-of-Return Business Data Services Order and the consensus of commenters in this proceeding including the State Members of the Federal-State Joint Board, the Commission concludes that affected carriers should be given the flexibility to choose whether to unfreeze their category relationships. Were the Commission instead to require all affected carriers to unfreeze and update their category relationships, the burden on some affected carriers could outweigh any potential benefits. As the Commission has recognized, the size, cost structures, and investment patterns of rate-of-return carriers vary widely. Certain rate-of-return carriers' cost structures may not have changed significantly enough since the freeze began to warrant the administrative costs that these carriers would incur in updating their category relationships, costs that would be borne by their customers and the high-cost universal service support program. Other carriers may find that updating their category relationships would disrupt business plans made based on a continuation of the category relationships freeze since it has been in effect for such a long period. Allowing affected carriers the flexibility to choose whether to unfreeze their category relationships properly recognizes that some carriers will embrace the opportunity to more accurately categorize their investments, while others would find updating their category relationships to be unduly costly or disruptive.

34. Consistent with Commission precedent, the Commission adopts July 1, 2019, as the effective date for opting out of the freeze. The Commission finds it important to implement the unfreeze option "efficiently and swiftly" while at the same time giving carriers enough time to prepare. Commenters generally agree that July 1, 2019, is a reasonable effective date. The Commission requires that carriers currently in the NECA traffic-sensitive pool notify NECA by March 1, 2019, of their decision to opt out of the category relationships freeze. This deadline provides the same advance notice that carriers exiting the NECA pool must give NECA under § 69.3 of the Commission's rules. The

Commission also requires carriers that file their own tariffs to provide the Wireline Competition Bureau with notice of their intent to opt out of the category relationships freeze by May 1, 2019.

35. The Commission finds there is insufficient basis in the record to modify any other aspects of the separations freeze. The Commission sought detailed input on several other possible modifications to the freeze, including whether carriers that unfreeze their category relationships should be permitted to refreeze them and whether carriers that did not freeze their category relationships in 2001 should be permitted to freeze them. In addition, carriers now apportion their categorized costs using jurisdictional allocation factors for the year 2000, and the Commission sought input on whether it should allow or require carriers to reset these factors using current data. The record provides insufficient information, however, about the impact of allowing such a reset of jurisdictional allocation factors or about how best to implement such a reset. Moreover, requiring all rate-of-return carriers to reset their jurisdictional allocation factors would impose substantial burdens on small rural carriers. And requiring or allowing all rate-of-return carriers to reset their jurisdictional allocation factors would impose a substantial burden on NECA and the Commission in reviewing such changes. Some commenters support other modifications to the separations freeze, such as giving carriers the opportunity to unfreeze and then refreeze their category relationships. The Commission agrees with NECA, however, that allowing companies to unfreeze and then refreeze their category relationships would risk gamesmanship, a risk that the Commission cannot adequately address on the current record. Indeed, the record lacks sufficient information to accurately assess the benefits and drawbacks of making changes to the separations freeze, other than to the category relationships freeze.

36. *Implementation of the Unfreeze.* The Commission adopts the suggestion that carriers that file their own tariffs and unfreeze their category relationships be required to update their part 36 category relationships in new cost studies on which their interstate tariffed rates, other than switched access rates, will be based going forward, beginning with the 2019 annual filing. Rate-of-return carriers subject to §§ 61.38 and 61.39 of the Commission's rules shall explain the impact of the unfreeze and describe these studies in the "Description & Justification" sections of their filings. Carriers subject to § 61.38 shall

include the results of these studies in their tariff review plans. Carriers subject to § 61.39 are not required to submit the supporting data at the time of filing, but the Commission and interested parties may request the data. NECA carriers that elect to unfreeze their category relationships must reflect these unfrozen relationships in the cost studies on which their pool settlements are based beginning with the last six months of studies for calendar year 2019.

37. The Commission concludes, consistent with the view of nearly all commenters addressing the issue, that it should take steps to prevent double-recovery of costs. Unfreezing separations category relationships could result in a carrier's recovery of the same costs through higher business data services rates and unchanged switched access recovery. Updated category relationships will change the costs assigned to common line, to interstate switched access, and to business data services. The USF/ICC Transformation Order capped all interstate switched access rates at 2011 levels, subject to specified reductions over time. The Commission does not with this action make changes to the carefully-balanced transition to bill-and-keep set forth in that Order. Unless cost reductions to interstate switched access are reflected in a carrier's revised base period revenue, however, a carrier will over-recover costs through its capped interstate switched access rates.

38. To prevent this over-recovery, the Commission follows the approach it took in the Rate-of-Return Business Data Services Order. There, the Commission adopted a method similar to the approach the Bureau followed in waiving the category relationships freeze in the Eastex Waiver Order, which commenters generally agree is a reasonable approach to prevent double-recovery. Thus, a carrier subject to § 61.38 or § 61.39 of the Commission's rules must calculate the difference between the interstate switched access costs in two cost studies—one based on unfrozen category relationships that is the basis for its tariff-year 2019-2020 rates and a second study that is the same except that it is based on frozen category relationships. Each carrier must then adjust its base period revenue by an amount equal to the interstate switched access cost difference between the two cost studies before applying the annual 5% reduction to the base period revenue, as required by the USF/ICC Transformation Order.

39. A carrier that participates in the NECA interstate switched access tariff must report to

NECA the interstate switched access cost difference between the two calendar year 2018 studies and its base period revenue as revised to reflect the cost difference. These procedures protect both carriers and customers from any unintended consequences of unfreezing category relationships. Finally, the Commission requires NECA to reflect these base period revenue changes in its settlement procedures.

40. The Commission finds that these measures provide a reasonable and not unduly burdensome method for preventing double-recovery of costs when a carrier chooses to unfreeze its category relationships. Each carrier will need to perform detailed calculations to implement its choice to update category relationships. Because the Commission has an obligation to protect ratepayers against the harms of double-recovery, the Commission rejects ITTA's assertion that the procedure carriers are required to follow to prevent double-recovery is too burdensome, particularly since ITTA poses no alternative.

### **C. Declining to Alter the Scope of the Referral**

41. The Commission declines to alter the scope of the referral to the Joint Board, and instead asks the Joint Board to adopt an incremental approach to separations reform by focusing first on cleaning up the existing separations rules and then on long-term steps toward comprehensive reform of the remaining rules. As previously articulated by the Commission, those issues include whether the separations rules are still needed, whether specific separations categories should be consolidated or disaggregated, and how certain types of costs should be allocated between the jurisdictions. Although the Commission has never retreated from its goal of comprehensive separations reform, over the years it has asked the Joint Board to focus on certain specific issues within that broad area. Most recently, the Commission referred to the Joint Board the harmonization of the Commission's part 32 jurisdictional separations rules with previous amendments to its part 32 accounting rules and asked the Joint Board to issue a recommended decision on that matter. The Joint Board issued its Recommended Decision eight months after receiving that referral; and, after seeking public comment on the Joint Board's recommendations, the Commission amended its separations rules consistent with those recommendations.

42. Therefore, rather than narrowing the scope of the separations reform referral, the

Commission believes that the best course is to ask the Joint Board to focus on certain discrete issues in the short term. First, should the Commission amend the separations rules to recognize that price cap carriers and rate-of-return carriers that have adopted the new incentive regulation framework for their business data services offerings are not subject to them—an action that would recognize the Commission’s forbearance from application of the separations rules to these carriers? Second, given that the separations rules apply only to certain rate-of-return carriers and only for certain purposes, are there rules or recordkeeping requirements that the Commission should modify or eliminate in light of the freeze extension of up to six years? In highlighting these issues, the Commission hopes to draw on the Commission’s recent experience with the Joint Board in amending the part 36 separations rules to harmonize them with changes in the part 32 accounting rules.

43. Longer term, the Commission continues to seek the Joint Board’s recommendations on how the Commission might replace the existing jurisdictional separations process with a simplified system for reasonably allocating costs between the interstate and intrastate jurisdictions. The Commission agrees with NARUC that the existing separations rules, which presume circuit-switched, primarily voice networks, require updating to reflect today’s network configurations and mix of broadband, video, and voice services. The Commission also shares NARUC’s and the Irregulars’ concern that those rules necessarily misallocate network costs. The Commission knows that any changes to the separations rules will need to be harmonized with the Commission’s reforms to the universal service, intercarrier compensation, and business data services rules. Indeed, the Commission extends the separations freeze for up to six years to free resources to address these and other long-term separations problems. The Commission looks forward to working with the Joint Board in a more directed manner, addressing these important issues step-by-step. By addressing the separations procedures in a concerted fashion—through substantive reforms of the universal service, intercarrier compensation, and business data services rules on one hand, and focused revisions of specific areas in the separations rules on the other—the Commission hopes to resolve the complex separations issues that have proven so challenging well before the end of the maximum six-year extension period.

#### **D. Consistency with the Communications Act**

44. The Commission rejects NARUC's assertion that because it did not refer or receive a recommended decision from the Joint Board on the specific proposal to extend the freeze for 15 years, and because it did not receive a recommended decision from the Joint Board on allowing carriers subject to the category relationships freeze the opportunity to update their category relationships, the Commission is violating section 410(c) of the Communications Act. In so arguing, NARUC ignores the fact that the Commission has twice referred comprehensive separations reform to the Joint Board. The Joint Board clearly understood that these referrals encompassed a separations freeze; otherwise it would have sought an additional referral before recommending the initial freeze. Moreover in 2009, the Commission referred the specific question of whether to allow carriers subject to the category relationships freeze the opportunity to unfreeze those relationships. The Joint Board has never come to a recommended decision on the latter referral, and the only Recommended Decision the Joint Board has issued addressing any part of either comprehensive reform referral was the decision the Joint Board issued in 2000 recommending a separations freeze. Following the Joint Board recommendation, the Commission adopted the separations freeze and recognized that it might need to extend the freeze if comprehensive reform were not completed before the freeze expired.

45. Because the Commission has not completed comprehensive reform, consistent with the Commission's 2001 Separations Freeze Order, the Commission has extended the separations freeze seven times without an additional referral to, or receiving an additional recommended decision from, the Joint Board. The first time the Commission extended the freeze it explicitly found that the extension was within the scope of the Joint Board's previous recommendation. NARUC's assertion that the Commission found in 2001 that it would be required to receive a specific recommendation from the Joint Board on each extension of the separations freeze is plainly wrong. The Commission committed to consulting with the Joint Board on extensions of the initial five-year freeze; it did not commit to referring freeze extensions to the Joint Board. For their part, State members of the Joint Board have repeatedly submitted letters supporting the freeze extensions; and, as part of this proceeding, the current State

members recommend that the Commission extend the separations freeze for up to six years and allow carriers a one-time opportunity to unfreeze their category relationships.

46. In its comments, NARUC attempts to distinguish the proposed 15-year freeze from earlier, shorter freeze extensions by arguing that a freeze of up to 15 years is the “policy equivalent” of a permanent freeze. The Commission’s decision to extend the freeze for only six years should alleviate NARUC’s concern. Moreover, the Commission’s decision to extend the freeze for up to six years is consistent with the recommendation of the State members of the Joint Board and informed by the record of this proceeding and by the Joint Board’s failure to reach a recommendation on comprehensive reform for the last 21 years. Furthermore, the freeze the Commission adopts today is not permanent; it will expire on a date certain absent further action by the Commission.

47. Regarding the Commission’s 2001 pledge to “consult[] with the Joint Board” to “determine whether the freeze period shall be extended,” the notice and comment and ex parte periods for the Further Notice provided ample opportunity for the Joint Board, including its State members, to voice their opinions on the extension. The State members of the Joint Board have taken the opportunity to engage in extensive discussions with all the other Joint Board members. These discussions meet any obligation the Commission may have under section 410(c) to afford the State members of the Joint Board an opportunity to participate in the Commission’s deliberations on this Report and Order.

48. Moreover, given the lack of action by the Joint Board on the Commission’s two referrals of comprehensive reform and separate referral of an unfreeze of the category relationships and the recommendations of the State Joint Board members, the Commission’s actions today are necessary and appropriate. Section 410(c) directs that, after a referral, the Joint Board “shall prepare a recommended decision for prompt review and action by the Commission.” Nothing in section 410(c) obligates the Commission to wait indefinitely for a recommended decision before acting. The Commission concludes that the only reasonable interpretation of the statutory language allows the Commission to act unilaterally where, as here, issues have been pending before the Joint Board for many years without a recommended decision. Any contrary interpretation would allow the Joint Board to indefinitely delay Commission

action. Congress could not have intended that result while requiring that the Commission act promptly once the Joint Board issues a recommended decision.

49. Reducing the length of the freeze extension should also alleviate NARUC's concern that extending the freeze for up to 15 years would result in unjust and unreasonable rates because of the frozen allocation of the underlying costs to the interstate and intrastate jurisdictions. A freeze extension of up to six years will free up resources to address whether the separations rules produce reasonable results within the meaning of section 201(b) of the Communications Act and determine the proper methodology if the rules need to be revised. This is no easy undertaking, given the need to ensure that any changes to the separations rules are consistent with the Commission's high-cost universal service and intercarrier compensation rules. Although the Commission agrees with NARUC on the need for separations reform, it finds that extending the freeze for up to six years will accelerate that reform. Accordingly, the Commission finds that a freeze extension of up to six years, in combination with a one-time option to unfreeze category relationships, will increase the Commission's and the Joint Board's ability to ensure just and reasonable rates.

#### **IV. PROCEDURAL MATTERS**

50. Paperwork Reduction Act Analysis. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, the Commission sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis below.

51. Congressional Review Act. The Commission will send a copy of this Report and Order

to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

52. Final Regulatory Flexibility Act Analysis. The Regulatory Flexibility Act of 1980 requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in part V, below.

53. Effective Date. The Commission finds good cause to make the extension of the separations freeze effective immediately upon publication of a summary of the Report and Order in the **Federal Register**. The current freeze expired on December 31, 2018. To avoid unnecessary disruption to carriers subject to the separations rules, the Commission preserves the status quo by making the extension of the freeze effective upon publication.

## **V. FINAL REGULATORY FLEXIBILITY ANALYSIS**

54. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) on the possible significant economic impact on small entities by the Report and Order. An Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Further Notice of Proposed Rulemaking. The Commission sought written public comment on the proposals in this rulemaking proceeding, including comment on the IRFA. The Commission did not receive comments on the IRFA.

### **A. Need for, and Objectives of, the Order**

55. The Commission’s part 36 jurisdictional separations rules originated more than 30 years ago when the Commission and its State counterparts used costs to set rates, and the rules were designed to help prevent local exchange carriers (LECs) from recovering the same costs from both the interstate and intrastate jurisdictions. In 1997, the Commission initiated a proceeding to comprehensively reform those

rules in light of the statutory, technological, and marketplace changes that had affected the telecommunications industry. In 2001, the Commission, pursuant to a recommendation by the Federal-State Joint Board on Jurisdictional Separations (Joint Board), froze the part 36 separations rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first. The Commission has extended the freeze seven times, with the most recent extension expiring on December 31, 2018. The deadline compelled the Commission to make a choice between extending the freeze further or allowing long-unused separations rules to take effect on January 1, 2019.

56. The Commission finds that not extending the freeze would impose significant burdens on rate-of-return carriers that would far exceed the benefits, if any, of requiring those carriers to comply with rules that they have not implemented since 2001. Accordingly, the Report and Order extends for up to six years the freeze of part 36 category relationships and jurisdictional cost allocation factors that the Commission adopted in the 2001 Separations Freeze Order and subsequently extended until December 31, 2018. This additional extension will begin upon publication of the Order in the **Federal Register**, and will continue until the earlier of December 31, 2024, or the completion of comprehensive reform of the part 36 jurisdictional separations rules.

57. Also, in the 2001 Separations Freeze Order, the Commission granted rate-of-return carriers a one-time option to freeze their category relationships. Carriers that chose to freeze their category relationships in 2001 assign costs within part 32 accounts to categories using their separations category relationships from 2000. Consequently, these companies are still separating their costs based on the technologies and services that were in place in 2000, instead of being able to adjust the amounts assigned to separations categories to reflect the current network costs and services.

58. In the Rate-of-Return Business Data Services Order, the Commission allowed carriers subject to the category relationships freeze that receive model-based and other forms of fixed high-cost support and elect incentive regulation for business data services to opt out of that freeze and update their category relationships. In this Report and Order, the Commission grants all other rate-of-return carriers

operating under that freeze the opportunity to opt out of it—enabling carriers to better recover network upgrade costs from ratepayers that benefit from those upgrades and to take greater advantage of universal service programs that incent broadband deployment.

**B. Summary of Significant Issues Raised by Comments in Response to the IRFA**

59. There were no comments that specifically addressed the proposed rules and policies presented in the IRFA that was part of the Further Notice.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

60. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which Rules May Apply**

61. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

62. Incumbent Local Exchange Carriers. The rules adopted in this Report and Order affect the tariffed rates for interstate regulated services for incumbent LECs. Neither the Commission nor the

SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under the SBA definition, a carrier is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 1,307 incumbent LECs reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted in this proceeding.

63. The Commission has included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Because the Commission's proposals concerning the part 36 rules will affect all incumbent LECs, some entities employing 1,500 or fewer employees may be affected by the rule changes adopted in the Report and Order. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

64. None. Carriers are not required to unfreeze their category relationships. Even if they choose to do so, affected carriers may adjust their category relationships in cost studies that generally are conducted prior to filing tariffed rates.

**F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

65. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

66. The jurisdictional freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1,500 employees or fewer, to complete certain annual separations studies that otherwise would be required by the Commission's rules. Thus, an extension of this freeze avoids increasing the administrative burden of regulatory compliance for rate-of-return incumbent LECs, including small incumbent LECs.

67. Presently, rate-of-return carriers in a limited number of study areas operate under the category relationships freeze. When the Commission granted rate-of-return carriers the opportunity to elect the category relationships freeze, it specified the freeze would be an interim, "transitional measure" lasting no more than five years. But, the freeze has now lasted 17 years, and carriers that elected it are prohibited from withdrawing from that election. In the Report and Order, the Commission grants affected carriers the opportunity to voluntarily opt out of this freeze, rather than requiring carriers to do so. The Commission recognizes that the size, cost structures, and investment patterns of these carriers vary widely, and therefore enables an individual carrier to decide for itself whether the economic benefits of unfreezing its category relationships outweigh any costs. The Commission therefore certifies that this Report and Order will not have a significant economic impact on a substantial number of small entities.

**G. Federal Rules that May Duplicate, Overlap, or Conflict with the Final Rules**

68. None.

## H. Report to Congress

69. The Commission will send a copy of the Report and Order, including the FRFA, to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

## VI. ORDERING CLAUSES

70. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, this Report and Order IS ADOPTED.

71. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, and part 36 of the Commission's rules, 47 CFR part 36, IS AMENDED as set forth in the Final Rules below.

72. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, except as otherwise provided in this Report and Order, the amendments to 47 CFR part 36 set forth in the Final Rules below shall be effective on the date of publication of a summary of the Report and Order in the **Federal Register**.

73. IT IS FURTHER ORDERED that the amendments to 47 CFR 36.3(b) specified below in the Final Rules, which may contain new or modified information collection requirements that require approval by the OMB under the Paperwork Reduction Act, WILL BECOME EFFECTIVE after OMB review, on the effective date specified in a document that the Commission will publish in the **Federal Register** announcing such effective date.

74. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

75. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of the Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

**List of Subjects in 47 CFR Part 36**

Communications common carriers, Jurisdictional separations procedures, Reporting and recordkeeping requirements, Standard procedures for separating telecommunications property costs, revenues, expenses, taxes and reserves for telecommunications companies, Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,  
Federal Register Liaison,  
Office of the Secretary.

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 36 as follows:

### **PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES**

1. The authority citation for part 36 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

2. Revise § 36.3(b) to read as follows:

#### **§ 36.3 Freezing of jurisdictional separations category relationships and/or allocation factors.**

\* \* \* \* \*

(b) Effective July 1, 2001, through December 31, 2024, local exchange carriers subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign costs from the accounts under part 32 of this chapter (part 32 account(s)) to the separations categories/sub-categories, as specified herein, based on the percentage relationships of the categorized/sub-categorized costs to their associated part 32 accounts for the twelve-month period ending December 31, 2000. If a part 32 account for separations purposes is categorized into more than one category, the percentage relationship among the categories shall be utilized as well. Local exchange carriers that invest in types of telecommunications plant during the period July 1, 2001, through December 31, 2024, for which it had no separations category investment for the twelve-month

period ending December 31, 2000, shall assign such investment to separations categories in accordance with the separations procedures in effect as of December 31, 2000. Local exchange carriers not subject to price cap regulation, pursuant to § 61.41 of this chapter, may elect to be subject to the provisions of this paragraph (b). Such election must be made prior to July 1, 2001. Any local exchange carrier that is subject to § 69.3(e) of this chapter and that elected to be subject to this paragraph (b) may withdraw from that election by notifying the Commission by May 1, 2019, of its intent to withdraw from that election, and that withdrawal will be effective as of July 1, 2019. Any local exchange carrier that participates in an Association tariff, pursuant to §§ 69.601 through 69.610 of this chapter, and that elected to be subject to this paragraph (b) may withdraw from that election by notifying the Association by March 1, 2019, of such intent. Subject to these two exceptions, local exchange carriers that previously elected to become subject to this paragraph (b) shall not be eligible to withdraw from such regulation for the duration of the freeze.

\* \* \* \* \*

§ 36.126 [Amended]

3. Amend § 36.126(b)(5) by removing the date “June 30, 2014” and adding in its place “December 31, 2024.”

§§ 36.3, 36.123, 36.124, 36.125, 36.126, 36.141, 36.142, 36.152, 36.154, 36.155, 36.156, 36.157, 36.191, 36.212, 36.214, 36.372, 36.374, 36.375, 36.377, 36.378, 36.379, 36.380, 36.381, 36.382

[Amended]

4. In addition to the amendments set forth above, in 47 CFR part 36, remove the date “December 31, 2018” and add in its place everywhere it appears the date “December 31, 2024” in the following places:

- a. Section 36.3(a), (c), (d) introductory text, and (e);
- b. Section 36.123(a)(5) and (6);

- c. Section 36.124(c) and (d);
- d. Section 36.125(h) and (i);
- e. Section 36.126(b)(6), (c)(4), (e)(4), and (f)(2);
- f. Section 36.141(c);
- g. Section 36.142(c);
- h. Section 36.152(d);
- i. Section 36.154(g);
- j. Section 36.155(b);
- k. Section 36.156(c);
- l. Section 36.157(b);
- m. Section 36.191(d);
- n. Section 36.212(c);
- o. Section 36.214(a);
- p. Section 36.372;
- q. Section 36.374(b) and (d);
- r. Section 36.375(b)(4) and (5);
- s. Section 36.377(a) introductory text, (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii);
- t. Section 36.378(b)(1);
- u. Section 36.379(b)(1) and (2);
- v. Section 36.380(d) and (e);
- w. Section 36.381(c) and (d); and
- x. Section 36.382(a).

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