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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1878; Project Identifier MCAI–2022–01582–E; Amendment 39–22711; AD 2024–06–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–25–03 for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 7000–72 and Trent 7000–72C engines. AD 2021–25–03 required operators to revise the airworthiness limitation section (ALS) of their existing approved continuous airworthiness maintenance program by incorporating the revised tasks of the applicable time limits manual (TLM) for each affected engine model. Since the FAA issued AD 2021–25–03, the manufacturer again revised the TLM to introduce new or more restrictive tasks and limitations and associated thresholds and intervals for life-limited parts, which prompted this AD. This AD requires revising the ALS of the operator's existing approved engine maintenance or inspection program, as applicable, to incorporate new or more restrictive tasks and limitations and associated thresholds and intervals for life-limited parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 21, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 21, 2024.

ADDRESSES: *AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1878; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1878.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–25–03, Amendment 39–21846 (86 FR 71135, December 15, 2021) (AD 2021–25–03). AD 2021–25–03 applied to all RRD Model Trent 7000–72 and Trent 7000–72C engines. AD 2021–25–03 required operators to revise the ALS of their existing approved continuous airworthiness maintenance program by incorporating the revised tasks of the applicable TLM for each affected model turbofan engine, as specified in EASA AD 2020–0244. The FAA issued AD 2021–25–03 to prevent the failure of critical rotating parts, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

The NPRM published in the **Federal Register** on September 18, 2023 (88 FR 63888). The NPRM was prompted by EASA AD 2022–0248, dated December 14, 2022 (EASA AD 2022–0248) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that the manufacturer published a revised engine TLM to introduce new or more restrictive tasks and limitations and associated thresholds and intervals for life-limited parts.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1878.

In the NPRM, the FAA proposed to require revising the ALS of the operator's existing approved engine maintenance or inspection program, as applicable, to incorporate new or more restrictive tasks and limitations and associated thresholds and intervals for life-limited parts, which are specified in EASA AD 2022–0248, described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two commenters. The commenters were the Air Line Pilots Association, International (ALPA) and Delta Air Lines, Inc. (DAL). ALPA supported the NPRM without change. The following presents the comments received on the NPRM from DAL and the FAA's response to each comment.

Request To Clarify the Definition of Approved Maintenance Program (AMP)

Delta requested that the FAA revise paragraph (h)(1) of the proposed AD to clarify the definition of the AMP and to refer to the operator's Continuous Airworthiness Maintenance Program (CAMP) instead. DAL stated that the FAA's definition of an AMP in paragraph (h)(1) of the proposed AD contradicts the definition of an AMP in paragraph (h)(4). DAL also noted that the definitions for an AMP in paragraph (h)(1) and (4) of the proposed AD are part of the operator's CAMP.

The FAA partially agrees. Paragraph (h)(4) of this AD has been revised to refer to the airworthiness limitations section of the ''existing approved

aircraft maintenance or inspection program'' rather than the ''existing approved engine maintenance or inspection program.'' However, paragraph (h)(1) of this AD was not changed as a result of this comment because a CAMP is a specific type of maintenance program, and this AD uses the term ''maintenance program'' generically to include an AMP and a CAMP.

Request To Allow Alternative Actions and Prohibit Relaxed Thresholds Intervals

DAL requested paragraph (i) of the proposed AD be revised to remove the ''no alternative actions'' statement and to clarify that only relaxed thresholds and intervals are not allowed unless they are specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0248. DAL stated that paragraph (i) of the proposed AD does not allow any alternative thresholds and interval changes once the required TLM revision is incorporated into the operator's maintenance program. DAL noted that an operator may elect to incorporate stricter thresholds and intervals than prescribed in the TLM, which would allow the intervals and thresholds to be changed if they remain within the published limits of the TLM.

The FAA disagrees with the request. The FAA notes that paragraph (i) of this AD does not limit the operators from using more restrictive limits or from performing more frequent inspections. This paragraph requires the actions within the compliance time of the TLM, which specifies the completion of tasks at intervals of no more than a defined number of engine flight cycles and replacement of parts before exceeding published life limits. Based on this, replacement of a part at a more restrictive time would fall within compliance time of the TLM and will satisfy that particular requirement of the AD. The FAA did not change this AD as a result of these comments.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0248, which specifies revising the ALS of the existing approved engine maintenance or inspection program, as applicable, to incorporate new or more restrictive tasks and limitations and associated thresholds and intervals for life-limited parts.

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

Costs of Compliance

The FAA estimates that this AD affects 40 engines installed on 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
Revise the ALS	1 work-hours × $85 per hour = $85	$0	$85	$3,400

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has determined that 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,

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

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

List of Subjects in 14 CFR Part 39

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

The 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:

■ a. Removing Airworthiness Directive 2021–25–03, Amendment 39–21846 (86 FR 71135, December 15, 2021); and

■ b. Adding the following new airworthiness directive:

2024–06–06 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–22711; Docket No. FAA–2023–1878; Project Identifier MCAI–2022–01582–E.

(a) Effective Date

This airworthiness directive (AD) is effective May 21, 2024.

(b) Affected ADs

This AD replaces AD 2021–25–03, Amendment 39–21846 (86 FR 71135, December 15, 2021).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG Model Trent 7000–72 and Trent 7000–72C engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine time limits manual (TLM) life limits of certain critical rotating parts and updating certain maintenance tasks. The FAA is issuing this AD to prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0248, dated December 14, 2022 (EASA AD 2022–0248).

(h) Exceptions to EASA AD 2022–0248

(1) Where EASA AD 2022–0248 defines the AMP as the approved Aircraft Maintenance Programme containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this AD defines the AMP as the aircraft maintenance program containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated airplane.

(2) Where EASA AD 2022–0248 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not require compliance with paragraphs (1), (2), (4), and (5) of EASA AD 2022–0248.

(4) Where paragraph (3) of EASA AD 2022–0248 specifies revising the approved AMP within 12 months after the effective date of EASA AD 2022–0248, this AD requires revising the airworthiness limitations section of the existing approved aircraft maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(5) This AD does not adopt the Remarks paragraph of EASA AD 2022–0248.

(i) Provisions for Alternative Actions and Intervals

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0248.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Manager, AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0248, dated December 14, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0248, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. 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 March 15, 2024.

Victor Wicklund,

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

[FR Doc. 2024–07872 Filed 4–15–24; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

[NASA Document No: NASA–23–054; NASA Docket No: NASA–2023–0003]

RIN 2700–AE74

Delegations and Designations

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is amending its delegations and designations rule to correct citations and titles throughout, to establish delegations of authority for Real Estate Contracting Officers, and to clarify regulatory text in specific sections.

DATES: This direct final rule is effective on June 17, 2024. Comments are due on or before May 16, 2024. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments must be identified with RINs 2700–AE74 and may be sent to NASA via the Federal E-Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Please note that NASA will post all comments on the internet with changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Daniela Cruzado, 202–295–7589.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

NASA has determined that this rulemaking meets the criteria for a direct final rule because it makes changes to correct citations and titles throughout, to establish delegations of authority for Real Estate Contracting Officers, and to clarify regulatory text in specific sections. No opposition to the changes and no significant adverse comments are expected. However, if NASA receives significant adverse comments, it will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will

consider whether it warrants a substantive response in a notice and comment process.

Background

Subpart 5 of part 1204, promulgated March 13, 1965 (30 FR 3378), established delegations and designations for NASA officials and other Government agencies acting on behalf of the Agency to carry out functions related to real estate and related matters, granting easements, leaseholds, permits, and licenses in real property, executing certificates of full faith and credit, and taking actions on liquidated damage. Sections 1204.501, 1204.503, and 1204.504 will be amended to correct citations and titles, and to clarify regulatory text in specific sections. Additionally, Sections 1204.503 and 1204.504 will be amended to establish delegation of authority for Real Estate Contracting Officers.

Statutory Authority

The National Aeronautics and Space Act (the Space Act), 51 U.S.C. 20113(a), authorizes the Administrator of NASA to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

Regulatory Analysis

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

E.O.'s 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as ''not significant'' under E.O. 12866.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 603). This rule removes one section from title 14 of the CFR and, therefore, does not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

This direct final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Review Under E.O. 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments and, if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any substantial direct effects on state and local governments within the meaning of the E.O. Therefore, no Federalism assessment is required.

List of Subjects in 14 CFR Part 1204

Administrative practice and procedure, Authority delegation (Government agencies), Federal buildings and facilities.

Accordingly, under the authority of the National Aeronautics and Space Act, as amended, 51 U.S.C. 20113, NASA amends 14 CFR part 1204 as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subpart 5—Delegations and Designations

■ 1. The authority citation for subpart 5 to part 1204 is revised to read as follows:

Authority: 51 U.S.C. 20113(a).

§ 1204.501 [Amended]

■ 2. Amend § 1204.501 as follows:
■ a. In paragraph (a) introductory text, add the words ''the Office of'' before the word ''Strategic'' and remove the words ''Integrated Asset Management'' and add in their place the words ''Facilities and Real Estate.''
■ b. In paragraph (a)(2)(i), remove the word ''to'' before the words ''sign declarations of taking.''
■ c. In paragraph (a)(2)(ii), add the text '', in accordance with statutory authority'' after the word ''reimbursement.''
■ d. In paragraph (a)(2)(iv), add the words ''in or over real property owned or'' before the word ''controlled.''
■ e. In paragraph (a)(2)(v):
■ i. Remove the phrase ''NASA-controlled'' and add in its place the phrase ''NASA-owned or -controlled.''
■ ii. Remove the word ''Comptroller'' and add in its place the words ''Office of the Chief Financial Officer.''

■ 3. Revise § 1204.503 to read as follows:

§ 1204.503 Delegation of authority to grant easements.

(a) *Scope.* 40 U.S.C. 1314 authorizes executive agencies to grant, under certain conditions, the easements as the head of the agency determines will not be adverse to the interests of the United States and subject to the provisions as the head of the agency deems necessary to protect the interests of the United States.

(b) *Delegation of authority.* The Assistant Administrator for the Office of Strategic Infrastructure and the Director, Facilities and Real Estate Division, are delegated authority to take actions in connection with the granting of easements.

(c) *Redelegation.* (1) The Real Estate Branch Chief may, subject to the restrictions in paragraph (d) of this section, exercise the authority of the National Aeronautics and Space Act of 1958, as amended, and 40 U.S.C. 1314 to authorize or grant easements in, over, or upon real property of the United States owned and/or controlled by NASA upon compliance with statute including a determination that such authorization or grant will not be adverse to the interests of the United States.

(2) The Real Estate Branch Chief may redelegate this authority to the appropriate warranted Real Estate Contracting Officer, in accordance with the requirements set forth in NASA Procedural Requirements (NPR) 8800.15, Real Estate Management Program.

(d) *Restrictions.* Except as otherwise specifically provided, no such easement shall be authorized or granted under the authority stated in paragraph (c) of this section unless:

(1) The responsible Center Director has provided approval that such grant is appropriate.

(2) The Center Director provides certification to the appropriate Real Estate Contracting Officer:

(i) That the interest in real property to be conveyed is not required for a NASA program.

(ii) That the grantee's exercise of rights under the easement will not be adverse to the interests of the United States or interfere with NASA operations.

(3) Monetary or other benefit, including any interest in real property, is received by the government as

consideration for the granting of the easement.

(4) The instrument granting the easement is on a form or template approved or directed to be used by the Real Estate Branch Chief, and provides at a minimum:

(i) For the termination of the easement, in whole or in part, and without cost to the Government, if there has been:

(A) A failure to comply with any term or condition of the easement;

(B) A nonuse of the easement for a consecutive two-year period for the purpose for which granted; or

(C) An abandonment of the easement.

(ii) That written notice of the termination shall be given to the grantee, or its successors or assigns, by the Assistant Administrator for the Office of Strategic Infrastructure or the Director, Facilities and Real Estate Division, and that termination shall be effective as of the date of the notice.

(iii) That restoration provisions are provided for in the agreement that protect the interests of the United States and ensure the grantee is responsible for removal of any and all improvements in or on NASA real property.

(iv) Such other reservations, exceptions, limitations, benefits, burdens, terms, or conditions as are set forth in the forms and templates for easements approved for NASA use by the Real Estate Branch Chief.

(e) *Waivers.* If, in connection with a proposed granting of an easement, the Real Estate Contracting Officer or Center Director determines that a waiver from any of the restrictions in paragraph (d) of this section is appropriate, authority for the waiver may be requested from the Assistant Administrator for the Office of Strategic Infrastructure or the Director, Facilities Real Estate Division.

(f) *Services of the Corps of Engineers.* In exercising the authority herein granted, the Real Estate Contracting Officer, under the applicable provisions of any cooperative agreement between NASA and the Corps of Engineers (in effect at that time), may:

(1) Utilize the services of the Corps of Engineers, U.S. Army.

(2) Delegate authority to the Corps of Engineers to execute, on behalf of NASA, grants of easements in real property, as authorized in this section, provided that the conditions set forth in paragraphs (d) and (e) of this section are complied with.

(g) *Distribution of documents.* One copy of each document granting an easement interest under this authority, including instruments executed by the Corps of Engineers, will be filed in the Central Depository for Real Property Documents at National Aeronautics and Space Administration, Office of Strategic Infrastructure, Facilities and Real Estate Division, Washington, DC 20546.

■ 4. Revise § 1204.504 to read as follows:

§ 1204.504 Delegation of authority to grant leaseholds, permits, and licenses in real property.

(a) *Delegation of authority.* The National Aeronautics and Space Act, as amended, authorizes NASA to grant agreements for the use of NASA-owned and/or -controlled real property. This authority is delegated to the Assistant Administrator for the Office of Strategic Infrastructure and the Director, Facilities Real Estate Division.

(b) *Definitions.* The following definitions will apply:

(1) Real Property refers to land, buildings, structures (including relocatable structures), air space, utility systems, improvements, and appurtenances annexed to land referred to as real property assets. For purposes of NASA use, the term real property also includes related personal property, also known as collateral equipment.

(2) State means the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(3) Person includes any corporation, partnership, firm, association, trust, estate, or other entity.

(c) *Redelegation.* (1) The Real Estate Branch Chief may, subject to the restrictions in paragraph (d) of this section, grant a leasehold, permit, or license to any Person or organization, including other Government agencies, a State, or political subdivision or agency thereof. This authority may not be exercised with respect to real property which is proposed for use by a NASA exchange and subject to the provisions of NASA Policy Directive 9050.6, NASA Exchange and Morale Support Activities.

(2) The Real Estate Branch Chief may redelegate this authority to the appropriate warranted Real Estate Contracting Officer, in accordance with the requirements set forth in NPR 8800.15.

(d) *Restrictions.* Except as otherwise specifically provided, no leasehold, permit, or license shall be granted under the authority stated in paragraph (c) of this section unless:

(1) The responsible Center Director has provided approval that such leasehold, permit, or license is appropriate.

(2) The Center Director provides certification to the appropriate Real Estate Contracting Officer:

(i) That the interest or rights to be granted are not required for a NASA program.

(ii) That the interests or rights to be granted will not be adverse to the interests of the United States nor interfere with NASA operations.

(3) That, in the case of leaseholds fair market value monetary consideration is received by NASA.

(4) The instrument granting the leasehold, permit, or license in real property is on a form or template approved by or directed to be used by the Real Estate Branch Chief, and provides, at a minimum:

(i) For unilateral termination by NASA in the event of:

(A) Default by the grantee; or

(B) Abandonment of the property by the grantee; or

(C) Force majeure circumstances including a determination by Congress, the President, or the NASA Administrator that the interest of the national space program, the national defense, or the public welfare require the termination of the interest granted, with advance, written notice provided to the grantee.

(ii) A liability waiver, indemnification requirements, environmental requirements, and insurance provisions as needed to suitably protect the United States from damages arising from the grantee's use of NASA real property.

(iii) That restoration provisions are provided for in the agreement that protect the interests of the United States and ensure the grantee is responsible for removal of any and all improvements in or on NASA real property.

(iv) Such other reservations, exceptions, limitations, benefits, burdens, terms, or conditions as are set forth in the forms and templates for leaseholds, permits, and licenses in real property approved by and directed for use by the Real Estate Branch Chief.

(e) *Waivers.* If, in connection with a proposed grant, the Real Estate Contracting Officer or Center Director determines that a waiver from any of the restrictions set forth in paragraph (d) of this section is appropriate, a request may be submitted to the Assistant Administrator for the Office of Strategic Infrastructure or the Director, Facilities Real Estate Division.

(f) *Distribution of documents.* One copy of each document granting an interest in real property will be filed in the Central Depository for Real Property Documents at: National Aeronautics and Space Administration, Office of

Strategic Infrastructure, Washington, DC 20546.

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2024–07421 Filed 4–15–24; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AB19

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') adopts amendments to the Telemarketing Sales Rule (''TSR'') that, among other things, require telemarketers and sellers to maintain additional records of their telemarketing transactions, prohibit material misrepresentations and false or misleading statements in business to business (''B2B'') telemarketing calls, and add a new definition for the term ''previous donor.'' These amendments are necessary to address technological advances and to continue protecting consumers, including small businesses, from deceptive or abusive telemarketing practices.

DATES: The amendments are effective May 16, 2024. However, compliance with 16 CFR 310.5(a)(2) is not required until October 15, 2024. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of May 16, 2024.

ADDRESSES: Relevant portions of the record of this proceeding, including this document, are available at *https://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia Hsue, (202) 326–3132, *phsue@ftc.gov,* or Benjamin R. Davidson, (202) 326–3055, *bdavidson@ftc.gov,* Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Stop CC–6316, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This document states the basis and purpose for the Commission's decision to adopt amendments to the TSR that were proposed and published for public comment in the **Federal Register** on June 3, 2022 in a Notice of Proposed Rulemaking (''2022 NPRM'').[1] After careful review and consideration of the entire record on the issues presented in this rulemaking proceeding, including 26 public comments submitted by a variety of interested parties, the Commission has decided to adopt, with several modifications, the proposed amendments to the TSR intended to curb deceptive or abusive practices in telemarketing and improve the effectiveness of the TSR.

I. Background

Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''Act'') in 1994 to curb abusive telemarketing practices and provide key anti-fraud and privacy protections to consumers.[2] The Act directed the Commission to adopt a rule prohibiting deceptive or abusive telemarketing practices.[3] The Act also directed the Commission to include, among other provisions, disclosure requirements and to consider recordkeeping requirements in its rulemaking.[4] Pursuant to the Act, the Commission promulgated the TSR on August 23, 1995.[5]

The Rule prohibits deceptive or abusive telemarketing practices, such as misrepresenting several categories of material information or making false or misleading statements to induce a person to pay for a good or service.[6] The Rule also requires sellers and telemarketers to make specific disclosures and keep certain records of their telemarketing activities.[7] The Commission determined that recordkeeping requirements were necessary to ''ascertain whether sellers and telemarketers are complying with the [. . .TSR], identify persons who are involved in any challenged practices, and [] identify customers who may have been injured.'' [8]

Since 1995, the Commission has amended the Rule on four occasions: (1) in 2003 to create the National Do Not Call (''DNC'') Registry and extend the Rule to telemarketing calls soliciting charitable contributions (''charity calls''); [9] (2) in 2008 to prohibit prerecorded messages (''robocalls'') in sales calls and charity calls; [10] (3) in 2010 to ban the telemarketing of debt relief services requiring an advance fee; [11] and (4) in 2015 to bar the use in telemarketing of certain payment mechanisms widely used in fraudulent transactions.[12]

Despite making significant amendments to the Rule, the Commission has not updated the recordkeeping provisions since the Rule's inception in 1995.[13] Evolutions in technology and the marketplace have made it more difficult for regulators to enforce the TSR, particularly provisions relating to the DNC Registry.[14] As a result, the Commission solicited comment during its regulatory review process on whether it should update the recordkeeping provisions, and subsequently proposed amending them in the 2022 NPRM.[15]

The 2022 NPRM also proposed applying the TSR's prohibitions on deceptive telemarketing to B2B calls.[16] The original TSR generally excluded

[1] Notice of Proposed Rulemaking (''2022 NPRM''), 87 FR 33677 (June 3, 2022).

[2] Public Law 103–297, 108 Stat. 1545 (1997) (codified as amended at 15 U.S.C. 6101 through 6108).

[3] 15 U.S.C. 6102(a)(1).

[4] 15 U.S.C. 6102(a)(3).

[5] *See* Statement of Basis and Purpose and Final Rule (''Original TSR''), 60 FR 43842 (Aug. 23, 1995).

[6] *See, e.g.,* 16 CFR 310.3(a); *see also* Original TSR, 60 FR at 43848–51.

[7] *See, e.g.,* 16 CFR 310.3(a)(1), 310.5; *see also* Original TSR, 60 FR at 43846–48, 43851, 43857.

[8] Original TSR, 60 FR at 43857.

[9] *See* Statement of Basis and Purpose and Final Amended Rule (''2003 TSR Amendments''), 68 FR 4580 (Jan. 29, 2003) (adding Do Not Call Registry, charitable solicitations, and other provisions). The Telemarketing Act was amended in 2001 to extend its coverage to telemarketing calls seeking charitable contributions. *See* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (''USA PATRIOT Act''), Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001) (adding charitable contribution to the definition of telemarketing and amending the Act to require certain disclosures in calls seeking charitable contributions).

[10] *See* Statement of Basis and Purpose and Final Rule Amendments (''2008 TSR Amendments''), 73 FR 51164 (Aug. 29, 2008) (addressing the use of robocalls).

[11] *See* Statement of Basis and Purpose and Final Rule Amendments (''2010 TSR Amendments''), 75 FR 48458 (Aug. 10, 2010) (adding debt relief provisions including a prohibition on misrepresenting material aspects of debt relief services in Section 310.3(a)(2)(x)). The Commission subsequently published technical corrections to Section 310.4 of the TSR. 76 FR 58716 (Sept. 22, 2011).

[12] *See* Statement of Basis and Purpose and Final Rule Amendments (''2015 TSR Amendments''), 80 FR 77520 (Dec. 14, 2015) (prohibiting the use of remotely created checks and payment orders, cash-to-cash money transfers, and cash reload mechanisms).

[13] When the Commission decided in 2003 and 2010 to make substantive amendments to the TSR, it declined to modify the Rule's recordkeeping provisions. *See* 2003 TSR Amendments, 68 FR at 4645, 4653–54 (declining to implement any of the suggested recordkeeping revisions that were raised in the public comments); 2010 TSR Amendments, 75 FR at 48502.

[14] 2022 NPRM, 87 FR at 33679–81.

[15] The Commission issued the 2022 NPRM after it had embarked on a regulatory review of the TSR in 2014. In that review, it sought feedback on a number of issues, including the existing recordkeeping requirements. *See* 2014 TSR Rule Review, 79 FR 46732, 46735 (Aug. 11, 2014).

[16] 2022 NPRM, 87 FR at 33682–83.

B2B calls, except those selling office and cleaning supplies, because in the Commission's experience at the time, those calls were ''by far the most significant business-to-business problem area.'' [17] In 2003, the Commission considered extending the TSR's protections to B2B calls selling internet or web services, but decided against doing so for fear of chilling technological innovation.[18] It did, however, note it would ''continue to monitor closely'' B2B telemarketing practices in this area and ''may revisit the issue in subsequent Rule Reviews should circumstances warrant.'' [19] Since then, the Commission has continued to see small businesses harmed by deceptive B2B telemarketing, and the 2022 NPRM proposed extending Section 310.3(a)(2)'s prohibition on misrepresentations [20] and Section 310.3(a)(4)'s prohibition on false or misleading statements [21] to B2B calls.[22]

Finally, the 2022 NPRM proposed adding a definition for ''previous donor.'' In 2008 the Commission amended the TSR to prohibit robocalls, but allowed charity robocalls if the recipient is a ''member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made.'' [23] The Commission intended this narrow exemption to apply only to consumers who had previously donated to the soliciting organization,[24] but the Commission did not define ''previous donor.'' [25] The new definition will clarify that telemarketers are prohibited from making charity robocalls unless the call recipient donated to the soliciting non-profit charitable organization (''charity'') within the last two years.[26]

II. Overview of the Proposed Amendments to the TSR

A. Recordkeeping

The TSR's recordkeeping provisions, which have remained unchanged since the Rule was promulgated in 1995, generally require telemarketers and sellers to keep for a 24-month period records of: (1) any substantially different advertisement, including telemarketing scripts; (2) lists of prize recipients, customers, and telemarketing employees directly involved in sales or solicitations; and (3) all verifiable authorizations or records of express informed consent or express agreement.[27] They may keep the records in any form and in the same manner and format as they would keep such records in the ordinary course of business, and they may allocate responsibilities of complying with the Rule's recordkeeping requirements between the seller and telemarketer.[28]

The telemarketing landscape has changed drastically since 1995. Technological advancements have made it easier and cheaper for unscrupulous telemarketers to engage in illegal telemarketing, resulting in a greater proliferation of unwanted calls.[29] Bad actors hide their identities by using technology to ''spoof'' or fake a calling number, making it more difficult for the Commission to identify the responsible parties or obtain records of their illegal telemarketing activities.[30] Technology also allows these bad actors to operate from anywhere in the world, posing additional challenges to the Commission's law enforcement efforts.[31]

The primary hurdles in enforcing the TSR in the current telemarketing landscape are in: (1) identifying the telemarketer and seller responsible for the telemarketing campaign; (2) obtaining call detail records; and (3) linking the content of the telemarketing calls with the call detail records to determine which TSR provisions might apply to the telemarketing activity.

As explained in more detail in the 2022 NPRM, to identify the responsible parties and obtain evidence of their telemarketing activities, the Commission often must issue civil investigative demands to multiple voice service providers to trace a call from the consumer to the telemarketer's voice provider.[32] In some instances, by the time the Commission has identified the relevant voice provider, the voice provider may not have retained records of the telemarketing calls such as the date, time, call duration, and disposition of each call, or the phone number(s) that placed and received each call (*i.e.* ''call detail records'').[33] As a result, the call detail records either no longer exist or are not available for law

[17] Original TSR, 60 FR at 43867, 43861.

[18] 2003 TSR Amendments, 68 FR at 4663; 2022 NPRM, 87 FR at 33682–83.

[19] 2003 TSR Amendments, 68 FR at 4663; 2022 NPRM, 87 FR at 33682–83.

[20] Section 310.3(a)(2) prohibits, among other things, misrepresenting: the total cost to purchase a good or service, material restrictions on the use of the good or service, material aspects of the central characteristics of the good or service, material aspects of the seller's refund policy, the seller's affiliation with or endorsement by any person or government agency, or material aspects of a negative option feature or debt relief service. *See* 16 CFR 310.3(a)(2)(i)–(x).

[21] Section 310.3(a)(4) prohibits making false or misleading statements to induce any person to pay for goods or services or induce a charitable contribution. *See* 16 CFR 310.3(a)(4).

[22] 2022 NPRM, 87 FR at 33682–83. When the Commission issued the 2022 NPRM, it also issued an Advance Notice of Proposed Rulemaking (''2022 ANPR'') in which it sought public comment on whether to extend all of the TSR's protections to B2B calls. 2022 ANPR, 87 FR 33662 (June 3, 2022). The Commission addresses the public comments submitted in response to the 2022 ANPR in a Notice of Proposed Rulemaking that the Commission is issuing simultaneously with this Final Rule.

[23] *See* 2008 TSR Amendments, 73 FR at 51185. To qualify for this narrow exemption, sellers and telemarketers must also comply with the provisions of Section 310.4(b)(1)(v)(B).

[24] *Id.*

[25] Pursuant to the USA PATRIOT Act, the Commission amended the TSR in 2003 to extend its coverage to charity calls. 2003 TSR Amendments, 68 FR at 4582. As part of that amendment, the Commission defined ''donor'' as ''any person solicited to make a charitable contribution.'' *Id.* at 4590.

[26] 2022 NPRM, 87 FR at 33679.

[27] 16 CFR 310.5(a).

[28] 16 CFR 310.5(b) & (c).

[29] *See, e.g.,* Prepared Statement of the Federal Trade Commission Before the United States Senate Committee on Commerce, Science and Transportation: Abusive Robocalls and How We Can Stop Them (Apr. 18, 2018), *available at https://www.ftc.gov/system/files/documents/public_statements/1366628/p034412_commission_testimony_re_abusive_robocalls_senate_04182018.pdf* (last visited Dec. 11, 2023); *see also* Prepared Statement of the Federal Trade Commission: Oversight of the Federal Trade Commission Before the United States Senate Committee on Commerce, Science, and Transportation (Aug. 5, 2020), *available at https://www.ftc.gov/system/files/documents/public_statements/1578963/p180101testimonyftcoversight20200805.pdf* (last visited Dec. 21, 2023).

From 2019 to 2023, the Commission received on average nearly 4 million Do Not Call complaints per year, and the DNC Registry currently has over 249 million active telephone numbers. FTC, Do Not Call Data Book 2023 (''2023 DNC Databook''), at 6 (Nov. 2023), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/Do-Not-Call-Data-Book-2023.pdf* (last visited Dec. 11, 2023). By comparison, within one year of its launch, the DNC Registry had over 62 million active telephone numbers registered, and the Commission received over 500,000 Do Not Call complaints. *See* Annual Report to Congress for FY 2003 and 2004 Pursuant to the Do Not Call Implementation Act on Implementation of the National Do Not Call Registry, at 3 (Sept. 2005), *available at https://www.ftc.gov/sites/default/files/documents/reports/national-do-not-call-registry-annual-report-congress-fy-2003-and-fy-2004-pursuant-do-not-call/051004dncfy0304.pdf* (last visited Dec. 11, 2023); National Do Not Call Registry Data Book for Fiscal Year 2009, at 4 (Nov. 2009), *available at https://www.ftc.gov/sites/default/files/documents/reports_annual/fiscal-year-2009/091208dncadatabook.pdf* (last visited Dec. 11, 2023). Conversely, technological advancements have also reduced the burden and costs of recordkeeping. 2022 NPRM, 87 FR at 33685 n.95 and 33690–91.

[30] *See supra* note 29. On June 25, 2019, the FTC announced ''Operation Call it Quits,'' which included 94 actions against illegal robocallers, many of which used spoofing technology. *See* Press Release, FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls (June 25, 2019), *available at https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal* (last visited Dec. 11, 2023).

[31] *See supra* note 29.

[32] 2022 NPRM, 87 FR at 33680–81.

[33] *Id.* at 33680. In other instances, voice providers assert it is cost prohibitive to retrieve because they only maintain records in an easily retrievable format for several months before archiving them in the ordinary course of business.

enforcement purposes, and the Commission cannot identify the bad actor responsible for the spoofed or otherwise illegal calls.[34]

Call detail records are also necessary to ascertain compliance with certain provisions of the TSR such as the DNC Registry.[35] And as detailed in the 2022 NPRM, even when the Commission and other law enforcers are successful in obtaining call detail records, the records alone do not contain sufficient information about the content of the calls for regulators to determine whether the telemarketer or seller has violated the TSR.[36]

The proposed amendments to the recordkeeping requirements addressed the challenges identified above. They included new recordkeeping requirements of telemarketing activity that telemarketers or sellers are in the best position to provide.[37] Specifically, the proposed amendments required the retention of the following new categories of information: (1) a copy of each unique prerecorded message, including each call a telemarketer makes using soundboard technology; [38] (2) call detail records of telemarketing campaigns; [39] (3) records sufficient to show a seller has an established business relationship (''EBR'') with a consumer; [40] (4) records sufficient to show a consumer is a previous donor to a particular charity; [41] (5) records of the service providers that a telemarketer uses to deliver outbound calls; [42] (6) records of a seller or charitable organization's entity-specific do-not-call registries; [43] and (7) records of the Commission's DNC Registry that were used to ensure compliance with this Rule.[44]

The proposed amendments also required the retention of other new records that help identify the nature and purpose of each call including: (1) the identity of the telemarketer who placed or received each call; (2) the seller or charitable organization for which the telemarketing call is placed or received; (3) the good, service, or charitable purpose that is the subject of the call; (4) whether the call is to a consumer or business, utilizes robocalls, or is an outbound call; and (5) the telemarketing script(s) and the robocall recording (if applicable) that was used in the call.[45] The proposed amendments also required the retention of records regarding the caller ID transmitted if the call was an outbound call, including the name and phone number that was transmitted, and records of the telemarketer's authorization to use the phone number and name that was transmitted.[46]

The proposed amendments also modified or clarified existing recordkeeping requirements to delineate more clearly the information telemarketers or sellers must keep to comply with those provisions, and specified what information is required to assert an exemption or affirmative defense to the TSR.[47] Specifically, the proposed amendments modified the recordkeeping provisions to require retention of a customer or prize recipient's last known telephone number and last known physical or email address, and the date a customer bought a good or service.[48] It modified the time period to keep records from two years to five years from the date the record is made, except for advertising materials under Section 310.5(a)(1) and service contracts under Section 310.5(a)(9), which require retention of records for five years from the date the records under those sections are no longer in use.[49]

The proposed amendments clarified that records of verifiable authorizations, express informed consent or express agreement (collectively, ''consent'') include a consumer's name and phone number, a copy of the consent requested in the same manner and format that it was presented to that consumer, a copy of the consent provided, the date the consumer provided consent, and the purpose for which consent was given and received.[50] The NPRM also proposed that if the telemarketer or seller requested consent verbally, the copy of consent requested did not require a recording of the conversation. A copy of the telemarketing script would suffice as a complete record of the consent requested. But the NPRM made clear that this proposal only applies to telemarketing calls where no other provision of the TSR requires a recording of consent.[51]

The proposed amendments also included new format requirements for records containing a phone number, time or call duration; [52] clarified that a

[34] *Id.*

[35] *Id.* at 33681.

[36] *Id.* at 33680–82.

[37] *Id.*

[38] Soundboard technology is technology that allows a live agent to communicate with a call recipient by playing recorded audio snippets instead of using his or her own live voice. *See* FTC Staff Opinion Letter on Soundboard Technology, at 1 (Nov. 10, 2016), *available at https://www.ftc.gov/system/files/documents/advisory_opinions/letter-lois-greisman-associate-director-division-marketing-practices-michael-bills/161110staffopsoundboarding.pdf* (last visited Dec. 11, 2023).

[39] The proposed amendments stated the call detail records include for each call a telemarketer places or receives, the calling number; called number; time, date, and duration of the call; and the disposition of the call, such as whether the call was answered, dropped, transferred, or connected. If the call was transferred, the record should also include the phone number or IP address that the call was transferred to as well as the company name, if the call was transferred to a company different from the seller or telemarketer that placed the call. 2022 NPRM, 87 FR at 33684.

[40] For each consumer with whom a seller asserts it has an established business relationship, the proposed amendments stated a seller must keep a record of the name and last known phone number of that consumer, the date the consumer submitted an inquiry or application regarding that seller's goods or services, and the goods or services inquired about. A seller may also show it has an established business relationship with a consumer if that consumer purchased, rented, or leased the seller's goods or services or had a financial transaction with the seller during the 18 months before the date of the telemarketing call. Another proposed amendment modifies the existing recordkeeping provisions to state that records of existing customers should also include the date of the financial transaction to establish EBR under these circumstances. *Id.* at 33685.

[41] If a telemarketer intends to assert that a consumer is a previous donor to a particular charity, the Commission proposed that for each such consumer the telemarketer must keep a record of that consumer's name and last known phone number, and the last date that consumer donated to the particular charity. The proposed amendments also included a new definition of ''previous donor.'' *Id.* at 33685.

[42] The proposed amendments stated that service providers include, but are not limited to, voice providers, autodialers, sub-contracting telemarketers, or soundboard technology platforms. The Commission did not intend for this provision to include every voice provider involved in delivering the outbound call and limited this provision to the service providers with which the seller or telemarketer has a business relationship. For each such entity, the seller or telemarketer must keep records of any applicable contracts, the date the contract was signed, and the time period the contract is in effect. The proposed amendments also stated that the records should be retained for five years after the contract expires or five years from the date the telemarketing activity covered by the contract ceases, whichever is shorter. *Id.* at 33685–86.

[43] For the entity-specific do-not-call registry, the Commission proposed requiring telemarketers and sellers to retain records of: (1) the consumer's name, (2) the phone number(s) associated with the DNC request, (3) the seller or charitable organization from which the consumer does not wish to receive calls, (4) the telemarketer that made the call; (5) the date the DNC request was made; and (6) the good or service being offered for sale or the charitable purpose for which contributions are being solicited. *Id.* at 33686.

[44] The Commission proposed requiring telemarketers or sellers to keep records of every version of the FTC's DNC Registry the telemarketer or seller downloaded to ensure compliance with the TSR. *Id.* at 33686.

[45] *Id.* at 33684.

[46] *Id.*

[47] *Id.* at 33680–82.

[48] *Id.* at 33686.

[49] *Id.*

[50] *Id.* at 33686–87. The proposed amendment also stated that for a copy of the consent provided under Sections 310.3(a)(3), 310.4(a)(7), 310.4(b)(1)(iii)(B)(1), or 310.4(b)(1)(v)(A), a complete record must include all of the requirements outlined in those respective sections.

[51] 2022 NPRM, 87 FR at 33686–87.

[52] The proposed amendments required records containing international phone numbers to comport

failure to keep each record required under Section 310.5 in a complete and accurate manner constitutes a violation of the TSR; and created a safe harbor for incomplete or inaccurate call detail records where the omission was temporary and inadvertent.[53] Finally, the Commission proposed modifying the compliance obligations in Section 310.5(e) to obligate both telemarketers and sellers to keep records if they fail to allocate recordkeeping obligations between themselves.[54]

B. B2B Telemarketing

The Original TSR exempted B2B calls other than those selling office and cleaning supplies, which the Commission considered the ''most significant business-to-business problem area'' at the time.[55] The Commission stated, however, it would reconsider the B2B exemption if ''additional [B2B] telemarking activities become problems.'' [56] In 2003, the Commission reconsidered the scope of the B2B exemption and proposed requiring B2B calls selling internet or web services to comply with the TSR because they had become an emerging area for fraud.[57] The Commission ultimately decided not to modify the B2B exemption because the Commission wanted to ''move cautiously so as not to chill innovation in the development of cost-efficient methods for small businesses to join in the internet marketing revolution.'' [58] But the Commission again noted it would ''continue to monitor closely'' the B2B telemarketing practices in this area and ''may revisit the issue in subsequent Rule Reviews should circumstances warrant.'' [59]

Since 2003, the Commission has continued to see small business harmed by numerous types of deceptive B2B telemarketing schemes,[60] including those selling business directory listings,[61] web hosting or design services,[62] search engine optimization services,[63] market-specific advertising opportunities,[64] payment processing services,[65] and schemes that impersonate the government.[66] For example, some of these schemes were the subject of a coordinated FTC-led crackdown on scams targeting small businesses, called ''Operation Main Street,'' announced in June 2018.[67]

To address these scams, the 2022 NPRM proposed applying the TSR's prohibitions against misrepresentations, as articulated in Sections 310.3(a)(2) and 310.3(a)(4), to B2B telemarketing. Specifically, sellers and telemarketers would be prohibited from making: (1) several types of material misrepresentations in the sale of goods or services; and (2) false or misleading statements to induce a person to pay for goods or services or to induce a charitable contribution (collectively, ''misrepresentations''). [68] The 2022 NPRM did not propose applying any other provisions of the TSR to B2B calls, such as recordkeeping, DNC Registry, or DNC fee access requirements.[69]

C. New Definition for ''Previous Donor''

The 2022 NPRM proposed adding a new definition for the term ''previous donor'' to clarify that telemarketers are prohibited from making charity robocalls unless the consumer donated to the soliciting charity within the last two years. When the Commission amended the TSR to prohibit robocalls

with International Telecommunications Union's Recommendation E.164 format and domestic numbers to comport with the North American Numbering plan. The Commission proposed that records containing time and call duration be kept to the closest whole second, and time must be recorded in Coordinated Universal Time (UTC). *Id.* at 33687.

[53] The Commission proposed a safe harbor for temporary and inadvertent errors in keeping call detail records if the telemarketer or seller can demonstrate that: (1) it has established and implemented procedures to ensure completeness and accuracy of its records under Section 310.5(a)(2); (2) it trained its personnel in the procedures; (3) it monitors compliance and enforces the procedures, and documents its monitoring and enforcement activities; and (4) any failure to keep accurate or complete records under Section 310.5(a)(2) was temporary and inadvertent. *Id.* at 33687.

[54] *Id.* at 33687.

[55] Original TSR, 60 FR at 43861.

[56] *Id.; see also* 2002 Notice of Proposed Rulemaking (''2002 NPRM''), 67 FR 4492, 4500 (Jan. 30, 2002); 2014 TSR Rule Review, 79 FR at 46738.

[57] 2002 NPRM, 67 FR at 4500, 4531. ''internet Services'' meant any service that allowed a business to access the internet, including internet service providers, providers of software and telephone or cable connections, as well as services that provide access to email, file transfers, websites, and newsgroups. *Id.* ''Web services'' was defined as ''designing, building, creating, publishing, maintaining, providing, or hosting a website on the internet.'' *Id.* The Commission intended for the term internet services to encompass any and all services related to accessing the internet and the term web services to encompass any and all services related to operating a website. *Id.*

[58] 2003 TSR Amendments, 68 FR at 4663.

[59] *Id.*

[60] A 2018 survey conducted by the Better Business Bureau revealed that the same scams that harm consumers, such as tech support scams and imposter scams, also harm small businesses, and that 57% of scams that impact small businesses are perpetrated through telemarketing. Better Business Bureau, *Scams and Your Small Business Research Report,* at 9–10 (June 2018), *available at https://www.bbb.org/SmallBizScams* (last visited Dec. 11, 2023).

[61] *See, e.g., FTC* v. *Your Yellow Book Inc.,* No. 14–cv–786–D (W.D. Ok. July 24, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140807youryellowbookcmpt.pdf* (last visited Dec. 11, 2023); *FTC* v. *OnlineYellowPagesToday.com, Inc.,* No. 14–cv–0838 RAJ (W.D. Wash. June 9, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140717onlineyellowpages cmpt.pdf* (last visited Dec. 11, 2023); *FTC* v. *Modern Tech. Inc., et al.,* No. 13–cv–8257 (Nov. 18, 2013) *available at https://www.ftc.gov/sites/default/files/documents/cases/131119yellowpagescmpt.pdf* (last visited Dec. 11, 2023); *FTC* v. *6555381 Canada Inc. d/b/a Reed Publishing,* No. 09–cv–3158 (N.D. Ill. May 27, 2009) *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602reedcmpt.pdf* (last visited Dec. 11, 2023); *FTC* v. *6654916 Canada Inc. d/b/a Nat'l. Yellow Pages Online, Inc.,* No. 09–cv–3159 (N.D. Ill. May 27, 2009), *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602 nypocmpt.pdf* (last visited Dec. 11, 2023); *FTC* v. *Integration Media, Inc.,* No. 09–cv–3160 (N.D. Ill. May 27, 2009), *available at https://www.ftc.gov/sites/default/files/documents/cases/2009/06/090602goamcmpt.pdf* (last visited Dec. 11, 2023); *FTC* v. *Datacom Mktg. Inc., et al.,* No. 06–cv–2574 (N.D. Ill. May 9, 2006), *available at https://www.ftc.gov/sites/default/files/documents/cases/2006/05/060509datacomcomplaint.pdf* (last visited Dec. 11, 2023); *FTC* v. *Datatech Commc'ns, Inc.,* No. 03–cv–6249 (N.D. Ill. Aug. 3, 2005) (filing amended complaint), *available at https://www.ftc.gov/sites/default/files/documents/cases/2005/08/050825compdatatech.pdf* (last visited Dec. 11, 2023); *FTC* v. *Ambus Registry, Inc.,* No. 03–cv–1294 RBL (W.D. Wash. June 16, 2003), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/07/ambuscomp.pdf* (last visited Dec. 11, 2023).

[62] *See FTC* v. *Epixtar Corp., et al.,* No. 03–cv–8511(DAB) (S.D.N.Y. Nov. 3, 2003), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/11/031103comp0323124.pdf* (last visited Dec. 11, 2023); *FTC* v. *Mercury Mktg. of Del., Inc.,* No. 00–cv–3281 (E.D. Pa. Aug. 12, 2003) (filing for an Order to Show Cause Why Defendants Should Not be Held in Contempt), *available at https://www.ftc.gov/sites/default/files/documents/cases/2003/08/030812contempmercury marketing.pdf* (last visited Dec. 11, 2023).

[63] *See, e.g., FTC* v. *Pointbreak Media, LLC,* No. 18–cv–61017–CMA (S.D. Fla. May 7, 2018), *available at https://www.ftc.gov/system/files/documents/cases/matter_1723182_pointbreak_complaint.pdf* (last visited Dec. 11, 2023); *FTC* v. *7051620 Canada, Inc.* No. 14–cv–22132 (S.D. Fla. June 9, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140717national busadcmpt.pdf* (last visited Dec. 11, 2023).

[64] *See, e.g., FTC* v. *Prod. Media Co.,* No. 20–cv–00143–BR (D. Or. Jan. 23, 2020), *available at https://www.ftc.gov/system/files/documents/cases/production_media_complaint.pdf* (last visited Dec. 11, 2023).

[65] *See, e.g., FTC* v. *First Am. Payment Sys., LP, et al.,* No. 4:22–cv–00654 (E.D. Tex. July 29, 2022), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint%20%28file%20stamped%29_0.pdf* (last visited Dec. 11, 2023).

[66] *See, e.g., FTC* v. *DOTAuthority.com,* No. 16–cv–62186 (S.D. Fla. Sept. 13, 2016) *available at https://www.ftc.gov/system/files/documents/cases/162017dotauthoriity-cmpt.pdf* (last visited Dec. 11, 2023); *FTC* v. *D & S Mktg. Sols. LLC,* No. 16–cv–01435–MSS–AAS (M.D. Fla. June 6, 2016), *available at https://www.ftc.gov/system/files/documents/cases/160621dsmarketingcmpt.pdf* (last visited Dec. 11, 2023).

[67] *See* Press Release, FTC, BBB, and Law Enforcement Partners Announce Results of Operation Main Street: Stopping Small Business Scams Law Enforcement and Education Initiative (June 18, 2018), *available at https://www.ftc.gov/news-events/press-releases/2018/06/ftc-bbb-law-enforcement-partners-announce-results-operation-main* (last visited Dec. 11, 2023).

[68] 2022 NPRM, 87 FR at 33682–84.

[69] *Id.; see also* 16 CFR 310.5 (recordkeeping requirements); 310.8 (fee for access to the Do Not Call Registry).

in 2008,[70] it included a narrow exemption allowing charity robocalls to prior donors, recognizing a charity's strong interest in reaching consumers with ''whom the charity has an existing relationship—*i.e.* members of, or previous donors to[,] the non-profit organization on whose behalf the calls are made.'' [71] The Commission meant to limit the exemption to consumers with actual relationships to the soliciting organization, because allowing ''telefunders to make impersonal prerecorded cold calls on behalf of charities that have no prior relationship with the call recipients . . . would defeat the amendment's purpose of protecting consumers' privacy.'' [72] But in creating the exemption, the Commission did not update the definition of ''donor'' or include a definition of ''previous donor.'' Because ''donor'' is defined as ''any person solicited to make a charitable contribution,'' [73] the Commission's 2008 Amendment could be misinterpreted as allowing a telemarketer to send robocalls to any consumer it had previously *solicited* for a donation on behalf of a charity, regardless of whether the consumer donated to or has an existing relationship with that charity.

Adding a definition for ''previous donor'' makes clear a seller or telemarketer may only make charity robocalls to a donor who has previously provided a charitable contribution to that particular charity within the last two years.[74]

D. Overview of Public Comments Received in Response to the 2022 NPRM

In response to the 2022 NPRM,[75] the Commission received 26 comments [76] representing the views of State governments,[77] consumer groups,[78] consumers,[79] industry trade associations,[80] and businesses.[81] The vast majority of the comments focused on the proposed recordkeeping amendments. Commenters on behalf of government, individual consumers, and consumer advocacy groups generally supported amending the recordkeeping requirements but also submitted suggestions for additional amendments.[82] Industry groups and businesses had mixed comments. Some commenters did not support any recordkeeping amendments, citing the burden they would impose, while others were generally supportive or supportive of specific proposed amendments.[83]

Similarly, industry groups and businesses did not support applying the TSR's prohibitions against deceptive telemarketing to B2B calls; while government, individual consumers, and consumer organizations were supportive. Only three comments touched on the proposed amendment to add a new definition of ''previous donor.'' The comments and the basis for the Commission's adoption or rejection of the commenters' suggested modifications to the proposed amendments are analyzed in Section III below.

III. Final Amended Rule

The Commission has carefully reviewed and analyzed the record developed in this proceeding.[84] The record, which includes the Commission's law enforcement experience and that of its State and Federal counterparts, support the Commission's view the proposed amendments in the 2022 NPRM are necessary and appropriate to protect consumers, including small businesses, from deceptive or abusive telemarketing practices and ensure the Commission and other regulators can effectively and efficiently enforce the TSR.[85]

The Final Rule requires sellers and telemarketers to keep additional records of their telemarketing activities, prohibits misrepresentations in B2B telemarketing, and adds a new definition for previous donor. The Final Rule also implements several other clerical modifications as originally proposed in the 2022 NPRM.[86]

In some instances, the Commission has clarified or made modifications to its original proposal in response to the public comments submitted. The

[70] 2008 TSR Amendments, 73 FR at 51164.

[71] *Id.* at 51193.

[72] *Id.* at 51194.

[73] 16 CFR 310.2(p). The Commission declined to limit the definition of donor to those who have ''an established business relationship with the non-profit charitable organization'' because it wanted the term ''[to] encompass not only those who have agreed to make a charitable contribution but also any person who is solicited to do so, to be consistent with [the Rule's] use of the term 'customer.' '' 2003 TSR Amendments 68 FR at 4590.

[74] The Commission proposed that the definition of ''previous donor'' be limited to those who donated to a charity within the past two years so that consumers will not receive robocalls in perpetuity from organizations to which they have donated. The Commission chose two years to account for the possibility that consumers who donate annually may not necessarily donate exactly one year apart. 2022 NPRM, 87 FR at 33688.

[75] The Commission also received 114 unique comments in response to the 2014 Rule Review reflecting the opinions of State and Federal agencies, consumer advocacy groups, consumers, academics, and industry. 2022 ANPR, 87 FR at 33664. The comments addressing whether the Commission should amend the TSR's recordkeeping provisions are summarized in the 2022 NPRM. 2022 NPRM, 87 FR at 33682.

[76] Many commenters filed one comment in response to the 2022 ANPR or 2022 NPRM that addressed issues raised by both documents. Comments regarding the proposals in the 2022 NPRM will be addressed in this Final Rule. Comments regarding the proposals in the 2022 ANPR will be addressed in the Notice of Proposed Rulemaking that the Commission is issuing concurrently with this Final Rule (''2024 NPRM''). We cite public comments by name of the commenting organization or individual, the rulemaking (ANPR comments were assigned ''33'' and the NPRM comments were assigned ''34''), and the comment number. All comments submitted can be found at *www.regulations.gov*.

[77] National Association of Attorneys General on behalf of 43 State Attorneys General (''NAAG'') 34–20.

[78] World Privacy Forum (''WPF'') 34–21; Electronic Privacy and Information Center, National Consumer Law Center (on behalf of its low-income clients), Center for Digital Democracy, Consumer Action, Consumer Federation of America, FoolProof, Mountain State Justice, New Jersey Citizen Action, Patient Privacy Rights, Public Good Law Center, Public Knowledge, South Carolina Appleseed Legal Justice Center, and Cathy Lesser Mansfield (Senior Instructor in Law at Case Western Reserve University School of Law) (''EPIC'') 34–23.

[79] Bradley 34–15; Cassady 34–2; Chen 34–9; Kreutzmann 34–5, Yang 34–12, and 4 Anonymous submitters at 34–3, 34–4, 34–7, and 34–11. Four commenters submitted consumer complaints or were not relevant to the proceeding. *See* Anonymous 34–6, 34–8, and 34–16; and Grener 34–10.

[80] Enterprise Communications Advocacy Coalition (''ECAC'') 34–22; National Federation of Independent Business 33–4 (''NFIB''); Ohio Credit Union League (''OCUL'') 34–19; Professional Association for Customer Engagement 33–15 (''PACE''); Revenue Based Finance Coalition(''RBFC'') 34–13; Third Party Payment Processors Association (''TPPPA'') 34–14; US Chamber of Commerce (''Chamber'') 34–24; and USTelecom—The Broadband Association (''USTelecom'') 33–14.

[81] Rapid Financial Services, LLC and Small Business Financial Solutions, LLC (''Rapid Finance'') 34–17; Sirius XM Radio (''Sirius'') 34–18.

[82] Many of the consumer comments generally stated that they supported the recordkeeping amendments because they would help protect consumers from deceptive telemarketing and with enforcing the TSR. *See, e.g.,* Cassady 34–3; Chen 34–9; and Anonymous 34–11 and 34–3. One commenter generally urged more enforcement and larger penalties. Kowalski 33–7.

[83] One anonymous commenter did not support any recordkeeping because it required collection of too much data, which the commenter believed infringed on a consumer's privacy. Anonymous 34–4.

[84] The record includes the 2014 Rule Review, the 2022 NPRM, 2022 ANPR, and the law enforcement cases and experience referenced therein, which are hereby incorporated by reference.

[85] The Commission's decision to amend the Rule is made pursuant to the rulemaking authority granted by the Telemarketing Act to protect consumers, including small businesses, from deceptive or abusive practices. 15 U.S.C. 6102(a).

[86] 2022 NPRM, 87 FR at 33688.

Commission otherwise adopts the amendments proposed in the 2022 NPRM as set forth in Section VII—Congressional Review Act (''Final Rule'') below. The primary modifications and clarifications between the proposed rule published in the 2022 NPRM and the Final Rule are:

- The term ''prerecorded message'' includes telemarketing calls made using ''digital soundboard'' rather than ''soundboard technology'' to make clear the term includes any digital or sound technologies that sellers or telemarketers use to convey a verbal message to a consumer in telemarketing;
- Telemarketers and sellers will have one hundred and eighty days after the Final Rule is published to implement any new systems, software, or procedures necessary to comply with the new requirement that they keep call detail records under Section 310.5(a)(2);
- Sellers and telemarketers need not retain records of the calling number, called number, date, time, duration, and disposition of telemarketing calls under Sections 310.5(a)(2)(vii) and (x) for any calls made by an individual telemarketer who manually enters a single telephone number to initiate a call to that telephone number. Such sellers and telemarketers, however, must still comply with the other requirements under Section 310.5(a)(2);
- Modified Section 310.4(b)(2) to state it is also an abusive telemarketing act or practice and a violation of the TSR for any person to sell, rent, lease, purchase, or use any list established to comply with the TSR's recordkeeping requirements under Section 310.5. This modification makes clear telemarketers and sellers cannot use any consumer lists created for recordkeeping purposes for any other purpose;
- In obtaining written consent to contact a consumer using robocalls on behalf of a ''specific seller,'' the written agreement must identify the ''specific seller'' by its legal entity name to make clear that any agreement to receive robocalls is limited to that legal entity. The seller or telemarketer obtaining consent from the consumer must ensure the consumer understands which legal entity they have authorized to send robocalls;
- Where no provision of the TSR requires a recording of the call, the Final Rule modifies what was proposed in the NPRM and now states a complete record of consent that is verbally requested must include a recording of the consent requested as well as the consent provided, and that recording must make clear the purpose for which consent was provided;
- Service providers referenced under Section 310.5(a)(9) include any entity that provides ''digital soundboard'' technology rather than ''soundboard technology platforms'' to make clear sellers and telemarketers must retain records of any entity that provides any digital or sound technologies sellers or telemarketers use to convey a verbal message to a consumer in telemarketing;
- Sellers and telemarketers must retain records of their service providers under Section 310.5(a)(9) for five years from the date the contract expires;
- For records of the entity-specific DNC list under Section 310.5(a)(10), sellers and telemarketers must retain a record of the telemarketing entity that made the call and not the individual telemarketer;
- Under Section 310.5(a)(11), sellers and telemarketers need only retain records of which version of the FTC DNC Registry they used to comply with the TSR rather than the version itself. A record of which version used includes: (1) the name of the entity which accessed the registry; (2) the date the DNC Registry was accessed; (3) the subscription account number that was used to access the registry; and (4) the telemarketing campaign(s) for which it was accessed;
- The new formatting requirements under Section 310.5(b) apply to new records created after the Final Rule goes into effect;
- The safe harbor to retain call detail records under Section 310.5(a)(2) will grant sellers and telemarketers thirty days to correct any inadvertent errors from the date of discovery, if the seller or telemarketer who made the error otherwise complies with the other provisions of the safe harbor; and
- Under Section 310.5(e), sellers who delegate recordkeeping responsibilities to a telemarketer must also retain access rights to those records so the seller can produce responsive records in the event it has hired a telemarketer overseas.

A. Recordkeeping Requirements

The Final Rule requires sellers and telemarketers to maintain additional records that, in the Commission's law enforcement experience, are difficult for the Commission to obtain but are necessary to ensure compliance with the TSR.[87] The Final Rule also clearly defines the information telemarketers or sellers must retain to comply with existing provisions and specifies the records needed to assert an exemption or affirmative defense to the TSR. In this section, the Commission details the public comments it received in response to each proposed amendment to the recordkeeping requirements, and the Commission's response.

1. Section 310.5(a)(1)—Substantially Different Advertising Materials and Each Unique Prerecorded Message

Section 310.5(a)(1) currently requires sellers and telemarketers to keep records of ''all substantially different advertising, brochures, telemarketing scripts, and promotional materials.'' The 2022 NPRM proposed modifying Section 310.5(a)(1) to require retention of a copy of each unique robocall, including each call a telemarketer makes using soundboard technology.[88]

The Commission received five public comments addressing this proposal. The Enterprise Communications Advocacy Coalition (''ECAC'') and Sirius XM Radio (''Sirius'') object to this proposed amendment, stating it would be overly burdensome. Sirius states requiring the retention of each unique robocall would ''generate massive amounts of data that then needs to be searched, analyzed, secured, and retained, and will be extremely burdensome.'' [89] ECAC claims robocalls are ''typically stored as .wav files that are significantly larger than text files. While storage costs *may* have decreased over time, the expense associated with the storage of these large .wav files will be a significant burden on lawful telemarketers.'' [90]

The National Association of Attorneys General (on behalf of 43 State Attorneys General) (''NAAG''), Professional Association for Customer Engagement (''PACE''), and World Privacy Forum (''WPF'') all state they generally support this amendment.[91] PACE further states their members ''often keep copies of [each unique robocall] despite the TSR currently not requiring businesses to do so. Retaining these records will protect American consumers, who receive countless prerecorded messages, and protect companies, who will be able to prove compliance with the TSR.'' [92]

The Commission is not persuaded by ECAC's and Sirius' arguments. In the Commission's experience, robocalls are typically of short duration and the file sizes are minimal. As ECAC notes, the cost of storage may be decreasing every

[87] The Telemarketing Act authorizes the Commission to include recordkeeping requirements in the Rule. 15 U.S.C. 6102(a)(3).

[88] The 2022 NPRM also proposed changing the records retention period under this provision from two years to five years from the date that the records are no longer in use. *See infra* Section III.A.10 (Time Period to Keep Records).

[89] Sirius 34–18 at 8.

[90] ECAC 34–22 at 2.

[91] NAAG 34–20 at 3–4; PACE 33–15 at 2; WPF 34–21 at 2.

[92] PACE 33–15 at 2.

year. Moreover, the Commission proposed requiring a copy of each *unique* robocall, not *every* robocall used. Finally, as some commenters have stated,[93] businesses typically keep these records in the ordinary course of business. In the FTC's law enforcement experience, records of each unique prerecorded message are necessary for the Commission to ensure compliance with the TSR, and requiring retention of each unique robocall should not impose an undue burden.

With respect to calls utilizing soundboard technology, the Commission sought comment on the burden that may be imposed by requiring sellers or telemarketers to keep each unique prerecorded message involving the use of soundboard technology, including how many telemarketers employ soundboard technology in telemarketing, how many calls they make using soundboard technology, the average duration of each call, and whether the telemarketer typically keeps recordings of such calls in the ordinary course of business.[94] The FTC's law enforcement experience demonstrates the use of soundboard technology is ongoing. The Commission did not receive any public comments regarding this issue. WPF did note, however, the Commission should be mindful of using technological language that is broad enough to encompass a variety of digital and other sound technologies and recommended the use of the term ''digital soundboard'' in lieu of ''soundboard technology.'' [95] In light of this recommendation, the Commission states that the term ''prerecorded message'' includes telemarketing calls made using ''digital soundboard'' rather than ''soundboard technology'' to make clear the term includes any digital or sound technologies that sellers or telemarketers use to convey a verbal message to a consumer in telemarketing. Some digital soundboard technologies allow a seller or telemarketer to mimic or clone the voice of a specific individual and calls using this technology would be subject to this provision of the TSR to the extent that the mimic or cloning creates a prerecorded message that is used in telemarketing.

WPF also ''encourage[s] the FTC to require telemarketers to keep a copy of the full range of materials involved in the advertising campaign, including transcripts.'' [96] The Commission notes the TSR's recordkeeping provisions already require telemarketers and sellers to retain a copy of each substantially different advertising, brochure, telemarketing script, and promotional material.[97] The 2022 NPRM simply clarified telemarketing scripts include robocall and upsell scripts, and the failure to keep one substantially different version of each record under Section 310.5(a)(1) is a violation of the TSR.[98]

2. Section 310.5(a)(2)—Call Detail Records

The 2022 NPRM proposed adding Section 310.5(a)(2) to require retention of call detail records, including, for each call a telemarketer places or receives: the calling number; called number; time, date, and duration of the call; and the disposition of the call, such as whether the call was answered, dropped, transferred, or connected. For transfers, the record included the phone number or IP address the call was transferred to and the company name, if transferred to a company different from the seller or telemarketer that placed the call. The 2022 NPRM also required the retention of other records regarding the nature and purpose of each call including: (1) the telemarketer who placed or received each call; (2) the seller or charity for which the telemarketing call is placed or received; (3) the good, service, or charitable purpose that is the subject of the call; (4) whether the call is to a consumer or business, utilizes robocalls, or is an outbound call; and (5) the telemarketing script(s) and robocall (if applicable) that was used in the call. Finally, the 2022 NPRM required retention of records regarding the caller ID transmitted for outbound calls, including the name and phone number transmitted, and records of the telemarketer's authorization to use that phone number and name.

The Commission received eight comments regarding this proposal. ECAC,[99] the National Federation of Independent Businesses (''NFIB''),[100] and Sirius [101] objected, stating that compliance with this provision would impose enormous expense on businesses engaged in lawful telemarketing.[102] ECAC states its members ''make hundreds of millions of calls each year'' and ''[f]actoring in the size of a CDR file'' multiplied by the number of calls its members make each year, ''the expense associated with this retention . . . would be massive.'' [103] ECAC also argues that, while its members likely keep information regarding the nature and purpose of the calls in the ordinary course of business, associating particular scripts with a particular call is unworkable because ''well-trained telemarketers are able to deviate from scripts or not use them at all'' and ''scripts are constantly changing and evolving to reflect consumer questions and concerns.'' [104]

Sirius argues the Commission's ''overly prescriptive'' approach would impair a business's ability to adapt to

[93] *See, e.g.,* PACE 33–15 at 2.

[94] 2022 NPRM, 87 FR at 33689.

[95] WPF 34–21 at 2.

[96] *Id.*

[97] 16 CFR 310.5(a)(1).

[98] 2022 NPRM, 87 FR at 33684.

[99] ECAC 34–22 at 3.

[100] NFIB 33–4 at 4–5.

[101] Sirius 34–18 at 7.

[102] OCUL also generally objects to the proposed recordkeeping requirements as overly burdensome, stating it would require a significant investment to collect and retain new data points in a constricted time frame. OCUL 34–19 at 2.

Other commenters generally objected to the recordkeeping amendments, arguing that they require telemarketers and sellers to retain more information than they would in the ordinary course of business and are ''contrary to data minimization principles'' articulated by the Commission elsewhere. *See, e.g.,* Sirius 34–18 at 2, 4–6; NFIB 33–4 at 3–4. The Commission interprets these arguments to refer to the new requirement that sellers and telemarketers retain call detail records. NFIB lists other categories in their comment as examples of burden, such as records of established business relationships, customer lists, consent, and entity-specific DNCs or versions of the FTC's DNC Registry. NFIB 33–4 at 3–4. None of these categories, however, is new, and the TSR has always required telemarketers and sellers to keep these records. *See, e.g.,* 16 CFR 310.5(a)(3) and (5) (requiring records of consent and customer lists); 310.4(b)(3)(iii) and (iv) (requiring records of an entity-specific DNC or a version of the FTC's DNC Registry that a seller or telemarketer used to qualify for the safe harbor provisions); *see also* 2015 TSR Amendments, 80 FR at 77554 (stating the seller or telemarketer bears the burden of demonstrating the seller has an existing relationship with a customer whose number is on the DNC).

The Commission notes that the call detail records primarily reflect sellers' and telemarketers' business practices rather than implicate any consumer information. The only new items of consumer information that sellers and telemarketers are required to retain under the new recordkeeping amendments are a consumer's phone number and the option to retain the consumer's last known email address rather than a physical address. *See* proposed amendments under Sections 310.5(a)(2) (call detail records); (a)(3) (prize recipients); (a)(4) (customer records); and (a)(6) (previous donor). As explained in the 2022 NPRM, the Commission believes that telemarketers and sellers likely retain this information in the ordinary course of business. 2022 NPRM, 87 FR at 33684–85. Furthermore, they must already retain consumers' phone numbers to comply with the entity-specific DNC requirements. As discussed in additional detail in Section III.A.3—Prize Recipients and Customer Records, the Commission will prohibit use of any records created to comply with the TSR's recordkeeping requirements for any other purpose.

[103] ECAC 34–22 at 3.

[104] *Id.* at 4. The Commission does not find ECAC's argument persuasive. Even if a telemarketer deviates from a script, fails to use the script, or the company constantly updates the scripts, there is still *a* script associated with a particular call and in the Commission's law enforcement experience, telemarketers typically retain that information in the ordinary course of business.

changing market conditions and a company's ability to innovate. It would also impose ''significant administrative burdens'' and ''substantial transactional costs'' on sellers and telemarketers to establish contracts and systems to capture the information requested.[105] And NFIB argues sellers and telemarketers would ''incur substantial costs to: (1) establish in-house, or purchase from others, systems designed and built to accomplish the newly-mandated, extraordinarily-detailed recordkeeping, and (2) employ personnel to maintain and operate the systems.'' [106] At minimum, Sirius requests the Commission allow a ''phase-in'' period of a few years to allow companies sufficient time to adjust agreements, implement new systems, and build compliance plans.[107]

The Electronic Privacy and Information Center (on behalf of 13 advocacy groups) (''EPIC''), NAAG, WPF, and an individual consumer, all support the proposed amendments.[108] NAAG echoed the Commission's law enforcement experience and agreed the amendments are necessary to ensure compliance with the TSR and should not be overly burdensome to create and maintain these records.[109] EPIC stated they ''strongly support'' the amendment which rectifies ''a major weakness in the existing rule'' of requiring retention of only ''prizes awarded and sales'' which are of ''little use in identifying violations of the do-not-call rule'' without accompanying records of calls.[110] EPIC particularly applauded the amendment requiring retention of any caller ID information transmitted and the telemarketer's authorization to use that caller ID because spoofing has undermined consumers' faith in the U.S. telecommunication system, making it harder for emergency calls to reach consumers.[111] WPF and NAAG also commented that requiring records of call transfers and the identity of the recipient of those transfers is particularly important because it is ''otherwise impossible to trace fraudulent activity'' when transfers typically appear as a separate inbound call to the recipient in the voice provider's call records.[112] The individual consumer stated retaining call detail records was necessary to enforce the TSR and ''a fair compromise'' in comparison to requiring recordings of all telemarketing transactions which would be overly burdensome to small businesses.[113]

PACE notes some of its members are able to maintain the requested records and already do so in the ordinary course of business, but the proposed amendments may not be technically feasible for all members, particularly those who do not use software to engage in telemarketing but use employees in retail locations.[114] PACE members raised particular concerns about the technical capacity to record ''the duration of the call, disposition of the call, and to whom the call was transferred.'' [115]

As explained in the 2022 NPRM, the proposed addition of Section 310.5(a)(2) is necessary for the Commission to determine whether the TSR applies and which sections of the TSR the seller and telemarketer must comply with for a telemarketing campaign.[116] The Commission is cognizant this amendment will require some administrative costs in establishing a new recordkeeping system. In the 2022 NPRM, the Commission provided an estimate of those costs and invited comment about those estimates,[117] but did not receive any public comment specifically disputing its estimates. Nevertheless, in determining whether to implement the proposed amendments, the Commission considers whether the proposed amendments strike an appropriate balance between the goal of protecting consumers from deceptive or abusive telemarketing and the harm from imposing compliance burdens.

To address the concerns raised by the public comments, the Commission will provide a grace period of one hundred and eighty days from the date Section 310.5(a)(2) is published in the **Federal Register** for sellers and telemarketers to implement any new systems, software, or procedures necessary to comply with this new provision. Furthermore, the Commission will modify this amendment and provide an exemption for calls made by an individual telemarketer who manually enters a single telephone number to initiate a call. For such calls, the seller or telemarketer need not retain records of the calling number, called number, date, time, duration, and disposition of the telemarketing call under Sections 310.5(a)(2)(vii) and (x) but must otherwise comply with the other requirements under Section 310.5(a)(2). Making this modification should alleviate the general concerns commenters have raised regarding the feasibility and burden of creating and retaining call detail records. The Commission is not persuaded that requiring sellers and telemarketers to retain call detail records of their telemarketing campaigns would impose an undue burden if the seller or telemarketer can use automated mechanisms to conduct their campaigns instead of placing calls manually. In those situations, as PACE notes, the seller or telemarketer already maintains similar call detail records in the ordinary course of business.[118]

Nor is the Commission persuaded by Sirius' arguments that the proposed amendments are overly prescriptive and requiring retention of these records would stifle innovation. The proposed amendments merely identify the information sellers and telemarketers must retain. It does not dictate the form or ''look and feel'' of business records as Sirius' suggests. As discussed in more detail in Section III.A.11—Format of Records, the Commission believes the amendment to Section 310.5(a)(2) strikes the appropriate balance between providing specificity about the information sellers and telemarketers are required to keep without prescribing how it must do so.

EPIC and WPF's comments also suggested additional modifications to Section 310.5(a)(2). WPF requested the Commission consider requiring sellers and telemarketers to retain records of their use of voice biometrics in call centers, including whether voice biometrics recognition or voice emotion analysis software was used, whether a consumer's records were marked with any inferences from any voice biometric analysis, and whether that analysis was shared with any other parties.[119] The FTC's Policy Statement on Biometric Information notes significant privacy concerns regarding the collection and use of biometric information and the possibility such practices may be considered an ''unfair'' practice under Section 5 of the FTC Act.[120] Furthermore, the collection and use of such information might be considered abusive and violative of a consumer's right to privacy, which Congress gave the Commission the power to regulate

[105] Sirius 34–18 at 7–8.

[106] NFIB 33–4 at 5.

[107] Sirius 34–18 at 8.

[108] Cassady 34–2; EPIC 34–23 at 4; NAAG 34–20 at 5; WPF 34–21 at 2.

[109] NAAG 34–20 at 5.

[110] EPIC 34–23 at 4.

[111] *Id.*

[112] WPF 34–21 at 2; NAAG 34–20 at 6.

[113] Cassady 34–2.

[114] PACE 33–15 at 2.

[115] *Id.*

[116] 2022 NPRM, 87 FR at 33680–82, 33684.

[117] 2022 NPRM, 87 FR at 33690–91.

[118] PACE 33–15 at 2.

[119] WPF 34–21 at 2.

[120] FTC, Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act (May 18, 2023), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/p225402biometricpolicystatement.pdf* (last visited Jan 24, 2024).

with respect to telemarketing.[121] Although the Commission does not believe it has the evidence now either to require the retention of voice biometric recognition data in telemarketing or place restrictions on its use, it will continue to monitor voice biometric use in telemarketing.

EPIC requested the Commission consider requiring telemarketers and sellers to also retain records of campaign IDs for each call, arguing it is necessary to tie the call detail records to a particular campaign.[122] The Commission recognizes the concern EPIC has raised and addressed it by requiring sellers and telemarketers to retain records that identify, *for each call,* the nature and purpose of that call, such as the seller or soliciting charity for whom the telemarketing call was placed, the good or service sold or the charitable purpose of the call, and the telemarketing script or the robocall recording that was used. This information is at least as comprehensive as a campaign ID. The Commission believes specifying the substantive information sellers and telemarketers are required to retain, rather than identifying a particular data category such as campaign ID that may be subject to change over time, will more effectively enable the Commission and other regulators to enforce the TSR.

Finally, EPIC requested the Commission consider requiring sellers and telemarketers to keep records of the originating or gateway telecommunications provider for each campaign, rather than any service provider the telemarketer is in a business relationship with, as the NPRM proposes.[123] The Commission believes requiring retention of the call detail records and records of the seller or telemarketer's service providers strikes an appropriate balance between the Commission's interest in having sufficient information to enforce the TSR and industry's concerns regarding burden.

3. Sections 310.5(a)(3) and (4)—Prize Recipients and Customer Records

The TSR currently requires telemarketers and sellers to retain the ''name and last known address'' of each prize recipient.[124] The 2022 NPRM proposed requiring sellers and telemarketers to also retain the last known telephone number and physical or email address for each prize recipient. The Commission received three comments regarding this proposal, and all were supportive of the amendment. PACE states it believes this was a ''prudent measure, and many telemarketers and sellers that reward prizes likely already comply with this proposal.'' [125] NAAG agrees, stating the requirement ''reflects current business practices'' and telemarketers and sellers ''likely keep such information in the regular course of their business.'' [126] WPF concurs, but also suggests the Commission consider requiring sellers and telemarketers to retain this data in an encrypted state.[127]

With respect to ''Customer Records'' under Section 310.5(a)(4), the TSR requires sellers or telemarketers to retain the ''name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services.'' [128] Similarly, the Commission proposed modifying this provision to account for current business practices and require the retention of the customer's last known telephone number and the customer's last known physical address or email address. The Commission also proposed adding the date the consumer purchased the good or service to account for the new requirement that telemarketers and sellers keep records of each consumer with whom a seller intends to assert it has an EBR.[129]

The Commission received four comments regarding this amendment. NAAG and PACE support this proposal, and agree it is necessary to establish EBR and likely that telemarketers and sellers already retain this information in the ordinary course of business.[130] EPIC and WPF, however, do not support this amendment unless the Commission concurrently passes commensurate privacy protections.[131]

The Commission notes that, as it recognized in the 2022 NPRM, requiring sellers and telemarketers to retain additional personal identifying information (such as consumers' names, phone numbers, and either their physical or email address, in combination with goods or services they purchased) may raise privacy concerns.[132] The Commission emphasizes once more that sellers and telemarketers have an obligation under Section 5 of the FTC Act to adhere to the commitments they make about their information practices and take reasonable measures to secure consumers' data.[133]

But the Commission also recognizes the concerns raised by the comments. It agrees additional protections, similar to those it incorporated into the TSR when it prohibited the sale or use of any lists established or maintained to comply with the TSR's DNC Registry or entity-specific DNC,[134] should also apply to any lists of consumers that sellers or telemarketers create or maintain in order to comply with the amended recordkeeping provisions.

Thus, the Commission will amend Section 310.4(b)(2) to state it is also an abusive telemarketing act or practice and a violation of the TSR for any person to sell, rent, lease, purchase, or use any list established to comply with Section 310.5. Amending the TSR to specify that the sale or use of a list created to comply with the recordkeeping provisions is consistent with the Telemarketing Act's emphasis on privacy protection. The Act authorizes the Commission to regulate ''calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy.'' [135] The Commission agrees with commenters that consumers would consider it coercive and an abuse of their right to privacy if telemarketers or sellers are allowed to use any consumer information they collect and maintain under the TSR's recordkeeping provisions for any other purpose.

4. Section 310.5(a)(5)—Established Business Relationship

The 2022 NPRM proposed adding Section 310.5(a)(5) to further clarify what records a seller must keep to ''demonstrate that the seller has an established business relationship'' with a consumer. Specifically, for each consumer with whom a seller asserts it

[121] 15 U.S.C. 6102(a)(1).

[122] EPIC 34–23 at 5.

[123] *Id.*

[124] 16 CFR 310.5(a)(2).

[125] PACE 33–15 at 4.

[126] NAAG 34–20 at 9.

[127] WPF 34–21 at 3.

[128] 16 CFR 310.5(a)(3).

[129] 2022 NPRM, 87 FR at 33686.

[130] NAAG 34–20 at 9; PACE 33–15 at 5.

[131] EPIC 34–23 at 15; WPF 34–21 at 3. When consumer data is transferred as part of the sale, assignment, or change in ownership, dissolution, or termination of the business, EPIC also urges the Commission to require a successor to acknowledge liability for any TSR violations regarding the calls that those records document. EPIC 34–23 at 15–16. EPIC argues that this will deter a fraudulent seller or telemarketer from shutting their businesses and selling their assets, including customer lists, to a sham successor as a means of evading liability. The Commission does not believe such an amendment is necessary at this time.

[132] 2022 NPRM, 87 FR at 33686.

[133] *See generally* Federal Trade Commission 2020 Privacy and Data Security Update, *available at https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-2020-privacy-data-security-update/20210524_privacy_and_data_security_annual_update.pdf* (last visited Dec. 11, 2023).

[134] 2003 TSR Amendments, 68 FR at 4645.

[135] 15 U.S.C. 6102(a)(3)(A); *see also* 2002 NPRM, 67 FR at 4510–11.

has an established business relationship, the seller must keep a record of the name and last known phone number of that consumer, the date the consumer submitted an inquiry or application regarding that seller's goods or services, and the goods or services inquired about.[136]

The Commission received five comments addressing this proposed amendment. EPIC,[137] NAAG, and PACE all support this amendment, agreeing it is necessary for a seller to establish a business relationship with a consumer and it is likely businesses already retain such records.[138] The Ohio Credit Union League (''OCUL'') made a general objection stating it was unclear when a credit union member's business relationship begins or ends, while Sirius objected on the grounds ''it was unnecessary'' since ''sellers and telemarketers must already collect information sufficient to demonstrate an established business relationship to use as an affirmative defense.'' [139]

The Commission is not persuaded by either OCUL's or Sirius's objections. As the Commission noted in its 2022 NPRM, this requirement only applies if a seller intends to assert it has an established business relationship with a consumer.[140] As Sirius notes, sellers must already collect this information in the ordinary course of business and thus the amendment should not impose an additional burden.

5. Section 310.5(a)(6)—Previous Donor

Similar to the EBR requirements described above, the Commission also proposed adding Section 310.5(a)(6) to clarify that, if a telemarketer intends to assert that a consumer is a previous donor to a particular charity,[141] the telemarketer must keep a record, for each such consumer, of the name and last known phone number of that consumer, and the last date the consumer donated to the particular charity. The Commission received two comments on this proposed amendment. NAAG agreed with this proposed amendment, stating it was akin to the proposed amendment for EBR and should not ''impose any undue burden.'' [142] WPF concurred stating the new recordkeeping provision will ''serve to clarify the exemption for charitable donations.'' [143]

6. Section 310.5(a)(8)—Records of Consent

Section 310.5(a)(5) of the TSR requires sellers or telemarketers to keep records of ''[a]ll verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.'' The Commission proposed modifying this provision to clarify what constitutes a complete record of consent sufficient for a telemarketer or seller to assert an affirmative defense.[144] It wanted to make clear that common practices previously employed by telemarketers or sellers, such as maintaining a list of IP addresses and timestamps as proof of consent, are insufficient to demonstrate that a consumer has, in fact, provided consent to receive robocalls or receive telemarketing calls when the consumer has registered her phone number on the DNC Registry.[145]

Specifically, the 2022 NPRM proposed that for each consumer from whom a seller or telemarketer states it has obtained consent, sellers or telemarketers must maintain records of that consumer's name and phone number, a copy of the consent requested in the same manner and format it was presented to that consumer, a copy of the consent provided, the date the consumer provided consent, and the purpose for which consent was given and received.[146] For a copy of the consent provided under Sections 310.3(a)(3), 310.4(a)(7), 310.4(b)(1)(iii)(B)(1), or 310.4(b)(1)(v)(A), a complete record must also include all of the requirements outlined in those respective sections.[147] The 2022 NPRM also stated if consent were requested verbally, a copy of the telemarketing script of the request would suffice as a copy of the consent requested, and a recording of the conversation was not necessary unless another provision of this Rule required it.[148]

The Commission received four comments regarding this proposed amendment. EPIC, NAAG, PACE, and WPF all generally support the proposed amendment.[149] PACE states it ''welcomes these provisions in order to better ascertain what records are necessary to assert an affirmative defense'' and the proposed records ''flow logically from the TSR.'' [150]

But EPIC, NAAG, and WPF also submitted suggestions on additional amendments, arguing the Commission should implement more stringent requirements. WPF suggests the Commission consider updating how a consumer ''may withdraw or revoke consent, and create responsibilities for telemarketers to provide a clear opportunity to revoke or consent in each communication.'' [151] EPIC asks the Commission to specify that in identifying the ''specific seller'' from whom a consumer has provided written express agreement to receive robocalls, the telemarketer or seller must retain records of the ''legal name of the seller whose goods [or] services are being promoted.'' [152] EPIC believes this will

[136] A seller may also show it has an established business relationship with a consumer if that consumer purchased, rented, or leased the seller's goods or services or had a financial transaction with the seller during the 18 months before the date of the telemarketing call. The Commission is modifying the existing recordkeeping provisions to state that records of existing customers should also include the date of the financial transaction to support the existence of an EBR under these circumstances. *See* Section III.A.3 (Prize Recipients and Customer Records).

[137] EPIC also urged the Commission to modify the EBR requirements to include consumers who purchased a good or service from the seller. EPIC 34–23 at 14. The Commission does not believe this is necessary since sellers and telemarketers must already keep records of customers, which includes consumers who purchased a good or service from the seller. 16 CFR 310.5(a)(3). Furthermore, as discussed in Section III.A.3—Prize Recipients and Customer Records above, the Commission is amending the customer records provision to include the date the consumer purchased the good or service to account for the new EBR recordkeeping requirements.

EPIC also urges the Commission to consider clarifying that EBR may only be asserted as an affirmative defense if the seller or telemarketer intentionally called the consumer *because* it has an established business relationship with the consumer. EPIC 34–23 at 15. The TSR does not currently contemplate the use of EBR in this manner but rather allows telemarketers and sellers to call a consumer if the seller can demonstrate it has an EBR with that consumer and otherwise meets other requirements under the TSR. Making any modifications to this framework would require additional consideration.

[138] EPIC 34–23 at 15; NAAG 34–20 at 7; and PACE 33–15 at 2–3.

[139] OCUL 34–19 at 2; Sirius 34–18 at 5.

[140] 2022 NPRM, 87 FR at 33685.

[141] The Commission also proposed adding a new definition of ''previous donor.'' *See supra* Section II.C.

[142] NAAG 34–20 at 7.

[143] WPF 34–21 at 1.

[144] 2022 NPRM, 87 FR 33686–87.

[145] *Id.* at 33681.

[146] *Id.* at 33686–87.

[147] *Id.* For example, a copy of the consent provided to receive prerecorded sales messages under Section 310.4(b)(1)(v)(A) must evidence, in writing: (1) the consumer's name, telephone number, and signature; (2) that the consumer stated she is willing to receive prerecorded messages from or on behalf of a specific seller; (3) that the seller obtained consent only after clearly and conspicuously disclosing that the purpose of the written agreement is to authorize that seller to place prerecorded messages to that consumer; and (4) that the seller did not condition the sale of the relevant good or service on the consumer providing consent to receive prerecorded messages. The TSR also states that a seller must obtain consent from the consumer, and the Commission reiterates that this means a seller must obtain consent directly from the consumer and not through a ''consent farm.''

[148] 2022 NPRM, 98 FR at 33686–87.

[149] *See* EPIC 34–23 at 10–11; NAAG 34–20 at 10; PACE 33–15 at 5; and WPF 34–21 at 3.

[150] PACE 33–15 at 5.

[151] WPF 34–21 at 3.

[152] EPIC 34–23 at 10–13.

''reduce obfuscation'' on the ''scope of the consumer's consent'' and identify the proper defendant if ''legal action is necessary.'' [153]

The Commission believes WPF's recommendation is primarily applicable to transactions involving a negative option feature [154] where a consumer may wish to cancel a subscription plan and revoke billing authorization. The Commission published a Notice of Proposed Rulemaking regarding the Negative Option Rule (''Negative Option NPRM'') on April 24, 2023, which also addresses telemarketing transactions.[155] Because the proposed Negative Option Rule would apply a more comprehensive and consistent framework for negative option transactions regardless of the sales medium, the Commission declines to make any further amendments to the TSR to address WPF's comment at this time.

With respect to EPIC's request regarding the identification of a ''specific seller,'' the Commission stated in the Statement of Basis and Purpose finalizing the TSR amendments prohibiting robocalls that it used the term ''specific seller'' to ''make it clear that prerecorded calls may be placed only by or on behalf of the specific seller identified in the agreement.'' [156] The Commission wanted to ensure any agreement to receive robocalls would be limited to the seller identified in the agreement and could not be transferrable to any other party.[157] Requiring companies to use the legal entity name to identify the specific seller in the written agreement is a natural extension of the Commission's intention in using the term ''specific seller.'' Thus, the Commission states now that in identifying the specific seller in any written agreement, the seller should use its legal entity name to make clear any agreement to receive robocalls is limited to that specific legal entity. The Commission also states the burden will be on the seller or telemarketer to ensure and prove a consumer understands which specific legal entity would be permitted to send the consumer robocalls. In circumstances where the legal entity's name may not be recognizable to consumers, perhaps because the consumers would recognize a brand or product name but not the legal entity name, the seller or telemarketer may need to take extra steps to ensure the consumer has knowingly agreed to receive robocalls from the specific seller.

EPIC also requests the Commission require sellers and telemarketers to ''retain records regarding the owner of the website where consent was purportedly obtained'' and a record of ''the relevant webform completion, or of some other admissible evidence of the specific consumer providing consent via a specific web page on a specific date/time.'' [158] For telemarketers or sellers who obtain consumer consent via a website, the Commission believes the new recordkeeping provision requiring records of ''a copy of the request for consent in the same manner and format in which was presented to that consumer'' would require a telemarketer or seller to keep a copy of the web page or web pages that were used to request consent from the consumer. The copy of the web page could be maintained as screenshots so long as the screenshot accurately reflects what a consumer viewed in providing consent. Sellers and telemarketers who obtain consent via website will also need to keep ''a copy of the consent provided'' under the new recordkeeping provisions. The Commission believes a screenshot of the web page a consumer completed to provide consent could satisfy this requirement if the screenshot also accurately reflects what a consumer submitted in providing consent. The Commission declines to specify the format a company must use to keep a copy of consent requested or provided to allow businesses the flexibility of retaining records as they would in the ordinary course of business. Rather, it believes specifying the categories of information required to adequately reflect consent will provide sufficient guidance. The Commission cautions, however, an IP address with a timestamp is not sufficient as a record of consent. The Commission does not believe any additional amendments are necessary at this time.[159]

EPIC and NAAG also raised concerns regarding the Commission's statement regarding the records for verbal consent. In the 2022 NPRM, the Commission stated if a seller or telemarketer requests consent verbally, a telemarketing script would suffice as a record of the consent requested as long as no other provision of the TSR required a recording.[160] EPIC requests the Commission make clear the reference to verbal consent only applies to billing authorization under Section 310.4(a)(7), and any authorization required to receive robocalls or to receive telemarketing calls to phone numbers on the DNC Registry must be provided in writing. EPIC also raised concerns over whether the Commission's statement meant that a script is an ''acceptable record of the language the caller used to request consent'' or if ''the Commission is also suggesting that [a script] is an acceptable record of the consumer's grant of consent.'' [161] If the former, EPIC argues using a telemarketing script as a record of the request for consent is insufficient when telemarketers often fail to follow the scripts.[162] If the latter, EPIC argues it would ''eviscerate the recordkeeping requirement'' when the new consent requirements include '' 'a copy of the request provided.' '' [163] EPIC also argues allowing a recording of only the consent provided without the actual request for consent would allow the telemarketer or seller to record a series of the ''word 'yes,' which would be meaningless without any context.'' [164] NAAG takes it a step further and urges the Commission to require recordings of the entire telemarketing transaction whenever consent is requested verbally.[165]

The 2022 NPRM specifies that, with respect to requests for verbal consent where no provision of the TSR requires a recording, a telemarketing script would be sufficient for a copy of the *request* for consent. It did not propose that a telemarketing script would be sufficient as a record of the consent *provided.* But the Commission recognizes the concerns raised by NAAG and EPIC, that without a recording of the consent requested, a recording of the request provided would

[153] *Id.*

[154] A negative option feature is defined as ''an offer or agreement to sell or provide any goods or services, a provision under which a customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.'' 16 CFR 310.2(w).

[155] 88 FR 24716 (Apr. 24, 2023).

[156] 2008 TSR Amendments 73 FR at 51186; *see also supra* note 147.

[157] 2008 TSR Amendments 73 FR at 51186.

[158] EPIC 34–23 at 12.

[159] EPIC also requested that the Commission clarify that the TSR's language regarding consent is similar to the TCPA's language regarding consent or that the consent requirements do not ''lower the bar below the current requirements of the TCPA.'' EPIC 34–23 at 13. The new amendments to the TSR do not alter substantive requirements for consent under the TSR. They merely clarify what records are necessary to maintain proof of consent.

[160] 2022 NPRM, 87 FR at 33687.

[161] EPIC 34–23 at 11.

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] NAAG 34–20 at 10. NAAG has also urged the Commission to require a recording whenever a telemarketing call includes a negative option offer. NAAG 34–20 at 6. It also requests that the Commission require a full refund if a consumer complains of unauthorized charges and the seller is unable to provide a recording of the transaction as proof of consent. *Id.* Since the Commission has issued the Negative Option NPRM, the Commission will not address this comment here.

be meaningless. Given that industry has stated scripts are not ''set in stone'' and ''[w]ell-trained telemarketers are able to deviate from scripts or not use them at all,'' [166] the Commission states that, for a complete record of consent that is requested verbally and where no provision of the TSR requires a recording, a telemarketer or seller must retain a recording of the consent requested as well as the consent provided to comply with proposed Section 310.5(a)(8). In addition, the recording must make clear the purpose for which consent was provided. The Commission does not believe requiring a recording of both the consent requested and provided would result in additional burden to businesses since it believes most businesses would have made a recording of both to comply with the recordkeeping provisions in the ordinary course of business.

In further response to NAAG and EPIC's concern, the Commission does not believe a recording of the entire telemarketing transaction is necessary if it is not otherwise required by another provision of the TSR. To require a recording of the entire transaction whenever consent is requested would effectively require a recording of all telemarketing transactions that are subject to the TSR.[167]

The Commission reiterates that sellers and telemarketers remain obligated to comply with all requirements outlined in other consent provisions in the TSR.[168] For transactions involving preacquired account information, telemarketers and sellers must fulfill the requirements of Section 310.4(a)(7)(i) and (ii), which include recording the entire telemarketing transaction if there is a free-to-pay conversion feature. For consent to receive robocalls or calls to phone numbers on the DNC Registry, telemarketers and sellers must abide by the requirements of Sections 310.4(b)(1)(iii)(B)(1) and (b)(1)(v)(A), respectively, which include obtaining a consumer's written consent.[169] And for telemarketing transactions using certain payment methods, telemarketers and sellers must comply with Section 310.3(a)(3), which includes obtaining a consumer's authorization to be billed in writing or, if verbal consent is requested, a recording of the transaction that evidences a consumer has received specific information. The Commission reiterates this rule amendment does not modify the requirements for consent outlined in the TSR; rather it clarifies what records must be kept to demonstrate compliance with the existing requirements.

7. Section 310.5(a)(9)—Other Service Providers

The Commission proposed requiring sellers and telemarketers to keep records of all service providers the telemarketer uses to deliver an outbound call in their telemarketing campaigns, such as voice providers, autodialers, sub-contracting telemarketers, or soundboard technology platforms. The provision would only apply to the service providers with which the seller or telemarketer has a business relationship, and not to every service provider involved in delivering an outbound call. For each service provider, the seller or telemarketer would keep records of any applicable contracts, the date the contract was signed, and the time period the contract is in effect. The seller or telemarketer would keep such records for five years from the date the contract expires or five years from the date the telemarketing activity covered by the contract ceases, whichever is shorter.

The Commission received four comments on this proposal. EPIC, NAAG, PACE, and WPF all support the proposed amendment, but also suggested some modifications.[170] WPF repeated its request the Commission use broader terminology than ''soundboard technology platforms'' in defining service providers.[171] EPIC repeated its request the Commission require sellers and telemarketers to also keep records of which service provider they used for each telemarketing campaign to ensure those service providers are also complying with the TSR.[172]

The Commission clarifies that service providers referenced under this provision include any entity that provides ''digital soundboard'' technology rather than ''soundboard technology platforms,'' to make clear that sellers and telemarketers must retain records of any entity that provides any digital or sound technologies that sellers or telemarketers use to convey a verbal message to a consumer in telemarketing. This includes, for example, service providers that telemarketers or sellers use to mimic or clone the voice of an individual to deliver live and prerecorded outbound telemarketing calls. With respect to EPIC's concerns of ensuring service providers are also complying with the TSR, as discussed above in Section III.A.2—Call Detail Records, the Commission believes it is not necessary to require records of the service provider used per telemarketing campaign. Requiring retention of all call detail records *and* records of the service providers used in making outbound telemarketing calls would be sufficient for the Commission and other law enforcement agencies to enforce the TSR and strikes an appropriate balance against industry's concerns regarding burden.

PACE requests the Commission limit this provision to the service providers with which sellers and telemarketers have a direct contractual relationship rather than a ''business relationship.'' [173] PACE argues it would be unreasonable to expect a seller to maintain records of its telemarketers' voice providers when the contractual relationship is between the telemarketer and voice provider.[174] PACE also asks the Commission limit the five year retention time period from the date the contract expires rather than when the telemarketing activity covered by the contract ceases.[175] PACE expressed concerned one party to the contract might cease the telemarketing activity without informing the other party and it would be difficult to identify when the retention period is triggered.[176]

The Commission recognizes the potential for uncertainty in the scenario PACE raises and will modify the recordkeeping requirements accordingly to require retention of any records under this provision for five years from the date the contract expires.[177] With respect to PACE's request to limit the recordkeeping requirements to those service providers with whom sellers or telemarketers have a direct contractual relationship, the Commission is not persuaded that requiring records of service providers with which they have a business relationship would cause

[166] ECAC 34–22 at 4.

[167] The TSR states it is an abusive practice to ''cause billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor.'' 16 CFR 310.4(a)(7). This prohibition applies to all telemarketing transactions subject to the TSR. Thus, requiring a recording of every telemarketing call whenever consent is requested would essentially mean that all telemarketing calls subject to the TSR would need to be recorded.

[168] *See* 16 CFR 310.3(a)(3), 310.4(a)(7), 310.4(b)(1)(iii)(B)(1), and 310.4(b)(1)(v)(A).

[169] The Commission reiterates that a seller or telemarketer may not use an oral recording of consent for any provision of the TSR that requires consent to be provided in writing.

[170] EPIC 34–23 at 7–8; NAAG 34–20 at 7–8; PACE 33–15 at 3; WPF 34–21 at 2.

[171] WPF 34–21 at 2; *see also* Section III.A.2 (Call Detail Records).

[172] EPIC 34–23 at 8.

[173] PACE 33–15 at 3.

[174] *Id.*

[175] *Id.*

[176] *Id.*

[177] If, after the end of a fixed term contract, a service provider continues to provide services and the telemarketer or seller continues to pay for those services, the Commission will consider the contract extended until performance ceases.

additional burden. As explained in more detail in Section III.A.14—Compliance Obligation, the Commission will allow sellers and telemarketers to allocate recordkeeping responsibilities between themselves. In the scenario that PACE raises, a seller can simply require their telemarketer to retain records of all the service providers it uses to make outbound telemarketing calls on the seller's behalf.

8. Sections 310.5(a)(10)—Entity-Specific DNC List

The 2022 NPRM also proposed requiring telemarketers and sellers to maintain for five years records related to the entity-specific DNC list and its corresponding safe harbor provision under Section 310.4(b)(3)(iii).[178] Specifically, the Commission proposed requiring telemarketers and sellers to retain records of: (1) the consumer's name, (2) the phone number(s) associated with the DNC request, (3) the seller or charitable organization from which the consumer does not wish to receive calls, (4) the telemarketer that made the call; (5) the date the DNC request was made; and (6) the good or service being offered for sale or the charitable purpose for which contributions are being solicited.

The Commission received four comments on this proposal. NAAG, PACE, and WPF, generally support the provision, noting that businesses likely retain this information in the ordinary course of business, while ECAC raised concerns.[179] ECAC agrees that businesses likely keep most of the data listed in the proposed provision, but stated the requirements should not include retention of consumer phone numbers or records of the purpose of the call (*e.g.,* the good or service offered for sale or the charitable purpose of contributions solicited) because both are burdensome to retain and irrelevant to the entity-specific TSR provisions.[180] Instead, ECAC argues the Commission should modify the entity-specific DNC requirements so it prohibits calls to specific numbers rather than specific people, similar to how the DNC Registry is applied.[181] PACE also requested the Commission clarify that the new entity-specific DNC recordkeeping provision requires retention of the telemarketing *entity* that made the call rather than the *individual* telemarketer.[182]

The Commission clarifies that the new recordkeeping provision requires retention of the identity of the telemarketing company that made the call and not the individual telemarketer. This requirement is particularly important for sellers or charitable organizations who engage multiple telemarketing entities to sell their good or service or seek a charitable contribution through telemarketing. Sellers or charities already should know which telemarketing entity logged the consumer's request to cease receiving calls on their behalf and ensure all their telemarketers abide by that request.

Similarly, when a telemarketer engages in telemarketing on behalf of multiple sellers or charitable organizations, it is important to require the retention of records of the purpose of the call any time a consumer asks a telemarketer to add them to the entity-specific DNC list. Since the entity-specific DNC prohibition is seller or charitable organization specific, telemarketers already should retain this information in the ordinary course of business because telemarketers must keep track of which seller on whose behalf they cannot contact specific consumers.

With respect to ECAC's concerns that retaining consumer phone numbers is irrelevant and overly burdensome, the Commission notes the safe harbor provision for the entity-specific DNC list is phone-number based and not based on a consumer's name. Section 310.4(b)(3) states that a seller or telemarketer shall not be liable for violating the entity-specific DNC provisions if, among other things, they maintain and record a ''list of telephone numbers the seller or charitable organization may not contact, in compliance with [the entity-specific DNC provision.]'' [183] Telemarketers must already retain a consumer's phone number in the ordinary course of business to comply with the TSR; including it in the new recordkeeping provision would not impose additional burden on businesses.

9. Section 310.5(a)(11)—DNC Registry

The 2022 NPRM also proposed requiring telemarketers and sellers to maintain, for five years, records of every version of the FTC's DNC Registry the telemarketer or seller downloaded in implementing the process referenced in the safe harbor provision of Section 310.4(b)(3)(iv).[184]

The Commission received four comments on this provision. NAAG, PACE, and WPF generally support the proposed provision, but also request some clarifications or modifications, while ECAC generally objects to the requirement.[185] WPF notes it ''strongly support[s]'' the proposed changes, noting they would ensure the ''integrity of the Do Not Call Registry.'' [186] ECAC argues the Commission should not require records of every version of the DNC Registry used because it ''imposes significant costs and burdens'' that ''greatly exceed any marginal benefit'' to the Commission, particularly when many of its members outsource scrubbing responsibilities to third parties and may never download the DNC Registry in the first place.[187]

WPF requests the Commission require telemarketers to keep records of how many times they accessed the DNC Registry or parts of the DNC Registry.[188] PACE requests the Commission clarify how it believes sellers and telemarketers would comply with the proposal that they retain records of ''every version of the registry they have downloaded.'' [189] PACE states it would be ''redundant'' if the Commission is requiring businesses to ''maintain separate versions of the registry apart from the up-to-date one'' since most businesses only ''scrub against the current version'' of the registry in the ordinary course of business.[190] PACE would support requiring them to ''document the version of the registry they used'' since doing so would reduce ''redundancy and data storage costs associated with keeping expired registries.'' [191]

Given the objections raised, the Commission will modify this provision to clarify that sellers and telemarketers need not keep every version of the DNC Registry they accessed to comply with the TSR's safe harbor rules. Instead, sellers and telemarketers must retain records of which version they used by keeping records of: (1) the name of the entity which accessed the registry; (2) the date the DNC Registry was accessed; (3) the subscription account number that was used to access the registry; and (4) the telemarketing campaign(s) for which it was accessed. Amending this provision to retain this information will address ECAC's concerns that the seller or telemarketer may use a third-party service to access the DNC Registry, and PACE's concern that retaining the actual version of the DNC Registry would be

[178] 2022 NPRM, 87 FR at 33686.

[179] ECAC 34–22 at 4; NAAG 34–20 at 8; PACE 33–15 at 3–4; WPF 34–21 at 3.

[180] ECAC 34–22 at 4.

[181] *Id.*

[182] PACE 33–15 at 4.

[183] 16 CFR 310.4(b)(3)(iii).

[184] 2022 NPRM, 87 FR at 33686.

[185] ECAC 34–22 at 4; NAAG 34–20 at 8; PACE 33–15 at 3–4; WPF 34–21 at 3.

[186] WPF 34–21 at 3.

[187] ECAC 34–22 at 4.

[188] WPF 34–21 at 3.

[189] PACE 33–15 at 4.

[190] *Id.*

[191] *Id.*

redundant and burdensome. It would also address WPF's request that sellers and telemarketers should keep records of the number of times they access the DNC Registry. Presumably, sellers and telemarketers only access the DNC Registry to ensure compliance with the TSR's DNC prohibitions since accessing the DNC Registry for any other purpose would be a violation of the TSR.[192]

10. Time Period To Keep Records

The Commission proposed changing the time period that telemarketers and sellers must keep records from two years to five years from the date the record is made, except for Sections 310.5(a)(1) and (a)(9),[193] where the Commission proposed requiring retention for five years from the date that records covered by those sections are no longer in use. The Commission received nine comments on this proposal.[194] EPIC, NAAG, and WPF support the proposal, citing as rationales for their support the amount of time necessary to complete an investigation of TSR violations and that telemarketers fail to comply with litigation holds that are issued while investigations are pending.[195] ECAC, NFIB, OCUL, PACE, Sirius, and the US Chamber of Commerce (''Chamber'') all object, raising burden concerns.[196] PACE stated the Commission cannot assume its proposal would not be unduly burdensome based on the fact that data storage costs have decreased since 2014.[197] This is particularly true for small businesses, according to PACE, when the Commission is simultaneously expanding the number of records that must be retained and the length of time those records must be retained.[198] Sirius and OCUL also argue the FTC should not require retention of records ''beyond the agency's statute of limitations.'' [199] Sirius argues the appropriate statute of limitations is three years,[200] and OCUL argues that while the TSR does not ''specify a statute of limitations,'' courts will ''apply the statute of limitations of the state where the case is filed,'' which is two years in Ohio.[201]

The Commission is not persuaded by the general burden concerns commenters have raised. None of the commenters provided any information on what the burden would be and why small businesses would not be able to comply with the new recordkeeping amendments. As mentioned in Section III.A.2—Call Detail Records, the Commission provided an estimate of the additional cost of complying with the new recordkeeping amendments but did not receive any comment or data on why its estimate is inaccurate.

Additionally, the Commission notes the statute of limitations for the FTC to seek civil penalties under the TSR is five years and not two or three years, as some commenters argued. Although the statute of limitations to seek *consumer redress* for TSR violations is three years under Section 19 of the FTC Act,[202] the applicable statute of limitations for *civil penalties* is five years under Section 5 of the FTC Act.[203] As such, the Commission believes it is appropriate and necessary to require the retention of records for five years. This requirement is particularly important when, as EPIC has noted, not all companies will comply with a litigation hold request while an investigation is pending, potentially leaving law enforcement agencies with no recourse in enforcing the TSR.[204]

11. Section 310.5(b)—Format of Records

The 2022 NPRM proposed modifying the formatting requirements to require records that include phone numbers comport with the International Telecommunications Union's Recommendation E.164 format for international phone numbers and North American Numbering plan for domestic phone numbers.[205] For records that include time and call duration, the 2022 NPRM proposed industry keep these records to the closest whole second, and record times in Coordinated Universal Time (UTC). The Commission received two comments on this proposal. Both commenters support the amendments, but also requested clarifications or modifications.

PACE asked the Commission to clarify that the new amendments requiring that time be kept in UTC format applies only to new records moving forward.[206] It also requested the Commission allow businesses a reasonable time to implement the proposed changes since it may require reprogramming software and IT systems.[207] The Commission clarifies that the new formatting requirements apply only to new records created after the proposed amendments go into effect. Additionally, as stated in Section III.A.2—Call Detail Records, the Commission will allow sellers and telemarketers a one hundred eighty-day grace period to implement any new systems, software, or procedures necessary to comply with that new provision. The Commission believes that should provide companies sufficient time to reprogram any software systems necessary to also comport with the new formatting requirements.

EPIC requests the Commission require companies to maintain records in a format that is easily retrievable and inexpensive to produce and make clear the regulated party is responsible for the cost of producing the records.[208] EPIC also requests the Commission impose more specific formatting requirements and require telemarketers and sellers to keep their records in a format that ''is commonly used to work with large data sets'' and ''easily readable'' such as ''separate columns for separate data points rather than every data point within the same single data field.'' [209] The Commission considered EPIC's suggestions and declines to impose more specific formatting requirements. Technology is advancing at such a rapid pace that the Commission is concerned more specific formatting requirements might become obsolete in the future. Moreover, in the Commission's experience, companies that use technologies such as an autodialer to make telemarketing calls rather than manual means typically retain records of those calls in an easily retrievable format. The Commission believes allowing companies to retain records as they would in the ordinary course of business strikes an appropriate balance between law enforcement's interest in obtaining the information necessary to enforce the TSR and industry's concerns

[192] 16 CFR 310.4(b)(2).

[193] The records covered by these two sections include advertising materials and a list of the service providers who assisted in outbound telemarketing. *See supra* Sections III.A.1 (Substantially Different Advertising Materials) and III.A.7 (Other Service Providers).

[194] 2022 NPRM, 87 FR at 33686.

[195] EPIC 34–23 at 4–5; NAAG 34–20 at 8–9; WPF 34–21 at 3.

[196] ECAC 34–22 at 6; NFIB 33–4 at 5; OCUL 34–19 at 2–3; PACE 33–15 at 4; Sirius 34–18 at 3; Chamber 34–24 at 1.

[197] PACE 33–15 at 4.

[198] *Id.*

[199] Sirius 34–18 at 3.

[200] *Id.*

[201] OCUL 34–19 at 2–3.

[202] 15 U.S.C. 57b(d).

[203] 15 U.S.C. 45(m); 28 U.S.C. 2462; *see also United States* v. *MyLife.com, Inc.,* 567 F. Supp. 3d 1152, 1166 (C.D. Cal. Oct. 19, 2021) (holding the statute of limitations for civil penalties under the FTC Act is five years); *United States* v. *Dish Network, LLC,* 75 F. Supp. 3d 942, 1004–05 (C.D. Ill. 2014) (holding the three-year statute of limitations in 15 U.S.C. 57b does not apply to claims for civil penalties under Section 5(m) of the FTC Act, and since Section 5(m) is silent, the applicable statute of limitations is five years under 28 U.S.C. 2462). The statute of limitations for a private right of action under the Telemarketing Act is three years. 15 U.S.C. 6104(a).

[204] EPIC 34–23 at 4–5.

[205] 2022 NPRM, 87 FR at 33687.

[206] PACE 33–15 at 5.

[207] *Id.*

[208] EPIC 34–23 at 13.

[209] *Id.*

about burden. Finally, the Commission does not believe it is appropriate to require sellers and telemarketers to affirmatively bear the cost of producing records to private litigants regardless of the outcome of their suits as EPIC requests,[210] when Congress already included a provision in the Telemarketing Act that allows a court to award the cost of the suit and any reasonable attorney or expert witness fees to the prevailing party.[211]

12. Section 310.5(c)—Violation of Recordkeeping Provisions

The 2022 NPRM proposed clarifying that the failure to keep each record required by Section 310.5 in a complete and accurate manner constitutes a violation of the TSR.[212] The Commission received five comments on this proposal. EPIC and NAAG support the proposal, stating it is a ''common-sense approach in deterring deceptive telemarketers/sellers from harming consumers'' [213] and ''inaccurate or incomplete records are of little use.'' [214] PACE also supports the proposed clarification, stating the proposal is ''logical and in line with the spirit of the TSR and its accompanying legislation.'' [215] But PACE raised concerns about the requirement that records be kept in an accurate and complete manner, arguing that companies who fail to keep all or some records in a complete and accurate manner through inadvertent error should not be penalized in the same way as telemarketers and sellers who fail to keep all or some categories of records.[216] Instead, PACE urges leniency for situations where the failure is inadvertent rather than willful and requests the Commission provide ''a 30-day cure period when the alleged violation can be easily corrected.'' [217]

NFIB and Sirius object to this proposal.[218] Sirius proposes the Commission ''count violations by each *type* of record rather than by *each* record, as proposed.'' [219] NFIB argues allowing civil penalties for ''each erroneous error'' is as ''perverse as the evil the FTC states it is addressing, for it would allow the FTC to put a seller or telemarketer out of business for a relatively minor mistake that affected many records.'' [220] NFIB provides an example to illustrate its concerns describing a situation where a company ''made the relatively minor mistake of keeping calls in the time zone of the person called, rather than in Coordinated Universal Time (UTC) format.'' [221] NFIB believes in this situation the company would be facing astronomically high fines for the hundreds of thousands of calls it makes a year.[222] Instead, NFIB argues the FTC should provide a reasonable time period to cure these errors once discovered, such as 90 days, and only commence imposing fines for each week after the reasonable period expires.[223] According to NFIB, this would be a more balanced system that ''avoids both the extreme that a relatively minor design violation yields an astronomical fine that puts the seller or marketer out of business and the opposite extreme that a violation results in such a small fine that a seller or marketer accepts fines as an annoying but manageable cost of doing business.'' [224]

The Commission recognizes NFIB's and PACE's concerns regarding inadvertent errors resulting in large penalties and, thus, included a safe harbor provision for call detail records in the proposed amendments. As discussed in Section III.A.13—Safe Harbor for Incomplete or Inaccurate Records Pursuant to Section 310.5(a)(2) below, the Commission believes it has provided a reasonable grace period for sellers and telemarketers to cure any inadvertent deficiencies in their recordkeeping system before any civil penalties might apply and the proposed example NFIB raises would fall squarely within the safe harbor, provided the company followed the other requirements of the safe harbor.

Regarding Sirius's suggestion that failure to retain each *type* of record equal one violation, the Commission is not persuaded imposing civil penalties for each type of record would provide sufficient incentive for companies to abide by the recordkeeping provisions given the limited number of categories of records sellers and telemarketers are required to retain.[225]

13. Section 310.5(d)—Safe Harbor for Incomplete or Inaccurate Records Kept Pursuant to Section 310.5(a)(2)

The Commission proposed including a safe harbor provision for temporary and inadvertent errors in keeping call detail records pursuant to Section 310.5(a)(2). Specifically, the 2022 NPRM stated a seller or telemarketer would not be liable for failing to keep records under Section 310.5(a)(2) if it can demonstrate that: (1) it established and implemented procedures to ensure completeness and accuracy of its records under Section 310.5(a)(2); (2) it trained its personnel in the procedures; (3) it monitors compliance and enforces the procedures, and documents its monitoring and enforcement activities; and (4) any failure to keep accurate or complete records under Section 310.5(a)(2) was temporary and inadvertent.[226]

The Commission received four comments on this proposal. PACE states a ''safe harbor for maintaining call detail records is necessary'' while Sirius states it would ''provide a good foundation for seller and telemarketer compliance plans.'' [227] WPF states it does not ''object to the safe harbor proposed'' because it was ''narrow enough to allow companies to make the kinds of mistakes that occur in day to day business, and provides incentives to correct the errors.'' [228]

NFIB, however, states it does not deem the safe harbor sufficient because it is ''complex and limited'' and does not provide a ''great source of comfort to sellers and marketers in its current form.'' [229] Because the safe harbor would apply in the scenario NFIB posits above where a company fails to keep call times in UTC format, the Commission believes the safe harbor provides adequate protection against inadvertent and temporary errors. The Commission, however, will revise this provision to provide sellers or telemarketers thirty days to cure an inadvertent error, as PACE suggests.[230]

14. Section 310.5(e)—Compliance Obligations

The Commission proposed modifying the compliance obligations in Section 310.5(e) to state that, in the event the seller and telemarketer failed to allocate responsibility between themselves for

[210] *Id.*

[211] 15 U.S.C. 6104(d).

[212] 2022 NPRM, 87 FR 33687.

[213] NAAG 34–20 at 10.

[214] EPIC 34–23 at 5.

[215] PACE 33–15 at 6.

[216] *Id.*

[217] *Id.* PACE also cites to the example NFIB provided in its comment as an example of why PACE believes the Commission should provide some leniency and an opportunity to cure rather than penalize inadvertent errors.

[218] NFIB 33–4 at 6–7; Sirius 34–18 at 8.

[219] Sirius 34–18 at 8.

[220] NFIB 33–4 at 7.

[221] *Id.*

[222] *Id.*

[223] *Id.*

[224] *Id.*

[225] Although Sirius did not provide a definition for what it meant by ''type of record,'' the Commission interprets it to mean the categories the Commission has outlined under the amended Section 310.5(a), which would limit the number of categories to eleven.

[226] 2022 NPRM, 87 FR at 33687.

[227] PACE 33–15 at 6; Sirius 34–18 at 8.

[228] WPF 34–21 at 4.

[229] NFBI 33–4 at 8.

[230] PACE 33–15 at 6; *see also* Section III.A.12 (Violation of Recordkeeping Provisions which provides additional discussion about the proposed safe harbor).

maintaining the required records, the responsibility for complying with the recordkeeping requirements would fall on both parties.[231] The Commission received four comments on this proposal. NAAG, PACE, and Sirius supported the proposal.[232] PACE states that ''not only do we consider this fair, but we believe it will encourage parties to negotiate their contracts and cease regarding TSR recordkeeping as an afterthought.'' [233]

EPIC, however, objects to this amendment and strongly urges the Commission to require both telemarketers and sellers to retain records rather than allowing them to allocate responsibilities.[234] Specifically, EPIC raises a concern that a seller may allocate responsibilities to a telemarketer that resides outside the United States and would not be subject to U.S. jurisdiction and process.[235] EPIC argues that if the Commission is inclined to designate only one party, it should be the seller who is responsible because the seller should be accountable for the telemarketers it hires, is less likely to be overseas and undercapitalized compared to telemarketers, and likely receives most of the sales proceeds.[236] But EPIC still believes the Commission should explicitly require both sellers and telemarketers be responsible for recordkeeping to prevent any gamesmanship where sellers move overseas to avoid liability.[237] In the event the Commission is not persuaded, EPIC also argues the Commission should require sellers to audit their telemarketers, including reviewing an actual production of preserved records, and require sellers who hire overseas telemarketers to require those telemarketers to have a U.S.-based agent so their records would be subject to U.S. jurisdiction and process.[238]

The Commission shares EPIC's concerns regarding gamesmanship and the challenges of obtaining records from overseas entities. The Commission is also concerned about sellers hiring unscrupulous telemarketers and disclaiming any responsibility for recordkeeping by allocating the responsibility to those telemarketers. The Commission notes that under the proposed amendment, sellers who allocate recordkeeping responsibilities to their telemarketers would be required to ''establish and implement practices and procedure to ensure the telemarketer is complying with the [TSR's recordkeeping provisions].'' [239] But given the concerns EPIC has raised, the Commission will modify this provision to also require sellers who allocate recordkeeping responsibilities to their telemarketer to retain access rights to those records so the seller can produce responsive records in the event it has hired a telemarketer overseas. Requiring sellers to ensure their telemarketers are abiding by the TSR's recordkeeping provisions and retain access to their telemarketer's records of telemarketing activities on the seller's behalf should not impose onerous obligations, and such access may never be necessary. Sellers likely already take such steps in the ordinary course of business, given that telemarketers are acting as their agents and their telemarketers' violations of the TSR could also expose them to liability under the TSR.

15. Authority To Require Recordkeeping

NFIB argues the new recordkeeping proposals exceed the FTC's statutory authority under the Telemarketing Act.[240] Section 6102(a) of the Telemarketing Act directs the Commission to: (1) prescribe rules prohibiting deceptive or abusive telemarketing acts or practices; [241] (2) include in those rules a definition of deceptive acts or abusive practices that shall include fraudulent charitable solicitations and may include actions that constitute assisting or facilitating such as credit card laundering; [242] and (3) include in those rules a specific list of abusive practices that govern patterns and timing of unsolicited calls, and disclosures of certain material information in sales or charity calls.[243] It also states at the end of Section 6102(a) that ''[i]n prescribing the rules described in this paragraph, the Commission shall also consider recordkeeping requirements.''

NFIB argues the directive to consider recordkeeping requirements applies only to the specific list of abusive practices under Section 6102(a)(3) and, since the other paragraphs are silent as to recordkeeping, the Act affirmatively prohibits the FTC from requiring recordkeeping.[244] The Commission does not agree. The language of the Act shows the directive to consider recordkeeping applies to the Act's mandate to promulgate rules addressing deceptive or abusive telemarketing practices and is not limited to the specific abusive practices identified in Section 6102(a)(3).

Section 6102(a) generally requires the Commission to promulgate rules regarding deceptive or abusive telemarketing acts or practices. Section 6102(a)(1) states: ''[t]he Commission *shall prescribe rules* prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.'' [245] Sections 6102(a)(2) and (a)(3) then identify specific provisions that Congress instructs the Commission to include, or consider including, when it promulgates its rules under Section 6102(a)(1). Section 6102(a)(2) directs the Commission to ''*include in such rules* respecting deceptive telemarketing acts or practices'' a definition of deceptive telemarketing acts or practices, which may include, among other things, credit card laundering.[246] Section 6102(a)(3) directs the Commission to ''*include in such rules* respecting other abusive telemarketing acts or practices'' specific requirements including: (1) ''a *requirement* that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy''; (2) ''*restrictions* on the hours of the day and night when unsolicited telephone calls can be made to consumers''; (3) ''a *requirement* that any person engaged in telemarketing for the sale of goods or services'' make certain disclosures; and (4) ''a *requirement* that any person engaged in telemarketing for the solicitation of charitable contributions'' make certain disclosures.[247] At the end of Section 6102(a)(3), in a separate unnumbered sentence, the Act states ''[i]n *prescribing the rules* described in this paragraph, the Commission shall also consider recordkeeping requirements.'' [248] Thus, Congress directed the Commission to promulgate rules prohibiting deceptive or abusive telemarketing acts or practices under Section 6102(a)(1), and Sections 6102(a)(2) and (a)(3) merely inform what types of acts or practices the Commission should include, or consider including, when it promulgates those rules.[249]

[231] 2022 NPRM, 87 FR at 33687.

[232] NAAG 34–20 at 10; PACE 33–15 at 6; Sirius 34–18 at 8.

[233] PACE 33–15 at 6.

[234] EPIC 34–23 at 8–10.

[235] *Id* at 10.

[236] *Id.*

[237] *Id.*

[238] *Id.*

[239] 2022 NPRM, 87 FR at 33694.

[240] NFIB 33–4 at 5–6.

[241] 15 U.S.C. 6102(a)(1).

[242] *Id.* 6102(a)(2).

[243] *Id.* 6102(a)(3).

[244] NFIB 33–4 at 6.

[245] 15 U.S.C. 6102(a)(1) (emphasis added).

[246] *Id.* 6102(a)(2) (emphasis added).

[247] *Id.* 6102(a)(3) (emphasis added).

[248] *Id.*

[249] The Commission also notes that the official codification of the Telemarketing Act in the United States Code aligns the indentation of the statement

Continued

NFIB's interpretation of Section 6102(a)(3) improperly divorces that provision from the rest of the statute. As discussed, Section 6102(a)(3) contains Congress's specific guidance regarding the types of rules the Commission must adopt or consider adopting to implement Section 6102(a)(1)'s general grant of authority to ban deceptive or abusive telemarketing practices. Section 6102(a)(3) states when the Commission ''prescrib[es] the rules described'' by Congress, it ''shall also consider recordkeeping requirements.'' This provision thus authorizes the Commission to adopt—or not adopt—recordkeeping requirements and declare violations of such requirements to be an abusive telemarketing practice.

But even if Section 6102(a)(3) did not expressly authorize the Commission to consider recordkeeping requirements, the Commission may still require recordkeeping under Section 6102(a)(1). Congress's purpose in enacting the Telemarketing Act was to prevent deceptive or abusive telemarketing acts or practices.[250] As the Commission has noted over the years, recordkeeping provisions prevent deceptive or abusive telemarketing acts or practices because they are necessary to effectively enforce the TSR.[251] NFIB's assertion that ''the rules for recordkeeping do not prevent or address deceptive or other abusive telemarketing acts or practices'' is not an accurate assertion [252] and it is undermined by the Commission's law enforcement experience and that of other enforcers.[253]

Even if Section 6102(a)(1) could be read as being silent on recordkeeping, that would not prohibit the Commission from including recordkeeping in any rules the Commission promulgates under this section of the Act. Rather, Congress directed the Commission to prescribe rules prohibiting deceptive telemarketing acts or practices and the Commission is granted authority to issue rules, including recordkeeping provisions, for any deceptive or abusive telemarketing acts or practices it identifies in promulgating the TSR.[254] Congress's silence would make sense given the Commission had yet to identify these deceptive or abusive acts or practices in the TSR at the time the Telemarketing Act was passed, and it was unknown whether and what form of recordkeeping would be necessary to ensure compliance.[255] Interpreting the Telemarketing Act to prohibit the Commission from requiring recordkeeping would contradict the Act's stated purpose—to ''enact legislation that will offer consumers necessary protection from telemarketing deception and abuse.'' [256]

Nothing in the text of the Act prevents the Commission from requiring persons to keep records substantiating their compliance with any requirement of the TSR. Nor does NFIB explain why Congress would have intended to deprive the Commission of records essential to the enforcement of the rule. NFIB's interpretation would give telemarketers and sellers a perverse incentive to commit deceptive and abusive practices while destroying any record of those violations.

Finally, even if a court determines the Act only permits recordkeeping for rules that address the specific acts and practices listed in Section 6102(a)(3), the TSR's recordkeeping provisions meet those criteria. The Final Rule requires recordkeeping for eleven general categories of information: (1) advertisements, including telemarketing scripts and robocall recordings; (2) call detail records; (3) prize recipients; (4) customers; (5) customer information to establish a business relationship; (6) previous donors; (7) telemarketers' employees; (8) consent; (9) service providers; (10) entity-specific DNC; and (11) versions of the FTC's DNC. Each of these categories is necessary to ensure compliance with the provisions of the TSR the Commission promulgated to address the specifics acts or practices identified in Section 6102(a)(3).

For example, Section 6102(a)(3)(A) of the Act requires the FTC to prohibit ''a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy.'' [257] Accordingly, the Commission promulgated Section 310.4(b) of the TSR to prohibit certain ''patterns of calls,'' [258] including prohibitions against robocalls, calls to consumers who have asked a specific seller to stop calling, and calls to consumers who have registered their phone numbers on the FTC's DNC Registry.[259] As explained in more detail in Section II—Overview of the Proposed Amendments to the TSR above, the Commission needs all eleven categories of information set forth in the Final Rule, including the requirement that sellers and telemarketers retain call detail records to ensure compliance with these prohibitions.[260]

Similarly, Section 6102(a)(3)(B) of the Act requires the FTC to place restrictions on when telemarketers can make unsolicited calls, while Sections 6102(a)(3)(C) and (D) require the FTC to mandate certain disclosures. The FTC promulgated Section 310.4(c) of the TSR

''In prescribing the rules described in this paragraph, the Commission shall consider recordkeeping requirements'' with Section 6102(a) rather than with Section 6102(a)(3). As such, it supports the Commission's position that the directive to consider recordkeeping refers generally to Section 6102(a) and is not limited to the specific acts and practices listed in Section 6102(a)(3). *See, e.g., https://www.govinfo.gov/content/pkg/USCODE-2011-title15/pdf/USCODE-2011-title15-chap87.pdf* (last visited November 21, 2023).

[250] H.R. Rep. No. 103–20, 103rd Cong., 1st Sess. (''House Report'') at 1; S. Rep. No. 103–80, 103rd Cong., 1st Sess. (''Senate Report'') at 1 (stating the purpose of the bill was ''to prevent fraudulent or harassing telemarketing practices'').

[251] Original TSR 60 FR at 43857; 2003 TSR Amendments, 68 FR at 4653; 2014 TSR Rule Review, 79 FR at 46735.

[252] NFIB 33–4 at 5–6.

[253] *See, e.g.,* NAAG 34–20 at 3–10.

[254] *See. e.g., U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 617–18 (D.C. Cir. 2016) (upholding EPA's authority to require recordkeeping in regulating even though Congress was silent on that issue because ''Congress plainly intended EPA to regulate sources burning 'any' solid waste, a goal presumably advanced by the recordkeeping presumption'').

[255] Congress has amended the Telemarketing Act numerous times over the years but made no changes to the recordkeeping provision. *See, e.g., supra* note 13. Given that the TSR has always included recordkeeping requirements since its inception in 1995 and the FTC has reported to Congress on its rulemaking efforts at various congressional hearings, Congress's silence on this issue can be interpreted as agreement with the FTC's statutory construction. *See, e.g., Washington All. of Tech. Workers* v. *U.S. Dep't of Homeland Sec.,* 50 F.4th 164, 182 (D.C. Cir. 2022) (quoting *Jackson* v. *Modly,* 949 F.3d 763, 772–73 (D.C. Cir. 2020)).

[256] 15 U.S.C. 6101(5). The Commission's position is also supported by the legislative history, which demonstrates that Congress intended for the Commission to consider recordkeeping requirements more broadly. *See* Senate Report at 7. The Senate Report references Section 3(a)(5) in an earlier version of the Act that directed the Commission to ''prescribe rules regarding telemarketing activities'' and in prescribing those rules to ''consider the inclusion of . . . (5) recordkeeping requirements.'' Telemarketing and Consumer Fraud and Abuse Prevention Act, S. 568, 103rd Cong. (1993). At minimum, this legislative history supports the position that the Commission may require recordkeeping for all abusive telemarketing acts or practices it identifies in promulgating the TSR and is not limited to those specific acts or practices listed in Section 6103(a)(3).

[257] 15 U.S.C. 6102(a)(3)(A).

[258] 16 CFR 310.4(b).

[259] 16 CFR 310.4(b)(1)(iii) and (b)(1)(v). *See also* Original TSR, 60 FR at 43854 (stating the entity-specific DNC provisions are intended to effectuate the requirements of Section 6102(a)(3)(A) of the Telemarketing Act); 2002 NPRM, 67 FR at 4518 (proposing the DNC Registry to ''fulfill the mandate in the Telemarketing Act that the Commission should prohibit telemarketers from undertaking 'a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy'') (quoting 15 U.S.C. 6102(a)(3)(A)); 2006 Denial of Petition for Proposed Rulemaking, Revised Proposed Rule With Request for Public Comments, Revocation of Non-enforcement Policy, Proposed Rule (''2006 NPRM''), 73 FR 58716, 58726 (proposing adding an express prohibition against [robocalls] pursuant to Section 6102(a)(3)(A) of the Telemarketing Act).

[260] *See supra* Sections II.A (Recordkeeping) and II.C (New Definition for ''Previous Donor'').

to prohibit calls to a person's residence outside of certain hours and Sections 310.4(d) and (e) to require telemarketers to disclose the identity of the seller or charity, the purpose of the call, the nature of the good or service being sold, and that no purchase is required to win a prize or participate in a prize promotion. The TSR's existing and amended recordkeeping requirements are necessary to ensure compliance with these provisions of the TSR. For example, call detail records are needed to ensure telemarketers abide by the call time restrictions, while the requirements to retain records of advertisements, telemarketing scripts, robocalls, consent, customers, prize recipients, and call details regarding the content of the call are required to determine whether a telemarketer has made the necessary disclosures.

B. Modification of the B2B Exemption

The 2022 NPRM proposed narrowing the B2B exemption to require B2B telemarketing calls to comply with Section 310.3(a)(2)'s prohibition on misrepresentations and Section 310.3(a)(4)'s prohibition on false or misleading statements.[261] The Commission received twelve comments on this proposal.[262] Rapid Financial Services, LLC and Small Business Financial Solutions, LLC (collectively, ''Rapid Finance''), EPIC, NAAG, USTelecom—The Broadband Association (''USTelecom''), WPF, and three anonymous commenters all support the proposal.[263] EPIC strongly supports the proposal, stating ''there is no reason to believe that phone-based attempts to exploit small business victims have diminished since the pandemic began.'' [264] NAAG states ''misrepresentations and false or misleading statements, in any form, are harmful to trade and commerce in general.'' [265] WPF argues ''there is no downside to this particular update—the FTC Act already prohibits such activity.'' [266] The anonymous commenters expressed concern over the harm that businesses suffer from deceptive telemarketing.[267]

USTelecom highlights small and medium-sized businesses (''SMBs''), in particular, ''can be disproportionately impacted by malicious B2B telemarketers'' and scammers primarily use phones as the primary means of contacting SMBs.[268] USTelecom also argues bad actors hide behind the B2B exemption and other legal ambiguities to avoid accountability, citing to a particularly pernicious example of a high-volume B2B telemarketing robocall campaign purporting to sell services that help SMBs boost their companies' Google listing that tied up the business's phone lines.[269]

Rapid Finance states, as a general matter, it ''does not oppose, and indeed supports the application of the TSR to B2B calls to prohibit material misrepresentations and false or misleading statements in B2B telemarketing transactions, including prohibiting the specific misrepresentations listed in Section 310.3(a)(2).'' [270] Rapid Finance explains its business customers are ''often the target of telemarketers seeking to peddle so-called debt settlement services to them.'' [271]

NFIB, Revenue Based Finance Coalition (''RBFC''), Third Party Payment Processors Association (''TPPPA''), and PACE all object to this proposed amendment.[272] RBFC argues amending the TSR to apply to deceptive B2B telemarketing would ''undermine the Supreme Court's interpretation of the FTC's authority to impose penalties,'' [273] citing *AMG Capital Management, LLC* v. *FTC.*[274] RBFC's arguments are inapposite because the Supreme Court's decision in *AMG* concerned the FTC's authority to obtain consumer redress under Section 13(b) of the FTC Act; [275] the decision did not address or implicate the Commission's authority to promulgate rules under the Telemarketing Act.

PACE and NFIB argue applying the TSR to B2B telemarketing exceeds the scope of the FTC's authority under the Telemarketing Act.[276] They claim the Telemarketing Act is limited to consumer harm because of its ''consistent use of consumer-oriented language'' and the focus on consumer harm in the statutory text and legislative history. [277] PACE also argues the Telemarketing Act's directive for the Commission to identify deceptive telemarketing practices is also limited to consumer harm, because the Commission itself has historically conceptualized deception from a consumer perspective in its policy statements.[278]

The Commission disagrees. The Telemarketing Act directs the FTC to promulgate a rule that addresses deceptive and abusive telemarketing practices which, in the Commission's law enforcement experience, includes B2B telemarketing. The language of the Act supports the Commission's position.

First, the Act defines ''telemarketing,'' as ''a plan, program, or campaign which is conducted to induce purchases of goods or services . . ., by use of one or more telephones and which involves more than one interstate telephone call.'' [279] The Act exempts from the definition of telemarketing ''the solicitation of sales through the mailing of a catalog'' which meet certain criteria and ''where the person making the solicitation does not solicit *customers* by telephone but only receives calls initiated by *customers* in response to the catalog during those calls. . . .'' [280] The Act only specifies that ''telemarketing'' must involve the use of one interstate telephone call but does not identify who must participate in the call. To the extent it identifies any participant, it uses the term *customers,* which includes businesses.[281]

Second, Section 6102(a)(1) directs the Commission to ''prescribe rules

[261] 2022 NPRM, 87 FR at 33687.

[262] The Commission received an additional ten comments addressing whether the Commission should generally repeal the B2B exemption in its entirety. The Commission addresses those comments in the 2024 NPRM, issued this same day.

[263] Anonymous 34–11, 33–11, and 33–13; EPIC 34–23 at 17; NAAG 34–20 at 10; Rapid Finance 34–17 at 3; USTelecom 33–14 at 3–4; WPF 34–21 at 4.

[264] EPIC 34–23 at 17.

[265] NAAG 34–20 at 10.

[266] WPF 34–21 at 4.

[267] Anonymous 34–11, 33–11, and 33–13.

[268] USTelecom 33–14 at 3–4.

[269] *Id.*

[270] Rapid Finance 34–17 at 3.

[271] *Id.* Rapid Finance also argues that the amendments will close the gap between how B2B sellers and B2B telemarketers are treated under the TSR. *Id.* at 6–7. Rapid Finance appears to be under the misimpression that the B2B exemption only applies to telemarketers and not to sellers. That is incorrect and the Commission clarifies that the exemption under Section 310.6(a)(7) applies to both sellers and telemarketers. The Commission also notes that Rapid Finance raised other issues that the Commission is not addressing because they are unrelated to the focus of this rulemaking. *Id.* at 6.

[272] NFIB 33–4 at 8–12; RBFC 34–13 at 1–4; TPPPA 34–14 at 2; PACE 33–15 at 7–9.

[273] RBFC 34–13 at 3.

[274] *AMG Cap. Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341 (2021).

[275] 15 U.S.C. 53(b).

[276] NFIB 33–4 at 11; PACE 33–15 at 7–9.

[277] PACE 33–15 at 8; *see also* NFIB 33–4 at 11 (arguing all five findings in the Telemarketing Act reference consumer harm and not harm to businesses).

[278] PACE 33–15 at 7–9. NFIB raises separate objections to repealing the B2B exemption based on changing market forces described in the Commission's 2022 ANPR. NFIB 33–4 at 9–10. As explained in the 2024 NPRM that the Commission is issuing concurrently with this Final Rule, the Commission declined to move forward with narrowing the B2B exemption as proposed in the 2022 ANPR. As such, the Commission will not address NFIB's argument here since it is not applicable in requiring B2B telemarketing to comply with the TSR's misrepresentation provisions.

[279] 15 U.S.C. 6106(4).

[280] 15 U.S.C. 6106(4) (emphasis added).

[281] *See, e.g., Customer,* Merriam-Webster Dictionary, *available at https://www.merriam-webster.com/dictionary/customer* (last visited Feb. 1, 2024) (defining customer as ''one that purchases a commodity or service'').

prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.'' [282] Section 6102(a)(2) directs the Commission to include in its rules ''a definition of deceptive telemarketing acts or practices which shall include fraudulent charitable solicitations, and which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.'' [283] Congress used broad language, similar to the language of the FTC Act, in directing the FTC to promulgate a rule. The Act does not limit the scope of the rule promulgated under the Act to telemarketing that harms natural persons. Nor does the Act prohibit applying the rule to telemarketing that harms businesses or other organizations.

Third, Sections 6102(a)(3)(C) and (D) direct the Commission to require ''any person engaged in telemarketing'' to ''promptly and clearly disclose to the *person* receiving the call the purpose of the call is to'' sell a good or service or solicit a charitable solicitation.[284] Once again, Congress did not specify that the disclosure must be made to a natural person rather than a business. It simply specified that the disclosure be made to the person who received the call.

Although PACE and NFIB argue the Commission's authority is limited to addressing deceptive or abusive telemarketing practices that harm natural persons because of the Act's liberal use of the term ''consumer,'' [285] none of the Act's provisions described above uses the word ''consumer.'' Moreover, the Act never defines the term ''consumer.'' Given the Act's broad language, the most logical reading of the term ''consumer'' is that it encompasses *all*—including businesses—who consume a product or service.

The absence of a definition is notable when Congress *has* defined ''consumer'' in other contexts, such as when it enacted the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act in 1975 (''Magnuson-Moss'').[286] Under Title I of Magnuson-Moss, which extended the Commission's jurisdiction over consumer product warranties, Congress narrowly defined ''consumer'' to mean a buyer of any ''consumer product'' which is ''normally used for personal, family, or household purposes.'' [287] Congress also clarified that the narrow definition of consumer was limited to Title I of the Magnuson-Moss Act and did not apply to Title II, which among other things, codified the FTC's ability to seek consumer redress by filing civil actions in Federal court.[288] Under Title II, Congress stated the term ''consumer'' in the FTC Act should still be construed broadly without the limitations imposed in section 101(3) of title I of S. 356.[289] Here, no such definition exists. If Congress had intended to limit the scope of the Telemarketing Act to those acts and practices directed at individuals rather than businesses, it would have done so.

The Commission's position is also supported by the legislative history. A Senate Report on the Act explained that, in directing the Commission to define ''fraudulent telemarketing acts or practices'' in its rulemaking, that Congress intended the rule ''to encompass the types of unlawful activities that are currently being addressed by the both the FTC and the States in their telemarketing cases.'' [290] The Report also stated Congress intends the ''rule to be flexible enough to encompass the changing nature of [fraudulent telemarketing] activity while at the same time providing telemarketers with guidance as to the general nature of prohibited conduct.'' [291] At the time the Telemarketing Act was passed, the Commission's law enforcement experience included cases against deceptive B2B telemarketing.[292] In promulgating the original TSR, the Commission considered exempting all B2B telemarketing but stated, given its ''extensive enforcement experience pertaining to deceptive telemarketing directed to businesses,'' it did not believe ''an across-the-board exemption for business-to-business contacts is appropriate.'' [293] Instead, the original TSR excluded from the B2B exemption telemarketing schemes that sell nondurable office or cleaning supplies because, in the Commission's law enforcement experience, these B2B schemes ''have been by far the most significant business-to-business problem area [that] such telemarketing falls within the Commission's definition of deceptive telemarketing acts or practices.'' [294] The Commission also stated it would reconsider the scope of the B2B exemption ''if additional business-to-business telemarketing activities become problems after the Final Rule has been in effect.'' [295] Each time the Commission has considered applying the TSR to other B2B telemarketing, it has done so based on its law enforcement experience in keeping with Congress's directive.[296]

But even if the term ''consumer'' is construed more narrowly to exclude businesses, the Act's language still supports the Commission's position that the Act allows it to regulate B2B telemarketing. First, one of the Act's findings states ''[c]onsumers and *others* are estimated to lose $40 billion a year in telemarketing fraud.'' [297] The legislative history makes clear Congress was concerned about telemarketing fraud against small businesses.[298] Second, the Act uses broad language in the definition of telemarketing, in its directives to promulgate rules regarding deceptive or abusive telemarketing under Section 6102(a)(1), and in its directives of what to include in those rules under Sections 6102(a)(2), (a)(3)(C), and (a)(3)(D). These provisions do not contain any reference to a ''consumer.'' [299] If Congress intended to construe consumer narrowly, Congress's *omission* of the term consumer from

[282] 15 U.S.C. 6102(a)(1).

[283] 15 U.S.C. 6102(a)(2).

[284] 15 U.S.C. 6102(a)(3)(C) and (D) (emphasis added).

[285] NFIB 33–4 at 11; PACE 33–15 at 7–9.

[286] Title I of that legislation created the Magnuson-Moss Warranty Act (''Magnuson-Moss''), Public Law 93–637 (1975) (codified as amended at 15 U.S.C. 2301), extending Commission jurisdiction over consumer product warranties. Title II, separately known as the Federal Trade Commission Improvement Act (''FTCIA''), modernized the FTC Act by expanding the Commission's anti-fraud powers, including power to ''redress consumer injury resulting from violations of the [FTC Act]'' by filing civil actions in district court. S. Rep. No. 93–151, at 3 (1973). Public Law 93–637; Public Law 93–153. p. 2533 (1975) (codified as amended at 15 U.S.C. 45 *et seq.*).

[287] 15 U.S.C. 2103(1) and (3).

[288] *See supra* note 286.

[289] S. Rep. No. 93–151, at 27.

[290] Senate Report at 7.

[291] *Id.*

[292] *See* Prepared Statement of the Federal Trade Commission before the United States House of Representatives Committee on Small Business (Sept. 28, 1994) (detailing the Commission's law enforcement actions against telemarketers who have harmed small businesses).

[293] Original TSR, 60 FR at 43861–62.

[294] *Id.*

[295] *Id.* at 43862.

[296] 2022 NPRM, 87 FR at 33682–83. Although the Commission's law enforcement efforts have primarily focused on harms to small businesses, the Commission believes that the Telemarketing Act authorizes the Commission to apply the TSR to B2B telemarketing more broadly for the reasons stated here. Similar to the recordkeeping provision, the Commission notes that Congress has amended the Telemarketing Act numerous times but made no changes to prohibit the TSR's application to some B2B telemarketing. Congress's silence here can also be interpreted as agreement with the FTC's statutory construction. *See supra* note 255.

[297] 15 U.S.C. 6101(3) (emphasis added).

[298] The legislative history supports the Commission's position that, even assuming a narrower definition of consumer, the Telemarketing Act allows the Commission to regulate B2B telemarketing. The Senate Report on the Act explains that telemarketing fraud ''affects a cross section of Americans, including small business.'' Senate Report at 2.

[299] 15 U.S.C. 6102(a) and 6106(4).

these provisions of the Act demonstrates Congress did not intend to limit the TSR to telemarketing that harms only individual consumers.

Finally, RBFC and TPPPA make general objections that prohibiting misrepresentations in B2B telemarketing is unnecessary; that it would ''unduly burden legitimate business activities''; [300] and would not provide small businesses any additional protections when the FTC has authority already to pursue bad actors that harm businesses under the FTC Act.[301] RBFC also argues if the Commission were to prohibit misrepresentations in B2B telemarketing, it should only do so in the areas where there is a history of deception such as the top five scams identified in the Better Business Bureau's research report issued in 2018.[302]

The Commission is not persuaded by these arguments. The Commission notes that requiring B2B telemarketers to comply with the TSR's prohibitions against misrepresentations would provide the Commission with additional tools to obtain monetary redress for those harmed by illegal telemarketing and civil penalties against bad actors who violate the law, creating a deterrent effect. Importantly, the proposed amendment refrains from imposing any burdens on B2B sellers and telemarketers, including recordkeeping requirements. And, as commenters have noted, because businesses must already comply with the FTC Act, which prohibits deceptive or unfair conduct, complying with the TSR should not create significant burden.[303] The Commission also does not believe it should limit the prohibition against misrepresentations to just the five top scams identified in the BBB's 2018 report. The Commission has monitored deceptive telemarketing impacting small businesses since 1995 and has observed not only the increase in deceptive telemarketing but how easily scammers shift tactics and peddle different products or services to small businesses.[304] Given the Commission's extensive law enforcement experience in B2B telemarketing cases—including schemes involving deceptive business directory listings, web hosting or design, search engine optimization services, and government impersonators [305]—the Commission believes applying the TSR's prohibitions against misrepresentations in Section 310.3(a)(2) and 310.3(a)(4) is appropriate.

C. New Definition of ''Previous Donor''

The 2022 NPRM proposed adding a new definition for the term ''previous donor'' to identify consumers who have donated to a particular charity within the two-year period immediately preceding the date the consumer receives a robocall on behalf of that charity.[306] The Commission proposed including this new definition to make clear that telemarketers are allowed to place charity robocalls only to consumers who have previously donated to that charity within the last two years.[307]

The Commission received three comments on the new definition. WPF supports the new definition, stating it would ''clarify the exemption for charitable donations'' and ''effectively close what has been a fairly significant loophole.'' [308] EPIC also supports the new definition and the clarification that the robocall exemption only applies to consumers who have previously donated to the soliciting charity, but it also urges the Commission to emphasize the limited scope of this exemption from the general prohibition against robocalls.[309] One anonymous commenter objected to this new definition, arguing there should not be an exemption to place robocalls to prior donors in the first place.[310]

The Commission emphasizes the exemption to allow a telemarketer to place charity robocalls is narrow in scope and amending the TSR to add a new definition of ''previous donor'' will ensure the exemption remains narrow. The Commission understands some consumers do not want to receive any robocalls, including from charities they have supported through a donation. In such cases, the Commission notes that a consumer who does not want to receive such robocalls may request to be added to that charity's do-not-call list. If the consumer has done so, the exemption to place robocalls does not apply and it is a violation of the TSR for a telemarketer to place robocalls to the consumer on behalf of that charity.[311]

D. Corrections to the Rule

In the 2022 NPRM, the Commission proposed the following five corrections to the Rule:

- In all instances where Sections 310.6(b)(1), (b)(2), and (b)(3) cross-reference Sections 310.4(a)(1), (a)(7), (b), and (c), change these citations so that they cross-reference Sections 310.4(a)(1), (a)(8), (b), and (c).
- Modifying the time requirements in the definition of EBR from months to days as follows:
  - Changing the time requirement to qualify for EBR in Section 310.2(q)(1) from 18 months between the date of the telephone call and financial transaction to 540 days.
  - Changing the time requirement to qualify for EBR in Section 310.2(q)(2) from three months between the date of the telephone call and the date of the consumer's inquiry or application to 90 days.
- Adding an email address to Section 310.7 for State officials or private litigants to provide notice to the Commission that they intend to bring an action under the Telemarketing Act.
- Amending Section 310.5(a)(7) so it is consistent in form with the new proposed additions to Section 310.5(a).
- Amending Section 310.5(f) to remove an extraneous word.[312]

The Commission did not receive any comments on the proposed modifications and will implement the amendments as proposed.

The Commission will also make the following additional non-substantive modifications to the Rule:

- Change all references in the TSR from ''this Rule'' to ''this part.''
- Renumber the footnotes in the TSR so the first footnote starts at one.

Finally, as described in Section III.B—Modification of the B2B Exemption, some commenters did not understand the term ''consumer'' includes businesses. To address any confusion, the Commission will change references to ''consumer'' in the amendments of the recordkeeping requirements and definition of EBR to the defined term ''person.'' [313] The Commission will also modify the references to ''consumer'' and ''business'' in the new recordkeeping requirement to retain call

[300] TPPPA 34–14 at 2.

[301] RBFC 34–13 at 2–3.

[302] RBFC 34–13 at 3; *see also* Better Business Bureau, Scams and Your Small Business Research Report, at 7–8 (2018), *available at https://www.bbb.org/content/dam/bbb-institute-(bbbi)/files-to-save/bbb_smallbizscamsreport-final-06-18.pdf* (last visited Dec. 11, 2023). RBFC argues that any application of the TSR should be limited to the BBB's top five scams impacting small businesses including: ''(1) bank/credit card company imposters, (2) directory listing and advertising services; (3) fake invoice/supplier bills; (4) fake checks; and (5) tech support scams.'' RBFC 34–13 at 3.

[303] RBFC 34–13 at 2–3; WPF 34–21 at 4.

[304] *See* Section II.B (B2B Telemarketing).

[305] *Id.*

[306] 2022 NPRM, 87 FR at 33687–88.

[307] To qualify for this narrow exemption, telemarketers must also comply with the provisions of Section 310.4(b)(1)(v)(B).

[308] WPF 34–21 at 1.

[309] EPIC 34–23 at 16.

[310] Anonymous 34–7.

[311] *See* Section 310.4(b)(1)(v)(B)(iii) (requiring sellers and telemarketers to comply with all other requirements of this part, which include the entity-specific do not call provisions).

[312] 2022 NPRM, 87 FR at 33688.

[313] 310 CFR 310.2(y).

detail records in Section 310.5(a)(2)(iv) to ''individual consumer'' and ''business consumer.'' While these modifications do not substantively alter the scope or application of the TSR, the Commission believes they will resolve any remaining uncertainty.

IV. Paperwork Reduction Act

The current Rule contains various provisions that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (''OMB'') regulations implementing the Paperwork Reduction Act (PRA). 44 U.S.C. chapter 35. OMB has approved the Rule's existing information collection requirements through October 31, 2025.[314] The 2022 NPRM's proposed amendments made changes in the Rule's recordkeeping requirements that increased the PRA burden as detailed below.[315] Accordingly, FTC staff submitted the 2022 NPRM and the associated Supporting Statement to OMB for review under the PRA.[316] On June 16, 2022, OMB directed the FTC to resubmit its request when the proposed rule is finalized.[317]

None of the public comments submitted addressed the estimated PRA burden included in the 2022 NPRM, but some commenters did raise general burden concerns.[318] Other commenters concurred that sellers and telemarketers likely retained the required records in the ordinary course of business and that the cost of electronic storage is decreasing.[319] The Commission's responses to those concerns are set forth in more detail in Section III—Final Amended Rule, and in some instances the Commission made modifications to the proposed rule to address the concerns and reduce the estimated PRA burden.

The Final Rule contains new recordkeeping requirements and modifications to existing recordkeeping requirements. The new recordkeeping provisions require sellers or telemarketers to retain: (1) a copy of each unique prerecorded message; (2) call detail records of telemarketing campaigns; (3) records sufficient to show a seller has an established business relationship with a consumer; (4) records sufficient to show a consumer is a previous donor to a particular charitable organization; (5) records regarding the service providers that a telemarketer uses to deliver outbound calls; (6) records of a seller or charitable organization's entity-specific do-not-call registries; and (7) records of which version of the Commission's DNC Registry were used to ensure compliance with this Rule. The Final Rule modifies existing recordkeeping requirements by: (1) changing the time-period for retaining records from two years to five years;[320] (2) clarifying the records necessary for sellers or telemarketers to demonstrate that the person it is calling has consented to receive the call; and (3) specifying the format for records that include phone numbers, time, or call duration.

As explained above and in the 2022 NPRM,[321] the Commission believes that for the most part, sellers and telemarketers already generate and retain these records either because the TSR already requires it or because they already do so in the ordinary course of business. For example, to comply with the TSR, sellers and telemarketers must already have a reliable method to identify whether they have a previous business relationship with a customer or whether the customer is a prior donor. They must also access the DNC Registry and maintain an entity-specific DNC registry. Moreover, sellers and telemarketers are also likely to keep records about their existing customers or donors and service providers in the ordinary course of business. The Final Rule now further requires telemarketers and sellers to keep call detail records of their telemarketing campaigns. Specifically, it requires sellers and telemarketers to keep call detail records of their telemarketing campaigns because in the Commission's experience, sellers and telemarketers use technologies that can easily generate these records. If a seller or telemarketer does not use such technology, however, and an individual telemarketer must manually enter a single telephone number to initiate a call to that number, then the seller or telemarketer does not need to retain records of the calling number, called number, date, time, duration and disposition of the telemarketing call under Sections 310.5(a)(2)(vii) and (x) of the Final Rule for those calls. The Commission made this modification to reduce the anticipated PRA burden for those sellers and telemarketers who manually place telemarketing calls. However, as a matter of caution, the Commission estimates the anticipated PRA burden will stay roughly the same as what was projected in 2022 NPRM, because that estimate was largely based on the use of automated mechanisms. Further, the Commission's enforcement of the Rule and review of the comments shows few sellers and telemarketers manually place telemarketing calls.[322] Thus, the anticipated PRA burden could be significantly lower than the estimates set out below.

A. Estimated Annual Hours Burden

The Commission estimates the PRA burden of the Final Rule based on its knowledge of the telemarketing industry and data compiled from the Do Not Call Registry. In calendar year 2022, 10,804 telemarketing entities accessed the Do Not Call Registry; however, 549 were exempt entities obtaining access to data.[323] Of the non-exempt entities, 6,562 obtained data for a single State. Staff assumes these 6,562 entities are operating solely intrastate, and thus would not be subject to the TSR. Therefore, Staff estimates approximately 3,693 telemarketing entities (10,804—549 exempt—6,562 intrastate) are currently subject to the TSR. The Commission also estimates there will be 75 new entrants to the industry per year.

The Commission has previously estimated that complying with the TSR's current recordkeeping requirements requires 100 hours for new entrants to develop recordkeeping systems that comply with the TSR and 1 hour per year for established entities to file and store records after their systems are created, for a total annual

[314] OMB Control No: 3084–0097, ICR Reference No: 202208–3084–001, available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202208-3084-001* (last visited Dec. 11, 2023).

[315] 2022 NPRM, 87 FR at 33690–91.

[316] This PRA analysis focuses only on the information collection requirements created by or otherwise affected by these now final rule amendments.

[317] See OMB Control No. 3084–0097, ICR Reference 202204–3084–004, Notice of Office of Management and Budget Action (June 16, 2022).

[318] *See, e.g.,* ECAC 34–22 at 3; NFIB 33–4 at 4–5; Sirius 34–18 at 7–8.

[319] *See, e.g.,* NAAG 34–20 at 9; PACE 33–15 at 2–5.

[320] As described above in Section II.A—Recordkeeping and in the 2022 NPRM, changing industry practice including increased spoofing of Caller ID information has made it more difficult to identify the telemarketers and sellers responsible for particular telemarketing campaigns and has hindered evidence gathering. As a result, two years is no longer always a sufficient amount of time for the Commission to fully complete its investigations of noncompliance and therefore the Commission is increasing the required retention period for recordkeeping under the Rule. Given the decreasing cost of data storage, the Commission does not believe that changing the length of time sellers and telemarketers are required to keep records will be unduly burdensome. 2022 NPRM, 87 FR at 33680–82, 33686.

[321] 2022 NPRM, 87 FR at 33690–91.

[322] *See, e.g.,* PACE 33–15 at 2.

[323] *See* National Do not Call Registry Data Book for Fiscal Year 2022 (''Data Book''), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/DNC-Data-Book-2022.pdf* (last visited Dec. 11, 2023). An exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.

recordkeeping burden of 4,385 hours for established entities and 7,500 hours for new entrants who must develop required record systems.[324]

Because the Final Rule contains new recordkeeping requirements, the Commission anticipates that in the first year after the proposed amendments take effect, every entity subject to the TSR would need to ensure that their recordkeeping systems meet the new requirements. The Commission estimates this undertaking will take 50 hours. This includes 10 hours to verify the entities are maintaining the required records, and 40 hours to create and retain call detail records. This yields an additional one-time burden of 184,650 hours for established entities (50 hours × 3,693 covered entities).

For new entrants, the Commission estimates that the new requirements will increase their overall burden for establishing new recordkeeping systems by 50 hours per year. This yields a total added burden for new entrants of 3,750 hours (50 hours × 75 new entrants per year) in addition to what OMB has already approved.[325]

B. Estimated Annual Labor Costs

The Commission estimates annual labor costs by applying appropriate hourly wage rates to the burden hours described above. The Commission estimates that established entities will employ skilled computer support specialists to modify their recordkeeping systems. Applying a skilled labor rate of $30.97/hour [326] to the estimated 184,650 burden hours for established entities yields approximately $5,718,611 in one-time labor costs during the first year after the amendments take effect.

As described above, the Commission estimates that with the Final Rule new entrants will spend approximately 50 additional hours per year to establish new recordkeeping systems. Applying a skilled labor rate of $30.97/hour to the estimated 3,750 burden hours for new entrants, the Commission estimates that the annual labor costs for new entrants would be approximately $116,138.

C. Estimated Non-Annual Labor Costs

Staff previously estimated the non-labor costs to comply with the TSR's recordkeeping requirements were *de minimis* because most affected entities would maintain the required records in the ordinary course of business. Staff estimated that the recordkeeping requirements could require $50 per year in office supplies to comply with the Rule's recordkeeping requirements. Because the Final Rule requires retention of additional records, Staff estimates that these requirements will increase to $60 per year in office supplies on average for each of the 3,768 covered entities per year in office supplies. This equates to roughly $226,080 in total for all covered entities.

The new recordkeeping requirements also require entities to retain call detail records and audio recordings of prerecorded messages used in calls. Staff estimates the costs associated with preserving these records will also be *de minimis.* The Commission regularly obtains call detail records from voice providers when investigating potential TSR violations, and these records are kept in databases with small file sizes even when the database contains information about a substantial number of calls. For example, the Commission received a 2.9 gigabyte database that contained information about 56 million calls. The Commission also received a 1.2 gigabyte database that contained information about 5.5 million calls. Similarly, audio files of most prerecorded messages will not be very large because prerecorded messages are typically short in duration. Storing electronic data is very inexpensive. Electronic storage can cost $.74 per gigabyte for onsite storage including hardware, software, and personnel costs.[327] Commercial cloud-based storage options are less expensive and can cost around $.20 per gigabyte per year.[328] The Commission estimates the non-labor costs associated with electronically storing audio files of prerecorded messages and call detail records will cost around $5 a year on average for each of the 3,768 covered entities per year for electronic storage. This equates to roughly $18,840 in total for all covered entities.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities.[329] The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the Final Rule unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.[330]

As discussed in the 2022 NPRM, the Commission did not believe the proposed amendment requiring additional recordkeeping would have a significant economic impact upon small entities, although it may affect a substantial number of small businesses.[331] In the Commission's view, the proposed amendment would not significantly increase the costs of small entities that are sellers or telemarketers because the proposed amendments primarily require these entities to retain records that they are already generating and preserving in the ordinary course of business. The Commission also did not believe that the proposed amendments requiring small entities that are sellers or telemarketers to comply with the TSR's prohibitions on misrepresentations should impose any additional costs. Therefore, based on available information, the Commission certified that amending the Rule as proposed would not have a significant economic impact on a substantial number of small entities, and provided notice of that certification to the Small Business Administration (''SBA'').[332]

Notwithstanding the certification, the Commission also published an IRFA in the 2022 NPRM and invited comment on the impact the proposed amendments would have on small entities covered by the Rule.[333] The Commission did not receive any comments that provided empirical information on the burden the proposed amendments would have on small entities, but some commenters raised

[324] *See* Information Collection Activities; Proposed Collection; Comment Request 87 FR 23177 (Apr. 19, 2022).

[325] See ''Recordkeeping for new entrants for live & prerecorded calls'' under IC (Information Collection) List, *available at https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202208-3084-001&icID=185985 (*last visited Dec. 11, 2023).

[326] This figure is derived from the mean hourly wage shown for ''Computer Support Specialist.'' *See* ''Occupational Employment and Wages-May 2022'' Bureau of Labor Statistics, U.S. Department of Labor, Last Modified April 25, 2023, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2022'') *available at https://www.bls.gov/news.release/pdf/ocwage.pdf* (last visited October 24, 2023).

[327] *See* Gartner, Inc. ''IT Key Metrics Data 2020: Infrastructure Measures—Storage Analysis.'' Gartner December 18, 2019.

[328] Amazon's storage rate for S3 Standard—Infrequent Access storage is $0.0125 per GB per month. *See https://aws.amazon.com/s3/pricing/?nc=sn&loc=4* (last visited Dec. 11, 2023); Google's storage rate for Archive Storage in parts of North America is $0.0012 per GB per month. *See https://cloud.google.com/storage/pricing* (last visited Dec. 11, 2023).

[329] 5 U.S.C. 601–612.

[330] 5 U.S.C. 605.

[331] 2022 NPRM, 87 FR at 33691–92.

[332] 5 U.S.C. 605(b).

[333] *Id.*

general burden concerns, in particular with respect to the recordkeeping requirement that sellers and telemarketers retain call detail records.[334] As discussed in more detail in Section III—Final Amended Rule, the Commission does not believe the Final Rule would impose significant additional burden since the recordkeeping amendments primarily require small entities that are sellers and telemarketers to retain records that they would keep in the ordinary course of business. The Commission also amended the Final Rule so that entities that do not utilize certain technology are not required to retain certain call detail records, to reduce the burden imposed on those entities.[335] Finally, the FTC Act already requires sellers and telemarketers that are small entities to comply with the Final Rule's prohibition against misrepresentations in telemarketing. Thus, the Commission certifies that the Final Rule would not have a significant economic impact on a substantial number of small entities and provides notice of that certification to the Small Business Administration (''SBA'').[336] The Commission has nonetheless deemed it appropriate as a matter of discretion to provide this FRFA.

A. Statement of the Need for, and Objectives of, the Rule

The Final Rule requires telemarketers and sellers to maintain additional records regarding their telemarketing transactions. As described in the 2022 NPRM [337] and in Section II—Overview of the Proposed Amendments to the TSR, the Final Rule updates the TSR's existing recordkeeping requirements so that the requirements comport with the substantial amendments to the TSR since the recordkeeping requirements were first made. The requirements are also necessary in light of the technological advancements that have made it easier and cheaper for unscrupulous telemarketers to engage in illegal telemarketing. The Final Rule also requires B2B telemarketers to comply with the TSR's prohibition on misrepresentations. These amendments are necessary to help protect businesses from deceptive telemarketing practices. The Final Rule also amends the definition of ''previous donor'' to clarify that a seller or telemarketer may not use prerecorded messages to solicit charitable donations on behalf of a charitable organization unless the recipient of the call previously donated to that charitable organization within the last two years.

B. Issues Raised by Public Comments in Response to the IRFA

As stated above, the Commission did not receive any comments relating to the IRFA or that provided empirical information on the burden the proposed amendments would have on small entities, but some commenters raised general burden concerns. The Commission details these concerns and its responses in more detail in Section III—Final Amended Rule.

Commenters stated, in particular, that requiring retention of call detail records and each version of the DNC used for compliance would cause significant burden to businesses. Commenters also argued changing the time period to retain records from two years to five years would also impose additional burdens.

To address concerns regarding the burden of retaining call detail records, the Final Rule provides an exemption for calls made by an individual telemarketer who manually enters a single telephone number to initiate those calls. For such calls, the seller or telemarketer does not need to retain records of the calling number, called number, date, time, duration, and disposition of the call. This modification should address burden concerns raised for small businesses which do not employ software or other technology to automate their telemarketing activity and still use manual operations.

The Final Rule also provides a one hundred and eighty-day grace period from the date Section 310.5(a)(2)—which requires retention of call detail records—is published in the **Federal Register** so sellers and telemarketers can implement any new systems, software, or procedures necessary to comply with this new provision. This modification similarly should alleviate commenters' concerns regarding the time necessary to come into compliance.

The Final Rule also modifies the recordkeeping requirement regarding DNC compliance and now requires records of which version of the DNC rather than each version used for compliance, significantly reducing the burden associated with this requirement. With respect to the time period to retain records, the Commission does not believe changing the time period to retain records would impose a significant burden because many businesses already retain the necessary records in the ordinary course of business.

C. Estimated Number of Small Entities to Which the Final Rule Will Apply

The Final Rule affects sellers and telemarketers engaged in ''telemarketing,'' defined by the Rule to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.'' [338] As noted above, staff estimate 3,693 telemarketing entities are currently subject to the TSR, and approximately 75 new entrants enter the market per year. For telemarketers, a small business is defined by the SBA as one whose average annual receipts do not exceed $25.5 million.[339] Because virtually any business could be a seller under the TSR, it is not possible to identify average annual receipts that would make a seller a small business as defined by the SBA. Commission staff are unable to determine a precise estimate of how many sellers or telemarketers constitute small entities as defined by SBA. The Commission sought comment on this issue but did not receive any information from commenters.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Small Entities and Professional Skills Needed To Comply

The Final Rule contains new recordkeeping requirements and modifications to existing recordkeeping requirements. The new recordkeeping requirements would require sellers or telemarketers to retain: (1) a copy of each unique prerecorded message; (2) call detail records of telemarketing campaigns; (3) records sufficient to show a seller has an established business relationship with a consumer; (4) records sufficient to show a consumer is a previous donor to a particular charitable organization; (5) records regarding the service providers that a telemarketer uses to deliver outbound calls; (6) records of a seller or charitable organization's entity-specific

[334] *See, e.g.,* NFIB 33–4 at 4–5; PACE 33–15 at 2.

[335] *Supra* Section III.A.2 (Call Detail Records).

[336] 5 U.S.C. 605(b).

[337] 2022 NPRM, 87 FR at 33678–84.

[338] 16 CFR 310.2(dd). The Commission notes that, as mandated by the Telemarketing Act, the interstate telephone call requirement in the definition excludes small business sellers and the telemarketers which serve them in their local market area, but may not exclude some small business sellers and telemarketers in multi-state metropolitan markets, such as Washington, DC.

[339] Telemarketers are typically classified as ''Telemarketing Bureaus and Other contact Centers,'' (NAICS Code 561422). *See* Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf* (last visited October 24, 2023).

do-not-call registries; and (7) records of which version of the Commission's DNC Registry that were used to ensure compliance with this Rule. The proposed modifications to the existing recordkeeping requirements would: (1) change the time period for retaining records from two years to five years; (2) clarify the records necessary for sellers or telemarketers to demonstrate that the person they are calling has consented to receive the call; and (3) specify the format for records that include phone numbers, time, or call duration. The small entities potentially covered by the proposed amendment will include all such entities subject to the Rule. The Commission has described the skills necessary to comply with these recordkeeping requirements in Section IV—Paperwork Reduction Act above.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Telephone Consumer Protection Act of 1991, 47 U.S.C. 227, and its implementing regulations, 47 CFR 64.1200 (collectively, ''TCPA'') contain recordkeeping requirements that may overlap with the recordkeeping requirements proposed by the new rule. For example, the proposed provision requiring sellers or telemarketers to keep a record of consumers who state they do not wish to receive any outbound calls made on behalf of a seller or telemarketer, 16 CFR 310.5(a)(10), overlaps to some degree with the TCPA's prohibition on a person or entity initiating a call for telemarketing unless such person or entity has procedures for maintaining lists of persons who request not to receive telemarketing calls including a requirement to record the request. The Final Rule's recordkeeping requirements do not conflict with the TCPA's recordkeeping requirements because sellers and telemarketers can comply with both sets of requirements simultaneously. Moreover, in the Commission's experience, the recordkeeping requirements under the TCPA do not lessen the need for the more robust recordkeeping requirements the Commission is proposing to further its law enforcement efforts. The Commission invited comment and information regarding any potentially duplicative, overlapping, or conflicting Federal statutes, rules, or policies and received one comment about a potential conflict.

OCUL argues the Commission cannot proceed with the proposed amendments until the Federal Communications Commission (''FCC'') has clarified whether it will allow the establishment of a new code that will inform the telemarketer placing the call why its call was blocked.[340] OCUL argues that this would lead to telemarketers and sellers being unable to keep complete or accurate records, subjecting them to violations, if they do not know why a call was blocked.[341] The Commission does not see a conflict between the FCC's ongoing rulemaking and the proposed amendments in the 2022 NPRM. The Final Rule does not require the telemarketer or seller to retain records detailing why a call was blocked. Simply stating that a call was blocked as a record of the disposition of the call will suffice.

F. Description of Steps Taken To Minimize Significant Economic Impact, if any, on Small Entities, Including Alternatives

The Commission has not proposed any specific small entity exemption or other significant alternatives to the proposed rule. The Commission has made every effort to avoid imposing unduly burdensome requirements on sellers and telemarketers by limiting the recordkeeping requirements to records that are both necessary for the Commission's law enforcement and typically already kept in the ordinary course of business. As detailed above in Sections III—Final Amended Rule and IV—Paperwork Reduction Act, the Commission has made additional modifications to the proposed amendments to further reduce the burden on small entities of complying with the Final Rule. These modifications include exempting sellers or telemarketers from retaining some call detail records for calls that are manually placed, and requiring sellers and telemarketers to retain records of which version of the FTC's DNC Registry they used rather than each version used for compliance.

VI. Incorporation by Reference

Consistent with 5 U.S.C. 552(a) and 1 CFR part 51, the Final Rule incorporates the specifications of the following standard issued by the International Telecommunications Union: ITU–T E.164: Series E: Overall Network Operation, Telephone Service, Service Operation and Human Factors (published 11/2010). The E.164 standard establishes a common framework for how international telephone numbers should be arranged so that calls can be routed across telephone networks. Countries use this standard to establish their own international telephone number formats and ensure that those numbers have the information necessary to route telephone calls successfully between countries.

This ITU standard is reasonably available to interested parties. The ITU provides free online public access to view read-only copies of the standard. The ITU website address for access to the standard is: *https://www.itu.int/en/pages/default.aspx.*

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated these rule amendments as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Part 310

Advertising; Consumer protection; Incorporation by reference; Reporting and recordkeeping requirements; Telephone; Trade practices.

For the reasons discussed in the preamble, the Federal Trade Commission amends title 16 of the Code of Federal Regulations, part 310, as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. In § 310.2,
■ a. Revise paragraph (q);
■ b. Redesignate paragraphs (aa) through (hh) as (bb) through (ii);
■ c. Add a new paragraph (aa).

The revisions and addition read as follows:

§ 310.2 Definitions.

* * * * *

(q) *Established business relationship* means a relationship between a seller and a person based on:

(1) The person's purchase, rental, or lease of the seller's goods or services or a financial transaction between the person and seller, within the 540 days immediately preceding the date of a telemarketing call; or

(2) The person's inquiry or application regarding a good or service offered by the seller, within the 90 days immediately preceding the date of a telemarketing call.

* * * * *

(aa) *Previous donor* means any person who has made a charitable contribution to a particular charitable organization within the 2-year period immediately preceding the date of the telemarketing

[340] OCUL 34–19 at 3.

[341] *Id.*

call soliciting on behalf of that charitable organization.

* * * * *

§ 310.3 [Amended]

■ 3. In § 310.3, redesignate footnotes 659 through 663 as footnotes 1 through 5.

■ 4. In § 310.4, revise paragraph (b)(2) and redesignate footnotes 664 through 666 as footnotes 1 through 3 to read as follows:

§ 310.4 Abusive telemarketing acts or practices.

* * * * *

(b) * * *

(2) It is an abusive telemarketing act or practice and a violation of this part for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A) or § 310.5, or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this part or otherwise to prevent telephone calls to telephone numbers on such lists.

* * * * *

■ 5. Revise § 310.5 to read as follows:

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer must keep, for a period of 5 years from the date the record is produced unless specified otherwise, the following records relating to its telemarketing activities:

(1) A copy of each substantially different advertising, brochure, telemarketing script, and promotional material, and a copy of each unique prerecorded message. Such records must be kept for a period of 5 years from the date that they are no longer used in telemarketing;

(2) A record of each telemarketing call, which must include:

(i) The telemarketer that placed or received the call;

(ii) The seller or person for which the telemarketing call is placed or received;

(iii) The good, service, or charitable purpose that is the subject of the telemarketing call;

(iv) Whether the telemarketing call is to an individual consumer or a business consumer;

(v) Whether the telemarketing call is an outbound telephone call;

(vi) Whether the telemarketing call utilizes a prerecorded message;

(vii) The calling number, called number, date, time, and duration of the telemarketing call;

(viii) The telemarketing script(s) and prerecorded message, if any, used during the call;

(ix) The caller identification telephone number, and if it is transmitted, the caller identification name that is transmitted in an outbound telephone call to the recipient of the call, and any contracts or other proof of authorization for the telemarketer to use that telephone number and name, and the time period for which such authorization or contract applies; and

(x) The disposition of the call, including but not limited to, whether the call was answered, connected, dropped, or transferred. If the call was transferred, the record must also include the telephone number or IP address that the call was transferred to as well as the company name, if the call was transferred to a company different from the seller or telemarketer that placed the call; provided, however, that for calls that an individual telemarketer makes by manually entering a single telephone number to initiate the call to that number, a seller or telemarketer need not retain the records specified in paragraphs (a)(2)(vii) and (a)(2)(x) of this section.

(3) For each prize recipient, a record of the name, last known telephone number, and last known physical or email address of that prize recipient, and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25.00 or more;

(4) For each customer, a record of the name, last known telephone number, and last known physical or email address of that customer, the goods or services purchased, the date such goods or services were purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services; [1]

(5) For each person with whom a seller intends to assert it has an established business relationship under § 310.2(q)(2), a record of the name and last known telephone number of that person, the date that person submitted an inquiry or application regarding the seller's goods or services, and the goods or services inquired about;

(6) For each person that a telemarketer intends to assert is a previous donor to a particular charitable organization under § 310.2(aa), a record of the name and last known telephone number of that person, and the last date that person donated to that particular charitable organization;

(7) For each current or former employee directly involved in telephone sales or solicitations, a record of the name, any fictitious name used, the last known home address and telephone number, and the job title(s) of that employee; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee;

(8) All verifiable authorizations or records of express informed consent or express agreement (collectively, ''Consent'') required to be provided or received under this part. A complete record of Consent includes the following:

(i) The name and telephone number of the person providing Consent;

(ii) A copy of the request for Consent in the same manner and format in which it was presented to the person providing Consent;

(iii) The purpose for which Consent is requested and given;

(iv) A copy of the Consent provided;

(v) The date Consent was given; and

(vi) For the copy of Consent provided under §§ 310.3(a)(3), 310.4(a)(7), 310.4(b)(1)(iii)(B)(*1*), or 310.4(b)(1)(v)(A), a complete record must also include all information specified in those respective sections of this part;

(9) A record of each service provider a telemarketer used to deliver an outbound telephone call to a person on behalf of a seller for each good or service the seller offers for sale through telemarketing. For each such service provider, a complete record includes the contract for the service provided, the date the contract was signed, and the time period the contract is in effect. Such contracts must be kept for 5 years from the date the contract expires;

(10) A record of each person who has stated she does not wish to receive any outbound telephone calls made on behalf of a seller or charitable organization pursuant to § 310.4(b)(1)(iii)(A) including: the name of the person, the telephone number(s) associated with the request, the seller or charitable organization from which the person does not wish to receive calls, the telemarketer that called the person, the date the person requested that she cease receiving such calls, and the goods or services the seller was offering for sale or the charitable purpose for which a charitable contribution was being solicited; and

(11) A record of which version of the Commission's ''do-not-call'' registry was used to ensure compliance with § 310.4(b)(1)(iii)(B). Such record must include:

(i) The name of the entity which accessed the registry;

[1] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR pt. 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, will constitute compliance with § 310.5(a)(4) of this part.

(ii) The date the ''do-not-call'' registry was accessed;

(iii) The subscription account number that was used to access the registry; and

(iv) The telemarketing campaign for which it was accessed.

(b) A seller or telemarketer may keep the records required by paragraph (a) of this section in the same manner, format, or place as they keep such records in the ordinary course of business. The format for records required by paragraph (a)(2)(vii) of this section, and any other records that include a time or telephone number, must also comply with the following:

(1) The format for domestic telephone numbers must comport with the North American Numbering plan;

(2) The format for international telephone numbers must comport with the standard established in the International Telecommunications Union's Recommendation ITU–T E.164: Series E: Overall Network Operation, Telephone Service, Service Operation and Human Factors, published 11/2010 (incorporated by reference, see paragraph (g)(1) of this section);

(3) The time and duration of a call must be kept to the closest second; and

(4) Time must be recorded in Coordinated Universal Time (UTC).

(c) Failure to keep each record required by paragraph (a) of this section in a complete and accurate manner, and in compliance with paragraph (b) of this section, as applicable, is a violation of this part.

(d) For records kept pursuant to paragraph (a)(2) of this section, the seller or telemarketer will not be liable for failure to keep complete and accurate records pursuant to this part if it can demonstrate, with documentation, that as part of its routine business practice:

(1) It has established and implemented procedures to ensure completeness and accuracy of its records;

(2) It has trained its personnel, and any entity assisting it in its compliance, in such procedures;

(3) It monitors compliance with and enforces such procedures, and maintains records documenting such monitoring and enforcement; and

(4) Any failure to keep complete and accurate records was temporary, due to inadvertent error, and corrected within 30 days of discovery.

(e) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement will govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If by written agreement the telemarketer bears the responsibility for the recordkeeping requirements of this section, the seller must establish and implement practices and procedures to ensure the telemarketer is complying with the requirements of this section. These practices and procedures include retaining access to any record the telemarketer creates under this section on the seller's behalf. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, both the telemarketer and the seller are responsible for complying with this section.

(f) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer must maintain all records required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business must maintain all records required under this section.

(g) The material required in this section is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Trade Commission (FTC) and at the National Archives and Records Administration (NARA). Contact FTC at: FTC Library, (202) 326–2395, Federal Trade Commission, Room H–630, 600 Pennsylvania Avenue NW, Washington, DC 20580, or by email at *Library@ftc.gov.* For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* It is available from: The International Telecommunications Union, Telecommunications Standardization Bureau, Place des Nations, CH–1211 Geneva 20; (+41 22 730 5852); *https://www.itu.int/en/pages/default.aspx.*

(1) Recommendation ITU–T E.164: Series E: Overall Network Operation, Telephone Service, Service Operation and Human Factors, published 11/2010.

(2) [Reserved]

■ 6. Amend § 310.6 as follows:

■ a. In paragraphs (b)(1), (b)(2), and (b)(3), remove the words ''§§ 310.4(a)(1), (a)(7), (b), and (c)'' and add, in their place, the words ''§ 310.4(a)(1), (a)(8), (b), and (c)''; and

■ b. Revise paragraph (b)(7) to read as follows:

§ 310.6 Exemptions.

* * * * *

(b) * * *

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, *provided,* however that this exemption does not apply to:

(i) The requirements of § 310.3(a)(2) and(4); or

(ii) Calls to induce the retail sale of nondurable office or cleaning supplies; *provided,* however, that §§ 310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

■ 7. Amend § 310.7 by revising paragraph (a) to read as follows:

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, must serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this part. The notice must be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, at *tsrnotice@ftc.gov* and must include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person must serve the Commission with the required notice immediately upon instituting its action.

* * * * *

§§ 310.3, 310.4, 310.6, 310.8, 310.9 [Amended]

■ 8. In addition to the amendments set forth above, in 16 CFR part 310, remove the words ''this Rule'' and add, in their place, the words ''this part'' in the following places:

■ a. Section 310.3(a) introductory text, (b), (c) introductory text, (d) introductory text, and newly redesignated footnotes 2 and 5.

■ b. Section 310.4(a) introductory text, (a)(2)(ii), (b)(1) introductory text, (b)(2), (c), (d) introductory text, (e) introductory text, and newly redesignated footnotes 1 and 2;

■ c. Section 310.6(a) and (b) introductory text;

■ d. Section 310.8(a), (b), and (e); and

■ e. Section 310.9.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2024–07180 Filed 4–15–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9988]

RIN 1545–BQ63

Elective Payment of Applicable Credits

Correction

In rule document 2024–04604, beginning on page 17546, in the issue of Monday, March 11, 2024, the title is corrected to read as set for above.

[FR Doc. C1–2024–04604 Filed 4–15–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 11, 73, and 74

[MB Docket No. 20–401; FCC 24–35; FR ID 213398]

Program Originating FM Broadcast Booster Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In a Report and Order, the Federal Communications Commission (Commission) finds that allowing FM booster stations to originate content on a limited basis would serve the public interest. The Report and Order adopts rules to allow for the voluntary implementation of program originating FM booster stations, subject to future adoption of processing, licensing, and service rules proposed concurrently in a further notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**. The rule changes in this document are needed to expand the potential uses of FM booster stations, which currently may not originate programming. The intended effect is to allow radio broadcasters to provide more relevant localized programming and information to different zones within their service areas.

DATES: *Effective date:* May 16, 2024.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2721, *Albert.Shuldiner@fcc.gov;* Irene Bleiweiss, Attorney, Media Bureau, Audio Division, (202) 418–2785, *Irene.Bleiweiss@fcc.gov.* For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), MB Docket No. 20–401; FCC 24–35, adopted on March 27, 2024, and released on April 2, 2024. The full text of this document will be available via the FCC's Electronic Comment Filing System (ECFS), *https://www.fcc.gov/cgb/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The Commission published the notice of proposed rulemaking (NPRM) at 86 FR 1909 on January 11, 2021.

Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the R&O to Congress and the Government Accountability Office (GAO) pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

1. *Introduction.* In the R&O, the Commission expands the potential uses of FM boosters, which are low power, secondary stations that operate in the FM broadcast band. As a secondary service, FM booster stations are not permitted to cause adjacent-channel interference to other primary services or previously-authorized secondary stations. They must operate on the same frequency as the primary station, and have been limited to rebroadcasting the primary station's signal in its entirety (*i.e.,* no transmission of original content). Historically, the sole use of FM boosters has been to improve signal strength of primary FM stations in areas where reception is poor due to terrain or distance from the transmitter. The R&O amends the Commission's rules to allow FM and low power FM (LPFM) broadcasters to employ FM booster stations to originate programming for up to three minutes per hour. This represents a change from current requirements of 47 CFR 74.1201(f) and 74.1231 which, respectively, define FM booster stations as not altering the signal they receive from their primary FM station and prohibit FM boosters from making independent transmissions.

2. GeoBroadcast Solutions, LLC (GBS), the proponent of the rule changes, has developed technology designed to allow licensees of primary FM and LPFM broadcast stations to ''geo-target'' a portion of their programming by using FM boosters to originate different content for different parts of their service areas. Prior to proposing rule changes, GBS tested its technology under different conditions in three radio markets and concluded that the technology could be deployed for limited periods of time within the primary station's protected service contour without causing any adjacent-channel interference, and that any resulting co-channel interference (self-interference to the licensee's own signal) would be manageable and not detrimental to listeners. GBS filed a Petition for Rulemaking (Petition) seeking to allow FM boosters to originate programming. The Petition suggested that geo-targeted broadcasting can deliver significant value to broadcasters, advertisers, and listeners in distinct communities by broadcasting more relevant localized information and advancing diversity. Stations might, for example, air hyper-local news and weather reports most relevant to a particular community. Stations also might air advertisements or underwriting acknowledgements from businesses that are only interested in reaching small geographic areas, thereby enhancing the stations' ability to compete for local support. GBS pointed out that many other types of media, such as online content providers, cable companies, and newspapers are able to differentiate their content geographically, but that no such option has existed for radio broadcasting. On April 2, 2020, the Consumer and Governmental Affairs Bureau issued a

public notice seeking comment on the Petition. The Petition garnered significant public participation.

3. The Commission released a notice of proposed rulemaking (NPRM) on December 1, 2020, FCC 20–166, to seek comment on the GBS proposal and published a **Federal Register** summary on January 11, 2021, 86 FR 1909. The NPRM posed questions to determine whether—and if so, how—to change FM booster station rules to permit FM boosters to transmit original geo-targeted content. It asked whether booster program origination may result in self-interference that would be disruptive to listeners and whether there are alternatives to GBS's proposal. The NPRM also invited comment on whether to require programming originated by the FM booster station to be ''substantially similar'' to the primary station's programming, as GBS had proposed, and how to define that term. Additionally, the NPRM sought comment on the potential impact of GBS's proposal on primary station broadcasts, the Emergency Alert System (EAS), and digital HD Radio broadcasts. Finally, the NPRM asked commenters to address the potential public interest implications of geo-targeted content on localism, diversity, and competition in the media marketplace. GBS clarified in its comments that it was proposing that boosters be allowed to originate programming for up to three minutes per hour.

4. After the comment period closed, the Commission granted GBS's request for experimental authority to conduct additional tests and required GBS to report the results. The reports contained detailed information about the technology's operation in two additional radio markets, its compatibility with the EAS, and potential impact on digital FM broadcasts. Because this information was not available to the public during the NPRM comment cycle, the Commission issued a public notice on April 18, 2022, DA 22–429, opening the record for additional comments.

5. *Discussion.* The issues raised in this proceeding fall into three broad categories: (1) non-technical matters such as the advantages and disadvantages of program originating boosters from an economic and public interest perspective; (2) technical issues such as whether program originating boosters, if properly engineered, would cause harmful interference to their primary station or adjacent channel stations; and (3) administrative matters the Commission would need to address in order to authorize program originating boosters and respond to any resulting operational issues. The R&O resolves the first two categories by determining that program originating boosters limited to originating programming for three minutes per hour would serve the public interest and that concerns about the technology's impact on advertising revenue of other broadcasters and harmful interference are speculative. The R&O also concludes that properly engineered program originating boosters will not cause interference to the primary station or adjacent channel stations. Any interference concerns that arise in individual circumstances can be addressed by the Bureau through conditions imposed as part of the authorization process. Thus, the R&O, the Commission finds that it is in the public interest to allow FM and low power FM (LPFM) broadcasters to use FM booster stations to provide booster-originated content on a voluntary, limited basis, subject to certain restrictions described in the R&O, and further subject to the adoption of licensing, interference and service rules proposed in the concurrently adopted FNPRM that would be required to authorize broadcasters to originate programming on boosters on a permanent basis. The ability to originate content will enable broadcasters to serve specific geographic segments within their broadcast areas, could open up more affordable advertising to smaller and minority-owned businesses, and generally provide broadcasters and listeners options for more targeted and varied advertising and content.

6. *Non-technical Matters.* In order to distinguish between a booster station used only to fill in gaps in service and a program originating FM booster station, the R&O adopts a new definition of program originating boosters. As suggested by GBS, the definition provides that program originating boosters may air no more than three minutes per hour of booster-originated content. Commenters, while focusing on the overall pros and cons of booster-originated content, did not raise any concern that a three minute per hour limitation is too long or too short. The Commission believes that three minutes per hour is sufficient to achieve the technology's goals, and provides the best balance between the desire to offer broadcasters the flexibility to originate content on boosters, and the need for safeguards to minimize the risks of interference as the Commission assesses the rollout of this new technology. Given adoption of this three-minute limit, the Commission finds it unnecessary to further limit the definition of a program originating booster as one airing programming that is ''substantially similar'' to the main station's, as GBS had also proposed.

7. In addition, the R&O determines that the potential public interest advantages of program originating boosters outweigh potential disadvantages. It finds that concerns about the impact of program originating boosters on advertising revenue of other broadcasters are not supported by the record. Commenters differ on whether program originating boosters would be beneficial or harmful to stations, advertisers, listeners, the radio industry, and the overall economy. There is general consensus among the commenters that the radio industry has experienced declining revenues over the past decade, and continues to lose advertising market share to other media sources. However, while supporters view program originating boosters as a solution capable of reversing that trend, opponents believe such booster use would exacerbate these financial challenges. The record reflects that the potential costs and benefits of program originating boosters on broadcast revenue will likely vary from station to station and market to market. Because the use of boosters would be voluntary for stations and potentially beneficial to listeners and consumers, the R&O finds that the public interest will be served by providing each individual radio licensee the opportunity to evaluate whether or not program originating booster use would be advantageous under its own unique circumstances.

8. Commenters also differ in opinion on the potential impact of program originating boosters on advertising revenue. Supporting commenters state that program originating boosters can provide advertisers with better opportunities to direct messages to the listeners they want to reach, and may also provide listeners with content that is more relevant and engaging to their areas of interest. Opposing commenters, however, are concerned that targeted programming or advertising could result in intentional or inadvertent socio-economic ''redlining,'' giving advertisers the means to reach more ''desirable'' neighborhoods and to overlook others. Some argue that geo-targeting would make it easier for businesses to avoid advertising to minority and low-income communities. Other commenters dispute these arguments because their review of business and academic literature found no documented redlining by other types local media that can already offer geo-targeted content.

9. The R&O finds that program originating boosters could further the

public interest by enabling radio stations to seek new sources of revenue while providing audiences with hyper-local content. Program originating boosters could enhance the competitiveness of the overall FM radio industry by expanding the range of advertising opportunities available in the relevant geographic areas. The R&O acknowledges the concern in the comments that program originating boosters could drive down advertising rates and thereby could negatively impact radio stations' revenue, but concludes that this concern does not justify rejecting the authorization of program originating boosters. Whether a broadcaster could recoup any lost revenues by selling more spots could vary from market to market and from station to station. It would be up to each broadcaster to weigh its own individual circumstances, market, and needs of its community of license to arrive at a voluntary decision of whether to use boosters for limited program origination. Although the Commission agrees with some comments that the cost of building and operating multiple boosters may be too significant for some broadcasters, it finds that, in many ways, this concern is not different than the decisions that broadcasters routinely make about investment in technologies. The R&O rejects as speculative the argument that stations that would otherwise not adopt program originating boosters will allegedly be forced to do so in order to compete with lower advertising rates offered by those stations in a market that have adopted the technology. The R&O concludes that this theoretical risk does not outweigh the potential public interest benefits of the technology. Although the Commission has considered the concern that some broadcasters and advertisers might have an economic motivation to use program originating boosters to the disadvantage of certain communities or geographic areas, the Commission believes that such an outcome would be unlikely, based on commenter research finding no documentation of such practices by other local media offering targeted advertising. With respect to concerns that GBS is a single vendor with a proprietary technology, the Commission states that it has no reason to conclude that providers of program originating booster technologies will have a relationship with a broadcast licensee that is materially different from any other technology vendor. Nonetheless, the Commission emphasizes that existing broadcast ownership rules will continue to apply to licensees, including those that use program originating boosters.

10. *Technical Matters/Interference Issues.* With respect to technical issues, the Commission concludes that properly engineered program originating boosters will not cause objectionable co-channel interference to the primary station or adjacent channel interference to other stations. It further determines that such boosters, when properly engineered, are compatible with EAS and HD Radio.

11. *Co-Channel Self-Interference.* The main interference concern in the record is whether program originating boosters will cause self-interference to the primary station associated with the booster. Due to the fact that boosters operate on the same channel as the primary station and within the primary station's coverage area, there always is a risk of self-interference. Existing rules currently take this into account by permitting a booster to cause ''limited interference'' to its primary station provided it does not disrupt the existing service of its primary station or cause such interference within the boundaries of the principal community of its primary station. Because the purpose of programming originating boosters is to replace the signal of the primary station for limited periods, the R&O considers the extent to which self-interference is acceptable.

12. GBS and supporting commenters argue that program originating boosters can be configured to ensure that any co-channel interference will be brief. They base this assertion on the tests that GBS conducted. They also note that broadcasters have a business incentive to avoid self-interference to the greatest extent possible.

13. Opposing commenters reject these assertions, and are concerned that self-interference might diminish the audience experience and lead to listeners becoming frustrated, tuning away, and suspecting that their car radios are defective. These comments focus primarily on the methodology of the GBS tests, which they contend were optimized to avoid showing interference and inadequate by omitting critical scenarios. Even commenters that do not completely oppose the Petition urge the Commission to proceed cautiously and to require further testing.

14. The R&O finds the test record has shown that properly engineered program originating boosters can be implemented without causing more than a limited amount of co-channel interference. The R&O's decision to limit program origination to three minutes per hour combined with the economic incentive broadcasters have to minimize self-interference will help to reduce any potential for harmful interference from a booster's airing of programming different from that of the primary station. The Commission amends § 74.1203(c) to clarify that a booster's limited origination of programming does not cause interference into or disrupt the service of the primary station solely because it originates programming different from the primary station. The Commission also amends § 74.1203(c) to eliminate the specific prohibition on interference within the primary station's principal community as applied to program originating boosters. The Commission believes a broadcaster's economic incentive to avoid self-interference negates the ongoing need for this restriction as applied to program originating boosters. Retaining the restriction could impede the voluntary deployment of program originating boosters, and the corresponding public interest benefits, even in cases of a well-engineered transition zone located within the primary station's principal community. However, the Commission retains the requirement that all boosters may provide only ''limited'' interference to emphasize the Commission's expectation that booster stations minimize their impact on their primary station wherever possible. The Commission will not hesitate to address non-compliance if poorly engineered program originating booster systems result in unduly large transition zones or otherwise cause excessive interference.

15. *Adjacent Channel Interference.* The Commission finds that record does not contain any evidence that allowing boosters to originate programming increases their risk of generating adjacent channel interference. A limited number of commenters address adjacent channel interference. These commenters support the Commission's conclusion that program originating boosters will not cause harmful interference to first-adjacent or second adjacent channel stations.

16. The R&O finds that existing rules provide adequate protection to ensure boosters do not cause adjacent channel interference. These rules include a requirement that booster station signals must be contained within the coverage area of the primary station; operate with a signal 6 dB less than the signal of a first-adjacent channel full-service station; and be subject to a process for addressing any claims of actual interference. As an additional safeguard in this proceeding, however, the Commission adopts a notification requirement so that the Commission and interested parties are able to identify

which booster stations are originating content. This will allow the Commission to address more quickly any reports of interference or other issues that may arise through the introduction of program originating boosters.

17. *EAS Compatibility.* Consistent with the Commission's findings about overall interference from program originating boosters, the R&O concludes these stations can be implemented without causing harmful interference to the EAS. GBS tests in two markets document successful reception of EAS tones from both the primary station and the program originating booster. Engineering consultants hired by supporting commenters and GBS state that program origination on boosters will have no effect on EAS because the signals and data contained within the EAS tones will override any booster-originated content before it is delivered to the booster.

18. Opposing commenters, however, argue that the EAS tests were optimized and inadequate. Commenters also express concerns that individuals crossing an interference zone at a slow rate (which may be likely during an emergency situation when traffic would be heavier), could experience longer interruptions to emergency alerts.

19. The R&O notes that no commenter presented definitive evidence that program originating boosters are incompatible with the EAS or any evidence that the booster's substitution of programming caused a dead zone unable to receive an emergency alert. To ensure that listeners to program originating boosters receive timely emergency alerts, the R&O requires program originating boosters to receive and broadcast all emergency alerts in the same manner as their primary station. While the Commission concludes that this requirement will ensure that EAS messages are passed through, it states that in light of the significant concerns that interested parties have expressed about the EAS, and the importance of the EAS to public safety, the Commission will carefully monitor the implementation of program originating boosters and may revisit this issue if it receives reports of interference to EAS tests and alerts.

20. *Impact On HD Radio.* Consistent with findings about self-interference and EAS compatibility, the R&O concludes that it is possible for program originating boosters to minimize disruption to HD Radio. GBS, based on tests at one station airing HD Radio, reports that boosters can originate programming without material degradation of the listener's experience, when deployed with optimal system design and successful synchronization. Xperi, the developer of HD Radio, while having some reservations about the impact on HD due to GBS's limited testing, concludes that the listener experience was ''generally good'' when characterized by well-designed booster antennas to diminish transition zone size, and absent synchronization issues. Independent engineers specializing in HD Radio agree that when professionally designed and deployed with successful synchronization, the technology causes ''no appreciable degradation'' to HD Radio signals.

21. Yet, a number of commenters raise concerns that the impact of program originating boosters on digital radio has not been sufficiently examined because the one digital station used for GBS testing was protected by terrain obstructions, and because the test failed to assess HD3 and HD4 subchannels. Commenters also argue that program originating boosters could cause significant disruption to HD Radio in transition regions between the booster and primary signals, causing listener dissatisfaction. Xperi also asserts that its own testing confirmed signal degradation in transition zones due to frequent switching between main and zone audio programs, and loss of both physical and digital synchronization, resulting in audio outages. Commenters therefore request further testing and propose potential scenarios that have not yet been tested.

22. The Commission concludes that program originating boosters can be designed to minimize interference to or disruption of HD Radio signals. The R&O finds it significant that Xperi, the developer of HD Radio, has not opposed the adoption of program originating boosters even though it has a strong incentive to prevent interference to digital operations. The Commission also based its conclusion on its determination that the only potential interference concern of any significance from program originating boosters is co-channel interference from the booster to the primary station. Broadcasters that find they are unable to engineer boosters to avoid co-channel interference to their HD Radio operations can opt not to implement those boosters. The definition of program originating boosters adopted in the R&O, which limits program origination to three minutes per hour, further reduces the risk of widespread interference to HD Radio broadcasts. Nonetheless, the Commission recognizes commenter assertions that testing to date has not examined many typical digital radio implementations. If the Commission receives reports of significant disruption to digital broadcasts, it may revisit this issue.

23. Since current use of boosters is a response to weak signals caused by terrain, few stations now use multiple boosters. The new ability to originate programming over boosters has the potential to significantly increase the use of booster stations. Accordingly, in the FNPRM, the Commission seeks comment on a program originating booster cap or other measures, and whether they will be necessary to ensure compliance with the Local Community Radio Act of 2010 (LCRA), and its license availability requirements regarding FM translator stations, LPFM stations, and FM booster stations. During the interim when the Commission is considering these matters proposed in the FNPRM, it will limit to 25 the number of program originating boosters licensed to each full-service FM station.

24. *Part 5 Authorizations.* As of the effective date of the R&O and until the effective date of final service rules based on the proposals in the FNPRM, a licensed FM station may originate programming on a booster under a one-year, renewable experimental authorization obtained pursuant to 47 CFR part 5. The Commission views experimental use of program-originating boosters as an appropriate mechanism during the pendency of the FNPRM because it allows the FCC to closely monitor the rollout of the technology. In the FNPRM, the Commission seeks comment on the proposed processing, licensing, and service rules required to authorize broadcasters to originate programming on boosters on a permanent basis.

25. *Correction of Spelling Error.* The Commission also corrects an error in the spelling of the word ''radial'' in 47 CFR 74.1235.

Procedural Matters

Final Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Amendment of Section 74.1231(i) of the Commission's Rules on FM Broadcast Booster Stations,* Notice of Proposed Rulemaking (NPRM), released in December 2020 (86 FR 1909, January 11, 2021). The Federal Communications Commission (Commission) sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were filed addressing the IRFA. The Final Regulatory Flexibility Analysis

(FRFA) conforms to the RFA. See 5 U.S.C. 604.

A. Need For, and Objectives of, the Report and Order

27. In the Report and Order, the Commission finds that it is in the public interest to allow FM and low power FM (LPFM) broadcasters to use FM booster stations to provide booster-originated content on a voluntary, limited basis, subject to certain restrictions described in the Report and Order, and further subject to the adoption of licensing, interference and service rules for origination of content on boosters as proposed in the concurrently adopted FNPRM. In order to distinguish between a fill-in station and a Program Originating FM booster station, the Report and Order adopts a new definition of program originating boosters. The ability to originate content will enable broadcasters to serve geographic segments of their broadcast areas, could open up more affordable advertising to smaller and minority-owned businesses, and will generally provide broadcasters and listeners options for more targeted and varied advertising and content that FM stations are not able to provide today.

28. The issues raised in this proceeding fall into three broad categories: (1) non-technical matters such as the advantages and disadvantages of program originating boosters from an economic and public interest perspective; (2) technical issues such as whether program originating boosters, if properly engineered, would cause harmful interference to their primary station or adjacent channel stations; and (3) administrative matters the Commission would need to address in order to authorize program originating boosters and respond to any resulting operational issues. The Report and Order resolves the first category by adopting a rule that determines program originating boosters limited to originating programming for three minutes per hour would serve the public interest. In addition, the Report and Order determines concerns about the technology's impact on advertising revenue of other broadcasters and harmful interference are not supported by the record. It also addresses the second category about interference by concluding that properly engineered program originating boosters will not cause interference to the primary station or adjacent channel stations. The Report and Order also requires that program originating boosters receive and broadcast all emergency alerts in the same manner as their primary station. While stations will not be permitted to install or operate program originating boosters pursuant to these rules until we adopt final service rules in response to the FNPRM and such rules have been reviewed by the Office of Management and Budget, the Commission provides that pending adoption and OMB review of such rules, stations can pursue experimental authorizations for installation and use of program originating boosters pursuant to part 5 of our rules. In the FNPRM, the Commission seeks comment on the proposed processing, licensing, and service rules required to authorize broadcasters to originate programming on boosters on a permanent basis.

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

29. Parties that filed comments did not specifically reference the IRFA in their comments. Some commenters, however, expressed concern about increased costs, such as the cost of building and operating multiple boosters, particularly for smaller broadcasters, and the initial outlay to cover infrastructure and maintenance expenses, and additional expenses to hire and train staff, and purchase content management systems to feed secondary programming to the boosters. In addition, commenters claim the GeoBroadcast Solutions (GBS) proprietary technology could ultimately lead to unfavorable rates for small entities that are late adopters of the technology. These and other concerns are discussed in section F of this FRFA.

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

30. 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 for Advocacy 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. 5 U.S.C. 604(a)(3). 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 the Rules Apply

31. The RFA directs the agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(a)(4). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' Id. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Id. 601(3). 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. 15 U.S.C. 632.

32. *Radio Stations.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. 13 CFR 121.201. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Id. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

33. The Commission estimates that as of September 30, 2023, there were 4,452 licensed commercial AM radio stations and 6,670 licensed commercial FM radio stations, for a combined total of 11,122 commercial radio stations. Of this total, 11,120 stations (or 99.98%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of September 30, 2023, there were 4,263 licensed noncommercial (NCE) FM radio stations, 1,978 low power FM (LPFM) stations, and 8,928 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the SBA small business size standard.

34. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected

by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

35. The Report and Order adopts rules requiring compatibility between program originating boosters and the Emergency Alert System (EAS) as well as rules limiting program origination to three minutes per hour. Stations that wish to originate programming on a booster station may request experimental authorization pursuant to § 5.203 of the Commission's rules, which would require an application describing the nature, purpose, and duration of the experimental authorization, and require the station to file any supplemental reports that flow from this authorization. The Commission's Media Bureau is required to provide expedited treatment for any such requests. As discussed previously, the use of program originating boosters will be voluntary. To the extent that broadcasters choose to use boosters in this way, they will be required to follow the rules adopted in the Report and Order. We also note the Commission concurrently adopted an FNPRM in this proceeding, which proposes modified reporting requirements for FM booster stations.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

36. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . 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.'' 5 U.S.C. 604(a)(6). In the Report and Order, the Commission adopted measures authorizing program originating boosters to benefit the public by providing broadcasters and listeners with increased options for more targeted and varied advertising and content that many stations are not able to currently provide. We sought to weigh the impact of these measures on small entities against the public interest benefits gained from them and have determined that the benefits outweigh the costs. Commenters have asserted that while booster use causes advertising revenues to increase, the gains may be offset by increased costs. Other commenters claim purchasing program originating boosters will necessitate additional expenses, such as purchasing additional content management systems to feed the secondary programming to the boosters, new sales software to handle sub-areas, and hiring and retraining staff. In contrast, supporters of FM geotargeting claim the technology will enable small and minority-owned broadcasters to become more competitive by attracting new advertisers and listeners, and offer targeted advertisements relevant to the local community.

37. Commenters also raised concerns about the potential of GBS' proprietary technology to create unfavorable rates for small entities who are late adopters. However, we do not require broadcasters to use the GBS system. Other, more economical solutions that are in compliance with our interference rules may be viable options for broadcasters. Lastly, we considered concerns regarding the potential impact of program originating boosters on minority and female broadcasters, however, the record does not provide clear evidence concerning the potential impact to these entities. While we acknowledge and have considered these concerns, we have determined that the public interest benefits of localism, diversity, and competition obtained by the adopted rules outweigh those potential risks.

G. Report to Congress

38. The Commission will send a copy of the Report and Order, including the FRFA, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. Id. 604(b).

39. Paperwork Reduction Act Analysis. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

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

Ordering Clauses

41. Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 2, 4(i), 7, 301, 302, 303, 307, 308, 309, 316, 319, and 324 of the Communications Act of 1934, 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, and 324, the Report and Order *is adopted.*

42. *It is further ordered* that the Report and Order and the amendments to the Commission's rules set forth in Appendix B of the Report and Order *shall be effective* 30 days after publication of a summary in the **Federal Register**.

43. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of the Report and Order and Further Notice of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the **Federal Register**.

44. *It is further ordered* that Office of the Managing Director, Performance Program Management, *shall send* a copy of the Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 11

Radio.

47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Research.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 11, 73, and 74 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g), 606, 1201, 1206.

■ 2. Amend § 11.11 by revising paragraph (a) introductory text, table 1 to paragraph (a), and paragraph (b) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, Low-power FM (LPFM), and program originating FM booster stations; digital audio broadcasting (DAB) stations, including digital AM, FM, LPFM, and program originating FM booster stations; Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireline video systems; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in § 25.701(a) of this chapter (including certain Ku-band Fixed-Satellite Service Direct to Home providers); and SDARS, as defined in § 25.201 of this chapter. These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided in this section. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts, and comply with the requirements set forth in § 11.56, in accordance with the following tables:

TABLE 1 TO PARAGRAPH (a)—ANALOG AND DIGITAL BROADCAST STATION EQUIPMENT DEPLOYMENT REQUIREMENTS

EAS equipment requirement	AM & FM & program originating FM booster station	Digital AM & FM & program originating FM booster station	Analog & digital FM class D	Analog & digital LPFM & program originating FM booster station	DTV	Analog & digital class A TV	Analog & digital LPTV
EAS Decoder [1]	Y	Y	Y	Y	Y	Y	Y
EAS Encoder	Y	Y	N	N	Y	Y	N
Audio message	Y	Y	Y	Y	Y	Y	Y
Video message	N/A	N/A	N/A	N/A	Y	Y	Y

[1] EAS Participants may comply with the obligations set forth in § 11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in § 11.56(b).

* * * * *

(b) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog LPFM stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, analog LPTV stations as defined in § 74.701(f), and digital LPTV stations as defined in § 74.701(k) of this chapter are not required to comply with § 11.32. Analog and digital LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter, are not required to comply with the requirements of this part. FM broadcast booster stations as defined in § 74.1201(f)(1) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part. Program originating FM booster stations as defined in § 74.1201(f)(2) of this chapter must comply with the requirements of this part as set forth in table 1 to paragraph (a) of this section. International broadcast stations as defined in § 73.701 of this chapter are not required to comply with the requirements of this part. Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy the requirements of this part through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§ 11.32 and 11.33.

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 3. The authority citation for part 73 continues to read as follows:

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

■ 4. Amend § 73.860 by:

■ a. Removing the word ''and'' at the end of paragraph (b)(3);

■ b. Removing the period at the end of paragraph (b)(4) and adding ''; and'' in its place; and

■ c. Adding paragraph (b)(5).

The addition reads as follows:

§ 73.860 Cross-ownership.

* * * * *

(b) * * *

(5) Booster stations commonly owned by LPFM stations may conduct transmissions independent of those broadcast by the primary LPFM station for a period not to exceed three minutes of each broadcast hour. This is a strict hourly limit that may not be exceeded by aggregating unused minutes of program origination.

* * * * *

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

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

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

■ 6. Amend § 74.1201 by revising paragraph (f) to read as follows:

§ 74.1201 Definitions.

* * * * *

(f) *FM broadcast booster station*—(1) *In general.* A station in the broadcasting service operated for the sole purpose of retransmitting the signals of an FM radio broadcast station, by amplifying and reradiating such signals, without significantly altering any characteristic of the incoming signal other than its amplitude. Unless specified otherwise, an FM broadcast booster station includes LPFM boosters as defined in paragraph (l) of this section.

(2) *Program originating FM booster station.* An FM broadcast booster station that retransmits the signals of an FM radio broadcast station or a low-power FM broadcast station, and that may replace the content of the incoming signal by originating programming for a period not to exceed three minutes of each broadcast hour. This is a strict hourly limit that may not be exceeded by aggregating unused minutes of program origination. A program originating FM booster station is subject to the same technical and interference protection requirements as are all FM broadcast booster stations, including but not limited to those set forth in §§ 74.1203 through 74.1262.

* * * * *

■ 7. Amend § 74.1203 by revising paragraph (c) to read as follows:

§ 74.1203 Interference.

* * * * *

(c) An FM broadcast booster station will be exempted from the provisions of paragraphs (a) and (b) of this section to the extent that it may cause limited interference to its primary station's signal, *provided* it does not disrupt the existing service of its primary station or cause such interference within the boundaries of the principal community of its primary station. A program originating FM booster station will be exempted from the provisions of paragraphs (a) and (b) to the extent that it may cause limited interference to its primary station's signal. A properly synchronized program originating FM booster station transmitting programming different than that broadcast by the primary station, subject to the limits set forth in § 74.1201(f)(2), is not considered to cause interference to its primary station solely because such originated programming differs from that transmitted by the primary station.

* * * * *

■ 8. Amend § 74.1231 by:
■ a. Revising paragraph (i);
■ b. Removing the note following paragraph (i); and
■ c. Adding paragraph (j).

The addition reads as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(i) FM broadcast booster stations provide a means whereby the licensee of an FM broadcast station may provide service to areas in any region within the primary station's predicted authorized service contour. An FM broadcast booster station is authorized to retransmit only the signals of its primary station which have been received directly through space and suitably amplified, or received by alternative signal delivery means including, but not limited to, satellite and terrestrial microwave facilities. The FM booster station shall not retransmit the signals of any other station nor make independent transmissions except as set forth in § 74.1201(f)(2), and except that locally generated signals may be used to excite the booster apparatus for the purpose of conducting tests and measurements essential to the proper installation and maintenance of the apparatus.

(j) In the case of an FM broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, an FM booster station will only be authorized within the protected contour of the class of station being rebroadcast as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned.

■ 9. Amend § 74.1232 by revising paragraph (f) to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(f) An FM broadcast booster station will be authorized only to the licensee or permittee of the FM radio broadcast station whose signals the booster station will retransmit, to serve areas within the protected contour of the primary station, subject to § 74.1231(j).

* * * * *

■ 10. Amend § 74.1235 by revising paragraph (b) introductory text to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(b) An application for an FM translator station, other than one for fill-in service which is covered in paragraph (a) of this section, will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds the maximum ERP (MERP) value determined in accordance with this paragraph (b). The antenna height above average terrain (HAAT) shall be determined in accordance with § 73.313(d) of this chapter for each of 12 distinct radials, with each radial spaced 30 degrees apart and with the bearing of the first radial bearing true north. Each radial HAAT value shall be rounded to the nearest meter. For each of the 12 radial directions, the MERP is the value corresponding to the calculated HAAT in the following tables that is appropriate for the location of the translator. For an application specifying a nondirectional transmitting antenna, the specified ERP must not exceed the smallest of the 12 MERP's. For an application specifying a directional transmitting antenna, the ERP in each azimuthal direction must not exceed the MERP for the closest of the 12 radial directions.

* * * * *

[FR Doc. 2024–07910 Filed 4–15–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 89, No. 74
Tuesday, April 16, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1002; Project Identifier MCAI–2022–01574–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350D, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. This proposed AD was prompted by reports of debonding on the leading edge protection of certain part-numbered main rotor blades (MRBs). This proposed AD would require repetitively tap inspecting the MRB and, depending on the results, taking corrective action. This proposed AD would also prohibit installing an affected MRB on any helicopter unless its requirements are met. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 31, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1002; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu.* You may find the EASA material on the EASA website *easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2024–1002.

Other Related Service Information: For Airbus Helicopters service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (404) 474–5548; email *william.mccully@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–1002; Project Identifier MCAI–2022–01574–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (404) 474–5548; email *william.mccully@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0246, dated December 12, 2022 (EASA AD 2022–0246), to correct an unsafe condition for all Airbus Helicopters Model AS 350 B, AS 350 BA, AS 350 B1, AS 350 B2, AS 350 BB, AS 350 D, AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, and AS 355 N helicopters.

This proposed AD was prompted by reports of debonding on the stainless steel leading edge protection of certain part-numbered MRBs. The FAA is

proposing this AD to address the debonding of the MRB leading edge protection. The unsafe condition, if not detected and corrected, could lead to significant unbalance of the main rotor, a high level of vibration, failure of the main rotor, failure of the main gearbox, and subsequent loss of control of the helicopter.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0246 requires repetitively tap inspecting affected MRBs and, depending on findings, either repairing or replacing the MRB. For certain helicopters, EASA AD 2022–0246 prohibits installing an affected MRB unless it is a serviceable part as defined within and is inspected following installation. For other certain helicopters, EASA AD 2022–0246 prohibits installing an affected MRB.

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.

Other Related Service Information

The FAA also reviewed Airbus Helicopters Alert Service Bulletin No. AS350–05.01.07 and No. AS355–05.00.91, both Revision 0 and dated December 6, 2022. This service information specifies procedures for tap inspecting the stainless steel leading edge protection of the MRB and, depending on the results, repairing or sending the MRB for repair to Airbus Helicopters. The service information also specifies sending certain information to Airbus Helicopters.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0246, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0246 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0246 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0246 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0246. Service information referenced in EASA AD 2022–0246 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–1002 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2022–0246 applies to Model AS350BB helicopters, whereas this proposed AD would not because that model is not FAA-type certificated.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 405 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Tap inspecting affected MRBs for disbonding would take up to approximately 1 work-hour (up to three MRBs per helicopter) for an estimated cost of up to $85 per helicopter and $34,425 for the U.S. fleet, per inspection cycle. Replacing a blade would take approximately 6 work-hours and parts would cost up to approximately $84,000 for an estimated cost of up to $84,510 per MRB. The FAA has no data to determine the cost of or the number of helicopters that might need the MRB repaired.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2024–1002; Project Identifier MCAI–2022–01574–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 31, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350D, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blades.

(e) Unsafe Condition

This AD was prompted by reports of debonding on the stainless steel leading edge protection of certain main rotor blades (MRBs). The FAA is issuing this AD to address the debonding of the MRB leading edge protection. The unsafe condition, if not addressed, could result in a significant unbalance of the main rotor, a high level of vibration, failure of the main rotor, failure of the main gearbox, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety agency (EASA) AD 2022–0246, dated December 12, 2022 (EASA AD 2022–0246).

(h) Exceptions to EASA AD 2022–0246

(1) Where EASA AD 2022–0246 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0246 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in paragraphs (2) and (3) of EASA AD 2022–0246 specifies sending removed blade(s) to Airbus Helicopters, this AD does not require that action.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0246.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0246 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (404) 474–5548; email *william.mccully@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0246, dated December 12, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0246, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on April 9, 2024.

James D. Foltz,

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

[FR Doc. 2024–07878 Filed 4–15–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0438; Airspace Docket No. 23–AAL–13]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–399 in the Vicinity of Clear, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation Route (RNAV) T–399 in the vicinity of Clear, AK. The FAA is proposing this amendment to increase the lateral separation between T–399 and Restricted Area R–2206.

DATES: Comments must be received on or before May 31, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0438 and Airspace Docket No. 23–AAL–13 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11H, 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, 800 Independence

Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; 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 would amend the airway structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

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 proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

On December 29, 2022, the FAA expanded Restricted Area R–2206 in the vicinity of Clear, AK. The expansion of this restricted area impeded the airway structure in the area at the time. Due to these impediments, the FAA amended several airways and established others to provide routing around the expanded restricted area. RNAV route T–399 was one of these routes and was established on December 29, 2022. Although the current design of T–399 does provide the appropriate separation between the route and R–2206, air traffic controllers at the Anchorage Air Route Traffic Control Center (ZAN ARTCC) have identified that additional lateral separation is needed, especially during periods when the ARTCC surveillance radar is limited. The SEAHK, AK, waypoint (WP) on T–399 is a turn point where northbound aircraft change from a northern flight path to a northeastern flight path and where southbound aircraft change from a southwest path to south. At times, aircraft initiate this turn prior to the SEAHK WP, causing air traffic controllers to intervene to ensure proper separation is maintained. This proposed amendment would relocate the SEAHK waypoint approximately 2.3 nautical miles (NM) to the west. Doing so would increase this segment of T–399s lateral spacing from R–2206, providing a 5 NM buffer from all areas of R–2206. This proposed route amendment would also require the inclusion of the EVIEE, AK, WP in the route description. The waypoint EVIEE is currently on T–399 but due to it not being a turning point, it is not included in the route description. This proposed amendment would make the EVIEE WP a turning point, thus requiring its inclusion in the route description. The EVIEE WP would be added to the route description between the PAWWW, AK, WP and the SEAHK, AK, WP.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV Route T–399 in the vicinity of Clear, AK. This proposed amendment would increase the lateral separation between the RNAV route and Restricted Area R–2206. Specifically, the SEAHK, AK, WP would be relocated approximately 2.3 NM west from its current location. The SEAHK WP would be renamed to the WHYTT, AK, WP.

T–399: T–399 currently extends between the Talkeetna, AK (TKA), Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the Nenana, AK (ENN), VOR/Tactical Air Navigation (VORTAC). The FAA proposes to move the SEAHK, AK, WP approximately 2.3 NM to the west and rename the route point to the WHYTT, AK, WP. Additionally, the FAA proposes to include the EVIEE, AK, WP in the route description. The EVIEE WP would be added between the PAWWW, AK, WP and the SEAHK, AK, WP.

Regulatory Notices and Analyses

The FAA has determined that this proposed 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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), 106(g); 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 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–399 TALKEETNA, AK (TKA) TO NENANA, AK (ENN) [AMENDED]

Talkeetna, AK (TKA)	VOR/DME	(Lat. 62°17′54.16″ N, long. 150°06′18.90″ W)
AILEE, AK	FIX	(Lat. 63°36′00.04″ N, long. 149°32′23.46″ W)
PAWWW, AK	WP	(Lat. 63°58′06.62″ N, long. 149°35′19.10″ W)
EVIEE, AK	WP	(Lat. 64°08′04.02″ N, long. 149°34′14.27″ W)
WHYTT, AK	WP	(Lat. 64°22′23.27″ N, long. 149°37′54.53″ W)
Nenana, AK (ENN)	VORTAC	(Lat. 64°35′24.04″ N, long. 149°04′22.34″ W)

* * * * *

Issued in Washington, DC, on April 9, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–07835 Filed 4–15–24; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AB19

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') proposes to amend the Telemarketing Sales Rule (''Rule'') to extend its coverage to inbound telemarketing calls by consumers to technical support services—*i.e.,* calls that consumers make in response to an advertisement through any medium or to a direct mail solicitation. The proposed amendment is necessary in light of the widespread deception and consumer injury caused by tech support scams. The amendment would provide the Commission with the ability to obtain stronger relief in cases involving tech support scams, including civil penalties and consumer redress.

DATES: Comments must be received by June 17, 2024.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Telemarketing Sales Rule (16 CFR part 310—NPRM) (Project No. R411001)'' on your comment, and file your comment online at *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex T), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Benjamin R. Davidson, (202) 326–3055, *bdavidson@ftc.gov,* or Patricia Hsue, (202) 326–3132, *phsue@ftc.gov,* Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Stop CC–8528, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Trade Commission issues this notice of proposed rulemaking (''NPRM'') to invite public comment on a proposed amendment to the TSR that would require inbound technical support (''tech support'') calls to comply with the Rule.[1] The Rule is currently framed to exempt from its requirements: (1) calls initiated by a customer in response to an advertisement through any medium, and (2) calls initiated by a customer in response to a direct mail solicitation.[2] The proposal would specifically exclude tech support calls from these inbound call exemptions. The NPRM also explains the Commission's decision to refrain from proposing changes to the TSR that would: (1) require a notice and cancellation mechanism with negative option sales or (2) further address business to business (''B2B'') calls.[3]

This NPRM invites written comments on all issues raised by the proposed amendment, including answers to the specific questions set forth in Section IV of this Notice. The Commission has issued a final rule—published elsewhere in this same issue of the **Federal Register**—that, among other things, will require telemarketers and sellers to maintain additional records of their telemarketing transactions and prohibit material misrepresentations and false or misleading statements in B2B telemarketing calls.

II. Overview of the Telemarketing Sales Rule

Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''Act'') in 1994 to curb deceptive and abusive telemarketing practices and provide anti-fraud and privacy protections for consumers receiving

[1] *See* 16 CFR part 310. References to the TSR will cite the section number (*e.g.,* § 310.6(b)(5)).

[2] *See* § 310.6(b)(5) and (b)(6). The exemptions currently exclude certain categories of calls that are likely to be deceptive, such as calls relating to investment opportunities and debt relief services.

[3] The Commission is concurrently issuing a Final Rule that would require B2B calls to comply with the TSR's prohibitions on deception.

telephone solicitations to purchase goods or services.[4] The Telemarketing Act directed the Commission to adopt a rule prohibiting deceptive or abusive telemarketing practices, including prohibiting telemarketers from undertaking a pattern of unsolicited calls that reasonable consumers would consider coercive or abusive of their privacy, restricting the time of day telemarketers may make unsolicited calls to consumers, and requiring telemarketers to promptly and clearly disclose that the purpose of the call is to sell goods or services.[5] The Act also directed the Commission to address in its rule other acts or practices that it found to be deceptive or abusive, including acts or practices of entities or individuals that assist and facilitate deceptive telemarketing, and to consider including recordkeeping requirements.[6] Finally, the Act authorized State Attorneys General, or other appropriate State officials, and private litigants to bring civil actions in federal district court to enforce compliance with the FTC's rule.[7]

Pursuant to the Act's directive, the FTC promulgated the TSR on August 23, 1995.[8] Since then, the Commission has amended the Rule's substantive provisions on four occasions: (1) in 2003 to, among other things, create the National Do Not Call Registry and extend the Rule to telemarketing calls soliciting charitable contributions; [9] (2) in 2008 to prohibit calls playing a recorded message (''robocalls'') selling a good or service or soliciting charitable contributions; [10] (3) in 2010 to ban the telemarketing of debt relief services requiring an advance fee; [11] and (4) in 2015 to bar the use in telemarketing of certain novel payment mechanisms widely used in fraudulent transactions.[12]

On June 3, 2022, the Commission issued an advance notice of proposed rulemaking (''ANPR'') and a separate notice of proposed rulemaking (''June NPRM'') [13] concerning several potential changes to the TSR. The June NPRM proposed amending the TSR's recordkeeping requirements and requiring B2B calls to comply with the TSR's prohibitions on several types of misrepresentations.[14] The TSR currently excludes most B2B calls from the Rule's coverage.[15] The ANPR sought comment on: (1) whether to further modify the TSR's treatment of B2B calls including removing the exemption entirely; (2) whether the Rule should require sellers of negative option products to provide consumers notice before they are billed and a simple mechanism to cancel the negative option; and (3) whether to extend the Rule to apply to inbound tech support calls.

III. Discussion of Comments

A. Negative Option

The Commission received seven comments that addressed whether the Rule should require a notice and cancellation mechanism with negative option sales.[16] Six of the comments supported creating additional protections for negative option sales, and one opposed any changes.

The Professional Association for Customer Engagement (''PACE'') opposed any changes to the Rule to address negative options. PACE claimed many consumers ''embrace negative option offers'' and regularly check their bank statements to identify and stop unwanted recurring charges.[17] PACE also argued requiring sellers or telemarketers to give notice to consumers before they are billed for recurring payments would ''amount to yet another nuisance.'' [18]

The other six commenters supported amending the Rule to create greater protections for negative option sales. Three of those comments expressed general support for the Rule requiring notice and a simple cancellation method for negative options sales.[19] The National Association of Attorneys General (''NAAG''), and the Electronic Privacy Information Center, along with thirteen other consumer organizations (''EPIC''), observed that negative options continue to grow in popularity.[20] NAAG's comment ''echoes sentiments expressed by State AGs for more than a decade,'' though those sentiments were directed to negative options generally as opposed to the specific benefits or risks of negative options sold by telemarketing.[21] NAAG noted negative option plans have become ''increasingly prevalent'' over the past decade ''especially as home delivery became more popular during the COVID–19 pandemic.'' [22] EPIC cited a prediction made by UBS that the ''subscription economy'' will more than double by 2025, and it noted the rise of a ''cottage industry'' to help consumers manage and cancel their subscriptions.[23]

Commenters also expressed concern for rules that would create inconsistent regulation of negative options. The Third Party Payments Association (''TPPA'') urged the FTC to use its rule making authority to ''promulgate consistent requirements across its various rules, regardless of sales channel, means of communication and/or method of obtaining payment authorization.'' [24] EPIC also noted Visa and Mastercard require sellers to provide advance notice before the end

[4] 15 U.S.C. 6101–6108.

[5] 15 U.S.C. 6102(a)(3). The Telemarketing Act was subsequently amended in 2001 to add 15 U.S.C. 6102(a)(3)(D), which requires a telemarketer to promptly and clearly disclose the purpose calls made to solicit charitable contributions. *See* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (''USA PATRIOT Act''), Pub. L. 107–56, 115 Stat. 272 (Oct. 26, 2001).

[6] 15 U.S.C. 6101(a); *see also* 2002 Notice of Proposed Rulemaking, 67 FR 4492, 4510 (Jan. 30, 2002).

[7] 15 U.S.C. 6103, 6104.

[8] *See* Statement of Basis and Purpose and Final Rule (''Original TSR''), 60 FR 43842 (Aug. 23, 1995).

[9] *See* Statement of Basis and Purpose and Final Amended Rule (''2003 TSR Amendments''), 68 FR 4580 (Jan. 29, 2003) (adding Do Not Call Registry, charitable solicitations, and other provisions).

[10] *See* Statement of Basis and Purpose and Final Rule Amendments (''2008 TSR Amendments''), 73 FR 51164 (Aug. 29, 2008) (addressing the use of robocalls).

[11] *See* Statement of Basis and Purpose and Final Rule Amendments (''2010 TSR Amendments''), 75 FR 48458 (Aug. 10, 2010) (adding debt relief provisions). The prohibition on misrepresenting material aspects of debt relief services in § 310.3(a)(2)(x) was added in 2010 along with other debt relief provisions. *See* 2010 TSR Amendments, 75 FR at 48498. The Commission subsequently published correcting amendments to the text of § 310.4 of the TSR. Telemarketing Sales Rule; Correcting Amendments, 76 FR 58716 (Sept. 22, 2011).

[12] *See* Statement of Basis and Purpose and Final Rule Amendments (''2015 TSR Amendments''), 80 FR 77520 (Dec. 14, 2015) (prohibiting the use of remotely created checks and payment orders, cash-to-cash money transfers, and cash reload mechanisms).

[13] 87 FR 3367.

[14] *Id.* at 3367. The June NPRM also proposed adding a new definition of ''previous donor.''

[15] *See* § 310.6(b)(7). The exemption for B2B calls excludes calls selling nondurable office or cleaning supplies.

[16] Many commenters filed one comment either in response to the ANPR or June NPRM that addressed issues raised by both documents. We address relevant comments that were filed in response to both rulemakings. We cite public comments by name of the commenting organization or individual, the rulemaking (ANPR comments were assigned ''33'' and the NPRM comments were assigned ''34'') and the comment number.

[17] PACE 34–21 at 9.

[18] *Id.*

[19] Two of those comments were anonymous, 33–10 and 33–11, and one was made by Kara V, 33–12.

[20] NAAG 33–16; EPIC 33–17. The other individuals and organizations participating in the EPIC comment are: National Consumer Law Center (on behalf of its low-income clients), Center for Digital Democracy, Consumer Action, Consumer Federation of America, FoolProof, Mountain State Justice, National Consumers League, New Jersey Citizen Action, Patient Privacy Rights, Public Good Law Center, Public Justice Center, Public Knowledge, South Carolina Appleseed Legal Justice Center, Cathy Lesser Mansfield (Senior Instructor in Law, Case Western Reserve University School of Law).

[21] NAAG 33–16 at 3–4.

[22] *Id.* at 3.

[23] EPIC 33–17 at 7.

[24] TPPA 34–14 at 2.

of a trial period, and it cautioned ''leaving these safeguards up to individual companies will create a patchwork of different policies.'' [25]

At the same time the Commission has been considering amendments to the Rule, it has also been considering a broader rule that would address negative option sales regardless of the method through which the sale is made. On October 2, 2019, the Commission issued an advance notice of proposed rulemaking regarding the need for a ''Rule Concerning the Use of Prenotification Negative Option Plans,'' [26] and on April 24, 2023, the Commission issued a notice of proposed rulemaking (''Negative Option NPRM'').[27] The Negative Option NPRM would apply to sales calls made by telephone. It proposes a rule that would, among other things: require a clear and conspicuous disclosure of the negative option feature and its conditions; require sellers to obtain consumers' express informed consent to the negative option transaction; and require sellers to provide a simple mechanism to cancel the negative option that is at least as easy as the method used to initiate the transactions. Because the proposed Negative Option Rule addresses the commenters' suggestions including the preference for a rule that would apply to all transactions, instead of potentially creating different regulatory regimes depending on the sales channel, the Commission will not amend the TSR to address negative option transactions at this time.

B. Business to Business

The Commission received fifteen comments addressing the ANPR's question of whether the Commission should modify the TSR's B2B provision beyond the proposal in the June NPRM that would subject B2B calls to the TSR's prohibitions on misrepresentations. Ten comments supported removing the B2B exemption entirely, and five comments opposed making any changes. Eight of the ten comments supporting removing the B2B provision were made by consumers.[28] Two of the consumers referred to the B2B exemption as a ''loophole,'' and one complained about receiving unwanted B2B telemarketing calls.[29]

NAAG and EPIC supported removing the B2B exemption entirely. NAAG called the exemption a ''relic of a bygone era.'' [30] NAAG cited data showing that: in 2020 more than 62% of U.S. households did not have a landline; in 2020 only 26% of employees have employer-provided mobile phones; and in 2018 36% of workers participated in the gig economy in some capacity.[31] EPIC noted the ''operational realities of work have changed'' and the TSR should be amended to better reflect those realities.[32]

Several commenters who opposed making any changes to the Rule argued the Commission lacks the legal authority to remove the B2B exemption because the Telemarketing Act is focused on harms to consumers.[33] Three commenters supported keeping the B2B exemption without modification. The Chamber of Commerce asserted the B2B exemption ''has proven beneficial to the business community.'' [34] The Revenue Based Finance Coalition (''RBFC'') argued additional regulation of business activities is unwarranted ''given the sophistication of the parties to the transaction'' and regulation could ''increase the cost of capital available to small businesses.'' [35] TPPA also noted its members use telemarketing to engage with and acquire potential customers.[36]

The Commission is persuaded that it is appropriate to modify the B2B exemption to require compliance with the TSR's prohibitions on misrepresentation and false or misleading statements but not to require compliance with all other TSR requirements. The comments do not provide sufficient support to warrant modifying the B2B exemption beyond the proposal in the ANPR that would require all B2B calls to comply with the TSR's prohibitions on misrepresentations. The ANPR sought information about the market for B2B telemarketing generally, including whether businesses appreciate B2B telemarketing as a way to sell or buy products. The ANPR also sought comment on whether businesses believe they are harmed by B2B telemarketing or subject to unwanted B2B calls. The Commission noted it is ''particularly interested in seeking comment on the number of sellers or telemarketers who engage in telemarketing to businesses'' [37] and it asked about the kinds of goods or services that are sold through B2B telemarketing, as well as how often businesses receive B2B telemarketing calls.[38] Only three comments addressed these broader questions. TPPA claimed its members rely on telemarketing to sell their products, and two anonymous commenters claimed they receive an excessive volume of B2B telemarketing calls.[39] As NAAG and EPIC described, the Commission recognizes the increasing interchangeability of personal and business phones. But, as a whole, these comments do not adequately address the nature or scope of relevant problems, and they do not enable the Commission to assess related harm flowing from B2B telemarketing in order to craft proposed changes that would mitigate or address such harm. The Commission will consider further modifications to the B2B exemption at a later date if the record demonstrates any modifications may be warranted.

C. Tech Support

The Commission received ten comments addressing whether the TSR should require inbound tech support calls to comply with the TSR. Nine comments supported the proposal: six filed anonymously or by consumers and three filed by organizations.[40] NAAG ''wholeheartedly'' agreed with the proposal and believed that amending the TSR will have a ''substantial effect'' on tech support scams.[41] NAAG stated the scams ''have become one of the most prevalent scams in the nation over the past few years.'' [42] EPIC also supported the proposal and noted the ''serious nature of this fraud is comparable to that in the transactions already singled out for coverage of inbound calls.'' [43] USTelecom—The Broadband Association (''USTelecom'') also supported the proposal, noting tech support scams are a ''significant menace for both consumers and businesses.'' [44]

TPPA opposed ''prohibiting inbound telemarketing calls.'' [45] TPPA

[25] EPIC 33–17 at 8. EPIC also proposed that the Rule specify the timing, manner of delivery, and content of the notice and also set standards for cancellation.

[26] *See* ANPR, 84 FR 52393 (Oct. 2, 2019).

[27] 88 FR 24716 (Apr. 24, 2023).

[28] The comments are 34–9, 34–11, 33–5, 33–9, 33–10, 33–11, 33–12, and 33–13.

[29] *See* 33–5; 33–9.

[30] NAAG 33–16 at 8.

[31] *Id.*

[32] EPIC 33–17 at 11–12.

[33] National Federation of Independent Business 34–1 at 9–11; PACE 33–20 at 7.

[34] Chamber of Commerce 34–24 at 2.

[35] RBPFC 34–13 at 3–5.

[36] TPPA 34–14 at 2.

[37] ANPR, 87 FR at 33674.

[38] *Id.* at 33675.

[39] TPPA 34–14 at 2; 33–5; and 33–10.

[40] The comments are Jennifer Pierce 33–04; Kara V. 33–12; Anonymous 33–02; Anonymous 33–10; and Anonymous 33–11.

[41] NAAG 33–16 at 6.

[42] *Id.* at 7.

[43] EPIC 33–17 at 10.

[44] UST 33–14 at 7.

[45] TPPA 34–14 at 2. The ANPR did not propose prohibiting inbound tech support calls. It proposed requiring inbound tech support calls to comply with the TSR. It is not clear from TPPA's comment whether TPPA's concerns are limited to the effects of prohibiting tech support calls as opposed to merely requiring the calls to comply with the TSR.

acknowledged these scams disproportionately affect older adults, but it contended those problems will ''diminish over time'' as consumers become more familiar with technology.[46] TPPA also cautions that ''prohibiting'' inbound tech support calls could raise conflicts with the FTC's Policy Statement on Repair Restrictions, create confusion for consumers and businesses, and ''unduly burden legitimate business activity by prohibiting Inbound telemarketing of technical support services.''[47]

As explained below, the scope and severity of injury from tech support scams, including their impact on older adults, warrants amending the TSR.[48] The Commission is mindful of concerns the proposed amendment may unduly burden businesses, and the Commission seeks comment on whether the proposed Rule will burden businesses and how any undue burdens can be ameliorated.

IV. Proposed Rule

A. Overview of Tech Support Scams

Tech support scams can begin in a variety of ways. Sometimes the scammer places outbound calls to consumers warning them their computers have been infected.[49] Other scammers use deceptive computer pop-up messages that claim the consumer's computer has a problem and direct the consumer to call a phone number to fix the errors.[50] Still other scammers place advertisements with search engines that appear when consumers search for their computer company's tech support telephone number.[51] And sometimes, scammers pay computer security software companies so that when consumers call to activate their service, they reach the scammer and are pitched additional and unnecessary products and services.[52] Once consumers connect with the scammer, whether through outbound telemarketing or inbound telemarketing, the scammers deceive consumers about a variety of problems with their computers and dupe consumers into purchasing subscription tech support services or software they do not need.[53]

Although tech support scams have typically targeted consumers looking for help with computers, tech support scams also target consumers looking for help with other electronic devices, such as cellular phones and smart home devices. News stories report on consumers encountering tech support scams when they search for help with their iPhones[54] or look for support for their Kindle tablets.[55] In August 2022, Amazon filed a lawsuit alleging a tech support operation targeted consumers who were seeking help with their smart home doorbells and streaming video services.[56]

Consumer complaints about tech support scams have increased dramatically over the last few years, ranging from approximately 40,000 complaints in 2017 to nearly 115,000 complaints in 2021.[57] In 2018, consumers reported losing more than $55 million to these scams, with an average individual loss of approximately $400, and an average individual loss of approximately $500 for consumers over the age of 60.[58]

Moreover, tech support scams disproportionately harm older consumers, with consumers 60 years of age and older being five times more likely to report a financial loss to tech support scams compared to younger consumers.[59] Data shows tech support scams have consistently caused such disproportionate harm to older consumers. From 2015 to 2018, older consumers filed more reports on tech support scams than on any other fraud category.[60]

B. Law Enforcement and Other Responses

The Commission has responded to tech support scams through consumer education and law enforcement actions. For consumer education, the Commission has issued guidance to consumers including ''How to Spot, Avoid, and Report Tech Support Scams,''[61] and ''Keep tech support strangers out of your computer.''[62] The Commission has also responded to particular tech support campaigns with consumer education such as ''Fake Calls from Apple and Amazon Support: What you need to know,''[63] ''No gift cards for tech support scammers,''[64] and ''FTC asking for access to your computer? It's a scam.''[65] Other government agencies and consumer organizations have also

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[46] *Id.*

[47] *Id.*

[48] *See* FTC Report to Congress, Protecting Older Consumers, 2021–2022 (''2022 Protecting Older Consumers Report'') at 31 (Oct. 18, 2022), *available at https://www.ftc.gov/reports/protecting-older-consumers-2021-2022-report-federal-trade-commission* (last visited Apr. 24, 2023).

[49] *See, e.g.,* Prepared Statement of the Federal Trade Commission Before the United States Senate Special Committee on Aging on Combatting Technical Support Scams (''Tech Support Testimony''), at 3–5 (Oct. 21, 2015), *available at https://www.ftc.gov/system/files/documents/public_statements/826561/151021techsupport testimony.pdf* (last visited Jan. 31, 2022).

[50] *Id.*

[51] *Id; see also FTC* v. *Click4Support, LLC,* No. 15-cv-05777–SD, at 9–10 (E.D. Pa. Oct. 26, 2015), *available at https://www.ftc.gov/system/files/documents/cases/151113click4supportcmpt.pdf* (last visited Jan. 31, 2022).

[52] *See FTC* v. *Inbound Call Experts,* No. 9:14-cv-81935 (S.D. Fla. Nov. 19, 2014), *available at https://www.ftc.gov/system/files/documents/cases/141119icecmpt.pdf* (last visited June 23, 2023).

[53] Tech Support Testimony at 3.

[54] ''Woman loses $1,500 to fake Apple Customer Service Scam,'' WCPO ABC 9, Cincinnati, (May 20, 2022), *available at https://www.wcpo.com/money/consumer/dont-waste-your-money/woman-loses-1-500-to-fake-apple-customer-service-scam* (last visited June 23, 2023).

[55] ''Don't get Scammed by Fake Amazon Kindle and Fire Tablet Support Sites'' (Feb. 22, 2016), *available at https://blog.the-ebook-reader.com/2016/02/22/dont-get-scammed-by-fake-amazon-kindle-and-fire-tablet-support-sites/* (last visited June 23, 2023).

[56] *Amazon.com, Inc.* v. *Pionera, Inc.,* 2:22–cv–1491 (E.D. Cal. Aug. 23, 2022).

[57] *See* FTC Consumer Sentinel Network Databook 2022 at 86, *available at https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2021* (last visited June 23, 2023).

[58] *See,* FTC Data Spotlight (''Tech Support Spotlight''), *available at https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-sugpport-scams* (last visited Jan. 31, 2022).

[59] *See* 2022 Protecting Oder Consumers Report at 31, *available at https://www.ftc.gov/reports/protecting-older-consumers-2021-2022-report-federal-trade-commission* (last visited June 23, 2023). In 2020, older consumers were six times as likely to report a financial loss to tech support scams as compared to younger consumers. *See* FTC Report to Congress, Protecting Older Consumers, 2019–2020 (''2020 Protecting Older Consumers Report'') at 6 (Oct. 18, 2020) *available at https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2019-2020-report-federal-trade-commission/p144400_protecting_older_adults_report_2020.pdf* (last visited April. 24, 2023).

[60] Tech Support Spotlight; *see also* FTC Report to Congress, Protecting Older Consumers, 2018–2019 (''2019 Protecting Older Consumers Report'') at 5 (Oct. 18, 2019), *available at https://www.ftc.gov/reports/protecting-older-consumers-2018-2019-report-federal-trade-commission* (last visited Jan. 31, 2022). In 2021, reports of online shopping frauds and business imposter frauds were the top fraud complaint for older consumers, with tech support scams dropping to third. 2022 Protecting Older Consumers Report, at 31. Older consumers, however, are disproportionately more likely to lose money to tech support scams. *Id.*

[61] ''How to Spot, Avoid, and Report Tech Support Scams'' (Sept. 6, 2022), *available at https://consumer.ftc.gov/articles/how-spot-avoid-and-report-tech-support-scams* (last visited June 23, 2023).

[62] ''Keep tech support strangers out of your computer'' (Mar. 7, 2019), *available at https://consumer.ftc.gov/consumer-alerts/2019/03/keep-tech-support-strangers-out-your-computer* (last visited June 23, 2023).

[63] ''Fake Calls from Apple and Amazon Support: What you need to know'' (Dec. 3, 2020), *available at https://consumer.ftc.gov/consumer-alerts/2020/12/fake-calls-apple-and-amazon-support-what-you-need-know* (last visited June 23, 2023).

[64] ''No gift cards for tech support scammers'' (June 6, 2018), *available at https://consumer.ftc.gov/consumer-alerts/2018/06/no-gift-cards-tech-support-scammers* (last visited June 23, 2023).

[65] ''FTC asking for access to your computer? It's a scam'' (Apr. 6, 2018), *available at https://consumer.ftc.gov/consumer-alerts/2018/04/ftc-asking-access-your-computer-its-scam* (last visited June 23, 2023).

issued guidance on tech support scams.[66]

In addition to consumer education, the Commission and other State and Federal law enforcement partners have brought a multitude of actions against tech support scams. For example, on May 12, 2017, the Commission announced ''Operation Tech Trap'' which consisted of 29 law enforcement actions brought by the Commission and other law enforcement agencies against tech support schemes.[67] On March 7, 2019, the Department of Justice announced the largest-ever elder fraud sweep, which focused on tech-support scams and involved actions against ''more than 260 defendants from around the globe who victimized more than two million Americans.'' [68] The Commission has filed numerous tech support cases outside the scope of the sweeps.[69]

While the Commission has sued tech support scams for engaging in deceptive practices under the TSR where applicable, the Commission has brought cases under the FTC Act alone if the telemarketer's practices could arguably fall within an exception to the TSR. In *FTC* v. *PCCare247,* for example, the Commission used the FTC Act to seek monetary relief from a tech support operation that placed deceptive online advertisements to induce consumers to place inbound calls.[70] The calls at issue in *PCCare 247* may have fallen outside of the Rule to the extent they were telephone calls initiated by a consumer in response to an advertisement.[71] Similarly in *FTC* v. *Vylah Tec LLC,* the Commission used the FTC Act to seek monetary relief from a tech support operation that lured consumers by placing deceptive pop up messages warning consumers their computers had been infected with viruses.[72] The calls at issue in *Vylah Tec* may have fallen outside the Rule if a court were to determine that pop-up messages are a form of advertisement or a direct mail solicitation under the Rule.[73]

In April 2021, the Supreme Court's decision in *AMG Capital Management, LLC* v. *FTC* overturned forty years of precedent from the U.S. Circuit Courts of Appeal that held the Commission could take action under the FTC Act to return money unlawfully taken from consumers through deceptive practices.[74] As a result, the Commission is now limited in its ability to obtain monetary relief from tech support scams whose business practices, in some cases, arguably place the scams beyond the reach of the Rule. Amending the Rule will clarify all tech support scams are potentially subject to the Rule.

C. Discussion of the Proposed Rule

The proposed rule would define ''technical support service'' and amend the exemptions for calls in response to advertisements and calls in response to direct mail solicitations, to add technical support services to the categories of calls excluded from the exemptions.

1. Definition of Technical Support Service.

The proposed rule defines technical support services as ''any plan, program, software or service that is marketed to repair, maintain, or improve the performance or security of any device on which code can be downloaded, installed, run, or otherwise used, such as a computer, smartphone, tablet, or smart home product.'' This definition is broad enough to encompass a wide range of electronic devices.

A broad definition is necessary because, in the Commission's experience, tech support scams have shown an ability to evolve with changes in consumer behavior and technology. The Commission's first actions against tech support scams involved telemarketers making outbound calls to consumers in which the telemarketer claimed to be a Microsoft technician who had identified a virus on the consumer's computer.[75] As consumers learned that Microsoft does not call consumers to warn them about viruses on their computers, tech support scams began relying on intrusive popup messages that claimed the computers had been infected with viruses.[76] As web browsers began blocking popup messages, tech support scammers have taken other means to reach consumers, including placing advertisements that solicit inbound calls from consumers looking for tech support.[77] The techniques scammers use to alarm consumers have also evolved. Early tech support scams relied on ''red x's'' in a computer's event viewer while later scams have instructed consumers to download software programs that run

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[66] *See, e.g.,* AARP, ''How to Get Good Tech Support'' (Jan. 3, 2022), *available at https://www.aarp.org/home-family/personal-technology/info-2021/tips-for-getting-tech-support.html* (last visited June 23, 2023); CFPB, ''What you should do about tech support scams'' (Jan. 21, 2021), *available at https://www.consumerfinance.gov/about-us/blog/what-you-should-know-about-tech-support-scams/* (last visited June 23, 2023).

[67] Press Release, FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams (May 12, 2017), *available at https://www.ftc.gov/news-events/press-releases/2017/05/ftc-federal-state-international-partners-announce-major-crackdown* (last visited June 23, 2023).

[68] Press Release, Justice Department Coordinates Largest-Ever Nationwide Elder Fraud Sweep (Mar. 7, 2019), *available at https://www.justice.gov/opa/pr/justice-department-coordinates-largest-ever-nationwide-elder-fraud-sweep-0* (last visited June 23, 2023).

[69] *See, e.g., United States* v. *Nexway SASU,* No. 1:23–cv–900 (D.D.C. Apr. 3, 2023) (complaint alleging that Nexway provided payment processing services for several deceptive tech support operations), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/nexway-complaint.pdf* (last visited Apr. 19, 2023); *FTC* v. *RevenueWire, Inc.,* No. 1:20–cv–1032 (D.D.C. April 21, 2020) (complaint alleging that companies to which RevenueWire provided payment processing services used pop-up dialog boxes that claimed to have detected computer infections and directed consumers to call a 1–800 number), *available at https://www.ftc.gov/system/files/documents/cases/revcomp3.pdf* (last visited Jan. 31, 2022); *FTC* v. *Boost Software, Inc.,* No. 14–cv–81397 (S.D. Fla. Nov. 10, 2014), *available at https://www.ftc.gov/system/files/documents/cases/141119vastboostcmpt.pdf* (last visited Jan. 31, 2022); *FTC* v. *Click4Support, LLC,* No. 15–cv–05777–SD, at 9–10 (E.D. Pa. Oct. 26, 2015), *available at https://www.ftc.gov/system/files/documents/cases/151113click4supportcmpt.pdf* (last visited Jan. 31, 2022) (''Click4Support''); *FTC* v. *Inbound Call Experts, LLC,* 9:14–cv–81395 (S.D. Fla. Nov. 2014), available at *https://www.ftc.gov/system/files/documents/cases/141119icecmpt.pdf* (last visited June 23, 2023) (''Inbound Call Experts'').

[70] *FTC* v. *PCCare247, Inc.,* 12–cv–7189 (S.D.N.Y. Oct. 3, 2012) (''PCCare247''), *available at https://www.ftc.gov/sites/default/files/documents/cases/2012/10/121003pccarecmpt.pdf* (last visited Jan. 31, 2022) (''PCCare247'').

[71] *See* § 310.6(b)(5). Even if the consumer's call was in response to an advertisement, the Rule would still apply to instances of upselling included in the call. Section 310.6(b)(5)(iii). If, for example, the consumer initiated a call for technical support with their computer and the consumer was pitched additional software products or computer services, that transaction would likely be an upsell under the Rule.

[72] *See, e.g., FTC* v. *Vylah Tec LLC,* No. 17–cv–228–FtM–99MRM (M.D. Fla. May 17, 2017) (''Vylah Tec''), *available at https://www.ftc.gov/system/files/documents/cases/162_3253_vylah_tec_llc_complant.pdf* (last visited Jan. 31, 2022).

[73] In an abundance of caution, the Commission pursued its claim regarding the pop-ups under section 5. The Commission, however, does not believe such pop-up messages are exempt under the Rule. The exemption in § 310.6(b)(5) ''applies to calls in response to television commercials, infomercials, home shopping programs, magazine and newspaper advertisements, and other forms of mass media advertising solicitation. . . . In the Commission's experience, calls responding to general media advertising do not typically involve the forms of deception and abuse the Act seeks to stem.'' 60 FR at 43860. The Commission also generally has not observed pop-up messages that contained the disclosures necessary to fall within the exemption for direct mail solicitations.

[74] *See AMG Cap. Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341, 1352 (2021).

[75] Press Release, ''FTC Halts Massive Tech Support Scams''(Oct. 3, 2012), *available at https://www.ftc.gov/news-events/news/press-releases/2012/10/ftc-halts-massive-tech-support-scams* (last visited June 23, 2023).

[76] *See* Vylah Tec. Microsoft has also advised consumers to keep in mind that Microsoft does not make unsolicited phone calls ''to request personal or financial information, or to fix your computer.'' ''Tech Support scams.'' *available at https://learn.microsoft.com/en-us/microsoft-365/security/intelligence/support-scams?view=o365-worldwide* (last visited Apr. 19, 2023).

[77] *See* Click4Support; Inbound Call Experts.

diagnostics of computers and exaggerated the risks the diagnostics reveal.[78] Scammers have also evolved from targeting computers to also targeting a variety of electronic devices.[79]

The unifying characteristic of tech support scams is that scammers attempt to profit from consumers' problems with technology and potential lack of familiarity with complicated electronic devices. As technology changes, tech support scams are likely to change as well, and the definition of tech support in the proposed rule is intended to be broad enough to encompass these changes.

The definition of tech support also excludes ''any plan, program, software, or services in which the person providing the repair obtains physical possession of the device being repaired.'' In the Commission's experience, tech support scams have not involved situations where the repair includes physical interaction with the device, such as replacing a computer hard drive or repairing a broken phone screen.[80] Whether this interaction involves face-to-face contact between the consumer and the person providing the repair or the consumer shipping the device to the repair person and waiting for a return shipment, the Commission believes tech support scams rarely involve physical repair of electronic devices.[81] The Rule currently exempts calls in which payment is not required until ''after a face-to-face sales or donation presentation by the seller.'' [82] In creating that exemption, the Commission explained the ''occurrence of a face-to-face meeting limits the incidence of telemarketing deception and abuse'' because the ''paradigm of telemarking fraud involves an interstate telephone call in which the customer has no other direct contact with the caller.'' [83] Here too, the ''paradigm'' of tech support scams are consumers speaking with third parties with whom they have limited contact and often at a time when they have been misled to believe they have a problem with their electronic device. Physical in-person repair does not involve the same pressures as remote tech support, and it is less conducive to scams. The Commission seeks comment on the proposed definition of tech support.

2. Requirements.

The proposed rule would add ''tech support services'' to the categories of calls excluded from the TSR's exemptions for inbound calls ''in response to an advertisement through any medium'' and inbound calls in response to ''a direct mail solicitation,'' including email.[84] The Commission created these exemptions in the original Rule based on its consideration of four factors: whether Congress intended certain types of sales activity to be exempt under the Rule; whether the conduct or business in question ''already is regulated extensively by Federal or State law''; whether the conduct ''lends itself easily to the forms of deception or abuse that the Act is intended to address''; and whether requiring business to comply the Rule would be ''unduly burdensome weighed against the likelihood that sellers or telemarketers engaged in fraud would use an exemption to circumvent Rule coverage.'' [85]

The Commission decided to create exemptions from the rule for calls in response to advertisements and direct mail solicitation because, in the Commission's experience, calls in response to these solicitations ''do not typically involve the forms of deception and abuse the Act seeks to stem.'' [86] At the same time, the Commission recognized ''some deceptive sellers or telemarketers use mass media or general advertising to entice their victims to call, particularly in relation to the sale of investment opportunities, specific credit-related programs'' and other areas.[87] The Commission decided to exclude certain categories of calls from the exemptions given its ''experience with the marketing of these deceptive telemarketing schemes.'' [88] The Commission's experience with tech support schemes also supports excluding tech support calls from the exemptions for inbound calls in response to advertisements and direct mail solicitations.

The Commission is mindful of the potential burden the proposed amendment may have on tech support businesses that do not engage in deceptive practices. The proposed amendment has been drafted in an attempt to minimize the burden on these businesses, and the Commission seeks comment on whether the burden would be undue or can be further reduced.

Two features of the proposed amendment would minimize the burden on legitimate tech support businesses. First, tech support calls ''that are not the result of any solicitation by a seller, charitable organization, or telemarketer'' would still be exempt under § 310.6(b)(5). As the Commission recognized when it created this exemption, these type of calls are not ''part of a telemarketing 'plan, program, or campaign * * * to induce the purchase of goods or services' under the Act.'' [89] The Commission further explained: ''This exemption covers incidental uses of the telephone that are not in response to a direction solicitation, *e.g.,* calls from a customer . . . to obtain information or customer technical support.'' [90] Under this exemption, as long as the call is not solicited, a consumer calling their computer manufacturer for technical support or a home security company about a disruption to their service would not be subject to the Rule unless, as part of that transaction, the company also engaged in an upsell.[91]

Second, excluding tech support where the person providing the service takes physical possession of the device will also limit the breadth of the rule. Consumer calls to a local repair shop or to the manufacturer of their device seeking physical repairs will not be subject to the Rule. The Commission seeks comment on whether it should consider other approaches to reduce any burden imposed by the Rule.

V. Request for Comment

The Commission seeks comments on all aspects of the proposed regulation. The Commission also seeks comments on the estimated burden that compliance with the proposed regulations will impose on sellers and telemarketers. In their replies, commenters should provide any available evidence and data that supports their position, such as empirical data on the costs of complying with the proposed amendment.

[78] *See* PCCare247; Elite IT.

[79] Supra notes 54–56.

[80] Tech support scammers sometimes obtain remote access to a computer or electronic device to perform diagnosis or service. The ''physical possession'' is not intended to apply when the tech support involves remote access to a device.

[81] The Commission's lawsuit against Office Depot is an exception to this pattern. *See FTC* v. *Office Depot Inc.,* 9:19-cv-80431 (S.D. Fla. Mar. 29, 2019) (alleging that Office Depot and Support.com deceived consumers who brought their computers into Office Depot stores for support services).

[82] Section 310.6(b)(3).

[83] Original TSR, 60 FR at 43860.

[84] Sections 310.6(b)(5) and 310.6(b)(6). For ''direct mail solicitations'' to qualify for the exemption, the solicitations must ''clearly, conspicuously, and truthfully disclose[] all material information listed in § 310.3(a)(1)'' and contain ''no material misrepresentation regarding any item contained in § 310.3(d).''

[85] Original TSR, 60 FR at 43859.

[86] *Id.* at 43860.

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] Section 310.6(b)(4).

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 17, 2024. Write ''Telemarketing Sales Rule (16 CFR 310—NPRM) (Project No. R411001)'' 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 subject to delay. We strongly encourage you to submit your comment online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Telemarketing Sales Rule (16 CFR 310—NPRM) (Project No. R411001)'' 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 T), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website, *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 any 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 any 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.'' 15 U.S.C. 46(f); *see* FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, your comment should not include 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), 16 CFR 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), 16 CFR 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 publicly at *www.regulations.gov,* as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b), we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), 16 CFR 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. 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 June 17, 2024. 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.*

In addition to the issues raised above, the Commission solicits public comment on the list of questions below regarding the costs and benefits of the proposed amendment. The Commission requests that comments provide the factual data upon which they are based. These questions are designed to assist the public and should not be construed as a limitation on the issues on which a public comment may be submitted.

A. Questions for Comments

1. Should the Commission finalize the proposed rule as a final rule? Why or why not? How, if at all, should the Commission change the proposed rule in promulgating a final rule?

2. Is the definition of ''technical support service'' clear and understandable? It is ambiguous in any way? How, if at all, should it be improved?

3. Is the definition of ''technical support service'' appropriately tailored? Is it overinclusive or underinclusive in any way? How, if at all, should it be improved?

4. Do you support excluding from the definition of technical support instances in which the person providing the repair obtains physical possession of the device being repaired? Why or why not?

5. Do you support the proposal to add technical support services to the list of calls that do not qualify for the exemptions for calls in response to advertisements and direct mail solicitations in § 310.6(b)(5) and § 310.6(b)(6)? Should the Commission consider other modifications to the Rule to address tech support scams?

6. Would the proposed rule place an undue burden on technical support operations that do not engage in deceptive acts or practices? If so, what burden would it impose and how can the burden be reduced?

7. Do you agree with the estimates in the Paperwork Reduction Analysis? Why or why not?

8. How many new calls would be subject to the TSR if the proposed rule is adopted?

9. Would the proposed rule disproportionately benefit or burden original equipment manufacturers? If so, how should the proposed rule be changed?

VI. Paperwork Reduction Act

The current Rule contains various provisions that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (''OMB'') regulations implementing the Paperwork Reduction Act (PRA). 44 U.S.C. chapter 35. OMB has approved the Rule's existing information collection requirements through October 31, 2025 (OMB Control No. 3084–0097). The proposed amendment will newly require certain inbound tech support calls to comply with the Rule's recordkeeping and disclosure requirements. This will increase the PRA burden for sellers or telemarketers as detailed below. Accordingly, FTC staff is simultaneously submitting this notice of proposed rulemaking and the associated Supporting Statement to OMB for review under the PRA.[92]

A. Estimated Annual Hours Burden

The Commission estimates the PRA burden of the proposed amendment based on its knowledge of the telemarketing industry and data compiled from the Do Not Call Registry. The annual hours of burden for sellers or telemarketers will consist of two components: the time required to make disclosures and the costs of complying with the Rule's recordkeeping requirements.

[92] This PRA analysis focuses specifically on the information collection requirements created by or otherwise affected by the proposed amendment.

First the Commission estimates that the disclosure burden will take 19,566 hours. Calculating the disclosure burden requires estimating the number of inbound tech support calls that will now be subject to the TSR if the proposed amendment goes into effect. The Commission uses the same methodology it has used in the past to calculate the disclosure burden for categories of calls that are excluded from the TSR's exemptions for inbound calls.[93]

As it has in the past, the Commission estimates that there are 1.8 billion inbound telemarketing calls that result in sales, that consumer injury from telemarketing fraud is $40 billion a year, and that it takes seven seconds to make the disclosures required by the Rule in inbound calls.[94] The Commission estimates the disclosure burden for particular categories of calls that are excluded from the TSR's exemptions by extrapolating a percentage of those calls based on their complaint rates in the FTC's Consumer Sentinel system.[95] The resulting percentage of total fraud complaints must be adjusted to reflect the fact that only a relatively small percentage of telemarketing calls are fraudulent. To extrapolate the percentage of fraudulent telemarketing calls, staff divides a Congressional estimate of annual consumer injury from telemarketing fraud ($40 billion) [96] by available data on total consumer and business-to-business telemarketing sales ($310.0 billion projected for 2016),[97] or 13%. The two percentages are then multiplied together to determine the percentage of the 1.8 billion annual inbound telemarketing calls represented by each type of fraud complaint. That number is then rounded to the nearest ten. In 2022, there were 2,369,527 fraud complaints and 89,158 complaints about tech support.[98] Thus, the general sales disclosure burden is 19,566 hours (1.8 billion inbound calls ×the percentage of fraud complaints for tech support (89,158/2,369,527) ×the percentage of telemarketing calls that are estimated to be fraudulent (.13) ×the length of the disclosures (8 seconds per disclosure, ÷ 3,600 to convert to hours).

Second, the estimated recordkeeping burden is 104,250 hours. Estimating this burden requires estimating how many new telemarketing entities will be subject to the TSR if the proposed amendment goes into effect. To create this estimate, staff first estimates the number of existing telemarketing entities that engage in tech support sales. In calendar year 2022, 10,804 telemarketing entities accessed the Do Not Call Registry; however, 549 were ''exempt'' entities obtaining access to data.[99] Of the non-exempt entities, 6,562 obtained data for a single State. Staff assumes that these 6,562 entities are operating solely intrastate, and thus would not be subject to the TSR. Therefore, staff estimates that approximately 3,693 telemarketing entities (10,804—549 exempt—6,562 intrastate) are currently subject to the TSR. To estimate the percentage of those entities that sell tech support products and services, staff again relies on the percentage of fraud complaints for tech support out of the total fraud complaints. (89,158/2,369,527) which is multiplied by the number of telemarketing entities, (3,693) to produce the estimate that 139 telemarketing entities receive tech support calls.

If the proposed amendment goes into effect, additional businesses will likely be covered by the TSR. For example, tech support companies that advertise their products through general advertisements and do not engage in upselling may be subject to the Rule for the first time.[100] On the other hand, companies that market through a combination of advertisements and outbound telemarketing are already subject to the Rule. Companies that receive inbound calls from consumers with questions about their products who then engage in upsells of technical support services are also already subject to the Rule. The Commission estimates that the Proposed amendment will increase the number of telemarketing entities that receive inbound tech support calls by a factor of 5, which would mean that an additional 695 entities will be covered by the Rule.

The Commission estimates that after implementation of the separate Final Rule proceeding which, among other things, requires telemarketers and sellers to maintain additional records of their telemarketing transactions, complying with the TSR's current recordkeeping requirements requires 150 hours for new entrants to develop recordkeeping systems that comply with the TSR, for a total annual recordkeeping burden of 104,250 hours.[101]

B. Estimated Annual Labor Costs

The Commission estimates annual labor costs by applying appropriate hourly wage rates to the burden hours described above. The Commission estimates that the annual labor cost for disclosures will be $315,991. This total is the product of applying an assumed hourly wage of $16.15 for 19,566 hours of disclosures.[102] The Commission estimates that the annual labor cost for recordkeeping will be $3,228,623. This is calculated by applying a skilled labor rate of $30.97/hour [103] to the estimated 150 burden hours for the estimated 695 entities that will now be covered by the Rule ($30.97 × 150 × 695).

C. Estimated Annual Non-Labor Costs

The final rule published in this same issue of the **Federal Register** estimates that the annual non-labor costs are $55 a year, derived from $5 for electronically storing audio files, and $50 for storing the required records. The Commission thus estimates that the annual non-labor costs will be $38,255 (695 entries × $55).

The Commission invites comments on the accuracy of the FTC's burden estimates, including whether the methodology and assumptions used are valid. Specifically, the Commission invites comments on: (1) whether the

[93] *See, e.g.,* Agency Information Collection Activities; Proposed Collection; Comment Request; Extension. 87 FR 23179 (April 19, 2022).

[94] *Id.*

[95] *Id.*

[96] *House Committee on Government Operations, The Scourge of Telemarketing Fraud: What Can Be Done Against It,* H.R. Rep. 421, 102nd Cong., 1st Sess. at 7 (Dec. 18, 1991). The FBI believes that this estimate overstates telemarketing fraud losses as a result of its investigations and closings of once massive telemarketing boiler room operations. *See* FBI, *A Byte Out of History: Turning the Tables on Telemarketing Fraud* (Dec. 8, 2010), *available at https://www.fbi.gov/news/stories/2010/december/telemarketing_120810/telemarketing_120810. See also* Internet Crime Complaint Center, 2020 Annual Report on Internet Crime (citing $4.1 billion of losses claimed in consumer complaints for 2020), available at *https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3Report.pdf.*

[97] DMA 2013 Statistical Fact Book (January 2013) projection up through 2016, p. 5 (no associated DMA updates made or otherwise found thereafter).

[98] *See* FTC, Consumer Sentinel Network Data Book 2022 (February 2023) (''Sentinel Data'') at 9, 87, *available at https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf* (last visited June 12, 2023).

[99] *See* National Do Not Call Registry Data Book for Fiscal Year 2022 (''Data Book''), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/DNC-Data-Book-2022.pdf* (last visited March 21, 2024). An exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.

[100] *See* § 310.6(b)(5).

[101] The Commission is using a Final Rule simultaneously with this NPRM.

[102] This figure is derived from the mean hourly wage shown for Telemarketers. *See* ''Occupational Employment and Wages–May 2022,'' U.S. Department of Labor, released April 25, 2023 Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2022''), *available at https://www.bls.gov/news.release/ocwage.t01.htm* (last visited July 19, 2023).

[103] This figure is derived from the mean hourly wage shown for Computer Support Specialists from the U.S. Department of Labor source set out in the prior footnote.

proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC'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 collecting information on those who respond.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities.[104] The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.[105]

The Commission believes that the proposed amendment would not have a significant economic impact upon small entities, nor will it affect a substantial number of small businesses. In the Commission's view, the proposed amendment should not significantly increase the costs of small entities that are sellers or telemarketers. Therefore, based on available information, the Commission certifies that amending the Rules as proposed will not have a significant economic impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration (''SBA''). Nonetheless, the Commission has determined that it is appropriate to publish an IRFA to inquire into the impact of the proposed amendment on small entities. The Commission invites comment on the burden on any small entities that would be covered and has prepared the following analysis.

A. Description of the Reasons the Agency Is Taking Action

The Commission proposes amending the TSR to explicitly exclude tech support calls from the exemptions for inbound calls by consumers in response to advertisements and direct mail solicitations from tech support services. As described in Section IV, the proposed amendment is intended to address the widespread harm caused by deceptive tech support services, which disproportionately impact older consumers compared to younger ones.

B. Statement of Objectives of, and Legal Basis for, the Proposed Amendment

The objective of the proposed amendment is to lessen the harm caused by deceptive tech support scams. The legal basis for the proposed amendment is the Telemarketing Act, which authorizes the Commission to issue rules to prohibit deceptive or abusive telemarketing practices.

C. Description and Estimated Number of Small Entities to Which the Rule Will Apply

The proposed amendment to the Rule affects sellers and telemarketers that sell technical support services through inbound telemarketing calls that are made in response to advertisements and direct mail solicitations. As noted above, staff estimates that there are 695 such entities that would be covered by the Rule. For telemarketers, a small business is defined by the SBA as one whose average annual receipts do not exceed $25.5 million.[106] It is not possible to identify how many of these entities would be a small business as defined by the SBA. Commission staff are unable to determine a precise estimate of how many sellers or telemarketers constitute small entities as defined by SBA. The Commission invites comment and information on this issue.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Small Entities and Professional Skills Needed To Comply

The proposed amendment would require sellers and telemarketers that sell technical support services through inbound telemarketing calls that are made in response to advertisements and direct mail solicitations to comply with the TSR's disclosure and recordkeeping requirements. The small entities potentially covered by the proposed amendment will include all such entities subject to the Rule. The Commission has described the skills necessary to comply with these recordkeeping requirements in Section VI above on the Paperwork Reduction Act.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other Federal statutes, rules, or policies currently in effect that may duplicate, overlap or conflict with the proposed amendment. The Commission invites comment and information regarding any potentially duplicative, overlapping, or conflicting Federal statutes, rules, or policies.

F. Significant Alternatives to the Proposed Amendment

The Commission believes that there are no significant alternatives to the proposed amendment but is seeking comment on whether the proposed rule places an undue burden on technical support operations that do not engage in deceptive acts or practices and, if so, how can the burden be reduced. The Commission has over many years pursued alternatives to the proposed amendment in the form of law enforcement and consumer outreach. The continued injury caused by these scams shows that the proposed amendment to the Rule is necessary.

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record.[107]

List of Subjects in 16 CFR Part 310

Advertising; Consumer protection; Telephone; Trade practices.

[104] 5 U.S.C. 601 through 612.

[105] 5 U.S.C. 605.

[106] Telemarketers are typically classified as ''Telemarketing Bureaus and Other contact Centers,'' (NAICS Code 561422). *See* Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

[107] *See* 16 CFR 1.26(b)(5).

For the reasons stated above, the Federal Trade Commission proposes to amend part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. Amend § 310.2 by:
■ a. Redesignating paragraphs (ff) through (hh) as paragraphs (gg) through (ii); and
■ b. Adding new paragraph (ff).

The addition reads as follows:

§ 310.2 Definitions.

* * * * *

(ff) Technical Support Service means any plan, program, software, or service that is marketed to repair, maintain, or improve the performance or security of any device on which code can be downloaded, installed, run, or otherwise used, such as a computer, smartphone, tablet, or smart home product. Technical support service does not include any plan, program, software, or services in which the person providing the repair, maintenance, or improvement obtains physical possession of the device being repaired.

* * * * *

■ 3. Amend § 310.6 by revising paragraphs (b)(5)(i) and (b)(6)(ii) to read as follows:

§ 310.6 Exemptions.

* * * * *

(b) * * *

(5) * * *

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, technical support services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

* * * * *

(6) * * *

(ii) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, technical support services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

* * * * *

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2024–07182 Filed 4–15–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2024–0014]

RIN 0651–AD79

Rules Governing Director Review of Patent Trial and Appeal Board Decisions

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) proposes new rules to govern the process for the review of Patent Trial and Appeal Board (PTAB or Board) decisions in America Invents Act (AIA) proceedings by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (Director). Specifically, the USPTO proposes these rules in light of stakeholder feedback received in response to a request for comments (RFC). The proposed rules promote the accuracy, consistency, and integrity of PTAB decision-making in Leahy-Smith America Invents Act of 2011 (AIA) proceedings.

DATES: Comments must be received by June 17, 2024 to ensure consideration.

ADDRESSES: For reasons of Government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov*. To submit comments via the portal, one should enter docket number PTO–P–2024–0014 on the homepage and select ''search.'' The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this notice and select the ''Comment'' icon, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe® portable document format (PDF) or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of, or access to, comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Krause, Director Review Executive; Kalyan Deshpande, Vice Chief Administrative Patent Judge; or Amanda Wieker, Acting Vice Chief Administrative Patent Judge, at 571–272–9797.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office proposes new rules governing the process for the review of Patent Trial and Appeal Board decisions in AIA proceedings by the Under Secretary of Commerce for Intellectual Property and Director [1] of the United States Patent and Trademark Office.

This Notice of Proposed Rulemaking (NPRM) provides that a party to an AIA proceeding may request Director Review in that AIA proceeding of any decision on institution, any final written decision, or any decision granting rehearing of a decision on institution or a final written decision. The NPRM also sets forth the timing and format of a party's request for Director Review. In addition, the NPRM provides that the Director may initiate a review of any decision on institution, any final written decision, or any decision granting rehearing of a decision on institution or a final written decision on the Director's own initiative.

The NPRM addresses the impact of Director Review on the underlying proceeding at the PTAB, as well as the time by which an appeal to the U.S. Court of Appeals for the Federal Circuit must be filed.

[1] In this notice of proposed rulemaking, references to the ''Director'' include the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, an individual serving as the Acting Director or one performing the functions and duties of the Director, or an individual designated to fill the Director's role in case of a conflict of interest. See Procedures for Recusal to Avoid Conflicts of Interest and Delegations of Authority, available at *https://www.uspto.gov/sites/default/files/documents/Director-Memorandum-on-Recusal-Procedures.pdf*. For example, if the Director has a conflict that requires the Director to be recused, the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO will take the required action. If the position of the Deputy Director is vacant, or if the Deputy Director also has a conflict, the Commissioner for Patents will take the required action, if no conflicts exist for the Commissioner.

Background

Development of This Notice of Proposed Rulemaking

On September 16, 2011, Congress enacted the AIA (Pub. L. 112–29, 125 Stat. 284 (2011)). The AIA established the PTAB,[2] which is made up of administrative patent judges (APJs) and four statutory members, namely the Director, the Deputy Director, the Commissioner for Patents, and the Commissioner for Trademarks. 35 U.S.C. 6(a). The Director is appointed by the President, by and with the advice and consent of the Senate. 35 U.S.C. 3(a)(1). APJs are appointed by the Secretary of Commerce in consultation with the Director. *Id.* 6(a). The PTAB hears and decides ex parte appeals of adverse decisions by examiners in applications for patents, applications for reissue, and reexamination proceedings, and proceedings under the AIA, including inter partes reviews (IPRs), post grant reviews (PGRs), covered business method (CBM) patent reviews,[3] and derivation proceedings, all in panels of at least three members. *Id.* 6(b), (c). Under the statute, the Director designates the members of each panel. *Id.* 6(c). The Director has delegated that authority to the Chief Judge of the PTAB. See PTAB Standard Operating Procedure 1 (Rev. 15) (SOP 1), Assignment of Judges to Panels, available at *www.uspto.gov/sites/default/files/documents/SOP%201%20R15%20FINAL.pdf.*

35 U.S.C. 6(c) states that ''[o]nly the Patent Trial and Appeal Board may grant rehearings'' of Board decisions. In *United States* v. *Arthrex, Inc.* (''*Arthrex*''), the Court held that the Appointments Clause of the Constitution (art. II, sec. 2, cl. 2) and the supervisory structure of the USPTO require the Director, a principal officer of the United States, to have the ability to review the PTAB's final written decisions in IPR proceedings. See *United States* v. *Arthrex, Inc.,* 141 S. Ct. 1970, 1986 (2021). The Court determined that ''35 U.S.C. 6(c) is unenforceable as applied to the Director insofar as it prevents the Director from reviewing the decisions of the PTAB on [the Director's] own.'' *Id.* at 1987. The Court added that:

this suit concerns only the Director's ability to supervise APJs in adjudicating petitions for inter partes review. We do not address the Director's supervision over other types of adjudications conducted by the PTAB, such as the examination process for which the Director has claimed unilateral authority to issue a patent.

Id. The Court thus held that ''the Director has the authority to provide for a means of reviewing PTAB decisions'' in IPR proceedings and ''may review final PTAB decisions and, upon review, may issue decisions [ ] on behalf of the Board.'' *Id.* (citations omitted). Additionally, the Court in *Arthrex* made clear that ''the Director need not review every decision of the PTAB,'' nor did it require the Director to accept requests for review or issue a decision in every case. *Id.* at 1988. Instead, ''[w]hat matters is that the Director have the discretion to review decisions rendered by APJs.'' *Id.* See *Arthrex, Inc.* v. *Smith & Nephew, Inc.,* 35 F.4th 1328, 1338 (Fed. Cir. 2022) (noting same); *CyWee Group Ltd.* v. *Google LLC,* 59 F.4th 1263, 1268 (Fed. Cir. 2023) (''[T]he Appointments Clause was intended to prevent unappointed officials from wielding too much authority, not to guarantee procedural rights to litigants, such as the right to seek rehearing from the Director.'' '' (quoting *Piano Factory Grp., Inc.* v. *Schiedmayer Celesta GmbH,* 11 F.4th 1363, 1374 (Fed. Cir. 2021)).

Following the *Arthrex* decision, in June 2021 the USPTO implemented an interim process for Director Review of final written decisions in AIA proceedings and published *Arthrex* Questions and Answers (Q&As), which was available on a USPTO web page. On April 22, 2022, the USPTO published two web pages to replace the *Arthrex* Q&As. Specifically, the USPTO published an ''Interim Process for Director Review'' web page,[4] setting forth more details on the interim process and additional suggestions and guidance for parties who wish to request Director Review. The USPTO also published a web page providing the status of all Director Review requests, available at *www.uspto.gov/patents/patent-trial-and-appeal-board/status-director-review-requests* (status web page). The status web page includes a spreadsheet that is updated monthly and has information about the proceedings in which Director Review has been granted. The updated interim process guidance increased clarity as the Office continued to update and improve the interim Director Review process based on experience and initial stakeholder feedback.

On July 20, 2022, the USPTO issued an RFC[5] on Director Review, Precedential Opinion Panel (POP) review,[6] and the internal circulation and review of PTAB decisions. 87 FR 43249–52.[7] The RFC is discussed in detail below. The USPTO considered stakeholder comments to the RFC as it worked to formalize the proposed rules for Director Review. The Office has continued to revise the interim Director Review process while also pursuing rulemaking.

On July 24, 2023, the USPTO modified the interim Director Review process to allow parties to request Director Review of decisions on institution in AIA proceedings, and to introduce a process by which the Director may delegate review of a Board decision to a Delegated Rehearing Panel (DRP). See ''Revised Interim Director Review Process'' web page (available at *www.uspto.gov/patents/ptab/decisions/revised-interim-director-review-process,* also called the Director Review web page); ''Delegated Rehearing Panel'' web page (available at *www.uspto.gov/patents/ptab/decisions/delegated-rehearing-panel*). These changes were based on the Office's experience with Director Review and stakeholder feedback. The USPTO made additional updates to the interim Director Review process on September 18, 2023, (updating processes related to Director Review of PTAB decisions on remand from the Director) and January 19, 2024 (updating processes related to requests for rehearing of Director Review decisions).

The rule proposed in this NPRM is consistent with the interim process. If the USPTO issues a final rule, the Director Review web page will be updated when the rule becomes effective. After the rule becomes effective, any further modifications to the Director Review process will be

[2] The PTAB was previously known as the Board of Patent Appeals and Interferences.

[3] Under section 18 of the AIA, the transitional program for post grant review of CBM patents sunset on September 16, 2020. AIA 18(a). Although the program has sunset, a few existing CBM proceedings, based on petitions filed before September 16, 2020, remain pending, for example, on appeal to the United States Court of Appeals for the Federal Circuit.

[4] This web page was superseded by the ''Revised Interim Director Review Process'' web page, discussed below.

[5] Request for Comments (RFC) on Director Review, Precedential Opinion Panel Review, and Internal Circulation and Review of Patent Trial and Appeal Board Decisions. 87 FR 43249–52 (July 20, 2022).

[6] The USPTO established the POP review process in 2018 and set forth that process in the Board's Standard Operating Procedure 2, revision 10. The POP process was used to establish binding agency authority concerning major policy or procedural issues, or other issues of exceptional importance in the limited situations where it was appropriate to create such binding agency authority through adjudication before the PTAB. The USPTO retired the POP process on July 24, 2023, in view of recent changes to the interim Director Review process.

[7] Available at *www.federalregister.gov/documents/2022/07/20/2022-15475/request-for-comments-on-director-review-precedential-opinion-panel-review-and-internal-circulation.*

consistent with the rule and will be reflected on the Director Review web page.

Request for Comments

As noted above, on July 20, 2022, the Office published an RFC on Director Review, POP review, and the internal circulation and review of PTAB decisions. 87 FR 43249–52. The RFC included the following questions pertinent to Director Review:

1. Should any changes be made to the interim Director Review process, and if so, what changes and why?
2. Should only the parties to a proceeding be permitted to request Director Review, or should third-party requests for Director Review be allowed, and if so, which ones and why?
3. Should requests for Director Review be limited to final written decisions in IPR and PGR? If not, how should they be expanded and why?
4. Should a party to a proceeding be able to request both Director Review and rehearing by the merits panel? If so, why and how should the two procedures interplay?
5. What criteria should be used in determining whether to initiate Director Review?
6. What standard of review should the Director apply in Director Review? Should the standard of review change depending on what type of decision is being reviewed?
7. What standard should the Director apply in determining whether or not to grant sua sponte Director Review of decisions on institution? Should the standard change if the decision on institution addresses discretionary issues instead of, or in addition to, merits issues?
8. Should there be a time limit on the Director's ability to reconsider a petition denial? And if so, what should that time limit be?
9. Are there considerations the USPTO should take with regard to the fact that decisions made on Director Review are not precedential by default, and instead are made and marked precedential only upon designation by the Director?
10. Are there any other considerations the USPTO should take into account with respect to Director Review?
11. Should the POP review process remain in effect, be modified, or be eliminated in view of Director Review? Please explain.
12. Are there any other considerations the USPTO should take into account with respect to the POP process?

Id. at 43252.

The RFC closed on October 19, 2022, and the Office received comments from intellectual property organizations, trade organizations, other organizations, and individuals. These comments are available at *www.regulations.gov/docket/PTO-P-2022-0023/comments* (collected responses to RFC). Responses to the specific questions asked in the RFC pertinent to Director Review or POP review are summarized briefly below.

In response to question 2, many commenters suggested that only parties to the proceeding should be permitted to request Director Review, consistent with the interim process. Some of these commenters suggested that limiting Director Review requests to the parties best promotes judicial economy and efficiency as the parties are best positioned to present the issues on review. Notably, some of these commenters also suggested that third parties could still participate when appropriate, either through amicus briefing or joinder. Other commenters suggested that allowing third-party requests would be preferred because PTAB decisions often have broad ramifications that affect non-parties.

In response to question 3, some commenters suggested that Director Review should be available for both final written decisions and decisions on institution, and especially for denials of institution. Some commenters argued that no other review mechanism existed for review of decisions on institution.[8] Other commenters suggested that Director Review should be available only for final written decisions, in part out of efficiency concerns. One commenter suggested that Director Review should be available for ex parte reexaminations and ex parte appeals. As discussed above, based on experience and in response to stakeholder feedback, the USPTO expanded the interim Director Review process to allow parties to request Director Review of decisions on institution in AIA proceedings.

In response to question 4, commenters were divided as to whether, consistent with the interim process, parties should be permitted to request either Director Review or panel rehearing, but not both. Those in favor of allowing parties to file requests for both types of rehearing argued that a decision may include some issues more appropriate for the original panel to reconsider, and other issues more appropriate for the Director to review. Those in favor of permitting parties to request only one form of rehearing argued that this reduces duplication, waste, inefficiency, and delay. Moreover, some argued that requiring a choice between panel rehearing and Director Review avoids potentially conflicting analyses between the Director and the panel.

In response to question 5, commenters did not agree on the criteria that should be used in determining whether to initiate Director Review. Some commenters suggested that Director Review should apply to issues of policy, while others suggested that policy should be made by formal rulemaking only. Similarly, some commenters stated that Director Review should be limited to important issues, such as policy, or statutory or regulatory interpretation, while others suggested that Director Review should consider all panel errors and abuses of discretion.

In response to question 6, some commenters suggested that the Director should apply de novo review for all issues on review. These commenters suggested that a standard that is deferential to the Board panel would not provide clear guidance. Other commenters favored de novo review on the basis that *Arthrex* requires the Director to substitute the Director's own judgment.

In response to question 7, commenters were divided on the appropriate standard for initiating sua sponte Director Review (*i.e.,* on the Director's own initiative). Some commenters suggested that the same standard of review should apply for all decisions, including sua sponte Director Review. The commenters also suggested that the same standard of review should apply to issues related to both the asserted merits of unpatentability and the Director's discretionary authority to institute an AIA proceeding. Several commenters suggested that sua sponte Director Review should be limited to extraordinary circumstances, including issues of exceptional importance to the USPTO or the patent community. One commenter suggested that sua sponte Director Review should be limited to extraordinary circumstances and only for decisions on institution.

In response to question 8, some commenters suggested that there should be a set time limit on the conclusion of Director Review, in particular when the Director reviews a denial of institution. The commenters generally suggested the need for certainty regarding timing and finality in both the grant of Director Review and the ultimate Director Review decision. One commenter suggested that no time limit would be necessary.

In response to question 9, all responsive commenters suggested that a Director Review decision should not be precedential by default. Some

[8] POP review was available for decisions on institution at the time of the RFC.

commenters suggested that decisions should be made precedential only when needed to ensure consistency and predictability, and only as applied to certain issues. Some commenters also suggested a clear process with objective criteria for determining when to make cases precedential. Other commenters suggested that a Director Review decision should never be precedential so as to not supplant rulemaking.

In response to questions 11 and 12, commenters were divided on the status of the POP review process. Commenters in favor of eliminating POP review suggested it was redundant with Director Review and that issues previously considered by the POP should be considered under Director Review instead. Commenters in favor of maintaining POP review suggested that it provides input and perspectives from other USPTO leaders, which are important for resolving issues of exceptional importance, policy, and PTAB procedure.

Some commenters provided additional considerations for Director Review and with respect to the interim process (see questions 1 and 10). Some suggested that the Director Review process should consider AIA and policy goals, for example: (1) promoting transparency, consistency, and fairness; (2) improving patent quality and litigation efficiency; and (3) broadening access to the patent system while safeguarding against low-quality patents and abusive behavior. Others suggested that Director Review decisions should explain the basis for granting Director Review and provide a reasoned rationale for each decision. Still others suggested that the USPTO should clarify the criteria used to determine whether to grant Director Review and eliminate overlapping and redundant reviews and rehearing.

The USPTO appreciates the public input provided in response to the RFC and has reviewed the individual responses thoroughly. In view of the comments, the USPTO's experience with the interim Director Review process, and public support for rulemaking with respect to Director Review, and in the interest of providing greater clarity, certainty, and predictability to parties participating in proceedings before the Board, the Office now issues this notice of proposed rulemaking (NPRM).

Proposed Director Review Process

Under the Director Review process proposed in this NPRM, which is consistent with the current interim process, a party may only request Director Review of: (1) a decision on whether to institute an AIA trial, (2) a final written decision in an AIA proceeding, or (3) a panel decision granting a request for rehearing of a decision on whether to institute a trial or a final written decision in an AIA proceeding. In the course of reviewing such an institution decision, final written decision, or panel rehearing decision, the Director may review any interlocutory decision rendered in reaching that decision. The Director may also grant review of those same decisions sua sponte. Third parties may not request Director Review or communicate with the USPTO concerning the Director Review of a particular case unless the Director invites them to do so.

Under the interim process, as described on the Director Review web page, requests for Director Review of Board decisions on whether to institute an AIA trial, or decisions granting rehearing of such a decision, are limited to decisions presenting: (a) an abuse of discretion, or (b) important issues of law or policy. Issues related to both discretion and the asserted merits of unpatentability may be raised, subject to limitations (a) and (b) above. Under the interim process, requests for Director Review of PTAB final written decisions, or decisions granting rehearing of such decisions, are available for decisions presenting: (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.

The interim Director Review process generally follows existing PTAB rehearing procedures under 37 CFR 42.71(d). Similarly, as proposed in this NPRM, to request Director Review, a party to an IPR, PGR, or derivation proceeding must file a request for rehearing pursuant to § 42.71(d) and subject to any further instructions provided by the Director. The Director Review web page further explains that the Director has instructed that parties must both file their rehearing request in the Patent Trial and Appeal Case Tracking System and send an email to the Director at *Director_PTABDecision_Review@uspto.gov*.

Under the process proposed in this NPRM, a party must file a request for rehearing by the Director within the time prescribed for a request for rehearing under 37 CFR 42.71(d), as appropriate for the type of decision for which review is sought. The Director may choose to extend the rehearing deadline for good cause. A timely request for rehearing by the Director will be considered a request for rehearing under 37 CFR 90.3(b)(1) and will reset the time for appeal to the Federal Circuit as set forth in that rule until a time after which all issues on Director Review in the proceeding are resolved, including any ancillary issues.

As proposed in this NPRM, requests for rehearing by the Director are limited to 15 pages (see § 42.24(a)(1)(v)). A Director Review request may not introduce new evidence.

Moreover, under the process proposed in this NPRM, parties are limited to requesting either: (1) Director Review, or (2) rehearing by the original panel, but may not request both. Requests for both Director Review and panel rehearing of the same decision are treated as a request for Director Review only, as described on the Director Review web page. However, as explained above, parties may request Director Review of a decision by a panel granting rehearing of a prior PTAB decision. ''[G]ranting rehearing'' here means that the rehearing decision modifies the holding or result of the underlying decision in some fashion. For example, where a Board panel changes the determination of the Final Written Decision for certain claims from unpatentable to not unpatentable in a rehearing decision, the petitioner may file a Request for Director Review of that new determination as to those claims. Rehearing is not ''granted,'' and thus a Request for Director Review is not available, for purposes of this rule if the panel: (1) provides a decision addressing the arguments in the request for rehearing but does not modify the underlying holding or result, or (2) denies the request for rehearing without further explanation.

Under the interim process, as explained on the Director Review web page, each request for Director Review is considered by an Advisory Committee that the Director has established to assist with the process. The Advisory Committee has at least 11 members and currently includes representatives from various business units within the USPTO who serve at the discretion of the Director. The Advisory Committee currently is chaired by a Director Review Executive and comprises members from the Office of the Under Secretary (not including the Director or Deputy Director); the PTAB (not including members of the original panel for each case under review); the Office of the Commissioner for Patents (not including the Commissioner for Patents or any persons involved in the examination of the challenged patent); the Office of the General Counsel (which includes the Office of the Solicitor); and the Office of Policy and International Affairs. The Advisory Committee meets periodically to

evaluate each request for Director Review.[9] Advisory Committee meetings may proceed with fewer than all members in attendance, as long as a quorum of seven members is present.

The Advisory Committee presents the Director with a recommendation. The recommendation includes either a consensus from the various members of the Advisory Committee, or notes differing views among the Advisory Committee members. The Director also receives each Director Review request, the underlying decision, and associated arguments and evidence. The Director determines whether to grant or deny the request for Director Review, or to delegate Director Review.[10] The Director may also consult others in the USPTO as needed, so long as those individuals consulted do not have a conflict of interest. Although the Advisory Committee and other individuals in the USPTO may advise the Director on whether a decision warrants review, the Director has sole discretion to resolve each request for Director Review. The Director's decision on each request will be communicated to the parties in the proceeding. Furthermore, Director Review grants and delegations will be posted on the PTAB website. Other determinations, such as Director Review denials, dismissals, and withdrawals, will be cataloged and posted on the PTAB website.

As proposed in this NPRM, in addition to allowing parties to request Director Review of certain decisions, the Director may order sua sponte Director Review. Under the interim process, as described on the Director Review web page, sua sponte Director Review is typically reserved for issues of exceptional importance, and the Director retains the authority to initiate review sua sponte of any other issue, as the Director deems appropriate. As explained in SOP 4, an internal post-issuance review team at the PTAB reviews issued decisions and, if warranted, flags certain AIA decisions as potential candidates for sua sponte Director Review. See PTAB SOP 4, at 1, 5. In addition, as described on the Director Review web page, the Director may also convene the Advisory Committee to make recommendations on decisions that the Director is considering for sua sponte Director Review. If the Director initiates a sua sponte review, the parties will be given notice and may be given an opportunity for briefing. The public will also be notified, and the Director may request amicus briefing. If briefing is requested, the procedures to be followed will be set forth.

As proposed in this NPRM, absent exceptional circumstances (which might include a remand from the Federal Circuit for the purpose of Director Review), the Director may initiate sua sponte review at any point within 21 days after the expiration of the period for filing a request for rehearing, pursuant to § 42.71(d), as appropriate to the type of decision (*i.e.,* a decision on institution or a final written decision) for which review is sought.

As proposed in this NPRM, a decision on institution, a final written decision, or a decision granting rehearing of such decision on institution of a final written decision shall become the decisions of the agency unless Director Review is requested or sua sponte review is initiated. Moreover, upon denial of a request for Director Review of a decision denying institution, a final written decision, or a decision granting rehearing of a final written decision, the Board's decision becomes the final agency decision.

As proposed in this NPRM, and consistent with the interim process, by default a request for Director Review or the initiation of sua sponte Director Review resets the time for appeal but does not stay or delay the time for the parties to take action in the underlying proceeding before the PTAB, unless the Director orders otherwise. As also proposed in this NPRM, if the Director grants a Director Review, the Director will issue an order or decision that will be made part of the public record, subject to any confidentiality requirements. A grant of Director Review that is not withdrawn will conclude with the issuance of a decision or order providing the Director's reasoning in the case.

As proposed in this NPRM, and consistent with the interim process, a party may appeal a Director Review decision of a final written decision, or rehearing thereof, to the United States Court of Appeals for the Federal Circuit using the same procedures for appealing other PTAB decisions under 35 U.S.C. 141(c), 319. Director Review decisions on decisions on institution are not appealable.

As proposed in this NPRM, and in consideration of the objectives of the Director Review process, the Director may, at their discretion, delegate the review of a Board decision in an AIA proceeding.

Under the interim process, decisions made on Director Review are not precedential by default, but may be designated as precedential by the Director. Additional implementation details of the interim process are provided on the Director Review web page. If a final rule issues and goes into effect, the Director Review web page will be updated or replaced with updated guidance on the effective date of such a final rule.

Application of Director Review Process to Date

As of April 1, 2024, the USPTO had received 328 compliant requests for Director Review under the interim process. Of those requests, the Director Review process was completed for 316 requests. Of the 316 completed requests, 18 requests were granted, 2 requests were delegated to the DRP, 5 requests were withdrawn, and the remaining 291 requests were denied. Additionally, sua sponte Director Review was initiated in 35 cases.

Since July 24, 2023, when the interim process for Director Review was expanded to allow for requests of decisions on institution, the majority of requests received have been from decisions on institution. Specifically, between July 24, 2023, and April 1, 2024, 27 requests for review of final written decisions and 82 requests for review of decisions on institution were received.

Discussion of Specific Rules

The USPTO proposes to add § 42.75, as follows:

Section 42.75: Proposed § 42.75(a) would set forth the general availability of Director Review.

Proposed § 42.75(b) would set forth the availability of sua sponte Director Review.

Proposed § 42.75(c) would set forth the availability of requests for Director Review and request requirements.

Proposed § 42.75(d) would set forth the finality of decisions subject to Director Review.

Proposed § 42.75(e) would set forth the Director Review process.

Proposed § 42.75(f) would provide for the delegation of a review by the Director.

[9] No member of the Advisory Committee may participate in the consideration of a request for Director Review if that member has a conflict of interest under the U.S. Department of Commerce USPTO Summary of Ethics Rules, available at *ogc.commerce.gov/sites/default/files/pto-summary_of_ethics_2022_0.pdf*. PTAB APJs who are Advisory Committee members will also follow the guidance on conflicts of interest set forth in the PTAB's SOP 1, and will recuse themselves from any discussion involving cases on which they are paneled.

[10] The current interim process in place for delegating Director Review is presented on the Delegated Rehearing Panel website (*www.uspto.gov/patents/ptab/decisions/delegated-rehearing-panel*). The process for delegation may change in the future, as required to accommodate needs of the Director, consistent with all applicable law.

Proposed § 42.75(g) would set forth provisions regarding communications with the Office.

Rulemaking Considerations

A. Administrative Procedure Act: The changes proposed by this NPRM involve rules of agency practice and procedure, and/or interpretive rules, and do not require notice-and-comment rulemaking. See *Perez* v. *Mortg. Bankers Ass'n,* 135 S.Ct. 1199, 1204 (2015) (explaining that interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'' and do not require notice-and-comment rulemaking when issued or amended); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice''); and *JEM Broadcasting Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (explaining that rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits'').

Nevertheless, the USPTO is publishing this proposed rule for comment to seek the benefit of the public's views on the Office's proposed regulatory changes.

B. Regulatory Flexibility Act: For the reasons set forth in this notice, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, USPTO, has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes set forth in this NPRM would not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The changes in this NPRM are to expressly set forth the rules governing Director Review. The changes do not create additional procedures or requirements or impose any additional compliance measures on any party beyond the interim process for Director Review, nor do these changes cause any party to incur additional costs. Therefore, any requirements resulting from these proposed changes are of minimal or no additional burden to those practicing before the Board.

For the foregoing reasons, the proposed changes in this NPRM would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This NPRM has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993), as amended by Executive Order 14094 (April 6, 2023).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (January 18, 2011). Specifically, and as discussed above, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the proposed rule; (2) tailored the proposed rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This NPRM pertains strictly to Federal agency procedure and does not contain policies with federalism implications sufficient to warrant the preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This NPRM will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (November 6, 2000).

G. Executive Order 13211 (Energy Effects): This NPRM is not a significant energy action under Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This NPRM meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996).

I. Executive Order 13045 (Protection of Children): This NPRM does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (April 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This NPRM will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this NPRM are not expected to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this NPRM will not be a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this NPRM do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This NPRM will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this NPRM does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This NPRM does not involve an information collection requirement that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. In addition, this NPRM does not add any additional information requirements or fees for parties before the Board. Therefore, the Office is not resubmitting collection packages to OMB for its review and approval because the revisions in this NPRM do not materially change the information collections approved under OMB control number 0651–0069.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, the Office proposes to amend 37 CFR part 42 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for part 42 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3, 6, 134, 135, 143, 153, 311, 314, 316, 318, 324, 326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 2. Add § 42.75 to read as follows:

§ 42.75 Director Review.

(a) *Director Review Generally.* In a proceeding under part 42, the Director may review any decision on institution under 35 U.S.C. 314 or 324, any final written decision under 35 U.S.C. 318 or 328, or any decision granting rehearing of such a decision. In the course of reviewing an institution decision, a final written decision, or a rehearing decision, the Director may review any interlocutory decision rendered by the Board in reaching that decision.

(b) *Sua Sponte Director Review.* The Director, on the Director's own initiative, may order sua sponte Director Review of a decision as provided in paragraph (a) of this section. Absent exceptional circumstances, any sua sponte Director Review will be initiated within 21 days after the expiration of the period for filing a request for rehearing pursuant to § 42.71(d).

(c) *Requests for Director Review.* A party to a proceeding under part 42 may file one request for Director Review of a decision as provided in paragraph (a) of this section, instead of filing a request for rehearing of that decision pursuant to § 42.71(d), subject to the limitations herein and any further guidance provided by the Director.

(1) *Timing.* The request must be filed within the time period set forth in § 42.71(d) unless an extension is granted by the Director upon a showing of good cause. No response to a Director Review request is permitted absent Director authorization.

(2) *Format and Length.* A request for Director Review must comply with the format requirements of § 42.6(a). Absent Director authorization, the request must comply with the length limitations for motions to the Board provided in § 42.24(a)(1)(v).

(3) *Content.* Absent Director authorization, a request for Director Review may not introduce new evidence.

(d) *Final Agency Decision.* A decision on institution, a final written decision, or a decision granting rehearing of such decision on institution or final written decision shall become the decision of the agency unless:

(1) A party requests rehearing or Director Review within the time provided by § 42.71(d); or

(2) In the absence of such a request, the Director initiates sua sponte review as provided by § 42.75(b). Upon denial of a request for Director Review of a final written decision or of a decision granting rehearing of a final written decision, the Board's decision becomes the final agency decision.

(e) *Process.* (1) *Effect on Underlying Proceeding.* Unless the Director orders otherwise, and except as provided in paragraph (e)(3) of this section, a request for Director Review or the initiation of review on the Director's own initiative does not stay the time for the parties to take action in the underlying proceeding.

(2) *Grant and scope.* If the Director grants Director Review, the Director shall issue an order or decision that will be made part of the public record, subject to the limitations of any protective order entered in the proceeding or any other applicable requirements for confidentiality. If the Director grants review and does not subsequently withdraw the grant, the Director Review will conclude with the issuance of a decision or order that provides the reasons for the Director's disposition of the case.

(3) *Appeal.* A party may appeal a Director Review decision of either a final written decision or a decision granting rehearing of a final written decision under 35 U.S.C. 318, 328, and 135 to the United States Court of Appeals for the Federal Circuit using the same procedures for appealing other decisions under 35 U.S.C. 141(c), 319. Director Review decisions on decisions on institution are not appealable. A request for Director Review of a final written decision or a decision granting rehearing of a final written decision, or the initiation of a review on the Director's own initiative of such a decision, will be treated as a request for rehearing under § 90.3(b)(1) and will reset the time for appeal until after all issues on Director Review in the proceeding are resolved.

(f) *Delegation.* The Director may delegate their review of a decision on institution, a final written decision, or a decision granting rehearing of such a decision, subject to any conditions provided by the Director.

(g) *Ex parte communications.* All communications from a party to the Office concerning a specific Director Review request or proceeding must copy counsel for all parties. Communications from third parties regarding a specific Director Review request or proceeding, aside from authorized amicus briefing, are not permitted and will not be considered.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–07759 Filed 4–15–24; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0748; FRL–11882–01–R9]

Air Plan Revisions; Arizona; Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X), particulate matter (PM), and oxides of sulfur (SO_X). We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before May 16, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0748 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972–3245; email: *evanshopper.lakenya@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rules are the county rescinding, and/or replacing?

On September 13, 2017, and November 13, 2023, the Arizona Department of Environmental Quality (ADEQ) submitted to the EPA requests from MCAQD to act on a series of rules from the existing SIP, including the rescission of various local rules. Table 1 lists the SIP-approved rules proposed to be rescinded from the SIP by this proposed rule with the dates that they were adopted by the MCAQD and previously approved into the SIP. We are proposing action on the entire November 13, 2023 submittal (''2023 SIP Submittal'') and a portion of the September 13, 2017 submittal (''2017 SIP Submittal''). Portions of other rules from the 2017 SIP Submittal were addressed in other rulemakings (see Table 3 and 87 FR 42324 (September 15, 2022)), and the remaining portions of the 2017 SIP Submittal will be addressed in a future rulemaking.[1]

TABLE 1—RULES TO BE RESCINDED

Rule No.	Title	Local adoption date	SIP approval date	FR citation
22	Permit Denial-Action-Transfer-Expiration-Posting-Revocation-Compliance.	August 12, 1971	July 27, 1972	37 FR 15080
28	Permit Fees	March 8, 1982	June 18, 1982	47 FR 26382
32 G	Other Industries	October 1, 1975	April 12, 1982	47 FR 15579
32 H	Fuel Burning Equipment for Producing Electric Power (Sulfur Dioxide).	October 1, 1975	April 12, 1982	47 FR 15579
32 J	Operating Requirements for an Asphalt Kettle.	June 23, 1980	April 12, 1982	47 FR 15579
32 K	Emissions of Carbon Monoxide	June 23, 1980	April 12, 1982	47 FR 15579
41 A	Monitoring	August 12, 1971	July 27, 1972	37 FR 15080
41 B	Monitoring	October 2, 1978	April 12, 1982	47 FR 15579
42	Testing and Sampling	August 12, 1971	July 27, 1972	37 FR 15080
74 C	Public Notification	June 23, 1980	April 12, 1982	47 FR 15579

Table 2 lists the submitted rule sections addressed by this proposal with the dates that they were adopted by the MCAQD and submitted by ADEQ on behalf of the MCAQD for inclusion into the SIP.

TABLE 2—SUBMITTED RULES

Rule No.	Title	Local revision date	EPA submission date
320 Section 306	Odors and Gaseous Air Contaminants, Limitation—Sulfur from Other Industries.	July 2, 2023	November 13, 2023.

[1] A summary of the status of the 2017 SIP Submittal is included in the docket for this action. See ''Maricopa Recodification Project, Submitted 2017, Rules Updates,'' March 2024, EPA Region 9.

TABLE 2—SUBMITTED RULES—Continued

Rule No.	Title	Local revision date	EPA submission date
320 Section 307	Odors and Gaseous Air Contaminants, Operating Requirements—Asphalt Kettles and Dip Tanks.	July 2, 2023	November 13, 2023.

On December 4, 2023, the EPA determined that the submittal for MCAQD Rule 320, section 306 and section 307 from the 2023 SIP Submittal, met the completeness criteria in 40 CFR part 51 Appendix V. On March 13, 2018, the 2017 SIP Submittal was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V. SIP submittals must meet the completeness criteria before formal EPA review.

B. What is the purpose of the rules and what is the impact of the EPA's rescissions?

Since initial SIP approval in the 1970s, Maricopa County has revised many of its rules to comply with the CAA national ambient air quality standards (NAAQS) requirements, and to implement reasonably available control technology (RACT) for various source categories in nonattainment areas. These rules were submitted to the EPA for incorporation into the Arizona SIP at various times. In 2016, the EPA reformatted the Arizona SIP as codified in the Code of Federal Regulations (CFR) into a tabulated ''notebook'' format. While developing the updated SIP tables for that conversion, the EPA worked closely with the ADEQ and local air agencies to clarify what was in their applicable SIP, including older provisions that had not been updated or replaced to reflect local rulemakings. The result of that coordination was the MCAQD's 2017 SIP submittal that requests to rescind or replace many obsolete rules in the federally enforceable SIP in favor of rules that reflect their current locally enforceable rulebook. The MCAQD also submitted an updated request on November 13, 2023, to replace Rule 32, sections G and J with Rule 320 sections 306 and 307. The 2023 SIP Submittal request supersedes the 2017 SIP Submittal request with respect to Rules 32, sections G and J. What follows is a summary of the rules identified in Table 1 that we are proposing for rescission and/or replacement in this rulemaking.

Rule 22 states that the Control Officer shall deny or revoke an Installation Permit and an Operating Permit if the applicant does not show that every machine, equipment, incinerator, device or other article usage (units; with or without air pollution control equipment) does not eliminate or reduce air pollution. If the Control Officer finds that such units under an Operating Permit are constructed not in accordance with the Installation Permit, the Control Office shall not accept any further application for an Operating Permit for these units. If the units are reconstructed in accordance with the Installation Permit, they may be permitted an Operating Permit. All permits are non-transferable and must be affixed to the unit. Rule 22 was superseded by Rule 200, Rule 210, Rule 220, Rule 240, and Rule 241.[2]

Rule 28 supplies the fees and fee schedules for Installation Permits and Annual Operating Permits. Rule 28 was included in the SIP to meet CAA section 110(a)(2)(L) that requires permitting fees under the new source review (NSR) preconstruction permitting program, until it is superseded by the fee requirement under the title V operating permits program (CAA sections 501–507). Since Maricopa County has an EPA approved title V operating permits program that includes a fee rule, permit fees are not required to be in the SIP.[3]

The following sections of Rule 32 are the subject of this proposed rule. The remainder of Rule 32 (sections A, B, C, D, E, and F) were removed from the SIP on July 15, 2022 (87 FR 42324). Rule 32, section G states that no person shall discharge sulfur, sulfur dioxide (SO_2), or sulfur equivalent, into the atmosphere in excess of 10% of the sulfur entering the process as feed. Rule 32, section G is being rescinded and replaced by analogous requirements in Rule 320, section 206 (submitted on November 13, 2023). Rule 32, section H applies to an installation that operate steam power to produce electric power with a resulting discharge of SO_2. With a two-hour maximum average, new sources shall not emit more than 0.80 pounds of SO_2 per million Btu, and existing sources shall not emit more than 1.0 pound of SO_2 per million Btu when coal or oil is fired. Existing sources firing on high sulfur oil shall not emit more than 2.2 pounds of SO_2 per million Btu in a two-hour average maximum. Issued permits prohibit the use of high sulfur oil unless the applicant demonstrates to the control office that a) sufficient quantities of low sulfur oil is not available for use, and b) that the SO_2 ambient air quality standards will not be violated. If an exemption is made, then the permittee must submit monthly reports to the bureau. The permit shall be modified when conditions justifying the use of high sulfur oil no longer exist. Rule 32, section H was superseded by Rule 322.[4] Rule 32, section J states that asphalt kettles shall be operated with good modern practices including, but not limited to: (1) maintain temperatures both below the asphalt flash point and the manufacture maximum recommended temperature, (2) except when charging, operate Kettles with a closed lid, (3) pump asphalt from the kettle, (4) draw asphalt through cocks without dipping, (5) fire kettle with clean burning fuel, and 6) maintain a clean, properly adjusted and good operating condition kettle. Rule 32, section J is being rescinded and replaced by analogous requirements in Rule 320, section 307 (submitted on November 13, 2023). Rule 32, section K states that the discharge of carbon monoxide (CO) from any process source shall be effectively controlled by secondary combustion. Rule 32, section K was superseded by Rule 322 and Rule 323.[5]

Rule 41, section A requires owners, lessees, or operators to provide, install, maintain, and operate air contaminant monitoring devices that are required to determine compliance acceptable to the Control Officer. Owners, lessees, or operators shall also provide monitoring information in writing to the Control Office, with the devices available for inspection during all reasonable times. Rule 41, section A was superseded by Arizona Revised Statute 36–780.[6] Rule 41, section B requires owners or operators of fossil fuel-fired steam generators, fluid bed catalytic cracking unit catalyst regenerators, sulfuric acid and nitric acid plants to install,

[2] 87 FR 8418 (February 15, 2022).

[3] Letter dated June 28, 2023, from Philip A. McNeely, Director, MCAQD, to Matthew Lakin, Acting Director, EPA Region IX, Subject: ''RE: Rule 28 (Permit Fees) Justification to Rescind from the Arizona State Implementation Plan (SIP) Without Replacement.''

[4] 87 FR 8418 (February 15, 2022).

[5] 88 FR 7879 (February 7, 2023).

[6] 47 FR 26382 (June 18, 1982).

calibrate, operate, and maintain all monitoring equipment to continually monitor opacity, NO_X, SO_2, oxygen and CO_2. The rule provides basic requirements for monitoring equipment and performance specifications as set forth in Title 40 CFR, Part 60, Chapter 1, Appendix B. SIP Rule 41, section B also provides requirements for the calibration of gases, cycling times, monitor location, combined effluents, span, and data reporting and recordkeeping. Sources of catalytic cracking unit catalyst regenerators, sulfuric acid and nitric acid plants that are applicable to Rule 41, section B are not currently located in Maricopa County. However, if a new source is constructed in the County for one of these categories, it will be subject to the New Source Performance Standards promulgated in 40 CFR part 60 and the New Source Review program, and would be exempted from Rule 41, section B. Therefore, Rule 41, section B is unenforceable or superseded by other requirements.

Rule 41, section B is being rescinded without replacement.

Rule 42 requires that an owner or operator test the openings in a system, stack, or the stack extension. If the facilities are not adequate for testing, the Control Office shall supply to the owner or operator, in writing, the necessary testing requirements for these facilities. Rule 42 does not specify emission limits or achieve any emission reductions, nor are any test methods specified in Rule 42. MCAQD rules now contain a section that identifies test methods for the rule and EPA reviews those methods when each rule is approved. Rule 42 is being rescinded without replacement.

Rule 74, section C states that the public shall have daily notifications for the concentrations of total suspended particles, CO, and ozone based on the Pollution Standard Index. Rule 74, section C was superseded by Rule 100.[7]

Additionally, Table 3 identifies rules from the 2017 SIP submittal that were requested to be rescinded and/or replaced but have since been superseded by action on other SIP submittals that contained the same rules.

TABLE 3—RULES SUPERSEDED BY DIFFERENT RULEMAKINGS

Rule No.	Title	SIP submittal date	SIP approved date	FR citation
100	General Provisions and Definitions	December 20, 2019	February 15, 2022	87 FR 8418
210	Title V Permit Provisions	December 20, 2019	February 15, 2022	87 FR 8418
220	Non-Title V Permit Provisions	December 20, 2019	February 15, 2022	87 FR 8418
322	Power Plant Operations	June 30, 2021	December 15, 2021	87 FR 8046
323	Fuel Burning Equipment from Industrial/ Commercial/Institutional (ICI) Sources.	June 30, 2021	February 7, 2023	88 FR 7879
336	Surface Coating Operations	June 22, 2017	January 1, 2021	86 FR 971

The EPA's technical support document (TSD) has more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the request for rescission, and/or replacement?

Once a rule has been approved as part of a SIP, the rescission of that rule from the SIP constitutes a SIP revision. To approve such a revision, the EPA must determine whether the revision meets relevant CAA criteria for stringency, if any, and complies with restrictions on relaxation of SIP measures under CAA section 110(l), and the General Savings Clause in CAA section 193 for SIP-approved control requirements in effect before November 15, 1990.

Stringency: Generally, rules must be protective of the NAAQS, and must require RACT in nonattainment areas for ozone. Maricopa County is currently designated as nonattainment for ozone and classified as Moderate for the 2008 8-hour NAAQS (see 40 CFR 81.303, 81 FR 26699).

Plan Revisions: States must demonstrate that SIP revisions would not interfere with attainment, reasonable further progress or any other applicable requirement of the CAA under the provisions of CAA section 110(l) and section 193.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. Letter dated February 12, 1990, from Johnnie L. Pearson, Chief Regional Activities Section, ROB, to Chief, Air Branch, Region I–X, Subject: ''Review of State Regulation Recodifications.''

B. Do the rule rescissions, and/or replacements, meet the evaluation criteria?

We have concluded that the rules in Table 1 are appropriate for rescission, and/or replacement. The rule sections to be rescinded from the SIP without replacement either have already been superseded in the SIP by requirements that are at least as stringent or are requirements that do not address any particular CAA requirements, do not include definitions that are not otherwise defined elsewhere, do not include provisions that are necessary to implement or protect any of the NAAQS and do not fulfill RACT requirements. For the rule sections to be rescinded and replaced, the requirements are being replaced with analogous requirements that are at least as stringent. As such, the removal and/or replacement of the rules covered by this proposed rulemaking would not impact the overall stringency of the Arizona SIP. The reasons for the rule rescissions, and/or replacements, can be summarized into the following categories:

Category 1—Rules that do not establish emission limits or enforce the NAAQS: Rule 42 and Rule 28.

Category 2—Rules that have been superseded and are no longer needed in the SIP: Rule 22, Rule 32 sections G, H, and J, Rule 41, section A, and Rule 74, section C.

Category 3—Unenforceable Rules: Rule 32, section K and Rule 41, section B.

Category 4—Rules that are being rescinded and replaced: Rule 32, sections G and J are being replaced by Rules 320, sections 306 and 307.

In sum, the rules being rescinded and/or replaced address local issues and are no longer needed for the purposes for which SIPs are developed and approved, namely the implementation,

[7] 87 FR 8418 (February 15, 2022).

maintenance, and enforcement of the NAAQS.

The TSD has more information on our evaluation.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the requested rescission of the rules listed in Table 1 above, and subsequent replacement of SIP-approved rules, because they fulfill all relevant requirements. We will accept comments from the public on this proposal until May 16, 2024. If we take final action to approve the rescission, and/or replacement, of the submitted rules, our final action will remove the rescinded rules from the federally enforceable SIP, and replace these rules in the federally enforceable SIP as described.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Maricopa County Air Quality Department, Rule 320, Odors and Gaseous Air Contaminants, sections 306 and 307, revised on July 2, 2003, which regulate emissions of SO_2 from fossil fuel fired steam generators. In addition, the EPA is proposing to rescind Rule 22, Rule 28, Rule 32 sections H and K, Rule 41 sections A and B, Rule 42, and Rule 74 section C from the MCAQD SIP without replacement because the rules either have already been superseded in the SIP by requirements that are at least as stringent or are requirements that do not address any particular CAA requirements, do not include definitions that are not otherwise defined elsewhere, do not include provisions that are necessary to implement or protect any of the NAAQS and do not fulfill RACT requirements. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. 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 State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Recordkeeping requirements, Volatile organic compounds.

Dated: April 9, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–07954 Filed 4–15–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0448; FRL–11677–01–R9]

Approval and Promulgation of Implementation Plans; State of California; Coachella Valley; Extreme Attainment Plan for 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA) requirements for the 1997 8-hour ozone

national ambient air quality standards (NAAQS or ''standards'') in the Riverside County (Coachella Valley), CA nonattainment area (''Coachella Valley''). These SIP revisions address the ''Extreme'' nonattainment area requirements for the 1997 8-hour ozone standards, including the requirements for the attainment demonstration, reasonable further progress demonstration, and reasonably available control measures demonstration, among others.

DATES: Comments must be received on or before May 16, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0448 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Geographic Strategies and Modeling Section (AIR–2–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3856, *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. The 1997 8-Hour Ozone Standards and the Coachella Valley Nonattainment Area

A. Background on the 1997 8-Hour Ozone Standards

Ground-level ozone is formed when oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Health effects associated with exposure to ground-level ozone include: reduced lung function, making it more difficult for people to breathe as deeply and vigorously as normal; irritated airways, causing coughing, sore or scratchy throat, pain when taking a deep breath and shortness of breath; increased frequency of asthma attacks; inflammation of and damage to the lining of the lung; increased susceptibility to respiratory infection; and aggravation of chronic lung diseases such as asthma, emphysema, and bronchitis. Ozone may continue to cause lung damage even when the symptoms have disappeared and breathing ozone may contribute to premature death, especially in people with heart and lung disease.[2]

In 1979, under section 109 of the Clean Air Act (CAA), the EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period.[3] On July 18, 1997, the EPA revised the primary and secondary standards for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period (''1997 8-hour ozone standards'').[4] The EPA set the 1997 8-hour ozone standards based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the previous 1-hour ozone standards were set. The EPA determined that the 1997 8-hour standards would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma. The 8-hour ozone standards were further strengthened in 2008 and 2015.[5] Although the 1979 1-hour ozone standards and the 1997 8-hour ozone standards have subsequently been revoked following the promulgation of more stringent ozone standards, certain requirements that had applied under the revoked standards continue to apply under the anti-backsliding provisions of CAA section 172(e), including an approved attainment plan.[6]

B. The Coachella Valley 1997 8-Hour Ozone Nonattainment Area

Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the standards. Effective June 15, 2004, the EPA designated nonattainment areas for the 1997 8-hour ozone standards.[7] The designations and classifications for

[1] The State of California uses the term Reactive Organic Gases (ROG) rather than VOC in some of its ozone-related SIP submissions. As a practical matter, ROG and VOC refer to the same set of chemical constituents and for simplicity, we refer to this set of gases as VOC.

[2] EPA, ''Fact Sheet, Final Revisions to the National Ambient Air Quality Standards for Ozone,'' March 2008.

[3] 44 FR 8202 (February 8, 1979).

[4] 62 FR 38856.

[5] In 2008, the EPA revised and strengthened the NAAQS for ozone by setting the acceptable level of ozone in the ambient air at 0.075 ppm, averaged over an 8-hour period. 73 FR 16436 (March 27, 2008). In 2015, the EPA further tightened the 8-hour ozone standards to 0.070 ppm. 80 FR 65292 (October 26, 2015). The EPA has approved most elements of the 2008 ozone attainment plan for the Coachella Valley. 85 FR 57714 (September 16, 2020). The EPA has yet to act on the Coachella Valley attainment plan for the 2015 ozone NAAQS, submitted electronically on February 23, 2023. This action applies only to the 1997 8-hour ozone standards and does not address requirements for the 2008 and 2015 8-hour ozone standards.

[6] 80 FR 12264, 12296 (March 6, 2015).

[7] 69 FR 23858 (April 30, 2004).

the 1997 8-hour ozone standards for California areas are codified at 40 CFR 81.305. In a rule governing certain facets of implementation of the 1997 8-hour ozone standards (the ''Phase 1 Rule''), the EPA classified the Coachella Valley as ''Serious'' nonattainment for the 1997 8-hour ozone standards, with an attainment date no later than June 15, 2013.[8] On November 28, 2007, the California Air Resources Board (CARB) requested that the EPA reclassify the Coachella Valley 1997 8-hour ozone nonattainment area from Serious to ''Severe-15.'' The EPA granted the reclassification, effective June 4, 2010, with an attainment date of not later than June 15, 2019.[9] On June 11, 2019, CARB requested another reclassification for the Coachella Valley, from Severe-15 to ''Extreme'' nonattainment, which the EPA granted in a final rule published July 10, 2019.[10] This reclassification to Extreme applied only to the portions of the Coachella Valley subject to state jurisdiction. At this time, areas of Indian country within the nonattainment area remain classified as Severe-15 for the 1997 8-hour ozone standards.[11] On January 15, 2020, we published a final rule setting a deadline of February 20, 2021, for the state to submit a SIP revision addressing the Extreme requirements of CAA section 182(e) and the revised title V and new source review rules for the Coachella Valley.[12]

The EPA previously approved many elements of the Coachella Valley's Severe attainment plan in a final rule dated June 12, 2017,[13] including the reasonably available control measure (RACM) demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1105(a)(1) and 51.1100(o)(17); the rate of progress (ROP) and reasonable further progress (RFP) demonstrations as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.1105(a)(1) and 51.1100(o)(4); the attainment demonstration as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1105(a)(1) and 51.1100(o)(12); and the demonstration that the SIP submittal provides for transportation control strategies and measures sufficient to offset any growth in emissions from growth in vehicle miles travelled (VMT) or the number of vehicle trips, and to provide for RFP and attainment, as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1105(a)(1) and 51.1100(o)(10). The EPA did not act on the contingency measures submitted with the Severe-15 attainment plan, which were subsequently withdrawn by CARB, and we did not act on the motor vehicle emissions budgets, because the associated transportation conformity demonstration is not required for a revoked NAAQS. The EPA also approved the Enhanced motor vehicle inspection and maintenance (I/M) program for the Coachella Valley in a final rule published on July 1, 2010.[14]

The Coachella Valley area is located within Riverside County.[15] The Coachella Valley is under the jurisdiction of the South Coast Air Quality Management District (SCAQMD or ''District''), which also oversees air quality in the upwind South Coast Air Basin. The District and CARB are responsible for adopting and submitting plans to attain the 1997 8-hour ozone standards for nonattainment areas in their jurisdiction.

Ground level ozone in the Coachella Valley ''is both directly transported from the [South Coast Air Basin] and formed photochemically from precursors emitted upwind and within the Coachella Valley.'' [16] The South Coast Air Basin is home to a much larger population than Coachella Valley and, based on inventory data from 2018, emissions of NO_X and VOC in the South Coast Air Basin are more than 20 times larger than those of Coachella Valley.[17] Therefore, attainment of the 1997 8-hour ozone standards in Coachella Valley is heavily dependent on upwind reductions in the South Coast Air Basin. The largest sources of precursors are at the coastal and central portions of South Coast Air Basin. The area's prevailing winds transport ozone precursors inland, forming ozone along the way. Maximum ozone concentrations occur ''in the inland valleys of the Basin, extending from eastern San Fernando Valley through the San Gabriel Valley into the Riverside-San Bernardino area and the adjacent mountains.'' [18] As pollution is further transported through the San Gorgonio Pass into the Coachella Valley, ozone concentrations typically decrease from dilution with cleaner air, but ozone standards are still exceeded.

Air quality in the Coachella Valley has steadily improved in recent years. Design values have declined from 0.108 ppm in 2003 to 0.087 ppm in 2022.[19] Design values are used to designate and classify nonattainment areas, as well as to assess progress towards meeting the air quality standards.[20]

II. CAA and Regulatory Requirements for Ozone Nonattainment Area SIPs

States must implement the 1997 8-hour ozone standards under Title 1, Part D of the CAA, which includes section 172, ''Nonattainment plan provisions,'' and subpart 2, ''Additional Provisions for Ozone Nonattainment Areas'' (sections 181–185).

To assist states in developing effective plans to address ozone nonattainment, the EPA issued an implementation rule for the 1997 8-hour ozone standards (''1997 Ozone Implementation Rule''). This rule was finalized in two phases. The first phase of the rule addressed classifications for the 1997 8-hour ozone standards; applicable attainment dates for the various classifications; the timing of emissions reductions needed for attainment; and identified applicable requirements, such as clean fuels for boilers.[21] The second phase addressed SIP submittal dates and the requirements for reasonably available control technology (RACT) and RACM, RFP, modeling and attainment demonstrations, contingency measures, and new source review.[22] The rule was codified at 40 CFR part 51, subpart X.

The EPA announced the revocation of the 1997 8-hour ozone standards and the anti-backsliding requirements that apply upon revocation in a rulemaking that established final implementation rules for the 2008 8-hour ozone NAAQS.[23] Under these anti-backsliding requirements, areas that were designated as nonattainment for the 1997 8-hour ozone standards at the time the standards were revoked continue to be subject to certain SIP requirements that had previously applied based on area classifications for the standards.[24] Thus, although the 1997 8-hour ozone standards have been revoked, the Coachella Valley remains subject to

[8] Id. at 23885 and 23886.

[9] 75 FR 24409 (May 5, 2010).

[10] 84 FR 32841 (July 10, 2019).

[11] Id.; see also 40 CFR 81.305.

[12] 85 FR 2311 (January 15, 2020). See also proposal at 84 FR 44801 (August 27, 2019).

[13] 82 FR 26854.

[14] 75 FR 38023.

[15] For a precise description of the geographic boundaries of the area, see 40 CFR 81.305.

[16] SCAQMD, ''Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard,'' dated December 2020, (''Coachella Valley Ozone Plan''), p. 2–1.

[17] Id. at 3–13.

[18] Id. at 2–1.

[19] EPA, Design Values Report for the Joshua Tree National Monument, Indio, and Palm Springs monitors for 2021, 2021, and 2022, March 8, 2023, and contained in the docket for this proposed action.

[20] For more information about ozone design values, see 40 CFR 50, Appendix I.

[21] 69 FR 23951 (April 30, 2004).

[22] 70 FR 71612 (November 29, 2005).

[23] 80 FR 12264.

[24] Id. at 12296; 40 CFR 51.1105 and 51.1100(o).

many requirements for these standards as applicable to ''Extreme'' nonattainment areas.

We discuss the CAA and regulatory requirements for 1997 8-hour ozone nonattainment plans in more detail in the following section of this proposed rulemaking.

III. CARB's SIP Submittals To Address the Extreme Requirements for the 1997 8-Hour Ozone Standards in the Coachella Valley

A. CARB's SIP Submittals

1. The Coachella Valley Ozone Plan

On December 29, 2020, CARB submitted the ''Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard,'' dated December 2020 (''Coachella Valley Ozone Plan'' or ''Plan''), to the EPA as a revision to the California SIP.[25] The Plan addresses many of the Extreme nonattainment area requirements for the Coachella Valley for the 1997 8-hour ozone standards.

The Coachella Valley Ozone Plan includes the District's resolution of approval for the Plan (District Board Resolution 20–22) and the executive order commemorating CARB's adoption of the Plan as a revision to the California SIP (Executive Order S–20–34).[26] The Plan addresses the requirements for emissions inventory; RACM demonstration and adopted control strategy; attainment demonstration; ROP and RFP demonstrations; and clean fuels for boilers.

The Plan is organized into an executive summary, seven sections, and three appendices. Section 1, ''Introduction,'' identifies the nonattainment area and the nonattainment status for all EPA ozone standards, including the 1997 8-hour ozone standards; provides a history of air quality planning for the 1997 8-hour ozone standards; and explains the purpose of the Plan. Section 2, ''Air Quality Trends,'' describes the formation of ground-level ozone generally and specific factors that contribute to ozone formation in the Coachella Valley, and provides historic monitoring data and related discussion. Section 3, ''Base Year and Future Year Emissions,'' describes the methodology used for the area's emissions inventories, citing to the ''Final 2016 Air Quality Management Plan'' (''2016 AQMP'')[27] where appropriate, and discusses the modeled inventories in detail. Section 4, ''Control Strategy,'' describes District and CARB rules that will achieve the emissions reductions relied upon in the Plan. Section 5, ''Future Air Quality,'' describes the modeling approach, including inputs, assumptions, methodology, and weight of evidence analysis (WOE). Section 6, ''Other Clean Air Act Requirements'' addresses various Extreme area requirements, including for RFP, RACT, RACM, contingency measures, offsetting of increases in VMT, NSR requirements, use of clean fuels or advanced control technology for boilers, and traffic control measures during heavy traffic hours. Sections 7 through 9 address various procedural requirements, including compliance with the California Environmental Quality Act, and notice and comment procedures. The Plan includes three supporting appendices, which describe the emissions inventories and existing District and CARB rules and regulations relied on in the Plan.

2. The Coachella Valley VMT Offset Demonstration

On March 18, 2021,[28] CARB submitted the ''VMT Offset Demonstration.''[29] The VMT Offset Demonstration is intended to show compliance with the requirement at CAA section 182(d)(1) for nonattainment areas classified Severe or Extreme to adopt sufficient transportation control strategies (TCSs) and transportation control measures (TCMs) to offset any growth in VMT.

The VMT Offset Demonstration contains an Executive Summary, Introduction, Methodology, Staff Recommendations, and appendices. The appendices contain the following sections: ''Sensitivity Test to Estimate Emissions for the 2023 Attainment Year with Motor Vehicle Control Program Frozen at 2002;'' ''EMFAC2014 Analysis;''[30] ''EMFAC2011 Analysis;''[31] and ''Summary.''

The VMT Offset Demonstration includes a base year emissions estimate and three different estimates for the 2023 attainment year. One estimate has 2023 on-road vehicle emissions controls frozen as the requirements existed in 2002. One estimate shows 2023 emissions freezing the VMT at the levels from 2002. The final estimate reflects expected emissions for 2023 based on the submitted control strategy, which, as described further in Section IV.E of this document, must be less than both previous estimates for 2023 for an adequate VMT offset demonstration.

As the VMT Offset Demonstration explains, several post-2002 emissions control measures are factored into EMFAC2017 (the latest CARB model for on-road emissions at the time the demonstration was prepared) and cannot be removed. To correct this, the VMT Offset Demonstration includes the results of a sensitivity analysis to determine the emissions reductions associated with CARB's Advanced Clean Cars program and the Truck and Bus Regulations (calculated using EMFAC2014), and the additional stringency of CARB's inspection and maintenance programs (calculated using EMFAC2011).

B. CAA Procedural and Administrative Requirements for SIP Submittals

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that the state provided adequate public notice and an opportunity for a public hearing, consistent with the EPA's implementing regulations in 40 CFR 51.102.

The SCAQMD provided public notice of its intent to approve the Coachella Valley Ozone Plan on November 4, 2020.[32] The public comment period ended with a public hearing on December 4, 2020; no comments were submitted during the public hearing.[33] The SCAQMD responded to written comments in Section 9 of the Plan. The SCAQMD Governing Board documented the adoption of the Plan in Board Resolution 20–22, dated December 4, 2020. In addition to the comment period and hearing, the SCAQMD convened several steering committees and advisory groups beginning in August

[25] Letter dated December 28, 2020, from Richard W. Corey, CARB, to John W. Busterud, EPA, Subject: ''Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard'' (submitted electronically December 29, 2020).

[26] SCAQMD Board Resolution 20–22, December 4, 2020; Executive Order S–20–34, ''Coachella Extreme Ozone Plan SIP Submittal,'' December 28, 2020.

[27] SCAQMD, ''Final 2016 Air Quality Management Plan,'' dated March 2017, submitted electronically by CARB to the EPA on April 27, 2017, and approved by the EPA on September 16, 2020 (85 FR 57714). The 2016 AQMP includes a Coachella Valley attainment plan for the 2008 ozone standards.

[28] Letter dated March 15, 2021, from Richard W. Corey, CARB, to Deborah Jordan, EPA (submitted electronically March 18, 2021).

[29] CARB, ''Staff Report, 2020 Coachella Valley Vehicle Miles Traveled Emissions Offset Demonstration,'' January 22, 2021.

[30] EMFAC2014 is the 2014 version of CARB's Emissions Factor model.

[31] EMFAC2011 is the 2011 version of CARB's Emissions Factor model.

[32] SCAQMD, Proof of Publication for Notice of Public Hearing, dated November 4, 2020.

[33] SCAQMD, Draft Minutes of Public Hearing, dated December 4, 2020.

2020.[34] As documented in Executive Order S–20–34, CARB determined that the Plan met the requirements of the Act, adopted the Plan, and ordered it to be submitted to the EPA for inclusion in the SIP.

The Plan includes proof of publication for the notice of the District public hearings, as evidence that all hearings were properly noticed. Therefore, we find the Coachella Valley Ozone Plan meets the procedural requirements of CAA sections 110(a) and 110(l).

CARB provided public notice of its intent to approve the VMT Offset Demonstration on January 21, 2021. The public comment period ended with a board meeting on February 25, 2021. One person commented during the public meeting, urging progress in addressing air pollution in the Coachella Valley without directly addressing the VMT Offset Demonstration. The CARB Governing Board documented the adoption of the VMT Offset Demonstration in Board Resolution 21–1, dated February 25, 2021.

CAA section 110(k)(1)(B) requires that the EPA determine whether a SIP submittal is complete within 60 days of receipt. This section of the CAA also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete is deemed complete by operation of law six months after the date of submittal. The SIP submittal for the Coachella Valley Ozone Plan became complete by operation of law on June 28, 2021, and the submittal for the VMT Offset Demonstration became complete by operation of law on September 18, 2021.

IV. Review of the Coachella Valley Ozone Plan

A. Emissions Inventories

1. Requirements for Emissions Inventories

CAA section 182(a)(1) requires each state with an ozone nonattainment area classified under subpart 2 to submit a ''comprehensive, accurate, current inventory of actual emissions from all sources'' of the relevant pollutants in accordance with guidance provided by the Administrator. While this inventory is not a specific requirement under the anti-backsliding provisions at 40 CFR 51.1105 and 51.1100(o), it provides support for demonstrations required under these anti-backsliding rules. Additionally, a baseline emissions inventory is needed for the attainment demonstration and for meeting RFP requirements. The 1997 Ozone Implementation Rule identifies 2002 as the baseline year for RFP purposes.[35] Emissions inventory guidance issued by EPA sets specific planning requirements pertaining to future milestone years for reporting RFP and to attainment demonstration years.[36] Key RFP analysis years in the RFP demonstration include 2008 and every subsequent 3 years until the attainment date.

We have evaluated the emissions inventories in the Coachella Valley Ozone Plan to determine if they are consistent with EPA guidance and adequate to support the Plan's RACM, RFP, ROP, and attainment demonstrations.

2. Emissions Inventories in the Coachella Valley Ozone Plan

Chapter 3 and Appendix I of the Plan contain detailed emissions estimates. The District's process for developing these emissions estimates followed a similar methodology to the inventories in the 2016 AQMP.[37] In general, Appendix III of the 2016 AQMP includes a more detailed discussion of this methodology, and the Plan explains relevant differences between the two emissions estimates.

The Plan's emissions estimates are seasonally adjusted to summer emissions when ozone concentrations are highest. The Plan divides emissions into the four categories of ''point,'' ''area,'' ''on-road,'' and ''off-road'' sources, with point and area sources grouped as ''stationary sources'' in summary tables. The base year for the emissions estimates is 2018. As Chapter 3 of the Plan explains, that data was projected to 2020 and 2023. Appendix I also contains full emissions breakdowns projected back to 2002 (the baseline year for the RFP demonstration), and forward to 2020 (a milestone year in the RFP demonstration) and 2023 (the attainment year). Table 1 compares emissions for 2002, 2018, 2020, and 2023.

TABLE 1—COACHELLA VALLEY NO_X AND VOC EMISSIONS INVENTORY SUMMARIES FOR 2002, 2018, AND 2023

[Average summer weekday emissions in tons per day] [a]

Category	NO_X				VOC			
	2002	2018	2020	2023	2002	2018	2020	2023
Combined Point and Area Sources	1.40	1.59	1.14	1.18	7.63	7.18	7.74	8.32
On-Road Mobile Sources	41.07	11.18	9.53	6.85	10.47	3.89	3.33	2.90
Other Mobile Sources	11.77	5.56	5.10	4.30	4.76	3.30	3.23	3.22
Totals	54.24	18.33	15.77	12.33	22.85	14.37	14.30	14.44

[a] Source: Coachella Valley Ozone Plan, Appendix I for 2002, Table 3–1 for 2018, and Table 3–2 for 2023.

As described in the Plan, SCAQMD Rule 301 requires stationary sources emitting 4 tons per year (tpy) or more of NO_X or VOC to report facility emissions directly to the District.

Sources with NO_X and VOC emissions below these thresholds are classified as area sources. The area source category includes aggregated emissions data from processes that are individually small and widespread. CARB and SCAQMD jointly estimate emissions for more than 400 area source categories. Appendix I of the Plan includes aggregate categories, such as consumer products, but not every individual category (*e.g.,* hairspray). The Plan states that ''emissions from these sources are estimated using specific activity information and emission factors. Activity data are usually obtained from survey data or scientific reports, *e.g.,* Energy Information Administration reports for fuel consumption other than natural gas fuel, Southern California Gas Company for natural gas consumption, paint supplier data under SCAQMD

[34] SCAQMD, Governing Board Package for the Coachella Valley Extreme Area Plan, dated December 4, 2020, Public Process, page 3.

[35] 69 FR 23951, 23980 (April 30, 2004).

[36] 70 FR 71612.

[37] 2016 AQMP, approved by the EPA on September 16, 2020 (85 FR 57714).

Rule 314, 'Fees for Architectural Coatings,' and District databases.'' [38] Emission factors are values representing the amount of NO_X or VOC per amount of fuel, hours of operation, or some other measurement. The Plan's emission factors are based on ''rule compliance factors, source tests, manufacturer's product or technical specification data, default factors (mostly from AP–42, the EPA's published emission factor compilation), or weighted emission factors derived from the point source facilities' annual emissions reports.'' [39] Area source emissions are based on emissions projections for 2018 and 2023 from the 2016 AQMP, ''using growth and control factors derived from regulatory and socio-economic data.'' [40]

For on-road mobile source emissions, which consists of emissions from trucks, automobiles, buses, and motorcycles, the Plan uses the vehicle activity from the ''2016–2040 Regional Transportation Plan/Sustainable Communities Strategy'' (''2016–2040 RTP/SCS'') developed by the Southern California Association of Governments (SCAG). The Plan's mobile source emission factors come from CARB's 2017 emissions factor model, known as ''EMFAC2017,'' which was the latest model available for estimating on-road motor vehicle emissions in California at the time of its submission.[41]

The Plan also contains off-road NO_X and VOC inventories developed by CARB using category-specific methods and models.[42] The off-road mobile source category includes aircraft, trains, ships, and off-road vehicles and equipment used for construction, farming, commercial, industrial, and recreational activities. The 2016 AQMP provides the growth factors used to project base year emissions for the off-road sources.[43]

Future emissions forecasts are primarily based on demographic and economic growth projections provided by SCAG, and control factors developed by the District in reference to the 2018 base year. Growth factors used to project these baseline inventories are derived mainly from data obtained from SCAG.[44]

3. Proposed Action on the Emissions Inventories

We have reviewed the emissions inventories in the Coachella Valley Ozone Plan and the inventory methodologies used by the District and CARB for consistency with CAA section 182(a)(1) and EPA guidance. We find that the base year and projected attainment year inventories are comprehensive, accurate, and current inventories of actual and projected emissions of NO_X and VOC in the Coachella Valley as of the date of the submittal. Accordingly, we propose to find that these inventories provide an appropriate basis for the various other elements of the Coachella Valley Ozone Plan, including the RACM, ROP, RFP, and attainment demonstrations. The technical support document (TSD) accompanying this proposed rulemaking identifies SCAQMD rules submitted to the EPA for SIP approval after submittal of the Coachella Valley Ozone Plan and compares emissions in the Plan with emissions in the previously approved Severe attainment plan.[45]

B. Reasonably Available Control Measures Demonstration and Adopted Control Strategy

1. RACM Requirements

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all reasonable available control measures as expeditiously as practicable and provide for attainment of the NAAQS. The RACM demonstration requirement is a continuing applicable requirement for the Coachella Valley under the EPA's anti-backsliding rules that apply for revoked standards.[46]

The EPA has previously provided guidance interpreting the RACM requirement in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble'') [47] and in a memorandum entitled ''Guidance on Reasonably Available Control Measures (RACM) Requirements and Attainment Demonstration Submissions for the Ozone NAAQS,'' John Seitz, November 30, 1999 (''Seitz Memo''). In summary, EPA guidance provides that to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's attainment date by one year or more.[48]

Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. CAA section 172(c)(6) requires nonattainment plans to include enforceable emissions limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standards in such area by the applicable attainment date.[49]

The purpose of the RACM analysis is to determine whether or not control measures exist that are economically and technically reasonable and that provide emissions reductions that would advance the attainment date for nonattainment areas. The EPA defines RACM as any potential control measure for application to point, area, on-road, and non-road emission source categories that: (1) is technologically feasible; (2) is economically feasible; (3) does not cause ''substantial widespread and long-term adverse impacts;'' (4) is not ''absurd, unenforceable, or impracticable;'' and (5) can advance the attainment date by at least one year.[50]

For ozone nonattainment areas classified as Moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which the EPA has

[38] Id.

[39] Id. at 3–2.

[40] Id.

[41] EMFAC is short for EMission FACtor. The EPA announced the availability of the EMFAC2017 model for use in state implementation plan development and transportation conformity in California on August 15, 2019. 84 FR 41717. The EPA's approval of the EMFAC2017 emissions model for SIP and conformity purposes was effective on the date of publication of the notice in the **Federal Register**.

[42] Detailed information on CARB's off-road motor vehicle emissions inventory methodologies is found at: *https://ww2.arb.ca.gov/msei-road-documentation.*

[43] 2016 AQMP, Appendix III, pp. III–1–24 to III–1–27.

[44] 2016 AQMP, 7–25, and Appendix III, p. III–2–6.

[45] EPA, Region IX, ''Technical Support Document, Approval and Promulgation of Implementation Plans; State of California; Coachella Valley; Extreme Attainment Plan for 1997 8-Hour Ozone Standards, Docket: EPA–R09–OAR–2023–0448, Additional Supporting Information for Notice of Proposed Rulemaking,'' March 2024.

[46] See 40 CFR 51.1105(a)(1) and 51.1100(o)(17).

[47] See 57 FR 13498, 13560 (April 16, 1992). The General Preamble describes the EPA's preliminary view on how we would interpret various SIP planning provisions in title I of the CAA as amended in 1990, including those planning provisions applicable to the 1-hour ozone standards. The EPA continues to rely on certain guidance in the General Preamble to implement the 8-hour ozone standards under title I.

[48] General Preamble at 13560; see also Memorandum dated December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs.''

[49] See also CAA section 110(a)(2)(A).

[50] General Preamble at 13560.

issued a Control Techniques Guidelines document. CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. In Extreme areas, a major source is a stationary source that emits or has the potential to emit at least 10 tpy of VOC or NO_X.[51] Under the 1997 Ozone Implementation rule, states were required to submit SIP revisions meeting the RACT requirements of CAA sections 182(b)(2) and 182(f) no later than 27 months after designation for the 1997 8-hour ozone standards (September 15, 2006, for areas designated in April 2004) and to implement the required RACT measures no later than 30 months after that submittal deadline.[52] The EPA has approved the Severe area RACT SIP for the SCAQMD for the 1997 ozone standards, which included rules applicable to the Coachella Valley.[53] With the reclassification from Severe to Extreme nonattainment, the major source threshold shifts from 25 tpy to 10 tpy, changing the NO_X and VOC sources subject to the RACT requirements. While this action does not address the Coachella Valley's RACT demonstration, we will consider the rules in relevant RACT demonstrations as potentially addressing RACM demonstration requirements.

2. Control Strategy and RACM Demonstration in the Coachella Valley Ozone Plan

a. The District's Component of the RACM Demonstration

The RACM demonstration begins on page 6–12 of the Coachella Valley Ozone Plan. The Plan's RACM demonstration builds on the SCAQMD's prior RACM demonstrations for the Coachella Valley and South Coast Air Basin for the 2008 ozone standards in the 2016 AQMP, which the EPA approved in 2020.[54] The Plan supplements this demonstration by evaluating as potential RACM new rules put in place after the 2016 AQMP and rules for area sources. The SCAQMD compared its rules with rules from other air districts within California (*i.e.,* the Sacramento Metropolitan Air Quality Management District, the San Joaquin Valley Air Pollution Control District, the Ventura County Air Pollution Control District, the Antelope Valley Air Quality Management District, and the Mojave Desert Air Quality Management District) and from air quality agencies in Delaware and Texas.

The evaluation of other districts' and states' rules for stationary and area sources did not identify any rules as potential RACM. In all but a few cases, SCAQMD rules were as stringent or more stringent than other rules. Where other rules were more stringent, the SCAQMD still determined that its rules provided RACM-level controls. For example, the VOC control efficiency of SCAQMD Rule 461, ''Organic Liquid Loading,'' is less stringent than another rule (*i.e.,* 90 percent vs. 95 percent), but actual operational control efficiency at SCAQMD facilities exceeded the higher (95 percent) limit. In another example, SCAQMD Rule 1162, ''Polyester Resin Operations,'' which regulates more than 15 different categories of wood product coatings, has a lower limit than another district for one category, high-solid stains (240 grams per liter vs. 350 grams per liter), but ''for almost all categories, Rule 1136 is as stringent as the other agency's rule and provides RACM level of control for this source category.'' [55]

The Plan also highlights rules and programs revised since the completion of the 2016 AQMP that are anticipated to achieve additional reductions when fully implemented as planned. Table 4–1 of the Plan shows these measures have collectively further reduced emissions by 6.3 tons per day (tpd) of NO_X and 2.3 tpd of VOC.[56] These reductions would occur primarily in the South Coast Air Basin; however, as the Plan explains, the ozone air quality problems of the Coachella Valley are primarily caused by transported emissions from within the South Coast Air Basin. The TSD for this proposed rulemaking supplements the District's analysis with a discussion of rules adopted by the SCAQMD since the completion of the Coachella Valley Ozone Plan.

The 2016 AQMP included several commitments for additional emissions reductions, such as for the applications of zero or near-zero NO_X emissions appliances in the residential and commercial sectors (CMB–02), additional enhancement in reducing energy use in existing residential buildings (ECC–03), and co-benefits from existing residential and commercial building energy efficiency mandates (ECC–02). Collectively, these measures are expected to achieve 2.6 tpd of NO_X reductions by 2023 in the South Coast Air Basin.[57] Consistent with the emissions reductions from new and recently revised rules, the benefits achieved are primarily expected in the South Coast Air Basin.

b. Local Jurisdiction Component of the RACM Demonstration

With respect to on-road mobile sources, we note that SCAG is the designated metropolitan planning organization (MPO) for a large portion of southern California, including Coachella Valley, and SCAG's membership includes local jurisdictions within the Coachella Valley. For the 2016 AQMP, SCAG evaluated a list of possible transportation control measures (TCMs) as one element of the larger RACM evaluation for the plan. TCMs are, in general, measures designed to reduce emissions from on-road motor vehicles through reductions in VMT or traffic congestion.

In our final actions on the Severe area RACM requirements for the Coachella Valley for the 1997 and 2008 8-hour ozone standards,[58] we concluded that the evaluation processes undertaken by SCAG were consistent with the EPA's RACM guidance and found that there were no additional RACM, including no additional TCMs that would advance attainment of the 1997 8-hour ozone standards in the South Coast Air Basin.[59] More recently, we came to the same conclusion with respect to RACM and TCMs for the South Coast in our action on the ozone portion of the SCAQMD's ''Final 2012 Air Quality Management Plan.'' [60]

Although TCMs are implemented in the upwind South Coast Air Basin area to meet CAA requirements, neither the SCAQMD nor CARB rely on implementation of any TCMs in the Coachella Valley to demonstrate implementation of RACM in the Coachella Valley Ozone Plan. The SCAQMD and CARB justify the absence of TCMs in the Coachella Valley by reference to the significant influence of pollutant transport from the South Coast Air Basin on ozone conditions in the Coachella Valley.[61]

[51] CAA section 182(d).

[52] See 40 CFR 51.912(a). Following the reclassification of the Coachella Valley to Extreme nonattainment for the 1997 8-hour ozone standards, the EPA established a deadline of February 14, 2021, for the State to submit SIP revisions addressing the CAA section 182(b)(2) and 182(f) RACT requirements. 85 FR 2311, 2312 (January 15, 2020).

[53] 73 FR 76947 (December 18, 2008).

[54] The Coachella Valley Ozone Plan incorrectly identifies the EPA's approval of the RACM demonstration as 82 FR 26854 (June 12, 2017), but the actual approval was published at 85 FR 57714 (September 16, 2020).

[55] Coachella Valley Ozone Plan, Table 6–10 at p. 6–17.

[56] Table 4–1 does not total the emission reductions for all measures.

[57] Coachella Valley Ozone Plan, p. 6–20.

[58] 82 FR 26854 and 85 FR 57714.

[59] See also 81 FR 75764 (November 1, 2016) (proposed rule for 1997 8-hour ozone standards).

[60] See 79 FR 29712, 29720 (May 23, 2014) (proposed rule); 79 FR 52526 (September 3, 2014) (final rule).

[61] See Coachella Valley Ozone Plan, p. 6–29.

c. The Statewide Component of the RACM Demonstration

CARB has primary responsibility for reducing emissions in California from new and existing on-road and off-road engines and vehicles, motor vehicle fuels, and consumer products. CARB has been a leader in the development of stringent control measures for on-road and off-road mobile sources, fuels, and consumer products. Because of this role, the Plan identifies CARB's 2016 State Strategy as a key component of the control strategy necessary to attain the State's ozone goals, which includes attaining the 1997 ozone NAAQS. The Plan states that California has received waivers and authorizations for over 100 regulations and lists several recent examples, such as rules governing light-, medium-, and heavy-duty vehicles; off-road vehicles and engines; and other sources including motorcycles, recreational boats, off-road recreational vehicles, cargo handling equipment, and commercial harbor craft.[62] The Plan highlights reductions achieved through ''more stringent engine emissions standards, in-use requirements, incentive funding, and other policies and initiatives'' since the EPA's 2019 approval of the South Coast Air Basin RACM demonstration for the 2008 ozone standards.[63]

The CARB portion of the RACM evaluation also covers consumer products. CARB regulates VOC emissions from more than 130 consumer products, with the most recent rule revisions in 2018. The federal regulations for consumer products were last amended in 1998.[64] Since submittal of the Plan, CARB has submitted additional consumer product regulations for approval into the SIP, but EPA has yet to act on this submittal.[65]

3. The EPA's Evaluation of the Control Strategy and RACM

We find that the Coachella Valley Ozone Plan includes a thorough update of the District's RACM demonstration for the 2008 ozone standards from the 2016 AQMP that we previously approved in 2020.[66] This updated demonstration focuses on new rules put in place by five California air districts and two states since completion of the 2016 AQMP, and we propose to find that it demonstrates that the District's stationary source controls represent RACM for the 1997 8-hour ozone standards.

With respect to mobile sources, we find that CARB's current program addresses the full range of mobile sources in the South Coast Air Basin and Coachella Valley through regulatory programs for both new and in-use vehicles. Moreover, we find that the process conducted by CARB to prepare the 2016 State Strategy was reasonably designed to identify additional available measures within CARB's jurisdiction, and that CARB has adopted those measures that are reasonably available. As noted in the TSD supporting this rulemaking, following submittal of the 2016 State Strategy, CARB has continued to submit mobile source control measures, such as the Heavy-Duty Inspection and Maintenance Regulation, which expands the inspection of heavy-duty trucks beyond particulate matter emissions to include the equipment controlling NO_X emissions.

With respect to TCMs, we find that SCAG's process for identifying additional TCM RACM and conclusion that the TCMs being implemented in the South Coast Air Basin are inclusive of all TCM RACM to be reasonably justified and supported. For the 2016 AQMP, given the minimal and diminishing emissions benefits generally associated with TCMs, no combination of TCMs implemented in the Coachella Valley could have contributed to advancing the attainment date in the Coachella Valley, and no TCMs are reasonably available for implementation in the Coachella Valley for the purposes of meeting the RACM requirement.[67]

Additionally, we find that CARB's consumer products program generally exceeds the controls in place throughout other areas of the country. The additional commitments included in the 2016 State Strategy further strengthen this program by achieving additional VOC reductions. Some of the committed measures have already been submitted to the EPA, including lower VOC emission limits for seven consumer product categories.[68]

While the Plan does not quantify the amount of reductions necessary to advance attainment by one year, in view of the current timing of this proposed approval, the Coachella Valley no longer has a practical opportunity to advance attainment prior to 2023. Therefore, the EPA is proposing to find that the Coachella Valley Ozone Plan provides for implementation of all RACM necessary to demonstrate expeditious attainment of the 1997 8-hour ozone standards in the Coachella Valley, consistent with the applicable requirements of CAA section 172(c)(1) and 40 CFR 51.1105(a)(1) and 51.1100(o)(17).

C. Attainment Demonstration

1. Statutory and Regulatory Requirements

CAA section 182(c)(2)(A) requires that a plan for an ozone nonattainment area classified Serious or above include a ''demonstration that the plan . . . will provide for attainment of the ozone [NAAQS] by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined . . . to be at least as effective.'' The attainment demonstration predicts future ambient concentrations for comparison to the NAAQS, making use of available information on measured concentrations, meteorology, and current and projected emissions inventories of ozone precursors, including the effect of control measures in the Plan.

In accordance with 40 CFR 51.903(a), areas classified Extreme for the 1997 ozone NAAQS must demonstrate attainment as expeditiously as practicable, but no later than 20 years after the effective date of designation to nonattainment. The Coachella Valley was designated nonattainment for the 1997 ozone NAAQS effective June 15, 2004,[69] and accordingly, the area must demonstrate attainment of the standards by June 15, 2024. An attainment demonstration must show attainment of the standards by the calendar year prior to the attainment date, so in practice, Extreme nonattainment areas must demonstrate attainment in 2023.

The EPA's recommended procedures for modeling ozone as part of an attainment demonstration are contained in ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' EPA 454/R–18–009, November 2018

[62] Coachella Valley Ozone Plan, p. 6–26.

[63] Id. at 6–28 *et seq.*

[64] Id. at 6–29.

[65] Letter dated April 25, 2023, from Steve S. Cliff, CARB, to Martha Guzman, EPA Region IX, transmitting 2021 amendments to CARB's consumer product regulations (submitted electronically April 25, 2023).

[66] 85 FR 57714.

[67] While not required for CAA purposes, the 2016–2040 RTP/SCS includes a list of projects for the Coachella Valley, some of which represent the types of projects often identified as TCMs, such as traffic signalization projects and bike lane projects. 2016–2040 RTP/SCS, Appendix, ''Project List.''

[68] Letter dated April 25, 2023, from Steve S. Cliff, CARB to Martha Guzman, EPA Region IX, transmitting 2021 amendments to CARB's consumer product regulations (submitted electronically April 25, 2023).

[69] 69 FR 23858.

(''Modeling Guidance'').[70] The Modeling Guidance includes recommendations for a modeling protocol, model input preparation, model performance evaluation, use of model output for the numerical NAAQS attainment test, and modeling documentation. Air quality modeling is performed using meteorology and emissions from a base year, and the predicted concentrations from this base case modeling are compared to air quality monitoring data from that year to evaluate model performance.

Once the model performance is determined to be acceptable, future year emissions are simulated with the model. The relative (or percent) change in modeled concentrations due to future emissions reductions provides a relative response factor (RRF). Each monitoring site's RRF is applied to its monitored base period design value to provide the future design value for comparison to the NAAQS. The Modeling Guidance also recommends supplemental air quality analyses, which may be used as part of a weight of evidence (WOE) analysis. A WOE analysis corroborates the attainment demonstration by considering evidence other than the main air quality modeling attainment test, such as trends and additional monitoring and modeling analyses.

The Modeling Guidance also does not require a particular year to be used as the base year for 1997 8-hour ozone plans.[71] The Modeling Guidance states that the most recent year of the National Emissions Inventory may be appropriate for use as the base year for modeling, but that other years may be more appropriate when considering meteorology, transport patterns, exceptional events, or other factors that may vary from year to year.[72] Therefore, the base year used for the attainment demonstration need not be the same year used to meet the requirements for emissions inventories and RFP.

With respect to the list of adopted measures, CAA section 172(c)(6) requires that nonattainment area plans include enforceable emissions limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for timely attainment of the NAAQS.[73]

2. Summary of the State's Submission

a. Photochemical Modeling

Chapter 5 of the Coachella Valley Ozone Plan includes a description of photochemical modeling performed by the SCAQMD for the 1997 8-hour ozone standards. The modeling relies on a 2018 model base year and projects design values to demonstrate attainment of the 1997 ozone NAAQS in 2023.

Chapter 5, ''Future Air Quality,'' of the Plan, includes a description of current air quality in the Coachella Valley, a summary of the ozone modeling approach, a model performance evaluation, results of the NAAQS attainment test, an unmonitored area analysis, an assessment of ozone sensitivity to NO_X and VOC reductions, and a WOE analysis. The Plan uses the same approach that is outlined in more detail in the 2016 AQMP, with some updates to the modeling platform, input databases, and emissions inventories. Like the 2016 AQMP, the Plan uses the EPA recommended Community Multiscale Air Quality Modeling System (CMAQ, version 5.0.2) modeling platform. An overview of the modeling approach and modeling protocol can be found in the 2016 AQMP, Appendix V, ''Modeling and Attainment Demonstrations,'' Chapter 1, ''Modeling Overview,'' and Chapter 2 ''Modeling Protocol.'' While the 2016 AQMP used 2012 as the model base year, the Plan uses 2018 as the model base year on which to develop meteorological conditions and emissions inventories. Meteorological fields were developed for 2018 using the Weather Research and Forecasting Model (WRF, version 4.0.3) from the National Center for Atmospheric Research. Input information and model evaluation for WRF version 4.03 can be found in the SCAQMD, ''Final 2022 Air Quality Management Plan,'' adopted December 2, 2022 (''2022 AQMP''), Appendix V, Chapter 3, ''Meteorological Modeling and Sensitivity Analyses.''

CMAQ and WRF are both recognized in the Modeling Guidance as technically sound, state-of-the-art models. The areal extent and the horizontal and vertical resolution used in these models is adequate for modeling Coachella Valley ozone. The WRF modeling uses routinely available meteorological and air quality data collected during 2018. Those data cover May through September, a period that spans the period of highest ozone concentrations in the Coachella Valley. The District evaluated the WRF model performance and concluded that the WRF simulation for 2018 provided representative meteorological fields that well characterized the observed conditions. The District's conclusions were supported by statistical metrics and hourly time series plots of water vapor mixing ratio, wind speed, direction, and temperature for the southern California domain as well an evaluation of the predicted planetary boundary layer height and the coast-to-inland temperature gradient.

Ozone model performance statistics are described in the Coachella Valley Ozone Plan at Chapter 5.[74] This chapter includes a table of statistics recommended in the Modeling Guidance and hourly ozone time series plots for 2018. The hourly time series and statistics show generally good model performance, though many individual daily ozone peaks are underpredicted.[75] Note that, because only relative changes are used from the modeling, the underprediction of ozone concentrations does not mean that future concentrations will be underestimated.

After model performance for the 2018 base case was accepted, the model was applied to develop RRFs for the attainment demonstration. This entailed running the model with the same meteorological inputs as before, but with adjusted emissions inventories to reflect the expected changes between 2018 and the 2023 attainment year. The base year or ''reference year'' modeling inventory was the same as the inventory for the modeling base case. The 2023 inventory projects the base year into the future by including the effect of economic growth and emissions control measures. The set of 153 days from May 1 through September 30, 2018, was simulated and analyzed to determine 8-hour average maximum ozone concentrations for the 2018 and 2023 emissions inventories. To develop the RRFs for the 1997 8-hour ozone standards, only the top 10 days were used, consistent with the Modeling Guidance.[76]

The Modeling Guidance addresses attainment demonstrations with ozone NAAQS based on 8-hour averages and for the 1997 ozone NAAQS the

[70] The EPA modeling guidance is available on the EPA website at: *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance;* direct link: *https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf.* Additional EPA modeling guidance can be found in 40 CFR 51 Appendix W, ''Guideline on Air Quality Models,'' 82 FR 5182 (January 17, 2017); available at *https://www.epa.gov/scram/clean-air-act-permit-modeling-guidance.*

[71] Modeling Guidance, 35.

[72] Id.

[73] See also CAA section 110(a)(2)(A).

[74] Coachella Valley Ozone Plan, Chapter 5, 5–4—5–5.

[75] Coachella Valley Ozone Plan, Figure 5–2.

[76] Modeling Guidance, section 4.2.1.

Coachella Valley Ozone Plan carries out the attainment test procedure consistent with the Modeling Guidance. The RRFs are calculated as the ratio of future to base year concentrations; these were then applied to weighted base year design values for each monitor to arrive at future year design values.[77] Ozone is measured continuously at two locations in the Coachella Valley at the Palm Springs and Indio air monitoring stations. The modeled 2023 ozone design value at the Palm Springs site (the higher of the two sites) is 0.0832 ppm; this value demonstrates attainment of the 1997 ozone NAAQS.[78]

The Plan modeling includes an ''Unmonitored Area Analysis'' (UAA) to assess whether locations without a monitor can reach attainment; the standard attainment test procedure covers only locations with a monitor. A UAA is recommended in the Modeling Guidance, but not required in the 1997 Ozone Implementation Rule—Phase 2.[79] Consistent with EPA Guidance, the District calculated five-year weighted design values for all monitoring stations that meet EPA's data quality requirements within the modeling domain and spatially interpolated concentrations for the area between the design values. RRFs were then applied to the interpolated measurement field to calculate future year design values. The District asserts that when all valid ozone design values were interpolated, they were too sparsely populated near the boundary of Coachella Valley to reasonably guide design value contours. To compensate, the District excluded the Morongo monitor and added several pseudo-monitors throughout the domain to guide the interpolation.[80] With these modifications the predicted future design values are all below the level of the 1997 8-hour ozone standards throughout the domain.

In addition to the formal attainment demonstration, the Plan also contains a WOE demonstration that includes ambient ozone data and trends and a sensitivity analysis using CMAQ 5.3.1, a later version of the model to complement the regional photochemical modeling analyses.

b. Control Strategy

The control strategy for attainment of the 1997 ozone NAAQS in the Coachella Valley relies primarily on timely attainment in 2023 of the 1997 ozone NAAQS in the South Coast Air Basin. As described in the Coachella Valley Ozone Plan and in Section I.B of this document, the primary cause of ozone in the Coachella Valley is the transport of ozone and its precursors from the South Coast Air Basin.

Because ozone concentrations at the Palm Springs monitor—the only monitoring site currently exceeding the 8-hour 1997 ozone NAAQS—are more sensitive to changes in NO_X than VOCs,[81] the Plan's control strategy relies on NO_X reductions and limited VOC reductions. Since the EPA's promulgation of the 1997 ozone NAAQS, NO_X emissions in the South Coast Air Basin have declined by 76 percent.[82] Mobile sources, responsible for 80 percent of regional NO_X emissions, are the primary focus of future emissions reductions.

A thorough discussion of the SCAQMD's control strategy for the Coachella Valley appears in the 2016 AQMP. The 2016 AQMP provides the District's control strategy through the 2026 attainment year for the 2008 ozone standards. The Coachella Valley Ozone Plan provides an update to that discussion, specifically focusing on the measures implemented after the 2016 AQMP that result in emissions reductions by 2023.

The South Coast Air Basin control strategy for the 1997 ozone NAAQS relies on emissions reductions from already-adopted measures, commitments by the District to certain regulatory and nonregulatory initiatives and aggregate emissions reductions, and commitments by SCAQMD and CARB to certain regulatory and nonregulatory initiatives and aggregate emissions reductions. In the 2016 AQMP, already-adopted measures are expected to achieve approximately 66 percent of the NO_X reductions needed from a 2012 base year for the South Coast Air Basin to attain the 1997 ozone NAAQS in 2023. To address the remaining emissions reductions, which are shown in Table 2, the 2016 AQMP included District and CARB aggregate commitments to achieve additional emissions reductions by 2023. These reductions are discussed in the EPA's proposed approval of the 2016 AQMP for the South Coast Air Basin.[83]

TABLE 2—DISTRICT AND CARB AGGREGATE EMISSION REDUCTION COMMITMENTS FOR 2023

[tpd]

Plan	NO_X	VOC
SCAQMD[a]	23	6
CARB[b]	113	50–51
Total	136	56–57

[a] Source: 2016 AQMP at Table 4–10.
[b] Source: 2016 AQMP at Table 4–5.

The Plan updates this analysis to incorporate more recent SCAQMD and CARB rules and programs that continue to achieve emissions reductions in future baseline emissions for both the South Coast Air Basin and Coachella Valley. For SCAQMD, the revised regulations are Regulation XX, ''RECLAIM Program;'' Rule 1111, ''Reduction of NO_X Emissions form Natural-Gas-Fired, Fan-Type Central Furnaces,'' and the CLEANair Furnace Rebate Program; Rule 1146.2, ''Large Water Heater, Small Boilers and Process Heaters;'' and Rule 1147, ''NO_X Reductions from Miscellaneous Sources.'' The District's incentive programs include the Carl Moyer Memorial Air Quality Standards Attainment Program to retrofit and replace heavy-duty diesel engines;

[77] The Modeling Guidance recommends that RRFs be applied to the average of three 3-year design values centered on the base year. For a 2018 base year, recommended design values would be 2016–2018, 2017–2019, and 2018–2020. This amounts to a 5-year weighted average of individual year 4th high concentrations, centered on the base year of 2018, and so is referred to as a weighted design value. The Coachella Valley Ozone Plan was adopted in December 2020, before 2020 monitoring data was available, so the Plan instead uses design values for 2015–2017, 2016–2018, and 2017–2019.

[78] Coachella Valley Ozone Plan, 5–6.

[79] 70 FR 71612.

[80] Coachella Valley Ozone Plan, p. 5–6.

[81] Coachella Valley Ozone Plan, p. 5–8 and Figure 5–5.

[82] Coachella Valley Ozone Plan, p. 4–1.

[83] 84 FR 28132 (June 17, 2019), Sections III.D.2.B.i and ii.

Clean School Buses Incentives; and the Surplus Off-Road Opt-In for NO_X Program for low emission heavy duty engines for off-road diesel fleets.[84] For CARB, the regulations that continue to result in improved future emissions estimates include the Advanced Clean Cars program, the Truck and Bus Regulation, and the In-Use Large Spark Ignition Fleet Regulation.[85]

The Plan also highlights rules and programs that continue to achieve reductions that have not been factored into the future emissions estimates for SCAQMD and CARB. SCAQMD efforts include Rule 1117, ''Emissions of Oxides of Nitrogen form Glass Melting Furnaces;'' Rule 1134, ''Emissions of Oxides from Stationary Gas Turbines''; Rule 1135, ''Emissions of Oxides of Nitrogen from Electricity Generating Facilities;'' and facility-based mobile source measures covering marine ports railyards, warehouse/distribution centers, commercial developments and new developments and redevelopment projects.[86] Table 4–1 shows estimated reductions for these rules and facility-based mobile source measures. Some of the measures continue to increase reductions in future years, including adopted CARB regulations not reflected in the future emissions estimate such as the Innovative Clean Transit Regulation; the Zero-Emission Airport Shuttle Regulation; the Advanced Clean Truck regulation and the Omnibus Low-NO_X Regulation. All measures that achieve further emissions reduction and not reflected in the future 2023 emissions estimate serve to increase the likelihood that the Coachella Valley attains the 1997 ozone NAAQS.

c. Attainment Demonstration

Chapter 5 of the Coachella Valley Ozone Plan describes the Coachella Valley's progress toward attaining the 1997 ozone standards. The Plan summarizes the District's modeling for the area and concludes that the measures included in the control strategy (including CARB commitments) will result in the area attaining the standards no later than 2023. The WOE discussion provides additional discussion of air quality trends and projections in the Coachella Valley and determines that the area is on track to attain the 1997 ozone NAAQS by 2023.

[84] Coachella Valley Ozone Plan, pp. 4–2 to 4–4.

[85] The complete list of incentive programs is provided on pages 4–3 to 4–4 of the Coachella Valley Ozone Plan.

[86] Id. at 4–4 to 4–6.

3. The EPA's Review of the State's Submission

a. Photochemical Modeling

As discussed in Section III.A of this document, we are proposing to approve the base year emissions inventory for the attainment demonstration and to find that the future year emissions projections in the Coachella Valley Ozone Plan reflect appropriate calculation methods and that the latest planning assumptions are properly supported by SIP-approved stationary source and mobile source measures. The Plan employs the modeling protocol from the 2016 AQMP, and Appendix V of that document in particular, with updates to the modeling platform, input databases, and emissions inventory.[87] The discussion below addresses modeling information included in both the Plan and the 2016 AQMP. Because of the importance of ozone transport from the South Coast to attainment in the Coachella Valley, and the close interactions of the modeling for each area, we have considered the modeling for both the Coachella Valley and the South Coast Air Basin. Similar and additional discussion for the South Coast Air Basin can be found in our June 17, 2019 proposed action on the 2016 AQMP.[88]

Based on our review of the Coachella Valley Ozone Plan, the EPA finds that the photochemical modeling is adequate for purposes of supporting the attainment demonstration.[89] First, we note the discussion of modeling procedures, tests, and performance analyses called for in the Modeling Protocol (*i.e.,* 2016 AQMP, Appendix V, Chapter 2) and the good model performance (Coachella Valley Ozone Plan, Chapter 5). Second, we find the WRF meteorological model results and performance statistics, including hourly time series graphs of water vapor mixing ratio, wind speed, direction, and temperature for both the South Coast and the Coachella Valley, to be satisfactory and consistent with our Modeling Guidance.[90] Performance was evaluated for the winter season (January, November, and December 2018) and summer season (June, July, and August 2018).[91] Diurnal variation of temperature, humidity, and surface wind are well represented by WRF. Temperature and wind speed are more accurate in the summer season than in the winter months. The observed temperature gradient from the coast to inland was well characterized by WRF. Both the observational data and WRF simulation showed distinct diurnal variations in wind speed in the summer, with a strong sea breeze in the afternoon responsible for transport inland. In general, the WRF simulations reproduce the dominant wind direction as the measurement at each station. The diurnal cycle in PBL height was well captured by the simulations. Overall, the daily WRF simulation for 2018 provided representative meteorological fields that characterized the observed conditions well.

The model performance statistics for ozone are described in Chapter 5 of the Plan and are based on the statistical evaluation recommended in the Modeling Guidance. Model performance was provided for 8-hour daily maximum ozone in the nonattainment area. As noted in Section IV.C.2.a of this document, the statistics and hourly time series show generally good performance, and while many individual daily ozone peaks are underpredicted, this does not mean that future concentrations based on monitored data and modeled RRFs will be underestimated. In addition, the WOE analysis presented provides additional information with respect to the observational trends and further supports the model performance.

Notwithstanding the general sufficiency of the modeling, we find that the Plan's UAA analysis does not provide justification for excluding the Morongo monitor or for adding pseudo-monitors to alter the interpolation. We therefore conclude the UAA is not sufficiently supported, and we are not evaluating those results here. However, we conclude that based on the density of the ozone monitoring stations within the Coachella Valley and upwind, as well as the uncertainty in the interpolation due to complex topography, the attainment demonstration is adequately supported without a UAA. We recommend that CARB and SCAQMD evaluate the continuing adequacy of the existing monitors as part of their ambient air monitoring network 5-year network assessment.

The modeling shows that existing control measures from CARB and the District, together with the commitments in the 2016 AQMP and further updated in the Coachella Valley Ozone Plan, are sufficient to attain the 1997 8-hour ozone standards by 2023 at all monitoring sites in the Coachella Valley.

[87] Coachella Valley Ozone Plan, p. 5–2 and 5–8.

[88] 84 FR 28132.

[89] The EPA's review of the modeling and attainment demonstration is discussed in greater detail in section V of the TSD for this action (''Modeling and Attainment Demonstration'').

[90] Modeling Guidance, 30.

[91] Temperature, water vapor mixing ratio, and wind speed were evaluated in terms of normalized gross bias and normalized gross error.

We are proposing to find the air quality modeling adequate to support the attainment demonstration for the 1997 ozone NAAQS, based on reasonable meteorological and ozone modeling performance, and supported by the WOE analysis.

For additional information, please see the TSD for this action.

b. Control Strategy

The control strategy in the Coachella Valley Ozone Plan relies primarily on previously adopted and future emissions reductions detailed in the 2016 AQMP. As described in Section IV.C.2.b of this document, a significant portion of the emissions reductions needed to attain the 1997 ozone NAAQS in the South Coast by 2023 will be obtained through previously adopted measures in the SIP, and the balance of the reductions needed for attainment will result from enforceable commitments to take certain specific actions within prescribed periods and to achieve aggregate tonnage reductions of VOC or NO_X by specific years. The aggregate commitments provide the remaining additional upwind reductions necessary for the Coachella Valley to attain the 1997 ozone NAAQS in 2023. In our October 1, 2019 approval of the 2016 South Coast Ozone SIP, the EPA approved the control strategy to attain the 2008 ozone standards for the Coachella Valley by 2026, including CARB's and the District's aggregate commitments, for the South Coast to attain the 1997 ozone NAAQS.[92]

For the reasons described in that action and based on the District's demonstration specific to the Coachella Valley described in this section, we propose to find the District's control strategy acceptable for purposes of attaining the 1997 8-hour ozone standards in the Coachella Valley. For additional information, please see the TSD for this action.

c. Attainment Demonstration

Based on our proposed determinations that the photochemical modeling and control strategy are acceptable, we propose to approve the attainment demonstration for the 1997 ozone NAAQS in the Coachella Valley Ozone Plan as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1105(a)(1) and 51.1100(o)(12). This demonstration shows the area attaining the 1997 8-hour ozone standards by the outermost statutory attainment date of June 15, 2024.

[92] 84 FR 52005.

D. Rate of Progress and Reasonable Further Progress Demonstrations

1. Rate of Progress

For areas classified as Moderate or above, CAA section 182(b)(1) requires a SIP revision providing for ROP, defined as a one time, 15 percent actual VOC emissions reduction during the six years following the baseline year 1990, or an average of 3 percent per year. While the ROP demonstration is a potentially applicable continuing applicable requirement, the EPA has already approved the 15 percent VOC only ROP demonstration for Coachella Valley for the 1997 8-hour ozone standards, so this requirement has been met.[93]

2. Reasonable Further Progress

a. Requirements

CAA sections 172(c)(2) and 182(b)(1) require plans for nonattainment areas to provide for RFP. RFP is defined in CAA section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' CAA section 182(c)(2)(B) requires ozone nonattainment areas classified as Serious or higher to submit no later than 3 years after designation for the 1997 8-hour ozone standards an RFP SIP providing for an average of 3 percent per year of VOC and/or NO_X emissions reductions for (*1*) the 6-year period immediately following the baseline year; and (*2*) all remaining 3-year periods after the first 6-year period out to the area's attainment date.[94] The RFP requirement is a continuing applicable requirement for the Coachella Valley under the EPA's anti-backsliding rules that apply once a standard has been revoked. See 40 CFR 51.1105(a)(1) and 51.1100(o)(4).

CAA section 182(c)(2)(C) allows for the substitution of NO_X emissions reductions in place of VOC reductions to meet the RFP requirements. According to the EPA's NO_X Substitution Guidance,[95] the substitution of NO_X reductions for VOC reductions must be done on a percentage basis, rather than a straight ton-for-ton exchange. There are two steps for substituting NO_X for VOC. First, an equivalency demonstration must show that the cumulative RFP emissions reductions are consistent with the NO_X and VOC emissions reductions determined in the ozone attainment modeling demonstration. Second, specified reductions in NO_X and VOC emissions should be accomplished after the initial 6-year ROP reductions are achieved and before the attainment date, consistent with the continuous RFP emission reduction requirement.[96]

Section 182(b)(1) requires that reductions exclude emissions reductions from four prescribed federal programs (*i.e.,* the federal motor vehicle control program, the federal Reid vapor pressure (RVP) requirements, any RACT corrections previously specified by the EPA, and any I/M program corrections necessary to meet the Basic I/M level); and (3) be calculated from an ''adjusted'' baseline relative to the year for which the reduction is applicable.

The adjusted base year inventory must exclude the emissions reductions from fleet turnover between 1990 and 1996 and from federal RVP regulations promulgated by November 15, 1990, or required under section 211(h) of the Act. The net effect of these adjustments is that states are not able to take credit for emissions reductions that would result from fleet turnover of current federal-standard cars and trucks, or from already existing federal fuel regulations. However, the SIP can take full credit for the benefits of any post-1990 vehicle emissions standards, as well as any other new federal or state motor vehicle or fuel programs that will be implemented in the nonattainment area, including Tier 1 exhaust standards, new evaporative emissions standards, reformulated gasoline, Enhanced I/M, California low emissions vehicle program, transportation control measures, etc.

b. RFP Demonstration in the State Submittal

The Coachella Valley Ozone Plan contains emissions estimates for the baseline, milestone, and attainment years.[97] Tables 3 and 4 show the RFP demonstration.[98] The RFP

[93] 82 FR 26854.

[94] Following the reclassification of the Coachella Valley to Extreme nonattainment for the 1997 8-hour ozone standards, the EPA established a deadline of February 14, 2021, for the state to submit SIP revisions addressing the CAA section sections 172(c)(2) and 182(b)(1) RFP requirements. 85 FR 2311, 2312.

[95] EPA Office of Air Quality Planning and Standards, ''NO_X Substitution Guidance,'' December 1993.

[96] As noted in Section IV.D.1 of this document, Coachella Valley has already met the 15 percent ROP demonstration requirement.

[97] Coachella Valley Ozone Plan, pp. 6–1 to 6–7.

[98] The years between 2002 and 2020 were addressed in the ''Staff Report, Proposed Updates to the 1997 8-Hour Ozone Standard, State Implementation Plans; Coachella Valley and Western Mojave Desert'' (''2014 SIP Update'') which covered the Coachella Valley's Severe area

demonstration calculates future year VOC targets from the 2002 baseline, consistent with CAA 182(c)(2)(B)(i), which requires reductions of ''at least 3 percent of baseline emissions each year,'' and it substitutes NO_X reductions for VOC reductions beginning in milestone year 2020 to meet VOC emission targets. The District concluded that RFP demonstration meets the applicable requirements for each milestone year as well as the attainment year.

TABLE 3—CALCULATION OF RFP DEMONSTRATION FOR COACHELLA VALLEY—VOC [a]

VOC emission calculations	2002 [b]	2020 [b]	2023 [b]
1. Baseline VOC (tpd)	22.85	14.30	14.44
2. Required Percent Reductions from Base Year (%)	n/a	51%	60%
3. Target VOC Level (tpd)	n/a	11.2	9.1
4. Cumulative Milestone Year Shortfall (tpd)	n/a	3.1	5.3
5. Cumulative Shortfall in VOC (%)	n/a	13.6%	37.1%
6. Incremental Milestone Year Shortfall (%)	n/a	13.6%	23.5%

[a] Source: Table 6–1 of the Coachella Valley Ozone Plan.
[b] Units are tons per day (summer planning) unless otherwise noted.

TABLE 4—CALCULATION OF RFP DEMONSTRATION FOR COACHELLA VALLEY—NO_X [a]

NO_X emission calculations	2002 [b]	2020 [b]	2023 [b]
1. Baseline NO_X Emissions (tpd)	54.24	15.77	12.33
2. Reductions in NO_X Emissions since Base Year (tpd)	n/a	38.47	41.91
3. Percent Reductions in NO_X Emissions since Base Year	n/a	70.9%	77.3%
4. Previous NO_X Substitution (%)	n/a	n/a	13.6%
5. Percent Available for NO_X Substitution (%)	n/a	70.9%	63.7%
6. Incremental Milestone Year VOC Shortfall (%)	n/a	13.6%	23.5%
7. Percent Surplus Reduction (%)	n/a	57.3%	40.2%
8. RFP Compliance	n/a	Yes	Yes

[a] Source: Table 6–2 of the Coachella Valley Ozone Plan. Table 4 of this document has been adapted from Table 6–2 to remove adjustments related to use of excess NO_X emissions reductions to address the contingency measures requirements of CAA sections 179(c)(9) and 182(c)(9). Under the EPA's most recent guidance (described in Section IV.G.1 of this document), excess NO_X reductions may not be used for this purpose.
[b] Units are tons per day (summer planning) unless otherwise noted.

CAA section 182(b)(1)(D) prohibits states from taking credit for certain categories of measures in an RFP demonstration. The three categories of non-creditable measures identified in CAA sections 182(b)(1)(D)(iii)-(iv) achieved their reductions many years ago and reductions from these measures would have no effect for the RFP milestones modeled in the Plan.[99] All categories of non-creditable emissions are considered de minimis for the 2008 or 2015 ozone NAAQS (and therefore do not need to be calculated as part of in an RFP demonstration for these standards).[100] While emissions from the category identified in CAA section 182(b)(1)(D)(i) (''any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990'') affect the demonstration for the 1997 8-hour ozone standards, the change in this effect becomes smaller with each successive milestone year. CARB has provided estimates for non-creditable emissions, which are less than 10 percent of the base year inventory. For more information about the correction to the non-creditable reductions in the 2014 SIP Update, including a revised RFP demonstration, see the TSD supporting this proposed rule.

3. Proposed Action on the ROP and RFP Demonstrations

As noted in Section IV.D.1 of this document, the EPA has already approved a 15-percent ROP plan for the Coachella Valley in our prior action on SCAQMD's submittal for the 1997 ozone NAAQS;[101] therefore, we find that the District and CARB have met the ROP requirement for this area.

Based on our review of the emissions inventory documentation in the Coachella Valley Ozone Plan, we find that CARB and the District have used the most recent planning and activity assumptions, emissions models, and methodologies in developing the RFP baseline and milestone year emissions inventories, and that the District and CARB have used an appropriate calculation method to demonstrate RFP. For these reasons, we have determined that the Plan demonstrates RFP in the 2023 attainment year, consistent with applicable CAA requirements and EPA guidance. We therefore propose to approve the Extreme RFP demonstration for the Coachella Valley for the 1997 ozone NAAQS under CAA sections 172(c)(2), 182(b)(1) and 182(c)(2) and 40 CFR 51.1105(a)(1) and 51.1100(o)(4).

E. Vehicle Miles Travelled Offset Demonstration

1. Requirements for a VMT Offset Demonstration

CAA section 182(d)(1)(A) requires a state to submit a revision for each area classified as Severe or above to identify and adopt specific enforceable transportation control strategies (TCSs) and TCMs to offset growth in emissions from growth in VMT or numbers of vehicle trips in such area. CAA section 182(d)(1)(A) also requires the SIP to attain reductions in motor vehicle emissions consistent with RFP demonstrations; and to implement measures as necessary to demonstrate attainment. We refer to CAA section 182(d)(1)(A) as the ''VMT offset requirement.'' The VMT offset requirement is a continuing applicable requirement for the Coachella Valley under the EPA's anti-backsliding rules

requirements for the 1997 ozone standards. 82 FR 26854.

[99] 80 FR 12264, 12274.
[100] 40 CFR 51.1110(a)(7) and 51.1310(a)(7).
[101] 82 FR 26854.

that apply once a standard has been revoked.[102]

In response to the Ninth Circuit Court of Appeals' decision in *Association of Irritated Residents* v. *EPA,*[103] we issued a memorandum titled ''Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled'' (''August 2012 Guidance'').[104] The August 2012 Guidance discusses the meaning of the terms TCSs and TCMs, and recommends that both TCSs and TCMs be included in the emissions calculations made for the purpose of determining the degree to which any hypothetical growth in emissions due to growth in VMT should be offset. Generally, TCS is a broad term that encompasses many types of controls (including, for example, motor vehicle emissions limitations, I/M programs, alternative fuel programs, other technology-based measures, and TCMs) that would fit within the regulatory definition of ''control strategy.'' [105] TCM is defined at 40 CFR 51.100(r) to mean ''any measure that is directed toward reducing emissions of air pollutants from transportation sources,'' including, but not limited to, measures listed in CAA section 108(f), and generally refers to programs intended to reduce the VMT, the number of vehicle trips, or traffic congestion, such as programs for improved public transit, designation of certain lanes for passenger buses and high-occupancy vehicles, trip reduction ordinances, and similar measures.

The August 2012 Guidance also explains how states may demonstrate that the VMT offset requirement is satisfied in conformance with the Court's ruling. In the approach recommended by the August 2012 Guidance, states develop one emission inventory estimate for the base year, and three different emissions inventory scenarios for the attainment year. Two of these scenarios would represent hypothetical emissions scenarios that would provide the basis to identify the ''growth in emissions'' due solely to the growth in VMT, and one that would represent projected actual motor vehicle emissions after fully accounting for projected VMT growth and offsetting emissions reductions obtained by all creditable TCSs and TCMs. The August 2012 Guidance contains specific details on how states might conduct the calculations.

The base year on-road VOC emissions inventory should be based on VMT in that year, and it should reflect all enforceable TCSs and TCMs in place in the base year. This would include vehicle emissions standards, state and local control programs such as I/M programs or fuel rules, and any additional implemented TCSs and TCMs that were already required by or credited in the SIP as of the base year.

The first of the emissions calculations for the attainment year would be based on the projected VMT and trips for that year and assume that no new TCSs or TCMs beyond those already credited in the base year inventory have been put in place since the base year. This calculation demonstrates how emissions would hypothetically change if no new TCSs or TCMs were implemented, and VMT and trips were allowed to grow at the projected rate from the base year. This estimate would show the potential for an increase in emissions due solely to growth in VMT and trips, representing a no action scenario. Emissions in the attainment year in this scenario may be lower than those in the base year due to fleet turnover to lower-emitting vehicles. Emissions may also be higher if VMT and/or vehicle trips are projected to sufficiently increase in the attainment year.

The second of the attainment year emissions calculations would also assume that no new TCSs or TCMs beyond those already credited have been put in place since the base year and would also assume no growth in VMT and trips between the base year and attainment year. Like the no-action attainment year estimate described previously, emissions in the attainment year may be lower than those in the base year due to fleet turnover, but the emissions would not be influenced by any growth in VMT or trips. This emissions estimate, the VMT offset ceiling scenario, would reflect the maximum attainment emissions that should be allowed to occur under the statute as interpreted by the Ninth Circuit because it shows what would happen under a scenario in which no offsetting TCSs or TCMs have yet been put in place and VMT and trips are held constant during the period from the area's base year to its attainment year.

These two hypothetical status quo estimates are necessary steps in identifying target emission levels. Comparison of the first two attainment year calculations would identify whether there was a hypothetical growth in emissions due to growth in VMT that needs to be offset, and as a result whether further TCMs or TCSs beyond those that have been adopted and implemented are needed.

The third calculation incorporates the emissions that are actually expected to occur in the area's attainment year after taking into account reductions from all enforceable TCSs and TCMs that were put in place after the baseline year. This estimate would be based on the VMT and trip levels expected to occur in the attainment year (*i.e.,* the VMT and trip levels from the first estimate) and all of the TCSs and TCMs expected to be in place and for which the SIP will take credit in the area's attainment year, including any TCMs and TCSs put in place since the base year. This represents the projected actual (attainment year) scenario. If this emissions estimate is less than or equal to the emissions ceiling that was established in the second of the attainment year calculations, the TCSs or TCMs for the attainment year would be sufficient to fully offset the hypothetical growth in emissions identified by comparison of the first two attainment year calculations.

If the projected actual attainment year emissions are greater than the VMT offset ceiling established in the second of the attainment year emissions calculations even after accounting for post-baseline year TCSs and TCMs, the state would need to adopt and implement additional TCSs or TCMs. To meet the VMT emissions offset requirement of section 182(d)(1)(A) as interpreted by the Ninth Circuit, the additional TCSs or TCMs would need to offset the growth in emissions and bring the actual emissions down to at least the same level as the attainment year VMT offset ceiling estimate in the second attainment year calculation.

2. The Coachella Valley VMT Offset Demonstration

The VMT Offset Demonstration uses EMFAC2017 to estimates on-road emissions. EMFAC2017 was the latest EPA-approved motor vehicle emissions model for California available at the time the VMT Offset Demonstration was prepared.[106] The EMFAC2017 results,

[102] 40 CFR 40 CFR 51.1105(a)(1) and 51.1100(o)(10).

[103] 632 F.3d. 584, 596–597 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (ruling additional TCMs are required whenever vehicle emissions are projected to be higher than they would have been had VMT not increased, even when aggregate vehicle emissions are actually decreasing).

[104] EPA, Office of Transportation and Air Quality, ''Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled,'' EPA–420–B–12–053, August 2012.

[105] See, *e.g.,* 40 CFR 51.100(n).

[106] The EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State and local governments to meet CAA requirements at that

however, were adjusted based on a sensitivity analysis using older previously approved EMFAC models, EMFAC2011 and EMFAC2014. As the VMT Offset Demonstration explains, several post-2002 emissions control measures are factored into EMFAC2017 and cannot be removed. To correct this, the VMT Offset Demonstration included the results of a sensitivity analysis to determine the emissions reductions associated with CARB's Advanced Clean Cars I program [107] and the Truck and Bus Regulations [108] with EMFAC2014, and the additional stringency of CARB's I/M programs [109] calculated using EMFAC2011.[110]

All of the EMFAC models calculate emissions from two combustion processes (*i.e.,* running exhaust and start exhaust) and four evaporative processes (*i.e.,* hot soak, running losses, diurnal losses, and resting losses). The models combine trip-based VMT data and speed distribution from the 2016–2040 RTP/SCS, along with vehicle data from the California Department of Motor Vehicles and the corresponding emission rates to calculate emissions.

Emissions from running exhaust, start exhaust, hot soak, and running losses are a function of how much a vehicle is driven. As such, emissions from these processes are directly related to VMT and vehicle trips, and the State included emissions from them in the calculations that provide the basis for the revised Coachella Valley VMT Offset Demonstration.[111] Resting and diurnal losses occur independently of vehicle activity were and not considered in the demonstration.[112]

The VMT Offset Demonstration also includes the previously described three attainment year scenarios (*i.e.,* no new measures; no VMT Growth or VMT offset ceiling; and projected actual) for 2023. Table 5 summarizes the emissions estimates for the base year and the three scenarios.

TABLE 5—VMT OFFSET INVENTORY SCENARIOS AND RESULTS FOR THE 1997 8-HOUR OZONE STANDARDS [a]

Scenario	VMT		Controls	VOC Emissions
	Year	1000 miles/day	Year	tpd
Base Year	2002	11,091	2002	8.5
No New Measures	2023	14,508	2002	2.8
No New Measures and No VMT Growth (VMT Offset Ceiling)	2002	11,091	2002	2.0
Projected Actual	2023	14,508	2018	1.9

[a] Source: Coachella Valley VMT Offset Demonstration, Table 1.

For the base year scenario, CARB ran the EMFAC2017 model for the 2002 RFP base year using VMT and starts data corresponding to those years. For the no new measures scenario, CARB estimated 2023 on-road vehicle emissions using EMFAC2017, considering the estimated increase in VMT,[113] but adding 0.33 tpd to account for the additional reductions associated with the Advanced Clean Cars I program, Truck and Bus Regulation, and I/M programs that are not creditable reductions in these calculations. Likewise, CARB added 0.25 tpd to the VMT offset ceiling to account for the same factors.

For the VMT offset ceiling scenario, the State ran the EMFAC2011 model for the attainment year but with VMT and starts data corresponding to base year values. Like the no action scenario, the EMFAC2011 model was adjusted to reflect VOC emissions levels in the attainment year without the benefits of the on-road motor vehicle control programs implemented after the base year. Thus, the VMT offset ceiling scenario reflects hypothetical VOC emissions if the State had not put in place any TCSs or TCMs after the base year and if there had been no growth in VMT or vehicle trips between the base year and the attainment year. As shown in Table 5, CARB estimates VMT offset ceiling VOC emissions to be 2.0 tpd in 2023.

The hypothetical growth in emissions due to growth in VMT and trips can be determined from the difference between the VOC emissions estimates under the no action scenario and the corresponding estimate for the VMT offset ceiling scenario. Based on the values in Table 5, the hypothetical growth in emissions due to growth in VMT and trips in the Coachella Valley would have been 0.8 tpd (*i.e.,* 2.8 tpd minus 2.0 tpd). This hypothetical difference establishes the level of emissions caused by growth in VMT that need to be offset by the combination of post-baseline year TCMs and TCSs and any necessary additional TCMs and TCSs.

For the projected actual scenario calculation, the State included the emissions benefits from TCSs and TCMs put in place since the base year.[114] In addition to the measures already discussed, a full list of CARB mobile source regulations from 1990 through the Plan's development appears in Attachment A–1 of the VMT Offset Demonstration. While some of these measures were adopted prior to 2002, all or part of their implementation occurred after 2002. CARB determined the area complied with the VMT Offset Demonstration because actual emissions did not exceed the VMT offset ceiling scenario calculation, in accordance with EPA guidance.[115]

3. The EPA's Evaluation of the VMT Offset Demonstration

CARB's VMT Offset Demonstration uses a 2002 RFP base year. This is the same year used for the Coachella Valley

time, in a rulemaking published at 84 FR 41717 (August 15, 2019).

[107] The EPA approved the Advanced Clean Car program in the California SIP on June 16, 2016 (81 FR 39424).

[108] The EPA approved the Truck and Bus Rule into the California SIP on April 4, 2012 (77 FR 20308).

[109] The EPA approved California's I/M program into the California SIP on July 1, 2010 (75 FR 38023).

[110] Two other control programs started after 2002, the Heavy-Duty Greenhouse Gas Regulation and Low Carbon Fuel Standard, have no impact on VOC emissions. VMT Offset Demonstration, p. 9, n. 9.

[111] VMT Offset Demonstration, p. 2.

[112] This fact is noted in several locations of the VMT Offset Demonstration, *e.g.,* p. 10.

[113] This estimate included an additional 0.33 tpd based on the sensitivity analysis conducted with the EMFAC2011 and EMFAC2014 models to account for the EMFAC reductions for CARB's Advanced Clean Cars I program, Truck and Bus Regulation, and I/M programs.

[114] As described in Section IV.B.2.c of this document, the TCMs are focused in the South Coast Air Basin, which heavily influences air quality in the Coachella Valley due to the downwind transport.

[115] EPA, Office of Transportation and Air Quality, ''Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled,'' EPA–420–B–12–053, August 2012.

Severe area VMT offset demonstration for the 1997 ozone NAAQS,[116] it corresponds to the Plan's baseline year for the RFP emissions inventory, and we find it appropriate for this demonstration.[117] Further, we find CARB's methodology incorporating sensitivity analysis to adjust for the periodic change in emissions control measures and the omission of resting and diurnal emissions appropriate.

As shown in Table 5, the VMT Offset Demonstration projects actual 2023 attainment-year VOC emissions of 1.9 tpd in the Coachella Valley, which is less than the VMT offset ceiling scenario value of 2.0 tpd. Therefore, the VMT Offset Demonstration shows that existing measures are sufficient to offset the increase due solely to VMT and additional trips, consistent with the methodology in the EPA's August 2012 Guidance, and that no new TCMs or TCSs are required for the area. We are proposing to approve the VMT Offset Demonstration.

F. Clean Fuels or Advanced Control Technology for Boilers

1. Statutory and Regulatory Requirements

Section 182(e)(3) of the CAA provides that SIPs for Extreme nonattainment areas require each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tpy of NO_X to either burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low-polluting fuel), or use advanced control technology, such as catalytic control technologies or other comparably effective control methods.

Additional guidance on this requirement is provided in the General Preamble.[118] In the General Preamble, the EPA states that, for the purposes of CAA section 182(a)(3), a boiler should generally be considered as any combustion equipment used to produce steam and generally does not include a process heater that transfers heat from combustion gases to process streams.[119] In addition, boilers with rated heat inputs less than 15 million British thermal units (MMBtu) per hour that are oil- or gas-fired may generally be considered de minimis and exempt from these requirements because it is unlikely that they will exceed the 25 tpy NO_X emission limit.[120]

2. Summary of the State's Submission

The Coachella Valley Ozone Plan discusses compliance with the requirements of CAA section 182(e)(3) by reference to SCAQMD Rules 1146 (''Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters'') and 1135 (''Emissions of Oxides of Nitrogen from Electricity Generating Facilities'').[121] These rules require the best available retrofit control technology (BARCT) for existing boilers. New or modified sources with emissions increases are subject to California best available control technology (BACT) requirements, which are comparable to the federal lowest achievable emissions rate (LAER) requirements for major sources as defined in CAA section 171(3). Accordingly, the Plan concludes that no additional action is needed to satisfy the CAA section 182(e)(3) requirement for the Coachella Valley's reclassification to Extreme.

3. The EPA's Review of the State's Submission

In our previous evaluation of the 2016 AQMP, which includes a similar documentation of compliance with CAA 182(e)(3), we determined that SCAQMD Rules 1303, 1146, and 2004 satisfy the clean fuel or advanced control technology for boilers requirement in CAA section 182(e)(3) for the South Coast Air Basin.[122] For similar reasons, we find that the requirements for new, modified, and existing boilers in approved SCAQMD Rules 1303, 1146, and 2004 satisfy the clean fuel or advanced control technology for boilers requirement in CAA section 182(e)(3), and based on this finding, we propose to find the State has demonstrated that these requirements are met for the Coachella Valley for the 1997 ozone NAAQS.

G. Other CAA Requirements

1. Contingency Measures

Under the CAA, ozone nonattainment areas classified under subpart 2 as Serious or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). CAA section 172(c)(9) requires states with nonattainment areas to provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the NAAQS by the applicable attainment date. Such measures must be included in the SIP as contingency measures to take effect in any such case without further action by the state or the EPA. CAA section 182(c)(9) requires states to provide contingency measures in the event that an ozone nonattainment area fails to meet any applicable RFP milestone. Contingency measures are additional controls or measures to be implemented in the event an area fails to make RFP or to attain the NAAQS by the attainment date.

In March 2023, the EPA announced a new draft guidance addressing the contingency measures requirement of section 172(c)(9), entitled ''DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter,'' and provided an opportunity for public comment.[123] The principal differences between this draft revised guidance and previous existing guidance on contingency measures relate to the EPA's recommendations concerning the specific amount of emissions reductions that implementation of contingency measures should achieve, and the timing for when the emissions reductions from the contingency measures should occur.

The Plan explains that the District intends to amend SCAQMD Rule 445, ''Wood Burning Devices,'' to include potential contingency provisions for Coachella Valley for the 1997 8-hour ozone standards.[124] To date, the EPA has not received a submittal to address the 1997 ozone contingency measures requirements of CAA sections 172(c)(9) and 182(c)(9) for the Coachella Valley. The EPA is not proposing action on the Coachella Valley contingency measures requirement for the 1997 ozone NAAQS in this rulemaking.

2. CAA Section 185 Fees

Under sections 182(d)(3), (e), and (f) and 185 of the Act, states with ozone nonattainment areas classified as Severe or Extreme are required to submit a revision to the SIP that would require major stationary sources of VOC or NO_X to pay a fee upon a failure to attain by the applicable attainment date. Under CAA section 185, this fee is calculated as $5,000 in 1990 dollars, adjusted for inflation, for every ton emitted by the source during the calendar year in excess of 80 percent of the source's

[116] 81 FR 75764, 75779.

[117] The 2002 RFP base year is also consistent with the approach described in the 1997 Ozone Implementation Rule—Phase 2. See 70 FR 71612, 71632.

[118] 57 FR 13498, 13523.

[119] 57 FR 13498, 13523.

[120] Id at 13524.

[121] Coachella Valley Ozone Plan, p. 6–31.

[122] 84 FR 28132, 28164.

[123] 88 FR 17571 (March 23, 2023).

[124] Coachella Valley Ozone Plan p. 6–30.

actual emissions in the applicable attainment year.[125]

While the EPA has approved SCAQMD Rule 317 into the SIP for the 1-hour ozone standards, the SCAQMD has not submitted a rule to address the requirement of CAA section 185 for the 1997 8-hour ozone standards. We are aware, however, that the SCAQMD is working to create to a rule to address this requirement, SCAQMD Rule 317.1, ''Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards.'' The SCAQMD has prepared a draft rule and held a workshop to discuss it on November 7, 2023.[126] The EPA is not proposing action on the CAA Section 185 fee requirement for the 1997 ozone NAAQS in this rulemaking.

3. New Source Review Rules

Section 182(a)(2)(C) of the CAA requires states to develop SIP revisions containing permit programs for each ozone nonattainment area. These SIP revisions must include requirements for permits in accordance with CAA sections 172(c)(5) and 173 for the construction and operation of each new or modified major stationary source for VOC and NO_X anywhere in the nonattainment area.[127] In addition, CAA section 182(e)(1) requires the permitting offset ratios for volatile organic compound and NO_X for major sources and modifications in an Extreme nonattainment area to be at least 1.5 to 1, or at least 1.2 to 1 if the plan requires all existing major sources in the nonattainment area to use the best available control technology. SCAQMD Rule 1302, ''Definitions,'' and Rule 2000, ''General'' (part of the RECLAIM regulations), have been submitted to address these requirements.[128] The EPA has not yet acted on this submittal.

4. Clean Fuels for Fleets

Section 182(c)(4)(A) of the CAA requires states to submit SIP revisions to implement the clean-fuel vehicle program for fleets described at CAA section 246 (''Clean Fuels Fleet Program'') in each ozone nonattainment area classified as Serious and above. Section 182(c)(4)(B) of the CAA allows states to opt out of the federal Clean Fuels Fleet Program by submitting a SIP revision consisting of a program or programs that will result in at least equivalent long-term reductions in ozone precursors and toxic air emissions.

In 1994, CARB submitted a SIP revision to the EPA to opt out of the Clean Fuels Fleet Program. The submittal included a demonstration that California's low-emissions vehicle program achieved emissions reductions at least as large as would be achieved by the federal program. The EPA approved the SIP revision to opt-out of the federal program on August 27, 1999.[129]

Recent EPA guidance for the 2008 and 2015 ozone standards[130] identifies several methods to demonstrate compliance with the Clean Fuels Fleet Program requirement. Among them, a state may submit a certification SIP revision if it has ''an approved [Clean Fuels Fleet Program] or substitute measure(s) that it is continuing to implement, and the state does not plan to make any changes to the program or substitute measure(s).''[131] Consistent with this guidance, the EPA approved the ''California Clean Fuels for Fleets Certification for the 70 ppb (2015) Ozone Standard,'' which included Coachella Valley, in a final rule dated May 25, 2023.[132] However, because the Plan does not contain a certification for the 1997 ozone standards, the EPA is taking no action regarding this requirement as part of this action.

5. Enhanced Monitoring

Section 182(c)(1) of the CAA requires that all ozone nonattainment areas classified as Serious or above implement measures to enhance and improve monitoring for ambient concentrations of ozone, NO_X, and VOC, and to improve monitoring of emissions of NO_X and VOC. The enhanced monitoring network for ozone is referred to as the photochemical assessment monitoring station (PAMS) network. The EPA promulgated final PAMS regulations on February 12, 1993.[133]

On November 10, 1993, CARB submitted to the EPA a SIP revision addressing the PAMS network for six ozone nonattainment areas in California, including the Southeast Desert, to meet the enhanced monitoring requirements of CAA section 182(c)(1) and the PAMS regulations.[134] The EPA determined that the PAMS SIP revision met all applicable requirements for enhanced monitoring and approved the PAMS submittal into the California SIP.[135]

Appendix B, ''Enhanced Ozone Monitoring Plan,'' of the District's Five-Year Monitoring Network Assessment, dated June 1, 2020, describes the District's plan to address the requirements of section 182(c)(1).[136] The EPA has approved the District's review, including the Enhanced Ozone Monitoring Plan in a letter dated October 28, 2020.[137]

Prior to 2006, the EPA's ambient air monitoring regulations in 40 CFR part 58 (''Ambient Air Quality Surveillance'') set forth specific SIP requirements (see former 40 CFR 52.20). In 2006, the EPA significantly revised and reorganized 40 CFR part 58.[138] Under revised 40 CFR part 58, SIP revisions are no longer required; rather, compliance with EPA monitoring regulations is established through review of required annual monitoring network plans.[139] Therefore, based on our review and approval of the 2020 Five-Year Network Monitoring Assessment we find the District has adequately addressed the enhanced monitoring requirements under CAA section 182(c)(1) for the Coachella Valley.

6. Enhanced Vehicle Inspection and Maintenance Programs

Section 182(c)(3) of the CAA requires states with ozone nonattainment areas classified as Serious or above to implement an enhanced motor vehicle inspection and maintenance program in those areas. The requirements for those programs are provided in CAA section 182(c)(3) and 40 CFR part 51, subpart S. The EPA approved the State of California's SIP revision addressing this requirement in a final rule dated July 1, 2010.[140]

V. Environmental Justice Considerations

We expect that this proposed action, if approved, will generally be neutral or contribute to a reduction in adverse environmental and health impacts on all

[125] CAA section 185(a) and (b).

[126] *https://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/proposed-rules/rule-317-and-317-1.*

[127] See also CAA section 182(e).

[128] Letter dated February 12, 2021, from Richard W. Corey, CARB, to Deborah Jordan, EPA Region IX (submitted electronically on February 12, 2021).

[129] 64 FR 46849 (August 27, 1999).

[130] EPA, Office of Transportation and Air Quality, ''Guidance for Fulfilling the Clean Fuel Fleets Requirement of the Clean Air Act,'' EPA–420–B–22–027, June 2022.

[131] Id. at 8.

[132] 88 FR 33830.

[133] 58 FR 8452 (February 12, 1993).

[134] In the designation of the 1997 ozone NAAQS nonattainment areas, the Southeast Desert was split into the Los Angeles and San Bernardino (Western Mojave Desert) and Coachella Valley Nonattainment Areas.

[135] 82 FR 45191 (September 28, 2017).

[136] Letter dated June 26, 2020, from Rene Bermudez, SCAQMD, to Jennifer Williams, EPA Region IX, transmitting the District's Five-Year Monitoring Network Assessment.

[137] Letter dated October 28, 2020, from Gwen Yoshimura, EPA Region IX, to Matt Miyasato, SCAQMD.

[138] 71 FR 61236 (October 17, 2006).

[139] 40 CFR 58.2(b) now provides ''The requirements pertaining to provisions for an air quality surveillance system in the SIP are contained in this part.''

[140] 75 FR 38023.

populations in the Coachella Valley, including people of color and low-income populations in the area. At a minimum, the approved action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people. In responding to public concerns about environmental justice in eastern Coachella Valley, the Plan notes that (1) Assembly Bill 617 funding has reduced pollutant emissions in Eastern Coachella Valley by 63.1 tpy of NO_X, 7.5 tpy of VOC, and 5.3 tpy of diesel particulate matter,[141] and (2) the SCAQMD has provided $966,667 in energy efficiency upgrades, reducing energy costs for homes within designated environmental justice areas of Indio and Eastern Coachella Valley.[142] The 2016 AQMP also identifies an Environmental Justice Advisory Group established to ''advise and assist SCAQMD in protecting and improving public health in SCAQMD's most impacted communities through the reduction and prevention of air pollution.'' [143]

VI. The EPA's Proposed Action and Public Comment

For the reasons discussed in this document, the EPA is proposing to approve the California's SIP submittal for the Coachella Valley addressing the Extreme nonattainment areas for the 1997 ozone NAAQS. The EPA is proposing to approve the following elements of SCAQMD's ''Final Coachella Valley Extreme Area Plan for 1997 8 Hour Ozone Standard,'' dated December 2020, under CAA section 110(k)(3):

1. The RACM demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1105(a)(1) and 51.1100(o)(17);

2. The ROP and RFP demonstrations as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.1105(a)(1) and 51.1100(o)(4); and

3. The attainment demonstration as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1105(a)(1) and 51.1100(o)(12).

The EPA is also proposing to approve CARB's ''2020 Coachella Valley Vehicle Miles Traveled Emissions Offset Demonstration,'' release date January 22, 2022. The demonstration provides for transportation control strategies and measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips, and to provide for RFP and attainment, as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1105(a)(1) and 51.1100(o)(10). Additionally, we are proposing to find that the State has satisfied the clean fuel or advanced control technology for boilers requirement in CAA section 182(e)(3) for the Coachella Valley for the 1997 ozone NAAQS. The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this action for the next 30 days. We will consider these comments before taking final action.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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), 13563 (76 FR 3821, January 21, 2011) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Furthermore, 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 State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. However, as described in Section IV of this document, the District has taken measures to address environmental justice concerns within the Coachella Valley. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of this proposed action, if finalized, this action is expected to have

[141] Coachella Valley Ozone Plan, p. 9–8. SCAQMD's website identifies Assembly Bill 617 Community Air Initiatives as ''community based efforts that focus on improving air quality and public health in environmental justice communities.'' See *http://www.aqmd.gov/nav/about/initiatives/environmental-justice/ab617-134.*

[142] Id.

[143] 2016 AQMP p. 9–7.

a neutral to positive impact on the air quality of Coachella Valley. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898, to achieve environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 9, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–08121 Filed 4–15–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0408; FRL–7821–02–OAR]

RIN 2060–AU78

Petition To Remove the Stationary Combustion Turbines Source Category From the List of Categories of Major Sources of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of denial of petition to delist.

SUMMARY: The U.S Environmental Protection Agency (EPA) is announcing the Agency's decision to deny a petition requesting the removal of the Stationary Combustion Turbines source category from the list of categories of major sources of hazardous air pollutants (HAP) subject to regulation the Clean Air Act (CAA). The petition was submitted jointly by American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the American Public Power Association, the Gas Turbine Association, the Interstate Natural Gas Association of America, and the National Rural Electric Cooperative Association (''the petitioners''). The EPA is denying the petition based on the EPA's determination that the petition is incomplete and because we have found that the submitted information is inadequate to determine that no source in the category emits HAP in quantities that may cause a lifetime risk of cancer greater than 1-in-1 million to the individual in the population who is most exposed to emissions of such pollutants from the source. We have reached this decision based on review of the risk analysis and other information submitted by petitioners and on consideration of turbine testing results received from a CAA information request. The EPA is denying the petition with prejudice and will deny any future petition to delist as a matter of law unless such future petition is accompanied by substantial new information or analysis.

DATES: Petitions for judicial review of this action must be filed June 17, 2024. See **SUPPLEMENTARY INFORMATION** for filing information.

ADDRESSES: In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature, the EPA will post a copy of this action at *https://www.epa.gov/stationary-sources-air-pollution/stationary-combustion-turbines-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of this action at this same website.

FOR FURTHER INFORMATION CONTACT: For questions about this action contact Ms. Angela M. Ortega, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4197; and email address: *ortega.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2020–0408.[1] All documents in the docket are listed in *https://www.regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *https://www.regulations.gov.*

Judicial review. Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the Agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion to decide whether to invoke the exception in (ii).[2]

This final action is ''nationally applicable'' within the meaning of CAA section 307(b)(1). In this final action, the Administrator is denying a petition to delist the entire Stationary Combustion Turbines source category under CAA section 112(c)(9)(B). This action results in the continued applicability of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Combustion Turbines to all turbines meeting the rule's applicability criteria located in any state in the nation. For these reasons, this final action is nationally applicable.

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 District of Columbia Circuit within 60 days from April 16, 2024. Filing a petition for reconsideration of this final action by the Administrator 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 must be filed and shall not postpone the effectiveness of such rule or action.

Under CAA section 307(b)(2) (42 U.S.C. 7607(b)(2)), the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

[1] As explained in a memorandum to the docket, the docket for this action includes the documents and information in Docket ID Nos. EPA–HQ–OAR–2017–0688 (Stationary Combustion Turbines NESHAP Risk and Technology Review), EPA–HQ–OAR–2003–0196 (Proposal to stay the enforcement of the combustion turbines National Emission Standards Hazardous Air Pollutants for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories), EPA–HQ–OAR–2003–0189 (Proposal to delist four subcategories from the Stationary Combustion Turbines source category), and EPA–HQ–OAR–2002–0060 (National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines).

[2] *Sierra Club* v. *EPA,* 47 F.4th 738, 745 (D.C. Cir. 2022) (''EPA's decision whether to make and publish a finding of nationwide scope or effect is committed to the agency's discretion and thus is unreviewable''); *Texas* v. *EPA,* 983 F.3d 826, 834–35 (5th Cir. 2020).

Organization of this document. The information in this preamble is organized as follows:

I. General Information

The EPA has received, has reviewed, and is now denying a petition that requests the removal of a source category from the list of major source categories of HAP, under CAA section 112. In section I.A., we summarize the action we are taking today. In section I.B., we provide information about the NESHAP program set forth in CAA section 112 and the regulatory history and information for the source category at issue. In section II., we discuss the delisting criteria outlined in the CAA and the Agency's process for delisting a source category. Section III. discusses the EPA's residual risk review methodologies and findings in the 2020 Stationary Combustion Turbines NESHAP Risk and Technology Review (2020 RTR) as well as the CAA section 114 information request that the EPA issued subsequent to the 2020 RTR. Section IV. presents the details of the petition to delist and the Agency's technical evaluation of the petition. Finally, in section V., we discuss the EPA's response to the petition.

A. What action is the EPA taking?

This action presents the Agency's decision to deny a petition requesting the removal of the Stationary Combustion Turbines source category from the list of categories of major sources of HAP subject to regulation under CAA section 112. The petition was submitted jointly by American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the American Public Power Association, the Gas Turbine Association, the Interstate Natural Gas Association of America, and the National Rural Electric Cooperative Association (''the petitioners'').

The EPA's decision is governed by CAA section 112(c)(9), which provides the EPA's discretionary authority to delist source categories and specifies the health risk criteria that must be met for a source category to be delisted. These criteria require the EPA to determine that no source in the category emits HAP in quantities which may cause a lifetime risk of cancer greater than 1-in-1 million to the individual in the population who is most exposed to emissions of such pollutants from the source and that HAP emissions from such source category would not result in adverse effects to human health or the environment before delisting a source category.

The EPA is denying the petition based on the EPA's determination that the petition is incomplete and because the petitioners did not present adequate information and analyses for each of the necessary subject areas, under CAA section 112(c)(9)(B). After receipt of the initial petition and the first supplement, the EPA requested that the petitioners provide information and data to support the stationary combustion turbine emission estimates provided by the petitioners; the requested information was not provided. As an additional and separate independent basis for the denial of the petition, the EPA has determined that the petitioners' requested conclusions are not supported by the evidence. The EPA is denying the petition with prejudice and will deny any future petition to delist as a matter of law unless such future petition is accompanied by substantial new information or analysis.

B. Background Information

In this section, the EPA provides a brief overview of HAP regulation under CAA section 112, the regulatory history of the Stationary Combustion Turbines source category, information about the source category and its HAP emissions, and information about delisting petitions concerning this source category.

1. HAP Regulation Under CAA Section 112

CAA section 112 establishes the framework for regulation of HAP. CAA section 112(c)(1) requires the EPA to publish a list of both categories and subcategories of major and area sources of HAP. A source category on the list is required to meet the specifically defined emission standards that depend on the HAP emitted and whether a source is a major source or an area source. Major sources of HAP are those stationary sources or group of stationary sources under common control (*e.g.,* facilities) that emit or that have the potential to emit 10 tons per year or more of any specific HAP or 25 tons per year or more of any combination of HAP. An area source is any source of HAP that is not a major source. CAA section 112(c)(2) further requires the EPA to promulgate standards under CAA section 112(d) for all listed source categories according to the schedule specified in CAA section 112(e). CAA section 112(d)(6) requires the EPA to review these standards and revise them as necessary, with consideration of developments in practices, processes, and control technologies, every 8 years (the ''technology review''), and CAA section 112(f)(2) requires the EPA to assess the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review'' (RTR).

2. Regulatory History of and Information About the Stationary Combustion Turbines Source Category

On July 16, 1992, the EPA published the initial list of source categories, which included the Stationary Turbines source category (57 FR 31576). This source category was subsequently renamed the Stationary Combustion Turbines source category (64 FR 63025; November 18, 1999). CAA section 112(c)(2) further requires the EPA to promulgate standards under CAA section 112(d) for all listed source categories according to the schedule specified in CAA section 112(e). The EPA promulgated the NESHAP for Stationary Combustion Turbines on March 5, 2004 (69 FR 10512). The standards are codified at 40 CFR part 63, subpart YYYY and apply to stationary combustion turbines at major sources of HAP. There are no requirements under 40 CFR part 63, subpart YYYY for stationary combustion turbines located at area sources. The RTR for the Stationary Combustion Turbines NESHAP was proposed on April 12, 2019 (84 FR 15046) and finalized on March 9, 2020 (85 FR 13524).[3]

The Stationary Combustion Turbines source category covered by the NESHAP

[3] The EPA readopted the existing standards under CAA section 112(f)(2) (85 FR 13530).

includes approximately 1,015 turbines at 310 facilities.[4] Within the Stationary Combustion Turbines source category are the following eight subcategories: lean premix gas-fired turbines, lean premix oil-fired turbines, diffusion flame gas-fired turbines, diffusion flame oil-fired turbines, turbines which burn landfill or digester gas or gasified municipal solid waste, turbines of less than 1 megawatt (MW) rated peak power output, emergency turbines, and turbines operated on the North Slope of Alaska. Stationary combustion turbines are typically located at power plants, compressor stations, landfills, and industrial facilities such as chemical plants. These turbines are generally operated using natural gas, distillate oil, landfill gas, jet fuel, or process gas.

Emissions of HAP in the exhaust gases of turbines are the result of combustion of the gaseous and liquid fuels. The HAP present in these exhaust gases include formaldehyde, toluene, benzene, acetaldehyde, and metallic HAP (*e.g.,* cadmium, chromium, manganese, lead, and nickel). Of these HAP, benzene, nickel subsulfide, and hexavalent chromium are classified as known human carcinogens, and formaldehyde, acetaldehyde, lead, nickel carbonyl, and cadmium are classified as probable human carcinogens. Exposure to the various HAP emitted by stationary combustion turbines is associated with a variety of adverse health effects. These adverse health effects include chronic (long-term) health disorders (*e.g.,* effects on the central nervous system, damage to the kidneys, and irritation of the lung, skin, and mucus membranes); and acute health disorders (*e.g.,* effects on the kidney and central nervous system, alimentary effects such as nausea and vomiting, and lung irritation and congestion).

Mercury has been measured in the exhaust gas from landfill gas-fired turbines. Gaseous mercury emitted into the air eventually can be deposited into soil and water bodies, where microorganisms can convert it into methylmercury, a highly toxic form of mercury that bio-accumulates in fish tissue and in other aquatic creatures. People are primarily exposed to mercury by consuming contaminated fish. Methylmercury exposure is a particular concern for people of childbearing age, developing fetuses, and young children, because studies have linked exposure to high levels of methylmercury to damage to the developing nervous system. Children exposed to methylmercury while they are in the womb can have negative impacts to their cognitive thinking, memory, attention, language, fine motor skills, and visual spatial skills. Animals can absorb mercury through water, air, and soil or from eating certain plants. Mercury can harm an animal's ability to reproduce and to care for their young.

3. Delisting Petitions Concerning the Stationary Combustion Turbines Source Category

During the 2004 Stationary Combustion Turbines NESHAP rulemaking, the EPA received a petition from the Gas Turbine Association to delist two subcategories of stationary combustion turbines under CAA section 112(c)(9).[5] The petitioners requested the EPA to create and delist two subcategories—lean premix turbines firing natural gas with limited oil backup and a low-risk subcategory where facilities would make site-specific demonstrations regarding risk levels. On April 7, 2004, the EPA proposed to delist the following four subcategories: lean premix gas-fired turbines, diffusion flame gas-fired turbines, emergency turbines, and turbines located on the North Slope of Alaska (69 FR 18327). At the same time, the EPA proposed to stay the effectiveness of the NESHAP for new lean premix gas-fired and diffusion flame gas-fired turbines (69 FR 18338). On August 18, 2004, the EPA finalized the administrative stay of the effectiveness of the NESHAP for new lean premix gas-fired and diffusion flame gas-fired turbines, pending the outcome of the proposed subcategory delisting (69 FR 51184). The proposal to delist the four subcategories was never finalized in light of the 2007 decision in *Natural Resources Defense Council* v. *EPA,* 489 F.3d 1364 (D.C. Cir. 2007), which addressed limits on the EPA's ability to delist subcategories. This court decision is discussed in more detail in section II.A.

On August 28, 2019, the EPA received the petition being acted on here, which seeks to remove the Stationary Combustion Turbines source category from the list of categories of major sources under CAA section 112. The petitioners submitted a supplement to the source category delisting petition on November 21, 2019; a second supplement to the source category delisting petition on December 2, 2020; and a revised version of the second supplement to the delisting petition on March 15, 2021. The EPA has fully considered all the petitioners' submissions in this final decision to deny the petition. Delisting of the Stationary Combustion Turbines source category from the list of major sources would result in removal of the regulatory requirements specified in the NESHAP for Stationary Combustion Turbines in 40 CFR 63.6080–6175 of 40 CFR part 63, subpart YYYY.

II. Treatment of Petitions To Delist a Source Category From Regulation Under CAA Section 112

In this section, the EPA sets out the specific criteria under the CAA that apply for removing a source category from the list of source categories. CAA section 112(c)(9)(B) specifies certain criteria that must be satisfied in order for the EPA to grant a petition to remove a source category from the list of source categories regulated for HAP emissions. The EPA's consideration of petitions to delist is bound by these criteria and informed by prior court decisions interpreting this provision of the CAA.

A. What is a source category delisting petition and what are the criteria for delisting a source category?

A source category delisting petition is a formal request to the EPA from an individual or group to remove a specific source category from the CAA section 112 list of categories of major sources and area sources under CAA section 112(c)(9)(B). The Administrator must grant or deny such a petition to delete a source category within 1 year after a petition is filed and is determined to be complete.[6] See CAA section 112(c)(9)(B). Delisting of a source category would result in the removal of applicable regulatory requirements under CAA section 112 for such source category. CAA section 112(c)(9)(B) contains the discretionary authority to delist a source category and provides in relevant part: ''The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable: [. . .].''

CAA section 112(c)(9)(B) further specifies three criteria for deletion of a source category from the list. The first criterion is specific to carcinogenic HAP and is specified in CAA section 112(c)(9)(B)(i). The criterion states that, in the case of HAP emitted by sources in the category that may result in cancer

[4] Turbine NESHAP Unit List—Updated October 2023. Docket ID No. EPA–HQ–OAR–2020–0408.

[5] Petition to Delist Two Subcategories of Combustion Turbines. Docket ID No. EPA–HQ–OAR–2003–0189–0014.

[6] As stated previously, the EPA has determined that the current petition to delist the Stationary Combustion Turbines source category is not complete.

in humans, a determination must be made that ''no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).''

The second criterion is specific to non-carcinogenic HAP and the third criterion is specific to environmental effects. These criteria are specified in CAA section 112(c)(9)(B)(ii). In the case of HAP that may result in adverse health effects in humans other than cancer or adverse environmental effects, the second criterion states that a determination must be made that ''emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety'' and the third criterion states that a determination must be made that ''no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).''

Further, to assist the EPA in making judgments about whether a pollutant causes adverse environmental effects, CAA section 112(a)(7) defines an ''adverse environmental effect'' as ''[A]ny significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

For source categories that emit carcinogenic HAP, CAA section 112(c)(9)(B)(i) sets a lifetime cancer risk threshold for delisting of 1-in-1 million. This level differs from the acceptable risk determination used in other rulemakings under CAA section 112. For instance, for standards promulgated under CAA section 112(f)(2), an excess lifetime cancer risk to the most exposed individual of 100-in-1 million is ordinarily the upper bound of acceptability. This level was established in the Benzene NESHAP (54 FR 38044; September 14, 1989) and was incorporated into the 1990 CAA Amendments in CAA section 112(f)(2)(B).[7]

When considering delisting decisions under CAA section 112(c)(9)(B), the EPA construes this provision as calling for a high level of confidence before a determination can be made that the criteria for delisting are satisfied. For example, for purposes of deleting the non-mercury cell chlorine production subcategory under CAA section 112(c)(9)(B)(ii), the EPA ''obtained chlorine and HCl emission estimates from every known major source facility in the non-mercury cell chlorine production subcategory using our authority under section 114 of the CAA and conducted risk assessments for each facility.''[8]

For source categories that emit HAP that may result in adverse health effects (non-cancer risks), CAA section 112(c)(9)(B)(ii) requires HAP emissions to be below a level providing an ample margin of safety. In the context of a source category delisting and CAA section 112(c)(9)(B)(ii), the EPA interprets an ''ample margin of safety'' as such that the chronic and acute concentrations that a person may be exposed to should be less than the concentrations that may elicit an adverse non-cancer health effect (*i.e.,* each of the ratios should be less than one). This interpretation has been applied in a prior subcategory delisting action under CAA section 112(c)(9)(B)(ii) for the non-mercury cell chlorine production subcategory (68 FR 70947).

For the purposes of determining whether the delisting criteria under CAA section 112(c)(9)(B) are satisfied, risk evaluations must be based on emission estimates that assume the controls required under CAA section 112 are not in place unless they are also known to be required under a different regulatory authority. This is because a final notice granting a delisting petition of, for example, the Stationary Combustion Turbines source category from the list of major sources would result in removal of the regulatory requirements specified in the NESHAP for stationary combustion turbines.

The EPA views CAA section 112(c)(9)(B) as providing discretionary authority for delisting source categories that satisfy the criteria contained therein. ''The Administrator *may* delete any source category from the list under this subsection, on petition of any person . . . , whenever the Administrator makes the following determination or determinations, as applicable,'' (CAA section 112(c)(9)(B) (Emphasis added)). The Agency reads this provision as allowing for delisting of a source category upon the Administrator determining that the statutory criteria are satisfied. However, it does not foreclose the exercise of the Administrator's discretion in forming a final decision on whether to delist. (''The Administrator *may* delete . . .'' and not ''The Administrator [*must*] delete . . .'' (Emphasis supplied). The EPA interprets ''may'' in CAA section 112(c)(9)(B)(i) as being directional towards a determination that is based on reasonably health protective assumptions to account for uncertainties in any supporting analysis. The final decision involves the consideration and balancing of factors that are uniquely within the Administrator's expertise, including policy choices, and predictions on ''the frontiers of scientific knowledge.'' *Nat'l Lime Ass'n* v. *EPA,* 627 F.2d 416, 454 (D.C. Cir. 1980).[9]

Questions as to whether pollutant emissions from a source category present adverse health and environmental effects and questions regarding the kinds of effects that can come from exposure to those emissions may, in certain instances, border on the frontiers of scientific knowledge and are given to be quite uncertain due to either insufficient or inconsistent data.[10] For example, there could be limited scientific knowledge of the effects of pollutant exposure on human health and the environment. There could also be limited emissions data from the source category. Further, some

[7] The maximum individual lifetime cancer risk is the ''estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044, 38045; September 14, 1989).

[8] National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions from Chlorine Production: Final decision to delete subcategory (68 FR 70948, 70951; December 19, 2003). See also 66 FR 21933, where the EPA explained and agreed with the use of certain health effect studies in delisting petition for Methanol. (''As the [Health Effects Institute] Health Review Committee noted in its commentary, the experiments in this study were 'well designed and executed with appropriate quality control and quality assurance procedures. Thus, one can have confidence in the data.' '').

[9] ''[A]n agency [has] latitude to exercise its discretion in accordance with the remedial purposes of the controlling statute where relevant facts cannot be ascertained or are on the frontiers of scientific inquiry.'' 627 F.2d 454.

[10] ''Where a statute is precautionary in nature, the evidence difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge, the regulations designed to protect the public health, and the decision that of an expert administrator, we will not demand rigorous step-by-step proof of cause and effect. Such proof may be impossible to obtain if the precautionary purpose of the statute is to be served.'' *Id.,* at 454 n.143 citing *Ethyl Corp.* v. *EPA,* 541 F.2d 1, 28–29 (D.C. Cir. 1976).

pollutants have no known safe level of exposure.[11] The Administrator is not required to base his determination solely on a single parameter or measure and has the discretion to weigh various factors or data differently. The Administrator's decision to delist (or to deny a petition to delist) a source category is made on a case-by-case basis and involve a thorough and comprehensive review of factual issues, scientific evidence, and data provided in support of a delisting petition.

The EPA also views CAA section 112(c)(9)(B) as allowing the Administrator to balance the likelihood of adverse health effects against limited scientific data and to err on the side of caution in making decisions considering uncertainties in scientific data. Any projections, assessments, and estimations must be reasonable and not based on conjecture. While use of the term ''adequate''' further indicates that the Administrator must weigh the potential uncertainties and their likely significance, uncertainties concerning the risks of adverse health or environmental effects may be mitigated if the Administrator can determine that projected exposures are sufficiently low to provide reasonable assurance that adverse health effects will not occur. Similarly, uncertainties concerning the magnitude of projected exposures may be mitigated if the Administrator can determine that the levels which might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels. But as a part of the requisite demonstration called for by CAA section 112(c)((9)(B), a petitioner must present data that are adequate to support a delisting decision, and thus, resolve any uncertainties associated with missing information.

The Administrator will not remove a source category from the list of source categories covered under CAA section 112 merely because of the inability to conclude that HAP emissions from sources within that source category will cause adverse effects on human health or the environment. Thus, the EPA will not grant a petition to remove a source category if there are uncertainties relating to health effects or if the Administrator does not have sufficient information to make the requisite determination under CAA section 112(c)(9)(B).[12] We note that the Administrator's discretion is neither unbounded nor limitless, but rather constrained by the EPA's duty to protect human health and welfare.[13] This is because the CAA is a protective or preventive statute [14] considering that one of its stated purposes under CAA section 101(b)(1) is ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare.'' Such statutes do not call for certitude of harm but rather accord a decision maker discretion and flexibility in taking regulatory action that is protective of both public health and the environment.

Further, when considering delisting petitions under CAA section 112(c)(9)(B), the EPA is guided by relevant decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit or court). Specifically, in 2007, the court held in *Natural Resources Defense Council* v. *EPA,* 489 F.3d 1364, 1373 (D.C. Cir. 2007) (vacating portions of the Plywood Maximum Achievable Control Technology (MACT) standards), that the EPA had no authority to create and delist a ''low-risk subcategory'' under CAA section 112(c)(9)(B)(i).[15] According to the court, only subcategories with no carcinogenic HAP emissions and satisfying CAA section 112(c)(9)(B)(ii) could be removed from the CAA section 112(c)(1) list of categories and subcategories (*e.g.,* deletion of the non-mercury cell chlorine production subcategory (68 FR 70947; December 19, 2003)). Otherwise, subcategories with any carcinogenic HAP emissions could only be removed as part of a complete removal of the entire source category under CAA section 112(c)(9)(B)(i), noting that the criteria in CAA section 112(c)(9)(B)(ii) would also need to be satisfied if applicable.

Further, in another key case, *New Jersey* v. *EPA,* 517 F.3d 574, 582 (D.C. Cir. 2008), the court vacated the EPA's action that delisted coal- and oil-fired electric utility steam generating units (EGUs) holding that ''because section 112(c)(9) governs the removal of '*any* source category' from the section 112(c)(1) list, and nothing in the CAA exempts EGUs from section 112(c)(9), the only way the EPA could remove EGUs from the section 112(c)(1) list was by satisfying section 112(c)(9)'s requirements.'' (Emphasis in original). Since then, the court has upheld our reading of CAA section 112(c)(9) as calling for application of criteria contained therein.[16] For instance, in *White Stallion Energy Ctr., LLC* v. *EPA,* 748 F.3d 1222 (D.C. Cir. 2013) the court upheld the EPA's denial of a petition to delist coal-fired EGUs finding that the EPA was correct in rejecting a delisting petition because it ''did not demonstrate that EPA could make either of the two predicate findings required for delisting under section 112(c)(9)(B).'' *Id.,* at 1248. Additionally, in *American Forest and Paper Ass'n* v. *EPA,* 294 F.3d at 119 (construing section 112(b) and upholding the EPA's denial of the petition to delist methanol as a HAP), the court held that ''[t]he statutory language unambiguously places on a delisting petitioner the burden to make a showing that there is adequate data about a substance to determine exposure to it *may* not reasonably be anticipated to cause adverse effects.''

Finally, an additional relevant decision addresses setting MACT standards for listed source categories under CAA section 112. In *Louisiana Environmental Action Network* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020) (*LEAN*), the court held that when the ''EPA reviews an existing standard that fails to address many of the listed air toxics the source category emits, adding limits for those overlooked toxics is a 'necessary' revision under section 112(d)(6).'' *Id.,* at 1091. The EPA must now set MACT

[11] ''The Administrator may apply his expertise to draw conclusions from suspected, but not completely substantiated, relationships between facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not yet certifiable as 'fact,' and the like.'' *Id.*

[12] *See American Forest and Paper Ass'n* v. *EPA* 294 F.3d 113, 119 (D.C. Cir. 2002) (upholding the EPA's denial of the petition to delist methanol as a HAP) ''EPA's interpretation easily passes muster under *Chevron.* The statutory language unambiguously places on a delisting petitioner the burden to make a showing that there is adequate data about a substance to determine exposure to it *may* not reasonably be anticipated to cause adverse effects. This is precisely what EPA has construed it to require.'' (Emphasis in original; cleaned up) (66 FR 21930; May 2, 2001) (Where the Administrator is acting on a delisting petition, ''the burden remains on a petitioner to demonstrate that the available data support an affirmative determination that emissions of a substance may not be reasonably anticipated to result in adverse effects on human health or the environment.'').

[13] *See Massachusetts* v. *EPA,* 127 S. Ct. 1438, 1462. (The goal of the CAA is ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' CAA section 101(b)(1)).

[14] *Ethyl Corp.,* 541 F.2d at 29 n.56 (''Under the Clean Air Act the Administrator's flexibility is derived not from a command to act, but from a precautionary statute that necessarily includes risk assessment if its preventive purpose is to be achieved.''). The CAA is ''to assure that regulatory action can effectively prevent harm before it occurs; to emphasize the predominant value of protection of public health.'' H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 49 (1977).

[15] To accord with this decision, the EPA is denying the petition to delist two subcategories of stationary combustion turbines that the EPA received during the 2004 Stationary Combustion Turbines NESHAP rulemaking.

[16] *See U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579 (D.C. Cir. 2016) (upholding the EPA's decision to remove source categories from CAA section 112(c)(6) without applying CAA section 112(c)(9)).

standards in the context of a CAA section 112(d)(6) review where there are gaps in existing MACT standards.

B. What is the process for delisting a source category?

In this section, the EPA describes the Agency's process for consideration of petitions to delist source categories under CAA section 112(c)(9)(B).

Although the delisting action for a listed source category is not subject to the formal rulemaking procedures under CAA section 307(d), it is the EPA's practice to publish and solicit public comments on relevant aspects of the Agency's consideration of such a complete petition in the **Federal Register**. See *American Forest and Paper Ass'n* v. *EPA,* 294 F.3d 113, 117 n.3 (D.C. Cir. 2002) (''Section 112(b) does not contemplate a formal rulemaking and is not among the sections enumerated in section 307(d)(1) (although other subsections of section 112 are included there).'').

The EPA's petition review process proceeds in two phases: a completeness determination and a technical review.[17] During the completeness determination, we conduct a broad review of the petition to determine whether all the necessary subject areas are addressed and whether reasonable information and analyses are presented for each of these subject areas.[18] Once the petition is determined to be complete, we place a notice of receipt of a complete petition in the **Federal Register**.[19] That **Federal Register** document announces a public comment period on the petition and starts the technical review phase of our decision-making process. The technical review involves a thorough scientific review of the petition to determine whether the data, analyses, interpretations, and conclusions in the petition are appropriately supported and technically sound. The technical review will also determine whether the petition satisfies the necessary requirements of CAA section 112(c)(9)(B) and adequately supports a decision to delist the source category. All comments and data submitted during the public comment period are considered during the technical review. The decision to either grant or deny a petition is made after a comprehensive technical review of both the petition and the information received from the public to determine whether the petition satisfies the requirements of CAA section 112(c)(9)(B). Here, the review process is not proceeding to the second phase due to the EPA's determination that the petition is incomplete because the petitioners did not address all the necessary subject areas under CAA section 112(c)(9)(B) and did not present reasonable information and analyses for each these subject areas.

If the Administrator decides to grant a petition, the Agency publishes a written explanation of the Administrator's decision, along with a proposed rule to delete the source category. The proposed rule is open to public comment and public hearing and all additional substantive information received is considered prior to the issuance of a final rule.[20] If the Administrator decides to deny the petition, the Agency publishes a notice of its denial, along with a written explanation of the basis for denial.[21] A decision to deny a petition is a final Agency action subject to review in the Circuit Court of Appeals for the District of Columbia under CAA section 307(b).

A denial of a petition may take one of two forms. The EPA may deny the petition with prejudice, in which case any future petition will be denied as a matter of law unless it is accompanied by substantial new evidence; or the EPA may deny the petition without prejudice, in which case the EPA will consider future petitions without the presentation of substantial new evidence. The EPA will issue a denial with prejudice when there are adequate data available that lead the EPA to conclude that emissions from a source category may cause a lifetime risk of cancer greater than 1-in-1 million to the individual in the population who is most exposed to emissions of pollutants from a source category; or where there are adequate data available that lead the EPA to conclude that emissions from a pollutant can be anticipated to result in adverse effects to human health or the environment. Additionally, the EPA will issue a denial with prejudice when the EPA concludes that the available evidence cannot support a determination that emissions from a source category may not cause a lifetime risk of cancer greater than 1-in-1 million to the individual in the population who is most exposed to emissions of such pollutants; or when the EPA concludes that the available evidence cannot support a determination that emissions from the source category may not reasonably be anticipated to result in adverse effects to human health or the environment and, therefore, that substantial new information or analyses would be necessary to allow the Agency to make the requisite determination under CAA section 112(c)(9)(B).[22]

III. Risk Review Methodology and Findings

In this section, the Agency presents the risk assessment and risk assessment methodology that are the underpinnings of the findings for the 2020 RTR for the Stationary Combustion Turbines source category under CAA section 112(f)(2). It bears note that under CAA section 112(f)(2) the excess lifetime cancer risk to the most exposed individual of 100-in-1 million is ordinarily the upper

[17] See, *e.g.,* 70 FR 30407; May 26, 2005 (Notice of receipt of a complete petition to delist 4,4'-methylene diphenyl diisocyanate as a HAP); 64 FR 42125; August 3, 1999 (Notice of receipt of a complete petition to delist ethylene glycol monobutyl ether as a HAP); 64 FR 38668, 38669; July 19, 1999 (Notice of receipt of a complete petition to delist methanol as a HAP); 64 FR 33453; June 23, 1999 (Notice of receipt of a complete petition to delist Methyl Ethyl Ketone as a HAP).

[18] As an additional and separate independent basis for denial, the EPA may deny a petition that is not complete if the petitioners did not address all the necessary subject areas under CAA section 112(c)(9)(B) and did not present reasonable information and analyses for each of the subject areas. See, *e.g.,* Notice of denial of petition to delist five glycol ethers as a HAP (58 FR 4164, 4165; January 13, 1993) (The EPA explained that: ''Although public information indicated that over 140 million pounds of these substances are used annually in the U.S. and that there is a general trend towards greater usage, the petitioner did not provide measurements or estimates regarding the emissions associated with such use. In the absence of such information, EPA cannot make the substantive determination contemplated by CAA Section 112(b)(3)'').

[19] The EPA did not make a completeness determination for the petition because the petitioners did not address all the necessary subject areas under CAA section 112(c)(9)(B) and did not present reasonable information and analyses for each these subject areas.

[20] See, *e.g.,* 68 FR 65648; November 21, 2003 (Proposal to Delist Ethylene Glycol Monobutyl Ether: Request for Comment); 68 FR 32605; May 30, 2003 (Proposed Rule to Delist Methyl Ethyl Ketone (MEK): Request for Comment).

[21] See, *e.g.,* 66 FR 21929; May 2, 2001 (Denial of the petition to delist methanol as a HAP).

[22] A denial with prejudice serves a vital administrative purpose. It prevents the endless resubmission of essentially identical petitions (with only peripheral or trivial changes) in the wake of an EPA decision on the merits of a petition. Thereby, once the EPA has denied a petition to delist based on a full consideration of the merits, any future petition to remove the same source category will not trigger another full evaluation of the merits unless it includes substantial data or analyses that were not present in the earlier petition. Conversely, the EPA may issue a denial without prejudice, for example, where there has not been a complete examination of the merits of a petition, and where, therefore, the EPA has not reached a decision on the petition that is based on a robust evaluation of the underlying technical data and analyses. For example, where a petition obviously lacks some element necessary for the EPA to properly evaluate the petition, the EPA may deny such petition without prejudice and allow the petitioner to re-submit the petition with the necessary additional information without a determination that the additional information constitutes substantial new data or analysis. See, *e.g.,* Notice of Denial (58 FR 4164; January 13, 1993) (denying without prejudice a petition to remove five glycol ethers from the list of HAP).

bound of acceptability, in contrast to CAA section 112(c)(9)(B)(i) which sets out a risk threshold of 1-in-1 million for delisting source categories that emit carcinogenic HAP. On April 12, 2019, the EPA proposed the RTR for the Stationary Combustion Turbines NESHAP (84 FR 15046). The EPA finalized the RTR on March 9, 2020, and based on the risk assessment performed for this source category readopted the existing standards under CAA section 112(f)(2) (85 FR 13524).[23] Additional emissions data collection efforts by the EPA after the 2020 RTR are also discussed in this section.

A. The EPA's Risk Assessment Methodology

The EPA's risk assessment methodology for the 2020 RTR is described in detail in the *Residual Risk Assessment for the Stationary Combustion Turbines Source Category in Support of the 2020 Risk and Technology Review Final Rule,* Docket ID No. EPA–HQ–OAR–2017–0688–0131 (''Risk Report''). The risk assessment estimated the maximum individual lifetime cancer risk, population at increased cancer risk, total estimated cancer incidence, maximum chronic non-cancer hazard index, and maximum acute non-cancer risk hazard quotient. The EPA performed a three-tier screening assessment of the potential multipathway health risks, as well as a three-tier screening assessment of the potential adverse environmental risks. The risk modeling dataset includes emissions data for three emissions scenarios: actual emissions, allowable emissions, and acute emissions.

B. The EPA's 2020 Risk Review Findings

Pursuant to CAA section 112(f)(2), the EPA conducted a residual risk review for the Stationary Combustion Turbines source category. Risk modeling was conducted for all the facilities known by the EPA at the time to be subject to the Stationary Combustion Turbines NESHAP, which totaled 253 stationary combustion turbine facilities. Additional information obtained after risk modeling refined our estimate of facilities in the source category to 244. The total emissions of HAP from modeled facilities were approximately 5,300 tons per year. The HAP emitted in the largest quantities were formaldehyde, n-hexane, acetaldehyde, toluene, xylenes (mixed), hydrochloric acid, propylene oxide, ethyl benzene, benzene, and acrolein. Emissions of these pollutants made up over 99 percent of the total HAP emissions by mass. Emissions of persistent and bioaccumulative HAP (PB–HAP) included lead compounds, arsenic compounds, cadmium compounds and mercury compounds. Emissions of environmental HAP included the above PB–HAP plus hydrochloric acid.

The results of the chronic inhalation cancer risk assessment based on actual emissions indicated that the estimated maximum individual lifetime cancer risk was 3-in-1 million, with formaldehyde, acetaldehyde, propylene oxide and arsenic compounds from combustion turbines as the major contributors to the risk. The total estimated cancer incidence was 0.04 excess cancer cases per year, or one excess case in every 25 years. Approximately 153,000,000 people live within 50 kilometers of the 253 modeled facilities, and 42,000 people were estimated to have cancer risks at or above 1-in-1 million. The 2020 RTR, where the Agency was acting under CAA section 112(f)(2), showed that the Stationary Combustion Turbines source category did not meet the statutory criteria for delisting described in section II.A. of this preamble. More information concerning the risk analysis can be found in the Risk Report.

C. CAA Section 114 Information Request

In May 2020, the EPA received a petition for reconsideration of the 2020 RTR. One of the issues listed in the petition for reconsideration was the EPA's failure to set limits for unregulated HAP in the Stationary Combustion Turbines NESHAP, citing *LEAN.* The EPA granted the petition for reconsideration on August 13, 2020. In April 2022, the EPA, acting under authority of CAA section 114, requested operating information and emissions data from six companies that own and operate turbines subject to the Stationary Combustion Turbines NESHAP. A request was sent to a seventh company in September 2022. The requests were sent for the purpose of obtaining emissions data to be used in an upcoming separate rulemaking to establish emission standards for turbines subject to the Stationary Combustion Turbines NESHAP that do not currently have standards in the rule. Requests for operating information included annual hours of turbine operation and annual turbine heat input for 2016–2020. Responses were required within 3 months of receipt of the request. The request mandated testing of selected turbines for emissions of formaldehyde, acid gases (hydrogen fluoride and hydrogen chloride), metallic HAP, particulate matter (PM), and carbon monoxide. The 22 turbines that were tested ranged in size from 1 to 269 MW and included both simple cycle and combined cycle units. The turbines were operated on natural gas, distillate oil, or landfill gas. Some turbines were equipped with an oxidation catalyst. Submittal of the required data from emissions testing was required within 9 months of receipt of the request. The responses to the requests are included in the docket for this action, Docket ID No. EPA–HQ–OAR–2020–0408.

IV. Evaluation of the Petition

In this section, the EPA presents the details of the petition to delist and of the Agency's technical evaluation of the petition. In section IV.A., the EPA presents the details of the petition to delist; and, in section IV.B., the EPA presents the petitioners' risk assessment methodology. In section IV.C., the EPA discusses deficiencies in the petitioners' estimates of HAP emissions for the Stationary Combustion Turbines source category; and, in section IV.D., the EPA presents the gaps in the petitioners' data that include missing emissions data from a large number of affected sources and uncertainty in the HAP emission estimates for the Stationary Combustion Turbines source category.

In general, the EPA found that the petitioners did not present reasonable and complete information and analyses for each of the affected sources, such as HAP emission measurements from stack testing or fuel content analyses for all sources subject to the Stationary Combustion Turbines source category. In the absence of such requisite information, the EPA did not make a completeness determination for the petition. And, in conducting the technical review of the information provided, the EPA cannot make the substantive determination contemplated under CAA section 112(c)(9)(B).

A. Description of the Petition

As stated previously, on August 28, 2019, the EPA received a joint petition from the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the American Public Power Association, the Gas Turbine Association, the Interstate Natural Gas Association of America, and the National Rural Electric Cooperative Association to remove the Stationary Combustion Turbines source category from the list of categories of major sources regulated under CAA section

[23] 85 FR at 13530. (*See NRDC* v. *EPA,* 529 F.3d at 1083. ''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

112. That petition claimed that the HAP emissions from affected sources in the Stationary Combustion Turbines source category that were identified in the proposed RTR meet the criteria for delisting. The petitioners submitted the first supplement to the petition on November 21, 2019. That supplement included risk analyses for additional units that were identified in a comment to the proposed RTR for the Stationary Combustion Turbines NESHAP. The petitioners claimed that all three statutory criteria for delisting were satisfied based on the results of this risk assessment.

After receipt of the first supplement to the petition, a second set of additional turbines that were not evaluated in either the petition or first supplement to the petition were identified by the EPA as being subject to the rule. The EPA therefore requested that the petitioners provide analyses for the second set of additional units. The EPA also asked for further explanation on the following issues: (1) whether the petitioners' analyses were based on emission factors without corroboration by emissions data and whether it accounted for operation of units at partial loads; (2) whether arsenic emission factors used in the petition analyses would be adequately justified for oil-fired turbines; and (3) whether the acute multiplier used in estimating acute risk at two facilities was adequately justified. The petitioners submitted a second supplement to the petition on December 2, 2020, in response to the EPA's concerns regarding the completeness of the petition. Finally, the petitioners submitted a revised version of the second supplement on March 15, 2021, correcting an error in the estimated hexavalent chromium emissions at one source. The petition and all the supplements to the petition are available for review in the docket, Docket ID No. EPA–HQ–OAR–2020–0408. The EPA has fully considered all the petitioners' submissions in this decision to deny the petition.

In general, the petitioners' initial petition and subsequent supplements to the petition provided both revised HAP emission estimates and a revised evaluation of the 2020 RTR risk analysis.[24] The petitioners revised HAP emission estimates and revised risk evaluation, however, were primarily based on emission factors and historical fuel usage data for a subset of the turbines that are subject to CAA section 112.

The initial petition and supplements provided by the petitioners contained the following information:

- Revised emission estimates for formaldehyde, which is one of the organic HAP that is a contributor to risk for stationary combustion turbines firing natural gas or distillate fuel oil;
- Revised emission estimates for arsenic, which is one of the metallic HAP that is a contributor to risk for stationary combustion turbines;
- Revised emission estimates for other HAP (organic and metallic) based on fuel use, emission factors, and permit limits for volatile organic compounds (VOCs);
- Measurements of the arsenic content in distillate fuel oil at certain facilities;
- Revised acute emission estimates for certain facilities;
- Other revisions including adjustments to stack parameters and locations, and removal of sources that were no longer operating;
- Analyses of the inhalation acute and chronic (cancer and non-cancer) risks for each source in the category, based on the revised HAP emission estimates;
- Analyses of the multipathway chronic (cancer and non-cancer) risks for each source in the category, based on the revised HAP emission estimates;
- Analyses of the environmental effects, based on the revised and updated emission estimates; and
- New emission estimates and analyses for the facilities not previously reviewed in the 2020 RTR risk analysis.

The petitioners argued that delisting of the source category was warranted based on the following results from their analyses:

- A maximum lifetime inhalation cancer risk for the most exposed individual of 0.76-in-1 million;
- A maximum acute inhalation hazard quotient (*i.e.,* the ratio of acute exposure concentration to the concentration at which no acute adverse health effect is observed) of 0.52;
- A maximum chronic (non-cancer) inhalation hazard index (*i.e.,* the ratio of chronic exposure concentration to the concentration at which no chronic adverse health effect is observed) of 0.03;
- A maximum multipathway cancer risk for the most exposed individual of 0.007-in-1 million; and
- A maximum multipathway chronic hazard index of 0.12.
- All facilities were below environmental screening thresholds.

B. Petitioners' Risk Assessment Methodology

As previously referenced, the petitioners' initial petition and subsequent supplements to the petition provided both revised HAP emission estimates and a revised evaluation of the 2020 RTR risk analysis. The petitioners also included risk analyses that covered additional units that were identified by the EPA as subject to the Stationary Combustion Turbines NESHAP after submittal of the initial petition. The petitioners' risk assessments, however, did not address whether the emission controls that reduce HAP emissions, such as oxidation catalysts, that are installed on some turbines were installed due to the requirements of the Stationary Combustion Turbines NESHAP or for other regulatory requirements.[25] The petitioners' risk assessments also did not address the effect of delisting the Stationary Combustion Turbines source category on the emission estimates used for their analysis. This is requisite information because deleting a source category from the list of major sources would result in removal of the regulatory requirements specified in the applicable NESHAP.

In some instances, the petitioners performed additional analyses that they claimed made their results more conservative. For inhalation risks, the petitioners conducted an additional analysis that accounted for the effects of building downwash,[26] which they indicated has the potential to increase risk. The petitioners also evaluated the non-cancer risks by summing the hazard quotients among all HAP regardless of the target organ. For multipathway health risks, the petitioners further performed a site-specific multipathway risk assessment for one facility with five stationary combustion turbines. According to the petitioners' multipathway risk assessment, four of those units exclusively fire natural gas while one fires refinery fuel gas. This facility was evaluated in the initial petition risk analysis and was re-evaluated in the first supplement to the petition. All other facilities showed low multipathway risks in a more general analysis by the petitioners and so they

[24] As described in section III.B. of this preamble, the 2020 RTR showed that the Stationary Combustion Turbines source category did not meet the statutory criteria for delisting.

[25] As mentioned previously, the EPA proposed to remove the stay of effectiveness of the standards for new lean premix gas-fired and diffusion flame gas-fired turbines on April 12, 2019 (84 FR 15046), prior to the submittal of the petition to delist in August 2019. The EPA finalized the removal of the stay on March 9, 2022 (87 FR 13183).

[26] Downwash means the downward movement of pollutant plumes immediately after stack release due to obstacles such as buildings or smokestacks.

did not perform site-specific multipathway risk assessments.

In general, the risk assessment methodology used in the petitioners' analyses estimated the same risk parameters as those used by the EPA in the risk assessment for the 2020 RTR, including maximum individual lifetime cancer risk, population at increased cancer risk, total estimated cancer incidence, maximum chronic non-cancer hazard index, maximum acute non-cancer risk hazard quotient, multipathway health risks, and adverse environmental risks. However, while the petitioners' risk modeling methodology was similar to the EPA's, there are deficiencies in the petitioners' estimates of the emissions from the source category which were used to determine the values of the petitioners' risk modeling results, as discussed further in sections IV.C. and IV.D.

C. Basis for Emission Estimates

The following section discusses deficiencies in the petitioners' analyses that support the EPA's conclusions that the petition is incomplete and that there are inadequate data to determine that no source in the category emits HAP in quantities which may cause a lifetime risk of cancer greater than 1-in-1 million to the individual in the population who is most exposed to emissions of such pollutants from the source.

The EPA identified several deficiencies in the submitted petition. First, the petitioners relied on emission factors and fuel sampling which are not adequate for determining site-specific emissions with the necessary certainty; and the petitioners failed to provide any site-specific emissions testing data. Notably, the Agency afforded petitioners the opportunity to provide additional information and data, which petitioners declined. Second, the petitioners significantly underestimated the formaldehyde emissions from some turbines, as demonstrated by site-specific turbine formaldehyde emissions testing data collected by the EPA. Third, to assess the potential health impacts from short-term exposures, the petitioners used a multiplier for acute risks that is far lower than the standard multiplier the EPA applied in the 2020 RTR, which was supported by measured emissions data, and the petitioners did not explain why their multiplier is more appropriate than the EPA's own multipliers. And fourth, the petitioners failed to explain whether the emission estimates they used would continue to be applicable if the source category were delisted.

1. Reliance on Emission Factors

As stated previously, a source category may be delisted only if the EPA has a high level of confidence that emissions from *no* source in the category or subcategory exceed a level which is adequate to protect public health with an ample margin of safety. The emission estimates used by the petitioners to assess the risks from the source category relied almost entirely on emission factors. The EPA has long viewed emission factors as not supplying sufficient certainty regarding *site-specific emissions* that would provide confidence that no source in the category exceeds the criteria for delisting. While emission factors are a widely used tool for estimating emissions, the EPA as well as state and local air pollution control agencies usually prefer data from source-specific emission tests or continuous emission monitoring systems (CEMS) for estimating a source's emissions because those data provide the best representation of the source's emissions. The EPA notes that the introduction to *AP–42: Compilation of Air Emission Factors from Stationary Sources* states that ''[b]ecause emission factors essentially represent an average of a *range* of emission rates, approximately half of the subject sources will have emission rates greater than the emission factor and the other half will have emission rates less than the emission factor.'' [27] In the same document, the EPA also noted that ''[a]verage emissions differ significantly from source to source and, therefore, emission factors frequently may not provide adequate estimates of the average emissions for a specific source.'' Further, for example, the North Carolina Department of Environmental Quality states the following regarding estimating emissions: ''Usually, results from continuous emission monitoring data are the preferred way to establish emissions. However, this is not often possible or practical, except for larger facilities such as electric utilities. Use of site-specific stack tests under a single or a range of representative conditions is usually the next preferable method.'' [28] After receipt of the initial petition and first supplement, the EPA requested that the petitioners provide HAP emission measurements from stack testing to corroborate the HAP emissions estimated by the petitioners based on emission factors and fuel content analyses, where possible. In response to the EPA's request, however, the petitioners indicated via email that a ''detailed measurement campaign is out of the scope for this study.'' [29]

In multiple instances, the petitioners' emission estimates were based on permit limits or emission factors of other pollutants (VOC and PM) that were then used to approximate the emissions of organic HAP (*e.g.,* formaldehyde) and metallic HAP (*e.g.,* arsenic). This introduces further uncertainty in the emission estimates for this source category. Moreover, the petitioners stated in the petition that ''combustion turbines' PM emissions are not a strong predictor of metallic HAP emissions.'' Regarding arsenic, in the 2020 RTR, arsenic emissions were one of the primary drivers for risk at sources firing distillate oil. The petitioners stated that metallic HAP emissions from oil-fired turbines are constituents of the fuel, and that the arsenic emissions estimated by the EPA for the 2020 RTR were biased upward because ''regulations requiring lower sulfur content for diesel fuel have resulted in lower arsenic content, if any, for these fuels, because the techniques used to remove sulfur from fuels necessarily remove metals such as arsenic also.'' One example of such regulation is the 15 parts per million by weight (ppmw) sulfur standard for ultra-low sulfur diesel fuel in 40 CFR 1090.305. The petitioners, however, did not provide references supporting the statement that the arsenic content in ultra-low sulfur diesel fuel is universally lower or documenting that stationary combustion turbines in the source category are required to use ultra-low sulfur diesel fuel. Rather, the new source performance standards (NSPS) for stationary combustion turbines (units constructed, modified, or reconstructed after February 18, 2005) require the use of only fuel having a sulfur content that is equivalent to a sulfur dioxide content less than 0.06 pounds per million British thermal units (lb/MMBtu) (*i.e.,* approximately 500 ppmw of sulfur content in distillate fuel oil) for turbines located on the continent and 0.42 lb/MMBtu (4,000 ppmw) for turbines in non-continental areas (71 FR 38497; July

[27] *https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors-stationary-sources.* Fifth Edition. January 1995.

[28] The Basics of Estimating Air Emissions. North Carolina Department of Environmental Quality. *https://www.deq.nc.gov/about/divisions/air-quality/outreach-education-engagement/air-quality-science-and-data/emission-inventories/general-information-emission-inventories.* Accessed on March 29, 2024.

[29] Email from Eladio Knipping, Electric Power Research Institute to Nick Hutson, Melanie King, and Greg Honda, EPA. Subject: FW: Response to EPA Feedback on EPRI CT Reports. April 15, 2020. Docket ID No. EPA–HQ–OAR–2020–0408.

6, 2006 and 40 CFR part 60, NSPS subpart KKKK, at 40 CFR 60.4300). Notably, permitted thresholds for stationary combustion turbines vary, but the source identified to have the highest cancer risk in the 2020 RTR is permitted to combust diesel fuel with a sulfur content up to 1,500 ppmw (permit available in the docket to this rulemaking, Docket ID No. EPA–HQ–OAR–2020–0408), which further demonstrates that there is no assurance that turbines are using ultra-low sulfur diesel fuel.

The petitioners also provided summary fuel analysis reports from a few stationary combustion turbines in the source category. In those cases, fuel arsenic concentrations reported by the petitioners were below the limit of detection of the instruments. The petitioners, however, did not provide any information regarding the methods and procedures that were used for the fuel sampling and the determination of the detection limits for arsenic. Instead, results were only indicated by a qualitative statement that the measurement was below the limit of detection. Additionally, raw data were not provided. After receipt of the first supplement to the petition, the EPA asked the petitioners to provide more detail regarding the methods used for the fuel measurements, including calibration data and information on the determination of non-detects.[30] The petitioners indicated that such information would be provided, but the second supplement only included more summary fuel sampling results and did not provide the more detailed information requested by the EPA. Without this information, the EPA cannot evaluate whether the quality of the data is adequate or assess whether the detection limits are accurate and, therefore, cannot determine whether the arsenic emissions estimated for these facilities are representative of their actual emissions.

2. The Measured Rates for Formaldehyde Emissions

Formaldehyde was the HAP emitted in the largest quantities from stationary combustion turbines evaluated in the EPA's 2020 risk analysis (see Table 3.1–1 of Risk Report). An examination of the formaldehyde emission rates measured during the CAA section 114 testing showed emissions that are significantly higher for some turbines than those estimated in the petition analysis (as well as the 2020 RTR). For instance, formaldehyde emissions at the two landfill gas-fired turbines at the BMW Manufacturing facility averaged 0.28 lb/hour (for unit GT05) and 0.65 lb/hour (for unit GT06) during the CAA section 114 testing. Multiplying the hourly emission rate by the highest annual hours of operation on 100 percent landfill gas for the turbines reported for the CAA section 114 request, which occurred in the year 2016, yields annual formaldehyde emissions of 0.80 tons/year for unit GT05 and 1.85 tons/year for unit GT06. The formaldehyde emissions assumed for those units in the petition analysis were 0.0096 tons/year for each turbine. The measured emissions were 80 times higher than estimated for unit GT05 and 190 times higher than estimated for unit GT06. A similar analysis of the formaldehyde emissions for units 7 and 8 at Northern Natural Gas's Waterloo Compressor Station showed that the measured formaldehyde emissions were 31 times (unit 7) and 18 times (unit 8) higher than the estimated emissions.[31] These differences in the measured formaldehyde emissions versus the petitioners' estimated formaldehyde emissions demonstrate that the petitioners' data are not adequate for purposes of the Administrator's determination under CAA section 112(c)(9)(B).

These higher measured formaldehyde emissions may also indicate that the EPA's finding in the 2020 RTR of a maximum individual lifetime cancer risk for the Stationary Combustion Turbines source category of 3-in-1 million may be a significant underestimation. But the EPA has also long acknowledged that the maximum individual lifetime cancer risk, under CAA section 112(f)(2), ''does not necessarily reflect the true risk, but [rather] displays a conservative risk level which is an upper-bound that is unlikely to be exceeded.'' [32] Moreover, as previously explained, for delisting source categories that emit carcinogenic HAP, CAA section 112(c)(9)(B)(i) sets a lifetime cancer risk to the most exposed individual threshold of 1-in-1 million, which differs significantly from the acceptable risk determination for standards promulgated under CAA section 112(f)(2), where a lifetime cancer risk to the most exposed individual of 100-in-1 million is ordinarily the upper bound of acceptability. And, ultimately, sources would remain subject to standards promulgated under CAA section 112(f)(2) in contrast to removal of all CAA section 112 regulatory requirements if the EPA grants a delisting petition under CAA section 112(c)(9)(B).[33]

3. Acute Multiplier

The acute multiplier used by the petitioners to assess the health impacts from short-term exposures to HAP emissions for two facilities is not adequately supported by the evidence. As discussed previously, the risk analyses for both the 2020 RTR and the petition evaluated the acute health risks posed by actual baseline emissions. To assess the potential health impacts from short-term exposures, the petitioners estimated worst-case 1-hour HAP emission rates (''acute emissions'') from each turbine included in their analysis. For most sources, the petitioners' analysis used an acute multiplier of 10 times the average annual hourly emission rate for each turbine. Use of this value is consistent with the acute multiplier used by the EPA in the 2020 RTR, as discussed in the March 6, 2019, memorandum titled *Review of the Acute Multiplier Used to Derive Hourly Emission Rates for the Stationary Combustion Turbines Risk Analysis* that reviewed the acute multiplier and that is available in the docket for the Stationary Combustion Turbines RTR (Docket ID No. EPA–HQ–OAR–2017–0688–0070).

As discussed in the memorandum, the basis for the use of a default acute multiplier of 10 in the 2020 RTR is a study of short-term emissions variability in a heavily industrialized four-county area in Texas.[34] At the time of the RTR proposal, the EPA evaluated the suitability of the default acute multiplier of 10 by reviewing available stack test data for formaldehyde emissions from stationary combustion turbines to determine the variability of hourly test runs. To determine the emissions variability, the average formaldehyde concentration for each unit was calculated using all available

[30] Email from Eladio Knipping, Electric Power Research Institute to Nick Hutson, Melanie King, and Greg Honda, EPA. Subject: FW: Response to EPA Feedback on EPRI CT Reports. April 15, 2020. Docket ID No. EPA–HQ–OAR–2020–0408.

[31] Comparison of estimated emissions in delisting petition with actual measured emissions from CAA section 114 testing for BMW Manufacturing and Waterloo Compressor Station. November 22, 2023. Docket ID No. EPA–HQ–OAR–2020–0408. Note that the annual emissions for the BMW Manufacturing turbines do not include emissions from the additional hours that the turbines were operated on a blend of 80 percent landfill gas and 20 percent natural gas.

[32] 54 FR 38045.

[33] The EPA readopted existing standards under CAA section 112(f)(2) (85 FR at 13530).

[34] Allen, D., C. Murphy, Y. Kimura, W. Vizuete, and T. Edgar. 2004. *Variable Industrial VOC Emissions and their impact on ozone formation in the Houston Galveston Area.* Final Report, Texas Environmental Research Consortium Project H–13. April 16, 2004. Docket ID No. EPA–HQ–OAR–2017–0688–0005.

valid stack test data for that unit, and then the concentration of formaldehyde for each hourly test run was divided by that unit's average to determine the run-to-average emissions ratio. The highest run-to-average ratio in the EPA's analysis for the 2020 RTR was 6.7. For two facilities, Salinas River Cogeneration and Sargent Canyon Cogeneration, the petitioners stated that using the EPA's default ratio of 10 in their analysis yielded acute hazard quotients exceeding 1. The petitioners then used a value of 2 for the acute multiplier in their analysis for those two facilities and justified this based on the ratio of hours in the year to annual operating hours at those facilities, rather than on information regarding worst-case emissions data. The petitioners did not provide any information to show how a comparison of the hours in the year to annual operating hours was relevant for an analysis of potential worst-case 1-hour HAP emission rates or how a multiplier of 2 was more valid than the multiplier used for the 2020 RTR, which was based on actual hourly emissions data. The EPA believes that the petitioners' approach does not adequately account for spikes in emissions and variability in emission rates at non-baseload conditions (*e.g.,* startup, part-load operation). At lower loads, more incomplete combustion may occur and result in proportionately greater organic HAP emissions. Furthermore, the oxidation catalysts used to control organic HAP emissions for some turbines may not operate effectively during startup until the catalyst reaches its appropriate operating temperature.

After receipt of the initial petition and the first supplement, the EPA discussed these issues with the petitioners. The petitioners indicated that they would provide an expanded justification for the use of an acute multiplier of 2.[35] The discussion of the acute multiplier for Salinas River Cogeneration and Sargent Canyon Cogeneration in the second supplement did not address the questions raised by the EPA. Instead, it just restated the petitioners' previous justification for using the ratio of hours in the year to annual operating hours. Therefore, the petitioners have not adequately demonstrated that an acute multiplier of 2 is appropriate for the turbines at the Salinas River Cogeneration and Sargent Canyon Cogeneration facilities and, therefore, that the hazard quotients for those two facilities are below 1.

4. Accounting for Potential Increases in Emissions

As previously noted, emission estimates in the petition analyses were primarily based on emission factors and historical fuel usage data. For the purposes of determining whether the delisting criteria under CAA section 112(c)(9)(B) are satisfied, risk evaluations must be based on emission estimates that assume the controls required under CAA section 112 are not in place unless they are also known to be required under a different regulatory authority. This is because deleting a source category from the list of major sources would result in removal of the regulatory requirements specified in the applicable NESHAP. However, the petitioners' emission estimates for those units with oxidation catalyst were based on controlled emissions, and the petitioners did not specify whether those oxidation catalysts were installed to meet the Stationary Combustion Turbines NESHAP or to satisfy regulatory requirements under other EPA programs (*e.g.,* new source review (NSR) or prevention of significant deterioration (PSD) permits).[36] As a result, the petitioners did not explain—and the EPA was not able to determine based on the information submitted—whether the emissions estimates and risk assessment presented by the petitioners account for potential increases in emissions that might result from delisting the Stationary Combustion Turbines source category.

D. HAP and Turbines Not Included in Petition

Regarding HAP emissions, in addition to the deficiencies discussed in section IV.C., the emission estimates in the information submitted by the petitioners do not include several HAP that have been demonstrated to be emitted by stationary combustion turbines and do not include one-fourth of the turbines in the source category. As discussed in section III.C., the EPA required testing of stationary combustion turbines to obtain data on emissions of formaldehyde, acid gases (hydrogen fluoride and hydrogen chloride), and metallic HAP. The emissions testing showed that there are measurable emissions of metallic HAP from turbines operating on natural gas and landfill gas. The risk analysis submitted by the petitioners did not include metallic HAP emissions for natural gas and landfill gas turbines. Several metallic HAP (arsenic, cadmium, lead, and mercury compounds) and acid gases are included in both the EPA's health risk analysis and screening for adverse environmental effects.

Regarding the universe of affected sources, the EPA has identified an additional 245 turbines that are subject to the Stationary Combustion Turbines NESHAP that were not included in the petitioners' risk analyses. These additional turbines include units that are owned and operated by companies that are members of the organizations that submitted the petition to delist.[37] The EPA has identified a total of 1,015 turbines that are subject to the NESHAP. Hence, the petitioners' analyses do not account for nearly one-fourth of the turbines that are subject to the Stationary Combustion Turbines NESHAP. This contrasts with, for example, the delisting of the non-mercury cell chlorine production subcategory where the EPA ''obtained chlorine and HCl emission estimates from every known major source facility in the non-mercury cell chlorine production subcategory using our authority under section 114 of the CAA and conducted risk assessments for each facility.'' [38] As previously noted, a petitioner must provide a detailed assessment of the available data concerning the potential adverse human health and environmental effects and the potential for human and environmental exposures from the source category that is to be delisted. Such data must demonstrate that no source in the category or subcategory emits HAP in quantities which may cause a lifetime risk of cancer greater than 1-in-1 million to the individual in the population who is most exposed to emissions of such pollutants from the source or that no source in the category exceeds a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from that source category.

V. What is the rationale for denying the petition?

The EPA is denying the petition because the EPA has determined that the petition is incomplete. The petitioners did not address all the necessary subject areas under CAA

[35] Email from Eladio Knipping, Electric Power Research Institute to Nick Hutson, Melanie King, and Greg Honda, EPA. Subject: FW: Response to EPA Feedback on EPRI CT Reports. April 15, 2020. Docket ID No. EPA–HQ–OAR–2020–0408.

[36] As discussed previously, the EPA proposed to remove the stay of the standards for new lean premix gas-fired and diffusion flame gas-fired turbines on April 12, 2019 (84 FR 15046), prior to the submittal of the petition to delist in August 2019. The EPA finalized the removal of the stay on March 9, 2022 (87 FR 13183).

[37] Turbine NESHAP Unit List—Updated October 2023. Docket ID No. EPA–HQ–OAR–2020–0408.

[38] 68 FR 70951.

section 112(c)(9)(B) and did not present adequate information and analyses for the requested determination. As stated previously, CAA section 112(c)(9)(B)(i) requires the EPA to determine that *no* source in the category emits HAP in quantities which may cause a lifetime risk of cancer greater than 1-in-1 million to the individual in the population who is most exposed to emissions of such pollutants from the source. Here, the petition and all the supplements to the petition did not include HAP emissions measurements for all of the HAP emitted by the Stationary Combustion Turbines source category.[39] The risk analysis submitted by the petitioners did not include metallic HAP emissions for natural gas and landfill gas turbines, which the CAA section 114 information request results demonstrated are emitted from turbines operating on both natural gas and landfill gas. Further, the petitioners' analyses did not include nearly one-fourth of the stationary combustion turbines that are subject to the Stationary Combustion Turbines NESHAP. For the fuel sampling data and the acute multiplier, the petitioners did not provide information requested by the EPA that is necessary to evaluate the adequacy of the data. The EPA also afforded petitioners opportunities to address the above referenced identified gaps in the data and information underpinning their petition, which petitioners declined. For these reasons, the EPA cannot conclude that the petitioners have demonstrated that the maximum individual lifetime cancer risk from all stationary combustion turbines subject to CAA section 112 is less than the 1-in-1 million delisting threshold under CAA section 112(c)(9)(B)(i).

The EPA construes CAA section 112(c)(9)(B)(i) as calling for the Administrator to make a determination that the criteria for delisting are satisfied. Any such determination must be supported by measured emissions data or otherwise reasonably account for operational variability.[40] This is because delisting of a source category would result in the removal of applicable regulatory requirements under CAA section 112 for such source category. The EPA cannot grant a petition to delist a source category if there are major uncertainties that must be addressed for the EPA to have sufficient information to make the requisite substantive determination, under CAA section 112(c)(9)(B)(i). And the burden remains on a petitioner to demonstrate that the available data support an affirmative determination that HAP emissions from a source category may not be reasonably anticipated to result in adverse effects on human health or the environment. *See American Forest and Paper Ass'n* v. *EPA,* 294 F.3d at 119 (''The statutory language unambiguously places on a delisting petitioner the burden to make a showing that there is adequate data about a substance to determine exposure to it *may* not reasonably be anticipated to cause adverse effects.'' (Emphasis in original; cleaned up)).

In addition to the incompleteness of the petition, the EPA's technical review identified major uncertainties in the emission estimates provided by the petitioners that are an additional and separate independent basis for denial of the petition. The results of the 2020 RTR risk analysis (based on actual emissions), under CAA section 112(f)(2), indicated that the estimated maximum individual lifetime cancer risk is 3-in-1 million. The petitioners' analyses contained in their submittals claimed a maximum individual lifetime cancer risk of 0.76-in-1 million as support for their petition to delist under CAA section 112(c)(9). But the petitioners' analyses, which included revised HAP emission estimates and a revised evaluation of the 2020 RTR risk analysis, were primarily based on emission factors and historical fuel usage data for a subset of the turbines that are subject to CAA section 112.

The petitioners also did not include any stack testing on the turbines that they analyzed to determine actual emissions. As stated previously, emission factors do not provide sufficient certainty regarding site-specific emissions that would provide confidence that no source in the category exceeds the criteria for delisting. In addition, the CAA section 114 emissions testing showed actual formaldehyde emissions for some turbines that are significantly higher than those estimated by the petitioners. Lastly, the petitioners did not explain whether the emission estimates they relied on would continue to be applicable if the EPA were to delist the source category. Overall, and as shown in section IV., the petitioners did not provide sufficient data or analyses for the purpose of estimating maximum offsite pollutant concentrations that would enable the Administrator to make the substantive determination contemplated by CAA section 112(c)(9)(B).[41]

The EPA has concluded that the available evidence is inadequate to support a determination that no source in the Stationary Combustion Turbines source category emits such HAP in quantities which may cause a lifetime risk of cancer greater than 1-in-1 million to the individual in the population who is most exposed to emissions of such pollutants from the source category as called for under CAA section 112(c)(9)(B)(i). Because the petition is denied under CAA section 112(c)(9)(B)(i) for the reasons stated above, the EPA finds that it is not necessary to make any determinations as to whether any source in the category exceeds a level which is adequate to protect public health with an ample margin of safety and presents adverse environmental effects under CAA section 112(c)(9)(B)(ii).

For the reasons stated in this section, the EPA concludes that the petitioners have not demonstrated that the Stationary Combustion Turbines source category may be delisted under CAA section 112(c)(9)(B)(i). This means that the petitioners have failed to meet the delisting criteria outlined in CAA section 112(c)(9)(B)(i), and the EPA must deny the petition. Finally, because the EPA has determined that the petitioners did not address all the necessary subject areas under CAA section 112(c)(9)(B) and did not present adequate information and analyses for each of the subject areas, the EPA is denying the petition with prejudice. Any future petition to delist will be denied as a matter of law unless such future petition is accompanied by substantial new information or analysis.

Michael S. Regan,

Administrator.

[FR Doc. 2024–08004 Filed 4–15–24; 8:45 am]

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[39] See, *e.g.,* 66 FR at 21933, ''As the [Health Effects Institute] Health Review Committee noted in its commentary, the experiments in this study were 'well designed and executed with appropriate quality control and quality assurance procedures. Thus, one can have confidence in the data.' '' (The EPA explaining and agreeing with the use of certain health effect studies in the delisting petition for Methanol).

[40] ''Although public information indicated that over 140 million pounds of these substances are used annually in the U.S. and that there is a general trend towards greater usage, the petitioner did not provide measurements or estimates regarding the emissions associated with such use. In the absence of such information, EPA cannot make the substantive determination contemplated by CAA Section 112(b)(3).'' 58 FR 4165 (The EPA explaining the decision to deny the petition to delist five glycol ethers as a HAP for lack of emission measurements and HAP estimated use).

[41] 58 FR 4165 (denying petition to delist five glycol ethers as a HAP on similar grounds).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 20–401, FCC 24–35; FR ID 213399]

Program Originating FM Broadcast Booster Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on revising Commission rules to establish processing, licensing, and service rules that will enable full power FM and low power FM (LPFM) broadcast stations to originate programming using FM booster stations. In a concurrently adopted Report and Order (R&O), published elsewhere in this issue of the **Federal Register**, the Commission found that it would be in the public interest to provide broadcasters flexibility to use program originating boosters, subject to certain safeguards needed to address concerns raised in the record. This further notice of proposed rulemaking (FNPRM) seeks comment on the details of implementing these safeguards and on a number of proposed rule changes.

DATES: Comments due on or before May 16, 2024; reply comments due on or before June 17, 2024.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). You may submit comments, identified by MB Docket No. 20–401, FCC 24–35, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2721, *Albert.Shuldiner@fcc.gov;* Irene Bleiweiss, Attorney, Media Bureau, Audio Division, (202) 418–2785, *Irene.Bleiweiss@fcc.gov.* For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FNPRM, FCC 24–35, adopted March 27, 2024 and released April 2, 2024. The full text of this document is available by downloading the text from the Commission's website at: *https://docs.fcc.gov/public/attachments/FCC-24-35A1.pdf.*

Paperwork Reduction Act of 1995 Analysis: This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act: Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on: *https://www.fcc.gov/proposed-rulemakings.*

Synopsis

Background

1. In a notice of proposed rulemaking (NPRM) adopted on December 1, 2020, and published on January 11, 2021, at 86 FR 1909, the Commission sought public comment on a proposal by GeoBroadcast Solutions, LLC (GBS) to allow a new use for FM booster stations. FM boosters are low power, secondary stations that operate in the FM broadcast band. They must operate on the same frequency as the primary station, and have been limited to rebroadcasting the primary station's signal in its entirety (*i.e.,* no transmission of original content). Historically, the sole use of FM boosters has been to improve signal strength of primary FM stations in areas where reception is poor due to terrain or distance from the transmitter. GBS developed technology designed to allow licensees of primary FM and LPFM broadcast stations to geographically target a portion of their programming by using FM boosters to originate different content for different parts of their service areas. Stations might, for example, use the technology to air hyper-local news and weather reports most relevant to a particular community. Stations also might air advertisements or underwriting acknowledgements from businesses that wish or can only afford to focus their reach on small geographic areas, thereby enhancing the stations' ability to compete for local support. Such program origination over boosters cannot be accomplished on a permanent basis under existing rules.

2. Upon consideration of comments both supporting and opposing the GBS proposal, the Commission concluded that program originating boosters would serve the public interest if properly engineered and subject to various safeguards. In the concurrently adopted R&O, the Commission authorizes program originating boosters in the near term under part 5 of the rules (47 CFR 5.1 to 5.602), which pertains to experimental use of new technologies. FM and LPFM broadcasters will have the flexibility to use FM boosters to originate geographically targeted programming on a voluntary basis for

up to three minutes per hour. However, the R&O notes that permanent use of program originating boosters cannot commence until the Commission adopts additional rule changes and establishes details for implementing safeguards to address concerns raised in the record. Accordingly, the Commission has adopted the FNPRM, which proposes and seeks comments on such rule changes and asks additional related questions.

Program Origination Notification

3. To address concerns in the comments about the potential impact of program originating boosters on existing FM service, the R&O concludes that it is imperative for the Commission to adopt a notification requirement for program originating boosters. This would enable the Media Bureau to keep track of which stations are using boosters to originate content and to respond to any complaints that may arise. The FNPRM proposes to require broadcasters originating programming on a booster to file a notification 15 days prior to commencing origination. The proposed rule would also require broadcasters that permanently discontinue originating programming on a booster to file a notification within 30 days after termination. The Commission seeks comment on this proposal and the proposed text of 47 CFR 74.1206 set out in appendix C of the FNPRM. Would the information collected in the proposed FM Booster Notification constitute ''data assets'' for purposes of the OPEN Government Data Act, Public Law 115–435 (2019)? If so, would the collected information constitute ''public data assets'' as defined in 44 U.S.C. 3502 (22)? Is there any reason the Commission should not make such information publicly available?

Section 74.1204(f)

4. Section 74.1204(f) of the rules (47 CFR 74.1204(f)) addresses claims of predicted interference outside a protected station's contour when a translator station construction permit application is pending. Unlike the actual interference rule in § 74.1203, which addresses both translator and booster stations, the predicted interference rule in § 74.1204(f) addresses only translator stations. The FNPRM seeks comment on whether to modify § 74.1204(f) to include a mechanism to address predicted interference while booster construction permit applications remain pending. The Commission believes this will help ensure that broadcasters do not invest in developing booster stations that will cause interference that must be resolved under § 74.1203 once the booster commences broadcasts. It also proposes to apply this new mechanism to any booster applications that are pending at the time the modifications to § 74.1204 are adopted. The Commission seeks comment on these proposals.

Synchronization

5. The FNPRM seeks comment on whether the Commission should adopt a requirement that broadcasters synchronize their primary station and booster signals to reduce and eliminate self-interference. GBS's engineering consultant emphasized in the comments that synchronization is critical to successful booster implementation. One commenter, Anderson, emphasizes the importance for any booster system, but particularly those in a program originating system, to be synchronized in carrier frequency, pilot phase, and audio frames for analog FM. In the R&O, the Commission concluded that broadcasters have strong economic incentives to avoid self-interference to their primary station's signal. In light of that conclusion, it believes broadcasters deploying program originating boosters will employ a technology that uses synchronization. Is there any need to adopt a separate synchronization requirement as an additional safeguard? If the Commission were to adopt a synchronization requirement, what level of synchronization would be appropriate? Should the Commission adopt any standards with regard to synchronizing any or all of the elements discussed by Anderson? Would stations require new or specialized equipment to maintain proper synchronization or is that a routine part of existing booster station operations? Do station signals change enough to require constant monitoring and recalibration and if so, how does this affect our ability to develop and apply a standard? Or would a synchronization requirement impose an unnecessary burden on booster station operations? The Commission seeks comment on these questions.

Notification to Emergency Alert System (EAS) Participants

6. The R&O requires program originating boosters to receive and broadcast all emergency alerts in the same manner as their primary station, and codifies this requirement by amending 47 CFR 11.11 to explicitly make all EAS requirements that are applicable to full-service AM and FM stations and LPFM stations equally applicable to program originating FM boosters. In its comments, the Federal Emergency Management Agency (FEMA) recommended a requirement that FM primary stations implementing program originating boosters must notify all EAS participants monitoring that primary station of the booster's program origination. The Commission seeks comment on this proposal. Does the Commission's proposal to require all program originating boosters to broadcast emergency alerts negate the need for this FEMA proposal?

7. As stated in the R&O, the Commission believes its requirement that program originating boosters broadcast all emergency alerts will ensure no disruptions to the EAS, but the Commission will monitor the rollout of program originating boosters to ensure they do not cause interruptions to the EAS. Should the Commission adopt any requirement for broadcasters using program originating boosters to report EAS-related problems or interference to the Commission? What would be the best means for broadcasters to provide this information to the Commission? Should it require that licensees also submit this information to FEMA?

Part 74 Licensing Issues

8. The Commission proposes to clarify certain operational issues for program originating boosters. The FNPRM proposes to reorganize and clarify 47 CFR 74.1231 by changing the current Note to a new paragraph (j), which clarifies grandfathered superpowered FM stations will be able to implement booster stations only within the standard (*i.e.,* non-superpowered) maximum contour for their class of station. We believe this helps to minimize interference risks by further isolating program originating boosters from adjacent FM broadcast stations. Also, the FNPRM proposes to add a new paragraph (k) that requires booster stations to suspend operations any time their primary stations are not broadcasting and to file notices of suspended operations pursuant to § 73.1740 of the rules (47 CFR 73.1740). This change codifies more explicitly existing requirements. Finally, the Commission proposes to modify 47 CFR 74.1232 to clarify that a booster station may not broadcast programming that is not permitted by its FM primary station's authorization. This will ensure that program originating boosters are not used in a manner that is inconsistent with the primary station. The Commission seeks comment on the proposed rule changes. The FNPRM also takes this opportunity to remind broadcasters that licensees of noncommercial FM stations may not use

booster stations for commercial broadcasts.

Cap on Program Originating FM Boosters and Other LCRA Issues

9. The FNPRM proposes to amend 47 CFR 74.1232(g) to limit full-service FM stations to 25 program originating booster stations. This cap on the number of program originating FM booster stations would represent a change from the current rule, which imposes no numerical limit on FM booster stations. The Commission is bound by Section 5 of the Local Community Radio Act of 2010, Public Law 111–371 (LCRA), to ensure when licensing new FM booster stations that ''licenses are available'' to FM translators and LPFM stations. The ability of other secondary service applicants to locate within an existing full-service FM station's service contour is ordinarily constrained by the full-service FM primary station itself. Despite this, the Commission does not yet know the extent of demand for program originating FM booster stations, nor the impact that potentially large numbers of such stations in a market could have on spectrum availability on adjacent channels where new FM translators and LPFM stations might conceivably wish to locate. Accordingly, it concludes in the R&O that a limit on the number of program originating boosters a station can operate may be needed to ensure that an increase in booster stations resulting from the decision to authorize program originating boosters is consistent with the LCRA.

10. The R&O notes that some commenters have expressed concern about the effect of additional boosters on the FM noise floor. Would a program originating FM booster cap address such concerns? The Commission tentatively concludes that a limit of 25 program originating boosters per full-service FM primary station is a reasonable compromise. In seeking comment on this number, the Commission also notes that imposing an artificially low number of program originating boosters could make it harder for licensees to design and deploy boosters in a way that minimizes the risks of interference. It does not propose an overall per market limit. The Commission seeks comment on these tentative conclusions as well as any alternative number for the cap. GBS studies evaluated geotargeting deployments with up to nine boosters. Thus, the Commission tentatively concludes that a 25 program originating booster station cap should not impose an undue burden on the rollout of this technology while at the same time ensuring consistency with the LCRA. It also seeks input on any alternatives. The Commission asks that any alternative proposals be accompanied by detailed justifications, as well as a discussion of the effect any alternative program originating booster cap or alternative approach to limiting program originating boosters might have on other stations, both full-service and secondary, and on the local FM noise floor generally.

11. The FNPRM also seeks comment on whether there are other requirements needed to ensure compliance with the LCRA. The R&O concluded that authorization of program originating boosters is consistent with the LCRA. However, the FNPRM seeks input on any remaining concerns about compliance with the LCRA. Currently, LPFM stations are permitted to originate programming 100 percent of the time, while FM translators and boosters do not originate programming. What difference, if any, does allowing some FM boosters to originate programming for five percent of each broadcast hour make to the relative status of the secondary services? The Commission seeks comment on these matters.

12. Additionally, in discussing any proposed LCRA-based requirements in licensing program originating FM booster stations, the Commission asks commenters specifically to enumerate the costs and benefits of their proposals or any alternatives set forth by commenters. This should include the costs of preparing any proposed application showings, or of licensing an FM booster in such a manner as to comply with the LCRA. Commenters should also quantify projected costs and benefits, identify supporting evidence and any underlying assumptions, and explain any difficulties faced in trying to quantify benefits and costs of the proposals and how the Commission might nonetheless evaluate them.

Political Broadcasting and Advertising

13. If program originating boosters are widely adopted, candidates and issue advertisers may seek to use program originating booster stations to target their message to particular subsets of a market, which has political broadcasting and recordkeeping implications. As an initial matter, the Commission tentatively concludes that, to the extent an FM booster station originates programming, it should be subject to the full array of political programming requirements that are applicable to full power broadcast stations. These obligations ensure that candidates for elective office have access to broadcast facilities and certain other media platforms and foster transparency about entities sponsoring advertisements. The FNPRM therefore proposes to adopt a new provision (47 CFR 74.1290) to make all political programming requirements applicable to program originating FM booster stations. It also proposes to require broadcasters originating programming on a booster to maintain a political file for the booster in the same political file as the booster's primary station. Thus, the Commission proposes to amend 47 CFR 73.3526 (online public inspection file of commercial stations) and 47 CFR 73.3527 (online public inspection file of noncommercial educational stations) to appropriately reflect the obligation of licensees of program originating FM booster stations to maintain an online political file for each such station. LPFM stations operating program originating boosters will need to maintain a physical political file consistent with existing requirements. The FNPRM invites comment on this proposal.

14. *Political Files.* Applying the full array of political programming requirements to program originating FM booster stations raises several additional issues on which the FNPRM seeks comment. First, it asks how licensees should comply with the political file requirements in 47 CFR 73.1943 and 47 U.S.C. 315(e) for program originating booster stations. For example, these sections require commercial licensees to maintain online political files for requests for the purchase of broadcast time by or on behalf of all legally qualified candidates for public office and by or on behalf of issues advertisers whose ads communicate a message relating to any political matter of national importance. The requirement applies to both full service noncommercial stations and LPFM stations to the extent that they make time available without charge for use by a candidate. What is the best location for records of such commercial and noncommercial use of broadcast time on a program originating booster station? The FNPRM notes that booster stations are not required to maintain a public file. Should records of political use of broadcast time on a program originating booster station be commingled with records of requests for the use of broadcast time on the licensee's primary station so long as they are appropriately labeled to identify the station on which the use was made? Alternatively, should licensees be required to create a political file subfolder for each of its booster stations into which it would place records of requests for the purchase or free use of broadcast time?

15. Would candidates and members of the public know that a political message

that they have heard originated on a booster station (as opposed to the licensee's primary station) and know where to locate records of the message in the station's political file? How should LPFM stations, which are not currently required to have an online public inspection file, keep publicly available records of political use of their program originating boosters? For example, should they keep a physical file for the booster with the LPFM station's files consistent with requirements for political use of the LPFM station? The Commission invites comment on all of these questions and any additional issues that follow from requiring licensees to maintain records of requests for the purchase of political time and of time made available without charge for use by a candidate on their program originating booster stations.

16. *Equal Opportunities.* Targeted advertising also raises questions about how licensees should comply with obligations related to equal opportunities. Under 47 CFR 73.1941 and 47 U.S.C. 315(a), if a licensee permits a legally qualified candidate for any public office to use its station, it must, with some exceptions, permit all other legally qualified candidates for the same office to also use its station. Should candidates who are requesting equal opportunities in response to an advertisement or noncommercial announcement that was broadcast on a particular program originating booster station be entitled to use only that booster station, essentially treating individual booster stations and a licensee's primary station as separate facilities for equal opportunities purposes?

17. *Reasonable Access.* Similar questions arise with respect to how licensees should entertain requests for reasonable access by Federal candidates on program originating booster stations. Under 47 CFR 73.1944 and 47 U.S.C. 312(a)(7), commercial broadcast stations must permit candidates for Federal office to purchase reasonable amounts of advertising time. In determining what is ''reasonable'' for reasonable access purposes, should licensees treat their program originating booster and primary stations as separate facilities? For example, should the amount of time that a Federal candidate has purchased on a licensee's primary station affect the amount of time to which the same candidate is entitled to purchase on one of the licensee's program originating booster stations, and vice versa?

18. *Candidate Rates.* Program originating booster stations raise additional questions about how licensees should apply candidate rates. Pursuant to 47 CFR 73.1942 and 47 U.S.C 315(b), during the 45-day period preceding a primary or primary run-off election, and the 60 day period preceding a general or special election, stations must charge candidates in connection with their campaigns no more than the station's lowest unit charge for the same class and amount of time during the same period. In determining lowest unit charges, should licensees treat their program originating booster stations and primary stations as separate facilities? Is it reasonable to expect that the lowest unit rates on a licensee's program originating booster station would be different from the lowest unit rates on its primary station?

Licensing Issues

19. The FNPRM also seeks comment on whether to require vendors of program originating technology and patent owners in program originating technology to abide by the Commission's patent policy or any other guidelines common to open standards, which require that licenses be available to all parties on fair, reasonable and nondiscriminatory terms. Would such a step be necessary or an appropriate exercise of Commission authority in light of the fact that the Report and Order does not endorse a particular technical approach? Parties suggesting that we do consider any requirements should provide detailed information, including how long such requirements should last and our authority to adopt such requirements.

Other Safeguards

20. Are there any other non-technical safeguards on program originating boosters that might be useful? For example, two members of Congress who support geo-targeted content, nevertheless suggest that the Commission should consider requiring licensees of program originating boosters to certify that they are being responsive to needs and issues of their service areas, especially minority communities. This appears to be a response to concerns of a non-technical nature, such as the potential for redlining by advertisers or licensees. Although the Commission finds no current evidence of factors to cause redlining, it seeks comment on whether a safeguard in the form of a reporting condition might generally be useful to address non-technical concerns. If so, what information should licensees certify to, and how often?

Digital Equity and Inclusion

21. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, it seeks comment on how the FNPRM's proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

22. The Commission will send a copy of the FNPRM including the IRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this FNPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

Initial Regulatory Flexibility Act Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the **DATES** section of this FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

24. The FNPRM seeks further comment on processing, licensing, and service rules for program originating FM booster stations, or program originating boosters, which provide targeted programming to specific areas within their primary FM stations' service areas. Through the FNPRM, the Commission sets out a number of proposed changes to the rules, detailed in Appendix C, and seeks comment on these proposed rule changes.

25. In the FNPRM, the Commission proposes to retain the requirement that a booster station may cause only limited interference to its primary station's signal, but also proposes to eliminate the current rule provision barring any interference to the primary station's

signal within the boundaries of the community of license. Additionally, the Commission proposes a notification requirement in which licensees of authorized booster stations will be required to file a notification of their intention to originate programming rather than implementing a separate application process for boosters that originate programming that could introduce greater delay for broadcasters seeking to operate such booster stations. The Commission also asks whether it should codify technical specifications for synchronization of the program originating booster's signal with that of the FM primary station, as well as whether imposing such a requirement would be an unnecessary burden on broadcasters.

26. In the Report and Order, we required program originating boosters to receive and broadcast all emergency alerts in the same manner as their primary station, by codifying this requirement through an amendment of § 11.11 of the rules (47 CFR 11.11). The FNPRM seeks comment regarding whether any additional requirements will be needed regarding the interaction of program originating boosters and the Emergency Alert System (EAS).

27. Additionally, the Commission proposes to add a new section to the rules (47 CFR 74.1206) requiring that a program originating booster formally notify the Commission through the Media Bureau's Licensing and Management System (LMS) of the commencement and suspension of operations. Other proposed rule additions and amendments include a requirement that a program originating booster suspend operations when its FM primary station suspends operations, and to so notify the Commission. The FNPRM also proposes that the programming originated by an FM booster station must conform to that broadcast by the FM primary station, *e.g.,* a booster re-transmitting a noncommercial educational (NCE) FM station may also only broadcast NCE content. The FNPRM also seeks comment on whether information collected in the proposed FM Booster Notification constitutes ''data assets'' for purposes of the OPEN Government Data Act and, if so, whether the collected information constitutes ''public data assets.''

28. The Commission further proposes to amend 47 CFR 74.1232(g) to limit each full-service FM station to using up to 25 FM booster stations. This cap represents a change from the current rule, which imposes no numerical limit on FM booster stations. This proposal is based on the decision in the Report and Order that a limit on the number of boosters a station can operate is needed to ensure that an increase in booster stations resulting from our decision to authorize program originating boosters is consistent with the Local Community Radio Act of 2010 (LCRA).

29. The FNPRM also addresses issues regarding political broadcasting. To the extent that political advertising may be broadcast over a program originating booster, the Commission proposes that such a booster station must follow all of the Commission's political broadcasting rules. These would include rules requiring the maintenance of an online political file, provision of equal opportunity and reasonable access to political candidates, and limiting the rates charged to political candidates for airtime. Finally, the FNPRM also asks whether vendors of these technologies should abide by the Commission's patent policy or any other guidelines common to open standards, which require that licenses be available to all parties on fair, reasonable, and nondiscriminatory terms.

B. Legal Basis

30. The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 301, 302, 303, 307, 308, 309, 316, 319, 324, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, 324, and 403.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

31. 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 (SBA). A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

32. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore, describe three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

33. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

34. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

35. *Radio Stations.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

36. The Commission estimates that as of September 30, 2023, there were 4,452 licensed commercial AM radio stations and 6,670 licensed commercial FM radio stations, for a combined total of 11,122 commercial radio stations. Of this total, 11,120 stations (or 99.98%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of September 30, 2023, there were 4,263 licensed noncommercial (NCE) FM radio stations, 1,978 low power FM (LPFM) stations, and 8,928 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume all of these entities qualify as small entities under the above SBA small business size standard.

37. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

38. The FNPRM proposes modified reporting requirements that, if adopted, may impact compliance requirements for small entities. The Commission seeks comment on whether FM licensees and permittees employing program originating boosters should provide notice through the Licensing and Management System (LMS) prior to commencing program origination, and whether it should similarly provide LMS notice when suspending operations. Should the Commission ultimately decide to adopt these requirements, they would likely result in a modified paperwork obligation for small and other entities. The Commission will have to consider the benefits and costs of allowing program originating booster licensees to submit certain notifications in LMS. If adopted, the Commission will seek approval of and submit the corresponding burden estimates to account for this modified reporting requirement. Additionally, small entities may determine they will need to hire professionals to comply with the rule changes proposed in the FNPRM, if adopted. We expect the comments we receive from the parties in the proceeding, including cost and benefit analyses, will help the Commission to identify and evaluate compliance costs and burdens for small businesses that may result from the proposed rules and additional matters discussed in the FNPRM.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

40. The Commission has sought to minimize the economic impact on small entities, as well as consider significant alternatives and weigh their potential impact to those entities. In the FNPRM, we take the step of proposing to modify rules to facilitate limited program origination by FM booster stations.

41. In addition, the FNPRM seeks to avoid imposing additional burdens on small radio stations where practicable. For example, the FNPRM proposes to add a new § 74.1206 to the rules, which would prescribe LMS notification of the commencement or suspension of program originating booster service. The majority of Commission notifications in the media services are delivered through LMS, which is less burdensome than requiring separate mail or electronic mail notification. Further, our proposed rule also simplifies notification and certification requirements for broadcasters that permanently discontinue originating programming on a booster to file a notification of termination within 30 days. We believe that unlike other alternatives for compliance, this approach will provide adequate notice to the Commission while minimizing the regulatory burden for broadcast stations.

42. At this time, the Commission does not have supporting data to determine if there will or will not be an economic impact on small businesses as a result of the proposed rule amendments and/or additions. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the FNPRM, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small entities. Additionally, the Commission seeks comment on whether any potential costs associated with our FM Booster Station requirements can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the FNPRM.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

43. None.

Ordering Clauses

44. *It is further ordered* that, pursuant to sections 1, 2, 4(i), 7, 301, 302, 303, 307, 308, 309, 316, 319, 324, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, 324,

and 403, the Further Notice of Proposed Rule Making *is adopted*.

44. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the further notice of proposed rulemaking in MB Docket No. 20–401 on or before thirty (30) days after publication in the **Federal Register** and reply comments on or before sixty (60) days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 73 and 74

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Revise § 73.801 to read as follows:

§ 73.801 Broadcast regulations applicable to LPFM stations.

The following rules are applicable to LPFM stations:

(a) Part 11—Emergency Alert System (EAS).

(1) Section 11.11 The Emergency Alert System (EAS).

(2) [Reserved]

(b) Part 73—Radio Broadcast Services.

(1) Section 73.201 Numerical definition of FM broadcast channels.

(2) Section 73.220 Restrictions on use of channels.

(3) Section 73.267 Determining operating power.

(4) Section 73.277 Permissible transmissions.

(5) Section 73.297 FM stereophonic sound broadcasting.

(6) Section 73.310 FM technical definitions.

(7) Section 73.312 Topographic data.

(8) Section 73.318 FM blanketing interference.

(9) Section 73.322 FM stereophonic sound transmission standards.

(10) Section 73.333 Engineering charts.

(11) Section 73.503 Licensing requirements and service.

(12) Section 73.508 Standards of good engineering practice.

(13) Section 73.593 Subsidiary communications services.

(14) Section 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

(15) Section 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(16) Section 73.1201 Station identification.

(17) Section 73.1206 Broadcast of telephone conversations.

(18) Section 73.1207 Rebroadcasts.

(19) Section 73.1208 Broadcast of taped, filmed, or recorded material.

(20) Section 73.1210 TV/FM dual-language broadcasting in Puerto Rico.

(21) Section 73.1211 Broadcast of lottery information.

(22) Section 73.1212 Sponsorship identification; list retention; related requirements.

(23) Section 73.1213 Antenna structure, marking and lighting.

(24) Section 73.1216 Licensee-conducted contests.

(25) Section 73.1217 Broadcast hoaxes.

(26) Section 73.1250 Broadcasting emergency information.

(27) Section 73.1300 Unattended station operation.

(28) Section 73.1400 Transmission system monitoring and control.

(29) Section 73.1520 Operation for tests and maintenance.

(30) Section 73.1540 Carrier frequency measurements.

(31) Section 73.1545 Carrier frequency departure tolerances.

(32) Section 73.1570 Modulation levels: AM, FM, and TV aural.

(33) Section 73.1580 Transmission system inspections.

(34) Section 73.1610 Equipment tests.

(35) Section 73.1620 Program tests.

(36) Section 73.1650 International agreements.

(37) Section 73.1660 Acceptability of broadcast transmitters.

(38) Section 73.1665 Main transmitters.

(39) Section 73.1692 Broadcast station construction near or installation on an AM broadcast tower.

(40) Section 73.1745 Unauthorized operation.

(41) Section 73.1750 Discontinuance of operation.

(42) Section 73.1920 Personal attacks.

(43) Section 73.1940 Legally qualified candidates for public office.

(44) Section 73.1941 Equal opportunities.

(45) Section 73.1943 Political file.

(46) Section 73.1944 Reasonable access.

(47) Section 73.3511 Applications required.

(48) Section 73.3512 Where to file; number of copies.

(49) Section 73.3513 Signing of applications.

(50) Section 73.3514 Content of applications.

(51) Section 73.3516 Specification of facilities.

(52) Section 73.3517 Contingent applications.

(53) Section 73.3518 Inconsistent or conflicting applications.

(54) Section 73.3519 Repetitious applications.

(55) Section 73.3520 Multiple applications.

(56) Section 73.3525 Agreements for removing application conflicts.

(57) Section 73.3539 Application for renewal of license.

(58) Section 73.3542 Application for emergency authorization.

(59) Section 73.3545 Application for permit to deliver programs to foreign stations.

(60) Section 73.3550 Requests for new or modified call sign assignments.

(61) Section 73.3561 Staff consideration of applications requiring Commission consideration.

(62) Section 73.3562 Staff consideration of applications not requiring action by the Commission.

(63) Section 73.3566 Defective applications.

(64) Section 73.3568 Dismissal of applications.

(65) Section 73.3580 Local public notice of filing of broadcast applications.

(66) Section 73.3584 Procedure for filing petitions to deny.

(67) Section 73.3587 Procedure for filing informal objections.

(68) Section 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.

(69) Section 73.3589 Threats to file petitions to deny or informal objections.

(70) Section 73.3591 Grants without hearing.

(71) Section 73.3593 Designation for hearing.

(72) Section 73.3598 Period of construction.

(73) Section 73.3599 Forfeiture of construction permit.

(74) Section 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene and indecent material).

(c) Part 74—Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services.

(1) Section 74.1201 Definitions.

(2) Section 74.1203 Interference.

(3) Section 74.1206 Program originating FM booster station notifications.

(4) Section 74.1231 Purpose and permissible service.

(5) Section 74.1232 Eligibility and licensing requirements.

(6) Section 74.1290 Political programming rules applicable to program originating FM booster stations.

■ 3. Amend § 73.3526 by adding paragraph (a)(3) to read as follows:

§ 73.3526 Online public inspection file of commercial stations.

(a) * * *

(3) Every permittee or licensee of a program originating FM booster station, as defined in § 74.1201(f)(2) of this chapter, shall maintain in the political file of its primary station the records required in § 73.1943 of this part for each such program originating FM booster station.

* * * * *

■ 4. Amend § 73.3527 by adding paragraph (a)(3) to read as follows:

§ 73.3527 Online public inspection file of noncommercial educational stations.

(a) * * *

(3) Every permittee or licensee of a program originating FM booster station, as defined in § 74.1201(f)(2) of this chapter, in the noncommercial educational broadcast service shall maintain in the political file of its primary station the records required in § 73.1943 of this part for each such program originating FM booster station.

* * * * *

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

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

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

■ 6. Amend § 74.1204 by

■ a. Removing the Note to paragraph (a)(4);

■ b. Adding paragraph (a)(5); and

■ c. Revising paragraphs (f) and (i).

The revisions and addition read as follows:

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

(a) * * *

(5) For the purposes of determining overlap pursuant to this paragraph, LP100 stations, LPFM applications, and LPFM permits that have not yet been licensed must be considered as operating with the maximum permitted facilities. All LPFM TIS stations must be protected on the basis of a nondirectional antenna.

* * * * *

(f)(1) An application for an FM translator station will not be granted even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including previously authorized secondary service stations within the 45 dBμ field strength contour of the desired station.

(2) An application for an FM broadcast booster station will not be granted even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (i) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, other than the booster's primary station, but including previously authorized secondary service stations within the 45 dBμ field strength contour of the desired station.

(3) Interference, with regard to either an FM translator station or an FM broadcast booster station application, is demonstrated by:

(i) The required minimum number of valid listener complaints as determined using Table 1 to § 74.1203(a)(3) of this part and defined in § 74.1201(k) of this part;

(ii) A map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBμ contour;

(iii) A statement that the complaining station is operating within its licensed parameters;

(iv) A statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator or booster licensee of the claimed interference and attempted private resolution; and

(v) U/D data demonstrating that at each listener location the undesired to desired signal strength exceeds −20 dB for co-channel situations, −6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the methodology set out in paragraph (b) of this section.

* * * * *

(i) FM broadcast booster stations shall be subject to the requirement that the signal of any first adjacent channel station must exceed the signal of the booster station by 6 dB at all points within the protected contour of any first adjacent channel station, except that in the case of FM stations on adjacent channels at spacings that do not meet the minimum distance separations specified in § 73.207 of this chapter, the signal of any first adjacent channel station must exceed the signal of the booster by 6 dB at any point within the predicted interference free contour of the adjacent channel station.

* * * * *

■ 7. Add § 74.1206 to read as follows:

§ 74.1206 Program originating FM booster station notifications.

(a) A program originating FM booster station must electronically file an FM Booster Program Origination Notification with the Commission in LMS, before commencing or after terminating the broadcast of booster-originated content subject to the provisions of § 74.1201(f)(2) of this part. Such a notification must be filed within 15 days before commencing origination, or within 30 days after terminating origination.

(b) Every FM Booster Program Origination Notification must include the following information in machine-readable format:

(1) The call sign and facility identification number of the program originating FM booster station;

(2) If applicable, the date on which the program originating FM booster station will commence or has terminated originating content;

(3) The name and telephone number of a technical representative the Commission or the public can contact in the event of interference;

(4) A certification that the program originating FM booster station complies with all Emergency Alert System (EAS) requirements in part 11 of this chapter;

(5) A certification that the program originating FM booster station will originate programming for no more than three minutes of each broadcast hour; and

(6) A certification that the program originating FM booster station has been properly synchronized to minimize interference to the primary station.

■ 8. Amend § 74.1231 by revising paragraph (j) and adding paragraph (k) to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(j) In the case of a superpowered FM broadcast station, authorized with facilities in excess of those specified by § 73.211 of this chapter, an FM booster station will only be authorized within the protected contour of the class of

station being rebroadcast as predicted based on the maximum facilities set forth in § 73.211 for the applicable class of FM broadcast station being rebroadcast.

(k) An FM broadcast booster station, as defined in § 74.1201(f)(1) or (f)(2) of this part, must suspend operations at any time its primary station is not operating. If a full-service FM broadcast station suspends operations, in addition to giving the notification specified in § 73.1740(a)(4) of this chapter, each FM broadcast booster station and program originating FM booster station must also file a notification under § 73.1740(a)(4) of this chapter that it has suspended operations.

■ 9. Amend § 74.1232 by revising the first sentence of paragraph (g), redesignating paragraph (h) as paragraph (i), and adding new paragraph (h). The revision and addition read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(g) No numerical limit is placed upon the number of FM booster stations which may be licensed to a single licensee. No more than twenty five (25) program originating FM booster stations may be licensed to a single full-service FM broadcast station. * * *

(h) A program originating FM booster station, when originating programming pursuant to the limits set forth in § 74.1201(f)(2) of this part, may not broadcast programming that is not permitted by its primary station's authorization (*e.g.,* a program originating FM booster station licensed to a noncommercial educational primary station may only originate programming consistent with § 73.503 of this chapter).

* * * * *

■ 10. Add § 74.1290 to read as follows:

§ 74.1290 Political programming rules applicable to program originating FM booster stations.

To the extent a program originating FM booster station originates programming different than that broadcast by its primary station, pursuant to the limits set forth in § 74.1201(f)(2) of this part, it shall comply with the requirements in §§ 73.1212 (Sponsorship identification), 73.1940 (Legally qualified candidates for public office), 73.1941 (Equal opportunities), 73.1942 (Candidate rates), 73.1943 (Political file), and 73.1944 (Reasonable access), of this chapter.

[FR Doc. 2024–07911 Filed 4–15–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 74
Tuesday, April 16, 2024

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

[Docket ID: FSA–2024–0004]

Information Collection Request; Representation for CCC and FSA Loans and Authorization To File a Financing Statement

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act requirement, the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) are requesting comments from all interested individuals and organizations on an extension with revision of a currently approved information collection that supports CCC and FSA loan programs. The information collection is necessary to gather data regarding the applicant which is required on a financing statement, and to obtain the applicant's permission to file a financing statement prior to the execution of a security agreement.

DATES: We will consider comments we receive by June 17, 2024.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments electronically through the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and search for Docket ID FSA–2024–0004. Follow the online instructions for submitting comments. All comments received will be posted without change and will be publicly available on *https://www.regulations.gov.*

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Comments will be available for inspection online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, contact Angela Pope by email at: *Angela.Pope@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Title: Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents.

OMB Control Number: 0560–0215.

Expiration Date of Approval: August 31, 2024.

Type of Request: Extension with a revision.

Abstract: The CCC and FSA are requesting comments from all interested individuals and organizations on an extension with revision of a currently approved information collection that supports CCC and FSA loan programs. We are requesting a 3-year extension for the collection.

Form CCC–10, ''Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents'' is necessary to:

(a) Gather or verify basic data, provided by a CCC or FSA loan applicant, that is required on a financing statement filed by CCC or FSA to perfect a security interest in collateral used to secure a loan; and

(b) Obtain applicant permission to file a financing statement prior to the execution of a security agreement.

The number of burden hours is being revised in this request. The number of burden hours decreased from 385 hours to 298 hours due to fewer producers who are new to FSA loan programs who had not previously provided applicable data and less time spent by producers who review the data on the form each time they apply for a FSA loan.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per response multiplied by the estimated total annual of responses.

Estimated Annual Burden: The public reporting burden for this information collection is estimated to average 5 minutes per response (0.08 hours).

Respondents: Individual producers and farming entities.

Estimated Number of Respondents: 3,734.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Response: 3,734.

Estimated Average Time per response: 0.08 (average 5 minutes).

Estimated Total Annual Burden on Respondents: 298.

We are requesting comments on all aspects of this information collection to help us to:

(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 collection of information, including the validity of the methodology and assumptions used;

(3) Evaluate the quality, ability and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information.

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

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA

(not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-aprogram-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

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

Zach Ducheneaux,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2024–08017 Filed 4–15–24; 8:45 am]

BILLING CODE 3411–E2–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2024–0003]

Notice of Request To Renew an Approved Information Collection: Consumer Complaint Monitoring System

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of 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, FSIS is announcing its intention to renew an approved information collection regarding its Consumer Complaint Monitoring System (CCMS) web portal. There are no changes to the existing information collection. The approval for this information collection will expire on September 30, 2024.

DATES: Submit comments on or before June 17, 2024.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2024–0003. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

SUPPLEMENTARY INFORMATION:

Title: Consumer Complaint Monitoring System.

OMB Number: 0583–0133.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled.

FSIS is requesting renewal of an approved information collection regarding its Consumer Complaint Monitoring System (CCMS) web portal. There are no changes to the existing information collection. The approval for this information collection will expire on September 30, 2024.

FSIS tracks consumer complaints about meat, poultry, and egg products. Consumer complaints are usually filed when food makes a consumer sick, causes an allergic reaction, is not properly labeled (misbranded), or contains a foreign object. FSIS uses a web portal to allow consumers to electronically file a complaint with the Agency about a meat, poultry, or egg product. FSIS uses this information to look for trends that will enhance the Agency's food safety efforts.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of burden: The public reporting burden for this collection of information is estimated to average 15 minutes per response.

Estimated annual number of respondents: The CCMS web portal will have approximately 3,000 respondents.

Estimated average number of responses per respondent: 1.

Estimated annual number of responses: 3,000.

Estimated Total Annual Burden on Respondents: The total annual burden time is estimated to be about 750 hours for respondents using the CCMS web portal.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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

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

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

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

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

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

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Paul Kiecker,

Administrator.

[FR Doc. 2024–07998 Filed 4–15–24; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2024–0005]

Notice of Request To Renew an Approved Information Collection: Animal Disposition Reporting

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of 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, FSIS is announcing its intention to renew an approved information collection regarding requirements for animal disposition reporting in the Public Health Information System. There are no changes to the existing information collection. The approval for this information collection will expire on September 30, 2024.

DATES: Submit comments on or before June 17, 2024.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2024–0005. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

SUPPLEMENTARY INFORMATION:

Title: Animal Disposition Reporting.

OMB Number: 0583–0139.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, and properly labeled.

FSIS is requesting renewal of the approved information collection

regarding animal disposition reporting in the Public Health Information System. There are no changes to the existing information collection. The approval for this information collection will expire on September 30, 2024.

In accordance with 9 CFR 320.6, 381.180, 352.15, and 354.91, establishments that slaughter meat, poultry, exotic animals, and rabbits are required to maintain certain records regarding their business operations and to report this information to the Agency as required. Poultry slaughter establishments complete FSIS Form 6510–7 after each shift and submit it to the Agency. Swine slaughter establishments operating under NSIS submit their records under OMB approval number 0583–0171. Other slaughter establishments provide their business records to FSIS to report the necessary information for entry into PHIS.

FSIS uses this information to plan inspection activities, to develop sampling plans, to target establishments for testing, to develop the Agency budget, and to develop reports to Congress. FSIS also provides this data to other USDA agencies, including the National Agricultural Statistics Service (NASS), the Animal and Plant Health Inspection Service (APHIS), and the Agricultural Marketing Service (AMS), for their publications and for other functions.

FSIS has made the following estimates as part of an information collection assessment:

Estimate of Burden: FSIS estimates that it will take slaughter establishments an average of two minutes per response to collect and submit this information to FSIS.

Respondents: Slaughter establishments.

Estimated Number of Respondents: 1,159.

Estimated Number of Annual Responses per Respondent: 600.

Estimated Total Annual Burden on Respondents: 23,180 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

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

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

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

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

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Paul Kiecker,

Administrator.

[FR Doc. 2024–07996 Filed 4–15–24; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service (NASS), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this

notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, Cost of Pollination Survey. This survey gathers data related to the costs incurred by farmers to improve the pollination of their crops through the use of honey bees and other pollinators. A revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by June 17, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0258, by any of the following methods:

- *Email: omb officer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph L. Parsons, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4557. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *omb officer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cost of Pollination Survey.

OMB Control Number: 0535–0258.

Expiration Date of Approval: January 31, 2025.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue state and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture, and to conduct the Census of Agriculture.

Pollinators (honey bees, bats, butterflies, hummingbirds, etc.) are vital to the agricultural industry for pollinating numerous food crops for the world's population. Concern for honey bee colony mortality has risen since the introduction of *Varroa* mites in the United States in the late 1980s and the appearance of Colony Collapse Disorder in the mid-2000s.

The 2018 Farm Bill (extended until September 2024) directs the implementation and coordination of USDA pollinator health research efforts as recommended by the Federal Pollinator Health Task Force (established in 2014 by Presidential Memorandum). The Task Force's plan involved conducting research and collecting data for the following categories: Status & Trends, Habitats, Nutrition, Pesticides, Native Plants, Collections, Genetics, Pathogens, Decision Tools, and Economics. The pollinators have been classified into Honey Bee, Native Bee, Wasp, Moth/Butterfly, Fly, and Vertebrate. The departments that conducted the bulk of the research were the Department of the Interior (DOI), the Environmental Protection Agency (EPA), the National Science Foundation (NSF), the Smithsonian Institute (SI), and the United States Department of Agriculture (USDA).

NASS was given the tasks of collecting economic data related to honey bees and quantifying the number of colonies that were lost or reduced. NASS is approved to conduct the annual Bee and Honey Inquiry (operations with five or more colonies) and the quarterly Colony Loss Survey (operations with five or more colonies) under OMB # 0535–0153.

NASS will collect economic data from crop farmers who rely on pollinators for their crops (fruits, nuts, vegetables, etc.). Data relating to the targeted crops are collected for the total number of acres that rely on honey bee pollination, the number of honey bee colonies that were used on those acres, and any cash fees associated with honey bee pollination. Crop Farmers are also asked if beekeepers who were hired to bring their bees to their farm were notified of pesticides used on the target acres, how many acres they were being hired to pollinate, and how much they were being paid to pollinate the targeted crops.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–113) and the Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, title III of Public Law 115–435, codified in 44 U.S.C. ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA. NASS uses the information only for statistical purposes and publishes only tabulated total data.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response. Publicity materials and an instruction sheet for reporting via internet will account for 5 minutes of additional burden per respondent. Respondents who refuse to complete a survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: Farmers.

Estimated Number of Respondents: 16,100.

Estimated Total Annual Burden on Respondents: 5,300 hours.

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 including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 9, 2024.

Joseph L. Parsons,

Associate Administrator.

[FR Doc. 2024–07929 Filed 4–15–24; 8:45 am]

BILLING CODE 3410–20–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2024–0002]

Agency Information Collection Activities; Submission of Renewed Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery for OMB Review

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: 30-Day notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Architectural and Transportation Barriers Compliance Board (Access Board) has submitted to the Office of Management and Budget (OMB) a request for renewal of its existing generic clearance to continue to collect qualitative feedback on agency services and programs.

DATES: Send comments on or before May 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review —Open for Public Comments'' or by using the search function.

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

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA and its implementing regulations (5 CFR part 1320), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor (*e.g.,* contractually-required information collection by a third-party). ''Collection of information,'' within the meaning of the PRA, includes agency requests that pose identical questions to, or impose reporting or recording keeping obligations on, ten or more persons, regardless of whether response to such request is mandatory or voluntary. See 5 CFR 1320.3(c); see also 44 U.S.C. 3502(3). In February 2024, the Access Board published a 60-day notice concerning the proposed renewal of its existing generic clearance for the collection of qualitative feedback, which expires on May 31, 2024. (OMB Control No. 3014–0011) 89 FR 8401 (Feb. 7, 2024). We received no comments in response to this 60-day notice.

II. Overview of Requested Generic Clearance Renewal

The Access Board is providing notice that it has requested OMB renewal of our existing generic clearance for the collection of qualitative feedback with regard to agency program and services. OMB approval is requested for three years. To date, we have found the feedback garnered through qualitative customer satisfaction surveys (and similar information collections) to be beneficial, by providing useful insights in experiences, perceptions, opinions, and expectations regarding Access Board services or focusing attention on areas in need of improvement. We are seeking approval to continue our current efforts to solicit qualitative feedback from customers across our agency programs and services. Online surveys will be used unless the customer contacts the agency by phone for technical assistance or an individual otherwise expresses a preference for another survey format (*i.e.,* fillable form in portable document format or paper survey). In addition, paper surveys may be used to garner feedback from participants at in-person trainings or similar events. Provided below is an overview of the existing generic clearance for which the Access Board seeks renewal.

OMB Control Number: 3014–0011.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Type of Request: Extension without change.

Abstract: The proposed information collection activity facilitates collection of qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Federal Government's commitment to improving service delivery. By qualitative feedback we mean information collections that provide useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insight into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of services. These collections will allow for ongoing, collaborative, and actionable communications between the Access Board and its customers and stakeholders.

Respondents/Affected Public: Individuals and households; businesses and organizations; State, local or Tribal government.

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

TABLE 1—ESTIMATED ANNUAL BURDEN HOURS

Type of collection	Number of respondents	Frequency of response (per year)	Average response time (mins.)	Total burden (hours)
Customer feedback surveys	3,870	1	4	258

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

Request for Comment: The Access Board seeks comment on any aspect of the proposed renewal of its existing generic clearance for the collection of qualitative feedback on agency service delivery, including (a) whether the proposed collection of information is necessary for the Access Board's performance; (b) the accuracy of the estimated burden; (c) ways for the Access Board 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. Comments will be summarized and included in our request for OMB's

approval of renewal of our existing generic clearance.

Christopher Kuczynski,

General Counsel.

[FR Doc. 2024–07928 Filed 4–15–24; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–67–2024]

Foreign-Trade Zone 262; Application for Subzone; Hamilton Beach Brands, Inc.; Byhalia, Mississippi

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Northern Mississippi FTZ, Inc., grantee of FTZ 262, requesting subzone status for the facility of Hamilton Beach Brands, Inc., located in Byhalia, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 11, 2024.

The proposed subzone (47.95 acres) is located at 647 East Stonewall Road in Byhalia, Mississippi. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 262.

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

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 28, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 10, 2024.

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

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

Dated: April 11, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–08061 Filed 4–15–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

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

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 17, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Tracy Rollins, POC, Director SABIT Program, International Trade Administration, 1401 Constitution Avenue NW, HCHB 12030, Washington, DC 20230, or by email to *tracy.rollins@trade.gov* or *PRA@trade.gov.* Please reference OMB Control Number 0625–0225 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Tracy Rollins, POC, Director SABIT Program, International Trade Administration, address: 1401 Constitution Avenue NW, HCHB 12030, Washington, DC 20230, telephone: (202) 482–0392, or by email: *tracy.rollins@trade.gov* .

SUPPLEMENTARY INFORMATION:

I. Abstract

The SABIT Program of the Department of Commerce's International Trade Administration (ITA), is a key element in the U.S. Government's efforts to support the economic transition of Eurasia (the former Soviet Union) and to support economic growth in other regions of the world, including countries in Europe, South Asia, and the Middle East, et al. SABIT develops and implements two-week training programs in the United States for groups of up to 20 business and government professionals from Eurasia and other regions. These professionals meet with U.S. government agencies, non-governmental organizations and private sector companies in order to learn about various business practices and principles. This unique private sector-U.S. Government partnership was created in order to tap into the U.S. private sector's expertise and to assist developing regions in their transition to market-based economies while simultaneously boosting trade between the United States and other countries. SABIT also develops and implements virtual events for its alumni and other participants that provide industry-specific training on best practices for business and management and fosters contacts with U.S. organizations. Participant applications are needed to enable SABIT to find the most qualified participants for the training programs. Participant pre-program surveys and post- program surveys provide insight as to what the participants have learned, and they are used to improve the content and administration of future programs. Such monitoring and evaluations is required by law (Foreign Aid and Transparency and Accountability Act of 2016). Alumni success story reports/surveys track the success of the program as regards to business ties between the U.S. and the countries SABIT covers. These alumni surveys also serve to provide evaluation information as required under the Foreign Aid and Transparency and Accountability Act of 2016).

The closing date for participant applications is based upon the starting date of the program and is published with the application and on the program's website at *www.trade.gov/sabit-program.* Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended, funding for the programs will be provided through the Agency for International Development (AID).

The SABIT Program has revised the collection instruments. The instruments are very similar to those used by SABIT in past years. However, some wording has been changed to reflect the changing needs of SABIT over time. The changes are relatively minor and most of them are rephrasing of wording. Instructions for filling out the form, methods of submission, and the order of questions have been revised on the Participant Application. These revisions are not expected to increase the response time to complete the instruments. SABIT

only accepts Participant Applications, Pre- and Post-Program surveys, and Alumni Surveys electronically. This is a change from the last collection request.

II. Method of Collection

Participant applications are electronic and are found on *sabit.smapply.us* when available. Pre-program and Post-program surveys are provided electronically with a link to a Survey Monkey site. Alumni Surveys are also gathered via Survey Monkey electronic, web-based forms.

III. Data

OMB Control Number: 0625–0225.
Form Number(s): None.
Type of Review: Regular submission (revision of a currently approved information collection).
Affected Public: Individuals or households; Business or other for-profit organizations.
Estimated Number of Respondents: 3,500.
Estimated Time per Response: Participant application, 3 hours; participant pre-program survey, 1 hour; participant post-program survey, 1 hour; alumni survey, 1 hour.
Estimated Total Annual Burden Hours: 8,500.
Estimated Total Annual Cost to Public: $14,500.
Respondent's Obligation: Voluntary.
Legal Authority: Section 632(a) of the Foreign Assistance Act of 1961, as amended (the ''FAA''), and pursuant to the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, P.L. 115–141); Foreign Aid and Transparency and Accountability Act of 2016.

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,

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

[FR Doc. 2024–08069 Filed 4–15–24; 8:45 am]
BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–838]

Clad Steel Plate From Japan: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on clad steel plate from Japan would likely lead to the continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable April 10, 2024.

FOR FURTHER INFORMATION CONTACT: Gregory Taushani, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1012.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1996, Commerce published in the **Federal Register** the AD order on clad steel plate from Japan.[1] On November 1, 2023, the ITC instituted,[2] and Commerce initiated,[3] the fifth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* would likely lead to the continuation or recurrence of dumping, and therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Order* be revoked.[4]

On April 10, 2024, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The scope of the order is all clad[6] steel plate of a width of 600 millimeters (mm) or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight. Stainless clad steel plate is manufactured to American Society for Testing and Materials (ASTM) specifications A263 (400 series stainless types) and A264 (300 series stainless types).

Stainless clad steel plate is manufactured to American Society for Testing and Materials (ASTM) specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel-base alloy clad steel plate is manufactured to ASTM specification A265. These specifications

[1] *See Notice of Antidumping Order: Clad Steel Plate from Japan,* 61 FR 34421 (July 2,1996) (*Order*).

[2] *See Clad Steel Plate from Japan; Institution of Five-Year Reviews,* 88 FR 75026 (November 1, 2023).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 74977 (November 1, 2023).

[4] *See Clad Steel Plate from Japan: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Order,* 89 FR 15973 (March 6, 2024), and accompanying Issues and Decision Memorandum.

[5] *See Clad Steel Plate from Japan,* 89 FR 25281 (April 10, 2024) (*ITC Final Determination*).

[6] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (*e.g.,* by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition of superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (*e.g.,* electrocladding), in which the cladding metal (nickel, chromium, *etc.*) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling. *See* Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV)(C)(2)(e).

are illustrative but not necessarily all-inclusive.

Clad steel plate within the scope of the order is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be April 10, 2024.[7] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Order* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

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

Notification to Interested Parties

This five-year (sunset) review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act, and published in accordance with section 777(i) of the Act and 19 CFR 351.218(f)(4).

Dated: April 10, 2024.

Ryan Majerus,

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

[FR Doc. 2024–07997 Filed 4–15–24; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See ITC Final Determination.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Artificial Intelligence Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee (NAIAC or Committee) will hold an open meeting in-person and virtually via web conference on May 2, 2024, from 10:00 a.m.–4:00 p.m. eastern time. The primary purpose of this meeting is for the Committee to report working group findings, identify actionable recommendations, and receive public briefings. The briefings are from outside subject matter experts to the full Committee from areas such as industry, nonprofit organizations, the scientific community, the defense and law enforcement communities, and other appropriate organizations. The final agenda will be posted on the NAIAC Upcoming Meeting Page on the NIST website at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.*

DATES: The NAIAC will meet on Thursday, May 2, 2024, from 10:00 a.m.–4:30 p.m. eastern time.

ADDRESSES: The meeting will be held in-person and virtually via web conference from the U.S. Department of Commerce, Herbert C. Hoover Federal Building, located at 1401 Constitution Ave., N.W, Washington, DC 20230. For instructions on how to attend and/or participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Designated Federal Officer, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975–2785, email address: *cheryl.gendron@nist.gov.* Please direct any inquiries to the committee at *naiac@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the NAIAC will meet virtually as set forth in the **DATES** section of this notice. The meeting will be open to the public.

The NAIAC is authorized by section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116–283), in accordance with the provisions of the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. 1001 *et seq.* The Committee advises the President and the National Artificial Intelligence Initiative Office on matters related to the National Artificial Intelligence Initiative. Additional information on the NAIAC is available at *ai.gov/naiac/.*

The agenda items may change to accommodate NAIAC business. The final agenda will be posted on the NAIAC Upcoming Meeting Page on the NIST website at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.*

Comments: Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to submit comments in advance of the conference. Approximately ten minutes will be reserved for public comments, as time allows, which will be heard on a first-come, first-served basis. Speakers maybe limited to two minutes each. Please note that all comments submitted via email will be treated as public documents and will be made available for public inspection. All comments must be submitted via email with the subject line ''May 2, 2024, NAIAC Public Meeting'' to *naiac@nist.gov* by 5 p.m. eastern time, April 30, 2024. NIST will not accept comments accompanied by a request that part or all of the comment be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

Virtual Meeting Registration Instructions: The meeting will be broadcast via web conference. Registration is required to view the web conference. Instructions on how to register will be made available at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.* Registration will remain open until the conclusion of the meeting.

In-Person Admittance Instruction: Limited space is available on a first-come, first-served basis for anyone who wishes to attend in person. Registration is required for in-person attendance. Registration details will be posted on the NAIAC Upcoming Meeting Page on the NIST website at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.* Registration for in-person attendance

will close at 5 p.m. Eastern time on Tuesday, April 30, 2024, or if the space is full.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–07924 Filed 4–15–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; An Observer Program for At Sea Processing Vessels in the Pacific Coast Groundfish Fishery

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 January 31, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: An Observer Program for At Sea Processing Vessels in the Pacific Coast Groundfish Fishery.

OMB Control Number: 0648–0500.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 268 (5 providers (supplying a total of 75 observers or catch monitors) and 263 fishing vessels).

Average Hours per Response: For providers: 15 minutes for observer training/briefing/debriefing registration, notification of observer physical examination, observer status reports, other reports on observer harassment, safety concerns, or performance problems, catch monitor status reports, and other catch monitor reports on harassment, prohibited actions, illness or injury, or performance problems; 5 minutes for observer safety checklist submission to NMFS, observer provider contracts, observer information materials, catch monitor provider contracts, and catch monitor informational materials; 10 minutes for certificate of insurance; 7 minutes for catch monitor training/briefing registration, notification of catch monitor physical examination, and catch monitor debriefing registration. For vessels: 10 minutes for fishing departure reports and cease-fishing reports.

Total Annual Burden Hours: 620 hours.

Needs and Uses: This is a request for extension of an approved information collection. In 2011, the National Marine Fisheries Service (NMFS) mandated observer requirements for the West Coast groundfish trawl catch shares program. For all fishery sectors, observers must be obtained through third-party observer provider companies operating under permits issued by NMFS. The regulations at §§ 660.140(h), 660.150(j), and 660.160(g), specify observer coverage requirements for trawl vessels and define the responsibilities for observer providers, including reporting requirements. Regulations at § 660.140(i) specify requirements for catch monitor coverage for first receivers. Data collected by observers are used by NMFS to estimate total landed catch and discards, monitor the attainment of annual groundfish allocations, estimate catch rates of prohibited species, and as a component in stock assessments. These data are necessary to comply with the Magnuson-Stevens Act requirements to prevent overfishing. In addition, observer data is used to assess fishing related mortality of protected and endangered species.

Affected Public: Business or other for-profit organizations.

Frequency: Reporting on occasion, weekly, or yearly.

Respondent's Obligation: Mandatory.

Legal Authority: The regulations at §§ 660.140(h), 660.150(j), and 660.160(g), specify observer coverage requirements for trawl vessels and define the responsibilities for observer providers, including reporting requirements. Regulations at § 660.140(i) specify requirements for catch monitor coverage for first receivers.

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 0648–0500.

Sheleen Dumas,

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

[FR Doc. 2024–08071 Filed 4–15–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Southeast Region Dealer and Interview Family of Forms

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 January 24th, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Southeast Region Dealer and Interview Family of Forms.

OMB Control Number: 0648–0013.

Form Number(s): NOAA Form 88–12B.

Type of Request: Regular submission [revision and renewal of a current information collection].

Number of Respondents: 1,829.

Average Hours per Response: Dealer reporting for monitoring Federal fishery annual catch limits (ACLs): coastal fisheries dealers reporting, 10 minutes; mackerel dealer reporting (gillnet), 10 minutes. Bio profile data from Trip Interview programs (TIP): Fin Fish interviews, 10 minutes.

Total Annual Burden Hours: 1,826.

Needs and Uses: This request is for a revision and renewal of a current information collection. Fishery quotas are established for many species in the fishery management plans developed by the Gulf of Mexico Reef Fish Fishery Management Council, the South Atlantic Fishery Management Council, and The Caribbean Fishery Management Council. The Southeast Fisheries Science Center has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. It was discovered that the USVI trip interviews were being double counted with the Vessel trip interviews. We have made the changes to remove the USVI interviews for accuracy.

The frequency of these reporting requirements varies depending on the magnitude of the quota (*e.g.,* lower quota usually requires more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is weekly. Daily reporting is only used for one fishery. In addition, information collection included in this family of forms includes interview with fishermen to gather information on the fishing effort, location and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region and commercial fisheries of the US Caribbean. Fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. This data collection is authorized under 50 CFR part 622.5.

Affected Public: Business and other for-profit organizations.

Frequency: Dealer reporting for monitoring Federal fishery annual catch limits (ACLs) are estimated to transmit data 173 times annually. Vessels selected for Trip Interview programs (TIP): Fin Fish interviews are estimated to be encountered 2.3 times annually.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR part 622.5.

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 0648–0013.

Sheleen Dumas,

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

[FR Doc. 2024–08070 Filed 4–15–24; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER FINANCIAL PROTECTION BUREAU

Community Bank Advisory Council Meeting

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Consumer Financial Protection Bureau (CFPB or Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Tuesday, April 30, 2024, from approximately 1:00 p.m. to 3:30 p.m., eastern time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Advisory Board and Councils, External Affairs Division, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC charter provides that pursuant to the executive and administrative powers conferred on the CFPB by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director of the CFPB renews the discretionary Community Bank Advisory Council under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10.

Section 3 of the CBAC charter states that the purpose of the CBAC is to advise the CFPB in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.

II. Agenda

The CBAC will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

If you require any additional reasonable accommodation(s) in order to attend this event, please contact the Reasonable Accommodations team at *CFPB_ReasonableAccommodations@cfpb.gov,* 48 business hours prior to the start of this event.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration. Individuals who wish to join this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_bvGIZiRMvYCFijs.*

III. Availability

The Council's agenda will be made available to the public on Monday, April 29, 2024, via *consumerfinance.gov.*

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2024–07815 Filed 4–15–24; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the Board of Regents, Uniformed Services University of the Health Sciences (BoR USUHS) will take place.

DATES: Friday, May 17, 2024, open to the public from 7:30 a.m. to 11:30 a.m. (EDT).

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Everett Alvarez Jr. Board of Regents Room (D3001), Bethesda, MD 20814. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Annette Askins-Roberts, Designated Federal Officer (DFO), at (301) 295–3066 or *bor@usuhs.edu.* Mailing address is 4301 Jones Bridge Road, Bethesda, MD 20814. Website: *https://www.usuhs.edu/ao/board-of-regents.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and sections 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and successful operation of Uniformed Services University (USU). These actions are necessary for USU to pursue its mission, which is to educate, train, and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The schedule includes opening comments from the Chair; an update from the Assistant Secretary of Defense for Health Affairs; a report by the President of USU; an End of the Academic Year Summary; an update on the School of Medicine Admissions Process; an update on the USU Accreditation Policy and Middle States Commission on Higher Education; and a brief on the 5-Year National Disaster Medical Systems Pilot Program.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165), the meeting will be held in-person and virtually and is open to the public from 7:30 a.m. to 11:30 a.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting virtually should contact Ms. Angela Bee via email at *bor@usuhs.edu* no later than five business days prior to the meeting.

Written Statements: Pursuant to 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the BoR USUHS about its approved agenda pertaining to this meeting or at any time regarding the BoR USUHS' mission. Individuals submitting a written statement must submit their statement to Ms. Askins-Roberts at the address noted in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to a scheduled meeting of the BoR USUHS may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least five calendar days prior to the meeting. Otherwise, the comments may not be provided to or considered by the Board until a later date. The DFO will compile all timely submissions with the BoR USUHS' Chair and ensure such submissions are provided to BoR USUHS members before the meeting.

Dated: April 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–08057 Filed 4–15–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting Notice—Military Justice Review Panel (MJRP)

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: The DoD is publishing this notice to announce that the MJRP will host a meeting on April 23–24, 2024.

DATES: Tuesday, April 23, 2024—Open to the public from 9:30 a.m. to 11 a.m.; 11:15 a.m. to 12:45 p.m. and 1:45 p.m. to 3 p.m. Pacific Standard Time. Wednesday, April 24, 2024—MJRP administrative session.

ADDRESSES: This meeting will be held at Joint Base Lewis-McChord, Washington. The open sessions of the meeting can be accessed virtually. For those who would like to attend, please send registration information to *whs.pentagon.em.mbx.mjrp@mail.mil*, providing your name, email, organization (if applicable), and telephone number.

FOR FURTHER INFORMATION CONTACT: Mr. Pete L. Yob, 703–693–3857 (Voice), *louis.p.yob.civ@mail.mil* (Email). Mailing address is MJRP, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. The most up-to-date changes to the meeting agenda can be found on the website: *https://mjrp.osd.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to section 5521 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, as amended by section 531(k) of the FY 2018 NDAA, the Secretary of Defense established the MJRP to conduct independent periodic reviews and assessments of the operation of the Uniform Code of Military Justice (UCMJ). (10 United States Code section946. Art. 146 (effective Jan 1, 2019)).

Purpose of the Meeting: Pursuant to UCMJ, Article 146, the MJRP shall conduct independent periodic reviews and assessments of the operation of the UCMJ. This will be the tenth meeting held by the MJRP. On April 23, 2024, the MJRP will hold three open sessions. The first session will be composed of a panel of Commanding Officers from each of the Armed Services. After a break, the MJRP will hear from a panel of Senior Enlisted Advisors followed by a panel discussion with practitioners with military and civilian experience. On April 23, 2024, the MJRP will conduct a session for administrative matters.

Dated: April 8, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–07978 Filed 4–15–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Executive Committee Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open and closed meetings.

SUMMARY: This notice sets forth the agenda, time, and instructions to access the meeting of the National Assessment Governing Board's (hereafter referred to as Governing Board or Board) special meeting of the Executive Committee. This notice provides information about the meeting to members of the public who may be interested in attending the meetings and/or providing written comments related to the work of the Governing Board. The meeting will be held virtually as noted below. Members

of the public must register in advance to attend the meeting. A registration link will be posted on *www.nagb.gov* no later than two business days prior to the meeting.

DATES: The Executive Committee Meeting will be held on the following date:

- May 1, 2024, from 2 to 4 p.m., EDT

FOR FURTHER INFORMATION CONTACT: Angela Scott, Designated Federal Official (DFO) for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–7502, fax: (202) 357–6945, email: *Angela.Scott@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, (20 U.S.C. 9621). Information on the Governing Board and its work can be found at *www.nagb.gov.* Notice of the meeting is required under section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees).

The Governing Board formulates policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include:

(1) selecting the subject areas to be assessed; (2) developing appropriate student achievement levels; (3) developing assessment objectives and testing specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards; (4) developing a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public; (5) designing the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys; (6) measuring student academic achievement in grades 4, 8, and 12 in the authorized academic subjects; (7) developing guidelines for reporting and disseminating results; (8) developing standards and procedures for regional and national comparisons; (9) taking appropriate actions needed to improve the form, content use, and reporting of results of an assessment; and (10) planning and executing the initial public release of NAEP reports.

Executive Committee Meeting

Wednesday, May 1, 2024

Executive Committee (Virtual)

2 p.m.–2:30 p.m. (EDT) Open Session
2:30 p.m.–4 p.m. (EDT) Closed Session

The Executive Committee will meet in open session on Wednesday, May 1, 2024, from 2 p.m. to 2:30 p.m. to review the agenda for the May 2024 Quarterly Board meeting, receive an update from the Governing Board's Executive Director and to discuss progress on the Strategic Vision refresh. The committee will meet in closed session from 2:30 to 4 p.m., to receive updates on the NAGB budget from the Governing Board's Executive Director and updates from National Center for Educational Statistics (NCES) Commissioner on the NAEP Cost Structure Review, contracting process and the NAEP Budget. The meeting will adjourn at 4 p.m. The briefing and discussion may impact current and future NAEP contracts and budgets and must be kept confidential to maintain the integrity of the Federal acquisition process. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 of the United States Code.

Instructions for Accessing and Attending the Meetings: Members of the public may attend the May 1, 2024, Executive Committee meeting virtually. A request for registration information should be sent to *nagb@ed.gov* no later than April 29. A link to the final meeting agenda and information on how to register for virtual attendance for the open sessions will be posted on the Governing Board's website at *www.nagb.gov* no later than two business days prior to the meeting. Registration is required to join the meeting virtually.

Public Comment: Written comments related to the work of the Governing Board and its standing committees may be submitted to the attention of the DFO no later than 10 business days prior to the meeting. Written comments may be submitted either via email to *Angela.Scott@ed.gov* in hard copy to the address listed above.

Access to Records of the Meeting: Pursuant to 5 U.S.C. 1009, the public may inspect the meeting materials at *www.nagb.gov,* which will be posted no later than five business days prior to each meeting. The public may also inspect the meeting materials and other Governing Board records at 800 North Capitol Street NW, Suite 825, Washington, DC 20002, by emailing *Angela.Scott@ed.gov* to schedule an appointment.

Reasonable Accommodations: The meeting location is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the DFO listed in this notice no later than ten working days prior to each meeting date.

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Authority: Public Law 107–279, title III, section 301—National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621).

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2024–08015 Filed 4–15–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decisions Under the Randolph-Sheppard Act

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: This notice lists arbitration panel decisions under the Randolph-Sheppard Act that the Department of Education (Department) has made publicly available in accessible electronic format during the first quarter of calendar year 2024. All decisions are available on the Department's website and by request.

FOR FURTHER INFORMATION CONTACT: James McCarthy, U.S. Department of

Education, 400 Maryland Avenue SW, Room 4A212, Washington, DC 20202–2800. Telephone: (202) 245–6458. Email: *james.mccarthy@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: For the purpose of providing individuals who are blind with remunerative employment, enlarging their economic opportunities, and stimulating greater efforts to make themselves self-supporting, the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* (Act), authorizes individuals who are blind to operate vending facilities on Federal property and provides them with a priority for doing so. The vending facilities include, among other things, cafeterias, snack bars, and automatic vending machines. The Department administers the Act and designates an agency in each participating State—the State licensing agency (SLA)—to license individuals who are blind to operate vending facilities on Federal and other property in the State.

The Act provides for arbitration of disputes between SLAs and vendors who are blind and between SLAs and Federal agencies before three-person panels, convened by the Department, whose decisions constitute final agency action. 20 U.S.C. 107d–1. The Act also makes these decisions matters of public record and requires their publication in the **Federal Register**. 20 U.S.C. 107d–2(c).

The Department publishes lists of Randolph-Sheppard Act arbitration panel decisions in the **Federal Register**. The full texts of the decisions listed are available on the Department's website (see below) or by request (see 82 FR 41941 (Sept. 5, 2017)). Older, archived decisions are also added to the Department's website as they are digitized.

Throughout 2023 and the last quarter of 2022, the Department received eight new decisions issued by Randolph-Sheppard arbitration panels that were made publicly available during the first quarter of 2024. The following table lists these eight decisions from most recent to oldest based on their decision dates.

Case name	Docket No.	Date	State
Sparks v. *Business Enterprises of Texas, Texas Workforce Commission*	R–S/22–08	12/21/2023	Texas.
Conway v. *State of Illinois, Department of Human Services, Business Enterprise Program For The Blind.*	R–S/22–05	12/11/2023	Illinois.
Mitchell v. *Louisiana Workforce Commission*	R–S/22–07	12/7/2023	Louisiana.
Mahler v. *Texas Workforce Commission*	R–S/22–09	10/13/2023	Texas.
Kean v. *South Carolina Commission For The Blind*	R–S/18–02	10/11/2023	South Carolina.
State of Hawaii, Department of Human Services, Division of Vocational Rehabilitation, Ho'opono Services For The Blind v. *United States Department of The Army, Schofield Barracks.*	R–S/16–07 (remand)	6/12/2023	Hawaii.
Mahler v. *Texas Workforce Commission*	R–S/22–02	5/15/2023	Texas.
The Colorado Business Enterprise Program v. *United States Department of the Air Force, Schriever Space Force Base.*	R–S/20–09	9/29/2022	Colorado.

These decisions and other decisions that we have already posted are searchable by key terms, are accessible under Section 508 of the Rehabilitation Act, and are available in Portable Document Format (PDF) on the Department's website at *https://rsa.ed.gov/about/programs/randolph-sheppard-vending-facility-program/decisions-of-arbitration-panels* or by request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–07999 Filed 4–15–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics

AGENCY: President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda for the May 3, 2024, meeting of the President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics (Commission), and how members of the public may attend the meeting and submit written comments pertaining to the work of the Commission.

DATES: The meeting of the Commission will be held on Friday, May 3, 2024, from 9 a.m. to 3 p.m. eastern daylight time.

ADDRESSES: Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, Washington, DC 20504. Members of the public can attend virtually.

FOR FURTHER INFORMATION CONTACT: Emmanuel Caudillo, Designated Federal Official, President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, U.S. Department of Education, 400 Maryland Avenue SW, Room 7E220, Washington, DC 20202, telephone: (202) 377–4988, or email: *Emmanuel.Caudillo@ed.gov.*

SUPPLEMENTARY INFORMATION:

The Commission's Statutory Authority and Function: The Commission is established by Executive Order 14045 (September 13, 2021) and continued by Executive Order 14109 (September 29, 2023). The Commission is also governed by the provisions of 5 U.S.C. chapter 10 (Federal Advisory Committees), which sets forth standards for the formation and use of advisory committees. The Commission's duties are to advise the President, through the Secretary of Education, on matters pertaining to educational equity and economic opportunity for the Hispanic and Latino community in the following areas: (i) what is needed for the development, implementation, and coordination of educational programs and initiatives at the U.S. Department of Education (Department) and other agencies to improve educational opportunities and outcomes for Hispanics and Latinos; (ii) how to promote career pathways for in-demand jobs for Hispanic and Latino students, including registered apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives; (iii) ways to strengthen the capacity of institutions, such as Hispanic-serving Institutions, to equitably serve Hispanic and Latino students and increase the participation of Hispanic and Latino students, Hispanic-serving school districts, and the Hispanic community in the programs of the Department and other agencies; (iv) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Hispanic and Latino students face and the causes of these challenges; and (v) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the mission and objectives of this order, consistent with applicable law. Notice of this meeting is required by section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees).

Meeting Agenda: The agenda for the Commission meeting builds upon conversations and information shared in the Commission's five prior meetings and continues their engagement on advancing educational equity and economic opportunity for Hispanics. Specifically, during the meeting, the Commission will (1) receive updates and vote on recommendations from the Commission's four subcommittees: Advancing PreK–12 Educational Equity; Advancing Higher Education and Hispanic Serving Institutions (HSIs); Strengthening Economic Opportunity & Workforce Development; and Strengthening Public Partnerships and Public Awareness; (2) hear presentations from federal and community leaders on topics related to Executive Order 14045; and (3) and discuss strategies to advance the Commission's approved recommendations from prior meetings and next steps towards advancing duties of the Commission, as outlined by Executive Order 14045.

Access to the Meeting: Members of the public may register to attend the meeting virtually by accessing the link at *https://www.ed.gov/hispanicinitiative* or emailing *WhiteHouseHispanicInitiative@ed.gov* by 5 p.m. EDT on Thursday, May 2, 2024. Instructions on how to access the meeting will be emailed to members of the public that register to attend and will be posted to *https://www.ed.gov/hispanicinitiative* no later than Thursday, May 2, 2024, by 6 p.m. EDT.

Public Comment: Written comments pertaining to the work of the Commission may be submitted electronically to *WhiteHouseHispanicInitiative@ed.gov* by 5 p.m. EDT on Thursday, May 2, 2024. Include in the subject line: ''Written Comments: Public Comment.'' The email must include the name(s), title, organizations/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to the electronic mail message (email) or is provided in the body of an email message. Please do not send material directly to members of the Commission.

Reasonable Accommodations: The meeting platform and access code are accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Commission's website, at *https://sites.ed.gov/hispanic-initiative/presidential-advisory-commission* no later than 90 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may request to inspect records of the meeting, and other Commission records, at 400 Maryland Avenue SW, Washington, DC, by emailing *Emmanuel.Caudillo@ed.gov* or by calling (202) 377–4988, to schedule an appointment.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Executive Order 14045 (September 13, 2021) and continued by Executive Order 14109 (September 29, 2023).

Alexis Barrett,

Chief of Staff, Office of the Secretary.

[FR Doc. 2024–08036 Filed 4–15–24; 8:45 am]

BILLING CODE 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.

SUMMARY: EIA invites public comment on the proposed three-year extension, with changes, to the Natural Gas Data Collection Program, OMB Control Number 1905–0175, as required under the Paperwork Reduction Act of 1995. The surveys covered by this request include; Form EIA–176, *Annual Report of Natural and Supplemental Gas Supply and Disposition;* Form EIA–191, *Monthly Underground Natural Gas Storage Report;* Form EIA–191L, *Monthly Liquefied Natural Gas Storage Report;* Form EIA–757, *Natural Gas Processing Plant Survey;* Form EIA–857, *Monthly Report of Natural Gas Purchases and Deliveries to Consumers;* Form EIA–910, *Monthly Natural Gas Marketer Survey;* and Form EIA–912, *Weekly Natural Gas Storage Report.* The

Natural Gas Data Collection Program provides information on natural gas storage, supply, processing, distribution, consumption, and prices, by sector, within the United States.

DATES: EIA must receive all comments on this proposed information collection no later than May 16, 2024. If you anticipate any difficulties in submitting your comments by the deadline, contact the email address listed in the **ADDRESSES** section of this notice as soon as possible.

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.* You can find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: If you need additional information, contact Michael Kopalek, U.S. Energy Information Administration, by phone at (202) 586–4001 or by email at *Michael.Kopalek@eia.gov.* The forms and instructions are available on EIA's website at *www.eia.gov/survey/.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0175;

(2) *Information Collection Request Title:* Natural Gas Data Collection Program.

(3) *Type of Request:* Three-year extension with changes.

(4) *Purpose:* The surveys included in the Natural Gas Data Collection Program collect information on natural gas storage, supply, processing, transmission, distribution, consumption by sector, and consumer prices. The data collected supports public policy analyses and produces estimates of the natural gas industry. The statistics generated from these surveys are published on EIA's website, *https://www.eia.gov,* and are used in various EIA information products, including the *Weekly Natural Gas Storage Report* (WNGSR), *Natural Gas Monthly* (NGM), *Natural Gas Annual* (NGA), *Monthly Energy Review* (MER), *Short-Term Energy Outlook* (STEO), and *Annual Energy Outlook* (AEO).

(4a) *Proposed Changes to Information Collection:*

Form EIA–176, Annual Report of Natural and Supplemental Gas Supply and Disposition

Form EIA–176 collects data on natural, synthetic, and supplemental gas supplies, their disposition, and certain revenues by state. EIA considers volumes of blended hydrogen to fall under the purview of current Form EIA–176, and as such will instruct respondents to report them on Line 6.0, ''Supplemental Gaseous Fuel Supplies,'' under the sub-header ''Other.'' During the previous collection package, EIA modified the survey instructions to include Renewable Natural Gas (RNG) producers who inject high-Btu RNG into an interstate pipeline, intra-state pipeline, or natural gas distribution company system. As such, EIA requests an increase in respondent count and burden to accommodate the addition of new respondents to the survey frame.

Form EIA–757, Natural Gas Processing Plant Survey

Form EIA–757 collects information on the capacity, status, and operations of natural gas processing plants, and monitors constraints to natural gas supplies during catastrophic events, such as hurricanes. Schedule A of Form EIA–757 collects baseline operating and capacity information from all respondents on a triennial basis or less frequently. Schedule B is used on an emergency standby basis and may be activated during natural disasters or other energy disruptions. Schedule B collects data from a sample of respondents in the affected areas.

EIA proposes to discontinue collection of Form EIA–757 Schedule A, and burden hours have been adjusted downward accordingly. EIA has investigated potential consolidation of the EIA–757 Schedule A survey with another, more frequent natural gas processing plant survey, the EIA–64A Survey (OMB number 1905–0057). As a result of this, EIA proposes that the EIA–64A Survey will absorb several key data items from the EIA–757 Schedule A Survey in order to reduce overall respondent burden and eliminate duplicative data collection efforts.

EIA–757 Schedule B is a standby survey to be used in instances of a natural disaster or incident resulting in widespread closures of natural gas processing plants. Since the agency has not used the survey at any point in the last six years, EIA is reducing the requested burden hours by 50% to allow its use once every three years, rather than twice every three years.

Form EIA–857, Monthly Report of Natural Gas Purchases and Deliveries to Consumers

Form EIA–857 collects monthly data on the volumes of natural gas delivered to consumers by end-use sector and by state, as well as certain associated revenues and heat content. EIA is increasing the requested burden to accommodate increased sample coverage, parallel to the increased scope of the EIA–176, the universe from which this survey's sample is drawn.

Form EIA–912, Weekly Natural Gas Storage Report

Form EIA–912 collects information on weekly inventories of natural gas in underground storage facilities. EIA is slightly decreasing the requested burden to more accurately reflect demonstrated sample sizes over the past six years.

Form EIA–191, Monthly Underground Natural Gas Storage Report

Form EIA–191 collects information on monthly inventories of natural gas in underground storage, as well as storage facility information. EIA is updating the instructions to clarify that respondent contact information collected in Part 1 of the survey form is not considered public information.

Form EIA–191L, Monthly Liquefied Natural Gas Storage Report

Form EIA–191L collects information on monthly inventories of liquefied natural gas (LNG) in aboveground storage, as well as LNG storage facility information. EIA is updating the instructions to clarify that respondent contact information collected in Part 1 of the survey form is not considered public information.

Form EIA–910, Monthly Natural Gas Marketer Survey Has No Changes

(5) *Annual Estimated Number of Respondents:* 3,045;

(6) *Annual Estimated Number of Total Responses:* 16,087;

(7) *Annual Estimated Number of Burden Hours:* 56,916;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $5,188,463 (56,916 burden hours times $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 April 11, 2024.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2024–08062 Filed 4–15–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7189–000]

Green Lake Water Power Company; Notice of Authorization for Continued Project Operation

The license for the Green Lake Hydroelectric Project No. 7189 was issued for a period ending March 31, 2024.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 7189 is issued to Green Lake Water Power Company for a period effective April 1, 2024, through March 31, 2025, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

If issuance of a new license (or other disposition) does not take place on or before March 31, 2025, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Green Lake Water Power Company is authorized to continue operation of the Green Lake Hydroelectric Project under the terms and conditions of the prior license until the issuance of a subsequent license for the project or other disposition under the FPA, whichever comes first.

Dated: April 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08080 Filed 4–15–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2392–000]

Ampersand Gilman Hydro LP; Notice of Authorization for Continued Project Operation

The license for the Gilman Hydroelectric Project No. 2392 was issued for a period ending March 31, 2024.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2392 is issued to Ampersand Gilman Hydro LP for a period effective April 1, 2024, through March 31, 2025, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

If issuance of a new license (or other disposition) does not take place on or before March 31, 2025, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Ampersand Gilman Hydro LP is authorized to continue operation of the Gilman Hydroelectric Project under the terms and conditions of the prior license until the issuance of a subsequent license for the project or other disposition under the FPA, whichever comes first.

Dated: April 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08077 Filed 4–15–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3025–000]

Green Mountain Power Corporation; Notice of Authorization for Continued Project Operation

The license for the Kelley's Falls Hydroelectric Project No. 3025 was issued for a period ending March 31, 2024.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms

and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3025 is issued to Green Mountain Power Corporation for a period effective April 1, 2024, through March 31, 2025, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

If issuance of a new license (or other disposition) does not take place on or before April 31, 2025, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Green Mountain Power Corporation is authorized to continue operation of the Kelley's Falls Hydroelectric Project under the terms and conditions of the prior license until the issuance of a subsequent license for the project or other disposition under the FPA, whichever comes first.

Dated: April 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08079 Filed 4–15–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–8–000]

Commission Information Collection Activities (FERC–598) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–598, Self-Certification for Entities Seeking Exempt Wholesale Generator Status or Foreign Utility Company Status, OMB Control Number 1902–0166, which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due May 16, 2024.

ADDRESSES: Send written comments on FERC–598 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0166) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC24–8–000) by one of the following methods. Electronic filing through *https://www.ferc.gov/ferc-online/overview* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by U.S. Postal Service mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection. FERC submissions must be formatted and filed in accordance with submission guidelines at *https://www.ferc.gov/ferc-online/overview.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* or telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC–598, Self-Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status.

OMB Control No.: 1902–0166.

Type of Request: Three-year renewal of FERC–598.

Abstract: Under 42 U.S.C. 16452(a), public utility holding companies and their associates must maintain, and make available to the Commission, certain books, accounts, memoranda, and other records. The pertinent records are those that the Commission has determined: (1) are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company; and (2) are necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

Public utility holding companies and their associates may seek exemption from this requirement. The pertinent statutory and regulatory provisions, 42 U.S.C. 16454 and 18 CFR 366.7, authorize such entities to file with the Commission a notice of self-certification demonstrating that they are ''exempt wholesale generators'' (EWGs) or ''foreign utility companies'' (FUCOs). If the Commission takes no action on a good-faith self-certification filing within 60 days after the date of filing, the applicant is exempt from the requirements of 42 U.S.C. 16452(a).

An EWG is defined as ''any person engaged directly, or indirectly through one or more affiliates . . . and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.'' [1] A FUCO is defined as ''any company that owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company: (1) derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and (2) [n]either the company nor any of its subsidiary companies is a public-utility

[1] 18 CFR 366.1.

company operating in the United States.'' [2]

In the case of EWGs, the person filing a notice of self-certification must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located. In addition, that person must represent to the Commission in its submission that it has filed a copy of the notice with the appropriate state regulatory authority.[3]

Type of Respondents: EWGs and FUCOs.

Estimate of Annual Burden: [4] The Commission estimates the total annual burden and cost [5] for this information collection as follows.

FERC–598

[Self-certification for entities seeking exempt wholesale generator status or foreign utility company status]

A. Number of respondents (EWGs and FUCOs)	B. Annual number of responses per respondent	C. Total number of responses (Column A × Column B)	D. Average burden hrs. & cost ($) per response	E. Total annual burden hours & total annual cost (Column C × Column D)	F. Average Cost per respondent ($) (Column E ÷ Column 1)
300	1	300	6 hrs.; $600	1,800 hrs.; $180,000	$600

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 10, 2024.

Debbie-Anne Reese,

Acting Secretary.

[FR Doc. 2024–08075 Filed 4–15–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–80–000]

Mississippi Hub, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed MS Hub Capacity Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the MS Hub Capacity Expansion Project involving construction and operation of facilities by Mississippi Hub, LLC (MS Hub) in Simpson, Covington, and Jefferson Davis Counties, Mississippi. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on May 10, 2024. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues it needs to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on March 5, 2024, you will need to file those comments in Docket No. CP24–80–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The

[2] *Id.*

[3] 18 CFR 366.7(a).

[4] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[5] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's FY 2024 annual full-time equivalent average of $207,786 (for salary plus benefits), the average hourly cost is $100 per hour.

courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

MS Hub provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. 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; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP24–80–000) on your letter. 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, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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.*

Summary of the Proposed Project

In Simpson County, MS Hub would make the following modifications to its existing MS Hub Storage Facility:

- increase the certificated capacity of Gas Storage Caverns No. 1 and No. 2 by a total of 3.87 billion cubic feet (Bcf);
- construct three new gas storage caverns Nos. 4, 5, and 6 totaling approximately 33.9 Bcf of working gas capacity;
- construct three electric motor-driven compressor units each rated at 7,000 horsepower (hp) and two Caterpillar model G3616 A4 reciprocating internal combustion engine natural gas-fired compressor units each rated at 5,500 hp, and dehydration and ancillary equipment at the existing Gas Handling Facility; and
- expand the existing Leaching Facility for the solution mining of each cavern by installing additional pumps, water tanks and separators.

Also in Simpson County, MS Hub would construct:

- one meter skid and one filter separator on the existing Southern Natural Gas (''SONAT'') Meter Station site;
- four raw water wells Nos. 6 through 9;
- one new saltwater disposal well No. 9; and
- two saltwater disposal wells Nos. 5 and 7 collocated at the existing raw water well No. 3 and saltwater disposal well No. 3 wellpad.

In Covington County, MS Hub would construct:

- two meter skids, two flow control skids, and one filter separator on the existing Transcontinental Gas Pipeline (''Transco'') Meter Station site;
- one meter skid and one filter separator on the existing Southeast Supply Header (''SESH'') Meter Station site; and
- one booster compressor station (''MS Hub Booster Station'') and associated equipment at the site of the existing Transco Meter Station consisting of three Solar Mars model 100–16000S natural gas-fired turbine compression units each rated at 13,486 hp.

In Jefferson Davis County, MS Hub would construct:

- two saltwater disposal wells Nos. 6 and 8 at the existing raw water well No. 4 and saltwater disposal well No. 4 wellpad.

As the MS Hub Facility is currently operational, the facilities contemplated by the project would be added to complement the current infrastructure. Upon completion, the project would add up to 0.7 Bcf per day of injection capacity, and up to 1.0 Bcf per day of delivery capacity, but would not increase MS Hub's maximum certificated capacity withdrawal and injection levels. With the additional injection and delivery capacity, the MS Hub Storage Facility would be capable of providing additional high-turn services to the Gulf Coast and Southeast market areas.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the project facilities would disturb about 108.3 acres. Following construction, MS Hub would maintain about 75.6 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP24–80–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is 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. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: April 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08073 Filed 4–15–24; 8:45 am]

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC24–40–000]

Black Hills Shoshone Pipeline, LLC; Notice of Filing

Take notice that on April 5, 2024, Black Hills Shoshone Pipeline LLC, submitted a request for a two year waiver of the Federal Energy Regulatory Commission's (Commission) requirement to provide its certified public accountant (CPA) certification statement for the 2023 FERC Form No. 2–A on the basis of the calendar year ending December 31.

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 and 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. 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://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on May 10, 2024.

Dated: April 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08074 Filed 4–15–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2420–000]

PacifiCorp; Notice of Authorization for Continued Project Operation

The license for the Cutler Hydroelectric Project No. 2420 was issued for a period ending March 31, 2024.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2420 is issued to PacifiCorp for a period effective April 1, 2024, through March 31, 2025, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

If issuance of a new license (or other disposition) does not take place on or before March 31, 2025, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PacifiCorp is authorized to continue operation of the Cutler Hydroelectric Project under the terms and conditions of the prior license until the issuance of a subsequent license for the project or other disposition under the FPA, whichever comes first.

Dated: April 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–08078 Filed 4–15–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11843–01–R9]

Approval of Clean Air Act General Permit Request for Coverage for New Minor Source Gasoline Dispensing Facility in Indian Country Within California for Oak Creek Travel Center

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that the U.S. Environmental Protection Agency (EPA), Region 9 issued an approval to the Fort Independence Indian Community of Paiute Indians of the Fort Independence Indian Reservation (Fort Independence Indian Community) under the Clean Air Act's Tribal Minor New Source Review (NSR) Program. The EPA approved the Fort Independence Indian Community's Request for Coverage under the General Air Quality Permit for New or Modified Minor Source Gasoline Dispensing Facilities in Indian Country within California for the Oak Creek Travel Center. This approval authorizes the construction of the Oak Creek Travel Center under the Tribal Minor NSR Program.

DATES: The EPA's approval of the Request for Coverage for the Oak Creek Travel Center was issued by the EPA and became effective on March 6, 2024. Pursuant to section 307(b)(1) of the Clean Air Act, judicial review of this final agency decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of June 17, 2024.

FOR FURTHER INFORMATION CONTACT: Noelle Mushro, EPA Region 9, (415) 972–3987, *Mushro.noelle@epa.gov.* The EPA's final approval decision, the Technical Support Document for this action, and all other supporting information are available through *www.regulations.gov* under Docket ID No. EPA–R09–OAR–2023–0249.

SUPPLEMENTARY INFORMATION:

Notice of Final Action

The EPA approved the Fort Independence Indian Community's Request for Coverage under the General Air Quality Permit for New or Modified Minor Source Gasoline Dispensing Facilities in Indian Country (Gasoline Dispensing Facility General Permit) [1] on

[1] The Gasoline Dispensing Facility General Permit was issued by the EPA under the Tribal Minor NSR

Continued

March 6, 2024. This approval pertains to the construction and operation of the Oak Creek Travel Center (Source), a gasoline dispensing facility, to be located on the Fort Independence Indian Reservation, in Independence, California. The EPA issued the approval pursuant to the provisions of Clean Air Act sections 110(a) and 301(d) and the EPA's Tribal Minor NSR Program at 40 CFR 49.151–49.164. The EPA based its approval on its determination that the Source meets the criteria qualifying it for coverage and that the Source is eligible for coverage under the Gasoline Dispensing Facility General Permit.

The EPA's Clean Air Act approval for the Source is a final agency action for purposes of judicial review only for the issue of whether the Source qualifies for coverage under the Gasoline Dispensing Facility General Permit. 40 CFR 49.156(e)(6).

Dated: April 9, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–07957 Filed 4–15–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2021–0254; FRL–9347–06–OCSPP]

Asbestos Part 2 Supplemental Evaluation Including Legacy Uses and Associated Disposals; Draft Risk Evaluation Under the Toxic Substances Control Act; Notice of Availability, Webinar and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing the availability of and seeking public comment on a draft document titled ''Draft Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos'' and is announcing a webinar on May 13, 2024. EPA is evaluating legacy uses and associated disposals of asbestos including chrysotile asbestos, five additional fiber types, asbestos-containing talc, and Libby asbestos. EPA has used the best available science to preliminarily determine that asbestos poses unreasonable risk to human health.

DATES:

Webinar: May 13, 2024, 3–4 p.m. EST. To receive the webcast meeting link and audio teleconference information before the meeting, you must register by 12 p.m. on April 25, 2024. To allow EPA time to process your request for special accommodations before the webinar, please submit your request to EPA by 5 p.m. EST on May 6, 2024.

Written comments: Submit your comments on or before June 17, 2024.

ADDRESSES:

Webinar: Register online at *https://usepa.zoomgov.com/meeting/register/vJItf-mgrjotGpHKg8v4EMI8cejAiOoZWbI.*

Special accommodations: Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0254, online 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 or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For webinar information: Chloe Durand, Project Management and Operations Division (7407M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1201 Constitution Ave. NW, Washington, DC 20004; telephone number: (202) 564–8820; email address: *durand.chloe@epa.gov.*

For technical information: Peter Gimlin, Existing Chemical Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0515; email address: *gimlin.peter@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general and may be of particular interest to those involved in the manufacture, processing, distribution, use, and disposal of asbestos,-containing materials (ACMs) including construction professionals and individuals completing do-it-yourself (DIY) activities in buildings with ACMs, related industry trade organizations, non-governmental organizations with an interest in human and environmental health, state and local governments, Tribal Nations, and/or those interested in the assessment of risks involving chemical substances and mixtures regulated under TSCA. As such, the Agency has not attempted to describe all the specific entities that this action might apply to. If you need help determining applicability, consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

The draft risk evaluation is issued pursuant to TSCA section 6, 15 U.S.C. 2605, which requires that EPA conduct risk evaluations on chemical substances and identifies the minimum components EPA must include in all chemical substance risk evaluations. Each risk evaluation must be conducted consistent with the best available science, be based on the weight of the scientific evidence, and consider reasonably available information. 15 U.S.C. 2625(h), (i), and (k).

C. What action is the Agency taking?

The Agency is announcing the availability of and soliciting comment on the document titled ''Draft Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos,'' which is available in the docket. EPA is also announcing a stakeholder engagement opportunity through a webinar where EPA will give an informational presentation on the document.

For more information about the TSCA risk evaluation process, which is the second phase of the EPA three phase process for ensuring the safety of existing chemicals, go to *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/how-epa-evaluates-safety-existing-chemicals.*

D. What should I consider as I prepare my comments?

1. Submitting CBI

Do not submit CBI to EPA through *https://www.regulations.gov* or email. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the information that you claim to be CBI. Information so marked will not be disclosed except in

Program on May 1, 2019, and the permit became effective June 12, 2019. 84 FR 20879 (May 13, 2019). This permit is available at *https://www.epa.gov/caa-permitting/air-permits-gas-stations-tribal-lands-california.*

accordance with procedures set forth in 40 CFR parts 2 and 703, as applicable.

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. Background

When EPA designated asbestos as one of the first 10 existing chemicals to undergo risk evaluation under TSCA, as amended in 2016, the risk evaluation focused on chrysotile asbestos, the only type of asbestos fiber where manufacture (including import), processing, and distribution in commerce for use was known, intended, or reasonably foreseen in the U.S. In *Safer Chemicals, Healthy Families* v. *EPA,* 943 F.3d 397 (9th Cir. 2019) the court held that EPA's Risk Evaluation Procedural Rule (82 FR 33726, July 20, 2017 (FRL–9964–38)) should not have excluded ''legacy uses'' (*i.e.,* uses without ongoing or prospective manufacturing, processing, or distribution) and ''associated disposals'' (*i.e.,* future disposal of legacy uses) from the definition of conditions of use. As a result, the risk evaluation for asbestos was split into two parts.

1. *Asbestos (Part 1: Chrysotile Asbestos).* The final risk evaluation for Asbestos (Part 1: Chrysotile Asbestos) was released in January 2021 (86 FR 89, January 4, 2021; FRL–10017–43), covering all intended, known, or reasonably foreseen import, processing, and distribution of chrysotile asbestos; uses of chrysotile asbestos that have been imported, processed, and distributed; and disposal of such chrysotile asbestos uses. The final rule to address the unreasonable risk identified in the Asbestos Part 1 risk evaluation was issued in March 2024 (89 FR 21970, March 28, 2024; FRL–8332–01–OCSPP).

2. *Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos.* Legacy uses and associated disposals of chrysotile asbestos, 5 additional fiber types, asbestos-containing talc, and Libby asbestos are the subject of the ''Draft Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos'' (also referred to as the Asbestos Part 2 Draft Risk Evaluation), which is scheduled to be finalized on or before December 1, 2024, per the consent decree in the case *Asbestos Disease Awareness Organization et al* v. *Regan et al,* 4:21- cv-03716 (N.D. Cal.).

In the Asbestos Part 2 Draft Risk Evaluation, EPA preliminarily concludes that asbestos, as a chemical substance and as evaluated in part 1 and part 2 of the risk evaluation, presents an unreasonable risk of injury to health under its conditions of use. This single unreasonable risk determination for asbestos would replace the previous unreasonable risk determinations made for asbestos by individual conditions of use and supersede the determinations (and withdraw the associated order) of no unreasonable risk for the conditions of use identified in the TSCA section 6(i)(1) no unreasonable risk order. This draft determination does not alter any of the underlying technical or scientific information that informs the risk characterization in part 1, and as such the hazard, exposure, and risk characterization sections of part 1 are not changed by this revision.

III. Request for Public Comment

EPA seeks feedback on the assessment of risk for asbestos as presented in the Asbestos Part 2 Draft Risk Evaluation and welcomes specific input on each section of the Asbestos Part 2 Draft Risk Evaluation. EPA is also seeking input on the take-home exposure scenarios, as well as the non-cancer endpoints used to characterize risk. EPA also specifically seeks public comment on the draft single risk determination for asbestos where the Agency intends to determine that asbestos, as a chemical substance, presents an unreasonable risk of injury to health when evaluated under its conditions of use. However, EPA is not requesting public comment on the hazard, exposure, or risk characterization sections of part 1, as those sections remain unchanged.

EPA encourages all potentially interested parties, including individuals, governmental and non-governmental organizations, non-profit organizations, academic institutions, research institutions, and private sector entities to comment on the Asbestos Part 2 Draft Risk Evaluation.

To the extent possible, the Agency asks commenters to please cite any public data related to or that supports responses, and to the extent permissible, describe any supporting data that is not publicly available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: April 9, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–08024 Filed 4–15–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2020–0527; FRL–11611–01 OLEM]

Interim PFAS Destruction and Disposal Guidance; Notice of Availability for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public comment.

SUMMARY: The National Defense Authorization Act for Fiscal Year 2020 (FY 2020 NDAA) was signed into law on December 19, 2019. Section 7361 of the FY 2020 NDAA directs the U.S. Environmental Protection Agency (EPA) to publish interim guidance on the destruction and disposal of perfluoroalkyl and polyfluoroalkyl substances (PFAS) and materials containing PFAS and to update the guidance at least every three years, as appropriate. The EPA is releasing an update to the December 20, 2020, interim guidance for public comment. The updated guidance builds on information pertaining to technologies that may be feasible and appropriate for the destruction or disposal of PFAS and PFAS-containing materials. The 2024 interim guidance also identifies key data gaps and uncertainties that must be resolved before the EPA can issue more definitive recommendations about PFAS destruction and disposal technologies.

DATES: Comments must be received on or before October 15, 2024.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2020–0527, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For

detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Cindy Frickle, Office of Superfund Remediation and Technology Innovation (5203T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number 202–566–0927; email address: *frickle.cindy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This interim guidance provides a summary of EPA's current knowledge of technologies for destruction or disposal of PFAS and PFAS-containing materials. The primary audience of this guidance is decision makers who need to identify the most effective means for destroying or disposing of PFAS-containing materials and wastes. The audience may also include regulators, waste managers, and the public, including affected communities.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2024–08064 Filed 4–15–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11868–01–OEJECR;-EPA–HQ–OEJECR–2024–0146]

National Environmental Justice Advisory Council; Notification of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. Due to unforeseen administrative circumstances, EPA is announcing this meeting with less than 15 calendar days public notice. The meeting is open to the public. For additional information about registering to attend the meeting or to provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Pre-Registration is required.

DATES: The NEJAC will convene an in-person and virtual public meeting on April 23–25, 2024, in Houston, Texas. On Tuesday, April 23, 2024, the public meeting will start at approximately 9:00 a.m. and end approximately at 8:00 p.m., Central Time. The public meeting continues Wednesday, April 24, 2024, and Thursday, April 25, 2024, from approximately 9:00 a.m. to 6:00 p.m., Central Time. The meeting discussions will focus on several topics including, but not limited to, workgroup updates, final recommendations for council consideration, presentations, panels, and discussions on potential charges with various EPA national program offices. A public comment period relevant to current NEJAC charges and recommendations will be considered by the NEJAC on Tuesday, April 23, 2024, approximately at 6:00 p.m. to 8:00 p.m., Central Time (see **SUPPLEMENTARY INFORMATION**). Members of the public wishing to participate during the public comment period must register by 11:59 p.m., Central Time, April 16, 2024.

ADDRESSES: The NEJAC meeting will be held at the Omni Houston Hotel, Four Riverway, Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Paula Flores-Gregg, NEJAC Designated Federal Officer, U.S. EPA; email: *nejac@epa.gov;* telephone: (214) 665–8123. Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, cross-cutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.''

Registration: Individual registration is required for the public meeting. No two individuals can share the same registration link. Information on how to register is located at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings.* Registration to attend the meeting is available through the scheduled meeting days. The deadline to sign up to speak during the public comment period will close at 11:59 p.m., Central Time, April 16, 2024. When registering, please provide your name, organization, city and state, and email address. Please also indicate whether you would like to provide oral public comment during the meeting, or whether you are submitting written comments at the time of registration.

A. Public Comment

The NEJAC is interested in receiving public comments relevant to the following charges and recommendations:

(1) Cumulative Impacts Framework Charge.

(2) Consultation on the EPA Policy on Environmental Justice for working with Federally Recognized Tribes and Indigenous Peoples Update.

Individuals or groups making remarks during the oral public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments; including your recommendations on what you want the NEJAC to advise the EPA to do. Submitting written comments for the record are strongly encouraged. You can submit your written comments in three different ways, (1.) by using the webform at *https://www.epa.gov/environmentaljustice/forms/national-environmental-justice-advisory-council-nejac-public-comment,* (2.) by sending comments via email to *nejac@epa.gov* and (3.) by creating comments in the Docket ID No. EPA–HQ–OEJECR–2024–0146 at *http://www.regulations.gov.* Written comments can be submitted through May 7, 2024. More information about the NEJAC's current charges can be found here.

B. Information about Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Paula Flores-Gregg, at (214) 665–8123 or via email at *nejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least seven (7) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the email or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Theresa Segovia,

Principal Deputy Assistant Administrator, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2024–07984 Filed 4–15–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of an Open Meeting of the FDIC Advisory Committee on Community Banking

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve. The meeting is open to the public. The public's means to observe this meeting of the Advisory Committee on Community Banking will be both in-person and via a Webcast live on the internet. In addition, the meeting will be recorded and subsequently made available on-demand approximately two weeks after the event. To view the live event, visit *http://fdic.windrosemedia.com.*

DATES: Thursday, May 2, 2024, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC building located at 550 17th Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Debra A. Decker, Committee Management Officer of the FDIC at (202) 898–8748.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of issues that are of interest to community banks. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. Observers requiring auxiliary aids (*e.g.,* sign language interpretation) for this meeting should email *DisabilityProgram@fdic.gov* to make necessary arrangements. This meeting of the Advisory Committee on Community Banking will also be Webcast live via the internet at *http://fdic.windrosemedia.com.* For optimal viewing, a high-speed internet connection is recommended. To view the recording, visit *http://fdic.windrosemedia.com/index.php?category=Community+Banking+Advisory+Committee.* Written statements may be filed with the Advisory Committee before or after the meeting.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 11, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–08037 Filed 4–15–24; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

Fund	Receivership name	City	State	Date of appointment of receiver
10334	Firstier Bank	Louisville	CO	01/28/2011
10463	Nova Bank	Berwyn	PA	10/26/2012

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors. Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Section, 600 North Pearl, Suite 700, Dallas, TX 75201. No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this timeframe.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 11, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–08035 Filed 4–15–24; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. FMC–2023–0016]

Request for Information

AGENCY: Federal Maritime Commission.

ACTION: Request for information.

SUMMARY: The Federal Maritime Commission (the Commission) seeks public comment on questions related to maritime data accuracy to continue the process of gathering information to inform possible future Commission activities with a focus on information related to containers moving through marine terminals. In particular, the Commission seeks responses on what data elements are communicated between transportation service providers and importers/exporters. The Commission also seeks information on how changes to information are conveyed and where communication is most likely to break down or information is most likely to be conveyed inaccurately.

DATES: Submit comments on or before 11:59 p.m. eastern standard time (EST) on June 17, 2024.

ADDRESSES: The Commission will collect comments through the Federal eRulemaking Portal at *www.regulations.gov,* under Docket No.

FMC–2023–0016. Please refer to the ''Public Participation'' heading under the **SUPPLEMENTARY INFORMATION** section of this notice for detailed instructions on how to submit comments, including instructions on how to request confidential treatment.

FOR FURTHER INFORMATION CONTACT: David Eng, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Containerized cargo in international trade moves between the control of numerous entities. While some key data elements are readily shared between supply chain participants, the lack of timely and accurate access to some data elements can lead to inefficiencies, as was seen during the COVID–19 pandemic. Additionally, the lack of data standardization reduces the ability to move cargo in an effective way.

Improved communication and data availability could ease the flow of data and potentially provide positive results including fewer and shorter duration instances of congestion; quicker movement of import and export shipments; assessment of fewer storage fees; and a reduction in non-government cargo holds thereby improving supply chain effectiveness and efficiency.

II. Request for Information/Notice of Inquiry

The Maritime Transportation Data Initiative (MTDI), led by Commissioner Carl Bentzel, examined the issue of data usage and sharing within the supply chain served by international ocean carriers. Commissioner Bentzel released a report in May 2023 summarizing the information he gathered and his initial findings.[1]

The Commission now seeks additional information to expand the information gathered from the MTDI and the Commission's August 23, 2023, Request for Information (88 FR 55697) related to data availability, accuracy, and exchange. This Request places particular emphasis on data accuracy.

A common theme revealed by the MTDI was that information on container pick up/return was difficult to gather accurately or predict. MTDI participants cited challenges such as determining who should provide the information, information changing frequently, and changes not being conveyed to shipping entities. These points have been reiterated to the Commission via numerous avenues, including by the National Shipper Advisory Committee.[2] The Commission created the prior Request for Information to understand some of the data challenges that entities throughout the supply chain face.[3] The purpose of this Request for Information is to continue the process of gathering information to inform possible future Commission activities with a focus on information related to containers moving through marine terminals. The purpose of these questions is to seek information about data accuracy, not information about specific customers/partners and commenters should not name specific customers/partners when responding. The Commission has segmented the questions into categories specific to certain stakeholders, but it is also interested in hearing from the public, who may respond to all of the questions.

Vessel Operators and Marine Terminal Operators

1. How do you communicate the vessel schedule and any changes regarding the vessel schedule to the beneficial cargo owners (BCO) and/or their agents? Please include the communication method and the timeline.
2. What share of vessels change their schedule within the last week prior to arrival at a scheduled port? What are the most common reasons for a vessel schedule to change?
3. What are the primary reasons for changes to the vessel schedule? What indicators can BCOs use to predict changes to vessel schedule?
4. How do you communicate the Early Return Date (ERD), and any changes to it, to BCOs and/or their agents? Please include the communication method and the timeline.
5. What are the primary reasons for changes to ERD? What indicators can BCOs use to predict changes to ERD?
6. What share of ERDs change within a week prior to the window? What are the most common reasons for an ERD to change in the last week?
7. How do you access information related to the availability of intermodal rail services? Please include the communication method and the timeline.
8. How do you access information related to the in-transit services of intermodal rail? Please include the communication method and the timeline.
9. Are there any metrics or pieces of information that are not clearly defined or missing entirely from the maritime supply chain? If so, please list and define.

Importers

10. What were the primary causes of penalty fees for missing a container pick up window?
11. What pick up information (such as vessel schedule or container availability) is most likely to change or be conveyed differently by different supply chain entities?
12. Who do you rely upon to obtain information pertaining to container pick up and any changes to it? Please include all entities that provide information, the communication method, and the timeline of when you receive the information.
13. How do you find out that a vessel schedule has changed?
14. How many days prior to the vessel arrival do you need the date to be finalized? Please indicate the conditions which affect the number of days you need.
15. How often do you attempt to pick up a container that you believe to be available, but it is not available? What are the most common reasons for this occurrence?
16. How frequently do you attempt to retrieve a container, but necessary equipment (such as chassis or rail service) is not available? What are the most common reasons for this occurrence?
17. Are there any metrics or pieces of information that are not clearly defined or missing entirely from the maritime supply chain? If so, please list and define.

Exporters

18. What were the primary causes of penalty fees for missing a container return window?
19. What container return information (such as vessel schedule or ERD) is most likely to change or be conveyed differently by different shipping entities?
20. Who do you rely upon to obtain information pertaining to container return and any changes to that information. Please include all entities that provide information, the communication method, and the timeline of when you receive the information.
21. How do you learn that a vessel schedule has changed?

[1] Available at *www.fmc.gov/wp-content/uploads/2023/04/MTDIReportandViews.pdf.*

[2] See *www.fmc.gov/wp-content/uploads/2023/05/Consistencyandalignmentofdata.pdf, www.fmc.gov/wp-content/uploads/2022/12/Draft-NSAC-ContainerLevelDataAlignment.pdf, www.fmc.gov/wp-content/uploads/2022/12/Draft-NSACIntermodalDataAlignment.pdf, www.fmc.gov/wp-content/uploads/2022/12/DRAFT–NSAC-ShipmentLevelDataAlignment.pdf* for National Shipper Advisory Committee recommendations.

[3] Previous Request for Information is posted in the docket at *www.regulations.gov/document/FMC–2023–0016–0001.*

22. How many days prior to the container return window do you need the ERD date to be finalized? Please indicate the conditions which affect the number of days you need.

23. How often do you attempt to export a container within what you believe to be the return window, and you end up being too early or too late? What are the most common reasons for this occurrence?

24. How frequently do you attempt to export a container, but necessary equipment (such as chassis or rail service) is not available? What are the most common reasons for this occurrence?

25. Are there any metrics or pieces of information that are not clearly defined or missing entirely from the maritime supply chain? If so, please list and define.

III. Public Participation

How do I prepare and submit comments?

You may submit comments by using the Federal eRulemaking Portal at *www.regulations.gov,* under Docket No. FMC–2023–0016. Please follow the instructions provided on the Federal eRulemaking Portal to submit comments.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If you would like to request confidential treatment, pursuant to 46 CFR 502.5, you must submit the following, by email, to *secretary@fmc.gov:*

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page and must clearly indicate any information withheld.

Will the Commission consider late comments?

The Commission will consider all comments received before the deadline on the comment closing date indicated above under **DATES**. To the extent possible, we may also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at *www.regulations.gov,* under Docket No. FMC–2023–0016.

By the Commission.

David Eng,

Secretary.

[FR Doc. 2024–07977 Filed 4–15–24; 8:45 am]

BILLING CODE 6730–02–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 May 1, 2024.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments may also be sent electronically to *MA@mpls.frb.org:*

1. *Luke Reiter, Cold Spring, Minnesota; John Reiter, Belgrade, Minnesota; and Nicholas Reiter, Otsego, Minnesota;* to join the Reiter Family Control Group, a group acting in concert, to acquire voting shares of First Bancshares, Inc., of Cold Spring, and thereby indirectly acquire voting shares of Granite Bank, both of Cold Spring, Minnesota.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–08058 Filed 4–15–24; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the current PRA clearance for its information collection requirements in the Power Output Claims for Amplifiers Utilized in Home Entertainment Products (''Amplifier Rule'' or ''Rule''). This clearance expires on April 30, 2024.

DATES: Comments must be filed by May 16, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. The reginfo.gov web link is a United States Government

website produced by the Office of Management and Budget (OMB) and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Hong Park, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, (202) 326–2158, *hpark@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Amplifier Rule, 16 CFR part 432.

OMB Control Number: 3084–0105.

Type of Review: Extension of a currently approved collection.

Estimated Annual Hours of Burden: 462 hours (308 testing hours; 154 disclosure hours).

Likely Respondents and Estimated Burden: (a) Testing—High fidelity manufacturers—308 new products/year × 1 hour each = 308 hours; and (b) Disclosures—High fidelity manufacturers—[(308 new products/year × 1 specification sheet) + (308 new products/year × 1 brochure)] × 15 minutes per specification sheet or brochure = 154 hours.

Frequency of Response: Periodic.

Estimated Annual Labor Cost: $28,019 per year ($17,131 for testing + $10,888 for disclosures).

Abstract: The Amplifier Rule assists consumers by standardizing the measurement and disclosure of power output and related performance characteristics of amplifiers in stereos and other home entertainment equipment. The Rule also specifies the test conditions necessary to make the disclosures that the Rule requires.

Request for Comment

On January 19, 2024, the FTC sought public comment on the information collection requirements associated with the Rule. 89 FR 3658. No germane comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Your comment—including your name and your State—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''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 in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–08012 Filed 4–15–24; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2024–04; Docket No. 2024–0002; Sequence No. 9]

Notice of Availability for a Final Supplemental Environmental Impact Statement and Floodplain Assessment and Statement of Findings for the International Falls Land Port of Entry Modernization and Expansion Project in International Falls, Minnesota

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of Availability (NOA); Public Notice of Floodplain Assessment and Statement of Findings.

SUMMARY: This notice announces the availability of the Final Supplemental Environmental Impact Statement (SEIS), which examines potential environmental impacts from the modernization and expansion of the International Falls Land Port of Entry (LPOE) in International Falls, Minnesota. The existing International Falls LPOE is owned and managed by GSA and is operated by the U.S. Department of Homeland Security's Customs and Border Protection (CBP). The Final SEIS describes the purpose and need for the project; alternatives considered; the existing environment that could be affected; the potential impacts resulting from each of the alternatives; and proposed mitigation commitments. The Final SEIS also includes a Floodplain Assessment and Statement of Findings as a result of construction in a floodplain at the International Falls LPOE. Based on impacts analyses and public comments, GSA has identified Alternative 1 (Full Build) as described in the Final SEIS as its preferred alternative. Alternative 1 has also been identified as the environmentally preferred alternative.

DATES: The Final SEIS Wait Period begins with publication of this NOA in the **Federal Register** and will last until Monday, May 20, 2024. Written comments must be received by the last day of the Wait Period (see **ADDRESSES** section of this NOA on how to submit comments). After the Wait Period, GSA will issue the Record of Decision (ROD).

ADDRESSES: Members of the public may submit comments by one of the following methods. All comments will be considered equally and will be part of the public record.

- *Email: michael.gonczar@gsa.gov.* Please include '*International Falls LPOE SEIS'* in the subject line of the message.
- *Mail: ATTN:* Michael Gonczar, International Falls LPOE SEIS; U.S. General Services Administration, Region 5; 230 S. Dearborn Street, Suite 3600, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Questions or comments on the Final SEIS should be directed to: Michael Gonczar, NEPA Program Manager, GSA, at 312–810–2326, or via email to *michael.gonczar@gsa.gov.* See **ADDRESSES** section of this NOA on how to submit comments.

Additional information and an electronic copy of the Final SEIS, may be found online on the following website: *https://www.gsa.gov/about-us/gsa-regions/region-5-great-lakes/buildings-and-facilities/minnesota/international-falls-land-port-of-entry.*

SUPPLEMENTARY INFORMATION: The Final SEIS has considered previous input provided during the scoping and Draft SEIS comment periods.

Background

The existing 1.6-acre LPOE is located on the south bank of the Rainy River and serves as the port of entry to people and vehicles crossing the International Bridge that connects International Falls, Minnesota to the town of Fort Frances, Ontario, Canada. The International Falls Land Port of Entry Improvements Study Final EIS, released in 2011, assessed the potential environmental impacts associated with the proposed action of replacing the undersized International Falls LPOE with a new LPOE facility ''to improve safety, security, and functionality.'' A total of ten build alternatives were considered, and a preferred action alternative was identified. This alternative would

consist of demolishing the existing building, constructing new facilities at the existing LPOE, and expanding the LPOE to meet the required space standards and increased security requirements of the Federal Inspection Services. This alternative would move the majority of the LPOE improvements and operations to an approximately 20-acre site southeast of the existing site between 4th Street and Rainy River. GSA signed and released a ROD in January 2012 that identified a preferred alternative as it best satisfied the purpose and needs of the project with the least overall adverse impacts to the environment. The ROD stated that the preferred alternative would have less-than-significant impacts on the natural and social environment of the study area and International Falls, including minor changes or impacts to surface water, surface water runoff, traffic, increased lighting, and hazardous substances.

Since 2011, GSA has identified the following changes to the project, which differ from the preferred alternative described in the 2011 EIS:

- There have been proposed changes in tenants and use of the space. The U.S. Food and Drug Administration and the U.S. Department of Agriculture/Animal Plant Health Inspection Services/-Plant Protection and Quarantine (USDA/APHIS–PPQ) will need space and facilities at the LPOE.
- The Packaging Corporation of America (PCA) has acquired Boise, Inc. and has a different timber unloading operation occurring adjacent to the proposed acquisition parcel, which will require modifications to the original site plan at the LPOE and offsite on PCA lands.
- A section of First Creek between Route 11 and the Rainy River that was previously contained in a culvert was identified following the 2011 EIS. The culvert has been removed and is now daylighted, requiring impacts analysis.
- There has been an increase in the proposed usable square feet (USF) for overall building space needed, based on the addition of a maintenance building and expansion in the sizes of all other buildings per updated agency requirements.
- Stormwater management would be redesigned in the 300-foot section of First Creek due to two new areas of pavement crossing the creek or installation of a new culvert.
- The Resolute Paper Mill in Fort Frances, Ontario has since closed and rail traffic across the bridge has ceased.
- New renewable energy technologies are being considered for implementation at the expanded and modernized LPOE, including solar and geothermal technologies.
- New LPOE access points for privately owned vehicles (POVs) and pedestrians are being considered. After publication of the Draft SEIS, the proposed location of the LPOE access point for POVs and pedestrians shifted from a point on Highway 53 and 2nd Street to points located near or at the proposed commercially owned vehicle (COV) access point on State Route 11 due to site constraints.

GSA has prepared a Final SEIS to assess the potential impacts of these updates, which were not assessed in the 2011 EIS.

Alternatives Under Consideration

The Proposed Action, defined as Alternative 1 (Full Build) in the Final SEIS and GSA's preferred alternative, would consist of modernization and expansion of existing International Falls LPOE facilities as previously considered in the 2011 EIS, but to consider the above project changes. GSA also considered the No Action Alternative, which assumes that GSA would not expand or modernize the International Falls LPOE.

The purpose of the Proposed Action is for GSA to support CBP's mission by bringing the International Falls LPOE operations in line with current land port design standards and operational requirements of CBP while addressing existing deficiencies identified with the ongoing port operations. Generally, the deficiencies described in the 2011 EIS remain at the LPOE. The deficiencies fall into two broad categories: deficiencies in the overall site layout and substandard building conditions. Therefore, in order to bring the International Falls LPOE operations in line with CBP's design standards and operational requirements, the Proposed Action is needed to (1) improve the capacity and functionality of the International Falls LPOE to meet future demand, while maintaining the capability to meet border security initiatives; (2) address spatial and layout constraints that lead to traffic congestion and safety issues for the employees and users of the LPOE; and (3) provide adequate space and facilities for the federal agencies to accomplish their missions.

The Final SEIS addresses the potential environmental impacts of the proposed alternatives on environmental resources including geology and soils, water resources, biological resources, air quality, noise, transportation and traffic, land use and visual resources, infrastructure and utilities, socioeconomics, cultural resources, human health and safety, and environmental justice. Additionally, findings from maritime and terrestrial surveys are included in the cultural resources discussion, and findings from the Phase II Environmental Site Assessment are included in the human health and safety discussion. Based on the analysis presented in the Final SEIS, adverse impacts to transportation and traffic, land use and visual resources, and human health and safety may experience major adverse impacts due to an increase in traffic conflicts between vehicles and bikers/pedestrians along the Rainy Lake Bike Trail. Impacts for the remaining resource areas would be less-than-significant (*i.e.,* negligible, minor, or moderate), adverse or beneficial. Impact reduction measures to reduce potential adverse effects are presented in the Final SEIS.

GSA is currently undergoing formal consultation with the State Historic Preservation Officer (SHPO) and consulting parties to follow coordination procedures as required under Section 106 of the NHPA to determine impacts to historic properties. Mitigation measures may be determined in consultation between GSA, SHPO, and applicable consulting parties.

Under the Endangered Species Act (ESA), GSA coordinated with the U.S. Fish and Wildlife Service (USFWS) per Section 7 requirements to determine effects to federally protected species. There would be no adverse effects to federally threatened or endangered species. Correspondence with USFWS and the findings are incorporated in the Final SEIS.

The Proposed Action would take place within the 1-percent-annual-chance floodplain and 0.2-percent-annual-chance floodplain at the International Falls LPOE. In compliance with Executive Order 11988 (Floodplain Management), GSA prepared a Floodplain Assessment and Statement of Findings addressing potential impacts on floodplains, which is included in the Final SEIS. As described in the Final SEIS, GSA would follow federal, state, and local regulatory compliance requirements and incorporate design standards at the International Falls LPOE to minimize impacts to floodplains.

William Renner,

Director, Facilities Management and Services Programs Division, Great Lakes Region 5, U.S. General Services Administration.

[FR Doc. 2024–07949 Filed 4–15–24; 8:45 am]

BILLING CODE 6820–CF–P

GENERAL SERVICES ADMINISTRATION

[Notice–WWICC–2024–01; Docket No. 2024–0011; Sequence No. 1]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting

AGENCY: World War One Centennial Commission.

ACTION: Meeting notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule and agenda for the May 7, 2024, meeting of the World War One Centennial Commission (the Commission). The meeting is available to the public. Dial in information will be provided upon request.

DATES: *Meeting date:* The meeting will be held on Tuesday, May 7, 2024, starting at 9 a.m. eastern daylight time (EDT) and ending no later than 12 p.m. EDT.

ADDRESSES: This meeting will be held in person and also available virtually. The meeting will convene in person at 1455 Pennsylvania Avenue NW, Suite 400, Washington, DC. Virtual attendance is by reservation. Requests for dial in information may be made to *daniel.dayton@worldwar1centennial.org.*

Written Comments may be submitted to the Commission and will be made part of the permanent record of the Commission. Comments must be received by 5 p.m. EDT, on May 3, 2024, and may be provided by email to *daniel.dayton@worldwarlcentennial.org.*

Contact Mr. Daniel S. Dayton at *daniel.dayton@worldwarlcentennial.org* to register to comment during the meeting's 30-minute public comment period. Registered speakers/organizations will be allowed five (5) minutes and will need to provide written copies of their presentations. Requests to comment, together with presentations for the meeting must be received by 5 p.m. EDT, on Friday May 3, 2024. Please contact Mr. Dayton at the email address above to obtain meeting materials.

FOR FURTHER INFORMATION CONTACT: Daniel S. Dayton, Designated Federal Officer, World War 1 Centennial Commission, 1455 Pennsylvania Avenue NW, Suite 400, Washington, DC 20004. 202–380–0725 (note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The World War One Centennial Commission was established by Public Law 112–272 (as amended), as a commission to ensure a suitable observance of the centennial of World War I, to provide for the designation of memorials to the service of members of the United States Armed Forces in World War I, and for other purposes.

Under this authority, the Committee will plan, develop, and execute programs, projects, and activities to commemorate the centennial of World War I, encourage private organizations and State and local governments to organize and participate in activities commemorating the centennial of World War I, facilitate and coordinate activities throughout the United States relating to the centennial of World War I, serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of World War I, and develop recommendations for Congress and the President for commemorating the centennial of World War I. Further, the Commission oversees the design and construction of the national World War I Memorial in Washington, DC.

Agenda

Old Business

- WWICC Program Review
- Public Comment Period

New Business

- Status of the National WWI Memorial
  - Ongoing Maintenance
  - Sculpture Completion and Installation
- A Soldier's Journey: First Illumination ceremony briefing
- Financial Report
- Legislative Report
- Commission Sunset
  - Commission Closing Document Review and Approval

Chairman's Remarks

Adjourn

David Coscia,

Agency Liaison Officer, Office of Presidential & Congressional Agency Liaison Services, General Services Administration.

[FR Doc. 2024–08018 Filed 4–15–24; 8:45 am]

BILLING CODE 6820–95–P

GENERAL SERVICES ADMINISTRATION

[Notice–MRB–2024–02; Docket No. 2024–0002; Sequence No. 18]

GSA Acquisition Policy Federal Advisory Committee; Notification of Upcoming Web-Based Public Meeting

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: GSA is providing notice of a meeting of the GSA Acquisition Policy Federal Advisory Committee (hereinafter ''the Committee'' or ''the GAP FAC'') in accordance with the requirements of the Federal Advisory Committee Act (FACA), as amended. This meeting will be open to the public, accessible via webcast. Information on attending and providing written public comment is under the **SUPPLEMENTARY INFORMATION** section.

DATES: The GAP FAC will hold an open public meeting on Wednesday, May 22, 2024, from 9 a.m. to 1 p.m. eastern standard time (EST).

ADDRESSES: The meeting will be accessible via webcast. Registrants will receive the webcast information before the meeting.

FOR FURTHER INFORMATION CONTACT: Boris Arratia, Designated Federal Officer, OGP, 703–795–0816, or email: *boris.arratia@gsa.gov;* or Stephanie Hardison, OGP, 202–258–6823, or email: *stephanie.hardison@gsa.gov.* Additional information about the Committee, including meeting materials and agendas, are available on-line at *https://gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee.*

SUPPLEMENTARY INFORMATION:

The GAP FAC continues to serve as an advisory body to GSA's Administrator on how GSA can use its acquisition tools and authorities to target the highest priority Federal acquisition challenges. The GAP FAC Committee continues to provide recommendations that will help advise GSA's Administrator on emerging acquisition issues, challenges, and opportunities to support its role as America's buyer.

Purpose of the Meeting

The purpose of this meeting is for each of the three subcommittees (Policy and Practice, Industry Partnerships, and Acquisition Workforce) to present recommendations to the full Committee. The Committee will, in turn, deliberate

and vote on GAP FAC recommendations to be delivered to the GSA Administrator.

Meeting Agenda

- Opening Remarks
- Acquisition Workforce Subcommittee Recommendations and Discussion
- Industry Partnerships Subcommittee Recommendations and Discussion
- Policy and Practices Subcommittee Recommendations and Discussion
- Vote on Recommendations
- Closing Remarks and Adjourn

Meeting Registration

This meeting is open to the public and will be accessible by webcast. Registration information is located on the GAP FAC website: *https://www.gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee.* Public attendees who want to attend virtually will need to register no later than 5 p.m. EST, on Tuesday, May 21, 2024 to obtain the meeting webcast information. All registrants will be asked to provide their name, affiliation, and email address. After registration, individuals will receive webcast access information details via email.

Public Comments

Written public comments are being accepted via email at *gapfac@gsa.gov.* To submit a written public comment, please email at *gapfac.gsa.gov* and include your name, organization name (if applicable).

Special Accommodations

For information on services for individuals with disabilities, or to request accommodation of a disability, please contact the Designated Federal Officer at least 10 business days prior to the meeting to give GSA as much time as possible to process the request. Closed captioning and live American Sign Language (ASL) interpreter services will be available.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–08016 Filed 4–15–24; 8:45 am]

BILLING CODE 6820–RV–P

GENERAL SERVICES ADMINISTRATION

[Notice–MVAC 2024–01; Docket No. 2024–0002; Sequence No 16]

Notice of Inquiry Regarding PFAS in Products

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Notice; request for information (RFI).

SUMMARY: As part of its on-going commitment to advancing sustainable acquisition, the General Services Administration (GSA) is exploring opportunities to reduce or eliminate potential per-and polyfluoroalkyl substances (PFAS) chemicals with the intent to reduce exposure from products offered to the Government through GSA's contract solutions. GSA is publishing this notice to request comments to help us understand potential areas for focus, and to identify potential unintended negative impacts. At this time, GSA has not determined whether or not it should work towards a notice of proposed rule-making to address this topic.

DATES: Interested parties should submit written comments to the Regulatory Secretariat as noted below on or before June 17, 2024.

ADDRESSES: Submit comments in response to this inquiry to: Regulations.gov: *https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''GSA PFAS Inquiry''. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''GSA PFAS Inquiry'' on your attached document.

Instructions: 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 *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Adina Torberntsson, Procurement Analyst, at *gsarpolicy@gsa.gov* or 720–475–0568. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at *GSARegSec@gsa.gov* or 202–501–4755. Please cite GSA PFAS Inquiry.

SUPPLEMENTARY INFORMATION:

I. Background

Per- and polyfluoroalkyl substances, known as PFAS, are a widely used class of chemicals which break down very slowly over time. Since PFAS chemicals are slow to break down, and have been used in several manufacturing processes, they are ubiquitously found throughout the environment. PFAS has been detected in air, water, soil, and even human blood. Several studies have linked PFAS to health risks and environmental risks.[1] To help reduce the risk of further exposure to these chemicals, the Government can work towards reducing PFAS containing products through procurement.

The GSA Acquisition Policy Federal Advisory Committee (GAP FAC) was established to provide recommendations specific to GSA to drive regulatory, policy, and process changes in acquisition. The GAP FAC recommended that GSA should move forward with reducing PFAS through government procurement and that GSA should consider product categories that have already been identified by other state and federal programs, specifically: furniture, carpets, rugs, curtains, cookware, food service ware, food packaging materials, cutlery, dishware, paints, cleaning products, stain and water resistant treatments, flooring, and floor care products (''Recommended Categories'').

While much has been learned by connecting with government experts and the GSA GAP FAC, GSA would like to similarly learn from industry partners.

II. Purpose

In 2021, Executive Order 14057 [2] outlined an approach to catalyzing clean energy industries and jobs through federal sustainability. The implementing instructions (OMB Memo M–22–06 [3]) directed federal purchasers to prioritize the procurement of products that do not contain PFAS. This inquiry is an important step towards implementing these instructions by learning more on how to successfully reduce or eliminate potential PFAS exposure through products procured by the Government. GSA has been engaged in a PFAS and product working group to better understand where PFAS is found in the marketplace.

GSA invites comment on the issues discussed in this notice to help inform future rulemaking on how to best reduce

[1] See EPA website on PFAS *https://www.epa.gov/pfas/pfas-explained.*

[2] E.O. 14057 Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability.

[3] OMB Memo M–22–06.

federal procurement of products that either intentionally or unintentionally contain PFAS while minimizing any unnecessary burdens on our industry and logistics partners.

III. Request for Operational Information

GSA seeks responses to the questions listed below. Please explain the reasoning behind your responses in detail. Also, please provide any data, studies, or other evidence that supports your response.

In your response please include your contact information, your business socio-economic category if applicable, and a little bit about your business (such as if you represent a manufacturer, distributor, reseller, or other).

To help GSA review comments efficiently, identify the question to which you are responding by its associated number and letter (*e.g.,* ''III.3a'') or whether you are commenting on a topic not listed below.

1. Aside from a product's ecolabel, are there other ways to identify if a product contains PFAS?

2. Considering GSA's goal to reduce products containing PFAS, what product categories have the greatest opportunity for GSA to reduce or eliminate PFAS exposure?

3. What should GSA consider in terms of defining if a product has reduced or eliminated PFAS?

4. What product areas should GSA exclude at this time and why?

5. Are there unintended impacts GSA should anticipate?

a. If so, what mitigation strategies should GSA consider?

6. What is the potential impact on domestic manufacturing if GSA establishes PFAS reduction requirements that reduce or prohibit PFAS, or eliminate them entirely?

7. What limitations exist for you to identify PFAS in the products that you offer?

8. Would your answers to questions #6 and #7 be different if only intentionally added PFAS (or when a PFAS containing chemical is included in a product that serves an intended function in the product) was the focus of this inquiry?

9. What is the potential impact on small businesses including socio-economic small businesses if GSA establishes PFAS reduction requirements or prohibited PFAS entirely?

10. How long should GSA give contractors to reduce PFAS?

11. What type of exception process should GSA consider?

12. What information is readily available for you to determine if your products contain PFAS chemicals?

a. If there is not information readily available, what type of tools would help you determine if PFAS is present (*e.g.,* supply chain mapping, specific ecolabels, etc.)

13. Would it be more impactful for GSA to target a specific product type or chemical signature in products to meet the goal of reducing or eliminating PFAS?

14. Are there existing industry manufacturing standards or oversight that address PFAS reduction or elimination?

IV. Request for Economic Data and Consumer Research

Aside from the questions listed above, GSA also seeks to better understand the bigger picture regarding what industry changes are in fact feasible from an economic perspective. GSA seeks economic data and consumer research to help increase its understanding of the market. In your response please consider some of the questions highlighted below. You do not have to answer all of these in your response. The intent of the following are simply things to consider.

1. What will the estimated costs be to either reduce or eliminate PFAS within your industry?

2. Is there a large price differential between a product that contains PFAS and an alternative product?

3. How would a reduction or elimination of PFAS containing products impact your company's ability to compete?

4. To what extent is your industry already moving to better understand and reduce the presence of PFAS in products as a result of broader market forces or policies being considered or enacted by entities other than the federal government?

Jeffrey A. Koses,

Senior Procurement Executive, Office of Governmentwide Policy, U.S. General Services Administration.

[FR Doc. 2024–07927 Filed 4–15–24; 8:45 am]

BILLING CODE 6820–61–P

GOVERNMENT PUBLISHING OFFICE

Depository Library Council Meeting

AGENCY: U.S. Government Publishing Office.

ACTION: Notice of meeting.

SUMMARY: The Depository Library Council (DLC) will meet virtually on Thursday, May 2, 2024. The sessions will take place from 12:30 p.m. to 5:15 p.m. (EDT). The meetings will take place online, and anyone can register to attend at *https://www.fdlp.gov/about/events-and-conferences/2024-depository-library-council-virtual-meeting*. Closed captioning will also be provided. The purpose is to discuss matters affecting the Federal Depository Library Program and its transition to a digital program. All sessions are open to the public.

DATES: May 2, 2024.

Hugh Nathanial Halpern,

Director, U.S. Government Publishing Office.

[FR Doc. 2024–08040 Filed 4–15–24; 8:45 am]

BILLING CODE 1520–01–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, CDC, 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)—PAR 20–280, Cooperative Research Agreements Related to the World Trade Center Health Program (U01); RFA–OH–24–002, Exploratory/Developmental Grants on Lifestyle Medicine Research Related to the World Trade Center Health Program (R21); RFA–OH–24–003, Exploratory/Developmental Grants Related to the World Trade Center Survivors (R21-No Applications with Responders Accepted); and RFA–OH–24–004, World Trade Center Health Program Mentored Research Scientist Career Development Award (K01).

Dates: May 28–30, 2024.

Times: 11 a.m.–6 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Laurel Garrison, M.P.H., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 5555 Ridge Avenue, Cincinnati, Ohio 45213. Telephone: (513) 533–8324; Email: *LGarrison@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. 2024–07961 Filed 4–15–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1819–N]

Public Meeting on June 25, 2024 Regarding New and Reconsidered Clinical Diagnostic Laboratory Test Codes for the Clinical Laboratory Fee Schedule for Calendar Year 2025

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to receive comments and recommendations (including data on which recommendations are based) on the appropriate basis for establishing payment amounts for new or substantially revised Healthcare Common Procedure Coding System codes being considered for Medicare payment under the Clinical Laboratory Fee Schedule for calendar year 2025. This meeting also provides a forum for those who submitted certain reconsideration requests regarding final determinations made last year on new test codes and for the public to provide comment on the requests.

DATES:

Clinical Laboratory Fee Schedule (CLFS) Annual Public Meeting Date: The public meeting is scheduled for Tuesday, June 25, 2024 from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time (E.D.T.).

Deadline for Submission of Presentations and Written Comments: All presenters for the CLFS Annual Public Meeting must register and submit their presentations electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov,* by May 30, 2024 at 5:00 p.m., E.D.T. All written comments (non-presenter comments) must also be submitted electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov,* by May 30, 2024, at 5:00 p.m., E.D.T. Any presentations or written comments received after that date and time will not be included in the meeting and will not be reviewed.

Deadline for Submitting Requests for Special Accommodations: Requests for special accommodations must be received no later than May 30, 2024 at 5:00 p.m. E.D.T.

Publication of Proposed Determinations: We intend to publish our proposed determinations for new test codes and our proposed determinations for reconsidered codes (as described later in section II, ''Format'' of this notice) for calendar year 2025 by early September 2024.

Deadline for Submission of Written Comments Related to Proposed Determinations: Comments in response to the proposed determinations will be due by early October 2024.

ADDRESSES: The CLFS Annual Public Meeting will be held virtually and in-person at the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Where to Submit Written Comments: Interested parties should submit all written comments on presentations and proposed determinations electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov* (the specific date for the publication of these determinations and the deadline for submitting comments regarding these determinations will be published on the CMS website).

FOR FURTHER INFORMATION CONTACT: Rasheeda Arthur, (410) 786–3434.

The CLFS Policy Team and submit all inquiries to the CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov* with the subject entitled ''CLFS Annual Public Meeting Inquiry.''

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) required the Secretary of the Department of Health and Human Services (the Secretary) to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases, Tenth Revision, Clinical Modification (ICD–10–CM). The procedures and Clinical Laboratory Fee Schedule (CLFS) public meeting announced in this notice for new tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to establish by regulation procedures for determining the basis for, and amount of, payment for any clinical diagnostic laboratory test (CDLT) for which a new or substantially revised Healthcare Common Procedure Coding System (HCPCS) code is assigned on or after January 1, 2005. A code is considered to be substantially revised if there is a substantive change to the definition of the test or procedure to which the code applies (for example, a new analyte or a new methodology for measuring an existing analyte-specific test). (See section 1833(h)(8)(E)(ii) of the Act and 42 CFR 414.502)).

Section 1833(h)(8)(B) of the Act sets forth the process for determining the basis for, and the amount of, payment for new tests. Pertinent to this notice, sections 1833(h)(8)(B)(i) and (ii) of the Act require the Secretary to make available to the public a list that includes any such test for which establishment of a payment amount is being considered for a year and, on the same day that the list is made available, cause to have published in the **Federal Register** notice of a meeting to receive comments and recommendations (including data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for the tests on such list. This list of codes for which the establishment of a payment amount under the CLFS is being considered for calendar year (CY) 2025 will be posted on the Centers for Medicare & Medicaid Services (CMS) website concurrent with the publication of this notice and may be updated prior to the CLFS Annual Public Meeting. The

CLFS Annual Public Meeting list of codes can be found on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/.* Section 1833(h)(8)(B)(iii) of the Act requires that we convene the public meeting not less than 30 days after publication of the notice in the **Federal Register**. The CLFS requirements regarding public consultation are codified at 42 CFR 414.506.

Two bases of payment are used to establish payment amounts for new CDLTs. The first basis, called ''crosswalking,'' is used when a new CDLT is determined to be comparable to an existing test, multiple existing test codes, or a portion of an existing test code. New CDLTs that were assigned new or substantially revised codes prior to January 1, 2018, are subject to provisions set forth under § 414.508(a). For a new CDLT that is assigned a new or significantly revised code on or after January 1, 2018, CMS assigns to the new CDLT code the payment amount established under § 414.507 of the comparable existing CDLT. Payment for the new CDLT code is made at the payment amount established under § 414.507. (See § 414.508(b)(1)).

The second basis, called ''gapfilling,'' is used when no comparable existing CDLT is available. When using this method, instructions are provided to each Medicare Administrative Contractor (MAC) to determine a payment amount for its part B geographic area for use in the first year. In the first year, for a new CDLT that is assigned a new or substantially revised code on or after January 1, 2018, the MAC-specific amounts are established using the following sources of information, if available: (1) charges for the test and routine discounts to charges; (2) resources required to perform the test; (3) payment amounts determined by other payers; (4) charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant; and (5) other criteria CMS determines appropriate. In the second year, the test code is paid at the median of the MAC-specific amounts. (See § 414.508(b)(2)).

Under section 1833(h)(8)(B)(iv) of the Act and § 414.506(d)(1) CMS, taking into account the comments and recommendations (and accompanying data) received at the CLFS Annual Public Meeting, develops and makes available to the public a list of proposed determinations with respect to the appropriate basis for establishing a payment amount for each code, an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on the proposed determinations. Under section 1833(h)(8)(B)(v) of the Act and § 414.506(d)(2), taking into account the comments received on the proposed determinations during the public comment period, CMS then develops and makes available to the public a list of final determinations of payment amounts for tests along with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

Section 216(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) added section 1834A to the Act. The statute requires extensive revisions to the Medicare payment, coding, and coverage requirements for CDLTs. Pertinent to this notice, section 1834A(c)(3) of the Act requires the Secretary to consider recommendations from the expert outside advisory panel established under section 1834A(f)(1) of the Act when determining payment using crosswalking or gapfilling processes. In addition, section 1834A(c)(4) of the Act requires the Secretary to make available to the public an explanation of the payment rates for the new test codes, including an explanation of how the gapfilling criteria and panel recommendations are applied. These requirements are codified in § 414.506(d) and (e).

After the final determinations have been posted on the CMS website, the public may request reconsideration of the basis and amount of payment for a new CDLT as set forth in § 414.509. Pertinent to this notice, those requesting that we reconsider the basis for payment or the payment amount as set forth in § 414.509(a) and (b), may present their reconsideration requests at the following year's CLFS Annual Public Meeting provided the requestor made the request to present at the CLFS Annual Public Meeting in the written reconsideration request. For purposes of this notice, we refer to these codes as the ''reconsidered codes.'' The public may comment on the reconsideration requests. (See the CY 2008 Physician Fee Schedule final rule with comment period published in the **Federal Register** on November 27, 2007 (72 FR 66275 through 66280) for more information on these procedures.)

II. Format

We are following our usual process, including an annual public meeting to determine the appropriate basis and payment amount for new and reconsidered codes under the CLFS for CY 2025. The public hybrid meeting will be conducted virtually and will occur on-site at the CMS Central Building.

This meeting is open to the public. Registration is only required for those interested in presenting public comments during the meeting or attending the meeting in-person at the CMS campus at the address specified in the **ADDRESSES** section of this notice. If attending the meeting in-person, on-site check-in for visitors will be held from 8:30 a.m. to 9:00 a.m. E.D.T., followed by opening remarks.

During this hybrid meeting, registered persons from the public may discuss and make recommendations for specific new and reconsidered codes for the CY 2025 CLFS. The Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (Advisory Panel on CDLTs) will participate in this CLFS Annual Public Meeting by gathering information and asking questions to presenters, and will hold its next public meeting, virtually and in-person, on July 25 and 26, 2024. The public meeting for the Advisory Panel on CDLTs will focus on the discussion of and recommendations for test codes presented during the June 25, 2024 CLFS Annual Public Meeting. The Panel meeting also will address any other CY 2025 CLFS issues that are designated in the Panel's charter and specified on the meeting agenda. The announcement for the next meeting of the Advisory Panel on CDLTs is included in a separate notice published elsewhere in this issue of the **Federal Register**.

Due to time constraints, presentations must be brief, lasting no longer than 10 minutes. Written presentations must be electronically submitted to CMS on or before May 30, 2024. In addition, if presenting in-person, presenters should make copies available for approximately 50 meeting participants, since CMS will not be providing additional copies to the public. Presentation slots will generally be assigned based upon chronological order of receipt of presentation materials. In the event there is not enough time for presentations by everyone who is interested in presenting, we will only accept written presentations from those who submitted written presentations within the submission window and were unable to present due to time constraints. Presentations should be sent via email to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov.* In addition, individuals may also submit requests after the CLFS Annual Public Meeting to obtain electronic versions of the

presentations. Requests for electronic copies of the presentations after the public meeting should be sent via email to our CLFS dedicated email box, noted above.

Presenters should submit all presentations using a standard PowerPoint template. In addition to the standard PowerPoint template available, presenters may also provide the same information from the PowerPoint presentation into a provided Excel worksheet template. Submitting the same information that is requested for the PowerPoint presentation into the Excel worksheet template will aid with triaging and reviewing recommendation information during the meeting and after the meeting, during the code review process. The standard PowerPoint presentation and Excel worksheet templates are available on the CMS website, at *https://www.cms.gov/medicare/payment/fee-schedules/clinical-laboratory-fee-schedule-clfs/annual-public-meetings,* under the ''Meeting Notice and Agenda'' heading.

For reconsidered and new codes, presenters should address all of the following five items:

- Reconsidered or new code(s) with the most current code descriptor.
- Test purpose and method with a brief comment on how the new test is different from other similar analyte or methodologies found in tests already on the CLFS.
- Test costs.
- Charges.
- Recommendation with rationale for one of the two bases (crosswalking or gapfilling) for determining payment for reconsidered and new tests.

Additionally, presenters should provide the data on which their recommendations are based. Presentations regarding reconsidered and new test codes that do not address the above five items for presenters may be considered incomplete and may not be considered by CMS when making a determination. However, we may request missing information following the meeting to prevent a recommendation from being considered incomplete.

Taking into account the comments and recommendations (and accompanying data) received at the CLFS Annual Public Meeting, we intend to post our proposed determinations with respect to the appropriate basis for establishing a payment amount for each new test code and our proposed determinations with respect to the reconsidered codes along with an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on these determinations on our website by early September 2024. The CMS website is *https://www.cms.gov/medicare/payment/fee-schedules/clinical-laboratory-fee-schedule-clfs/annual-public-meetings.* Interested parties may submit written comments on the proposed determinations for new and reconsidered codes by early October 2024, electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov* (the specific date for the publication of the determinations on the CMS website, as well as the deadline for submitting comments regarding the determinations, will be published on the CMS website). Final determinations for new test codes to be included for payment on the CLFS for CY 2025 and reconsidered codes will be posted our website in November 2024, along with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions received from the public. The final determinations with respect to reconsidered codes are not subject to further reconsideration. With respect to the final determinations for new test codes, the public may request reconsideration of the basis and amount of payment as set forth in § 414.509.

III. Registration Instructions

The Division of Ambulatory Services in the CMS Center for Medicare is coordinating the CLFS Annual Public Meeting registration. Beginning May 1, 2024 and ending May 30, 2024, registration may be completed by presenters and in-person attendees. Individuals who intend to view and/or listen to the meeting virtually do not need to register. Presenter registration and individuals who intend to attend the meeting at the CMS campus must register by sending an email to CMS's CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov.* The subject of the email should state ''Presenter or In-Person Attendee Registration for CY 2024 CLFS Annual Laboratory Meeting.'' All of the following information must be submitted when registering:

- Speaker or In-Person Attendee name.
- Organization or company name.
- Telephone numbers.
- Email address that will be used by the presenter to connect to the virtual meeting.
- New or Reconsidered Code (s) for which presentation is being submitted (if applicable).
- Presentation (if applicable).
- Excel Worksheet (if applicable).

Registration details may not be revised once they are submitted. If registration details require changes, a new registration entry must be submitted by the date specified in the **DATES** section of this notice. Additionally, registration information must reflect individual-level content and not reflect the name of an organization. For example, an organization cannot request to register a group of individuals without specifying registration details for each individual being registered. See section V for further information.

After registering, a confirmation email will be sent upon receipt of the registration. The email will provide information to the presenter or in-person attendee in preparation for the meeting. Registration is only required for individuals giving a presentation during the meeting or attending the meeting at the CMS campus. Presenters or in-person attendees must register by the deadline specified in the **DATES** section of this notice.

If you are not presenting during the CLFS Annual Public Meeting or cannot attend in person, you may view the meeting via webinar or listen-only by teleconference. If you would like to listen to or view the meeting, teleconference dial-in and webinar information will appear on the final CLFS Annual Public Meeting agenda, which will be posted on the CMS website when available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/.*

IV. Special Accommodations

Individuals viewing or listening to the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should send an email to the CMS resource box (*CDLT_Annual_Public_Meeting@cms.hhs.gov*). The deadline for submitting this request is listed in the **DATES** section of this notice.

V. Security, Building, and Parking Guidelines

This hybrid meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. We suggest that you arrive at the CMS campus and parking facilities between 8:00 a.m. and 8:45 a.m. E.D.T., so that you will be able to arrive promptly at the meeting by 9:00 a.m. E.D.T. Individuals who are not registered in

advance will not be permitted to enter the building and will be unable to attend the meeting. We note that the public may not enter the CMS building earlier than 8:15 a.m. E.D.T. (45 minutes before the convening of the meeting).

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. Persons without proper identification may be denied access to the building.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of CMS, Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–08005 Filed 4–15–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10573]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 17, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10573 Reform of Requirements for Long-Term Care Facilities

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Reform of Requirements for Long-Term Care Facilities; *Use:* The purpose of this package is to request Office of Management and Budget (OMB) approval of the collection of information requirements for the requirements of participation for Long-Term Care (LTC) facilities that must be met in order to participate in the Medicare and Medicaid Programs. LTC facilities include skilled nursing facilities (SNFs) as defined in section 1819(a) of the Social Security Act in the Medicare program and nursing facilities (NFs) as defined in 1919(a) of the Act in the

Medicaid program. SNFs and NFs provide skilled nursing care and related services for residents who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. In addition, NFs provide health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases. SNFs and NFs must care for their residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident and must provide to residents services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care, which describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met and is updated periodically.

The primary users of this information will be State agency surveyors, CMS, and the LTC facilities for the purposes of ensuring compliance with Medicare and Medicaid requirements as well as ensuring the quality of care provided to LTC facility residents. The ICs specified in the regulations may be used as a basis for determining whether a LTC is meeting the requirements to participate in the Medicare program. In addition, the information collected for purposes of ensuring compliance may be used to inform the data provided on CMS' Nursing Home Compare website and as such used by the public in considering nursing home selections for services.

We are revising this information collection request to include new requirements proposed at 42 CFR 483.35 and 483.71. The proposed requirements were discussed in detail in the proposed rule that published September 6, 2023 (88 FR 61352). The discussion related to proposed requirements and the associated information collection burden begins on page 61391. We are not making any other revisions to the information collection request at this time.

Form Number: CMS–10573 (OMB control number: 0938–1363); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 15,600; *Total Annual Responses:* 18,687,318 *Total Annual Hours:* 30,309,662. (For policy questions regarding this collection contact Diane Corning at 410–786–8486.)

William N. Parham, III

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–08011 Filed 4–15–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1824–N]

Medicare Program; Meeting Announcement for the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests, July 25–26, 2024

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the public meeting dates for the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (the Panel) on Thursday, July 25, 2024 and Friday, July 26, 2024. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on issues related to clinical diagnostic laboratory tests.

DATES:

Meeting Dates: The hybrid (in-person and virtual) meeting of the Panel is scheduled for Thursday, July 25, 2024 from 10:00 a.m. to 4:00 p.m., Eastern Daylight Time (E.D.T.) and Friday, July 26, 2024, from 10:00 a.m. to 4:00 p.m., E.D.T. The Panel is also expected to participate virtually in the Clinical Laboratory Fee Schedule (CLFS) Annual Public Meeting for Calendar Year (CY) 2025 on Tuesday, June 25, 2024, to gather information and ask questions to presenters. Notice of the CLFS Annual Public Meeting for CY 2025 is published elsewhere in this issue of the **Federal Register**.

Deadline for Meeting Registration: All stand-by speakers for the Panel meeting must register electronically to our CDLT Panel dedicated email box, *CDLTPanel@cms.hhs.gov* by June 1, 2024.

In-Person Attendance: If attending the meeting in person at the CMS Headquarters, registration is required and must be completed by May 30, 2025. For more information on how to register as an in-person attendee, see the ''Registration Instructions'' (section IV of this notice).

Virtual Attendee Only: The public may also view this meeting via webinar or listen-only via teleconference. If attending the meeting via webinar, or listen-only via teleconference, registration is not required for non-speakers.

Webinar and Teleconference Meeting Information: Teleconference dial-in instructions, and related webinar details will be posted on the meeting agenda, which will be available on the CMS website approximately 2 weeks prior to the meeting at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.* A preliminary agenda is described in section II of this notice.

ADDRESSES: The Panel meeting will be held *virtually* and *in-person* at the campus of the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: The CLFS Policy Team via email, *CDLTPanel@cms.hhs.gov;* or Rasheeda Arthur, (410) 786–3434. The CMS Press Office, for press inquiries, (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (CDLTs) (the Panel) is authorized by section 1834A(f)(1) of the Social Security Act (the Act) (42 U.S.C. 1395m–1), as established by section 216(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93), enacted on April 1, 2014. The Panel is subject to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory panels.

Section 1834A(f)(1) of the Act directs the Secretary of the Department of Health and Human Services (the Secretary) to consult with an expert outside advisory panel established by the Secretary, composed of an appropriate selection of individuals with expertise in issues related to clinical diagnostic laboratory tests, which may include the development, validation, performance, and application of such tests. Such individuals may include molecular pathologists, researchers, and individuals with expertise in laboratory science or health economics.

The Panel will provide input and recommendations to the Secretary and the Administrator of the Centers for

Medicare & Medicaid Services (CMS), on the following:

- The establishment of payment rates under section 1834A of the Act for new clinical diagnostic laboratory tests, including whether to use ''crosswalking'' or ''gap filling'' processes to determine payment for a specific new test.
- The factors used in determining coverage and payment processes for new clinical diagnostic laboratory tests.
- Other aspects of the payment system under section 1834A of the Act.

A notice announcing the establishment of the Panel and soliciting nominations for members was published in the October 27, 2014 **Federal Register** (79 FR 63919 through 63920). In the August 7, 2015 **Federal Register** (80 FR 47491), we announced membership appointments to the Panel along with the first public meeting date for the Panel, which was held on August 26, 2015. Subsequent meetings of the Panel and membership appointments were also announced in the **Federal Register**.

II. Agenda

The Agenda for the July 25 and July 26, 2024 hybrid Panel meeting will provide for discussion and comment on the following topics as designated in the Panel's charter:

- Calendar Year (CY) 2025 Clinical Laboratory Fee Schedule (CLFS) new and reconsidered test codes, which will be posted on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Laboratory_Public_Meetings.html.*
- Other CY 2025 CLFS issues designated in the Panel's charter and further described on our Agenda.

A detailed Agenda will be posted approximately 2 weeks before the meeting, on the CMS website at *https://www.cms.gov/medicare/payment/fee-schedules/clinical-laboratory-fee-schedule-clfs/clfs-advisory-panel.* The Panel will make recommendations to the Secretary and the Administrator of CMS regarding crosswalking and gap filling for new and reconsidered laboratory tests discussed during the CLFS Annual Public Meeting for CY 2025. The Panel will also provide input on other CY 2025 CLFS issues that are designated in the Panel's charter and specified on the meeting agenda.

III. Meeting Participation

This meeting is open to the public. Stand-by speakers may participate in the meeting in-person via teleconference and webinar. A stand-by speaker is an individual who will speak on behalf of a company or organization if the Panel has any questions during the meeting about technical information described in the public comments or presentation previously submitted or presented by the organization or company at the recent CLFS Annual Public Meeting for CY 2025 on June 25, 2024. The public may also attend the hybrid meeting in-person or view and/or listen-only to the meeting via teleconference and webinar.

IV. Registration Instructions

Beginning May 1, 2024 and ending May 30, 2024 at 5:00 p.m. E.D.T., registration for stand-by speakers and in-person attendees may be completed by sending an email to the following resource box: *CDLTPanel@cms.hhs.gov.*

If you are registering (for example, stand-by speaker or in-person attendee), the subject of the email should state ''Registration for CDLT Panel Meeting.'' Note: No registration is required for participants who plan to view the Panel meeting via webinar or listen via teleconference.

In the email, all of the following information must be submitted when registering:

- Name.
- Indicate if you are registering as a ''Stand-by speaker'' or ''In-Person Attendee.''
- Organization or company name.
- Email addresses that will be used by the speaker in order to connect to the virtual meeting.
- New or Reconsidered Code(s) for which the company or organization you are representing submitted a comment or presentation, if applicable.

Registration details may not be revised once they are submitted. If registration details require changes, a new registration entry must be submitted by the date specified in the **DATES** section of this notice. Additionally, registration information must reflect individual-level content and not reflect an organization name. Also, we request organizations register all individuals at the same time. That is, one individual may register multiple individuals at the same time.

After registering, a confirmation email will be sent upon receipt of the registration. The email will provide information to the attendee in preparation for the meeting. Registration is only required for stand-by speakers and members of the public attending the meeting at the CMS campus (address specified in the **ADDRESSES** section of this notice). All registration must be submitted by the deadline specified in the **DATES** section of this notice. We note that no registration is required for participants who plan to view the Panel meeting via webinar or listen via teleconference.

V. Panel Recommendations and Discussions

The Panel's recommendations will be posted approximately 2 weeks after the meeting on the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.*

VI. Security, Building, and Parking Guidelines

The hybrid meeting will be virtual and will be held in a Federal Government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. We suggest that you arrive at the CMS campus and parking facilities between 9:00 a.m. and 10:00 a.m. E.D.T., so that you will be able to arrive promptly at the meeting by 10:00 a.m. E.D.T. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. We note that the public may not enter the CMS building earlier than 9:15 a.m. E.D.T. (45 minutes before the convening of the meeting).

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. Persons without proper identification may be denied access to the building.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

VII. Special Accommodations

Individuals attending, viewing, or listening to the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should send an email to the resource box (*CDLTPanel@cms.hhs.gov*). The

deadline for submitting this request is listed in the **DATES** section of this notice.

VIII. Copies of the Charter

The Secretary's Charter for the Medicare Advisory Panel on CDLT's is available on the CMS website at *https://www.cms.gov/medicare/payment/fee-schedules/clinical-laboratory-fee-schedule-clfs/clfs-advisory-panel* or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

IX. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of CMS, Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–08008 Filed 4–15–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Submission for OMB Review; Public Comment Request; Prevention and Public Health Fund Evidence-Based Falls Prevention Program Information Collection; OMB Control Number 0985–0039

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-day notice collects comments on the information collection requirements related to the proposed extension of this ACL Prevention and Public Health Fund Evidence-Based Falls Prevention Program Information Collection.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. ET or postmarked. May 16, 2024.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attention: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Donna Bethge, Administration for Community Living. Washington, DC 20201, or *Donna.Bethge@acl.hhs.gov,* (202) 795–7659.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act (44 U.S.C. 3506), the Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. The Evidence-Based Falls Prevention Grant Program is financed through the Prevention and Public Health Fund (PPHF). The statutory authority for cooperative agreements under the most recent program announcement (FY 2023) is contained in the Older Americans Act, title IV; and the Patient Protection and Affordable Care Act, (Prevention and Public Health Fund). The Falls Prevention Grant Program awards competitive grants to implement and promote the sustainability of evidence-based Falls Prevention programs that have been proven to provide older adults and adults with disabilities with education and tools to help them reduce falls and/or risk of falls and fall-related injuries and supports a National Falls Prevention Resource Center that provides technical assistance, education, and resources for the national Falls Prevention network of partners. OMB approval of the existing set of Falls Prevention data collection tools (OMB Control Number, 0985–0039) expires on 04/30/2024. This data collection continues to be necessary for the monitoring of program operations and outcomes. ACL currently uses and proposes to continue to use the following tools to collect information for each program:

(1) a Program Information Cover Sheet and an Attendance Log, completed by the program leaders, to record the location of agencies that sponsor programs and will allow mapping of the delivery infrastructure; and

(2) a Participant Information Form and a Participant Post Program Survey to be completed by participants.

ACL intends to continue using an online data entry system for the program and participant survey data.

This IC collects demographic data from grantees receiving programs and services funded by HHS. ACL will adhere to best practices for collection of all demographic information when this information is collected for the programs listed in accordance with OMB guidance.

This includes, but is not limited to, guidance specific to the collection of sexual orientation and gender identity (SOGI) items that align with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, and Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation. Understanding these disparities can and should lead to improved service delivery for ACL's programs and populations served.

Comments in Response to the 60-day Federal Register Notice (FRN)

ACL published a 60-day FRN on December 14, 2023, at 88 FR 86657. ACL received fifty-four comments from the public, feedback from four focus groups (that included a subset of current and past falls prevention grantees and program administrators) and input from subject matter experts during the 60-day public comment period. A public comment summary table and ACL response is provided below.

PARTICIPANT INFORMATION FORM AND PARTICIPANT POST PROGRAM SURVEY

Comment	Response
Several comments suggested incorporating inclusive sexual orientation and gender identity question(s).	HHS and ACL, as an operating division of HHS, recognize the importance of collecting Sexual Orientation and Gender Identity (SOGI) data to better assess diversity and equity in evidence-based program scaling and participation. ACL has incorporated more inclusive questions and responses.
Several comments suggested adding a question to ask if the participant was a caregiver.	ACL has adopted this suggestion.
Suggestions were received to edit the question regarding chronic conditions: • Include additional conditions (*e.g.,* Hearing Loss and Vision Impairment among others). • Increase possible responses (including length of diagnosis, don't remember or not sure).	ACL reviewed the chronic condition question and: • Adopted suggestions of certain conditions that most aligned to fall risk and the growing prevalence of these conditions in the aging population. • Additional responses were not adopted at this time.
Several comments received suggested revising the social isolation and loneliness question as it combines two different conditions.	ACL has adopted the suggestion to separate the single question into two questions in efforts to better analyze and report the information collected.
Multiple comments made suggestions for the existing question 11 regarding falls: • Change formatting for clarification • Change Primary Care Physician to Health Care Provider • Edit and reorder answers for 11 b and c. Add 'urgent care' and 'blank response'. • Distinguish the difference between telling family/friend verse telling a healthcare provider.	ACL adopted the following suggestions: • Corrected formatting. • Changed language from Primary Care Physician to Health Care Provider. • Combined question b and c to reduce burden and added Urgent Care Center as a response option.
Some comments suggested changing language in the existing question 13: • Make language consistent with existing question 11, changing "During the last 4 weeks" to "In the past 3 months". • Remove "to what extent" • Provide an example such as "avoiding a friend's home that has steps to enter", "avoiding areas with uneven ground," etc.".	ACL adopted these suggestions by adjusting language: • Changed "During the last 4 weeks" to "In the Past 3 months" for consistency across the collection. • Removed "to what extent" for language simplification. • Added clarifying example of "avoiding situations with stairs or uneven ground".
There were several comments surrounding existing question 14: • Rephrase language to clarify the question and produce more useful feedback. • Replace existing question 14 with a validated outcome measure using activities of daily living (ADLs) to rate confidence. • A physical function question would be a better fit to define level of independence more clearly.	ACL adopted the suggestions by replacing the existing question 12 and 14 with questions that rate falls confidence level surrounding activities of daily living (ADLs).
Many comments received made suggestions for existing question 15: • Change language to lower reading level • Include descriptions for certain terms • Define 'vigorously' and 'moderately' more clearly and include examples in laymen's terms.	ACL adopted some modifications to the question: • Modified language to replicate wording from the Physical Activity Guidelines. • Added examples of activity from the Physical Activity Guidelines.
Several comments suggested adding the following questions to the forms: • Reason for taking the class • Collect name, date of birth, and insurance information • How did you hear about this class? Use of a mobility aid to include cane, walker, wheelchair, crutches, prosthesis, orthosis, others.	ACL did not adopt these suggestions. These questions can be added as an optional question by grantees when appropriate.
For Participant Post Program Survey only Many comments suggested changes to the existing question 8 and 9 • Remove the redundancy of question 8 and 9 • Adjust questions to action-oriented responses rather than feelings or intent • Suggest "I increased my activity level" rather than "I feel more comfortable increasing my activity level.". • Suggest moving some questions under a different heading • Recategorize "recommend program to friend" • Remove questions that are not relevant to falls prevention programs that have a different focus area.	ACL adopted the suggestions by: • Reviewing and removing the redundancy of question 8 and 9. • Combining the questions to reduce burden. • Removing any questions that were not core questions that spanned all program areas. Removed questions like "I have made safety modifications in my home . . .". These can be optional questions added by grantees when appropriate. • Language was adjusted to be action oriented.

FALL PREVENTION COVERSHEET

Comment	Response
A few comments suggested that program leaders do not know the funding source	ACL added language to clarify that the form should be adapted by the grantee to only include applicable funding sources.
Several comments suggested adding questions to capture: • Mode of delivery • Program setting • Whether facilitators are paid staff, volunteers or other • Whether the program is an adaptation	ACL has adopted 2 of the suggestions: • A question was added to indicate mode of delivery. • A question was added clarifying if facilitators are paid staff, volunteers or other. ACL did not adopt adding a question about adaptation.

FALL PREVENTION ATTENDANCE LOG

Comment	Response
A suggestion was submitted to add a column for the total number of classes attended and a check box if the participant was considered a completer.	ACL adopted the suggestion add a column for the total number of classes attended. ACL did not adopt adding a box to check if a participant was a completer due to the variability of definition of a completer across programs.
A suggestion was submitted to add space for the date of each session and names of leaders/coaches.	ACL did not adopt this suggestion. The form can be modified by the grantee.
Some comments suggested that for ease of data entry, the participant identification number is too long.	ACL acknowledges these comments.

COMMENTS RELEVANT TO ALL FORMS

Comment	Response
Some commenters suggested changes to the collection of data, *i.e.,* prefilled forms and positive remarks to prevent falls.	ACL will provide the documents in Word format. If resources allow, we will provide fillable PDFs for grantee use.
One respondent commented that the burden of data entry falls on the program coordinators taking hours to enter different forms.	ACL acknowledges the comment.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Program leaders (Program Information Cover Sheet, Attendance Log).	480 leaders	Twice a year (one set per program).	.50	480
Data entry staff (Program Information Cover Sheet, Attendance Log, Participant Information Survey, Participant Post Program Survey).	48 data entry staff	Once per program × 938 programs.	.50	469
Program participants (Participant Information Survey)	12,265	1	.10	1,226
Program participants (Participant Post Program Survey)	7,359	1	.10	735
Total Burden Hours				2,910

Dated: April 10, 2024.

Alison Barkoff,

Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2024–08009 Filed 4–15–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–1336]

Center for Drug Evaluation and Research Center for Clinical Trial Innovation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing this notice to announce the establishment of the Center for Drug Evaluation and Research (CDER) Center for Clinical Trial Innovation (C3TI). C3TI aims to be a central hub within CDER that supports innovative approaches to clinical trials that are designed to improve the quality and efficiency of drug development and regulatory decision making. C3TI's mission is to promote existing and future CDER clinical trial innovation activities through enhanced communication and collaboration. Existing CDER clinical development innovation programs will continue to operate according to their established processes with C3TI serving to synthesize lessons learned across those programs. C3TI will also be providing additional opportunities for sponsors of innovative clinical trials in the project areas described below to interact with CDER staff with the goal of fostering knowledge sharing both internally and externally.

DATES: The applicable date of this notice is April 15, 2024.

FOR FURTHER INFORMATION CONTACT: Kevin Bugin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6312, Silver Spring, MD 20993–0002, 301–796–2302, *Kevin.Bugin@fda.hhs.gov* or *CDERClinicalTrialInnovation@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CDER guides and fosters drug development by providing scientific and regulatory advice and direction. Evolving understanding of disease biology and molecular pharmacology, advancements in drug discovery, and growth in novel therapeutics have the potential to transform the development of promising new therapies. These changes in the drug development landscape can be further facilitated by novel clinical trial designs, innovative strategies for trial execution, and the expanding range of drug development tools. Similarly, later stages of development, including in the postmarketing setting, can benefit from innovative approaches to study design and analysis. These innovative approaches can include adoption of new statistical approaches, incorporation of pragmatic trial elements, the implementation of point-of-care trials, and wider adoption of selective safety data collection.

With this changing landscape in mind, CDER has many ongoing efforts to advance innovation in clinical trial design and conduct. These CDER efforts have led to improvements in more efficiently designing and conducting

clinical trials that are intended to generate evidence of safety and effectiveness of therapies that in turn showcase the value of clinical trial innovations. CDER leads or co-leads several ongoing programs to advance innovation, and CDER recognizes that additional innovative areas would benefit from the enhanced interactions that are the staple of these programs.

CDER also recognizes that opportunities exist to further enhance the adoption of clinical trial innovations, including the amplification of lessons learned across CDER's robust clinical innovation programs. On October 17, 2023, CDER solicited public comments on the barriers and facilitators to incorporating successful or promising innovative clinical trial approaches in drug development programs. These public comments were discussed as part of a public workshop led by the Duke-Margolis Institute for Health Policy, under a cooperative agreement with FDA, on March 19 and 20, 2024. Topics addressed during the workshop included, but were not limited to, those listed below:

- Evolution of clinical research and the current state of trial innovation
- Regulatory and compliance considerations
- Patient-centric and recruitment considerations
- Infrastructure and organizational considerations
- Global regulatory collaboration on clinical trial innovation
- Collaborations across industry, academia, and FDA to leverage innovation
- Future directions on clinical trial innovation

As a result of these discussions and internal deliberation, FDA is establishing C3TI to further enhance clinical trial innovation for drug development and regulatory decision making. C3TI will serve as a central hub to (1) facilitate the sharing of lessons learned across CDER's existing clinical trial innovation programs, (2) communicate and collaborate with external parties about innovative clinical trials, and (3) manage a C3TI Demonstration Program that will expand opportunities for sponsors of innovative clinical trials in the areas described below that are under a pre-investigational new drug application (pre-IND) or IND to interact with CDER staff.

II. Goals of C3TI

Specifically, C3TI aims to:

- Assist stakeholders involved in clinical research in staying current with clinical trial innovations
- Improve the efficiency and effectiveness of clinical trials
- Help increase the participation of diverse populations in clinical trials
- Enhance the quality of clinical trial data
- Accelerate the development of safe and effective new drugs
- Serve as a central hub for knowledge management and coordinating lessons learned across CDER's clinical trial innovation programs
- Establish a C3TI Demonstration Program that will include case examples from ongoing development programs in the project areas described below to spur innovation across therapeutic areas

III. Activities of C3TI

C3TI provides a single CDER location to engage stakeholders and assist with non-product-specific questions on innovative clinical trial approaches. C3TI maintains a website at *fda.gov/C3TI* to centralize information on existing and new CDER clinical trial innovation efforts, including links to existing websites and resources. C3TI can be contacted at *CDERClinicalTrialInnovation@fda.hhs.gov.* Additionally, C3TI will coordinate and act as a liaison to facilitate information sharing with external stakeholders, as appropriate and permitted by law, when they engage CDER on general clinical trial innovation matters. It will also support knowledge sharing internally through various mechanisms, such as discussion forums and communications, and a centralized knowledge repository. This repository will curate knowledge about completed CDER clinical trial innovation activities and maintain a comprehensive portfolio of ongoing efforts and knowledge resources.

A critical component of C3TI is expanding the subject areas that could benefit from enhanced communication between CDER and sponsors and serve as case examples to spur further innovation. Therefore, C3TI will manage a demonstration program that includes three initial subject matter/project areas described below. The program is for selected sponsors of innovative clinical trials in certain initial project areas under a pre-IND or IND with CDER that are intended to support new drug product approvals or changes to approved drug product labeling and that will serve as case examples that can be shared both internally and externally to foster innovation across therapeutic areas. If selected, sponsors will have the opportunity for enhanced communication and interaction with CDER staff. Because the goal of selecting these case examples from clinical trials under a pre-IND or IND is to ultimately share lessons learned more broadly with the clinical trial community, participating sponsors and FDA will agree on aspects of the development program that FDA can disclose even before a drug is approved.

The three initial project areas under the C3TI Demonstration Program are (1) point-of-care or pragmatic trials, (2) Bayesian analyses, and (3) trials using selective safety data collection. More information about the C3TI Demonstration Program, including how to participate and how the program differs from existing clinical trial innovation programs, is available on the C3TI website: *fda.gov/C3TI.*

IV. Paperwork Reduction Act of 1995

For the C3TI Demonstration Program, FDA will request information from no more than nine sponsors. Initial statements of interest from sponsors interested in being evaluated for participation in the C3TI Demonstration Program are not ''information'' in accordance with 5 CFR 1320.3(h)(1). Thus, this notice contains no new collection of information.

This notice also refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information relating to formal meetings between sponsors or applicants and FDA has been approved under OMB control number 0910–0001.

Dated: April 9, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–07829 Filed 4–15–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0330]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork

Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services (HHS), is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041, or *PRA@HHS.GOV.* When submitting comments or requesting information, please include the document identifier 0990–0330–60D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Appellant Climate Survey.

Type of Collection: Revision.

OMB No. 0990–0330, HHS, OS, Office of Medicare Hearings and Appeals.

Abstract:

The Department of Health and Human Services under the Office of Medicare Hearings and Appeals is doing the annual OMHA Appellant Climate Survey. This is a survey of Medicare beneficiaries, providers, suppliers, or their representatives who participated in a hearing before an Administrative Law Judge (ALJ) from OMHA. Appellants dissatisfied with the outcome of their Level 2 Medicare appeal may request a hearing before an OMHA ALJ. The Appellant Climate Survey will be used to measure appellant satisfaction with their OMHA appeals experience, as opposed to their satisfaction with a specific ruling. OMHA was established by the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173) and became operational on July 1, 2005. The MMA legislation also directed HHS to consider the feasibility of conducting hearings using telephone or video-teleconference (VTC) technologies. In carrying out this mandate, OMHA makes use of both telephone and VTC to provide appellants with a vast nationwide network of Field Offices for hearings. The first 3-year administration cycle of the OMHA survey began in fiscal year (FY) 2008, a second 3-year cycle began in FY 2011, a third 3-year cycle began in FY 2014, a fourth 3-year cycle began in FY 2018, and a fifth 3-year cycle began in FY 2021. The survey will continue to be conducted annually over a 3-year period with the next data collection cycle beginning in FY 2024.

The survey instrument includes several changes from the prior 3-year cycle: Added a new section, ''Request for Hearing.'' The section focuses on how customers requested a hearing, how satisfied they were with the method they used to request a hearing, and about the clarity of form OMHA–100 (Request for ALJ Hearing or Review of Dismissal).

Changed ''Hard Copy, internet and Phone Information'' section to ''Communications and Web Tools'' section.

Added a brief statement about when customers should have received the ''Notice of Nondiscrimination'' document.

Added two satisfaction questions for appellants who used the e-Appeal Portal—one about updates the portal provides on their appeal and another about using the portal for uploading documents electronically.

Changed ''Telephone Hearing'' section to ''Hearing.'' The appellant is asked what type of hearing they had (telephone or video) and satisfaction with using that method. If they attended a telephone hearing, appellants will be asked whether they were offered the option of a video hearing; if not, they will be asked if they would have participated in a video hearing if offered.

Data collection instruments and recruitment materials will be offered in English and Spanish. The estimated total number of respondents across all 3 years is 2,400 (800 respondents each FY for FY 2024, FY 2025, and FY2026). The estimated total annual burden hours expected across all years is 600 hours (200 hours each FY for FY 2024, FY 2025, and FY 2026).

The survey will be conducted annually, and survey respondents will consist of Medicare beneficiaries and non-beneficiaries (*i.e.,* providers, suppliers) who participated in a hearing before an OMHA ALJ. OMHA will draw a representative, nonredundant sample of appellants whose cases have been closed in the first 6 months of the surveyed fiscal year.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
	Beneficiaries	400	1	15/60	100
	Non-Beneficiaries	400	1	15/60	100
Total		800	1	15/60	200

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2024–07934 Filed 4–15–24; 8:45 am]

BILLING CODE 4150–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Dawn Taylor-Mulneix at 301–767–5189, or *dawn.taylor-mulneix@nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852: tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Human Monoclonal Antibodies That Target Plasmodium Falciparum Sporozoites

Description of Technology

Malaria is one of the world's deadliest infectious diseases, causing an estimated 249 million cases and 608,000 deaths annually, with children in the regions of Africa and South Asia being most vulnerable. Approx 2,000 cases of malaria are reported in the United States each year, by travelers from malaria-risk countries. Malaria is a mosquito-borne parasitic disease transmitted through the bite of infected female mosquitoes, which introduces *Plasmodium* sporozoites into the bloodstream of the human host. There are five Plasmodium parasite species that cause malaria in humans, of which, the vast majority of life-threatening cases are caused by infection with *Plasmodium falciparum* parasites.

Researchers at NIAID have developed 11 human monoclonal antibodies that bind to a unique site on the circumsporozoite protein (CSP) on Plasmodium falciparum sporozoites that is not targeted by any known monoclonal antibodies. These antibodies do not bind to recombinant forms of CSP and as such bind to a processed or post-translational form of the protein processed by the sporozoites. In vivo studies have shown several of these antibodies can substantially reduce liver parasite burden in a mouse model of malaria. These antibodies can work cooperatively with known antibodies that target the repeat region of CSP. Some of these novel antibodies have shown enhanced protection in an animal model when combined with known protective monoclonal antibodies against sporozoites, suggesting that together they may form an effective cocktail to prevent malaria.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications

- Prophylactic and preventative treatment against malaria.

Competitive Advantages

- These antibodies bind to a unique site on the circumsporozoite protein (CSP) on Plasmodium falciparum sporozoites that is distinct from the targets of pre-existing mAbs.
- These monoclonal antibodies can be used alone or in combination with existing antibodies.

Development Stage

- Pre-Clinical

Inventors: Joshua Tan, Ph.D., Cherrelle Dacon, Ph.D., both of NIAID.

Publications: n/a.

Intellectual Property: HHS Reference No. E–212–2022–0. U.S. Provisional Patent Application No. 63/409,016, filed on September 22, 2022, and PCT Patent Application No. PCT/US2023/074791, filed on September 21, 2023.

Licensing Contact: To license this technology, please contact Dawn Taylor-Mulneix at 301–767–5189, or *dawn.taylor-mulneix@nih.gov,* and reference E–212–2022.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Areas of specific interest include (a) testing developability of these antibodies (*e.g.,* biophysical characteristics, cross-reactivity, pharmacokinetics, toxicity), (b) pre-clinical model assessment, and (c) human clinical trials. For collaboration opportunities, please contact Dawn Taylor-Mulneix at 301–767–5189, or *dawn.taylor-mulneix@nih.gov.*

Dated: April 8, 2024.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–08013 Filed 4–15–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0014]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Declaration of Financial Support

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 17, 2024.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0014 in the body of the letter, the agency name and Docket ID USCIS–2006–0072. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0072.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this

notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2006–0072 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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; and

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Declaration of Financial Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–134; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. DHS and consular officers of the Department of State (DOS) use Form I–134 to determine whether, at the time of the beneficiary's application, petition, or request for certain immigration benefits, that beneficiary has sufficient financial support to pay for expenses for the duration of their temporary stay in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–134 is 2,500 and the estimated hour burden per response is 1.65 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,125 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $10,625.

Dated: April 8, 2024.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–08014 Filed 4–15–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0122]

Agency Information Collection Activities; Revision of a Currently Approved Collection: USCIS Online Account Access

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting 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. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until May 16, 2024.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2011–0015. All submissions received must include the OMB Control Number 1615–0122 in the body of the letter, the agency name and Docket ID USCIS–2011–0015.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on August 14, 2023, at 88 FR 55065, allowing for a 60-day public comment period. USCIS did receive two comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2011–0015 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide.

Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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; and

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* USCIS Online Account Access.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* OMB–62; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* In order to create a new USCIS Online Account, members of the public (*i.e.* users) must submit a valid email address; create a password; select their preferred method for interacting with a two-step verification process (authentication app, text message, or email); and provide responses to five password reset questions of their choice. Any given email address may be associated with only one USCIS Online Account; users may not establish multiple accounts using the same email address. A user is required to complete a two-step verification process upon creation of a new account and during each subsequent log-in. USCIS makes use of the information received during the account creation process to set up the user's profile. Once the account is established/the user has logged in, the user can edit/add certain profile information or select a USCIS online system with which to interact.

The myUSCIS system's registrant account is being enhanced to allow companies to set up company administrator accounts with company and personal profiles and to file Form I–129 petitions in addition to H–1B Registrations. The company account will have functionality that allows a company administrator to invite company members to join a company group and collaborate on H–1B Registrations and Form I–129 petitions. Company members will complete a personal profile. The burden to respondents for creating company and personal profiles, and for creating and accepting/declining invitations to join a company group, is being captured under OMB Control Number 1615–0122.

USCIS systems currently accessible by logging in through the USCIS Online Account Access process are: myUSCIS, the Freedom of Information Act electronic request system (FIRST), and myE-Verify. These systems serve specific, unique purposes and may require the user to provide information beyond what is required to create an account/log in through the USCIS Online Account Access process. Each system may be considered a collection of information in its own right and be covered by its own OMB Control Number. USCIS may add additional online systems for public use in the future.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection USCIS Online Account Access process for Individuals or Households is 4,240,000 and the estimated hour burden per response is 0.167 hours; the estimated total number of respondents for the information collection USCIS Online Account Access process for Businesses or other for-profit is 1,060,000 and the estimated hour burden per response is 0.167 hours; the estimated total number of respondents for the information collection for Account Interactions is 300,000 and the estimated hour burden per response is 0.315 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 979,600 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: April 8, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–07962 Filed 4–15–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2024–0059; FXIA16710900000–245–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by May 16, 2024.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2024–0059.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2024–0059.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2024–0059; U.S. Fish and Wildlife

Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. 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:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: International Elephant Foundation c/o Fort Worth Zoo, Fort Worth, TX; Permit No. PER8478987

The applicant requests authorization to import biological samples from African elephants (*Loxodonta africana*) and Asian elephants (*Elephas maximus*) from various countries for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: U.S. Fish and Wildlife Service, Office of Law Enforcement, Training and Development Unit, Brunswick, GA; Permit No. PER9624348

The applicant requests authorization to import seized biological samples of unknown origin from any location for law enforcement and educational purposes. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: U.S. Fish and Wildlife Service, Office of Law Enforcement, Training and Development Unit, Brunswick, GA; Permit No. PER9625280

The applicant requests authorization to export and re-export seized biological samples of unknown origin to any location for law enforcement and educational purposes. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Peck's Wildwood Wildlife Park and Nature Center, Minocqua, WI; Permit No. PER9700548

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
Ring-tail lemur	*Lemur catta.*
Brown lemur	*Eulemur fulvus.*
Black-and-white-ruffed lemur.	*Varecia variegata.*
Red-ruffed lemur	*Varecia rubra.*
African leopard	*Panthera pardus pardus.*
Cotton-top marmoset	*Saguinus oedipus.*
Snow leopard	*Panthera uncia.*
White-handed gibbon	*Hylobates lar.*
Radiated tortoise	*Astrochelys radiata.*
African penguin	*Spheniscus demersus.*
Bengal tiger	*Panthera tigris tigris.*
Siamang	*Symphalangus syndactylus.*
Arabian oryx	*Oryx leucoryx.*
Golden-rumped tamarin.	*Leontopithecus chrysomelas.*

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act

of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2024–07955 Filed 4–15–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_MT_FRN_MO4500178507]

Public Meeting for the Missouri Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Missouri Basin Resource Advisory Council (RAC) will meet as follows.

DATES: The Missouri Basin RAC will meet on May 16, 2024, from 8 a.m. to 12 p.m. Mountain Time.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton, 27 N 27th Street, Billings MT, 59101. A virtual participation option will also be available. Individuals that prefer to participate virtually must register with the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 2 weeks in advance.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Missouri Basin RAC Coordinator, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, MT 59301; telephone: (406) 233–2831; email: *mjacobse@blm.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mark Jacobsen. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central and Eastern Montana, and North and South Dakota. Meeting agenda topics may include North-Central and Eastern Montana/Dakotas District reports; presentations on the Upper Missouri River Breaks National Monument Left Coulee Access, the Snowy River CO2 Sequestration Project, and results of the North Dakota 2024 oil and gas lease sales; a public comment period; and other topics that may arise. A final agenda will be posted on the RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/montana-dakotas/missouri-basin-rac* 2 weeks in advance of the meeting. The meeting is open to the public with a public comment period offered at 11:30. Written comments to the RAC can be emailed in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 7 business days prior to the meeting to give the BLM sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

(Authority: 43 CFR 1784.4–2)

Wendy Warren,

Eastern Montana/Dakotas District Manager.

[FR Doc. 2024–08029 Filed 4–15–24; 8:45 am]

BILLING CODE 4331–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500178277]

Notice of Public Meetings of the Idaho Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior Bureau of Land Management (BLM) Idaho Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Idaho RAC will participate in a field tour on Tuesday, May 14, 2024, from 9:00 a.m. to approximately 4:00 p.m. Pacific Time (PT). The RAC will then hold an in-person meeting on Wednesday, May 15, from 9:00 a.m. to 5:00 p.m. PT, with public comments accepted at 3:00 p.m.

The RAC will hold an in-person meeting on Friday, July 11, from 9:00 a.m. to 5:00 p.m., Mountain Time (MT), with public comments accepted at 3:00 p.m.

The RAC will participate in a field tour on Wednesday, October 9, from 9:00 a.m. to approximately 4:00 p.m. MT. The RAC will then hold an in-person meeting on Thursday, October 10, from 9:00 a.m. to 5:00 p.m. MT, with public comments accepted at 3:00 p.m. Virtual participation options will be available for the May 15, July 11, and October 10 meetings.

Public notice of any changes to this schedule will be posted on the Idaho RAC web page listed below 15 days in advance of each meeting.

ADDRESSES: The May 14 field tour will commence and conclude and the May 15 meeting will be held at the Interagency Natural Resources Center, 3232 W. Nursery Rd., Coeur d'Alene, ID 83815.

The July 11 meeting will be held at the BLM Idaho State Office, 1387 S. Vinnell Way, Boise, ID 83709.

The October 9 field tour will commence and conclude and the October 10 meeting will be held at the BLM Pocatello Field Office, 4350 Cliffs Dr., Pocatello, ID 83204.

Virtual attendance for each meeting will be offered via Zoom. Agendas, zoom registration, and participation information will be available on the Idaho RAC web page 30 days in advance of the meetings at *http://tinyurl.com/3ajxvapd.*

FOR FURTHER INFORMATION CONTACT: Idaho RAC Coordinator MJ Byrne, telephone: 208–373–4006, email: *mbyrne@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member Idaho RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in Idaho. Their diverse perspectives are represented in commodity, non-commodity, and local area interests. The Idaho RAC serves in an advisory capacity to BLM officials concerning issues relating to land use planning and management of public land resources located within the State of Idaho.

On May 14, the RAC will tour BLM managed recreation sites. The May 15 agenda items include presentations and discussions on proposed recreation fee increases within the Coeur d'Alene District and the Salmon Field Office, updates from the State and District Offices, and a pre-season fire outlook. The July 11 agenda items include presentations on renewable energy, recreation, restoration and fuels treatments, fire status, and updates from the State and District Offices. On October 9, the RAC will tour BLM managed restoration and fuels treatments sites showcasing Bipartisan Infrastructure Law and Inflation Reduction Act projects. The October 10 agenda items include presentations and discussions on proposed recreation fee increases within the Idaho Falls and Twin Falls Districts, presentations on restoration and fuels treatments, renewable energy, recreation, a fire season recap, and updates from the State and District Offices.

All meetings and field tours are open to the public, but members of the public who wish to participate in the tours must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**) at least seven 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. Each Idaho RAC meeting will have time allocated for public comments. Depending on the number of persons wishing to speak and the time available, the amount of time for oral comments may be limited. Written public comments may be sent to the BLM Idaho State Office listed in the **ADDRESSES** section of this notice. All comments received at least one week prior to the meeting will be provided to the Idaho RAC. Please include ''RAC comment'' in your submission.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Detailed summary minutes for the Idaho RAC meetings will be maintained in the BLM Idaho State Office and will be available for public inspection and reproduction during regular business hours within 30 days of the meetings. Previous minutes and agendas are also available on the Idaho RAC web page listed above.

(Authority: 43 CFR 1784.4–2)

June Shoemaker,

Acting BLM Idaho State Director.

[FR Doc. 2024–07951 Filed 4–15–24; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500178328]

Call for Nominations for Colorado Rocky Mountain Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management (BLM) Colorado's Rocky Mountain Resource Advisory Council (RAC) to fill one existing vacancy. The RAC provides advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within its geographic area.

DATES: All nominations must be received no later than May 16, 2024.

ADDRESSES: Nominations and completed applications should be sent to Levi Spellman, BLM Rocky Mountain District Office, 3028 East Main Street, Cañon City, CO 81212; phone: (719) 269–8553; email: *lspellman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Kirby-Lynn Shedlowski, BLM Colorado Deputy Communications Director, Denver Federal Center, Building 40 Lakewood, CO 80215; telephone: (303) 239–3671; email: *kshedlowski@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Kirby-Lynn Shedlowski. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by the applicable regulations, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The BLM regulations governing the operation of RACs are found at 43 CFR subpart 1784.

The RAC is seeking nominations for individuals who hold State, county, or local elected office.

Individuals may nominate themselves or others. Nominees must be residents of the State of Colorado. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—A completed RAC application, which can either be obtained through your local BLM office or online at: *https://www.blm.gov/sites/default/files/docs/2022-05/BLM-Form-1120-19_RAC-Application.pdf*

—Letters of reference from represented interests or organizations; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM Colorado will issue a press release providing additional information for submitting nominations.

(Authority: 43 CFR 1784.4–1)

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2024–08039 Filed 4–15–24; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037758; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: David A. Fredrickson Archaeological Collections Facility at Sonoma State University, Rohnert Park, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Sonoma State University intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 16, 2024.

ADDRESSES: Doshia Dodd, Sonoma State University, 1801 East Cotati Avenue, Rohnert Park, CA 94928, telephone (530) 514–8472, email *Doshia.dodd@sonoma.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Sonoma State University, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of three lots of cultural items have been requested for repatriation. The three lots of objects of cultural patrimony each include flaked stone tools and debitage; dietary bone remains; groundstone objects; late 19th—early 20th century glass, ceramic and metal items; and soil samples. Based on records concerning the cultural items and the institution in which they were housed, there is no evidence of the three lots of cultural items being treated with hazardous substances.

One lot of cultural items was removed from archaeological site CA–SAC–436 in Sacramento County, CA. The items were removed in 1994 during archaeological work carried out by Stewart/Gerike Consultants related to an excavation at the Rancho Seco Park, and were curated at Sonoma State University after completion of the project. The cultural items have remained in possession of Sonoma State since their curation, under the Accession Number 94–12.

Two lots of cultural items were removed from archaeological sites P–34–002166 and P–34–004714 in Sacramento County, CA. The items were removed in 2014 during archaeological work carried out by ECORP Consulting, Inc. related to an infrastructure support project for the Folsom South of U.S. Highway 50 Specific Plan Project, and were curated at Sonoma State University after completion of the project. The cultural items have remained in possession of Sonoma State since their curation, under the Accession Numbers 2015–20 (for P–34–002166) and 2015–22 (P–34–004714).

Determinations

Sonoma State University has determined that:

- The three lots of objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; Chicken Ranch Rancheria of Me-wuk Indians of California; Guidiville Rancheria of California; Ione Band of Miwok Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tule River Indian Tribe of the Tule River Reservation, California; United Auburn Indian Community of the Auburn Rancheria of California; Wilton Rancheria, California; and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, Sonoma State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. Sonoma State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 9, 2024

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08054 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037762; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Pennsylvania Museum of Archaeology and Anthropology (Penn Museum) intends to repatriate certain cultural items that meet the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after May 16, 2024.

ADDRESSES: Dr. Christopher Woods, Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, email *director@pennmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Penn Museum, and additional information on the

determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one object of cultural patrimony is a wampum belt (PM# NA3878). The Penn Museum purchased the wampum belt from merchant Albert E. Barnes in 1913. It is unclear how or from whom Mr. Barnes acquired the wampum belt. Photographic evidence shows the wampum belt around the neck of Passamaquoddy Wampum Keeper Sachem Sopiel Selmore (b. 1803—d. 1903) in 1901.

Determinations

The Penn Museum has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Passamaquoddy Tribe.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, the Penn Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Penn Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08049 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037759; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Boston Children's Museum, Boston, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Boston Children's Museum has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 16, 2024.

ADDRESSES: Melissa Higgins, Vice President of Programs & Exhibits, Boston Children's Museum, 308 Congress Street, Boston, MA 02201, telephone (617) 986–3692, email *higgins@bostonchildrensmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Boston Children's Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing partial skeletons of at least two individuals have been reasonably identified. The two lots of associated funerary objects include Pottery Sherds, Flint Flake, Carbonized Beans, and Animal Bones. Remains and associated funerary objects were donated in 1969 by Dr. Jack Calvert, who was involved in archeological digs as part of the work of James Tuck in 1965–1967. The Remains and associated funerary objects are believed to have been removed from New York State as part of these digs. Accession records note them originating from the Cabin Site (tly 1–1), though there is a possibility that they originated from one of several sites in the area. Due to geographic origin, the remains are reasonably believed to be culturally affiliated with the Onondaga Nation. There is no documentation of hazardous substances being used to treat these individuals or materials.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

Boston Children's Museum has determined that:

- The human remains described in this notice represent the physical partial skeletal remains of two individuals of Native American ancestry.
- The two lots of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Onondaga Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, the Boston Children's Museum must determine the most appropriate

requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Boston Children's Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08046 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037760; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Western Washington University, Department of Anthropology, Bellingham, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Western Washington University (WWU) has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after May 16, 2024.

ADDRESSES: Dr. Judith Pine, Western Washington University, Department of Anthropology, Arntzen Hall 340, 516 High Street, Bellingham, WA 98225, telephone (360) 650–4783, email *pinej@wwu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of WWU, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, four individuals have been reasonably identified and were reported in a Notice of Inventory Completion published in the **Federal Register** on December 22, 2023 (88 FR 88642). The 63 associated funerary objects associated with those human remains are 63 level bags (lots) containing fragments of fauna/shell, button, charcoal, worked antler and bone, worked slate, metal, rocks and residue and are newly identified.

45–SK–37 is located in Skagit County, Washington. The site was excavated in 1960 by Dr. Herbert Taylor of Western Washington State College, now known as Western Washington University. Taylor was supervising a field school excavation with students from the college. No known individuals were identified. No hazardous chemicals are known to have been used to treat the human remains or associated funerary objects while in the custody of WWU.

The human remains and associated funerary objects have been determined to be Native American based on ethnographic, geographic, and archeological evidence. Comparison of the location of site 45–SK–37 with Suttles and Lane's map indicates that it is in an area associated with Nookachamps, Kikiallus, and Swinomish (Suttles and Lane 1990, Handbook of North American Indians, Volume 7, Northwest Coast: Figure 1). Many descendants of these cultural entities are today associated with the Swinomish Indian Tribal Community, as confirmed through consultation.

From Site 45– SK–37 in Skagit County, WA, four individuals and 63 associated funerary objects were removed.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

WWU has determined that:

- The 63 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Swinomish Indian Tribal Community.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, WWU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. WWU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08047 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037755; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Longyear Museum of Anthropology, Colgate University, Hamilton, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Longyear Museum of Anthropology (LMA) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 16, 2024.

ADDRESSES: Kelsey Olney-Wall, Repatriation Manager, University Museums, Colgate University, 13 Oak Drive, Hamilton, NY 13346, telephone (315) 228–7677, email *kolneywall@colagate.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the LMA, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. No associated funerary objects are present. The preponderance of evidence suggests that the human remains representing one individual were removed from Chatham County, GA, between 1937 and 1939 by physical anthropologist Dr. Frederick S. Hulse. The human remains were removed from an unknown archaeological site, possibly the Irene Mound site. The human remains came into the LMA collections after 1949 when Dr. Hulse left Colgate University.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The LMA has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and The Muscogee (Creek) Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, the LMA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The LMA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08043 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037764; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Davis (UC Davis) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 16, 2024.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UC Davis, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 149 cultural items have been requested for repatriation. The 46 unassociated funerary objects are 45 lots of debitage and chipped stone (including quartz items), and one mano fragment. In 1981, these cultural items were removed from CA–SAC–408 (Accession 281) during a surface collection and test excavation conducted by DL True, R. Jackson, and J. Offerman.

The 90 unassociated funerary objects are 17 lots of groundstone, 30 lots of flakes, 35 lots of unmodified stone, one lot of bone, and six lots of historic material. One projectile point is currently missing. In 1986, these items were removed from CA–SAC-Cripple Creek (Accession 385) near Citrus Heights, Sacramento County, CA during a test excavation conducted by DL True, C. Slaymaker, and P. Bouey.

The six unassociated funerary objects include four lots of chipped stone and two lots of groundstone. Between 1987 and 1988, these items were removed from CA–SAC–320 (Accession 391) during surface and limited test excavations conducted by DL True, C. Slaymaker, and S. Griset as part of a permit review by the Sacramento County Community Planning and Development Department.

The two unassociated funerary objects include one pestle and one open pestle fragment. Between 1987 and 1988, these items were removed from CA–SAC–406A (Accession 391) during surface and limited test excavations conducted by DL True, C. Slaymaker, and S. Griset as part of a permit review by the Sacramento County Community Planning and Development Department.

The four unassociated funerary objects include four lots of debitage. Between 1987 and 1988, these items were removed from CA–SAC-Folsom Shooting Club (Accession 391) during surface and limited test excavations conducted by DL True, C. Slaymaker, and S. Griset as part of a permit review by the Sacramento County Community Planning and Development Department.

The one object of cultural patrimony includes one handstone/mano. Around 1980, this item was donated to the UC Davis Department of Anthropology Teaching Collection (UCDA). Provenience information is limited to ''Sacramento, CA (1980).''

Determinations

The UC Davis has determined that:

- The 148 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- The one object of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, the UC Davis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The UC Davis is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08051 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037761; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State University, Manhattan, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Kansas State University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 16, 2024.

ADDRESSES: Megan Williamson, Department of Sociology, Anthropology, and Social Work, Kansas State University, 204 Waters Hall, 1603 Old Claflin Place, Manhattan, KS 66506–4003, telephone (785) 532–6005, email *mwillia1@ksu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Kansas State University, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 13 individuals have been reasonably identified. The 19,174 associated funerary objects are 8,397 unmodified stone, 7,004, burned/unidentifiable bone fragments, 2,900 chipped stone debris, 260 bone beads, 177 debitage, 142 shell beads, 112 faunal, 63 projectile points (whole & fragmented), 35 ceramic sherds, 17 shell fragments, 16 scrapers, eight worked chert, seven glass fragments, four limestone pieces, four staples, three pellets, two bullets, two quartzite, two spokeshaves, two bifaces, two core fragments, two bullet casings, two unidentifiable metal fragments, two bullets, one bolt, one plastic handle, one baseball, one fossilized shell, one Kansas pipestone, one knife fragment, one chopper, one drill fragment, and one Minnie ball. Missing from the original inventory above are 44 projectile points, three projectile point fragments, one Kansas pipestone, and two ceramic sherds. It is believed that these items were unlawfully removed by non-NAGPRA and departmental staff before the assemblage was relocated to our current more secure facilities.

The 13 individuals were removed from Geary County, KS, during the 1970s. Excavated by Kansas State University under the direction of Dr. Patricia J. O'Brien in May & June of 1974. The excavation of Witt Mound 2 was later completed in May/June of 1979. The removed assemblage has since been under the stewardship of Kansas State University since then.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

Kansas State University has determined that:

- The human remains described in this notice represent the physical remains of 13 individuals of Native American ancestry.
- The 19,174 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Kaw Nation, Oklahoma; Pawnee Nation of Oklahoma; The Osage Nation; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary

objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, Kansas State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Kansas State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08048 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037765; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Sierra Joint Community College District, Rocklin, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Sierra Joint Community College District intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 16, 2024.

ADDRESSES: Melissa Leal, Sierra Joint Community College District, 5100 Sierra College Blvd., Rocklin, CA 95677, telephone (916) 624–3333, email *mleal@nierracollege.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Sierra Joint Community College District and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of three lots of object of cultural patrimony have been requested for repatriation. The three lots of objects of cultural patrimony are three lots of modified stones. One lot of cultural item was removed from CA–PLA–606/H (Twelve Bridges Project) in Lincoln, CA. One lot of cultural item is from a personal donor and was removed in Auburn Ravine, Gold Hill Area, CA. One lot of cultural item was collected on the Rocklin Campus of Sierra College in 2016.

Determinations

The Sierra Joint Community College District has determined that:

- The three lots of objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the United Auburn Indian Community of the Auburn Rancheria of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, Sierra Joint Community College District must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Sierra Joint Community College District is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08052 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037763; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California Davis (UC Davis) has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after May 16, 2024.

ADDRESSES: Megon Noble, Repatriation Coordinator, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UC Davis, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Six associated funerary objects from CA–SAC–75 and CA–SAC–164 (UC Davis Accession 391) were removed from Sacramento County, CA. The five associated funerary objects removed from CA–SAC–75 are five pieces of groundstone. The one associated funerary object removed from CA–SAC–164 is one lot of midden with faunal remains intermixed. 1987–1988 surface collections and limited test excavations were conducted by DL True, C. Slaymaker, and S. Griset as part of a permit review by the Sacramento County Community Planning and Development Department. Both sites are known to have burials, however UC Davis does not hold any human remains for these sites.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the associated funerary objects described in this notice.

Determinations

UC Davis has determined that:

- The six objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, UC Davis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. UC Davis is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08050 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037757; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Sacramento has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 16, 2024.

ADDRESSES: Dr. Mark Wheeler, Chief of Staff to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 460–0490, email *mark.wheeler@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

In 1957, human remains representing, at minimum, one individual were removed from CA–YOL–13 in Yolo County by F.A. Riddell and W.H. Olsen of the State Indian Museum. It is not known how the collection came into the possession of California State University, Sacramento. Occupation of the site is estimated to have occurred during the Late Period. The one associated funerary object is a flaked stone.

At an unknown date, associated funerary objects were removed from CA–YOL–13 and Hall Mound by Anthony Zallio. In 1951, Zallio's estate donated the collections to California State University, Sacramento. Ancestral remains from the collections were previously repatriated in 2015, but objects from the sites were not requested during the repatriation. The 56 associated funerary objects removed from these sites includes ground and flaked stones; modified bones, shells and stones; and floral remains.

In 1960, human remains representing, at minimum, five individuals were removed from several sites in Yolo County by students from Sacramento State University (now California State University, Sacramento) under the direction of Dr. William Beeson. These sites include CA–YOL–18, CA–YOL–44, CA–YOL–51, and CA–YOL–58. The collections have been housed at California State University, Sacramento since this survey. The 48 associated funerary objects removed from these sites includes flaked and ground stones; faunal remains; modified bones, stones and shells; and unmodified stones.

Human remains representing, at minimum, two individuals, were removed from CA–YOL–45 by an unknown individual who donated a collection to the University in 1956, and during a 1960 survey of the site by students from Sacramento State University (now California State University, Sacramento) under the direction of Dr. William Beeson. Occupation of the site is estimated to have occurred during at least the Late Period. Anthony Zallio also collected human remains and cultural objects from the site, which were donated to the University in 1951. Human remains and funerary objects in the Zallio collection originating from this site were previously repatriated in 2015, but

several objects were not requested at that time and are included in this notice. The 6,208 associated funerary objects removed from this site include flaked and ground stones; faunal remains; historic materials; modified bones, stones and shells; and unmodified stones. Of this number, 99 objects are currently missing from the collection. California State University, Sacramento continues to look for these 99 missing objects.

At an unknown date, associated funerary objects were removed from either CA–YOL–45 and CA–YOL–52. It is not known how these objects came into the possession of California State University, Sacramento. They were determined to come from either CA–YOL–45 or CA–YOL–52 based on their inclusion with other objects from these sites. The five associated funerary objects include flaked stones and modified bones.

In 1978, human remains representing, at minimum, 10 individuals, were removed from an unnamed site in Yolo County, California by Dr. Jerald Johnson of California State University, Sacramento as part of a salvage excavation. The human remains and artifacts were transported back to California State University, Sacramento for evaluation and curation. The 28 associated funerary objects removed from this site include baked clay objects; ground and flaked stones; faunal remains; modified shells; and floral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

California State University, Sacramento has determined that:

- The human remains described in this notice represent the physical remains of 18 individuals of Native American ancestry.
- The 6,346 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Ione Band of Miwok Indians of California; Kletsel Dehe Wintun Nation of the Cortina Rancheria (*previously* listed as Kletsel Dehe Band of Wintun Indians); Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; Wilton Rancheria, California; and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08045 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037766; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Sierra Joint Community College District, Rocklin, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Sierra Joint Community College District intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 16, 2024.

ADDRESSES: Melissa Leal, Sierra Joint Community College District, 5100 Sierra College Blvd., Rocklin, CA 95677, telephone (916) 624–3333, email *mleal@sierracollege.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Sierra Joint Community College District and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one lot of unassociated funerary objects have been requested for repatriation. The one lot consists of one paint resource from Badge Creek Mound, Hwy 5 and Cosumnes Road.

Determinations

The Sierra Joint Community College District has determined that:

- The one lot of unassociated funerary objects described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Wilton Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, Sierra Joint Community College District must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Sierra Joint Community College District is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08053 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037756; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Sacramento, Sacramento, CA intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 16, 2024.

ADDRESSES: Dr. Mark Wheeler, Chief of Staff to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 460–0490, email *mark.wheeler@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

The 106 cultural items were removed from several sites in Yolo County, CA. At an unknown date, cultural items were removed from an unknown site in Yolo County near Clarksburg, CA–YOL–07, and CA–YOL–49 by Anthony Zallio. In 1951, Zallio's estate donated the collections to California State University, Sacramento. In 1970, cultural items were removed from CA–YOL–47 by an unknown individual associated with California State University, Sacramento. In 1960, cultural items from CA–YOL–42 were found during a survey conducted by students from Sacramento State University (now California State University, Sacramento) under the direction of Dr. William Beeson. Additional objects determined to be from Yolo County, but with no associated site name, number or other documentation were also located in the University's collections. It is not known how these objects came into the University's possession. The 101 unassociated funerary objects include faunal and floral remains; flaked and ground stones; modified bones, shells, and stones; and unmodified stones. The five objects of cultural patrimony include flaked stones, and modified bones and shells.

Determinations

California State University, Sacramento, Sacramento, CA has determined that:

- The 101 unassociated funerary objects described above are reasonably believed to have been placed intentionally with or near individual human remains, and are connected, either at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- The five objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08044 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037754; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Grand Rapids Public Museum, Grand Rapids, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Grand Rapids Public Museum has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 16, 2024.

ADDRESSES: Alex Forist, Chief Curator, 272 Pearl Street NW, Grand Rapids, MI 49504, telephone (616) 929–1809, email *aforist@grpm.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Grand Rapids Public Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The two associated funerary objects are pottery sherds. At an unknown date, the related ancestral remains and associated funerary objects were removed from Walnut Canyon, AZ, by an unknown individual. At an unknown date, Mrs. Ernest T. Ross acquired the ancestral remains and funerary objects from an unknown individual. In 1923, she donated the ancestral remains and funerary objects to the Grand Rapids Public Museum. The GRPM's records describe the remains and funerary objects as ''cliff dweller'' from Walnut Canyon, Arizona.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Grand Rapids Public Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Fort McDowell Yavapai Nation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico, & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 16, 2024. If competing requests for repatriation are received, the Grand Rapids Public Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Grand Rapids Public Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–08042 Filed 4–15–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0019; DS63644000 DRT000000.CH7000 234D1113RT, OMB Control Number 1012–0001]

Agency Information Collection Activities; Accounts Receivable Confirmations Reporting

AGENCY: Office of Natural Resources Revenue (''ONRR''), Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), ONRR is proposing to renew an information collection. Through this Information Collection Request (''ICR''), ONRR seeks renewed authority to collect information related to the paperwork requirements under the Chief Financial Officers Act of 1990 (''CFO Act'') covering the collection of royalties and other mineral revenues due, which obligations are accounted for as accounts receivables.

DATES: Interested persons are invited to submit comments on or before June 17, 2024.

ADDRESSES: All comment submissions must (1) reference ''OMB Control Number 1012–0001'' in the subject line; (2) be sent to ONRR before the close of the comment period listed under **DATES**; and (3) be sent using the following method:

Electronically via the Federal eRulemaking Portal: Please visit *https://www.regulations.gov.* In the Search Box, enter the Docket ID Number for this ICR renewal (''ONRR–2011–0019'') to locate the document and click the ''Comment Now!'' button. Follow the prompts to submit your comment prior to the close of the comment period.

Docket: To access the docket to view the ICR **Federal Register** publications, go to *https://www.regulations.gov* and search ''ONRR–2011–0019'' to view renewal notices recently published in the **Federal Register**, publications associated with prior renewals, and applicable public comments received for this ICR. ONRR will make the comments submitted in response to this notice available for public viewing at *https://www.regulations.gov.*

OMB ICR Data: You may also view information collection review data for this ICR, including past OMB approvals, at *https://www.reginfo.gov/public/do/PRASearch.* Under the ''OMB Control Number'' heading enter ''1012–0001'' and click the ''Search'' button located at the bottom of the page. To view the ICR renewal or OMB approval status, click

on the latest entry (based on the most recent date). On the ''View ICR—OIRA Conclusion'' page, check the box next to ''All'' to display all available ICR information provided by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact Thomas Anthony, Financial Services, by email at *Thomas.Anthony@onrr.gov* or by telephone at (303) 231–3708.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Pursuant to the PRA, 44 U.S.C. 3501, *et seq.,* and 5 CFR 1320.5, all information collections as defined in 5 CFR 1320.3, require approval by OMB. ONRR may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of ONRR's continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information in accordance with the PRA and 5 CFR 1320.8(d)(1). This helps ONRR assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand ONRR's information collection requirements and provide the requested data in the desired format.

ONRR is especially interested in public comments addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of ONRR's estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. ONRR will include or summarize each comment in its request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask ONRR in your comment to withhold your personal identifying information from public review, ONRR cannot guarantee that it will be able to do so.

Abstract: (a) General Information: The Secretary of the United States Department of the Interior (''Secretary'') is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf. Laws pertaining to Federal and Indian mineral leases are posted at *https://onrr.gov/references/statutes.* Pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (''FOGRMA'') and other laws, the Secretary's responsibilities include maintaining a comprehensive inspection, collection, and fiscal and production accounting and auditing system that: (1) accurately determines mineral royalties, interest, and other payments owed, (2) collects and accounts for such amounts in a timely manner, and (3) disburses the funds collected. *See* 30 U.S.C. 1701 and 1711. ONRR performs these mineral revenue management responsibilities for the Secretary. *See* Secretarial Order No. 3306.

ONRR collects, audits, and disburses royalties, interest, and other payments owed by lessees on minerals produced from Federal and Indian lands. Such information is generally available within the records of the lessee or others involved in the development, transport, processing, purchase, or sale of such minerals. Specifically, companies submit financial information to ONRR on a monthly basis by submitting form ONRR–2014 (Report of Sales and Royalty Remittance for oil and gas reported in OMB Control Number 1012–0004), and form ONRR–4430 (Solid Minerals Production and Royalty Report reported in OMB Control Number 1012–0010). These royalty reports result in accounts receivables and capture most of the mineral revenues that ONRR collects.

The basis for the data that a company submits on forms ONRR–2014 and ONRR–4430 is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals. The information that ONRR collects under this ICR includes data necessary to ensure that ONRR's accounts receivables are accurately based on the value of the mineral production, as reported to ONRR on forms ONRR–2014 and ONRR–4430.

(b) Information Collections: Every year, under the CFO Act, the Office of Inspector General (''OIG'') or its agent audits the accounts receivable portions of the Department of the Interior's financial statements, which includes accounts receivables based on ONRR forms ONRR–2014 and ONRR–4430. Accounts receivable confirmations are a common practice in the audit business. Due to a continuous increase in scrutiny of financial audits, a third-party confirmation of the validity of ONRR's financial records is necessary.

As part of CFO Act audits, the OIG or its agent selects a sample of accounts receivable items based on forms ONRR–2014 and ONRR–4430 and provides the sample items to ONRR. ONRR then identifies the company names and addresses for the sample items selected and creates accounts receivable confirmation letters. In order to meet the CFO Act's requirements, the letters must be on ONRR letterhead and the Deputy Director for ONRR, or his or her designee, must sign the letters. The letter requests third-party confirmation responses by a specified date on whether ONRR's accounts receivable records agree with royalty payor records for the following items: (1) customer identification; (2) royalty invoice number; (3) payor assigned document number; (4) date of ONRR receipt; (5) original amount the payor reported; and (6) remaining balance due to ONRR. The OIG or its agent mails the letters to the payors, instructing them to respond directly to confirm the accuracy and validity of selected royalty receivable items and amounts. In turn, it is the responsibility of the payors to verify, research, and analyze the amounts and balances reported on their respective forms ONRR–2014 and ONRR–4430.

Title of Collection: Accounts Receivable Confirmations.

OMB Control Number: 1012–0001.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 24 randomly selected mineral payors from Federal and Indian lands and the OCS.

Total Estimated Number of Annual Responses: 24.

Estimated Completion Time per Response: ONRR estimates that each

response will take 15 minutes for payors to complete.

Total Estimated Number of Annual Burden Hours: 6 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annual.

Total Estimated Annual Non-Hour Burden Cost: ONRR did not identify any ''non-hour cost'' burden associated with this collection of information.

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 PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Howard M. Cantor,

Director, Office of Natural Resources Revenue.

[FR Doc. 2024–08019 Filed 4–15–24; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR040U2000, XXXR4081G3, RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place. The meeting is open to the public.

DATES: The meeting will be held virtually on Wednesday, May 15, 2024, beginning at 9 a.m. (MDT) and concluding five (5) hours later in the respective time zones.

ADDRESSES: The virtual meeting held on Wednesday, May 15, 2024, may be accessed at *https://rec.webex.com/rec/j.php?MTID=mb125cd42a41ba24a5102bec2bd5650a2;* Meeting Number: 2820 785 2032, Password: AMP15. Phone Number: (415) 527–5035.

FOR FURTHER INFORMATION CONTACT: Mr. William Stewart, Bureau of Reclamation, telephone (385) 622–2179, email at *wstewart@usbr.gov.* Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) current basin hydrology and water year 2024 operations; (2) experiments considered for implementation in 2024; and (3) long-term funding considerations. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a final copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/progact/amp/amwg.html.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact Mr. William Stewart (see **FOR FURTHER INFORMATION CONTACT** section of this notice) 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.

Public Disclosure of Comments: Time will be allowed for any individual or organization wishing to make extemporaneous and/or formal oral comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Interested parties should contact Mr. William Stewart (see **FOR FURTHER INFORMATION CONTACT**) for placement on the public speaker list for this meeting. Members of the public may also choose to submit written comments by emailing them to *wstewart@usbr.gov.* Due to time constraints during the meeting, the AMWG is not able to read written public comments. All written comments will be made part of the public record and will be provided to the AMWG members.

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.

Authority: 5 U.S.C. ch. 10.

William Stewart,

Adaptive Management Group Chief, Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2024–08060 Filed 4–15–24; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1335]

Certain Integrated Circuits, Mobile Devices Containing the Same, and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation in its Entirety Based on Settlement; Termination of the 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. 84) of the presiding Administrative Law Judge (''ALJ'') terminating the above-captioned investigation in its entirety based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be

obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On October 19, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Daedalus Prime LLC (''Daedalus'') of Bronxville, New York. *See* 87 FR 63528–29 (Oct. 19, 2022). The complaint alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits, mobile devices containing the same, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,775,833 (''the '833 patent''); 8,898,494 (''the '494 patent''); 10,049,080 (''the '080 patent''); and 10,705,588 (''the '588 patent''). *See id.* The notice of investigation names the following respondents: Samsung Electronics Co., Ltd. of Suwon-si, Republic of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively, ''Samsung'') and Qualcomm Inc. (''Qualcomm'') of San Diego, California. *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *See id.*

On July 19, 2023, the Commission terminated the investigation as to Samsung based on settlement. *See* Order No. 39 (June 21, 2023), *unreviewed by* Comm'n Notice (July 19, 2023).

The Commission also terminated the investigation as to claims 6–19 of the '588 patent and all asserted claims of the '494, '833, and '080 patents, based on the withdrawal of the allegations in the complaint as to those claims. *See* Order No. 31 (May 18, 2023), *unreviewed by* Comm'n Notice (June 12, 2023); Order No. 32 (May 18, 2023), *unreviewed by* Comm'n Notice (June 12, 2023); Order No. 42 (June 30, 2023), *unreviewed by* Comm'n Notice (July 28, 2023); Order No. 49 (Aug. 1, 2023), *unreviewed by* Comm'n Notice (Aug. 28, 2023); Order No. 59 (Aug. 14, 2023), *unreviewed by* Comm'n Notice (Sept. 11, 2023).

On February 29, 2024, complainant Daedalus and respondent Qualcomm (collectively, ''the Private Parties'') filed a joint motion to terminate the investigation in its entirety based on settlement. On March 11, 2024, OUII filed a response supporting the joint motion to terminate.

On March 12, 2024, the ALJ issued the subject ID (Order No. 84) granting the joint motion to terminate the investigation based on settlement. Pursuant to Commission Rule 210.21(b) (19 CFR 210.21(b)), the ID notes that the Private Parties included public and confidential versions of the settlement agreement between them. *See* ID at 3. The ID also notes that ''the Private Parties represent that there are no other agreements, written or oral, express or implied, between them concerning the subject matter of this Investigation.'' *Id.* The ID further notes that ''in the absence of extraordinary circumstances, termination of an investigation will be readily granted to a complainant during the prehearing stage of an investigation.'' *Id.* at 2.

No petition for review of the subject ID was filed. The Commission has determined not to review the subject ID. The investigation is terminated.

The Commission's vote for this determination took place on April 11, 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: April 11, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–08025 Filed 4–15–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1397]

Certain Cellular Base Station Communication Equipment, Components Thereof, and Products Containing Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 11, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of Motorola Mobility LLC of Chicago, Illinois. A supplement was filed on March 19, 2024. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cellular base station communication equipment, components thereof, and products containing same by reason of the infringement of certain claims of U.S. Patent No. 11,076,304 (''the '304 patent'') and U.S. Patent No. 11,711,706 (''the '706 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2024).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 10, 2024, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 10–18 of the '304 patent and claims 15–20 of the '706 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and

Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''cellular base station communication equipment, specifically 5G NR radio units and baseband units, components thereof, and products containing same'';

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Motorola Mobility LLC, 222 W. Merchandise Mart Plaza, Suite 1800, Chicago, Illinois 60654.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Ericsson AB, Torshamnsgatan 23, Kista, 16480 Stockholm, Sweden; Telefonaktiebolaget LM Ericsson, Torshamnsgatan 21, Kista, SE–164 83, Stockholm, Sweden; Ericsson Inc., 6300 Legacy Drive, Plano, TX 75024.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
Issued: April 10, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–07991 Filed 4–15–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–600]

USMCA Automotive Rules of Origin: Economic Impact and Operation, 2025 Report

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a public hearing.

SUMMARY: The U.S. International Trade Commission (Commission) has scheduled a public hearing for Investigation No. 332–600, *USMCA Automotive Rules of Origin: Economic Impact and Operations, 2025 Report,* for October 8, 2024.

DATES:

September 24, 2024: Deadline for filing requests to appear at the public hearing.

September 26, 2024: Deadline for filing prehearing briefs and statements.

October 1, 2024: Deadline for filing electronic copies of oral hearing statements (testimony).

October 8, 2024: Public hearing.

October 16, 2024: Deadline for filing posthearing briefs.

November 18, 2024: Deadline for filing all other written submissions.

July 1, 2025: Transmittal of Commission report to the President, the House Committee on Ways and Means, and the Senate Committee on Finance.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Project Leader Mitch Semanik (202–205–2034 or *mitchell.semanik@usitc.gov*), or Deputy Project Leaders Nathan Lotze (202–205–3231 or *nathan.lotze@usitc.gov* or 202–205–3231) and Aaron Woodward (202–205–2663 or *aaron.woodward@usitc.gov*) for information specific to these investigations. For information on the legal aspects of this investigation, contact Brian Allen (202–205–3034 or *brian.allen@usitc.gov*) or William Gearhart (202–205–3091 or *william.gearthart@usitc.gov*) of the Commission's Office of the General Counsel. The media should contact Jennifer Andberg, Office of External Relations (202–205–3404 or *jennifer.andberg@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may be obtained by accessing its internet address (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background: The 2025 report will be the second of five reports that section 202A(g)(2) of the United States-Mexico-Canada Agreement Implementation Act (19 U.S.C. 4532(g)(2)) (''USMCA Implementation Act'') requires that the Commission provide on the USMCA automotive rules of origin (ROOs) and their impact on the U.S. economy, effect on U.S. competitiveness, and relevancy considering recent technology changes. In particular, the USMCA Implementation Act requires that the Commission report on the following:

(1) The economic impact of the USMCA automotive ROOs on U.S. gross domestic product; U.S. exports and imports; U.S. aggregate employment and employment opportunities; production, investment, use of productive facilities, and profit levels in the U.S. automotive industries and other pertinent industries; wages and employment of workers in the U.S. automotive sector; and the interests of U.S. consumers.

(2) The operation of the ROOs and their effects on the competitiveness of the United States with respect to

production and trade in automotive goods, taking into account developments in technology, production processes, or other related matters.

(3) Whether the ROOs are relevant in light of technological changes in the United States.

(4) Such other matters as the Commission considers relevant to the economic impact of the ROOs, including prices, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production in the United States.

The USMCA Implementation Act requires that the Commission transmit its report on July 1, 2025. The Commission is directed to submit additional reports on USMCA automotive ROOs every two years thereafter until 2031.

Public hearing: A public hearing in connection with this investigation will be held beginning at 9:30 a.m., October 8, 2024, in the Main Hearing Room of the U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The hearing can also be accessed remotely using the WebEx videoconference platform. A link to the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

Requests to appear at the hearing should be filed with the Secretary to the Commission no later than 5:15 p.m., September 24, 2024, in accordance with the requirements in the ''Written Submissions'' section below. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear as a witness via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may at their discretion for good cause shown, grant such requests. Requests to appear as a witness via videoconference due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing.

All prehearing briefs and statements should be filed no later than 5:15 p.m., September 26, 2024. To facilitate the hearing, including the preparation of an accurate written public transcript of the hearing, oral testimony to be presented at the hearing should be submitted to the Commission electronically no later than 5:15 p.m., October 1, 2024. All posthearing briefs and statements should be filed no later than 5:15 p.m., October 16, 2024. Posthearing briefs and statements should address matters raised at the hearing. For a description of the different types of written briefs and statements, see the ''Definitions of types of documents that may be filed'' section below.

In the event that, as of the close of business on September 24, 2024, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should check the Commission's website as indicated above for information concerning whether the hearing will be held.

Written submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received no later than 5:15 p.m., November 18, 2024. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Definitions of types of documents that may be filed; Requirements: In addition to requests to appear at the hearing, this notice provides for the possible filing of four types of documents: prehearing briefs, oral hearing statements, posthearing briefs, and other written submissions.

(1) *Prehearing briefs* refers to written materials relevant to the investigation and submitted in advance of the hearing, and includes written views on matters that are the subject of the investigation, supporting materials, and any other written materials that you consider will help the Commission in understanding your views. You should file a prehearing brief particularly if you plan to testify at the hearing on behalf of an industry group, company, or other organization, and wish to provide detailed views or information that will support or supplement your testimony.

(2) *Oral hearing statements (testimony)* refers to the actual oral statement that you intend to present at the hearing. Do not include any confidential business information (CBI) in that statement. If you plan to testify, you must file a copy of your oral statement by the date specified in this notice. This statement will allow Commissioners to understand your position in advance of the hearing and will also assist the court reporter in preparing an accurate transcript of the hearing (*e.g.,* names spelled correctly).

(3) *Posthearing briefs* refers to submissions filed after the hearing by persons who appeared at the hearing. Such briefs: (a) should be limited to matters that arose during the hearing; (b) should respond to any Commissioner and staff questions addressed to you at the hearing; (c) should clarify, amplify, or correct any statements you made at the hearing; and (d) may, at your option, address or rebut statements made by other participants in the hearing.

(4) *Other written submissions* refers to any other written submissions relevant to the investigation that interested persons wish to make, regardless of whether they appeared at the hearing or filed a prehearing or posthearing brief, and may include new information or updates of information previously provided.

In accordance with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), the document must identify on its cover (1) the investigation number and title and the type of document filed (*i.e.,* prehearing brief, oral statement of (name), posthearing brief, or written submission), (2) the name and signature of the person filing it, (3) the name of the organization that the submission is filed on behalf of, and (4) whether it contains CBI. If it contains CBI, it must comply with the marking and other requirements set out below in this notice relating to CBI. Submitters of written documents (other than oral hearing statements) are encouraged to include a short summary of their position or interest at the beginning of the document, and a table of contents when the document addresses multiple issues.

Confidential business information: Any submissions that contain CBI must also comply with the requirements and procedures in section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Among other things, section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the CBI is clearly identified by means of brackets. All written submissions, except for CBI,

will be made available for inspection by interested persons.

The Commission will not include any CBI in its report. However, all information, including CBI, submitted in this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission, including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any CBI in a way that would reveal the operations of the firm supplying the information.

Summaries of views of interested persons: Interested persons wishing to have a summary of their views included in the report should include a summary with a written submission no later than November 18, 2024, and must use the Commission template, which can be downloaded from *https://www.usitc.gov/docket_services/documents/firm_or_organization_summary_word_limit.pdf.* The Commission template must be uploaded as a separate attachment to the written submission filing in EDIS. The summary may not exceed 500 words and should not include any CBI. The summary will be published as provided only if it utilizes the Commission-provided template, meets these requirements, and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link where the written submission can be found.

By order of the Commission.

Issued: April 11, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–08027 Filed 4–15–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Training & Readiness Accelerator II

Notice is hereby given that, on January 15, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Training & Readiness Accelerator II (''TReX II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Highlight Technologies, Inc., Fairfax, VA; Viasat, Inc., Tempe, AZ; Inspired Engineering Solutions LLC, Niceville, FL; E.O. Solutions LLC, Kula, HI; Vega Technology Group LLC, North Canton, OH; DESE Research, Inc., Huntsville, AL; Waltonen Engineering, Inc., Warren, MI; Origami Software Solutions, Inc., Norfolk, VA; Radius Method, Boca Raton, FL; Scientific Applications & Research Associates, Inc., Cypress, CA; Raven Defense Corp., Albuquerque, NM; Technology and Communications Systems, Inc., Safety Harbor, FL; Expedition Technology, Inc., Herndon, VA; DTCUBED LLC, Sewell, NJ; Skaion Corp., North Chelmsford, MA; Laser Shot, Inc., Stafford, VA; Laulima Systems LLC, Charlottesville, VA; II–VI Aerospace & Defense, Murrieta, CA; Torrey Pines Logic, Inc., San Diego, CA; Theissen Training Systems, Inc., Gainesville, FL; Aunautic Technologies, National City, CA; Advanced Fiber Systems, Inc., Ann Arbor, MI; Corps Solutions LLC, Stafford, VA; The Boeing Company, St. Louis, MO; Aderas, Inc., Reston, VA; Immobileyes, Inc., Kent, OH; MSI Defense Solutions, LLC, Mooresville, NC; Riverside Research, Arlington, VA; L3 Technologies, Simi Valley, CA; F3EA, Inc., Savannah, GA; Engeniusmicro, Huntsville, AL; VK Integrated Systems, Clarksville, TN; Defense Industry Advisors LLC, Dayton, OH; Technovative Applications, Brea, CA; National Technical Systems, Belcamp, MD; Virginia Tech Applied Research Corporation, Arlington, VA; Planned Systems International, Inc., Columbia, MD; SciTec, Inc., Princeton, NJ; Applied Training Solutions LLC, Greensburg, PA; Hermeus Corporation, Atlanta, GA; BlackOhm LLC, Tempe, AZ; Tybram LLC Jacksonville, FL; Spectral Sciences, Inc., Burlington, MA; Orolia Government Systems, Inc., Rochester, NY; nLIGHT DEFENSE Systems, Inc., Longmont, CO; Mass Virtual, Inc., Orlando, FL; Applied Physical Electronics LLC, Spicewood, TX; Setter Research, Inc., Greensboro, NC; and Blackrock Strategy, LLC, Huntsville, AL, have been added as parties to this venture.

Also, NAL Research Corp., Manassas, VA; Action Engineering, Golden, CO; BrainSim Technologies, Inc., Pennsylvania Furnace, PA; FactualVR, Inc., Jersey City, NJ; Design Interactive, Inc. Orlando, FL; Rise8, Inc., Tampa, FL; Vega Technology Group LLC, North Canton, OH; SparkCognition Government Services, Austin, TX; Metateq, Eugene, OR; Netrist Solutions LLC, Charleston, SC; Next Earth LLC, Ashburn, VA; CMA Technologies, Inc., Orlando, FL; W R Systems, Ltd., Fairfax, VA; and NTELX, Inc., Asheville, NC, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TReX II intends to file additional written notifications disclosing all changes in membership.

On February 17, 2023, TReX II filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38536).

The last notification was filed with the Department on October 20, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 15, 2023 (88 FR 86938).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07940 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Clean Highly Efficient Decarbonized Engines

Notice is hereby given that, on February 14, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Clean Highly Efficient Decarbonized Engines (''CHEDE–9'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cummins, Columbus, IN;

The Lubrizol Corporation, Wickliffe, OH; Allison Transmission, Inc., Indianapolis, IN; Hyundai Motor Group, Seoul, REPUBLIC OF KOREA; Denso, Aichi ken, JAPAN; and Hino Motors, Ltd., Tokyo, JAPAN, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CHEDE–9 intends to file additional written notifications disclosing all changes in membership.

On January 4, 2024, CHEDE–9 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8243).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07945 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group H_2ICE Demonstration Vehicle (''H_2ICE'')

Notice is hereby given that, on February 14, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group H_2ICE Demonstration Vehicle (''H_2ICE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chevron Oronite Company LLC, San Antonio, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and H_2ICE intends to file additional written notifications disclosing all changes in membership.

On August 14, 2023, H_2ICE filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 20, 2023 (88 FR 80763).

The last notification was filed with the Department on December 5, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8246).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07944 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Institute of Electrical and Electronics Engineers, Inc.

Notice is hereby given that, on February 20, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Institute of Electrical and Electronics Engineers, Inc. (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 53 new standards have been initiated and 35 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/6dec2023/ https://standards.ieee.org/about/sasb/sba/15feb2024/.*

The following pre-standards activities associated with IEEE Industry Connections Activities were launched or renewed: *https://standards.ieee.org/about/bog/cag/approvals/december2023/.*

On September 17, 2004, IEEE filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on November 17, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 2024 (89 FR 18441).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07985 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Undersea Technology Innovation Consortium

Notice is hereby given that, on January 10, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Undersea Technology Innovation Consortium (''UTIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Absolute Concept Designs LLC, Rio Rancho, NM; American Systems Corporation, Middletown, RI; Integer Technologies LLC, Columbia, SC; MetalTek International, Waukesha, WI; National Instruments Corporation, Austin, TX; Sentient Digital, Inc., New Orleans, LA; and The Boeing Company, Ridley Park, PA, have been added as parties to this venture.

Also, Armada Marine Robotics, Inc., Falmouth, MA; Baker Manufacturing, Inc., Tacoma, WA; C–2 Innovations, Inc., Stow, MA; Careen, Inc. dba Windings, Inc., New Ulm, MN; Cisco Systems, Inc., San Jose, CA; Consolidated Ocean Technologies, Inc., Ventura, CA; Critical Prism Defense LLC, Ashland, MA; Cynnovative LLC, Arlington, VA; DataRobot, Inc., Boston, MA; Ensign-Bickford Aerospace & Defense Company, Simsbury, CT; Greystones Consulting Group LLC, Washington, DC; Longwave, Inc., Oklahoma City, OK; ManTech Advanced Systems International, Inc., Herndon, VA; Maritime Planning Associates, Inc., Newport, RI; MBDA, Inc., Huntsville, AL; Modern Intelligence, Inc., Austin, TX; Palantir USG, Inc., Palo Alto, CA; Phoenix International Holdings, Inc., Largo, MD; RJE International, Inc., Irvine, CA; Saft America, Inc., Cockeysville, MD; Syntonics LLC, Columbia, MD; The Metamorphosis Group, Inc., Vienna,

VA; University of Houston Systems, Houston, TX; Urban Electric Power, Inc., Pearl River, NY; and, Ward Leonard CT LLC, Thomaston, CT, have withdrawn from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UTIC intends to file additional written notifications disclosing all changes in membership.

On October 9, 2018, UTIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 2, 2018 (83 FR 55203).

The last notification was filed with the Department on October 6, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 15, 2023 (88 FR 86939).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07937 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biopharmaceutical Manufacturing Preparedness Consortium

Notice is hereby given that, on January 5, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Biopharmaceutical Manufacturing Preparedness Consortium (''BIOMAP–CONSORTIUM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture as of the date of this filing are: Advanced BioSciences Laboratory, Inc., Rockville, MD; Antheia, Inc., Menlo Park, CA; ApiJect Systems America, Inc., Stamford, CT; Applied Materials, Inc., Santa Clara, CA; CAMRIS International LLC, Bethesda, MD; Civica, Inc., Lehi, UT; Clarivate Analytics (US) LLC, Ann Arbor, MI; Ginkgo Bioworks, Inc., Boston, MA; Global Life Sciences Solutions USA LLC dba Cytiva, Marlborough, MA; Grand River Aseptic Manufacturing, Inc., Grand Rapids, MI; ImmunityBio, Inc., Culver City, CA; Joint Research and Development (JRAD) LLC, Stafford, VA; Maravai LifeSciences, San Diego, CA; Mission Pharmacal Company, San Antonio, TX; NextBeam LLC, North Sioux City, SD; Northeastern University, Boston, MA; OCUGEN, Inc., MALVERN, PA; Ocyon Bio PR, Inc., Aguadilla, PUERTO RICO; PSC Biotech Corp., Pomona, CA; Regis Technologies, Inc., Morton Grove, IL; Resilience Government Services, Alachua, FL; Riya Interactive, Inc., Chicago, IL; SEQENS, Devens, MA; Sanofi Pasteur, Inc., Swiftwater, PA; Slingshot Biosciences, Inc., Emeryville, CA; Smart World LLC dba Steri-Tek, Fremont, CA; TR Processing LLC, Golden Valley, MN; The Conafay Group, Washington, DC; USAntibiotics LLC, Bristol, TN; Varda Space Industries, Inc., El Segundo, CA.

Consistent with 15 U.S.C. 4301(a)(6)(C), (E) and (F), the general areas of BioMaP Consortium's planned activities are to engage the biopharmaceutical industrial base to enable targeted development expertise, address new and emerging biopharmaceutical technologies that enhance existing capabilities, as well as prepare for potential response to emerging pathogens with pandemic potential.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07947 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on March 7, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C.§ 4301 *et seq.* (the ''Act''), Pistoia Alliance, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mettler Toledo, Columbia, MD; Kyowa Kirin, Tokyo, JAPAN; and Grünenthal Group, Aachen, GERMANY, have been added as parties to the venture.

Also, Medexprim, Labége, FRANCE; Artificial, Inc., Palo Alto, CA; LabVoice, Durham, NC; Labforward GmbH (formerly cubuslab GmbH), Karlsruhe, GERMANY; Semantic Arts, Fort Collins, CO; and Matador Japan KK, Nagano, JAPAN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on December 20, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 2024 (89 FR 18437).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07987 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on January 9, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Sherpa 6, Inc., Littleton, CO; Pseudolithic, Inc., Santa Barbara, CA; Defense Industry Advisors LLC, Dayton, OH; and Radius Method LLC, Boca Raton, FL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 23, 2014, NSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 4, 2014 (79 FR 65424).

The last notification was filed with the Department on October 5, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 15, 2023 (88 FR 86934).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07936 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—TM Forum, A New Jersey Non-Profit Corporation

Notice is hereby given that, on January 17, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TM Forum, A New Jersey Non-Profit Corporation (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Halleyx Inc., Brampton, CANADA; ZIM Connections Ltd, London, UNITED KINGDOM; Platinion GmbH, Köln, GERMANY; Hewlett Packard Customer Delivery Services SL, Madrid, SPAIN; TIM Brasil, Barra da Tijuca, BRAZIL; Tele2 Kazakhstan, Almaty, KAZAKHSTAN; Mentopolis Consulting & Software Concepts, Niedernberg, GERMANY; BITConEx GmbH, München, GERMANY; Waylay, Gent, BELGIUM; R Software Inc. (dba Rapid), San Francisco, CA; OpenNet A/S, Silkeborg, DENMARK; Nuiva s.a.r,l, Grand-Duché, LUXEMBOURG; GCP Advisors, Philadelphia, PA; Saitro, Itatiba/SP, BRAZIL; Xpert360, Ramsgate, UNITED KINGDOM; Clear Blockchain Technologies Pte Ltd, Singapore, SINGAPORE; Canopus Network Pty Ltd, Haymarket, AUSTRALIA; Locatium.AI, Dubai, UNITED ARAB EMIRATES; Cécile Gérardin, Jougne, FRANCE; Zayo Group, LLC, Boulder, CO; and SK Telecom Co., Ltd., Seoul, REPUBLIC OF KOREA, have been added as parties to this venture.

Also, University College Dublin, Dublin, IRELAND; Accedian, Saint-Laurent, CANADA; AFR–IX telecom S.L., Barcelona, SPAIN; Agile Shift (Pty) Ltd, Durbanville, Cape Town, SOUTH AFRICA; Crossjoin Solutions Lda, Pragal, PORTUGAL; DZS Inc., Plano, TX; Elaine Haher Distinguished Fellow, Piscataway, NJ; Hargray Communications Group, Inc., Hilton Head Island, SC; IBISC—IBGBI—University of Evry Val D'Essonne, Evry, FRANCE; iMocha 'Mocha Technologies Inc', Claymont, DE; InCyan Ltd, Bath, UNITED KINGDOM; Multichoice Sparx Services North America, New Richmond, WI; Starbucks, Seatte, WA; Swish Fibre, London, UNITED KINGDOM; Videotron G.P., Montreal, CANADA; WeCity, Maassen, NETHERLANDS; and WorkSpan, Foster City, CA, have withdrawn as parties to this venture.

Additionally, the following members have changed their names: GIP AG to GIP Exyr GmbH, Mainz, GERMANY; Netadmin Systems to Netadmin System i Sverige AB, Linkoping, SWEDEN; avataa GmbH to avataa, Berlin, GERMANY; Beyond Now to Beyond Now GmbH, Graz, AUSTRIA; SEGMA COM to Sigma EMEA, El Sheikh Zayed, EGYPT; Vanrise Solutions to Vanrise, Beirut, LEBANON; alvatross by SATEC to alvatross, Madrid, SPAIN; Stechs Argentina to Stechs, Miami, FL; Nart Bilisim Hizmetleri Ltd. Sti. to TechNarts (Nart Bilisim), Ankara, TURKEY.

No other changes have been made to either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on October 13, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 15, 2023 (88 FR 86932).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07981 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group Permian Basin Consortium—Phase III

Notice is hereby given that, on March 13, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group Permian Basin Consortium—Phase III has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chevron U.S.A. Inc., Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Permian Basin Consortium—Phase III intends to file additional written notifications disclosing all changes in membership.

On January 10, 2024, Permian Basin Consortium—Phase III filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024, (89 FR 8245).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07992 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, LLC

Notice is hereby given that, on March 1, 2024, pursuant to section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, LLC (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 700Apps, Riyadh, SAUDI ARABIA; Arc Compute US LLC, Wilmington, DE; AXE, Inc., Kyoto, JAPAN; BHP Group Operations Pty Ltd, Melbourne, AUSTRALIA; Cisco Systems, Inc., Raleigh, NC; CognitusEA, Bhubaneswar, INDIA; Digicomp Academy AG, Zurich, SWITZERLAND; dt360, Inc., Santa Clara, CA; Eenpool B.V., Ijsselstein, THE NETHERLANDS; Genesis North America, Houston, TX; Greenleaf Advisors, LLC, Wilmette, IL; Nigerian Upstream Petroleum Regulatory Commission, Victoria Island, NIGERIA; Octopian Digital, Reston, VA; OpenSystems Media LLC, Phoenix, AZ; PACE America Inc., Mukilteo, WA; Proven Optics LLC, Columbus, OH; RockNRG LLC, Conroe, TX; Safe Securities Inc., Palo Alto, CA; SensorUp Inc., Calgary, CANADA; Sotatek Intelligence Connection Group JSC, Hanoi, VIETNAM; Teknologisk Institut, Taastrup, DENMARK; The Qt Company, San Jose, CA; Trading Paper Europe V.o.F., Amsterdam, THE NETHERLANDS; Ultra Intelligence & Communications, Frederick, MD; Vinsys Corporation, San Jose, CA; and ZDEN Technologies LLC, Edmond, OK, have been added as parties to this venture.

Also, Archer, Overland Park, KS; ASL BiSL Foundation, Utrecht, THE NETHERLANDS; Beckhoff Automation, LLC, Savage, MN; BHP Billiton Deepwater, Inc., Houston, TX; Build The Vision Inc., Ottawa, CANADA; Datagration Solutions, Inc., Houston, TX; Marine Corps Systems Command, Product Manager EWS, Stafford, VA; Neptune Energy Norge AS, Sandnes, NORWAY; OMV Exploration & Production GmbH, Vienna, AUSTRIA; Pentek, Inc., Upper Saddle River, NJ; Presagis USA, Inc, Richardson, TX; Promity sp. z.o.o., Warsaw, POLAND; Pumpedu s.r.o., Prague, CZECH REPUBLIC; Quint Technology, B.V., Amstelveen, THE NETHERLANDS; Resoptima AS, Oslo, NORWAY; Rocsole Oy, Kuopio, FINLAND; Sprintzeal Americas Inc., Las Vegas, NV; Technology Service Corporation, Arlington, VA; The Engineerix Group, McAllen, TX; Thermo Fisher Scientific, Bordeaux, FRANCE; Tipp Focus Holdings (Pty) Ltd, Johannesburg, SOUTH AFRICA; Transpara LLC, Scottsdale, AZ; and Ypto NV, Anderlecht, BELGIUM, have withdrawn as parties to this venture.

Additionally, Petroleum Experts Limited has changed its name to PE Limited, Edinburgh, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on January 16, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8247).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07946 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MLCommons Association

Notice is hereby given that, on April 3, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), MLCommons Association (''MLCommons'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Turaco Strategy, LLC, Boulder, CO; Cisco Systems Inc., San Jose, CA; Firmus Metal International Pte Ltd., Singapore, SINGAPORE; Ferroceria LLC, Vashon, WA; Andreea Bodnari (individual member), Brooklyn, NY; Percy Liang (individual member), Stanford, CA; Guanqun Yang, (individual member), Hoboken, NJ; Charlie Tan (individual member), Oxford, UNITED KINGDOM; Sergei Cheparukhin (individual member), London, UNITED KINGDOM; Frederik Mallmann-Trenn (individual member), London, UNITED KINGDOM; Shafee Mohammed (individual member), Hyderabad, INDIA; Alexander Kleinsorge, (individual member), Wildau, GERMANY; Cyril Weerasooriya, (individual member), Rochester, NY; Joseph Marvin Imperial (individual member), Bath, UNITED KINGDOM; Robert Scholz (individual member), Paris, FRANCE; Collin McCarthy (individual member), Truckee, CA; and Ray Simar (individual member), Richmond, TX, have been added as parties to this venture.

Also, Biren Technology, San Jose, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MLCommons intends to file additional written notifications disclosing all changes in membership.

On September 15, 2020, MLCommons filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 29, 2020 (85 FR 61032).

The last notification was filed with the Department on January 22, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2024 (89 FR 8242).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07994 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on March 20, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fire Protection Association (''NFPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of

antitrust plaintiffs to actual damages under specified circumstances. Specifically, NFPA has provided an updated and current list of its standards development activities and related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development, and conformity assessment activities are publicly available at *nfpa.org.*

On September 20, 2004, NFPA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 21, 2004 (69 FR 61869). The last notification was filed with the Department on October 2, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 15, 2023 (88 FR 86937).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07993 Filed 4–15–24; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on January 25, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Qualcomm Incorporated, San Diego, CA; and Formovie (Chongqing) Innovative Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on August 30, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 6, 2023(88 FR 69673).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07938 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Subcutaneous Drug Development & Delivery Consortium, Inc.

Notice is hereby given that on February 2, 2024, pursuant to section 6(a) of the Act of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Subcutaneous Drug Development & Delivery Consortium, Inc. (''SC Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Eli Lilly and Company, Indianapolis, IN; and Kaléo, Inc., Richmond, VA, have withdrawn as parties to this venture.

No other changes have been made in the membership or the planned activity of the group research project. Membership in this group research project remains open and Subcutaneous Drug Development & Delivery Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On October 26, 2020, Subcutaneous Drug Development & Delivery Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 3, 2020 (85 FR 78148).

The last notification was filed with the Department on June 23, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 23, 2023 (88 FR 57479).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07988 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bytecode Alliance Foundation

Notice is hereby given that, on March 14, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Bytecode Alliance Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, JAF Labs, Austin, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Bytecode Alliance Foundation intends to file additional written notifications disclosing all changes in membership.

On April 20, 2022, Bytecode Alliance Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29379).

The last notification was filed with the Department on October 3, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 15, 2023 (88 FR 86936).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07989 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rust Foundation

Notice is hereby given that, on March 14, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Rust Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Institute of Software Chinese Academy of Sciences, Beijing, PEOPLE'S REPUBLIC OF CHINA; OpenUK, London, UNITED KINGDOM; Trace Machina, Inc., Palo Alto, CA; and Veecle GmbH, Berlin, GERMANY, have been added as parties to this venture.

Also, Grafbase, Inc., San Francisco, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rust Foundation intends to file additional written notifications disclosing all changes in membership.

On April 14, 2022, Rust Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on December 15, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 2024 (89 FR 7731).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07990 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OPENJS Foundation

Notice is hereby given that, on March 7, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenJS Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, HeroDevs, Sandy, UT; and CarGurus, Cambridge, MA, have been added as parties to this venture.

Also, HERE Technologies, Chicago, IL; Stream.io, Dallas, TX; and Snyk Limited, London, UNITED KINGDOM, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenJS Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, OpenJS Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on December 20, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 2024 (89 FR 7731).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07986 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—1EdTech Consortium, Inc.

Notice is hereby given that, on February 6, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 1EdTech Consortium, Inc. (''1EdTech Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Inspirit Learning Inc., Atlanta, GA; Benton School District #8, Benton, AR; Anne Arundel County Public Schools, Annapolis, MD; EdWire, San Antonio, TX; Indiana Commission for Higher Education, Indianapolis, IN; Ministère de l'Education Nationale et de la Jeunesse, Direction du numérique pour l'éducation, Paris, FRANCE; MSD of Steuben County, Angola, IN; MyInnerGenius, Marco Island, FL; Portland Public Schools, Portland, OR; Spring-Ford Area School District, Royersford, PA; Studynaut e-Learning Solutions, Alicante, SPAIN; SUNY System Administration, Albany, NY; Walmart, Bentonville, AR; and YuJa Corporation, San Jose, CA, have been added as parties to this venture.

Also, Actionly, Madera, CA; TiLT, Dublin, IRELAND; Seattle Public Schools, Seattle, WA; Holographic, San Francisco, CA; Linc, Miami Lakes, FL; EdGate, Gig Harbor, WA; and Tutor.com, New York, NY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 1EdTech Consortium intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, 1EdTech Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on November 10, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 15, 2023 (88 FR 86936).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07943 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Railpulse, LLC

Notice is hereby given that, on January 24, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Railpulse, LLC (''Railpulse'') has filed written notifications simultaneously

with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bunge North America, Inc., Chesterfield, MO; and CPKC Ventures Corp., Kansas City, MO, have been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Railpulse intends to file additional written notifications disclosing all changes in membership.

On April 20, 2021, Railpulse filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 25, 2021 (86 FR 28151).

The last notification was filed with the Department on October 31, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 23, 2022 (87 FR 71678).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07939 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Digital Dollar Project, Inc.

Notice is hereby given that, on March 7, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Digital Dollar Project, Inc. (''DDP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Notoros, Inc., St. Louis, MO; Kaleido, Raleigh, NC; and The HBar Foundation, George Town, CAYMAN ISLANDS have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and DDP intends to file additional written notifications disclosing all changes in membership.

On June 9, 2022, the Digital Dollar Project filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 2022 (87 FR 47007).

The last notification was filed with the Department on June 8, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 22, 2023 (88 FR 57129).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07983 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rapid Response Partnership Vehicle

Notice is hereby given that, on January 5, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Rapid Response Partnership Vehicle (''RRPV'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture as of the date of this filing are: AATec Medical GmbH, München, GERMANY; ASELL LLC, Owings Mills, MD; Access to Advanced Health Institute, Seattle, WA; Adaptive Phage Therapeutics, Inc., Gaithersburg, MD; Advanced BioScience Laboratories, Inc., Rockville, MD; Aerium Therapeutics, Inc., Boston, MA; Alamgir Research, Inc. dba ARIScience, Wayland, MA; Alchem Laboratories Corp., Alachua, FL; Alentic Microscience, Inc., Halifax, Nova Scotia, CANADA; Altec, Inc., Natick, MA; Antiviral Technologies LLC, Dallas, TX; ApiJect Systems America, Inc., Stamford, CT; Applied Materials, Inc., Santa Clara, CA; Apriori Bio, Inc., Cambridge, MA; Aridis Pharmaceuticals, Inc., Los Gatos, CA; AstraZeneca Pharmaceuticals LP, Wilmington, DE; Atea Pharmaceuticals, Inc., Boston, MA; Attogene, Austin, TX; BCG Federal Corp., Washington, DC; BioFire Defense LLC, Salt Lake City, UT; BioTechnique LLC, York, PA; BiotechPharma Corp., Severna Park, MD; Bioxytran, Dedham, MA; Boston Engineering Corp., Waltham, MA; BrainScope Company, Inc., Chevy Chase, MD; Brimrose Technology Corporation, Sparks, MD; BugSeq, Inc., San Francisco, CA; CAMRIS International, Bethesda, MD; CASTLEVAX, Inc., New York, NY; CUBRC, Inc., Buffalo, NY; Care Access Research LLC, Boston, MA; Cayuga Biotech, New York, NY; Cepheid, Sunnyvale, CA; ChromoLogic, Monrovia, CA; Civica, Inc., Lehi, UT; Clarivate Analytics (US) LLC, Ann Arbor, MI; CliniOps, Inc., Fremont, CA; Cocrystal Pharma, Inc., Miami, FL; Codagenix, Inc., Farmingdale, NY; Concord Medical Technology Corp., Grand Forks, ND; Critical Innovations LLC, Lawndale, CA; Curia Global, Inc., Albany, NY; CyanVac LLC, Athens, GA; Delta Development Team, Inc., Tucson, AZ; Detect, Inc., Guilford, CT; Duke University, Durham, NC; Dyadic International, Inc., Jupiter, FL; Dynavax Technologies Corp., Emeryville, CA; Eagle Health Analytics LLC, San Antonio, TX; Endpoint Health, Palo Alto, CA; Esparza Pest Control and Eco-Logic Systems, Inc., Edinburg, TX; EverGlade Consulting LLC, Charleston, SC; Everest Consulting Group, Bethesda, MD; ExeVir Bio, Zwijnaarde, BELGIUM; FHI Clinical, Durham, NC; First Line Technology LLC, Fredericksburg, VA; Foamtec International Co., Ltd., Waco, TX; Foothill Scientific Associates, CA; GRIP Molecular Technologies, Inc., St. Paul, MN; GenVault, West Deptford, NJ; Generate Biomedicines, Inc., Somerville, MA; GeoVax, Inc., Smyrna, GA; Ginkgo Bioworks, Inc., Boston, MA; Global Resonance Technologies LLC, Shelburne, VT; Gritstone bio, Inc., Emeryville, CA; Healthtrek LLC, Tampa, FL; Hexagon Bio, Inc., Menlo Park, CA; ICON Government and Public Health Solutions, Inc., Blue Bell, PA; Immune Biosolutions, Sherbrooke, CANADA; ImmunityBio, Inc., Culver City, MN; Immuron, Ltd., Blackburn North, AUSTRALIA; Inflammatix, Inc., Sunnyvale, CA; Integrated Pharma Services, Frederick, MD; Invivyd, Inc., Waltham, MA; Irving Burton Associates LLC, Silver Spring, MD; Island Pharmaceuticals, Ltd., Camberwell, AUSTRALIA; Iuventis Technologies, Inc., Olean, NY; JEEVA INFORMATICS

SOLUTIONS, Inc., Manassas, VA; Jubilant HollisterStier, Spokane, WA; Jurata Thin Film, Inc., Houston, TX; K2 Biolabs, Inc., Houston, TX; LaCire LLC, Alexandria, VA; Latham BioPharm Group LLC, Elkridge, MD; Leidos, Reston, VA; Lex Diagnostics, Ltd., Melbourn, UNITED KINGDOM; Locus Biosciences, Morrisville, NC; Longhorn Vaccines and Diagnostics LLC, Bethesda, MD; Luna Labs USA LLC, Charlottesville, VA; Lungpacer Medical USA, Inc., Exton, PA; MMV Medicines for Malaria Venture, Geneva, SWITZERLAND; MRIGlobal, Gaithersburg, MD; Mapp Biopharmaceutical, Inc., San Diego, CA; Maravai Lifesciences, San Diego, CA; Maxwell Biosciences, Inc., Austin, TX; MeMed, Tirat Carmel, ISRAEL; Medigen, Inc, Frederick, MD; Meletios Therapeutics, Paris, FRANCE; Micron Biomedical, Inc., Atlanta, GA; Military Health Research Foundation, Inc., Laurel, MD; Mission Pharmacal Company, San Antonio, TX; Model Medicines, Inc., La Jolla, CA; ModernaTx, Cambridge, MA; Molecular Technologies Laboratories LLC dba InfinixBio, Galena, OH; NextBeam LLC, North Sioux City, SD; Ocugen, Inc., Malvern, PA; Ocyonbio LLC, Aguadilla, PUERTO RICO; OneBreath, Inc., Palo Alto, CA; Otter Cove Solutions LLC, Gaithersburg, MD; PPD Development LP, Wilmington, NC; Pacto Medical, Inc., Middletown, DE; Parallel Biosciences, Inc., Cambridge, MA; Peptilogics, Inc., Pittsburgh, PA; Pfizer, Inc., New York, NY; Phare Bio, Boston, MA; Pharm-Olam LLC dba Allucent, Cary, NC; PharmaJet, Inc., Golden, CO; Phlow Corp., Richmond, VA; PopVax Private Limited, Mumbai City, INDIA; QUZE Pharmaceuticals, Inc., Windsor, CO; Rajant Health, Inc., Malvern, PA; Regis Technologies, Inc., Morton Grove, IL; Research Lifecycle Solutions LLC, Franklin, TN; Resilience Government Services, Inc., Alachua, FL; Riya Interactive Inc., Hawthorn Woods, IL; Ronawk, Inc., Overland Park, KS; Rubix Strategies LLC dba Rubix LS, Lawrence, MA; SEQENS, Devens, MA; SRI International, Menlo Park, CA; Safi Biotherapeutics, Inc., Cambridge, MA; Sanofi Pasteur, Inc., Swiftwater, PA; Schrodinger LLC, Portland, OR; Shabas Solutions LLC, Fairfax, VA; Sibel Health, Inc., Chicago, IL; Signature Science LLC, Austin, TX; Swaza Inc., Mountain View, CA; Synedgen, Inc., Claremont, CA; TFF Pharmaceuticals, Inc., Fort Worth, TX; Texas Biomedical Research Institute, San Antonio, TX; The Conafay Group, Washington, DC; The Geneva Foundation, Tacoma, WA; The Henry M. Jackson Foundation for the Advancement of Military Medicine, Bethesda, MD; The Medical Countermeasures Coalition, Washington, DC; The Tiny Cargo Company, Roanoke, VA; ThirdLaw Molecular LLC, Blue Bell, PA; TrippBio, Inc., Jacksonville, FL; Uh-Oh Labs Inc. dba Scout, Santa Clara, CA; Univox Technical Solutions DBA Univox LLC, Tijeras, NM; Valneva Austria GmbH, Vienna, AUSTRIA; Vanderbilt Vaccine Center, Nashville, TN; Varda Space Industries, Inc., El Segundo, CA; Vaxart, Inc., South San Francisco, CA; Vaxess Technologies, Inc., Cambridge, MA; Vaxxas, Inc., Cambridge, MA; Vibrent Health, Fairfax, VA; Vir Biotechnologies, San Francisco, CA; Viti Pharmaceuticals, Miami, FL; Wizbiosolutions, Inc., Vienna, VA.

Consistent with 15 U.S.C. 4301(a)(6)(C), (E) and (F), the general area of RRPV's planned activities are to accelerate Medical Countermeasure (MCM) technology development to address evolving needs including pandemic influenza, emerging infectious diseases, and other biological threats. It will accelerate partnering, improve responsiveness, and meet expanding demand to develop future MCM needs. It will advance health security, enhance preparedness, and enable a rapid response to future pandemic or high consequence biological threats.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07941 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Customer Experience Hub

Notice is hereby given that, on January 11, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Customer Experience Hub (''CX Hub'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture as of the date of this filing are: AcademyHealth, Washington, DC; Access to Advanced Health Institute, Seattle, WA; Acclinate, Inc., Birmingham, AL; Addinex Technologies, Inc., New York, NY; Advanced BioScience Laboratories, Inc., Rockville, MD; Advanced Life Technologies LLC, Santa Barbara, CA; Advanced Silicon Group, Lowell, MA; Altec, Inc., Natick, MA; AmebaGone, Madison, WI; AMK Technologies of Ohio LLC, Mount Vernon, OH; AN2 Therapeutics, Inc., Menlo Park, CA; Angels for Change, Tampa, FL; Applied Research Associates, Albuquerque, NM; Arizona State University, Tempe, AZ; Aspire Clinical Intelligence LLC, Grand Forks, ND; Auburn University, Auburn, AL; Battelle Memorial Institute, Columbus, OH; BB Medical Surgical, Inc., San Francisco, CA; BCG Federal Corp., Washington, DC; Better Life Learning LLC, Birmingham, MI; BioAustinCTX, Austin, TX; BioBridge Global, San Antonio, TX; BioCircuit Technologies, Atlanta, GA; BioLum Sciences LLC, Dallas, TX; Biomotivate, Pittsburgh, PA; Biosortia Microbiomics, Dublin, OH; Bluehalo Labs LLC, Albuquerque, NM; Boston Children's Hospital, Boston, MA; Boston Engineering Corp., Waltham, MA; Boston Medical Center Corp., Boston, MA; BroadReach Group LLC, Washington, DC; Burnett School of Medicine at Texas Christian University, Fort Worth, TX; California Medical Innovations Institute, San Diego, CA; Cancer Prevention & Research Institute of Texas, Austin, TX; CarePredict, Inc., Plantation, FL; Children's National Hospital; Washington, DC; Children's Nebraska, Omaha, NE; ClearCam, Inc., Austin, TX; Cleveland Clinic, Cleveland, OH; Clinical Research Payment Network, Elkhart, IL; Clinical Research Strategies LLC, Wexford, PA; Cocrystal Pharma, Inc., Miami, FL; Cook Children's Health Care System, Fort Worth, TX; Creare LLC, Hanover, NH; Creatv MicroTech, Inc., Rockville, MD; Critical Innovations LLC, Lawndale, CA; Cure Rare Disease, Inc., Woodbridge, CT; Dallas College, Dallas, TX; Deloitte Consulting LLP, Arlington, VA; Domestic Monitoring Initiative (DMI), Erie, PA; Durahip LLC, San Antonio, TX; Eagle Health Analytics LLC, San Antonio, TX; Egality Sciences LLC, Houston, TX; Eisana, The Woodlands, TX; Elcomm, Kennesaw, GA; Emory University, Atlanta, GA; emTruth, Glendale, CA; Fempower Health, Irvington, NY; First Choice Professionals dba First Health Advisory,

Scottdale, AZ; Florida Institute for Human & Machine Cognition, Inc., Pensacola, FL; GaitIQ, Inc., San Antonio, TX; GelSana Therapeutics, Inc., Aurora, CO; GeneInfoSec, Boulder, CO; Gener8 LLC, San Jose, CA; Georgetown University, Washington, DC; Ginkgo Bioworks, Inc., Boston, MA; Glendor, Inc., Draper, UT; Grant Halliburton Foundation, Inc., Dallas, TX; Gwen Lily Research Foundation, Irving, TX; Harmony Healthcare Solutions, Inc. dba Harmony Health, Sunnyvale, CA; Healthpointe Solutions, Inc., Austin, TX; HERMTAC LLC, Dallas, TX; ICON Government and Public Health Solutions, Inc., Blue Bell, PA; Inhance Digital Corp., Los Angeles, CA; Innovation Incubator, Inc., Bayside, NY; International Business Machines Corp., Armonk, NY; INVIZA Corp., Malden, MA; IOTAI, Inc., Fremont, CA; Irrational Labs, Oakland, CA; Irving Burton Associates, Silver Springs, MD; JPS Health Network, Fort Worth, TX; Jubilant Hollisterstier LLC, Spokane, WA; Jurata Thin Film, Inc., Chapel Hill, NC; K2 Biolabs, Inc., Houston, TX; Kaibab Health, Sheridan, WY; Knight Technical Solutions LLC, Huntsville, AL; Lazarus 3D, Philomath, OR; Lighthouse XR LLC, Chester, VA; Limax Biosciences, Inc., Somerville, MA; Locus Biosciences, Morrisville, NC; LSU Health Science Center: New Orleans, New Orleans, LA; LSU Health Shreveport, Shreveport, LA; Luna Labs USA LLC, Charlottesville, VA; M3D, Inc., Ann Arbor, MI; MapHabit, Inc., Atlanta, GA; Maravai Lifesciences, San Diego, CA; Maryland Technology Development Corp., Columbia, MD; Mass General Brigham, Somerville, MA; Maxwell Biosciences, Inc., Austin, TX; MDC Studio, Inc., Baltimore, MD; Medable, Palo Alto, CA; MedVector, El Segundo, CA; Memsel, Inc., Fort Worth, TX; Moberg Analytics, Inc., Philadelphia, PA; Molecular Technologies Laboratories LLC, Columbus, OH; MRIGlobal, Gaithersburg, MD; National Association of Community Health Centers, Inc., Bethesda, MD; National Hispanic Health Foundation, Washington, DC; National Resilience, Inc., San Diego, CA; National Strategic Research Institute, Omaha, NE; Neurxstem, Inc., Columbus, OH; New Horizons Diagnostics Corp., Baltimore, MD; NIRSense, Inc., Richmond, VA; North Carolina State University, Raleigh, NC; NXTech, Inc., Patchogue, NY; O3 World LLC, Philadelphia, PA; Oceanit Laboratories, Inc., Honolulu, HI; OLSF Ventures, Tulsa, OK; Oregon Bioscience Association, Portland, OR; Orlando Health, Orlando, FL; Otter Cove Solutions LLC, Gaithersburg, MD; OXOS Medical, Atlanta, GA; Parkland Center for Clinical Innovation, Dallas, TX; Parkland Health, Dallas, TX; Patchwise Labs, Alameda, CA; Pennington Biomedical Research Center, Baton Rouge, LA; Pennsylvania State University—College of Medicine, Hershey, PA; Phronetik, Inc., Flower Mound, TX; Polaris Sensor Technologies, Inc., Huntsville, AL; PPD Development LP, Wilmington, NC; ppxTEX LLC, Jackson, MS; PragmaClin, St. John's, CANADA; PriMetaz, Boston, MA; Proteios Technology, Inc., Issaquah, WA; Purdue University, West Lafayette, IN; Qana Therapeutics, Inc., Austin, TX; QuantaSpec, Inc., Essex Junction, VT; Re:Build Manufacturing, Framingham, MA; Research Your Health LLC, Plano, TX; Resonantia Diagnostics, Inc., Dallas, TX; Ridgeline Therapeutics, Houston, TX; Ronawk, Inc., Overland Park, KS; Rubitection, Pittsburgh, PA; Rubix LS, Lawrence, MA; Rutgers University, New Brunswick, NJ; Safebeat Rx, Inc., Carson, CA; SafeGuard Surgical, Tampa, FL; SafetySpect, Inc., Grand Forks, ND; Safi Biotherapeutics, Inc., Cambridge, MA; SanaHeal, Inc., Boston, MA; Scorpius BioManufacturing, San Antonio, TX; Signature Science LLC, Austin, TX; Signum Technologies, Inc., Randor, PA; SimX, Inc., San Francisco, CA; Sonera Magentics, Inc., Berkeley, CA; Southwest Research Institute, San Antonio, TX; Southwest Texas Regional Advisory Council, San Antonio, TX; Sozo Dx LLC, Plano, TX; Sparta Science, San Francisco, CA; SPEAR Human Performance, Inc., Tallahassee, FL; Spectral Platforms, Duarte, CA; Sperry Medtech, Inc., Springfield, MA; Stanford Byers Center for Biodesign, Stanford, CA; Stellarray, Inc., Austin, TX; Swaza, Mountain View, CA; Talis Biomedical Corp., Redwood City, CA; Texas A&M Engineering Experiment Station, Bryan, TX; Texas Biomedical Research Institute, San Antonio, TX; Texas Healthcare and Bioscience Institute, Austin, TX; Texas Oncology, Dallas, TX; Texas State University—Translational Health Research Center, San Marcos, TX; Texas Tech University Health Sciences Center, Lubbock, TX; Texas Woman's University, Denton, TX; The Geneva Foundation, Tacoma, WA; The Henry M. Jackson Foundation for the Advancement of Military Medicine, Bethesda, MD; The Life Raft Group, Wayne, NJ; The Nebraska Medical Center, Omaha, NE; The University of Texas at Dallas, Richardson, TX; The University of Texas: M.D Anderson Cancer Center, Houston, TX; TheraTec, Inc., Horace, ND; TheraVista Health, Brentwood, TN; Thomas Jefferson University, Philadelphia, PA; Tranexamic Technologies LLC, Dallas, TX; Ubiros, Inc., Natick, MA; University City Science Center, Philadelphia, PA; University of California at Riverside, Riverside, CA; University of Delaware, Newark, DE; University of Hawai'i System, Honolulu, HI; University of Montana, Missoula, MT; University of Nebraska Medical Center, Omaha, NE; University of Notre Dame, Notre Dame, IN; University of Southern California, Los Angeles, CA; University of Texas at Austin, Austin, TX; University of Texas at San Antonio, San Antonio, TX; Univox Technical Solutions LLC dba Univox LLC, Tijeras, NM; Vanderbilt University, Nashville, TN; Varda Space Industries, Inc., El Segundo, CA; VelocityTX, San Antonio, TX; Verily Life Sciences LLC, South San Francisco, CA; ViBo Health, Fairfax, VA; Vivonics, Inc., Bedford, MA; Wake Forest University Health Sciences, Winston Salem, MA; Weinberg Medical Physics, Inc., Rockville, MD; West-Tech Materials, Keller, TX; Yuzu Labs Public Benefit Corp., San Francisco, CA; Zeteo Biomedical LLC, Austin, TX; Zeteo Tech, Inc., Sykesville, MD; Zymeron Corp., Durham, NC.

Consistent with 15 U.S.C. 4301(a)(6)(C), (E) and (F), the CX Hub is a new consortium created in response to requirements of the Advanced Research Projects Agency for Health (ARPA–H) for the active transition of health innovation in an expedient, safe, cost-effective, accessible, and sustainable manner that reaches all Americans. The CX Hub will take a human-centered approach to develop technologies and health solutions that will be accessible, desirable, and affordable for all. It will also take a proactive approach to enhance clinical trials, reach representative patient populations, and capture outcomes data for future use leading to better and more equitable health outcomes for all.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–07942 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Material Modification to Consent Decree Under the Clean Water Act

On April 10, 2024, the Department of Justice lodged a proposed material modification to a Consent Decree (''Decree'') with the United States District Court for the Eastern District of Kentucky in the lawsuit entitled *United*

States and Commonwealth of Kentucky v. *Lexington-Fayette Urban County Government,* Civil Action No. 5:06–cv–386–KSF.

The Consent Decree—entered by the court in 2011—resolved alleged violations of the Clean Water Act stemming from Lexington-Fayette Urban County Government's (''LFUCG'') operation of its sanitary sewer system and wastewater treatment plant. The Decree—including a First Material Modification entered by the court in 2015—required LFUCG to complete remedial projects to its sewer system and wastewater treatment plant to eliminate sanitary sewer overflows by December 31, 2026. The proposed material modification extends the final compliance deadline for remedial projects by four years to December 31, 2030, as well as making changes to reporting frequency and methods.

The publication of this notice opens a period for public comment on the proposed modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Commonwealth of Kentucky* v. *Lexington-Fayette Urban County Government,* D.J. Ref. No. 90–5–1–1–08858. 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 proposed modification, along with the previously entered Consent Decree and First Material Modification, may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed material modification, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Scott D. Bauer,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–07935 Filed 4–15–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Safe Drinking Water Act

On April 9, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of California in the lawsuit entitled *United States* v. *Grindstone Indian Rancheria of Wintun-Wailaki Indians of California,* Civil Action No. 2:24–cv–01044–KJM–CKD.

The proposed Consent Decree would resolve claims against the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California (''Defendant'') arising under sections 1414(g) and 1431 of the Safe Drinking Water Act (''SDWA''), 42 U.S.C. 300g–3(g) and 300i, and the SDWA's National Primary Drinking Water Regulations at 40 CFR part 141, as well as for its failure to comply with the requirements of two administrative orders issued by the United States Environmental Protection Agency pertaining to Defendant's noncompliance with the SDWA and its regulations at the Grindstone Indian Rancheria Public Water System. The proposed Consent Decree resolves these claims and includes a civil penalty of $8,963 and injunctive relief including, but not limited to, demonstrating compliance with surface water treatment requirements, providing boil water notices and alternative water supply, retaining at least two full time operators for the drinking water system, providing annual reporting to its customers, providing operating reports to EPA, and developing and implementing an extensive operation and maintenance plan for the water system.

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. *Grindstone Indian Rancheria of Wintun-Wailaki Indians of California, D.J. Ref. No. 90–5–1–1–12322.* 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.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

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.

Scott Bauer,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–07926 Filed 4–15–24; 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

On April 11, 2024, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Jersey in the lawsuit entitled *United States, New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund* v. *PPG Industries, Inc.,* Civil Action No. 2:24–04771.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), on behalf of the U.S. Environmental Protection Agency (''EPA''). The New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (collectively, ''NJDEP'') are co-plaintiffs. PPG Industries, Inc. (''PPG'') is the defendant named in the complaint. The complaint seeks injunctive relief and reimbursement of response costs in connection with the Riverside Industrial

Park Superfund Site (''Site'') located in Newark, New Jersey.

Under the proposed consent decree, PPG is required to (a) design and implement the components of the remedy selected for the Site in EPA's September 28, 2021, Record of Decision that relate to waste material, sewer water, soil gas, and soil/fill material, and (b) perform groundwater monitoring and implement institutional controls (the ''Work''). The estimated cost of the Work is about $15 million. PPG will also reimburse the United States $2,883,120 and NJDEP $116,880 for past costs relating to the Site and will pay the United States and NJDEP for future response costs they incur relating to the Work. In return, the United States agrees not to sue or take administrative action under sections 106 and 107 of CERCLA against PPG for the Work, EPA past costs relating to the Site, and future response costs EPA will incur relating to the Work. NJDEP also agrees not to sue or take administrative action against PPG for NJDEP past costs relating to the Site and for future response costs NJDEP will incur relating to the Work.

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 and NJDEP* v. *PPG Industries, Inc,* D.J. Ref. No. 90–11–2–12543. 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.

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter.

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.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–08010 Filed 4–15–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Villegas,* Civil Action No. 1:24-cv-962, was lodged with the United States District Court for the District of Colorado on April 10, 2024.

This proposed Consent Decree concerns a complaint filed by the United States against Defendants Thomas and Amy Villegas, pursuant to 33 U.S.C. 1311(a) and 33 U.S.C. 1319(b), to obtain injunctive relief from the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The Clean Water Act violations concern filling, grading, and excavation activities conducted in Lincoln County, Nebraska, along a braided channel of the Platte River. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore impacted areas.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments by mail to Phillip Dupré, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044, or by email to *pubcomment_eds.enrd@usdoj.gov* and refer to *United States* v. *Villegas,* DJ No. 90–5–1–1–22164.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Colorado, 901 19th Street, Denver, CO 80294. In addition, the proposed Consent Decree may be examined electronically at *https://www.justice.gov/enrd/consent-decrees.*

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2024–07995 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Information Collection Request Submitted for Public Comment; Retirement Savings Lost and Found

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department is proposing to collect information voluntarily in order to establish the Retirement Savings Lost and Found online searchable database described in section 523 of the Employee Retirement Income Security Act of 1974 (ERISA) and to connect missing participants and other individuals who have lost track of their retirement benefits with such benefits. The proposal solicits specific information from administrators of retirement plans subject to ERISA. Pursuant to the Paperwork Reduction Act of 1995 (PRA), the Department of Labor's Employee Benefits Security Administration (Department or EBSA) is soliciting comments on the proposed information collection request (ICR) described below.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 17, 2024.

ADDRESSES: James Butikofer, U.S. Department of Labor, Employee Benefits Security Administration, Office of Research and Analysis, 200 Constitution Avenue NW, N–5718, Washington, DC 20210, *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary of Burden

This notice requests public comment on the Department's proposed collection of information from plan administrators of retirement plans subject to ERISA for the purpose of establishing the Retirement Savings Lost and Found online searchable database to reunite workers with retirement benefits earned over their working lives and to help the Department assist them in that effort. A summary of the current burden estimates follows:

Agency: Employee Benefits Security Administration, U.S. Department of Labor.

Title: Retirement Savings Lost and Found.

OMB Control Number: 1210–NEW.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 359,368.

Responses: 359,368.
Estimated Total Burden Hours: 239,579.
Estimated Total Burden Cost (Operating and Maintenance): $0.

II. Description

A. Background

Section 303 of the SECURE 2.0 Act of 2022, which was enacted on December 29, 2022 (SECURE 2.0),[1] amended part 5 of subtitle B of title I of ERISA to add Section 523, which requires the Department, not later than 2 years after the date of enactment and in consultation with the Secretary of the Treasury, to create an online searchable database, to be known as the Retirement Savings Lost and Found. Among other things, SECURE 2.0 requires that this database allow retirement savers who may have lost track of their retirement plan to search for the contact information of their plan administrator in order to make a claim for benefits that may be owing to the individual under the plan.

Separate from the database required by SECURE 2.0, the Department administers the Terminated Vested Participants Project (TVPP or missing participant program). The TVPP has three key objectives for defined benefit pension plans. First, to ensure these plans maintain adequate census and other records necessary to determine (a) the identity and address of participants and beneficiaries due benefits under the plan, (b) the amount of benefits due under the plan, and (c) when participants and beneficiaries are eligible to commence benefits. Second, to ensure these plans have appropriate procedures for advising participants with vested accrued benefits of their eligibility to apply for benefits as they near normal retirement age and the date they must start required minimum distributions under federal tax law. Third, to ensure these plans implement appropriate search procedures for terminated participants and beneficiaries for whom they have incorrect or incomplete information. Since 2017, the Department has recovered more than $6.7 billion for such ''missing'' participants and beneficiaries.

The Department's experience indicates that retirement plan administrators lose track of participants and beneficiaries, and participants and beneficiaries lose track of their retirement benefits for many reasons. For example, sometimes plans may be unable to communicate with individuals who separated from service with deferred vested benefits, or their designated beneficiaries, because of inadequate recordkeeping practices, ineffective processes for communicating with such participants and beneficiaries, and faulty procedures for searching for participants and beneficiaries for whom they have incorrect or incomplete contact information. In addition, sometimes after workers change jobs, their former employers that sponsor the retirement plans go out of business or go through corporate events such as a merger, consolidation, or spinoff.

There is no more fundamental purpose of a retirement plan under ERISA than paying promised benefits. See 29 U.S.C. 1001. Losing track of individuals after long years of plan participation deprives workers and their families their full earned retirement benefits. The Department believes that it is united with plan sponsors and administrators in the goal of making sure that workers and their beneficiaries receive the retirement benefits they earned and were promised. By providing the data requested by this proposed ICR to enable the Department to establish and maintain the Retirement Savings Lost and Found online searchable database, retirement plans will make it more likely that promised benefits will be paid.

As an initial matter, the Department is seeking voluntary participation in this proposed ICR. The Department had planned to use data that plan administrators submitted to the Internal Revenue Service (IRS) on Form 8955–SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits). However, citing concerns under section 6103 of the Internal Revenue Code (Code),[2] IRS has now indicated that it will not authorize the release of this data to the Department for the purpose of communicating either directly with participants and beneficiaries about retirement plans that may still owe them retirement benefits or indirectly through the Retirement Savings Lost and Found online searchable database. Accordingly, the Department is proposing to request plan administrators to voluntarily furnish the information specified below directly to the Department.

By collecting this data, the Department is optimistic that it can work together with plan administrators to further reduce the number of missing participants and promote the payment of promised benefits, thus, helping plan administrators and other fiduciaries resolve issues and inaccuracies in the plans' books and records, and better comply with their fiduciary obligations.

B. Overview of Requested Data

This notice proposes to request that plan administrators (or their authorized representatives, such as recordkeepers) voluntarily provide the information described in sections III through V below. This information is needed by the Department to establish the Retirement Savings Lost and Found online searchable database no later than December 29, 2024. The Retirement Savings Lost and Found online searchable database will enable individuals to locate benefits they are owed by providing them with contact information for their plan administrator, the designated trustee or issuer described in section 401(a)(31)(B) of the Code, or the issuer of an annuity described in section 523(e)(3)(C) of ERISA.

Section 523(e) of ERISA expressly authorizes the Department to collect information described in sections 6057(b)(1) through (4) and 6057(a)(2)(A) and (B) of the Code. It also authorizes the Department to collect the names and social security numbers of participants and former participants described in Code section 6057(a)(2)(C) (*i.e.,* individuals who separated from service covered under their plans and who are entitled to deferred vested benefits) and identify those who were fully paid their deferred vested benefits. Finally, it also authorizes the Department to collect the names and social security numbers of each participant or former participant in the plan with respect to whom vested benefits were distributed under section 401(a)(31)(B) of the Code or to whom a deferred annuity contract was distributed.

Much of the foregoing information is currently reported to the IRS on Form 8955–SSA.[3] The information reported on Forms 8955–SSA is generally provided by the IRS to the Social Security Administration (SSA). The SSA then provides the reported information to separated vested participants when they file for social security benefits. Pursuant to section 523(c) of ERISA, the Department consulted with the Secretary of the Treasury and IRS on the Retirement Savings Lost and Found online

[1] Consolidated Appropriations Act, 2023, H.R. 2617.

[2] See 26 U.S.C. 6103 (confidentiality and disclosure of returns and return information).

[3] The Form 8955–SSA is the designated successor to Schedule SSA (Form 5500). The Schedule SSA attachment to the Form 5500 was the vehicle the IRS used to collect this information until the Schedule SSA was replaced by the stand-alone IRS Form 8955–SSA.

searchable database and had planned to use the data reported on Form 8955–SSA to populate the database. As noted above, however, the IRS has now declined to give this information to the Department to establish and maintain the Retirement Savings Lost and Found online searchable database, citing concerns under section 6103 of the Code.

In addition to the data elements specifically described in section 523(e) of ERISA, the Department is asking for the voluntary submission of additional data. The additional data requested consists mainly of mailing addresses, email addresses, and telephone numbers of separated vested participants and beneficiaries. It also includes an identification of any separated vested participant of normal retirement age or older owed a vested benefit, and who has been unresponsive to plan communications about their vested benefits or whose contact information the plan has reason to believe is no longer accurate. Based on its experience with the missing participant program, the Department believes this additional data may increase the efficiency and effectiveness of locating missing participants. Although this proposed ICR is voluntary, the Department notes that, in addition to the specific grant of authority in section 523(e) of ERISA, mentioned above, the Department has general authority to investigate and collect information under other sections of ERISA, including sections 504 and 505 of ERISA, as well as to verify participants' and beneficiaries' identities under the Retirement Savings Lost and Found online searchable database. The Department further notes that, although this proposed ICR does not impose any new recordkeeping requirements, the Department expects plans that follow best practices will already have much of this additional information on file.

Section 523(c) of ERISA, in relevant part, provides that in establishing the Retirement Savings Lost and Found online searchable database, the Department, in consultation with the Secretary of the Treasury, shall take all necessary and proper precautions to ensure that individuals' plan and personal information maintained by the Retirement Savings Lost and Found online searchable database is protected. Consistent with this provision, the Department will hold the data specifically required by section 523(e) of ERISA secure, verify the identity of participants and beneficiaries seeking access to the data, and limit disclosure to carry out the purposes of section 523 of ERISA. Section VI of this document describes the data security measures in more detail.

To provide an easy and efficient process for plans to furnish the information requested by this proposed ICR, the Department is proposing that plan administrators would provide the information in an attachment to their 2023 Form 5500 Annual Return/Report of Employee Benefit Plan or 2023 Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan, as applicable, (collectively Form 5500) using the all-electronic ERISA Filing Acceptance System (EFAST2). The information would be filed with the Form 5500 in accordance with instructions in EFAST2. Although the information would be submitted through EFAST2 along with the plan's Form 5500, the attachment itself would not be considered part of the Form 5500 annual report filing for purposes of Title I of ERISA. As the agency moves forward with the program, it is looking into providing other simple and efficient means of furnishing the data to the Retirement Savings Lost and Found online searchable database.

Finally, in an effort to establish the most effective Retirement Savings Lost and Found online searchable database possible, this proposed ICR asks for specific information dating back to the date a covered plan became subject to ERISA. The Department recognizes that some plans may not have retained such historical data. Nevertheless, to the extent that information is available, the Department encourages plan administrators to provide historic information from the date the plan first became subject to ERISA or as far back as possible, if shorter.

III. Plans With Separated Vested Participants

For any plan with a participant or former participant described in 26 U.S.C. 6057(a)(2)(C) (''separated vested participant''), provide the following information with respect to that plan:

1. Name and plan number of plan as reflected on the most recent Form 5500 Annual Return/Report of Employee Benefit Plan or Form 5500–SF Short Form Annual Return/Report of Employee Benefit Plan (individually and collectively ''Form 5500''). If the plan had names other than the name on the most recent Form 5500, provide the prior names and plan numbers and include the date of change.

2. Name, employer identification number (EIN), mailing address, and telephone number of the plan administrator as reflected on the most recent Form 5500. If the plan had plan administrators other than the plan administrator on the most recent Form 5500, provide the names and EINs of the prior plan administrators and include the date of change.

3. Name, EIN, mailing address, and telephone number of the plan sponsor as reflected on the most recent Form 5500, if different than the plan administrator. If the plan had plan sponsors other than the plan sponsor on the most recent Form 5500, provide the names and EINs of the prior plan sponsors and include the date of change.

4. Name, date of birth, mailing address, email address, telephone number, and social security number (SSN) of each separated vested participant.

5. Nature, form, and amount of benefit of each separated vested participant.

6. If the vested benefit of each such separated vested participant was fully paid in a form other than an annuity (*i.e.,* lump sum payout) to the separated vested participant, provide the date and the amount of the distribution.

7. If an annuity form of benefit, state whether the separated vested participant has begun receiving benefits, the date of the annuity commencement, and the monthly benefit.

8. Name, date of birth, mailing address, email address, telephone number, and SSN of any separated vested participant of normal retirement age or older that is owed a vested benefit, and who has been unresponsive to plan communications about their benefits or whose contact information as set forth in paragraph 4 above, the plan has reason to believe is no longer accurate.

9. Name, date of birth, mailing address, email address, telephone number, and SSN of any designated beneficiary of the separated vested participant.

10. With respect to any participant whose benefit was transferred to the plan in the manner described in Line 9 of the Form 8955–SSA, provide the name and plan number of the transferor plan. Include the date of transfer to the plan.

IV. Plans That Distributed Benefits Under Section 401(a)(31)(B) of the Internal Revenue Code

For any plan that distributed benefits under section 401(a)(31)(B) of the Code, provide the following information with respect to the plan:

1. Name of plan and plan number as reflected on the most recent Form 5500. If the plan had names other than the name on the most recent Form 5500, provide the prior names and plan numbers to include the date of change.

2. Name, EIN, mailing address, and telephone number of the plan administrator as reflected on the most recent Form 5500. If the plan had plan administrators other than the plan administrator on the most recent Form 5500, provide the names and EINs of the prior plan administrators and include the date of change.

3. Name, EIN, mailing address, and telephone number of the plan sponsor as reflected on the most recent Form 5500, if different than the plan administrator. If the plan had plan sponsors other than the plan sponsor on the most recent Form 5500, provide the names and EINs of the prior plan sponsors and include the date of change.

4. Name, date of birth, mailing address, email address, telephone number and SSN of each participant or former participant with respect to whom any amount of the vested benefit was distributed under section 401(a)(31)(B) of the Code.

5. With respect to such participant or former participant, the name of the designated trustee or issuer described in section 401(a)(31)(B) of the Code.

6. With respect to such participant or former participant, the address of the designated trustee or issuer described in section 401(a)(31)(B) of the Code.

7. With respect to such participant or former participant, the amount of the distribution.

8. With respect to such participant or former participant, the account number of the individual retirement plan to which the amount was distributed.

9. With respect to such participant or former participant, the name, date of birth, mailing address, email address, telephone number, and SSN of any designated beneficiary.

V. Plans That Distributed Annuities

For any plan that distributed benefits pursuant to an annuity contract described in 29 CFR 2510.3–3(d)(2)(ii), provide the following information with respect to the plan:

1. Name and plan number of plan as reflected on the most recent Form 5500. If the plan had names other than the name on the most recent Form 5500, provide the prior names and plan numbers to include the date of change.

2. Name, EIN, mailing address, and telephone number of the current plan administrator as reflected on the most recent Form 5500. If the plan had plan administrators other than the plan administrator on the most recent Form 5500, provide the names and EINs of the prior plan administrators and include the date of change.

3. Name, EIN, mailing address, and telephone number of plan sponsor as reflected on the most recent Form 5500, if different than the plan administrator. If the plan had plan sponsors other than the plan sponsor on the most recent Form 5500, provide the names and EINs of the prior plan sponsors and include the date of change.

4. Name, date of birth, SSN, mailing address, email address, and telephone number of each participant or former participant with respect to whom an annuity contract, described in 29 CFR 2510.3–3(d)(2)(ii), was distributed.

5. With respect to such participant or former participant, the name of the issuer of the annuity contract.

6. With respect to such participant or former participant, the address of the issuer of the annuity contract.

7. With respect to such participant or former participant, the contract or certificate number.

8. With respect to such participant or former participant, the name, date of birth, mailing, address, email address, telephone number, and SSN of any designated beneficiary.

VI. Method of Transmitting Data

To minimize public burden, plan administrators (or their authorized representatives, such as recordkeepers) will be able to electronically submit this data described in this proposed ICR as an attachment to this year's EFAST2 filing. The Department also is looking to establish a portal for plan administrators to submit the information directly into the Lost and Found database as an alternative to submitting the information as an attachment to the Form 5500 using EFAST2. The Department will provide the spreadsheet file template (CSV format), and intends to make available a model format that plan administrators could use to submit the information.

Multiple security measures will be in place to protect plan participant and beneficiary data (*i.e.,* Social Security numbers) in the Department's Lost and Found online searchable database. A public user will have no access to sensitive data. Government access to the data will also be strictly controlled, which will be encrypted both at rest and in transit. The database will implement extensive logging and monitoring mechanisms, and sensitive data masking techniques will be implemented to mask personally identifiable information.

VII. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections of information;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the information collection; they will also become a matter of public record.

Signed in Washington, DC, on April 9, 2024.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2024–07968 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act (WIOA) 2024 Lower Living Standard Income Level (LLSIL)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: Title I of WIOA requires the U.S. Secretary of Labor (Secretary) to update and publish the LLSIL tables annually, for uses described in the law (including determining eligibility for youth). WIOA defines the term ''low-income individual'' as (*inter alia*) one whose total family annual income does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2024 and references the current 2024 Health and Human Services ''Poverty Guidelines.''

DATES: This notice will be published April 16, 2024.

FOR FURTHER INFORMATION CONTACT: Contact Donald Haughton, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room C–4526, Washington, DC 20210; Telephone: 202–693–2874 or Email address:

haughton.donald.w@dol.gov. Individuals with hearing or speech impairments may access the telephone number above via their state's telecommunications relay service (TRS) by dialing 7–1–1 to make TTY calls.

Federal Youth Employment Program Information: Sara Hastings, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–4464, Washington, DC 20210; Telephone: 202–693–3599; Email: *hastings.sara@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via their state's telecommunications relay service (TRS) by dialing 7–1–1 to make TTY calls.

SUPPLEMENTARY INFORMATION: The purpose of WIOA is to provide workforce investment activities through statewide and local workforce investment systems that increase the employment, retention, and earnings of participants. WIOA programs are intended to increase the occupational skill attainment by participants and the quality of the workforce, thereby reducing welfare dependency and enhancing the productivity and competitiveness of the Nation.

LLSIL is used for several purposes under the WIOA. Specifically, WIOA Section 3(36) defines the term ''low-income individual'' for eligibility purposes, and Sections 127(b)(2)(C) and 132(b)(1)(B)(v)(IV) define the terms ''disadvantaged youth'' and ''disadvantaged adult'' in terms of the poverty line or LLSIL for State formula allotments. The Governor and state and local workforce development boards use the LLSIL for determining eligibility for youth and adults for certain services. ETA encourages Governors and state/local boards to consult the WIOA Final Rule and ETA guidance for more specific guidance in applying LLSIL to program requirements. The U.S. Department of Health and Human Services (HHS) published the most current poverty-level guidelines in the **Federal Register**, January 17, 2024. The HHS 2024 Poverty guidelines may also be found on the internet at *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

ETA will have the 2024 LLSIL and the HHS Poverty guidelines available on its website at *www.dol.gov/agencies/eta/llsil.*

WIOA Section 3(36)(B) defines LLSIL as ''that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary.'' The most recent lower living family budget was issued by the Secretary in fall 1981. The four-person urban family budget estimates, previously published by the U.S. Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA, which ETA then uses to develop the LLSIL tables, as provided in the Appendices to this **Federal Register** notice.

This notice updates the LLSIL to reflect cost of living increases for 2023, by calculating the percentage change in the most recent 2023 Consumer Price Index for All Urban Consumers (CPI–U) for an area to the 2023 CPI–U, and then applying this calculation to each of the previously published 2023 LLSIL figures. The 2024 LLSIL tables will be available on the ETA LLSIL website at *www.dol.gov/agencies/eta/llsil.*

The website contains updated figures for a four-person family in Table 1, listed by region for both metropolitan and non-metropolitan areas. Incomes in all of the tables are rounded up to the nearest dollar. Since program eligibility for ''low-income individuals,'' ''disadvantaged adults,'' and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIOA Section 3(36)(A)(ii) and Section 3(36)(B), respectively, those figures are listed as well.

I. Jurisdictions

Jurisdictions included in the various regions, based generally on the Census Regions of the U.S. Department of Commerce, are as follows:

A. Northeast

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the U.S. Virgin Islands.

B. Midwest

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

C. South

Alabama, American Samoa, Arkansas, Delaware, District of Columbia, Florida, Georgia, Northern Marianas, Oklahoma, Palau, Puerto Rico, South Carolina, Kentucky, Louisiana, Marshall Islands, Maryland, Micronesia, Mississippi, North Carolina, Tennessee, Texas, Virginia, and West Virginia.

D. West

Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Additionally, the LLSIL Excel file provides separate figures for Alaska, Hawaii, and Guam.

Data for selected Metropolitan Statistical Areas (MSAs) are also available. These are based on annual CPI–U changes for a 12-month period ending in December 2023. The updated LLSIL figures for these MSAs and 70 percent of LLSIL are also available in the LLISL Excel file.

The LLSIL Excel file also lists each of the various figures at 70 percent of the updated 2024 LLSIL for family sizes of one to six persons. Please note, for families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding 70 percent of the LLSIL figure, the figure is shaded.

The LLSIL Excel file also indicates 100 percent of LLSIL for family sizes of one to six, and is used to determine self-sufficiency as noted at Section 3(36)(A)(ii) and Section 3(36)(B) of WIOA.

II. Use of These Data

Governors should designate the appropriate LLSILs for use within the State using the LLSIL Excel files on the website. The Governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the state or it may involve further calculations. An area can be part of multiple LLSIL geographies. For example, an area in the State of New Jersey may have four or more LLSIL figures. All cities, towns, and counties that are part of a metro area in New Jersey are a part of the Northeast metropolitan; some of these areas can also be a portion of the New York City MSA. New Jersey also has areas that are part of the Philadelphia MSA, a less populated area in New Jersey may be a part of the Northeast non-metropolitan. If a workforce investment area includes areas that would be covered by more than one LLSIL figure, the Governor may determine which is to be used.

A state's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with WIOA and WIOA regulations.

III. Disclaimer on Statistical Uses

It should be noted that publication of these figures is only for the purpose of meeting the requirements specified by WIOA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series were terminated by BLS in 1982. The CPI–U adjustments used to update LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIOA as defined in the law and regulations.

Laura P. Watson,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–07971 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA), as amended, and Section 166(i)(4) of the Workforce Innovation and Opportunity Act (WIOA), notice is hereby given of the next meeting of the Native American Employment and Training Council (NAETC or Council), as constituted under WIOA.

DATES: The meeting will begin at 1 p.m., (Eastern Daylight Time) on Thursday, May 16, 2024, and continue until 5 p.m. The meeting will reconvene at 9:00 a.m., on Friday, May 17, 2024, and adjourn at 5 p.m. The period from 3 p.m. to 4 p.m., on May 17, 2024, is reserved for participation and comment by members of the public.

ADDRESSES: The meeting will be held in person at the Rosen Plaza Hotel, 9700 International Dr., Orlando, FL 32819. The meeting will also be accessible virtually on the *Zoom.gov* platform. To join the meeting use the following URL: *https://www.zoomgov.com/j/1600140228?pwd=YkZCQmFmTzdqQkwzais1UDZXQlJRZz09.*

SUPPLEMENTARY INFORMATION: Council members and members of the public are encouraged to logon to *Zoom.gov* early to allow for connection issues and troubleshooting.

The meeting will be open to the public. Members of the public not present may submit a written statement by Friday, May 10, 2024, to be included in the record of the meeting. Statements are to be submitted to the U.S. Department of Labor Division of Indian and Native American Programs (DINAP) at *DINAP@dol.gov.* Persons who need special accommodations should contact Nathaniel Coley at 202–693–4287 or *Coley.Nathaniel.D@dol.gov* two business days before the meeting. The formal agenda will focus on the following topics: (1) Updates from the Employment and Training Administration; (2) Overview of the Federal Advisory Committee Act; (3) Election of NAETC Officers (4) DINAP updates; (5) NAETC sub-committee and workgroup updates; and (6) public comment.

FOR FURTHER INFORMATION CONTACT: Nathaniel Coley, Designated Federal Officer, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number (202) 693–4287 (VOICE) (this is not a toll-free number) or *coley.nathaniel.d@dol.gov.*

Laura P. Watson,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–07975 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Attestation for Employers Seeking To Employ H–2B Nonimmigrant Workers Under the Consolidated Appropriations Act, 2023, as Extended by the Continuing Appropriations Act, 2024 and Other Extensions Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection request (ICR) supports the Temporary Final Rule (TFR), Exercise of Time-Limited Authority to Increase the Numerical Limitation for Fiscal Year 2024 for H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers, which is being promulgated by the Department of Labor (DOL or Department) and the Department of Homeland Security (DHS) (collectively, the Departments). For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 17, 2023 (88 FR 80394).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not

display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 303 of Division O of the Consolidated Appropriations Act, 2023, Public Law 117–328, as extended by sections 101(6) and 106 of Division A of the Continuing Appropriations Act, 2024 and Other Extensions Act, Public Law 118–15

OMB Control Number: 1205–0556.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 4,358.

Total Estimated Number of Responses: 4,358.

Total Estimated Annual Time Burden: 32,472 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–07969 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Innovation and Opportunity Act Joint Quarterly Narrative Performance Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection includes data validation for the Senior Community Service Employment Program (SCSEP), and a streamlined quarterly narrative report template to support the (1) reporting, (2) recordkeeping, and (3) program evaluation requirements for the following grant programs: National Dislocated Worker Grants (DWG), H–1B grant programs (started July 1, 2016 or later), National Farmworker Jobs Program (NFJP), Reentry Employment Opportunities (REO) youth and adult grant programs, SCSEP, and YouthBuild (YB). This information collection does not increase the burden on grantees. SCSEP data validation assesses the accuracy of data collected and reported to ETA on program activities and outcomes. The accuracy and reliability of program reports submitted by states and grantees using federal funds are fundamental elements of good public administration and are necessary tools for maintaining and demonstrating system integrity. The data validation requirement for employment and training programs strengthens the workforce system by ensuring that accurate and reliable information on program activities and outcomes is available. The WIOA Joint Quarterly Narrative Performance Report provides a detailed account of program activities, accomplishments, and progress toward performance outcomes during the quarter. It also provides information on grant challenges and timeline progress, as well as the opportunity to share success stories. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 8, 2023 (88 FR 85655).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Workforce Innovation and Opportunity Act Joint Quarterly Narrative. Performance Report.

OMB Control Number: 1205–0448.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 1,320.

Total Estimated Number of Responses: 5,580.

Total Estimated Annual Time Burden: 64,950 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–07970 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Training Plans and Records of Training, for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Federal Mine Safety and Health Act of 1977 (Mine Act) Public Law 95–164, as amended, recognizes that education and training is an important element of Federal efforts to make the nation's mines safe. Section 115(a) of the Mine Act states that ''each operator of a coal or other mine shall have a health and safety training program which shall be approved by the Secretary.'' 30 CFR 48.3 and 48.23 require training plans for underground and surface mines, respectively. Training plans are required to be submitted for approval to the MSHA District Manager for the area in which the mine is located. These standards are intended to ensure that miners will be effectively trained in matters affecting their health and safety, with the goal of reducing the occurrence of injury and illness in the nation's mines. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 18, 2023 (88 FR 63978).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–MSHA.

Title of Collection: Training Plans and Records of Training, for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines.

OMB Control Number: 1219–0009.

Affected Public: Businesses or other for-profits.

Number of Respondents: 65,494.

Frequency: On occasion.

Number of Responses: 130,055.

Annual Burden Hours: 12,434 hours.

Total Estimated Annual Other Costs Burden: $394,856.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–07974 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0025]

UL LLC: Grant of Expansion of Recognition and Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for UL LLC, as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA announces the final decision to add two test standards to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes effective on April 16, 2024.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–1911 or email *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of UL LLC, (UL) as a NRTL. UL's expansion covers the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by NRTLs or applicant organizations for initial recognition, as well as for expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *https://www.osha.gov/dts/otpca/nrtl/index.html.*

UL submitted an application, dated July 26, 2022 (OSHA–2009–0025–0059) to expand the NRTL scope of recognition to include three additional test standards. OSHA staff performed a detailed analysis of the application packet and other pertinent information.

OSHA did not perform any on-site reviews in relation to these applications.

OSHA published the preliminary notice announcing UL's expansion application in the **Federal Register** on February 9, 2024 (89 FR 9179). The agency requested comments by February 26, 2024, but it received no comments in response to this notice.

To obtain or review copies of all public documents pertaining to the UL application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2009–0025 contains all materials in the record concerning UL's recognition. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined UL's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant UL's expanded scope of recognition. OSHA limits the expansion of UL's recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 6420	Equipment Use for System Isolation and Rated as a Single Unit.
UL 6200 *	Controllers for Use in Power Production.
UL 62091 *	Low-Voltage Switchgear and Controlgear—Controllers for Drivers of Stationary Fire Pump.

* Represents the standards that OSHA will add to the NRTL Program's List of Appropriate Test Standards.

In this notice, OSHA also announces the final decision to add two new test standards to the NRTL Program's List of Appropriate Test Standards. Table 2 below lists the standards that are new to the NRTL Program. OSHA has determined that these test standards are appropriate test standards and will add them to the NRTL Program's List of Appropriate Test Standards.

TABLE 2—STANDARDS OSHA WILL ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 6200	Controllers for Use in Power Production.
UL 62091	Low-Voltage Switchgear and Controlgear—Controllers for Drivers of Stationary Fire Pump.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, Chapter 2, Section VIII), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, UL must abide by the following conditions of the recognition:

1. UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. UL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. UL must continue to meet the requirements for recognition, including all previously published conditions on UL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of UL as a NRTL, subject to the limitations and conditions specified above. Additionally, OSHA will add two standards to the NRTL List of Appropriate Test Standards.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020)), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–07973 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of TUV Rheinland of North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before May 1, 2024.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://*

www.regulations.gov, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0042). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before May 1, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Applications for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for an expansion of current recognition as a NRTL. TUVRNA requests the addition of two test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA currently has ten facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: TUV Rheinland of North America, Inc., 295 Foster Street, Suite 100, Littleton, Massachusetts 01460. A complete list of TUVRNA sites recognized by OSHA is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/tuv.*

II. General Background on the Applications

TUVRNA submitted two applications, dated August 25, 2023 (OSHA–2007–0042–0074), to expand recognition as a NRTL to include two additional test standards. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1 shows the test standards found in TUVRNA's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 1557	Electrically Isolated Semiconductor Devices.
UL 1577	Optical Isolators.

III. Preliminary Finding on the Applications

TUVRNA submitted acceptable applications for expansion of the scope of recognition. OSHA's review of the application files and pertinent documentation preliminarily indicates that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the two test standards shown in Table 1, above, for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's applications.

OSHA seeks public comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S.

Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0042 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on April 10, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–07976 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

AGENCY: Office of Workers' Compensation Programs, DOL.

ACTION: Announcement of meeting.

SUMMARY: The Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) will meet May 8–9, 2024, in Oak Ridge, Tennessee, near the Oak Ridge covered facilities.

ADDRESSES: The Advisory Board will meet at the Comfort Inn Oak Ridge, 433 S Rutgers Ave., Oak Ridge, Tennessee 37830. Telephone: 865–481–8200.

Submission of comments, requests to speak, materials for the record, and requests for special accommodations: You must submit comments, materials, requests to speak at the Advisory Board meeting, and requests for accommodations by May 1, 2024, identified by the Advisory Board name and the meeting date of May 8–9, 2024, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, for example ''Request to Speak: Advisory Board on Toxic Substances and Worker Health'').
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210.

Instructions: Your submissions must include the Agency name (OWCP), the committee name (the Advisory Board), and the meeting date (May 8–9, 2024). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OWCP will make available publicly, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: For further information regarding this meeting, you may contact Ryan Jansen, Designated Federal Officer, at *jansen.ryan@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

For press inquiries: Ms. Laura McGinnis, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Ave. NW, Washington, DC 20210; telephone (202) 693–4672; email *Mcginnis.Laura@DOL.GOV.*

SUPPLEMENTARY INFORMATION: The Advisory Board will meet: Tuesday, May 7, 2024, for a fact-finding site visit to the Oak Ridge National Laboratory and other facilities, accompanied by the Designated Federal Officer; Wednesday, May 8, 2024, from 9:00 a.m. to 5:00 p.m. Pacific time; and Thursday, May 9, 2024, from 8:30 a.m. to 11:00 a.m. Eastern Daylight time in Oak Ridge, Tennessee. Some Advisory Board members may attend the meeting by teleconference. The teleconference number and other details for participating remotely will be posted on the Advisory Board's website, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* 72 hours prior to the commencement of the first meeting date. Advisory Board meetings are open to the public.

Public comment session: Wednesday, May 8, from 4:15 p.m. to 5:00 p.m. Pacific time. Please note that the public comment session ends at the time indicated or following the last call for comments, whichever is earlier. Members of the public who wish to provide public comments should plan to either be at the meeting location or call in to the public comment session at the start time listed.

The Advisory Board is mandated by section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) the Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under part B of EEOICPA related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and 6) such other matters as the Secretary considers appropriate. The Advisory Board sunsets on December 19, 2029.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. 10) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Review and follow-up on Advisory Board's previous recommendations, data requests, and action items;
- Review responses to submitted Board questions;
- Working group presentations;
- Review of Board tasks, structure and work agenda;

• Consideration of any new issues; and

• Public comments.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP posts the transcripts and minutes on the Advisory Board web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions and Access to Public Record

Advisory Board meetings: All Advisory Board meetings are open to the public. Information on how to participate in the meeting remotely will be posted on the Advisory Board's website.

Submission of comments: You may submit comments using one of the methods listed in the **ADDRESSES** section. Your submission must include the Agency name (OWCP) and date for this Advisory Board meeting (May 8–9, 2024). OWCP will post your comments on the Advisory Board website and provide your submissions to Advisory Board members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays.

Requests to speak and speaker presentations: If you want to address the Advisory Board at the meeting you must submit a request to speak, as well as any written or electronic presentation, by May 1, 2024, using one of the methods listed in the **ADDRESSES** section. Your request may include:

• The amount of time requested to speak;

• The interest you represent (*e.g.,* business, organization, affiliation), if any; and

• A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The Advisory Board Chair may grant requests to address the Board as time and circumstances permit.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

Signed at Washington, DC.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2024–08059 Filed 4–15–24; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2024–028]

National Industrial Security Program Policy Advisory Committee (NISPPAC); Meeting

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: We are announcing an upcoming National Industrial Security Program Policy Advisory Committee (NISPPAC) meeting in accordance with the Federal Advisory Committee Act and implementing regulations.

DATES: The meeting will be on May 1, 2024 from 10 a.m.–1 p.m. EDT.

ADDRESSES: This meeting will be a virtual meeting. See **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Heather Harris Pagán, ISOO Program Analyst, by telephone at 202.357.5351 or by email at *ISOO@nara.gov.* Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulations at 41 CFR 102–3. The Committee will discuss National Industrial Security Program policy matters.

Procedures: Members of the public must register in advance for the virtual meeting through the Intellor link *https://events.intellor.com/?do=register&t=7&p=507793* if they wish to attend. NISPPAC members, ISOO employees, and speakers should send an email to *NISPPAC@nara.gov* for the appropriate registration information instead of registering with the above link.

Merrily Harris,

Committee Management Officer.

[FR Doc. 2024–07959 Filed 4–15–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Thursday, April 18, 2024.

PLACE: Board Room, 7th Floor, Room 7B, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA Rules and Regulations, Part 749, Records Preservation Program.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024–08107 Filed 4–12–24; 11:15 am]

BILLING CODE 7535–01–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: Wednesday, April 17, 2024, from 4–6 p.m. EDT.

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 Preliminary Recommendations; 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 Office.

[FR Doc. 2024–08126 Filed 4–12–24; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0069]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by May 16, 2024. A request for a hearing or petitions for leave to intervene must be filed by June 17, 2024. This monthly notice includes all amendments issued, or proposed to be issued, from March 1, 2024, to March 28, 2024. The last monthly notice was published on March 19, 2024.

ADDRESSES: You may submit comments by any of the following methods, however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0069. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kathleen Entz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2464; email: *Kathleen.Entz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0069, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0069.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- NRC's PDR: The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0069, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR) ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in

the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's

electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUESTS

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL	
Docket Nos	50–254, 50–265.
Application date	June 8, 2023, as supplemented by letter dated March 19, 2024.
ADAMS Accession Nos	ML23159A249, ML24079A122.
Location in Application of NSHC	Pages 7–8 of Attachment 1.
Brief Description of Amendments	The proposed amendments request adoption of Technical Specification Task Force (TSTF) Traveler 505 (TSTF–505), Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF [Risk Informed TSTF] Initiative 4b.'' The NRC provided notice of consideration of the amendment request in the **Federal Register** on August 8, 2023 (88 FR 53537). On March 19, 2024, Constellation Energy Generation, LLC, supplemented the amendment to adopt TSTF–505 to also adopt TSTF–591 ''Revised Risk-Informed Completion Time (RICT) Program.'' The relevant no significant hazard considerations provided in the license amendment request dated June 8, 2023, remain applicable to the amendment request. This notice supersedes the previous notice in its entirety.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 4300 Winfield Road Warrenville, IL 60555.
NRC Project Manager, Telephone Number	Robert Kuntz, 301–415–3733.

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit 1; Berrien County, MI	
Docket No	50–315.
Application date	March 6, 2024.
ADAMS Accession No	ML24073A067.
Location in Application of NSHC	Pages 5–6 of Enclosure 2.
Brief Description of Amendment	The proposed amendment will add the Completion Time requirement ''Immediately'' to Technical Specification (TS) 3.4.12, ''Low Temperature Overpressure Protection (LTOP) System,'' Actions Table to Condition F, Required Action F.2. Currently in Unit 1 TS 3.4.12, Condition F Completion Time for Required Action F.2 is left blank.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Robert B. Haemer, Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Units 1 and 2; Berrien County, MI	
Docket Nos	50–315, 50–316.
Application date	January 26, 2023, as supplemented by letters dated August 2, 2023; February 27, 2024.
ADAMS Accession Nos	ML23026A284, ML23214A289, ML24058A357.
Location in Application of NSHC	Pages 6–7 of Enclosure 3 of the February 27, 2024, supplement.
Brief Description of Amendments	On March 21, 2023, the NRC published a notice of consideration of approval of the application in the **Federal Register** (88 FR 17036). The original proposed amendments would have reclassified the wide range neutron flux instrumentation as Category 3 instrumentation and would have revised Technical Specification (TS) Table 3.3.3–1, ''Post Accident Monitoring Instrumentation,'' to remove Function 1, Neutron Flux, from the list of required post-accident monitoring instrumentation. By supplement dated February 27, 2024, the scope of the amendment request was revised such that Neutron Flux remains as Function 1 in TS Table 3.3.3–1, ''Post Accident Monitoring Instrumentation,'' but a note would be added to the table indicating that Function 1, Neutron Flux, channels are not required to be environmentally qualified.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Robert B. Haemer, Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.

LICENSE AMENDMENT REQUESTS—Continued

Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Docket No	50–298.
Application date	February 16, 2024.
ADAMS Accession No	ML24047A273.
Location in Application of NSHC	Pages 8–10 of Attachment 1.
Brief Description of Amendment	The proposed amendment revises the allowable value for Cooper Nuclear Station Technical Specification (TS) 3.3.5.1, ''Emergency Core Cooling System (ECCS) Instrumentation,'' Table 3.3.5.1–1, ''Emergency Core Cooling System Instrumentation,'' Function 3.f, ''High Pressure Coolant Injection Pump Discharge Flow—Low (Bypass),'' from greater than or equal to 490 gallons per minute (gpm) to greater than or equal to 523 gpm. The proposed change to the TS is due to a planned replacement of the flow-indicating switch with a different model.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	John C. McClure, Vice President, Governmental Affairs and General Counsel Nebraska Public Power District, P.O. Box 499, Columbus, NE 68601.
NRC Project Manager, Telephone Number	Thomas Byrd, 301 415–3719.
Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA	
Docket Nos	50–321, 50–366.
Application date	February 20, 2024.
ADAMS Accession No	ML24051A239.
Location in Application of NSHC	Pages E–19 to E–21 of the Enclosure.
Brief Description of Amendments	The proposed amendments would modify the licensing basis to implement a change to the approved voluntary implementation of the provisions of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.'' The proposed amendments would incorporate the use of an alternative seismic method into the previously approved 10 CFR 50.69 categorization process, in addition to the plant-specific Edwin I. Hatch Nuclear Plant seismic probabilistic risk assessment.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	Dawnmathews Kalathiveettil, 301–415–5905.
Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2; Surry County, VA	
Docket Nos	50–280, 50–281.
Application date	February 19, 2024.
ADAMS Accession No	ML24051A178.
Location in Application of NSHC	Pages 3–5 of the Enclosure.
Brief Description of Amendments	The proposed amendments would change the Surry Power Station, Unit Nos. 1 and 2, technical specifications to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections'' related to steam generator tube inspection and reporting changes based on operating history.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	John Klos, 301–415–5136.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, were published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCES

Aerotest Operations Inc., Aerotest Radiography and Research Reactor, San Ramon, CA

Docket No	50–228.
Amendment Date	March 6, 2024.
ADAMS Accession No	ML23310A104 (Package).
Amendment Nos	7.
Brief Description of Amendment	The license amendment approved the decommissioning plan for the Aerotest Radiography and Research Reactor and provided conditions for when changes to the decommissioning plan require NRC approval.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL

Docket No	50–254, 50–265.
Amendment Date	March 15, 2024.
ADAMS Accession No	ML23340A155.
Amendment Nos	299 (Unit 1), 295 (Unit 2).
Brief Description of Amendments	The amendments adopted Technical Specifications Task Force (TSTF) Traveler 564 (TSTF–564), Revision 2, ''Safety Limit MCPR [Minimum Critical Power Ratio].'' The adoption of TSTF–564 revised the technical specification safety limit on MCPR.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

DTE Electric Company; Fermi, Unit 2; Monroe County, MI

Docket No	50–341.
Amendment Date	March 4, 2024.
ADAMS Accession No	ML24002B181.
Amendment No	228.
Brief Description of Amendment	The amendment revised the Note for Technical Specification 3.4.5, ''RCS [reactor coolant system] Pressure Isolation Valve (PIV), Action A.1, to remove the word ''check'' and make the Action applicable to all valves.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC

Docket Nos	50–413, 50–414.
Amendment Date	March 8, 2024.
ADAMS Accession No	ML24017A065.
Amendment Nos	319 (Unit 1), 315 (Unit 2).
Brief Description of Amendments	The amendments revised Technical Specification 3.7.11, ''Control Room Area Chilled Water System (CRACWS),'' to allow a completion time of 24 hours to restore one of the two CRACWS trains to operable status.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Mecklenburg County, NC

Docket Nos	50–369, 50–370.
Amendment Date	March 26, 2024.
ADAMS Accession No	ML24031A540.
Amendment Nos	330 (Unit 1), 309 (Unit 2).
Brief Description of Amendments	The amendments modified technical specification requirements to permit the use of risk-informed completion times in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–505, Revision 2, ''Provide Risk-Informed Extended Completion Times—Risk Informed Technical Specification Task Force Initiative 4b.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Energy Northwest; Columbia Generating Station; Benton County, WA

Docket No	50–397.
Amendment Date	March 7, 2024.
ADAMS Accession No	ML24047A042.
Amendment No	273.
Brief Description of Amendment	The amendment revised the Columbia Generating Station renewed facility operating license and technical specifications, including editorial changes and the removal of obsolete information.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCES—Continued

Entergy Operations, Inc.; Arkansas Nuclear One, Unit 1; Pope County, AR	
Docket No	50–313.
Amendment Date	March 14, 2024.
ADAMS Accession No	ML24031A644.
Amendment No	282.
Brief Description of Amendment	The amendment revised Arkansas Nuclear One, Unit 1 Technical Specification 3.3.1, ''Reactor Protection System (RPS) Instrumentation,'' Table 3.3.1–1, ''Reactor Protection System Instrumentation,'' to reflect plant modifications to the RPS instrumentation associated with reactor trip on main turbine trip on low fluid oil pressure.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN	
Docket Nos	50–327, 50–328.
Amendment Date	March 26, 2024.
ADAMS Accession No	ML24040A206.
Amendment Nos	367 (Unit 1), 361 (Unit 2).
Brief Description of Amendments	The amendments revised the Sequoyah Nuclear Plant, Units 1 and 2, Updated Final Safety Analysis Report to reflect the results of a new hydrologic analysis.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Units 1 and 2; Louisa County, VA	
Docket Nos	50–338, 50–339.
Amendment Date	March 18, 2024.
ADAMS Accession No	ML24005A004.
Amendment Nos	296 (Unit 1), 279 (Unit 2).
Brief Description of Amendment(s)	The amendments allowed relocation of the Technical Support Center to a building outside the Protected Area.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1; Coffey County, KS	
Docket No	50–482.
Amendment Date	March 8, 2024.
ADAMS Accession No	ML24016A070.
Amendment No	240.
Brief Description of Amendment	The amendment deleted the requirements for the Power Range Neutron Flux Rate—High Negative Rate Trip function, which is specified in Wolf Creek Generating Station, Unit 1, Technical Specification Table 3.3.1–1, ''Reactor Trip System Instrumentation.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Circumstances or Emergency Situation)

Since publication of the last monthly notice, the Commission has issued the following amendment. The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent circumstances or emergency situation associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed NSHC determination, and opportunity for a hearing.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level (an emergency situation), the Commission may not have had an opportunity to provide for public comment on its NSHC determination. In such case, the license amendment has been issued without opportunity for comment prior to issuance. Nonetheless, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved. The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendments involve NSHC. The basis for this determination is contained in the NRC staff safety evaluation related to each action. Accordingly, the amendment has been issued and made effective as indicated. For those amendments that have not been previously noticed in the **Federal Register**, within 60 days after the date of publication of this notice, any persons (petitioner) whose interest

may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the guidance concerning the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2 as discussed in section II.A of this document.

Unless otherwise indicated, the Commission has determined that the amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to these actions, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession number(s) for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE—EMERGENCY CIRCUMSTANCES

NextEra Energy Seabrook, LLC; Seabrook Station, Unit No. 1; Rockingham County, NH	
Docket No	50–443.
Amendment Date	March 8, 2024.
ADAMS Accession No	ML24067A262.
Amendment No	173.
Brief Description of Amendment	The amendment revised Technical Specification (TS) ¾.8.1, ''A.C. Sources—Operating,'' to provide a one-time modification of the allowed outage time for Seabrook TS 3.8.1.1 action a.3 from 72 hours to 30 days when one offsite circuit is inoperable. The amendment allows the licensee to replace the 3B Reserve Auxiliary Transformer at power within 30 days from the start of the outage for the Seabrook Station, Unit No. 1. The amendment was issued under emergency circumstances as provided in the provisions of 10 CFR 50.91(a)(5) because of the time critical nature of the amendment.
Local Media Notice (Yes/No)	No.
Public Comments Requested as to Proposed NSHC (Yes/No).	No.

Dated: April 5, 2024.

For the Nuclear Regulatory Commission.

Jamie Pelton,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–07649 Filed 4–15–24; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information (OMB control number 1212–0030, expiring July 31, 2024). The purpose of this information collection is to survey insurance company rates for pricing annuity contracts to obtain information needed to set actuarial assumptions. The American Council of Life Insurers conducts this voluntary survey for PBGC. This notice informs the public of PBGC's request and solicits public comment on the collection.

DATES: Comments must be submitted by May 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. All comments received will be posted without change to PBGC's website, *www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of the collection of information may be obtained by writing to Disclosure Division (*disclosure@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington DC 20024–2101, 202–229–3829. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used to determine the actuarial present value of benefits under single-employer plans in involuntary or distress terminations (29 CFR part 4044) and the present value of benefits and certain assets under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 4281). In each month immediately preceding the start of a new calendar quarter, PBGC publishes the interest assumption to be used under those regulations for plans terminating or undergoing mass withdrawal during the next quarter.

The interest assumption is intended to reflect current conditions in the group annuity markets. To determine the interest assumption, PBGC gathers premium rate data from insurance companies that are providing annuity contracts to terminating pension plans

through a quarterly survey. The American Council of Life Insurers (ACLI) distributes the survey and provides PBGC with ''double blind'' data (*i.e.,* PBGC is unable to match responses with the insurance companies that submitted them). PBGC also uses the information from the surveys to determine the interest assumption it uses to value benefits payable to participants and beneficiaries in PBGC-trusteed plans for purposes of PBGC's financial statements.

PBGC is making conforming, clarifying, and editorial changes to the survey forms and instructions.

The existing collection of information was approved under OMB control number 1212–0030 (expires July 31, 2024). On February 2, 2024, PBGC published in the **Federal Register** (at 89 FR 7418) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend approval of the collection for three years. 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.

This voluntary survey is directed at insurance companies most, if not all, of which are members of ACLI. The survey is conducted quarterly and approximately 10 insurance companies will be asked to participate. PBGC estimates that about six insurance companies will respond to the survey each quarter, and that each survey will require approximately 30 minutes to complete and return. The total burden is estimated to be 12 hours (30 minutes per survey × four surveys per year × six respondents per quarter).

Issued in Washington, DC, by

Gregory Katz,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2024–08081 Filed 4–15–24; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2024–0009]

Submission for Review: Renewal of an Existing Information Collection, USAJOBS Resume Builder, Application Profile, and USAJOBS Career Explorer, OMB Control No. 3206–0219

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on revisions to a currently approved information collection request (ICR): OMB Control No. 3206–0219, USAJOBS Resume Builder, Application Profile, and Career Explorer.

DATES: Comments are encouraged and will be accepted until June 17, 2024.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection by one of the following means:

- *Federal eRulemaking Portal: https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: A copy of this information collection request, with applicable supporting documentation, may be obtained by contacting the Human Resources Solution, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Cori Schauer, or via electronic mail to *usajobsengagement@opm.gov* or 202–606–1800.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. This notice complies with that requirement and solicits comments on the proposed ICR described below.

USAJOBS is the Federal Government's centralized source for most Federal jobs and employment information, including both positions that are required by law to be posted at that location and positions that can be posted there at an agency's discretion, see 5 U.S.C. 3327 and 3330. The Applicant Profile, Resume Builder, and Career Explorer are three components of the USAJOBS application system. USAJOBS reflects the minimal critical elements collected across the Federal Government to begin an application for Federal jobs under the authority of 5 U.S.C. 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394, and Civil Service Rule II, codified at 5 CFR part 2. OPM proposes to renew a currently approved collection with revisions. A 32-question career quiz was added to aid job seekers in matching their skills to Federal job series. The quiz is voluntary. OPM is particularly interested in comments that:

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; and

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.

Analysis

Agency: Office of Personnel Management.

Title: USAJOBS Resume Builder, Application Profile, and Career Explorer.

OMB Number: 3206–0219.

Frequency: Annually.

Affected Public: Individuals.

Number of Resumes built in one year: 27,015,663.

Estimated Time per Respondent: 38 Minutes.

Total Burden Hours: 17,109,920.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–08041 Filed 4–15–24; 8:45 am]

BILLING CODE 6325–43–P

POSTAL REGULATORY COMMISSION

[Docket No. R2024–2; Order No. 7036]

Market Dominant Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service notice of inflation-based rate adjustments affecting market dominant domestic and international products and services, along with proposed classification changes. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 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

On April 9, 2024, the Postal Service filed a notice of price adjustments affecting Market Dominant domestic and international products and services, along with proposed classification changes to the Mail Classification Schedule (MCS).[1] The intended effective date for the planned price adjustments is July 14, 2024. Notice at 1. The Notice, which was filed pursuant to 39 CFR part 3030, triggers a notice-and-comment proceeding. 39 CFR 3030.125.

II. Overview of the Postal Service's Filing

The Postal Service's filing consists of the Notice, which the Postal Service represents addresses data and information required under 39 CFR 3030.122 and 39 CFR 3030.123; two attachments (Attachments A and B) to the Notice; three appended sets of workpapers; and six public library references and one non-public library reference.

Attachment A presents the planned price and related product description changes to the MCS. Notice, Attachment A. Attachment B presents the price cap calculation. *Id.* Attachment B. The three appended sets of workpapers present projections related to the proposed continuation of the First-Class Mail and Marketing Mail Growth Incentives. *Id.* at 31.

The first five public library references provide supporting documentation for the five classes of mail, and the sixth public library reference shows the banked rate adjustment authority for each class of mail over the last five years.[2] The Postal Service also filed a library reference pertaining to the two international mail products within First-Class Mail (Outbound Single-Piece First-Class Mail International and Inbound Letter Post) under seal and applied for non-public treatment of those materials.[3]

The Postal Service's planned percentage changes by class are, on average, as follows:

Market dominant class	Planned price adjustment (%)
First-Class Mail	7.755
USPS Marketing Mail	7.755
Periodicals	9.754
Package Services	7.755
Special Services	7.755

Notice at 5. Price adjustments for products within classes vary from the average. *See, e.g., id.* at 7, 10 (Table 4 showing range for First-Class Mail products and Table 6 showing range for USPS Marketing Mail products).

The Postal Service identifies the effect of its proposed price and classification changes on the MCS in Attachment A. *Id.* at 40; *id.* Attachment A. The Postal Service also seeks approval for the following seven promotions for the indicated periods:

- Informed Delivery Add-On/Upgrade Promotion (January 1–December 31, 2025);
- Sustainability Add-On/Upgrade Promotion (January 1–December 31, 2025);
- Tactile, Sensory, and Interactive Mailpiece Engagement Base/Primary Promotion (February 1–July 31, 2025).
- Integrated Technology Base/Primary Promotion (mailers will select a start date for a six-month promotion period within calendar year 2025);
- Reply Mail Intelligent Mail barcode Accounting Base/Primary Promotion (July 1–December 31, 2025);
- First-Class Mail Advertising Base/Primary Promotion (September 1–December 31, 2025); and
- Continuous Contact Base/Primary Promotion (July 1–December 31, 2025).

Id. at 32–37. Additionally, the Postal Service proposes a new Catalog Incentive for certain USPS Marketing Mail and Package Services products that is intended to improve reporting and analysis of catalog data and proposes continuing other previously approved incentives within First-Class Mail and USPS Marketing Mail. *Id.* at 8, 11, 14–15, 25, 29–32.

III. Initial Administrative Actions

Pursuant to 39 CFR 3030.124(a), the Commission establishes Docket No. R2024–2 to consider the planned price adjustments for Market Dominant postal products and services, as well as the related classification changes, identified in the Notice. The Commission invites comments from interested persons on whether the Postal Service's planned price adjustments are consistent with applicable statutory and regulatory requirements. 39 CFR 3030.125. The applicable statutory and regulatory requirements the Commission considers in its review are the requirements of 39 CFR part 3030, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629. 39 CFR 3030.126(b). Comments are due no later than May 9, 2024. 39 CFR 3030.124(f). The Commission will not accept late-filed comments as it is not practicable due to the expedited timeline for this proceeding. *See* 39 CFR 3030.126(b). The Commission notes that its review in this proceeding is limited to ensuring that the proposed prices comply with the requirements of 39 CFR part 3030, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629. The Commission has opened a separate proceeding that requests comments on the broader aspects of the Market Dominant ratemaking system.[4]

The public portions of the Postal Service's filing are available for review on the Commission's website (*http://www.prc.gov*). Comments and other material filed in this proceeding will be available for review on the Commission's website, unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on

[1] United States Postal Service Notice of Market-Dominant Price Change, April 9, 2024 (Notice).

[2] USPS Notice of Filing Public Library References, April 9, 2024, at 1.

[3] USPS Notice of Filing Non-Public International Mail Workpapers and Application for Non-Public Treatment of Materials Filed Under Seal, April 9, 2024, at 1, Attachment 1.

[4] Docket No. RM2024–4, Advance Notice of Proposed Rulemaking on the Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products, April 5, 2024, at 23–24 (Order No. 7032).

non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011.

Pursuant to 39 U.S.C. 505, the Commission appoints R. Tim Boone to represent the interests of the general public (Public Representative) in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2024–2 to consider the planned price adjustments for Market Dominant postal products and services, as well as the related classification changes, identified in the Postal Service's April 9, 2024 Notice.

2. Comments on the planned price adjustments and related classification changes are due no later than May 9, 2024.

3. Pursuant to 39 U.S.C. 505, R. Tim Boone is appointed to serve as an officer of the Commission to represent the interests of the general public (Public Representative) in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2024–07958 Filed 4–15–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–227 and CP2024–233; MC2026–228 and CP2024–234]

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:* April 18, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–227 and CP2024–233; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 215 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* April 18, 2024.

2. *Docket No(s).:* MC2024–228 and CP2024–234; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 216 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* April 18, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–08030 Filed 4–15–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Privacy Act; System of Records

AGENCY: Postal Service®.

ACTION: Notice of modified systems of records.

SUMMARY: The United States Postal Service™ (USPS™) is proposing to revise two General Privacy Act Systems of Records. These updates are being made to support enhanced security and analysis to anticipate user issues and provide resolution.

DATES: These revisions will become effective without further notice on May 16, 2024, unless, in response to comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *uspsprivacyfedregnotice@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The

Postal Service is proposing revisions to three existing systems of records (SOR) to support the implementation of voluntary mentorship programs and related applications.

I. Background

This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service is proposing to modify two SORs to support user experience enhancement analytics:

USPS SOR 550.100 Commercial Information Technology Resources-Applications

USPS SOR 550.200 Commercial Information Technology Resources-Administrative

II. Rationale for Changes to USPS Privacy Act Systems of Records

User experience is integral to the continued, seamless operation of any technology solution. Identifying pain points, areas of frustration, and common technology failures are paramount to positive user interaction. To that end, USPS will deploy a new tool to anticipate, identify, and provide remediation support for problems that may plague users in their technological interactions. Accordingly, USPS will modify USPS SOR 550.100 Commercial Information Technology Resources—Applications and USPS SOR 550.200 Commercial Information Technology Resources—Administrative as follows:

USPS SOR 550.100 Commercial Information Technology Resources—Applications

—Four new purposes: 13, 14, 15, and 16

USPS SOR 550.200 Commercial Information Technology Resources—Administrative

—Two new categories of records: 119 and 120.

III. Description of the Modified Systems of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions to this SOR has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect that this modified system of records will have any adverse effect on individual privacy rights. Accordingly, for the reasons stated above, the Postal Service proposes revisions included in this system of records presented in its entirety as follows:

SYSTEM NAME AND NUMBER:

550.100 Commercial Information Technology Resources—Applications.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and contractor sites.

SYSTEM MANAGER(S):

For records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and *404.*

PURPOSE(S) OF THE SYSTEM:

1. To provide event registration services to USPS customers, contractors, and other third parties.

2. To allow task allocation and tracking among team members.

3. To allow users to communicate by telephone, instant-messaging, and email through local machine and web-based applications on desktop and mobile operating systems.

4. To share your personal image via your device camera during meetings and web conferences, if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.

5. To provide for the creation and storage of media files, including video recordings, audio recordings, desktop recording, and web-based meeting recordings.

6. To provide a collaborative platform for viewing video and audio recordings.

7. To create limited use applications using standard database formats.

8. To review distance driven by approved individuals for accurate logging and compensation.

9. To develop, maintain, and share computer code.

10. To comply with Security Executive Agent Directive (SEAD) 3 requirements for self-reporting of unofficial foreign travel pertaining to covered individuals who have access to classified information or who hold a sensitive position.

11. To administer and maintain a secure board portal software that provides leadership with instant access to information they need before, during and after meetings, making board and committee interactions more efficient and productive by promoting collaboration and information sharing among USPS Board of Governors (BOG) and Executive Leadership Team (ELT).

12. To facilitate the software component of USPS-sponsored voluntary mentorship programs.

13. To monitor IT systems for software, hardware and application issues and aggregate results for diagnosis.

14. To measure user experience and utilization and provide proactive remediation to experience interruptions.

15. To organize user technology groupings by high-level to provide preventative technology support.

16. Collecting user sentiment via application interactions for the purpose of measuring digital employee experience and thereby improving results.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals with authorized access to USPS computers, information resources, and facilities, including employees, contractors, business partners, suppliers, and third parties.

2. Individuals participating in web-based meetings, web-based video conferencing, web-based communication applications, and web-based collaboration applications.

3. USPS Board of Governors, administrators, and USPS Executive Leadership Team.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Third-party Information records:* Records relating to non-Postal, third-party individuals utilizing an information system, application, or piece of software, including: Third-Party Name, Third Party Date Request, Third Party Free Text, Guest User Information.

2. *Collaboration application records:* Records relating to web-conferencing and web-collaboration applications, including; Collaborative Group Names, Collaborative Group IDs, Action Name, Number Of Actions Sent, Number Of Action Responses, Employee Phone Number, Collaborative Group Chat History, Profile Information, Collaborative Group Membership, Contacts, Project Owner, Project Creator, Event Start Time, Event Status, Event Organizer, Event Presenter, Event Producer, Event Production Type, Event Recording Setting, Total Number Of Event Media Viewings, Number Of Active Users, Number Of Active Users In Collaborative Groups, Number Of Active Collaborative Group Communication Channels, Number Of Messages Sent, Number Of Calls Participated In, Last Activity Date Of A User, Number Of Guest Users In A Collaborative Group, Event Name, Event Description, Event Start Date, Event End Date, Video Platform Group Name,

Video Platform Group Email Alias, Video Platform Group Description, Video Platform Group Classification, Video Platform Group Access Level, Video Platform Channel Name, Video Platform Channel Description, Video Platform Channel Access, Video Platform Live Event Recording, Total Number Of Video Conferences, Add Room Member To Collaborative Group, Attachment Downloaded From Collaborative Group, Attachment Uploaded From Collaborative Group, Direct Message Started From Collaborative Group, Invite Sent From Collaborative Group, Message Edited From Collaborative Group, Message Posted In Collaborative Group, Remove Room Member From Collaborative Group, Room Created In Collaborative Group, Add Service Account Permission To Enterprise Collaborative Group, Remove Service Account Permission To Enterprise Collaborative Group, Added User To Enterprise Collaborative Group, Added User Role To Enterprise Collaborative Group, Removed User From Enterprise Collaborative Group, Request To Join Enterprise Collaborative Group, Approve Join Request From Enterprise Collaborative Group, Reject Join Request From Enterprise Collaborative Group, Invite User To Enterprise Collaborative Group, Accept Invitation For Enterprise Collaborative Group, Reject Invitation For Enterprise Collaborative Group, Revoke Invitation For Enterprise Collaborative Group, Join Enterprise Collaborative Group, Ban User Including With Moderation In Enterprise Collaborative Group, Unban User From Enterprise Collaborative Group, Add All Users In Domain For Enterprise Collaborative Group, Create Group In Enterprise Collaborative Group, Delete Group In Enterprise Collaborative Group, Create Namespace In Enterprise Collaborative Group, Delete Namespace In Enterprise Collaborative Group, Change Info Setting In Enterprise Collaborative Group, Add Info Setting In Enterprise Collaborative Group, Remove Info Setting In Enterprise Collaborative Group, Add Member Role In Enterprise Collaborative Group, Remove User Role In Enterprise Collaborative Group, Membership Expiration Added In Enterprise Collaborative Group, Membership Expiration Removed In Enterprise Collaborative Group, Membership Expiration Updated In Enterprise Collaborative Group, ACL Permission Changed In Collaborative Group, Collaborative Group Invitation Accepted, Join Request Approved, User Joined Collaborative Group, User Requested To Join Collaborative Group, Collaborative Group Basic Setting Changed, Collaborative Group Created, Collaborative Group Deleted, Collaborative Group Identity Setting Changed, Collaborative Group Info Setting Added, Collaborative Group Info Setting Changed, Collaborative Group Info Setting Removed, Collaborative Group New Member Restriction Changed, Collaborative Group Post Reply Settings Changed, Collaborative Group Spam Moderation Settings Changed, Collaborative Group Topic Setting Changed, Collaborative Group Message Moderated, User Posts Will Always Be Posted, User Added To Collaborative Group, User Banned From Collaborative Group, User Invitation Revoked From A Collaborative Group, User Invited To Collaborative Group, User Join Request Rejected From A Collaborative Group, User Reinvited To Collaborative Group, User Removed From Collaborative Group, Call Event Abuse Report Submitted, Call Event Endpoint Left, Call Event Livestream Watched, Individual Form Response, Form Respondent Email Address, Whiteboard Software Updated, Whiteboard Reboot Requested, Whiteboard Export Requested, Attachment Deleted, Attachment Uploaded, Note Content Edited, Note Created, Note Deleted, Note Permissions Edited.

3. *Communication Application Records:* Enterprise Social Network User Name, Enterprise Social Network User State, Enterprise Social Network User State Change Date, Enterprise Social Network User Last Activity Date, Number Of Messages Posted By An Enterprise Social Network User In Specified Time Period, Number Of Messages Viewed By An Enterprise Social Network User, Number Of Liked Messages By An Enterprise Social Network User, Products Assigned To A Enterprise Social Network User, Home Network Information, External Network Information, External Network Name, External Network Description, External Network Image, Network Creation Date, Network Usage Policy, External Network User Name, External Network User Email Address, External Group Name, Number Of Users On A Network, Network ID, Live Event Video Links, Files Added Or Modified In Enterprise Social Network, Message ID, Thread ID, Message Privacy Status, Full Body Of Message, Chat User Action, Chat Room Member Added, Chat Attachment Downloaded, Chat Attachment Uploaded, Chat Room Blocked, Chat User Blocked, Chat Direct Message Started, Chat Invitation Accepted, Chat Invitation Declined, Chat Invitation Sent, Chat Message Edited, Chat Message Posted, Chat Room Member Removed, Chat Room Created.

4. *Multimedia records:* Records relating to media associated with or originating from an information system, including; Video Platform User ID, Video Name, Videos Uploaded By User, Videos Accessed By User, Channels Created By User, User Group Membership, Comments Left By User On Videos, Screen Recordings, Video Transcript, Deep Search Captions, Video Metadata, Audio Metadata, Phone Number, Time Phone Call Started, User Name, Call Type, Phone Number Called To, Phone Number Called From, Called To Location, Called From Location, Telephone Minutes Used, Telephone Minutes Available, Charges For Use Of Telephone Services, Currency Of Charged Telephone Services, Call Duration, Call ID, Conference ID, Phone Number Type, Blocked Phone Numbers, Blocking Action, Reason For Blocking Action, Blocked Phone Number Display Name, Date And Time Of Blocking, Call Start Time, User Display Name, SIP Address, Caller Number, Called To Number, Call Type, Call Invite Time, Call Failure Time, Call End Time, Call Duration, Number Type, Media Bypass, SBC FQDN, Data Center Media Path, Data Center Signaling Path, Event Type, Final SIP, Final Vendor Subcode, Final SIP Phrase, Unique Customer Support ID.

5. *Limited Use Application records:* Records relating to applications with a specific, limited use, including; Application Authoring Application Name, Application Authoring Application Author, Voice Search Text Strings, Miles Driven, Mileage Rates, Country Currency, Destination, Destination Classification, Car Make, Car Model, Working Hours, Total Number Of Monthly Drives, Total Number Of Monthly Miles, Total Number Of Personal Drives, Total Number Of Personal Drives, Users Allowed To Access Application, Application Authoring Application Security Settings, Total Number Of Cloud-Based Searches Performed, Total Number Of Cloud-Based Search Queries From Web Browsers, Total Number Of Cloud-Based Search Queries From Android Operating Systems, Total Number Of Cloud-Based Search Queries From iOS Operating Systems, Data Visualization Report Email Delivery Added, Data Visualization Asset Created, Data Visualization Data Exported, Data Visualization Asset Deleted, Data Visualization Report Downloaded, Data Visualization Asset Edited, Data Visualization Asset Restored, Data Visualization Report

Email Delivery Stopped, Data Visualization Asset Trashed, Data Visualization Report Email Delivery Updated, Data Visualization Asset Viewed, Data Visualization Link Sharing Access Type Changed, Data Visualization Link Sharing Visibility Changed, Data Visualization User Sharing Permissions Changed.

6. *Development Records:* Records relating to applications used for the creation, sharing, or modification of software code, including: Data Repository User ID, Data Repository Password, Data Repository User Address, Data Repository Payment Information, Data Repository User First Name, Data Repository User Last Name, Data Repository Profile Picture, Data Repository Profile Biography, Data Repository Profile Location, Data Repository User Company, Data Repository User Preferences, Data Repository User Preference Analytics, Data Repository Transaction Date, Data Repository Transaction Time, Data Repository Transaction Amount Charged, Data Repository web pages Viewed, Data Repository Referring website, Data Repository Date Of web page Request, Data Repository Time Of web page Request, Data Repository User Commits, Data Repository User Commit Comment Body Text, Data Repository Pull Request Comment Body Text, Data Repository Issue Comment Body Text, Data Repository User Comment Body Text, Data Repository User Authentication, Language Of Device Accessing Data Repository, Operating System Of Device Accessing Data Repository, Application Version Of Device Accessing Data Repository, Device Type Of Device Accessing Data Repository, Device ID Of Device Accessing Data Repository, Device Model Of Device Accessing Data Repository, Device Manufacturer Of Device Accessing Data Repository, Browser Version Of Device Accessing Data Repository, Client Application Information Of Device Accessing Data Repository, Data Repository User Usage Information, Data Repository Transactional Information, Data Repository API Notification Status, Data Repository API Issue Status, Data Repository API Pull Status, Data Repository API Commit Status, Data Repository API Review Status, Data Repository API Label, Data Repository API User Account Signin Status, Data Repository API Schedule Status, Data Repository API Schedule List.

7. *Unofficial Foreign Travel Monitoring:* Records relating to covered individuals for the administration of the SEAD 3 program, including: Title, Name Of Traveler, Information Type: Pre-Travel And Post-Travel, Start Date Of Travel, End Date Of Travel, Carrier Of Transportation, Countries You Are Visiting, Passport Number, Passport Expiration Date, Names And Association Of Foreign National Travel Companions, Planned Foreign Contacts, Emergency Contact Name, Emergency Contact Phone Number, Emergency Contact Relationship, Post-Travel Questions Relating To Activity, Events, And Interactions.

8. *Cloud-based storage records:* Records relating to activity within cloud-based storage systems, including: Number Of Files Made Publicly Available, Number Of Files Made Available With A Link, Number Of Files Shared With Domain Users, Number Of Files Shared With Domain Users Through Link, Number Of Files Shared With Users Outside Domain, Number Of Files Shared With User Or Group In Domain, Number Of Files Not Shared At All, Number Of Spreadsheet Documents Added, Number Of Text Documents Added, Number Of Presentation Documents, Number Of Form Documents Added, Number Of Other Files Added, Number Of Files Edited, Number Of Files Viewed, Number Of Files Added, Total Cloud Storage Space Used, Last Time Storage Accessed By User, Item Added To Folder, Item Approval Cancelled, Comment Added On Approval Of Item, Due Date Time Change Requested, Item Approval Requested, Reviewer Change Requested For Item Approval, Item Approval Reviewed, Document Copy Created, Document Created, Document Deleted, Document Downloaded, Document Shared As Email Attachment, Document Edited, Label Applied, Label Value Changed, Label Removed, Item Locked, Item Moved, Item Previewed, Item Printed, Item Removed From Folder, Item Renamed, Item Restored, Item Trashed, Item Unlocked, Item Uploaded, Item Viewed, Security Update Applied To File, Security Update Applied To All Files In Folder, Publish Status Changed, Editor Settings Changed, Link Sharing Access Type Changed, Link Sharing Access Changed From Parent Folder, Link Sharing Visibility Changed, Link Sharing Visibility Changed From Parent Folder, Security Update Removed From File, Membership Role Changed, Shared Storage Settings Changed, Spreadsheet Range Enabled, User Sharing Permissions Changed, User Sharing Permissions Changed From Parent Folder, User Storage Updated, File Viewed, File Renamed, File Created, File Edited, File Previewed, File Printed, File Updated, File Deleted, File Uploaded, File Downloaded, File Shared.

9. *Email Application records:* Records relating to regular use of email applications, including: Email Body Text, Email Metadata, Total Number Of Emails Sent, Total Number Of Emails Received, Total Number Of Emails Sent And Received, Last Time User Accessed Email Client Through A Post Office Protocol (POP) Mail Server, Last Time User Accessed Email Client Through An internet Message Access Protocol (IMAP) Mail Server, Last Time User Accessed Through Web-Based Server, Total Email Client Storage Space Used, Calendar Access Level(S) Changed, Calendar Country Changed, Calendar Created, Calendar Deleted, Calendar Description Changed, Calendar Location Changed, Calendar Time zone Changed, Calendar Title Changed, Calendar Notification Triggered, Calendar Subscription Added, Calendar Subscription Deleted, Calendar Event Created, Calendar Event Deleted, Calendar Event Guest Added, Calendar Event Guest Auto-Response, Calendar Event Guest Removed, Calendar Event Guest Response Changed, Calendar Event Modified, Calendar Event Removed From Trash, Calendar Event Restored, Calendar Event Start Time Changed, Calendar Event Title Modified, Successful Availability Lookup Of A Calendar Between Email Clients, Successful Availability Lookup Of Email Client Resource, Successful Email Client Resource List Lookup, Unsuccessful Availability Lookup Of A Calendar On Email Client, Unsuccessful Availability Lookup Of Email Client Resource, Unsuccessful Email Client Resource List Lookup.

10. *Web Browser Records:* Records relating to activity within a web browser, including: Web Browser Password Changed, Web Browser Password Reused, Malware Detected in Transferred Content for User, Sensitive Data Detected In Transferred Content, Unsafe website Visit Detected For User.

11. USPS Board of Governors name, email, and collaborative meeting records used to store meeting material such as presentations, briefing documents/memos, meeting minutes/notes, and responses to various board inquiries, presentation briefing documents, and memos.

12. Mentorship Application Information: Match Data Stored About A User, Program Membership Status, Program Eligibility, Program Enrollment Date, Program Participation Preference, Mentor/Mentee Capacity, Preferred Mentors, Accepting New Matches Status, Recommended Mentors, Declined Recommendation Reason,

Active Mentor/Mentee/Peer Relationships, Relationship Start/End Date, User Who Requested The Relationship, Relationship Status, Action Item/Checklist Item Progress, Mentorship Agreements, Pairing Health, Mentor/Mentee/Peer Relationship Requests, Mentor/Mentee/Peer Relationship Extension Requests, Mentor/Mentee/Peer Request Introduction Notes, Mentor/Mentee/Peer Request Preferred Match Duration, Past Mentor/Mentee/Peer Relationships, Active Group Membership As A Mentor/Mentee/Peer, Group Name, Group Start/End Date, Group Status, Past Group Membership As A Mentor/Mentee/Peer.

13. Mentoring Session Data Stored For A User: Status, Default Admin Agenda, Custom User Agenda Start/End Date Time, Mentee/Mentor Feedback, 1–4 Star Rating, Free Text Session Feedback, Private Session Notes, Shared Session Notes, User Booking Session, Session Calendar Event And Videoconferencing Details, Session Attendance, Session Topics.

14. Program Survey Data Stored For A User: Survey Status, Custom Admin Supplied Question Responses, Program Admin Data, Reporting Column Preferences, Program Admin Support Contact.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

(a) To appropriate agencies, entities, and persons when (1) the Postal Service suspects or has confirmed that there has been a breach of the system of records; (2) the Postal Service has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Postal Service (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Postal Service's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

RECORD SOURCE CATEGORIES:

Employees; contractors; customers; USPS Board of Governors.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

1. Records relating to third-parties are retrievable by name and email address.

2. Records relating to collaboration are retrievable by name, email address, and user ID.

3. Records relating to communication are retrievable by name, email address, and user ID.

4. Records pertaining to multimedia are retrievable by username and media title.

5. Records relating to application development are retrievable by user ID and application name.

6. Records relating to limited use applications are retrievable by name, email address, and user ID.

7. Records relating to Unofficial Foreign Travel Monitoring for covered individuals are retrievable by name.

8. Records relating to Cloud-based storage are retrievable by name, email address, and user ID.

9. Records relating to Email Applications are retrievable by name, email address, and user ID.

10. Records relating to Web Browsers are retrievable by name, email address, and user ID.

11. USPS Board of Governors secure board portal collaboration software data is retrievable by date, meeting information, committee name, and other session collaboration details.

12. Records relating to mentorship programs are retrievable by mentee name

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records relating to third parties are retained for twenty-four months.

2. Records relating to collaboration are retained for twenty-four months.

3. Records relating to communication are retained for twenty-four months.

4. Multimedia recordings are retained for twenty-four months.

5. Records relating to application development are retained for twenty-four months.

6. Records relating to limited use applications are retained for twenty-four months.

7. Records relating to Unofficial Foreign Travel Monitoring for covered individuals are retained for twenty-five years.

8. Records relating to Cloud-based storage are retained for twenty-four months.

9. Records relating to Email Applications are retained for twenty-four months.

10. Records relating to Web Browsers are retained for twenty-four months.

11. USPS Board of Governors secure board portal collaboration software data is retained up to twelve months from the close of the corresponding event.

12. Records relating to mentorship programs are retained for twenty-four months.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Computer access is limited to authorized personnel with a current security clearance, and physical access is limited to authorized personnel who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by encryption, mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure and USPS Privacy Act regulations regarding access to records and verification of identity under *39 CFR 266.5.*

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Customers and employees wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Information Officer and Executive Vice President and include their name and address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

December 1, 2023; *88 FR 83981;* May 11, 2021; *86 FR 25899;* January 31, 2022; *87 FR 4957.*

SYSTEM NAME AND NUMBER:

550.200 Commercial Information Technology Resources—Administrative.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and contractor sites.

SYSTEM MANAGER(S):

For records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To provide active and passive monitoring and review of information system applications and user activities.

2. To generate logs and reports of information system application and user activities.

3. To provide a means of auditing commercial information system activities across applications and users.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals with authorized access to USPS computers, information resources, and facilities, including employees, contractors, business partners, suppliers, and third parties.

2. Individuals participating in web-based meetings, web-based video conferencing, web-based communication applications, and web-based collaboration applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. General Audit Log activities: DateTime, IP Address, User Activity, User Item Accessed, Activity Detail, Object ID, Record Type, Client IP Address, CorrelationID, CreationTime, EventData, EventSource, ItemType, OrganizationID, UserAgent, USerKEy, UserType, Version, Workload.

2. File and page activities: Accessed file, Change retention label for a file, Deleted file marked as a record, Checked in file, Changed record status to locked, Changed record status to unlocked, Checked out file, Copied file, Discarded file checkout, Deleted file, Deleted file from recycle bin, Deleted file from second-stage recycle bin, Detected document sensitivity mismatch, Detected malware in file, Deleted file marked as a record, Downloaded file, Modified file, Moved file, Recycled all minor versions of file, Recycled all versions of file, Recycled version of file, Renamed file, Restored file, Uploaded file, Viewed page, View signaled by client, Performed search query.

3. Folder activities: Copied folder, Created folder, Deleted folder, Deleted folder from recycle bin, Deleted folder from second-stage recycle bin, Modified folder, Moved folder, Renamed folder, Restored folder.

4. Cloud-based Enterprise Storage activities: Created list, Created list column, Created list content type, Created list item, Created site column, Created site content type, Deleted list, Deleted list column, Deleted list content type, Deleted list item, Deleted site column, Deleted site content type, Recycled list item, Restored list, Restored list item, Updated list, Updated list column, Updated list content type, Updated list item, Updated site column, Updated site content type.

5. Sharing and access request activities: Added permission level to site collection, Accepted access request, Accepted sharing invitation, Blocked sharing invitation, Created access request, Created a company shareable link, Created an anonymous link, Created secure link, Deleted secure link, Created sharing invitation, Denied access request, Removed a company shareable link, Removed an anonymous link, Shared filer, folder, or site, Unshared file folder or site, Updated access request, Updated an anonymous link, Updated sharing invitation, Used a company shareable link, Used an anonymous link, Used secure link, User added to secure link, User removed from secure link, Withdrew sharing invitation.

6. Synchronization activities: Allowed computer to sync files, Blocked computer from syncing files, Downloaded files to computer, Downloaded file changes to computer, Uploaded files to document library, Uploaded file changes to document library.

7. Site permissions activities: Added site collection admin, Added user of group to Cloud-based Enterprise Storage group, Broke permission level inheritance, Broke sharing inheritance, Created group, Deleted group, Modified access request setting, Modified ''Members Can Share'' setting, Modified permission level on site collection, Modified site permissions, Removed site collection admin, Removed permission level from site collection, Removed user or group from Cloud-based Enterprise Storage group, Requested site admin permissions, Restored sharing inheritance, Updated group.

8. Site administration activities: Added allowed data location, Added exempt user agent, Added geo location admin, Allowed user to create groups, Cancelled site geo move, Changed a sharing policy, Changed deice access policy, Changed exempt user agents, Changed network access policy, Completed site geo move, Created Sent To connection, Created site collection, Deleted orphaned hub site, Deleted Sent To connection, Deleted site, Enabled document preview, Enabled legacy workflow, Enabled Office on Demand, Enabled result source for People Searched, Enabled RSS feeds, Failed site swap, Joined site to hub site, Registered hub site, Removed allowed data location, Removed geo location admin, Renamed site, Scheduled site rename, Scheduled site swap, Scheduled site geo move, Set host site, Set storage quota for geo location, Swapped site, Unjoined site from hub site, Unregistered hub site.

9. Cloud-based Email Server mailbox activities: Created mailbox item, Copied messages to another folder, User signed in to mailbox, Accessed mailbox items, Sent message using Send On Behalf permissions, Purged messages from mailbox, Moved messages to Deleted Items folder, Moved messages to another folder, Sent message using Send As permissions, Sent message, Updated message, Deleted messages from Deleted Items folder, New-Inbox Rule Create-Inbox Rule from email web application, Set-Inbox Rule Modify inbox rule from email web application, Update inbox rules from email web application, Added delegate mailbox permissions, Removed delegate mailbox permissions, Added permissions to folder, Modified permissions of folder, Removed permissions from folder, Added or removed user with delegate access to calendar folder, Labeled message as a record.

10. Retention policy and retention level activities: Created retention label, Created retention policy, Configured settings for a retention policy, Deleted retention label, Deleted retention policy, Deleted settings from a retention policy, Updated retention label, Updated retention policy, Updated settings for a retention policy, Enabled regulatory record option for retention labels.

11. User administration activities: Added user, Deleted user, Set license properties, Reset user password, Changed user password, Changed user license, Updated user, Set property that forces user to change password, Organization Signup, Organization Creation, User creation without organization, Password reset requested, Disable user, Login success, Login success reauthenticate, Login failure, Login failure reauthentication, Logout, User permission change, Role permission change, Environment permissions change, Create role, Edit role—add user, Edit role—remove user, Edit role—change external group mapping, Delete role.

12. Enterprise User Administration group administration activities: Added group, Updated group, Deleted group, Added member to group, Removed member from group.

13. Application administration activities: Added service principal, Removed a service principal from the directory, Set delegation entry, Removed credentials from a service principal, Added delegation entry, Added credentials to a service principal, Removed delegation entry.

14. Role administration activities: Added member to Role, Removed a user from a directory role, Set company contact information.

15. Directory administration activities: Added a partner to the directory, Removed a partner from the directory, Added domain to company, Removed domain from company, Updated domain, Set domain authentication, Verified domain, Updated the federation settings for a domain, Verified email verified domain, Turned on Enterprise Information Technology Account Administration sync, Set password policy, Set company information.

16. eDiscovery activities: Created content search, Deleted content search, Changed content search, Started content search, Stopped content search, Started export of content search, Started export report, Previewed results of content search, Purged results of content search, Started analysis of content search, Removed export of content search, Removed preview results of content search, Removed purse action performed on content search, Removed analysis of content search, Removed search report, Content search preview item listed, Content search preview item viewed, Content search preview item downloaded, Downloaded export of content search, Created search permissions filter, Deleted search permissions filter, Changed search permissions filter, Created hold in eDiscovery case, Deleted hold in eDiscovery case, Changed hold in eDiscovery case, Created eDiscovery case, Deleted hold in eDiscovery case, Changed hold in eDiscovery case, Created eDiscovery case, Deleted eDiscovery data, Changed hold in eDiscovery case, Added member to eDiscovery case, Removed member from eDiscovery case, Changed eDiscovery case membership, Created eDiscovery administrator, Deleted eDiscovery administrator, Changed eDiscovery administrator membership, Remediation action created, Item deleted using Remediation, Created workingset search, Updated workingset search, Deleted workingset search, Previewed workingset search, Document viewed, Document annotated, Document downloaded, Tag created, Tag edited, Tag deleted, Tag files, Tag job, Created review set, Added Cloud-based productivity software data, Added non-office data, Added data to another workingset, Added remediated data, Run algo job, Run export job, Run burn job, Run error remediation job, Run load comparison job, Updated case settings.

17. eDiscovery system command activities: Created content search, Deleted content search, Changed content search, Started content search, Stopped content search, created content search action, Deleted content search action, Created search permissions filter, Deleted search permissions filter, Changed search permissions filter, Created hold in eDiscovery case, Deleted hold in eDiscovery case, Changed hold in eDiscovery case, Created search query for eDiscovery case hold, Deleted search query for eDiscovery case hold, Changed search query for eDiscovery case hold, Created eDiscovery case, Deleted eDiscovery case, Changed eDiscovery case, Added member to eDiscovery case, Removed member from eDiscovery case, Changed eDiscovery case membership, Created eDiscovery administrator, Deleted eDiscovery administrator, Changed eDiscovery administrator membership.

18. Data Analysis application activities: Viewed program dashboard, Created program dashboard, Edited program dashboard, Deleted program dashboard, Shared program dashboard, Printed program dashboard, Copied program dashboard, Viewed program tile, Exported program tile data, Viewed program report, Deleted program report, Printed program report page, Created program report, Edited program report, Copied program report, Exported program artifact to another file format, Export program activity events, Updated program workspace access, Restored program workspace, Updated program workspace, Viewed program metadata, Created program dataset, Deleted program dataset, Created program group, Deleted program group, Added program group members, Retrieved program groups, Retrieved program dashboard, Retrieved data sources from program dataset, Retrieved upstream data flows from program dataflow, Retrieved data sources from program dataflow, Removed program group members, Retrieved links between datasets and dataflows, Created organizational program content pack, Created program app, Installed program app, Updated program app, Updated organization's program settings, Started program trial, Started program extended trial, Analyzed program dataset, Created program gateway, Deleted program gateway, Added data source to program gateway, Removed data source from program gateway, Changed program gateway admins, Changed program gateway data source users, Set scheduled refresh on program dataset, Unpublished program app, Deleted organizational program content pack, Renamed program dashboard, Edited program dataset, Updated capacity display name, Changed capacity state, Updated capacity admin, Changed capacity user assignment, Migrated workspace to a capacity, Removed workspace from a capacity, Retrieved program workspaces, Shared program report, Generated program Embed Token, Discover program dataset data sources, Updated program dataset data sources, Requested program dataset refresh, Binded program dataset to gateway, Changed program dataset data sources, Requested program dataset refresh, Binded program dataset to gateway, Changed program dataset connections, Took over program dataset, Updated program gateway data source credentials, Imported file to program, Updated program dataset parameters, Generated program dataflow SAS token, Created program dataflow, Updated program dataflow, Deleted program dataflow, Viewed program dataflow, Exported program dataflow, Set scheduled refresh on program dataflow, Requested program dataflow refresh, Received program dataflow secret from Key Vault, Attached dataflow storage account, Migrated dataflow storage location, Updated dataflow storage assignment permissions, Set dataflow storage location for workspace, Took ownership of program dataflow, Canceled program dataflow refresh, Created program email subscription, Updated program email subscription, Deleted program email subscription, Created program folder, Deleted program folder, Updated program folder, Added program folder access, Deleted program folder access, Updated program folder access, Posted program comment, Deleted program comment, Analyzed program report, Viewed program usage metrics, Edited program dataset endorsement, Edited program dataflow endorsement, Edited program report endorsement, Edited program app endorsement, Retrieved list of modified workspaces in program tenant, Sent a scan request in program tenant, Retrieve scan result in program tenant, Inserted snapshot for user in program tenant, Updated snapshot for user in program tenant, Deleted snapshot for user in program tenant, Inserted snapshot for

user in program tenant, Updated snapshot for user in program tenant, Deleted snapshot for user in program tenant, Retrieved snapshots for user in program tenant, Edited program certification permission, Took over a program data source, Updated capacity custom settings, Created workspace for program template app, Deleted workspace for program template app, Updated settings for program template app, Updated testing permissions for program template app, Created program template app, Deleted program template app, Promoted program template app, Installed program template app, Updated parameters for installed program template app, Created install ticker for installing program template app, Updated an organizational custom visual, Created an organizational custom visual, Deleted an organizational custom visual, Custom visual requested Enterprise Information Technology Account Administration access token, Customer visual requested Cloud-based productivity software access token, Connected to program dataset from external app, Created program dataset from external app, Deleted program dataset from external app, Edited program dataset from external app, Requested program dataset refresh from external app, Requested SAS token for program storage, Requested account key for program storage, Assigned a workspace to a deployment pipeline, Removed a workspace from a deployment pipeline, Deleted deployment pipeline, Created deployment pipeline, Deployed to a pipeline stage, Updated deployment pipeline configuration, Updated deployment pipeline access, Added external resource, Added link to external resource, Deleted link to external resource, Updated featured tables, Applied sensitivity label to program artifact, Changed sensitivity label for program artifact, Deleted sensitivity label from program artifact.

19. Productivity Analysis activities: Updated privacy setting, Updated data access setting, Uploaded organization data, Created meeting exclusion, Updated preferred meeting exclusion, Execute query, Canceled query, Deleted result, Downloaded report, Accessed Odata link, Viewed query visualization, Viewed explore, Created partition, Updated partition, Deleted partition, User logged in, User logged out.

20. Briefing email activities: Updated user privacy settings, Updated organization privacy settings.

21. Cloud-based Collaboration Application activities: Created team, Deleted team, Added channel, Deleted channel, Changed organization setting, Changed team setting, Changed channel setting, User signed in to Cloud-based Collaboration Application, Added members, Changed role of members, Removed members, Added bot to team, Removed bot from team, Added tab, Removed tab, Updated tab, Added connector, Removed connector, Updated connector, Downloaded analytics report, Upgraded Cloud-based Collaboration Application device, Blocked Cloud-based Collaboration Application device, Unblocked Cloud-based Collaboration Application device, Changed configuration of Cloud-based Collaboration Application device, Enrolled Cloud-based Collaboration Application device, Installed app, Upgraded app, Uninstalled app, Published app, Updated app, Deleted app, Deleted all organization apps, Performed action on card, Added scheduling group, Edited scheduling group, Deleted scheduling group, Added shift, Edited shift, Deleted shift, Added time off, Edited time off, Deleted time off, Added open shift, Edited open shift, Deleted open shift, Shared schedule, Clocked in using Time clock, Clocked out using Time clock, Started break using Time clock, Ended break using Time clock, Added Time clock entry, Edited Time clock entry, Deleted Time clock entry, Added shift request, Responded to shift request, Canceled shift request, Changed schedule setting, Added workforce integration, Accepted off shift message.

22. Cloud-based Collaboration Application approvals activities: Created new approval request, Viewed approval request details, Approved approval request, Rejected approval request, Canceled approval request, Shared approval request, File attached to approval request, Reassigned approval request, Added e-signature to approval request.

23. Enterprise Social Network activities: Changed data retention policy, Changed network configuration, Changed network profile settings, Changed private content mode, Changed security configuration, Created file, Created group, Deleted group, Deleted message, Downloaded file, Exported data, Shared file, Suspended network user, Suspended user, Updated file description, Updated file name, Viewed file.

24. Enterprise Customer Relationship Management activities: Accessed out-of-box entity (deprecated), Accessed custom entity (deprecated), Accessed admin entity (deprecated), Performed bulk actions (deprecated), All Enterprise Customer Relationship Management activities, Accessed Enterprise Customer Relationship Management admin center (deprecated), Accessed internal management tool (deprecated), Signed in or out (deprecated), Activated process or plug-in (deprecated).

25. Information Systems Infrastructure Automation activities: Created flow, Edited flow, Deleted flow, Edited flow permissions, Deleted flow permissions, Started a Flow paid trial, Renewed a Flow paid trial.

26. Application authoring program activities: Created app, Edited app, Deleted app, Launched app, Published app, Marked app as Hero, Marked app as Featured, Edited app permission, Restored app version.

27. Enterprise Automation DLP activities: Created DLP Policy, Updated DLP Policy, Deleted DLP Policy.

28. Video platform activities: Created video, Edited video, Deleted video, Uploaded video, Downloaded video, Edited video permission, Viewed video, Shared video, Liked video, Unliked video, Commented on video, Deleted video comment, Uploaded video text track, Deleted video text track, Uploaded video thumbnail, Deleted video thumbnail, Replaced video permissions and channel links, Marked video public, Marked video private, Created Video platform group, Edited Video platform group, Deleted Video platform group, Edited Video platform group memberships, Created Video platform channel, Edited Video platform channel, Deleted a Video platform channel, Replaced Video platform channel thumbnails, Edited Video platform user settings, Edited tenant settings, Edited global role members, Deleted Video platform user, Deleted Video platform user's data report, Edited Video platform user, Exported Video platform user's data report, Downloaded Video platform user's data report, Video Platform Event Date, Video Platform Event Name, Video Platform Event Description, Video Platform Meeting Code, Video Platform Participant Identifiers.

29. Content explorer activities: Accessed item.

30. Quarantine activities: Previewed Quarantine message, Deleted Quarantine message, Released Quarantine message, Exported Quarantine message, Viewed Quarantine Message's header.

31. Customer Key Service Encryption activities: Fallback to Availability Key.

32. Form application activities: Created form, Edited form, Moved form, Deleted form, Viewed form, Previewed form, Exported form, Allowed share form for copy, Added form co-author, Removed form co-author, Viewed response page, Created response, Updated response, Deleted all

responses, Deleted response, Viewed responses, Viewed response, Created summary link, Deleted summary link, Updated from phishing status, Updated user phishing status, Sent premium form product invitation, Updated form setting, Updated user setting, Listed forms.

33. Sensitivity label activities: Applied sensitivity label to site, Removed sensitivity label from site, Applied sensitivity label to file, Changed sensitivity label applied to file, Removed sensitivity label from file.

34. Local machine communications platform system command activities: Set tenant federation.

35. Search activities: Performed email search, Performed Cloud-based Enterprise Storage search.

36. Security analytics activities: Attempted to compromise accounts.

37. Device activities: Printed file, Deleted file, Renamed file, Created file, Modified file, Read file, Captured screen, Copied file to removable media, Copied file to network share, Copied file to clipboard, Uploaded file to cloud, File accessed by an unallowed application.

38. Information barrier activities: Removed segment from site, Changed segment of site, Applied segment to site.

39. On-premises DLP scanning activities: Matched DLP rule, Enforced DLP rule.

40. Individual Productivity Analytics activities: Updated user settings, Updated organization settings.

41. Exact Data Match (EDM) activities: Created EDM schema, Modified EDM schema, Removed EDM scheme, Completed EDM data upload, Failed EDM data upload.

42. Enterprise Information System Information Protection activities: Accessed file, Discovered file, Applied sensitivity label, Updated sensitivity label, Removed sensitivity label, Removed file, Applied protection, Changed protection, Removed protection, Received AIP heartbeat.

43. Data Repository Team Discussion Post Actions: Team Discussion Post Updated, Team Discussion Post Destroyed.

44. Data Repository Team Discussion Post Reply Actions: Team Discussion Post Reply Updated, Team Discussion Post Reply Destroyed.

45. Data Repository Enterprise Actions: Self-Hosted Runner Removed, Self-Hosted Runner Registered, Self-Hosted Runner Group Created, Self-Hosted Runner Group Removed, Self-Hosted Runner Removed From Group, Self-Hosted Runner Added To Group, Self-Hosted Runner Group Member List Updated, Self-Hosted Runner Group Configuration Changed, Self-Hosted Runner Updated.

46. Data Repository Hook Actions: Hook Created, Hook Configuration Changed, Hook Destroyed, Hook Events Altered.

47. Data Repository Integration Installation Request Actions: Integration Installation Request Created, Integration Installation Request Closed.

48. Data Repository Issue Action: Issue Destroyed.

49. Data Repository Org Actions: Secret Action Created, Member Creation Disabled, Two Factor Authentication Requirement Disabled, Member Creation Enabled, Two Factor Authentication Enabled, Member Invited, Self-Hosted Runner Registered, Secret Action Removed, Member Removed, Outside Collaborator Removed, Self-Hosted Runner Removed, Self-Hosted Runner Group Created, Self-Hosted Runner Group Removed, Self-Hosted Runner Group Updated, Secret Action Updated, Repository Default Branch Name Updated, Default Repository Permission Updated, Member Role Updated, Member Repository Creation Permission Updated.

50. Data Repository Organization Label Actions: Default Label Created, Default Label Updated, Default Label Destroyed.

51. Data Repository Oauth Application Actions: Oauth Application Created, Oauth Application Destroyed, Oauth Application Secret Restet, Oauth Application Token Revoked, Oauth Application Transferred.

52. Data Repository Profile Picture Actions: Organization Profile Picture Updated.

53. Data Repository Project Actions: Project Board Created, Project Board Linked, Project Board Renamed, Project Board Updated, Project Board Deleted, Project Board Unlinked, Project Board Permissions Updated, Project Board Team Permissions Updated, Project Board User Permission Updated.

54. Data Repository Protected Branch Actions: Branch Protection Enabled, Branch Protection Destroyed, Branch Protection Enforced For Administrators, Branch Enforcement Of Required Code Owner Enforced, Stale Pull Request Dismissal Enforced, Branch Commit Signing Updated, Pull Request Review Updated, Required Status Check Updated, Requirement For Branch To Be Up To Date Before Merging Changed, Branch Update Attempt Rejected, Branch Protection Requirement Overridden, Force Push Enabled, Force Push Disabled, Branch Deletion Enabled, Branch Deletion Disabled, Linear Commit History Enabled, Linear Commit History Disabled.

55. Data Repository Repo Actions: User Visibility Changed, Actions Enabled For Repository, Collaboration Member Added, Topic Added To Repository, Repository Archived, Anonymous Git Read Access Disabled, Anonymous Git Read Access Enabled, Anonymous Git Read Access Setting Locked, Anonymous Git Read Access Setting Unlocked, New Repository Created, Secret Created For Repository, Repository Deleted, Repository Enabled, Secret Removed, User Removed, Self-Hosted Runner Registered, Topic Removed From Repository, Repository Renamed, Self-Hosted Runner Updated, Repository Transferred, Repository Transfer Started, Repository Unarchived, Secret Action Updated.

56. Data Repository Dependency Graph Actions: Dependency Graph Disabled, Dependency Graph Disabled For New Repository, Dependency Graph Enabled, Dependency Graph Enabled For New Repository.

57. Data Repository Secret Scanning Actions: Secret Scanning Disabled For Individual Repository, Secret Scanning Disabled For All Repositories, Secret Scanning Disabled For New Repositories, Secret Scanning Enabled For Individual Repository, Secret Scanning Enabled For All Repositories, Secret Scanning Enabled For New Repositories.

58. Data Repository Vulnerability Alert Actions: Vulnerable Dependency Alert Created, Vulnerable Dependency Alert Dismissed, Vulnerable Dependency Alert Resolved.

59. Data Repository Team Actions: Member Added To Team, Repository Added To Team, Team Parent Changed, Team Privacy Level Changed, Team Created, Member Demoted In Team, Team Destroyed, Member Promoted In Team, Member Removed From Team, Repository Removed From Team.

60. Data Repository Team Discussion Actions: Team Discussion Disabled, Team Discussion Enabled.

61. Data Repository Workflow Actions: Workflow Run Cancelled, Workflow Run Completed, Workflow Run Created, Workflow Run Deleted, Workflow Run Rerun, Workflow Job Prepared.

62. Data Repository Account Actions: Billing Plan Change, Plan Change, Pending Plan Change, Pending Subscription Change.

63. Data Repository Advisory Credit Actions: Accept Credit, Create Credit, Decline Credit, Destroy Credit.

64. Data Repository Billing Actions: Change Billing Type, Change Email.

65. Data Repository Bot Alerts Actions: Disable Bot, Enable Bot.

66. Data Repository Bot Alerts for New Repository Actions: Disable Alerts, Enable Alerts.

67. Data Repository Bot Security Alerts for Update Actions: Disable Security Update Alerts, Enable Security Update Alerts.

68. Data Repository Bot Security Alerts for New Repository Actions: Disable New Repository Security Alerts, Enable New Repository Security Alerts.

69. Data Repository Environment Actions: Create Actions Secret, Delete, Remove Actions Secret, Update Actions Secret.

70. Data Repository Git Actions: Clone, Fetch, Push.

71. Data Repository Marketplace Agreement Signature Actions: Create.

72. Data Repository Marketplace Listing Actions: Approve, Create, Delist, Redraft, Reject.

73. Data Repository Members Can Create Pages Actions: Enable, Disable.

74. Data Repository Organization Credential Authorization Actions: Security Assertion Markup Language Single-Sign On Authorized, Security Assertion Markup Language Single-Sign On Deauthorized, Authorized Credentials Revoked.

75. Data Repository Package Actions: Package Version Published, Package Version Deleted, Package Deleted, Package Version Restored, Package Restored.

76. Data Repository Payment Method Actions: Payment Method Cleared, Payment Method Created, Payment Method Updated.

77. Data Repository Advisory Actions: Security Advisory Closed, Common Vulnerabilities And Exposures Advisory Requested, Data Repository Security Advisory Made Public, Data Repository Security Advisory Withdrawn, Security Advisory Opened, Security Advisory Published, Security Advisory Reopened, Security Advisory Updated.

78. Data Repository Content Analysis: Data Use Settings Enabled, Data Use Settings Disabled.

79. Data Repository Sponsors Actions: Repo Funding Link Button Toggle, Repo Funding Links File Action, Sponsor Sponsorship Cancelled, Sponsor Sponsorship Created, Sponsor Sponsorship Preference Changed, Sponsor Sponsorship Tier Changed, Sponsored Developer Approved, Sponsored Developer Created, Sponsored Developer Profile Updated, Sponsored Developer Request Submitted For Approval, Sponsored Developer Tier Description Updated, Sponsored Developer Newsletter Sent, Sponsored Developer Invited From Waitlist, Sponsored Developer Joined From Waitlist.

80. Administrator audit log events: Admin privileges grant, Group events, Marketplace login audit change, Auto provisioning automatically disabled.

81. Group enterprise audit log events: Add service account permission, Remove service account permission, Add user, Add user role, Remove user, Request to join, Approve join request, Reject join request, Invite user, Accept invitation, Reject invitation, Revoke invitation, Join, Ban user including with moderation, Unban user, Add all users in domain, Create group, Delete group, Create namespace, Delete namespace, Change info setting, Add info setting, Remove info setting, Add member role, Remove user role, Membership expiration added, Membership expiration removed, Membership expiration updated.

82. Software vendor employee interaction events: Event date, Software product name, Software vendor employee email, Software vendor employee home office location, Software vendor employee access justification, Justification tickets, Log ID, Software product resource accessed name.

83. Login events: Two-step verification enabled, Two-step verification disabled, Account password change, Account recovery email change, Account recovery phone change, Account recovery secret question change, Account recovery secret answer change, Advanced Protection enroll, Advanced Protection unenroll, Failed login, Government-backed attack attempt, Leaked password detected, Login challenged, Login verification, Logout, Out of domain email forwarding enabled, Successful login, Suspicious Login, Suspicious login blocked, Suspicious login from less secure app blocked, Suspicious programmatic login locked, User suspended, User suspended through spam relay, User suspended through spam, User suspended through suspicious activity.

84. OAuth Token audit log events: OAuth event description, OAuth event name, OAuth user, OAuth application name, OAuth client ID, OAuth scope, OAuth event data, OAuth logged activity IP address.

85. Rules audit log events: Rule event name, Rule event description, Rule triggering user, Rule name, Rule type, Rule resource name, Resource ID, Resource title, Resource type, Resource owner, Recipients, Data source, Actor IP address, Rule severity, Scan type, Matched trigger, Matched detectors, Triggered actions, Suppressed actions, Date, Device ID, Device type.

86. SAML audit log events: SAML event description, SAML Event name, SAML triggering user, SAML application name, SAML user organization name, Initiated by, Failure type, Response status, Second level status, SAML logged activity IP address, SAML event date.

87. Calendar application audit log events: Activity name, Activity description, Calendar user, Calendar ID, Event title, Event ID, User agent, Recipient email, Message ID, Remote Exchange Web Server URL, Error code, Requested window start, Requested window end, Date, Calendar logged activity IP address.

88. Context-Aware Access audit log events: Event name, Context-Aware access user, Context-Aware access logged activity IP address, Device ID, Access level applied, Context-Aware access event date.

89. Web browser audit log events: Web browser event name, Web browser event date, Web browser event reason, Device name, Device user, Web browser profile user name, URL generating event, Operating System of Web Browser, Web browser triggered rule reason, Web browser event result, Web browser content name, Web browser content size, Web browser content hash, Web browser content type, Web browser trigger type, Web browser trigger user, Web browser user agent, Web browser client type.

90. Data Visualization audit log events: Asset name, Event description, User, Event name, Date, Asset type, Owner, Asset ID, IP address, Connector type, visibility, Prior visibility.

91. Devices audit log events: Device ID, Event description, Date, Event name, User, Device type, Application hash, Serial number, Device model, OS version, Policy name, Policy status code, Windows OS edition, Account registration change, Device action event, Device application change, Device compliance status, Device compromise, Device OS update, Device ownership, Device settings change, Device status changed on Apple portal, Device sync, Failed screen unlock attempts, Sign out user, Suspicious activity, Work profile support.

92. Cloud-based web storage application audit log events: Cloud-based web storage application event name, Cloud-based web storage application event description, Cloud-based web storage application item type, Cloud-based web storage application item ID, Cloud-based web storage application item visibility, Cloud-based web storage application item prior visibility, Cloud-based web storage application user, Cloud-based web storage application visitor Boolean value, Cloud-based web storage

application file owner, Cloud-based web storage application event date, Cloud-based web storage application event IP address.

93. Groups audit log events: Groups event name, Groups event description, Groups event user, Groups event date.

94. Chat audit log events: Chat event name, Chat event description, Chat event user, Chat event date.

95. Whiteboard application audit log events: Whiteboard application ID Whiteboard application event description, Whiteboard application event name, Whiteboard application event user, Whiteboard application event date.

96. Note application audit log events: Note application event name, Note application event description, Note application event user, Note application event note owner, Note application event date, Note application note URI, Note application attachment URI.

97. Password vault audit log events: Password vault actor, Password vault event timestamp, Password vault event name, Password vault application username, Password vault application installation name, Password vault application credential name.

98. Takeout audit log events: Takeout event description, Takeout products requested, Takeout Job ID, Takeout event date, Takeout event IP address.

99. User accounts audit log events: User account event description, User account event date, User account event IP address, two-step verification disable, two-step verification enroll, Account password change, Account recovery email change, Account recovery phone change, Account recovery secret question change, Account recovery secret answer change.

100. Voice audit log events: Voice event name, Voice event description, Voice event date, Voice event user, Voice receiving phone number, Voice placing phone number, Voice call duration, Voice group message status, Voice call cost, Auto Attendant couldn't route to voicemail recipient, Auto attendant deleted, Auto attendant failed to transfer to a user, Auto attendant published, Auto attendant received a voicemail, Auto attendant voicemail failed to deliver, Auto attendant voicemail failed to forward.

101. User setting changes: 2-Step Verification Scratch Codes Of User Deleted, New 2-Step Verification Scratch Codes Generated For User, 3-Legged Oauth Device Tokens Revoked, 3-Legged Oauth Token Revoked, Add Recovery Email For User, Add Recovery Phone For User, Admin Privileges Granted For User, Admin Privileges Revoked For User, Application Specific Password Revoked For User, Automatic Contact Sharing Changed For User, Bulk Upload Notification, User Invite Cancelled, Custom Attribute Changed, External Id Changed, Gender Changed, Ims Changed, IP Whitelisted, Keywords Changed, User Location Changed, User Organization Changed, User Phone Numbers Changed, User Recovery Email Changed, User Recovery Phone Changed, User Relation Changed, User Address Changed, User Email Monitor Created, Data Transfer Requested For User, Delegated Admin Privileges Granted, Account Information Dump Deleted, Email Monitor Deleted, Mailbox Dump Deleted, Profile Photo Deleted, First Name Changed, Gmail Account Reset, Last Name Changed, Mail Routing Destination Created, Mail Routing Destination Deleted, Nickname Created, Nickname Deleted, Password Changed, Password Change Required On Next Login, Recovery Email Removed, Recovery Phone Removed, Account Information Requested, Mailbox Dump Requested, User Invite Resent, Cookies Reset For User And Forced Relogin, Security Key Registered For User, Security Key Revoked, User Invite Sent, Temporary Password Viewed, 2-Step Verification Turned Off, User Session Unblocked, Profile Photo Updated, User Advanced Protection Unenroll, User Archived, User Birthdate Changed, User Created, User Deleted, User Downgraded From Social Media Application, User Enrolled In 2-Step Verification, User List Downloaded, User Org Unit Changed, User Put In 2-Step Verification Grace Period, User Renamed, User Strong Auth Unenrolled, User Suspended, User Unarchived, User Undeleted, User Unsuspended, User Upgraded To Social Media Application.

102. Application Authoring application audit log elements: App synced, App edited, App added, App deleted, App invocation added, App invocation edited, App invocation deleted, App invocation action performed, App read call made, App bot invocation.

103. Organizational Administrative Data Elements: Set Terms and Conditions, Modify Terms and Conditions, Set org custom theme, Edit org custom theme, Add custom policy, Delete custom policy, Create User IdP Profile, Create environment, Delete environment, Rename environment, Edit domain name, Create business group, Edit business group name, Edit business group entitlement, Delete business group.

104. API audit log elements: Create API, Delete API, Import API, Update label of API, Update consumer endpoint of API, Update endpoint URI of API, Calendar API kind, Application API client version, Create API version, Delete API version, Import API, Edit name of API version, Edit description of API version, Edit API URL of API version, Add tag to API, Remove tag from API, Deprecate API, Set T&Cs, Create RAML, Modify RAML, Create endpoint, Update existing endpoint, Deploy proxy, Update deployed proxy, Redeploy proxy, Create SLA tier, Modify SLA tier, Deprecate SLA tier, Delete SLA tier, Apply policy, Edit policy, Remove policy, Create project, Delete project, Delete files, Rename project, Clean branch, Create branch, Delete branch, Save branch, Delete file, Move file, Import project, Publish to Exchange, Publish to API Platform, Add dependencies, Remove dependencies, Change dependencies, Reload dependencies, Merge Branch, Share project, Sync with Data Repository, Unsync with Data Repository, Modify organization settings, Rename branch, Modify project settings.

105. API Metadata: Create an API instance, Delete an API instance, Update an API instance.

106. Application Data: Create application, Delete application, Reset client secret, Request access, Request tier change, Request tier change approval, Approve application, Revoke application, Restore application, Create Mocking Service link, Delete Mocking Service link, Create/modify/delete Object store, Upload file, Delete file, Update file.

107. Private Portals audit log events: Create portal, Modify portal association, Delete portal, Add portal page, Make portal page visible, Delete portal page, Edit portal page, Hide portal page, Set portal theme, Modify portal theme, Modify portal security, Create a page, Update a page, Delete a page, Publish a portal.

108. Public Portals audit log events: Update a domain, Delete a domain, Create a page, Delete a page, Update a page, Create a portal, Publish a portal, Delete a portal, Update a portal.

109. Identity Management audit log events: Create identity provider configuration, Edit identity provider configuration, Delete identity provider configuration, Warning, Create identity management key, Set primary identity management key, Delete identity management key.

110. Connected App audit log events: Create Connected Application, Edit Connected Application, Delete Connected Application, Update Scope Assignments, Application Authorization Approved, Application Authorization Denied, Token Retrieval Success, Token

Retrieval Failed, Revoke Access/Refresh Tokens.

111. Team audit log events: Create Team, Update Team, Move Team, Add Members, Remove Members, Add Permissions, Remove Permissions, Edit External Group Mappings, Delete Team.

112. Asset Management audit log events: Create an asset, Update an asset, Delete an asset, Share an asset, Publish an asset to public portal, Remove an asset from public portal, Update an asset icon, Delete an asset icon, Create a managed tag (category), Delete a managed tag (category), Delete an organization, Update tags, Create a tag configuration, Update a tag configuration, Delete a tag configuration.

113. Asset Review audit log events: Create a Comment, Delete a comment, Update a comment, Create a review, Delete a review, Update a review.

114. Runtime Manager audit log events: Create application, Start application, Restart application, Stop application, Delete application, Change application zip file, Promote application from sandbox, Change application runtime, Change application worker size, Change application worker number, Enable/disable persistent queues, Enable/disable persistent queue encryption, Modify application properties, Enable/disable insight, Modify log levels, Create/modify/delete alerts, Enable/disable alerts, Create/modify/delete application data, Create/modify schedules, Create/modify/delete tenants, Enable/disable schedules, Clear queues, Enable/Disable static IP, Allocate/release static IP, LoadBalancer Create/modify/delete, Create/modify/delete alerts V2, Create/modify/delete VPC, Create/modify/delete VPN.

115. Server audit log events: Add server, Delete server, Rename server, Create server group, Delete server group, Rename server group, Add server to server group, Remove server from server group, Create cluster, Delete Cluster, Rename cluster, Add server to cluster, Remove server from cluster, Deploy application, Delete application, Start application, Stop application, Redeploy application with existing file, Redeploy application with new file.

116. Private Spaces audit log events: Create/Modify/Delete private space, Create/Modify/Delete connection, Create/Modify/Delete VPN, Create/Modify/Delete transit gateway, Create/Modify/Delete TLSContext, Create/Modify/Delete routes.

117. Anypoint MQ audit log events: Create/modify/delete/purge queue, Create/modify/delete exchange, Create/delete exchange binding, Create/delete/regenerate client.

118. Mentorship program application data: Notification Logs, Notification Type, Notification Template, Status, Time sent, Email Events, General Application Data, Support Tickets, Product Usage Analytics, Product update in app notification delivery status, Application error logs, Application request logs.

119. User Experience Device Audit events: Administrator Account Status, All Antispywares, All Antiviruses, All Firewalls, Allow Non-Provisionable Devices, Antispyware Name, Antispyware Real Time Protection, Antispyware Up To Date, Antivirus Name, Antivirus Real Time Protection, Antivirus Up To Date, Audit Account Logon Events, Audit Account Management, Audit Directory Service Access, Audit Logon Events, Audit Object Access, Audit Policy Change, Audit Privilege Use, Audit Process Tracking, Audit System Events, Average Boot Duration, Average Fast Startup Duration, Average Logon Duration, Bios Serial Number, Boot Disk Health Status, Boot Disk Type, Chassis Serial Number, Controller Ca License Universal Unique Identifier, Controller Ca Status, Controller Crash Guard Count, Controller Crash Guard Limit, Controller Crash Guard Protection Interval, Controller Crash Guard React Interval, Controller Custom Shells, Controller Data Channel Protocol, Controller DNS Res Preference, Controller Engage Service Status, Controller Freezes Monitoring, Controller Installs Scan Interval, Controller Is Visible, Controller Log Level, Controller Max Segment Size, Controller Ra Execution Policy, Controller SMB Print Mon Status, Controller String Tag, Controller Web Mon Status, Collector Distinguished Name, Collector Installation Log, Collector Package Target Version, Collector Print Monitoring Status, Collector Status, Collector Tag, Collector Update Status, Collector Version, CPU Frequency, CPU Model, Database Usage, Device Encryption Required, Device Manufacturer, Device Model, Device Password Required, Device Product Id, Device Product Version, Device Serial Number, Device Type, Device Universal Unique Identifier, Device Universal Unique Identifier, Directory Service Site, Disks Manufacturers, Disks Smart Index, Distinguished Name, EAS Access State, EAS Access State Reason, EAS Device Access Rule, EAS Device Identity, EAS Exemption, EAS Policy Application Status, EAS Policy Name, EAS Policy Update, Email Attachment Enabled, Enforce Password History, Entity, Extended Logon Duration Baseline, Firewall Name, Firewall Real Time Protection, First Seen, Graphical Card Ram, Graphical Cards, Group Name, Guest Account Status, Hard Disks, ID, internet Security Settings, Ip Addresses, Is Collector Distinguished Name Truncated, Is Directory Service Site Truncated, Last Boot Duration, Last Extended Logon Duration, Last Ip Address, Last Known Connection Status, Last Local Ip Address, Last Logged On User, Last Logon Duration, Last Logon Time, Last Seen, Last Seen On TCP, Last System Boot, Last Update, Last Update Status, Last Updater Request, Last Windows Update, Local Administrators, Local Power Users, Logical CPU Number, Logical Drives, Mac Addresses, Maximum Password Age, Membership Type, Minimum Password Age, Minimum Password Length, Monitor Models, Monitor Resolutions, Monitors, Monitors Serial Numbers, Device Name, Number Of Antispyware, Number Of Antiviruses, Number Of Cores, Number Of CPUs, Number Of Days Since First Seen, Number Of Days Since Last Boot, Number Of Days Since Last EAS Policy Update, Number Of Days Since Last Logon, Number Of Days Since Last Seen, Number Of Days Since Last Seen On TCP, Number Of Days Since Last Windows Update, Number Of Firewalls, Number Of Graphical Cards, Number Of Monitors, OS Architecture, OS Build, OS Version And Architecture, Password Complexity Requirements, Platform, Privileges Of Last Logged On Users, Sd Card Encryption Required, Sid, Storage Policy, System Drive Capacity, System Drive Free Space, System Drive Usage, Total Active Days, Total Drive Capacity, Total Drive Free Space, Total Drive Usage, Total Nonsystem Drive Capacity, Total Nonsystem Drive Free Space, Total Nonsystem Drive Usage, Total Ram, Updater Error, Updater Version, Upgrade Group, User Account Control Status, Windows License Key, Windows Updates Status, WMI Status.

120. User Experience Audit Records: Country, Database Usage, Department, Distinguished Name, First Seen, Full Name, Unique User Identifier, Job Title, Last Seen, Locality, Location, User Logon Name, Number Of Days Since Last Seen, Org Unit, Seen On Mac OS, Seen On Mobile, Seen On Windows, User Security Identifier, Total Active Days, Type, Duration, Real Duration, Activity Type.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

a. To appropriate agencies, entities, and persons when (1) the Postal Service

suspects or has confirmed that there has been a breach of the system of records; (2) the Postal Service has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Postal Service (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Postal Service's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

RECORD SOURCE CATEGORIES:

Employees; contractors; customers.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records relating to system administration are retrievable by user ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records relating to system administration are retained for twenty-four months.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Computer access is limited to authorized personnel with a current security clearance, and physical access is limited to authorized personnel who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by encryption, mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Information Officer and Executive Vice President and include their name and address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

December 1, 2023; *88 FR 83981;* May 10th, 2021; *86 FR 24902.*

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2024–07980 Filed 4–15–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Change in Classes of General Applicability for Competitive Products

AGENCY: Postal Service™.

ACTION: Notice of a change in classes of general applicability for competitive products.

SUMMARY: This notice sets forth changes in classes of general applicability for competitive products.

DATES: *Applicable date:* July 14, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, 202–268–7820.

SUPPLEMENTARY INFORMATION: On February 8, 2024, pursuant to their authority under 39 U.S.C. 3632 and 3642, the Governors of the Postal Service established classification changes for rate categories for vendor-assisted electronic money transfer, which are within the International Money Transfer Service—Outbound product found at Mail Classification Schedule section 2620.3. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2).

Sarah Sullivan,

Attorney, Ethics and Legal Compliance.

Decision of the Governors of the United States Postal Service on Mail Classification Schedule Changes Concerning International Money Transfer Service—Outbound and International Money Transfer Service—Inbound (Governors' Decision No. 24–2)

February 8, 2024

Statement of Explanation and Justification

Pursuant to our authority under section 404(b) and Chapter 36 of title 39, United States Code, the Governors establish classification changes to the International Money Transfer Service (IMTS)—Outbound product and the IMTS—Inbound product, to occur in three phases.

As for the first phase, the IMTS—Outbound product includes an Electronic Money Transfer service that enables customers to make payments or transfer funds to individuals or firms in foreign destinations. Electronic money transfers are available through the Sure Money (DineroSeguro) service, which is based on an agreement with a financial services company. During the last few years there have been significant declines in the number of electronic money transfers purchased from the Postal Service, and despite substantial historical price increases, the Sure Money (DineroSeguro) service has not covered its costs. Thus, the Postal Service intends to terminate the Sure Money (DineroSeguro) service by removing the prices and price categories in Mail Classification Schedule section 2620 that concerns IMTS—Outbound.

As for the second and third phases, IMTS—Outbound enables customers to make payments or transfer funds to individuals or firms in foreign destinations. This product includes hardcopy international postal money orders, which may be offered in cooperation with foreign postal operators. IMTS—Inbound provides a service to foreign postal operators for cashing of hard copy international postal money orders sent to recipients in the United States. During the last few years there have been significant declines in the number of international postal money orders sold and cashed by the Postal Service, and despite substantial historical price increases, the international postal money order service has not covered its costs.

Currently, both the outbound and inbound international postal money

order services are based on underlying bilateral agreements executed with various foreign postal operators. During the last few years, there have been significant declines in the number of international postal money orders purchased. Thus, the Postal Service intends to terminate both the outbound and inbound international postal money order services, first by terminating the sales of international postal money orders and removing the text concerning the IMTS—Outbound product from the Mail Classification Schedule, and then by terminating the cashing of international postal money orders and removing the text concerning the IMTS—Inbound product from the Mail Classification Schedule.

We have evaluated the classification changes to IMTS—Outbound and IMTS—Inbound in this context in accordance with 39 U.S.C. 3632 and § 3642. We approve the changes, finding that they are appropriate, and are consistent with the applicable criteria.

Order

We direct management to coordinate with the U.S. Department to State concerning the termination of the underlying bilateral agreements in order to determine the consistency of this action with the Universal Postal Union Postal Payment Services Agreement, and to file with the Postal Regulatory Commission the required documents and supporting documents consistent with this Decision. The changes in classification to the Mail Classification Schedule set forth herein shall be implemented in the following three phases,

- The removal of prices for Sure Money (DineroSeguro) for IMTS—Outbound from the Mail Classification Schedule, effective July 14, 2024, or as soon as practicable thereafter (Phase I),
- The removal of the IMTS—Outbound product from the Mail Classification Schedule, effective October 1, 2024, or as soon as practicable thereafter (Phase II),
- The removal of the IMTS—Inbound product from the Mail Classification Schedule, effective October 1, 2025, or as soon as practicable thereafter (Phase III).

By The Governors:

/s/

Roman Martinez IV,
Chairman, Board of Governors.

United States Postal Service Offie of the Board of Governors

Certification of Governors' Vote on Governors' Decision No. 24–2

Consistent with 39 U.S.C. 3632(a), I hereby certify that, on February 8, 2024, the Governors voted on adopting Governors' Decision No. 24–2, and that a majority of the Governors then holding office voted in favor of that Decision.

/s/

February 8, 2024
Michael J. Elston,
Secretary of the Board of Governors.

Part B

Competitive Products

2000 Competitive Product List
* * * * *
2600 Special Services
* * * * *
2620 International Money Transfer Service—Outbound
* * * * *
2620.3 Prices
* * * * *

Vendor Assisted Electronic Money Transfer

[Reserved]

	~~Transfer Amount~~		
	~~Minimum Amount ($)~~	~~Maximum Amount ($)~~	~~Per Transfer ($)~~
~~Electronic Money Transfer~~	~~0.01~~	~~750.00~~	~~69.30~~
	~~750.01~~	~~1,500.00~~	~~100.25~~
~~Refund~~	~~0.01~~	~~1,500.00~~	~~151.90~~
~~Change of Recipient~~	~~0.01~~	~~1,500.00~~	~~80.80~~

* * * * *

[FR Doc. 2024–07982 Filed 4–15–24; 8:45 am]
BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99937; File No. SR–CBOE–2024–017]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for the Cboe Silexx Platform

April 10, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2024, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend fees for the Cboe Silexx platform. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend fees for the Cboe Silexx platform (''Silexx platform''),[3] effective April 1, 2024.

By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders, and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions. The Silexx front-end and back-end platforms are a software application that is installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform.

The Exchange offers several versions of its Silexx platform. Originally, the Exchange offered the following versions of the Silexx platform: Basic, Pro, Sell-Side, Pro Plus Risk and Buy-Side Manager (''Legacy Platforms''). The Legacy Platforms are designed so that a User may enter orders into the platform to send to the executing broker, including TPHs, of its choice with connectivity to the platform. The executing broker can then send orders to Cboe Options (if the broker-dealer is a TPH) or other U.S. exchanges (and trading centers) in accordance with the User's instructions. Users cannot directly route orders through any of the Legacy Platforms to an exchange or trading center nor is the platform integrated into or directly connected to Cboe Options' System. In 2019, the Exchange made available a new version of the Silexx platform, Silexx FLEX, which supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange to establish connectivity and submit orders directly to the Exchange.[4] In 2020, the Exchange made an additional version of the Silexx platform available, Cboe Silexx, which supports the trading of non-FLEX Options and allows authorized Users with direct access to the Exchange to establish connectivity and submit orders directly to the Exchange.[5] Cboe Silexx is essentially the same platform as Silexx FLEX, with the same applicable functionality, except that it additionally supports non-FLEX trading. Use of the Silexx platform is completely optional.

The Exchange has adopted fees for additional functionality that users may purchase in connection with their use of the Silexx platform. The Exchange offers each type of additional functionality as a convenience and use of each type of additional functionality is discretionary and not compulsory. For example, for the Legacy platforms, the Exchange assesses a fee for use of the ''Staged Orders, Drop Copies, and Order Routing Functionality for FIX Connections (sessions) Using Third-Party FIX Router'' feature. This functionality provides firms with the ability to receive staged orders, receive ''drop copies'' of order fill messages, and route orders to executing brokers through a third-party FIX router.

By way of background, Financial Information eXchange (''FIX'') is an industry-standard, non-proprietary API that permits market participants to connect to exchanges. FIX connectivity provides users with the ability to receive ''drop copy'' order fill messages from their executing brokers. These fill messages allow customers to update positions, risk calculations, and streamline back-office functions. Additionally, FIX connections can be updated to permit the platform to receive orders sent from another system and then route these orders through the platform for execution (staged orders) as well as provide users with the ability to route orders in various ways to executing brokers (such as designation of a market to which the broker is to route an order received from the platform and use of a broker's ''smart router'' functionality). Some users have connections to third-party FIX routers, who currently normalize the format of messages of their client. To the extent a FIX router has a connection to the Silexx platform, users that also have connections to these routers may elect to receive staged orders, drop copies, and order routing functionality through a FIX router. Additionally, the Silexx platform permits users to elect to receive daily transmission of equity order reports related to order users submit through the platform.

As noted above, for the Legacy Platforms, the Exchange assesses a fee for use of the ''Staged Orders, Drop Copies, and Order Routing Functionality for FIX Connections (sessions) Using Third-Party FIX Router'' feature. Currently, the Exchange assesses a fee of $500 per month per FIX connection, and such fee is waived for FLEX and Cboe Silexx. Similarly, the Exchange assesses a fee for orders routed via FIX into Cboe Silexx,

[3] Cboe Silexx, Inc. (''Cboe Silexx''), which is a subsidiary of the Exchange's parent, Cboe Global Markets, Inc., offers the Silexx platform.

[4] *See* Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR–CBOE–2019–061). Only Users authorized for direct access and who are approved to trade FLEX Options may trade FLEX Options via Cboe Silexx. Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange's technical specifications.

[5] *See* Securities Exchange Act Release No. 88741 (April 24, 2020) 85 FR 24045 (April 30, 2020) (SR–CBOE–2020–040). Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5 and the Exchange's technical specifications.

applicable to each TPH broker to whom a TPH customer using a non-Cboe Silexx workstation sends orders electronically to a TPH broker's Silexx workstation. The fee is $500 per month for each TPH broker with a Silexx workstation to which the TPH customer sends orders.

The Exchange now proposes to adopt an additional order routing fee for Cboe Silexx, effective April 1, 2024. Particularly, the Exchange proposes to adopt a ''FIX order routing out of Cboe Silexx'' fee which would be payable by each receiving trading firms (such as an executing broker) that maintains a FIX router connected to the Silexx platform to receive orders electronically from a Silexx workstation, The proposed fee is $500 per month per receiving trading firm, regardless of how many Silexx workstations it connects to.

The proposed fee is substantially similar to the ''FIX order routing into Cboe Silexx'' fee, which assesses $500 per month for each receiving Trading Permit Holder that uses a non-Silexx workstation to send orders electronically into (as compared to out of) a TPH broker's Cboe Silexx workstation to which the TPH customer sends orders. Additionally, the Silexx Fees Schedule also currently provides for a ''Staged Orders, Drop Copies, and Order Routing Functionality for FIX Connections (sessions) Using Third-Party FIX Router'' fee set forth in the Silexx Fees Schedule, which is applicable to Legacy Platforms and currently waived for FLEX and Cboe Silexx. As noted above, Silexx users that have connections to these third-party FIX routers may elect to receive staged orders, drop copies, and order routing functionality through the FIX route. Establishing the monthly fee for the Cboe Silexx platform will allow for Cboe Silexx's recoupment of the costs of maintaining and supporting FIX order routing out of Cboe Silexx to third-party entities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed monthly fee for FIX order routing out of Cboe Silexx is reasonable, equitable, and not unfairly discriminatory because the fee will apply uniformly to all receiving trading firms that elect to establish and maintain a FIX router connection to the Cboe Silexx platform. The Exchange notes that each additional type of Silexx functionality, including FIX order routing out of Cboe Silexx, are available to all market participants, and users have discretion to determine which, if any, types of functionality to purchase. The Exchange believes the monthly fee for FIX order routing out of Cboe Silexx functionality, as proposed, is reasonable, as the fee is the same as an analogous fee currently charged for similar functionality on the Legacy Platforms, and as well as for Cboe Silexx as it relates to FIX order routing into Cboe Silexx functionality. Additionally, the Exchange believes the proposed fee is reasonable as it accounts for administrative costs that Cboe Silexx is incurring, but not charging users, to maintain support for these third-party FIX routers.

Finally, the Exchange notes that use of the platform is discretionary and not compulsory, as users can choose to route orders, including to Cboe Options, without the use of the platform. The Exchange makes the platform available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the platform is merely an alternative offered by 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will apply to similarly situated participants uniformly, as described in detail above. The Exchange notes that each additional type of Silexx functionality is available to all market participants, and users have discretion to determine which, if any, types of functionality to purchase.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to Cboe Options. Additionally, Cboe Silexx is similar to types of products that are widely available throughout the industry, including from some exchanges, at similar prices. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants. Further, the proposed rule change relates to an optional platform. As discussed, the use of the platform continues to be completely voluntary and market participants will continue to have the flexibility to use any entry and management tool that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their orders. The Cboe Silexx platform is not an exclusive means of trading, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial than Cboe Silexx, they may simply use those products instead, including for routing orders to the Exchange (indirectly or directly if they are authorized Users). Use of the functionality is completely voluntary.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2024–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2024–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–017 and should be submitted on or before May 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07966 Filed 4–15–24; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99934; File No. SR–MEMX–2024–12]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

April 10, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 28, 2024, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on April 1, 2024. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) modify the Liquidity Provision Tiers by modifying the required criteria under Liquidity Provision Tier 1 and modifying the required criteria under Liquidity Provision Tier 2; (ii) modify NBBO Setter Tier 1 by modifying the required criteria under such tier; (iii) modify the Tape B Volume Tier 1 by increasing the rebate provided and modifying the required criteria under such tier; (iv) modify the Cross Asset Tiers by adopting new Cross Asset Tiers 1 and 2 and re-numbering the existing Cross Asset Tier 1 to Cross Asset Tier 3; (v) modify the Displayed Liquidity Incentive (''DLI'') Additive Rebate Tier 1 by reducing the rebate provided and modifying the required criteria under such tier; and (vi) adopt a new Display Price-Sliding Tier, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

volume of equities trading.[4] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2.5% of the overall market share.[5] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a base rebate of $0.0015 per share for executions of Added Displayed Volume.[6] The Exchange also currently offers Liquidity Provision Tiers 1–5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the required criteria under Liquidity Provision Tier 1 and modifying the required criteria under Liquidity Provision Tier 2, as further described below.

First, with respect to Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV[7] (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) a Step-Up ADAV[8] (excluding Retail Orders) of the TCV from September 2023 that is equal to or greater than 0.05%, an ADV[9] that is equal to or greater than 0.50% of the TCV, and a Non-Displayed ADAV[10] that is equal to or greater than 5,000,000 shares; or (3) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 7,000,000 shares.[11] The Fee Schedule indicates that criteria (2) of Liquidity Provision Tier 1 will expire no later than March 31, 2024. Now, given the expiration of criteria (2) of Liquidity Provision Tier 1, it is necessary to modify the Fee Schedule to delete this criteria (2) as well as the footnote under the Liquidity Provision Tiers pricing table that indicates its expiration, as both are no longer applicable and otherwise obsolete. As such, the Exchange now proposes to modify the required criteria under Liquidity Provision Tier 1 such that a Member would qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 7,000,000 shares. Thus, such proposed change would keep criteria (1) intact, delete existing criteria (2) (based on a Step-Up ADAV from September 2023 threshold) and the corresponding footnote, and re-number existing criteria (3) as the new criteria (2). The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of $0.0032 per share for executions of Added Displayed Volume for members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV and a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) a Step-Up Displayed ADAV of the TCV from September 2023 that is equal to or greater than 0.10% and a Displayed ADAV (excluding Retail Orders) that is equal to or greater than 0.20% of the TCV.[12] The Fee Schedule indicates that criteria (2) of Liquidity Provision Tier 2 will expire no later than March 31, 2024. Now, given the expiration of criteria (2) of Liquidity Provision Tier 2, it is necessary to modify the Fee Schedule to delete this criteria (2) as well as the footnote under the Liquidity Provision Tiers pricing table that indicates its expiration, as both are no longer applicable and otherwise obsolete. As such, the Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2 such that a Member would qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV and a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) an ADAV that is equal to or greater than 0.35% of the TCV. Thus, such proposed change would keep the existing criteria (1) intact with no changes, delete existing criteria (2) (based on a Step-Up Displayed ADAV from September 2023 threshold) and the corresponding footnote, and replace it with a new criteria (2) that consists of an ADAV threshold. The Exchange is not proposing to change the rebate provided under such tier.

The Exchange believes that the tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed

[4] Market share percentage calculated as of March 28, 2024. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[5] *Id.*

[6] The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume'' with a Fee Code of ''B'', ''D'' or ''J'', as applicable, on execution reports.

[7] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and ''Displayed ADAV'' means ADAV with respect to displayed orders.

[8] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[9] As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

[10] As set forth on the Fee Schedule, ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

[11] The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 1'' with a Fee Code of ''B1'', ''D1'' or ''J1'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[12] The proposed pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 2'' with a Fee Code of ''B2'', ''D2'' or ''J2'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

NBBO Setter Tier

The Exchange currently offers NBBO Setter Tier 1 under which a Member may receive an additive rebate of $0.0002 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO and have a Fee Code B [13] (such orders, ''Setter Volume''), and an additive rebate of $0.0001 per share for executions of Added Displayed Volume (other than Retail Orders) that do not establish the NBBO (*i.e.,* Fee Codes D and J) [14] by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 0.10% of the TCV; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 0.05% of the TCV and a Step-Up ADAV with respect to orders with a Fee Code B that is equal to or greater than 75% of the Member's December 2023 ADAV with respect to orders with a Fee Code B. Now, the Exchange proposes to modify the required criteria under NBBO Setter Tier 1 such that a Member would now qualify for such tier by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 0.10% of the TCV; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 0.05% of the TCV or 5,000,000 shares and a Step-Up ADAV with respect to orders with a Fee Code B that is equal to or greater than 75% of the Member's March 2024 ADAV with respect to orders with a Fee Code B. Thus, such proposed change keeps the first alternative criteria intact with no changes but modifies the second alternative criteria by adding an alternative 5,000,000 share ADAV threshold and referencing a more recent baseline month in the Step-Up portion of the criteria. Given the more recent baseline month, the Exchange also proposes that criteria (2) of NBBO Setter Tier 1 will expire no later than September 30, 2024. As such, the Exchange proposes to indicate this in the existing note under the NBBO Setter Tier pricing table on the Fee Schedule, by deleting the existing expiration of July 31, 2024, and replacing it with the new expiration date of September 30, 2024.

The Exchange believes that the proposed modified alternative criteria provides an incremental incentive for Members to strive for higher ADAV on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange believes that the tier, as proposed, would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members. The Exchange is not proposing to change the amount of the additive rebates provided under such tier.

Tape B Volume Tier

The Exchange currently offers Tape B Volume Tier 1 under which qualifying Members may receive an additive rebate of $0.0001 per share for executions of Added Displayed Volume (excluding Retail Orders) in Tape B Securities (such orders, ''Tape B Volume'') by achieving: (1) a Step-Up Tape B ADAV [15] of the Tape B TCV from October 2023 that is equal to or greater than 0.10% (excluding Retail Orders); and (2) a Tape B ADAV that is equal to or greater than 0.25% of the Tape B TCV (excluding Retail Orders). The $0.0001 per share additive rebate is provided in addition to the rebate that is otherwise applicable to each of a qualifying Members' orders that constitutes Tape B Volume (including a rebate provided under another pricing tier/incentive).[16] Now, the Exchange proposes to increase the additive rebate provided for executions of Tape B Volume to $0.0002 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving a Tape B ADAV that is equal to or greater than 0.30% of the Tape B TCV (excluding Retail Orders). Accordingly, the new criteria eliminates the Step-Up Tape B ADAV requirement and increases the Tape B ADAV of the Tape B TCV requirement from 0.25% to 0.30%. In light of the removal of the Step-Up Tape B ADAV requirement, the Exchange also proposes to delete the language under the Tape B Volume Tier pricing table on the Fee Schedule that indicates Tape B Volume Tier 1 will expire no later than April 30, 2024.

The purpose of modifying the required criteria and increasing the additive rebate provided for executions of Tape B Volume is for business and competitive reasons, as the Exchange believes that such changes would incentivize Members to submit additional order flow in Tape B Securities, thereby promoting price discovery and market quality on the Exchange.

Cross Asset Tiers

The Exchange currently offers Cross Asset Tier 1 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume in securities priced at or above $1.00 per share by achieving the corresponding required volume criteria for such tier on the Exchange's equity options platform, MEMX Options. The Exchange now proposes to renumber the existing Cross Asset Tier 1 as Cross Asset Tier 3, and adopt new Cross Asset Tiers 1 and 2, each as described below.

First, the Exchange proposes to adopt Cross Asset Tier 1 under which the Exchange would provide an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an Options ADAV [17] in the Market Maker [18] capacity that is equal to or greater than 250,000 contracts on MEMX Options and an ADAV on MEMX Equities that is equal to or greater than 0.30% of the TCV. The Exchange proposes to provide Members that qualify for Cross Asset Tier 1 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the

[13] The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

[14] The Exchange notes that orders with Fee Code J include orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market. Orders with Fee Code D include orders that add displayed liquidity to the Exchange but that are not Fee Code B or J, and thus, orders with Fee Code B, D or J include all orders, other than Retail Orders, that add displayed liquidity to the Exchange.

[15] As set forth in the Fee Schedule, ''Step-Up Tape B ADAV'' means the ADAV in Tape B securities as a percentage of the TCV in the relevant baseline month subtracted from the current ADAV in Tape B securities as a percentage of the TCV.

[16] The pricing for the Tape B Volume Tier is referred to by the Exchange on the Fee Schedule under the description ''Tape B Volume Tier'' with a Fee Code of ''b'' to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[17] As set forth on the Fee Schedule, a Member's ''Options ADAV'' for purposes of equities pricing means the average daily added volume calculated as a number of contracts added on MEMX Options per day by the Member, which is calculated on a monthly basis.

[18] As set forth on the MEMX Options Fee Schedule, ''Market Maker'' applies to any order for the account of a registered Market Maker. ''Market Maker'' shall have the meaning set forth in Rule 16.1 of the MEMX Rulebook.

same rebate that is applicable to the majority of executions on the Exchange for all Members (*i.e.,* including those that do not qualify for any tier).

The Exchange further proposes to adopt Cross Asset Tier 2 under which the Exchange would provide an enhanced rebate of $0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an Options ADAV in the Market Maker capacity that is equal to or greater than 150,000 contracts on MEMX Options. The Exchange proposes to provide Members that qualify for Cross Asset Tier 2 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to the majority of executions on the Exchange for all Members (*i.e.,* including those that do not qualify for any tier).

Lastly, given the adoption of the aforementioned tiers, the Exchange proposes to renumber the current Cross Asset Tier 1 as Cross Asset Tier 3. The Exchange is not proposing to modify the rebate provided nor the criteria required under this re-numbered tier, however, the adoption of the new Cross Asset Tiers 1 and 2 as well as the re-numbering requires certain modifications to the notes below the Cross Asset Tier pricing table on the Fee Schedule. Specifically, the Exchange is proposing to add a note stating that the definition of Market Maker is set forth in the MEMX Options Fee Schedule, to renumber the existing notes, and to replace prior references in the notes to Cross Asset Tier 1 with Cross Asset Tier 3.

The proposed new Cross Asset Tier 1 and Cross Asset Tier 2 are designed to encourage Members to maintain or increase their order flow to the MEMX Options Exchange in the Market Maker capacity in order to qualify for the proposed enhanced rebate for executions of Added Displayed Volume. The Exchange believes that the addition of the new Cross Asset Tier 1 and Cross Asset Tier 2 would encourage the submission of additional order flow in the Market Maker capacity on MEMX Options, thereby contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants. As a result of achieving a higher rebate for activity on MEMX Options, and given the equities component of Cross Asset Tier 1, the Exchange further believes that the proposed tiers will encourage greater participation on MEMX Equities by qualifying participants, thereby contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

DLI Additive Rebate

The Exchange currently offers the DLI Additive Rebate Tier 1 under which a Member may receive an additive rebate for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that otherwise qualify for the applicable rebate under Liquidity Provision Tier 1 or Liquidity Provision Tier 2 as well as the applicable criteria under DLI Tier 1.[19] The Exchange now proposes to modify the DLI Additive Rebate Tier 1 by decreasing the additive rebate provided and updating the required applicable criteria under Liquidity Provision Tiers 1 and 2 in accordance with this proposal, as further described below.

As noted above, under DLI Additive Rebate Tier 1, the Exchange currently provides an additive rebate of $0.0001 per share for executions of Added Displayed Volume that first meet the criteria under DLI Tier 1, which include achieving: (1) an NBBO time of at least 25% in an average of at least 1,000 securities per trading day during the month; and (2) an ADAV that is equal to or greater than 0.10% of the TCV,[20] as well as the applicable criteria under Liquidity Provision Tier 1 or Liquidity Provision Tier 2. Under Liquidity Provision Tier 1, the Exchange is now proposing (as described above) Members will received the enhanced rebate by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 7,000,000 shares. Thus, the Exchange proposes to modify the criteria for the DLI Additive Rebate to correspond to the modifications to Liquidity Provision Tier 1 criteria described above. Under Liquidity Provision Tier 2, the Exchange is now proposing (as described above) that Members will receive the enhanced rebate by achieving: (1) an ADAV that is greater than or equal to 0.25% of the TCV and a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) an ADAV that is greater than or equal to 0.35% of the TCV. Thus, the Exchange proposes to modify the criteria for the DLI Additive Rebate to correspond to the modifications to Liquidity Provision Tier 2 criteria described above. Again, the Exchange notes that Members qualify for the DLI Additive rebate by achieving both the criteria under DLI Tier 1 and either Liquidity Provision Tier 1 or Liquidity Provision Tier 2.

Additionally, the Exchange proposes to reduce the additive rebate under the DLI Additive Rebate Tier 1 to $0.00005 per share. Other than the criteria changes noted above associated with the Exchange's proposed changes to the required criteria under Liquidity Provision Tiers 1 and 2, the Exchange does not propose to make any additional changes to the criteria required under the DLI Additive Rebate Tier 1. The purpose of reducing the additive rebate under the DLI Additive Rebate Tier 1, which the Exchange believes represents a modest reduction, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's philosophy of encouraging added displayed liquidity as well as consistently quoting at the NBBO on the Exchange.[21]

Display-Price Sliding Tier

Currently, the Exchange provides a base rebate of $0.0008 per share for executions of orders subject to Display-Price Sliding that add liquidity to the Exchange and receive price improvement over the order's ranked price when executed (such orders, ''Added Price-Improved Volume'') in securities priced at or above $1.00 per share.[22] Further, such orders are subject to the Exchange's Non-Display Add Tiers such that a Member that qualifies for a Non-Display Add Tier would receive the rebates provided under such tier that are applicable to executions of orders that add non-displayed liquidity to the Exchange with respect to its

[19] This pricing is referred to by the Exchange on the Fee Schedule under the existing description ''DLI Additive Rebate'' with a Fee Code of ''q'' to be appended to the otherwise applicable Fee Code for qualifying executions.

[20] The enhanced rebate provided under DLI Tier 1 is $0.0031 per share for executions of Added Displayed Volume.

[21] In light of the newly proposed Display-Price Sliding Tier set forth below, the Exchange also proposes to include Fee Code ''I'' as a possible fee code to which the DLI additive rebate may apply in the note under the DLI Additive Rebate pricing table in the Fee Schedule.

[22] The pricing for executions of Added Price-Improved Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added volume, order subject to Display-Price Sliding that receives price improvement when executed'' with a Fee Code of ''P'' to be provided by the Exchange on the monthly invoices provided to Members.

executions of Added Price-Improved Volume.[23]

As background regarding the mechanics of Added Price-Improved Volume, the Exchange notes that pursuant to the Exchange's Display-Price Sliding functionality, an order that would lock or cross a protected quotation is ranked on the Exchange's order book at the locking price and displayed at one minimum price variation less aggressive than the locking price. For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer, and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid. Additionally, Exchange Rule 11.10(a)(4)(D) allows an order subject to the Display-Price Sliding process that is not executable at its most aggressive price to be executed at one-half minimum price variation less aggressive than the price at which it is ranked. Specifically, in the event an order submitted to the Exchange on the side opposite such a price slid order is a market order or a limit order priced more aggressively than an order displayed on the Exchange's order book (*i.e.,* the incoming order is priced more aggressive than the locking price), the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order.

Based on this functionality, orders executed as described above will receive price improvement over the price at which such orders are ranked. Because price slid orders subject to the order handling process described above will receive price improvement, the Exchange provides the base rebate noted above of $0.0008 per share.

Now, the Exchange proposes to adopt a volume-based tier, referred to by the Exchange as the Display-Price Sliding Tier, under which the Exchange will provide an enhanced rebate for executions of Added Price-Improved Volume for qualifying Members who meet a certain specified Added Price-Improved Volume threshold on the Exchange, as further described below.

Specifically, under Display-Price Sliding Tier 1, the Exchange is proposing that if a Member achieves an ADAV with respect to orders subject to Display-Price Sliding that receive price improvement when executed (*i.e.* Added Price-Improved Volume) (excluding Retail Orders) that is equal to or greater than 5,000,000 shares, the Exchange will provide a rebate for those Added Price-Improved Volume executions equaling the highest possible rebate otherwise achieved for that Member for its Added Displayed Volume during that month. In order to ascertain the applicable rebate, at the end of each month, if a Member's Added Price-Improved Volume ADAV equals or exceeds 5,000,000 shares, the applicable executions (which are currently assigned a Fee Code of ''P'') will be assigned the Fee Code ''I'', and the Exchange will provide that Member's highest Added Displayed Volume[24] rebate for all of its transactions marked ''I'' during that month, plus any otherwise achieved additive rebates under the Tape B Volume Tier and DLI Additive Rebate Tier.[25] As an example, if Member A meets the criteria under the Display-Price Sliding Tier 1 for its Added Price-Improved Volume, and that Member also met the required criteria during that month under Liquidity Provision Tier 1, as well as the required criteria under the Tape B Volume Tier, the Exchange would provide a total enhanced rebate of $0.0035 per share (*i.e.* the $0.0033 rebate under Liquidity Provision Tier 1 plus the proposed $0.0002 additive rebate under the Tape B Volume Tier) for its total Added Price-Improved Volume executed during that month. In this same example, if Member A also achieved the required criteria under Cross Asset Tier 1 (which provides an enhanced rebate of $0.00026 per share), it would still receive $0.0035 per share for its Added-Price Improved Volume given that the under the proposed Display-Price Sliding Tier, the *highest* possible rebate otherwise achieved for the Member's Added Displayed Volume is awarded.

Along those same lines, as noted on the Fee Schedule, to the extent a Member qualifies or multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply. Accordingly, in the event that the rebate a Member would be awarded for its Added-Price Improved Volume by meeting the criteria under the Non-Display Add Tiers exceeds the rebate it would be awarded by also meeting the criteria under the Display-Price Sliding Tier, the Exchange proposes that it will continue to mark those executions ''P'' and award the rebate earned under the Non-Display Add Tiers, if applicable.

The Exchange proposes to provide Members that qualify for Display-Price Sliding Tier 1 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to the majority of executions on the Exchange for all Members (*i.e.,* including those that do not qualify for any tier).

The Exchange believes that the proposed Display-Price Sliding Tier provides an incremental incentive for Members to maintain or strive for higher ADAV on the Exchange in Added Price-Improved Volume in order to receive the enhanced rebate provided under the tier. The Exchange believes that this resulting additional displayed, liquidity-adding volume, would contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants and, in turn, enhance the attractiveness of the Exchange as a trading venue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[26] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[27] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over

[23] Executions of Added Price-Improved Volume for Members that qualify for the Non-Display Add Tiers receive a Fee Code of ''P1'', ''P2'', ''P3'', or ''P4'', as applicable, for such executions on the monthly invoices provided to Members.

[24] Specifically, the possible rebates are those that the Exchange is proposing to identify in the Transaction Fees table on the Fee Schedule with the Fee Code ''I'' and include the base rebate for Added Displayed Volume, as well as the enhanced rebates under the Liquidity Provision Tiers, DLI Tiers, and Cross Asset Tiers.

[25] Given that the additive rebate under the NBBO Setter Tier is only applied towards executions of Added Displayed Volume with the Fee Codes B, D or J, the Exchange is not proposing that any Added Price-Improved Volume be awarded the NBBO Setter Tier Additive Rebate.

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4) and (5).

regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including displayed, liquidity-adding, aggressively priced orders to the Exchange, as well as to the Exchange's equity options platform, MEMX Options, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange and on MEMX Options to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tiers 1 and 2 and NBBO Setter Tier 1, each as modified by the proposed changes to the required criteria under such tier, the Tape B Volume Tier as modified by the proposed changes to the additive rebate and required criteria under such tier, the proposed new Cross Asset Tiers 1 and 2, the DLI Additive Rebate as modified by the proposed changes to the additive rebate and required criteria under such tier, and the new proposed Display-Price Sliding Tier are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange (and in the case of the Cross Asset Tiers, MEMX Options), are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding, and/or NBBO-setting orders to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or Added Price-Improved Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tiers 1 and 2 and the proposed new Cross Asset Tiers 1 and 2, the additive rebates for executions of Added Displayed Volume under the proposed modified NBBO Setter Tier 1, Tape B Volume Tier 1, and DLI Additive Rebate Tier 1, as well as the enhanced rebate for executions of Added Price-Improved Volume under the new proposed Display-Price Sliding Tier, each remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. In addition, the Exchange believes that the proposed Display-Price Sliding Tier, which will award the highest Added Displayed Volume rebate possible to qualifying Members, is reasonable and equitable because orders subject to Display-Price Sliding are, in fact, displayed on the Exchange and thus contribute to price discovery and other benefits to the Exchange and the market generally, but also can be executed at prices not displayed on the Exchange, as described above. The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to provide Members that qualify for the newly proposed Cross Asset Tiers 1 and 2 and Display-Price Sliding Tier with the same rebate for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange as is applicable to the majority of executions on the Exchange for all Members (*i.e.* including those that do not qualify for any tier).

As it relates to the proposed Cross Asset Tiers 1 and 2, to the extent a Member participates on the Exchange but not on MEMX Options, the Exchange believes that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of MEMX Options. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on MEMX Options or not. The proposed pricing program is also fair and equitable in that membership on MEMX Options is available to all market participants which would provide them with access to the benefits on MEMX Options provided by the proposal, even where a member of MEMX Options is not necessarily eligible for the proposed enhanced rebates on the Exchange. Lastly, the Exchange believes that the proposal is still reasonable, equitably allocated and non-discriminatory because as a result of achieving a higher rebate for activity on MEMX Options, and given the equities component of Cross Asset Tier 1, the Exchange further believes that the newly proposed Cross Asset Tiers 1 and 2 will encourage greater participation on MEMX Equities by qualifying participants, thereby contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [29] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

[28] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[29] 15 U.S.C. 78f(b)(4) and (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow, including displayed, liquidity-adding, and/or aggressively priced orders to the Exchange, and MEMX Options, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants, as well as to generate additional revenue and decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [30]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and/or NBBO setting orders to both the Exchange and MEMX Options, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed modified Liquidity Provision Tiers 1 and 2, the newly proposed Cross Asset Tiers 1 and 2, and newly proposed Display-Price Sliding Tier, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume and/or Added Price-Improved Volume under such tiers, would be available to all Members that meet the associated volume requirements in any month. Similarly, the opportunity to qualify for the proposed modified criteria under the NBBO Setter Tier, the proposed modified rebate and criteria under the Tape B Volume Tier, and the proposed modified rebate and criteria under the DLI Additive Rebate Tier 1, and thus receive the additive rebate for executions of Added Displayed Volume, would continue to be available to all Members that meet the associated volume requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to Added Displayed Volume and Added Price-Improved Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [31] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . .''.[32] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

[30] *See supra* note 28.

[31] *Id.*

[32] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

19(b)(3)(A)[33] of the Act and subparagraph (f)(2) of Rule 19b–4[34] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)[35] 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–MEMX–2024–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MEMX–2024–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2024–12 and should be submitted on or before May 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07965 Filed 4–15–24; 8:45 am]

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[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(2).

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–609, OMB Control No. 3235–0706]

Proposed Collection; Comment Request; Extension: Form ABS–EE

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, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ABS–EE (17 CFR 249.1401) is filed by asset-backed issuers to provide asset-level information for registered offerings of asset-backed securities at the time of securitization and on an ongoing basis required by Item 1111(h) of Regulation AB (17 CFR 229.1111(h)). The purpose of the information collected on Form ABS–EE is to implement the disclosure requirements of Section 7(c) of the Securities Act of 1933 (15 U.S.C. 77g(c)) to provide information regarding the use of representations and warranties in the asset-backed securities markets. Form ABS–EE takes approximately 50.87152 hours per response to prepare and is filed by 5,463 securitizers annually. We estimate that 25% of the approximately 50.87152 hours per response (12.71788 hours) is prepared by the securitizers internally for a total annual reporting burden of 69,478 hours (12.71788 hours per response × 5,463 responses).

Written comments are invited on: (a) whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by June 17, 2024.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 11, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–08034 Filed 4–15–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–270, OMB Control No. 3235–0292]

Proposed Collection; Comment Request; Extension: Form F–6–Registration Statement

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, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission

plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form F–6 (17 CFR 239.36) is a form used by foreign companies to register the offer and sale of American Depositary Receipts (ADRs) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form F–6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. Form F–6 takes approximately 1.35 hour per response to prepare and is filed by 366 respondents annually. We estimate that 25% of the 1.35 hour per response (0.338 hours) is prepared by the filer for a total annual reporting burden of 124 hours (0.338 hours per response × 366 responses).

Written comments are invited on: (a) whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by June 17, 2024.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 10, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07925 Filed 4–15–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99931; File No. SR–CboeBZX–2024–024]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 10, 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 April 1, 2024, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 proposes to amend its Fee Schedule applicable to its equities trading platform (''BZX Equities'') by: (1) introducing a new Add Volume Tier; and (2) modifying the Single MPID Investor Tiers. The Exchange proposes to implement these changes effective April 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity.[4] For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.[5] Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met.

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 22, 2024), available at *https://www.cboe.com/us/equities/market_statistics/.*

[4] *See* BZX Equities Fee Schedule, Standard Rates.

[5] *Id.*

Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Add/Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange offers various Add/Remove Volume Tiers. In particular, the Exchange offers seven Add Volume Tiers that provide enhanced rebates for orders yielding fee codes B,[6] V[7] and Y[8] where a Member reaches certain add volume-based criteria. The Exchange now proposes to introduce a new Add Volume Tier. The proposed criteria for Add Volume Tier 8 is as follows:

• Add Volume Tier 8 provides a rebate of $0.0031 per share in securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where a Member: (1) has an ADAV[9] as a percentage of TCV[10] ≥ 0.50%; and (2) Member has a Tape B ADV[11] ≥ 1.50% of the Tape B TCV; and (3) Member has a Remove ADV ≥ 0.30% of the TCV.

The proposed Add Volume Tier 8 is intended to provide an additional opportunity to incentivize Members to add displayed liquidity on the Exchange. Like other Add Volume Tiers on the Exchange, Add Volume Tier 8 is designed to give members an additional opportunity to receive an enhanced rebate for orders meeting the applicable criteria. The Exchange believes the addition of Add Volume Tier 8 will encourage Members to grow their volume on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Single MPID Investor Tiers

Under footnote 4 of the Fee Schedule, the Exchange offers Single MPID Investor Tiers. In particular, the Exchange offers one Single MPID Investor Tier that provides enhanced rebates for orders yielding fee codes B, V and Y where an MPID reaches certain add volume-based criteria. Now, the Exchange proposes to modify the criteria of Single MPID Investor Tier 1 and introduce a new Single MPID Investor Tier. The current criteria of Single MPID Investor Tier 1 is as follows:

• Single MPID Investor Tier 1 provides an enhanced rebate of $0.0032 per share in Tape B securities priced at or above $1.00 and an enhanced rebate of $0.0033 per share in Tapes A and C securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where: (1) MPID has a Step-Up ADV[12] as a percentage of TCV ≥ 0.10% from May 2021; or MPID has a Step-Up ADV ≥ 10,000,000 from May 2021; and (2) MPID has an ADAV as a percentage of TCV ≥ 0.50%; or MPID has an ADAV ≥ 45,000,000.

The proposed criteria of Single MPID Investor Tier 1 is as follows:

• Single MPID Investor Tier 1 provides an enhanced rebate of $0.0032 per share in Tape B securities priced at or above $1.00 and an enhanced rebate of $0.0033 per share in Tapes A and C securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where: (1) MPID has an ADAV as a percentage of TCV ≥ 0.45% or MPID has an ADAV ≥ 45,000,000; and (2) MPID has an ADAV ≥ 0.05% of the TCV as Non-Displayed orders that yield fee codes HB,[13] HI,[14] HV[15] or HY.[16]

The Exchange also proposes to introduce Single MPID Investor Tier 2. The proposed criteria for proposed Single MPID Investor Tier 2 is as follows:

• Proposed Single MPID Investor Tier 2 provides an enhanced rebate of $0.0032 per share in Tape B securities priced at or above $1.00 and an enhanced rebate of $0.0033 per share in Tapes A and C securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where: (1) MPID removes an ADV ≥ 0.60% of the TCV; and (2) MPID has an ADAV ≥ 0.05% of the TCV as Non-Displayed orders that yield fee codes HB, HI, HV or HY.

The Exchange believes that the proposed modification to Single MPID Investor Tier 1 and the introduction of proposed Single MPID Investor Tier 2 will incentivize Members to increase their overall order flow, both add and remove volume, to the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. Incentivizing an increase in both liquidity adding volume and liquidity removing volume, through both revised and new criteria and enhanced rebate opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market and encourages liquidity removing Members on the Exchange to increase transactions and take execution opportunities provided by such activity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[20] as it is designed to provide for the equitable

[6] Fee code B is appended to displayed orders that add liquidity to BZX in Tape B securities.

[7] Fee code V is appended to displayed orders that add liquidity to BZX in Tape A securities.

[8] Fee code Y is appended to displayed orders that add liquidity to BZX in Tape C securities.

[9] ''ADAV' means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[10] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[11] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day, calculated on a monthly basis.

[12] ''Step-Up ADV'' means ADV in the relevant baseline month subtracted from current day ADV.

[13] Fee code HB is appended to non-displayed orders that add liquidity to BZX in Tape B securities.

[14] Fee code HI is appended to non-displayed orders that receive price improvement while adding liquidity to BZX.

[15] Fee code HV is appended to non-displayed orders that add liquidity to BZX in Tape A securities.

[16] Fee code HY is appended to non-displayed orders that add liquidity to BZX in Tape C securities.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] 15 U.S.C. 78f(b)(4).

allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to introduce Add Volume Tier 8, modify Single MPID Investor Tier 1, and introduce Single MPID Investor Tier 2 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[21] including the Exchange,[22] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules or rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to introduce Add Volume Tier 8, modify Single MPID Investor Tier 1, and introduce Single MPID Investor Tier 2 is reasonable because the revised tiers will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate. The Exchange further believes its proposal to introduce Add Volume Tier 8, modify Single MPID Investor Tier 1, and introduce Single MPID Investor Tier 2 will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding and liquidity removing volume to the Exchange by offering them an opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that its proposal to introduce Add Volume Tier 8, modify Single MPID Investor Tier 1, and introduce Single MPID Investor Tier 2 is reasonable as the proposed criteria do not represent a significant departure from the criteria currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members continue to be eligible for proposed Add Volume Tier 8 and the Single MPID Investor Tiers and have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for proposed Add Volume Tier 8 and the Single MPID Investor Tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior month's volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 8, at least three Members will be able to satisfy proposed Single MPID Investor Tier 1, and at least two Members will be able to satisfy proposed Single MPID Investor Tier 2. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the Exchange's proposal to introduce Add Volume Tier 8, modify Single MPID Investor Tier 1, and introduce Single MPID Investor Tier 2 will apply to all Members equally in that all Members are eligible for the new and modified tiers, have a reasonable opportunity to meet the proposed tiers' criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of BZX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.[23] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities

[21] *See e.g.,* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[22] *See e.g.,* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[23] *Supra* note 3.

markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [24] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[25] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and paragraph (f) of Rule 19b–4 [27] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2024–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2024–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–024 and should be submitted on or before May 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07963 Filed 4–15–24; 8:45 am]

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[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[25] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99932; File No. SR–CboeBYX–2024–010]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 10, 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 April 1, 2024, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/BYX/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''BYX Equities'') by modifying the criteria of Remove Volume Tier 6. The Exchange proposes to implement these changes effective April 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00200 per share for orders that remove liquidity and assesses a fee of $0.00200 per share for orders that add liquidity.[4] For orders in securities priced below $1.00, the Exchange does not assess any fees for orders that add liquidity, and provides a rebate in the amount of 0.10% of the total dollar value for orders that remove liquidity.[5] Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers two Remove Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes BB,[6] N[7] and W[8] where a Member reaches certain add volume-based criteria. The Exchange now proposes to amend Remove Volume Tier 6 by lowering the share amount required in the second prong of criteria. The current criteria for Remove Volume Tier 6 is as follows:

- Remove Volume Tier 6 provides a rebate of $0.0013 per share in securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes BB, N, or W) where (1) Member has a combined Auction ADV[9] and ADV[10] ≥ 0.08% of the TCV;[11] and (2) Member has a combined Auction ADV and ADAV[12] ≥ 5,000,000 shares.

The proposed criteria for Remove Volume Tier 6 is as follows:

- Remove Volume Tier 6 provides a rebate of $0.0013 per share in securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes BB, N, or W) where (1) Member has a combined Auction ADV and ADV ≥ 0.08% of the TCV; and (2) Member has a combined Auction ADV and ADAV ≥ 3,500,000 shares.

The Exchange believes that the proposed modification to current Remove Volume Tier 6 will continue to incentivize Members to add volume to the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. While the proposed criteria in Remove Volume Tier 6 is less difficult to achieve than the current criteria, the revised criteria continue to remain commensurate with the rebate that will be received upon a Member satisfying the proposed criteria.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[16] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to modify the criteria of Remove Volume Tier 6 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 22, 2024), available at *https://www.cboe.com/us/equities/_statistics/.*

[4] *See* BYX Equities Fee Schedule, Standard Rates.

[5] *Id.*

[6] Fee code BB is appended to orders that remove liquidity from BYX in Tape B securities.

[7] Fee code N is appended to orders that remove liquidity from BYX in Tape C securities.

[8] Fee code W is appended to orders that remove liquidity from BYX in Tape A securities.

[9] ''Auction ADV'' means average daily auction volume calculated as the number of shares executed in an auction per day.

[10] ''ADV'' means average daily volume calculated as the number of shares added ore removed, combined, per day. ADV is calculated on a monthly basis.

[11] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[12] ''ADAV'' means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(4).

exchanges,[17] including the Exchange,[18] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules or rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to modify the criteria of Remove Volume Tier 6 is reasonable because the tier will be available to all Members and provide all Members with an opportunity to receive a higher enhanced rebate. The Exchange further believes that proposed Remove Volume Tier 6 will provide a reasonable means to encourage adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide volume to the Exchange by offering them an opportunity to receive a higher enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes proposed Remove Volume Tier 6 is reasonable as it does not represent a significant departure from the criteria currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the tier and have the opportunity to meet the tier's criteria and receive the corresponding enhanced rebate if such criteria are met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed rule changes would definitely result in any Members qualifying for the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Remove Volume Tier 6. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, proposed Remove Volume Tier 6 will apply to all Members equally in that all Members are eligible for the tier and enhanced rebate, have a reasonable opportunity to meet the proposed tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BYX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.[19] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[21] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[17] *See e.g.,* EDGA Equities Fee Schedule, Footnote 7, Add/Remove Volume Tiers.

[18] *See e.g.,* BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[19] *Supra* note 3.

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[21] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and paragraph (f) of Rule 19b–4 [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBYX–2024–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBYX–2024–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBYX–2024–010 and should be submitted on or before May 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07964 Filed 4–15–24; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99938; File No. 4–698]

Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail Regarding Cost Savings Measures

April 10, 2024.

I. Introduction

On March 27, 2024, the Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''):[1] BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX, LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants,'' ''self-regulatory organizations,'' or ''SROs'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] and Rule 608 thereunder,[3] a proposed amendment to the CAT NMS Plan to amend existing requirements for the consolidated audit trail (''CAT'') regarding costs saving measures for operating the CAT (the ''Cost Savings Amendments'').[4] Set forth in Section II is the statement of purpose and summary of the amendment, along with information required by Rules 608(a)(4) and 608(a)(5) under the Exchange Act,[5] and *Exhibit A,* which contains the proposed revisions to the CAT NMS Plan, all substantially as prepared and submitted by the Participants to the Commission.[6] The Commission is publishing this notice to solicit comments from interested persons on the amendment.[7]

II. Description of the Plan

As described further below, the Cost Savings Amendments are expected to result in approximately $23.0 million in new annual cost savings in the first year with limited impact on the regulatory function of the CAT.[8] Specifically, the Cost Savings Amendment would:

[1] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016). The full text of the CAT NMS Plan is available at *www.catnmsplan.com.*

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated March 27, 2024 (the ''Transmittal Letter'').

[5] *See* 17 CFR 242.608(a)(4) and 17 CFR 242.608(a)(5).

[6] *See* Transmittal Letter, *supra* note 4. Unless otherwise defined herein, capitalized terms used herein are defined as set forth in the CAT NMS Plan.

[7] 17 CFR 242.608.

[8] All cost and savings projections are estimates only and reflect the current state and costs of CAT operations, including the current number of exchanges. Cost savings estimates are based on, among other factors: current CAT NMS Plan requirements; reporting by Participants, Industry Members and market data providers; observed data rates and volumes; current discounts, reservations and cost savings plans; and associated cloud fees. Actual future savings could be more or less than estimated due to changes in any of these variables. S3 Intelligent Tier storage fees in production are allocated at a ratio of 1 (S3 Frequent Access): 1 (S3 Infrequent Access): 8 (S3 Archive Instant Access) based on current operations and regulatory usage.

Continued

(1) optimize processing and storage requirements for Options Market Maker [9] quotes in Listed Options [10] (''Options Market Maker Quotes''), without eliminating them entirely from the CAT;

(2) permit the Plan Processor to move raw unprocessed data and interim operational copies of CAT Data older than 15 days to a more cost-effective storage tier; and

(3) permit the Plan Processor to provide an interim CAT-Order-ID on an ''as requested'' basis rather than each day.

In addition, the Cost Savings Amendments would incorporate into the CAT NMS Plan the Commission's recent exemptive order providing that data from industry testing for both Industry Members and Participants may be deleted after three months, which is estimated to result in additional cost savings of approximately $1 million per year, and would extend such relief to include test data related to the customer account and information system.[11]

The proposed changes to the CAT NMS Plan to implement the Cost Savings Amendments are set forth in *Exhibit A* to this filing.[12] CAT LLC continues to explore further changes to the CAT NMS Plan and expects to file future amendments that would result in additional cost savings without compromising the regulatory goals of the CAT.

Requirements Pursuant to Rule 608(a)

A. Description of the Proposed Amendments to the CAT NMS Plan

1. Optimize Processing and Storage Requirements for Options Market Maker Quotes

(a) Overview

Options Market Maker Quotes are the single largest data source for the CAT, comprising approximately 98% of all options exchange events and approximately 75% of all transaction volume stored in the CAT.[13] Under the CAT NMS Plan, Options Exchanges are required to report Options Market Maker Quotes to the CAT, and such quotes must be processed and assembled to create a complete order lifecycle. The number of quotes that result in an execution is extremely low; as a result, the vast majority of Options Market Maker Quote lifecycles consist of just two events—the quote and its subsequent cancellation.

The costs associated with processing and storing Options Market Maker Quotes under the CAT NMS Plan are significant—approximately $30 million in 2023.[14] CAT LLC has been focused on reducing these costs. In November 2023, the Commission granted exemptive relief that would allow the Plan Processor to create options quote lifecycles only once; this options quotes ''single pass'' proposal is expected to result in annual savings of approximately $5.4 million upon implementation in April 2024.[15] Even with these savings, the costs related to Options Market Maker Quotes continue to far outweigh the regulatory benefit.

Under the proposed amendments, Options Market Maker Quotes in Listed Options and related Reportable Events will be subject to ingestion only and will not be subject to any linkage requirements. These changes would result in approximately $20.0 million in additional annual savings, without eliminating Options Market Maker Quotes entirely from the CAT. Options Exchanges will continue to report Options Market Maker Quotes in the same manner they do today, but the Plan Processor will only ingest and store them. Options Market Maker Quotes will no longer be subject to validation, feedback, linkage and lifecycle processing, or Plan Processor enrichments (*e.g.,* next event timestamp, lifecycle sequence number, CAT-Lifecycle-ID). The elimination of linkage and feedback processes will remove Options Market Maker Quotes from Options Market Replay, OLA Viewer, and All-Related Lifecycle Event queries. Executions that result from Options Market Maker Quotes will identify the *quoteId* of the quote that resulted in an execution, but will appear as orphaned lifecycle events. Options Market Maker Quotes will no longer be accessible via DIVER, but will remain accessible through BDSQL and Direct Read interfaces.

These changes would significantly reduce the costs of the CAT with limited impact on the regulatory function of the CAT. As noted, the vast majority of Options Market Maker Quote lifecycles do not involve any execution or allocation and usage data demonstrates that such data is very rarely accessed by regulators. Under the proposed amendments, regulators will still have access to unlinked Options Market Maker Quotes data by T+1 at 12:00 p.m. ET. All necessary information for the eliminated enrichments would be available to regulators, but regulators would need to derive the enrichments themselves; upon request, the Plan Processor would provide regulators with the code required in order to do so. As a result of these changes, the cost impact of Options Market Maker Quotes on the CAT would be reduced from approximately $24.4 million (inclusive of anticipated savings resulting from the

Savings projections are primarily based on production environments, which represent approximately two-thirds of all cloud fees. For additional information on the cost savings estimates relevant to each proposal, *see infra* notes 20, 24, 29 and 30.

[9] Section 1.1 of the CAT NMS Plan defines an ''Options Market Maker'' as ''a broker-dealer registered with an exchange for the purpose of making markets in options contracts on the exchange.''

[10] Section 1.1 of the CAT NMS Plan defines a ''Listed Option'' as having ''the meaning set forth in Rule 600(b)(35) of Regulation NMS.'' Rule 600(b)(35) has since been redesignated as Rule 600(b)(43), which defines a ''Listed Option'' as ''any option traded on a registered national securities exchange or automated facility of a national securities association.''

[11] Exchange Act Release No. 99023 (Nov. 27, 2023), 88 FR 84026 (Dec. 1, 2023).

[12] Because the Commission has acknowledged that Appendix C was not intended to be continually updated once the CAT NMS Plan was approved, CAT LLC is not proposing to update Appendix C to reflect the proposed amendments. *See* Exchange Act Release No. 89632 (Aug. 21, 2020), 85 FR 65990 (Oct. 16, 2020).

[13] Under Section 1.1 of the CAT NMS Plan, a ''Reportable Event'' ''includes, but is not limited to, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order.'' Section 1.1 of the CAT NMS Plan states that an ''order'' ''has, with respect to Eligible Securities, the meaning set forth in SEC Rule 613(j)(8).'' SEC Rule 613(j)(8), in turn, states that ''[t]he term order shall include: (i) Any order received by a member of a national securities exchange or national securities association from any person; (ii) Any order originated by a member of a national securities exchange or national securities association; or (iii) Any bid or offer.'' Accordingly, the definition of an ''order'' includes Options Market Maker Quotes, and Reportable Events include events related to Options Market Maker Quotes.

[14] Although Options Market Maker Quotes are the single largest data source for the CAT, there is not a linear relationship between volume and costs; rather, a combination of volume and processing complexity drive costs. While Options Market Maker Quotes represent a significant percentage of data volume, life-cycling this data is less compute intensive because the vast majority of quotes have just two events and involve only a single venue. Despite this relatively limited processing complexity, the cost impact of storing and processing Options Market Maker Quotes remains a significant percentage of overall CAT costs.

[15] Exchange Act Release No. 98848 (Nov. 2, 2023); 88 FR 77128 (Nov. 8, 2023). The exemption order allows the Plan Processor to create lifecycle linkages for Options Market Maker Quotes only once by T+2 at 8 a.m. ET (as opposed to requiring both an interim lifecycle by T+1 at 9 p.m. ET and a final lifecycle by T+5 at 8 a.m. ET). To the extent the proposed amendments are approved, the Plan Processor would no longer be required to create any lifecycle linkages for Options Market Maker Quotes.

implementation of the options quotes ''single pass'' proposal referenced above) to approximately $4.0 million annually.

The Participants believe that the anticipated savings associated with this proposal substantially outweigh the limited regulatory impact on the CAT.[16]

(b) Current CAT NMS Plan Requirements

The CAT NMS Plan contains broad requirements relating to the current reporting of, linkage and lifecycle processing of, and regulator access to Options Market Maker Quotes and related Reportable Events.

First, Section 6.3(d) of the CAT NMS Plan requires each Participant to record and electronically report to the Central Repository details for each order and each Reportable Event, including all Options Market Maker Quotes and related Reportable Events.[17] Under Section 6.4(d)(iii) of the CAT NMS Plan, ''[w]ith respect to the reporting obligations of an Options Market Maker with regard to its quotes in Listed Options, Reportable Events required pursuant to Section 6.3(d)(ii) and (iv) shall be reported to the Central Repository by an Options Exchange in lieu of the reporting of such information by the Options Market Maker.'' Section 6.4(d)(iii) also requires that, pursuant to the Compliance Rules of the Options Exchanges, Options Market Makers are required to report to the Options Exchange the time at which a quote in a Listed Option is sent to the Options Exchange (and, if applicable, any subsequent quote modifications and/or cancellation time when such modification or cancellation is originated by the Options Market Maker). Such time information shall be reported to the Central Repository by the Options Exchange in lieu of reporting by the Options Market Maker.

Second, CAT NMS Plan broadly requires all CAT Data reported to the Central Repository to be processed and assembled to create the complete lifecycle of each Reportable Event. The Plan Processor uses a ''daisy chain approach'' to link all Reportable Events and create a complete lifecycle of each order. Under this approach, ''a series of unique order identifiers assigned to all order events handled by CAT Reporters are linked together by the Central Repository and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order.'' [18] Data processing timelines are described in Section 6.1 and Section 6.2 of Appendix D of the CAT NMS Plan.

Finally, the CAT NMS Plan provides that regulators will have access to processed CAT Data through an online-targeted query tool and user-defined direct queries and bulk extracts. These requirements are described in Section 8.1 and Section 8.2 of Appendix D of the CAT NMS Plan.

(c) Estimated Cost Savings

As described above, the proposed changes would result in approximately $20.0 million in annual cost savings in the first year with limited impact on the regulatory function of the CAT.[19] Given that the vast majority of Options Market Maker Quotes do not involve any execution or allocation and are used for limited regulatory purposes, the current cost associated with processing and storing such quotes—approximately $30 million in 2023—far outweighs the regulatory value. Although they will no longer be subject to validation, feedback, linkage and lifecycle processing, or Plan Processor enrichments (*e.g.,* next event timestamp, lifecycle sequence number, CAT-Lifecycle-ID), Options Market Maker Quotes will continue to be reported and ingested in the same manner they are today, and unlinked data will remain accessible to regulators by T+1 at 12:00 p.m. through BDSQL and Direct Read interfaces.

(d) Proposed Revisions to CAT NMS Plan

Given the scope of requirements relating directly or indirectly to the current reporting of, linkage and lifecycle processing of, and regulator access to Options Market Maker Quotes and related Reportable Events that currently appear throughout the CAT NMS Plan, CAT LLC proposes to add a general provision to Appendix D that would expressly override any inconsistency with respect to Options Market Maker Quotes. The effect of this provision will be to override any requirements that generally apply to Reportable Events in the specific circumstance of Options Market Maker Quotes.

New Section 3.4 of Appendix D would be entitled ''Requirements for Options Market Maker Quotes in Listed Options'' and would state the following:

''3.4 Requirements for Options Market Maker Quotes in Listed Options

The provisions of this section shall govern the processing and storage of Options Market Maker Quotes in Listed Options and related Reportable Events and shall override any conflicting provisions in the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a–1.

Options Market Maker Quotes in Listed Options must be reported to the Central Repository as provided under Section 6.4(d)(iii) of the CAT NMS Plan. This data will undergo ingestion only and such unlinked data will be made available to regulators by T+1 at 12:00 p.m. Eastern Time. Options Market Maker Quotes in Listed Options will not be subject to any requirement to link and create an order lifecycle, and will not undergo any validation, feedback, linkage, or enrichment processing. Options Market Maker Quotes in Listed Options will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.''

In addition, CAT LLC proposes to amend certain provisions of Appendix D to include cross-references to new Section 3.4. First, CAT LLC proposes to amend Section 3 of Appendix D of the CAT NMS Plan to add the following statement: ''As described in Section 3.4 of Appendix D, Options Market Maker Quotes in Listed Options and related Reportable Events will be subject to ingestion only and will not be subject to any linkage requirements.'' Second, CAT LLC proposes to amend Section 6.1 of Appendix D of the CAT NMS Plan to add the following statement: ''For the avoidance of doubt, processing and storage of Options Market Maker Quotes in Listed Options and related Reportable Events shall be governed by Section 3.4 of Appendix D.'' Finally, CAT LLC proposes to amend Section 8.1.1 of Appendix D of the CAT NMS Plan to add the following statement: ''As described in Section 3.4 of Appendix D, Options Market Maker Quotes in Listed Options and related Reportable Events will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.''

[16] The Participants continue to evaluate additional cost savings measures and alternatives, which may include in the future continuing to evaluate eliminating Options Market Maker Quotes entirely from the CAT. Any such changes would require the submission of a proposed Plan amendment or exemption request to the SEC for consideration and approval.

[17] *See supra* note 13.

[18] Appendix D, Section 3 of the CAT NMS Plan at D–8.

[19] For a discussion of how cost savings estimates are calculated, *see supra* note 8. This estimate represents additional savings to be achieved following the implementation of the options quotes ''single pass'' proposal targeted for the end of April 2024. This estimate assumes an approximate 65% reduction in compute runtime associated with options exchange events, and an approximate 80% reduction in storage footprint through the elimination of versioned options quote data (*e.g.,* interim, final, DIVER-optimized, OLA copies).

2. Move Raw Unprocessed Data and Interim Operational Copies of CAT Data Older Than 15 Days to a More Cost-Effective Storage Tier

(a) Overview

Under the current CAT NMS Plan, CAT Data must be ''directly available and searchable electronically without manual intervention for at least six years,'' and within certain query tool response times.[20] This requirement applies not only to the final corrected data version that is delivered to regulators by T+5 at 8 a.m. ET, but also to raw unprocessed data and the various types of interim operational data that do not provide any value to CAT Reporters or to regulators after T+5, as well as copies of all submission and feedback files provided to CAT Reporters as part of the correction process (collectively, ''Operational Data'').

Specifically, interim operational data includes all processed, validated and unlinked data made available to regulators by T+1 at 12:00 p.m. ET, and all iterations of processed data made available to regulators between T+1 and T+5 (*i.e.,* the interim data version available at T+1 at 9:00 p.m. ET). Under the CAT NMS Plan, the Plan Processor is required to make such data directly available and searchable electronically by regulators without any manual intervention. When a regulator queries CAT data, the CAT provides the latest, most current version to the user. Interim operational data is supplanted in all CAT query tools by the final version of corrected data that is made available at T+5 at 8:00 a.m. ET, but remains available to regulators after T+5 ''without manual intervention'' in accordance with the CAT NMS Plan via the use of CAT data management APIs. Regulators generally access the latest, corrected version of CAT data; accordingly, interim operational data generally does not provide any regulatory value after the final corrected data version is delivered by T+5 at 8 a.m. ET. After four years of operation, the Plan Processor has not seen any regulatory usage of this interim operational data.

Subject to the Commission's approval, significant cost savings could be achieved by archiving Operational Data older than 15 days to a more cost-effective storage tier that is optimized for infrequent access. Operational Data not older than 15 days, as well as all final, corrected data, would remain accessible ''without manual intervention'' within required query tool response times.

In each case, it would require some ''manual intervention'' by the Plan Processor to obtain such archived data for regulators. Under Section 10.3 of Appendix D of the CAT NMS Plan, the Plan Processor maintains a CAT Help Desk to, among other things, assist Participants' regulatory staff and the SEC with questions and issues regarding obtaining and using CAT Data for regulatory purposes. Upon request by the SEC or one of the Participants to the CAT Help Desk, archived data would be restored by the Plan Processor to an accessible storage tier, at which point it would be available and searchable electronically by regulatory users in the same manner it is today. The Plan Processor will develop policies and procedures to ensure the confidentiality of any regulator requests to obtain Operational Data. Archived data will be restored generally within several hours or business days of a request, depending on the volume and size of the date range of the requested data restore. For example, a request to restore a single day of data may take less than 24 hours, whereas a request to restore a year's worth of data may take several days. To put this in context, when the Commission adopted the CAT NMS Plan, it noted that ''[m]ost current data sources do not provide direct access to most regulators, and data requests can take as long as *weeks or even months* to process.'' [21]

Accordingly, the Participants believe that the anticipated savings associated with optimizing storage costs as described herein substantially outweigh the minimal impact on regulatory access to CAT Data.

(b) Current CAT NMS Plan Requirements

Generally, Section 1.4 of Appendix D of the CAT NMS Plan provides that the Plan Processor must ''[m]ake data directly available and searchable electronically without manual intervention for at least six years.'' Section 6.5(b)(i) of the CAT NMS Plan provides that, ''[c]onsistent with Appendix D, Data Retention Requirements, the Central Repository shall retain the information collected pursuant to paragraphs (c)(7) and (e)(7) of SEC Rule 613 in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention by the Plan Processor for a period of not less than six (6) years.''

In addition, with respect to raw unprocessed data and interim operational copies of data created between T+1 and T+5, Section 6.2 of Appendix D of the CAT NMS Plan provides that, ''[p]rior to 12:00 p.m. Eastern Time on T+1, raw unprocessed data that has been ingested by the Plan Processor must be available to Participants' regulatory staff and the SEC,'' and ''[b]etween 12:00 p.m. Eastern Time on T+1 and T+5, access to all iterations of processed data must be available to Participants' regulatory staff and the SEC.''

Under the current CAT NMS Plan, CAT Data must be accessible to regulatory users without ''manual intervention.'' Obtaining data from archive storage initially would require some manual intervention by the Plan Processor (*i.e.,* via request to the FINRA CAT Help Desk). Upon request, data would be restored by the Plan Processor to an accessible storage tier, at which point it would be available and searchable electronically by regulatory users in the same manner it is today.

In addition, Section 8.1.2 of Appendix D of the CAT NMS Plan sets forth certain performance requirements for the OTQT, including timeframes in which results must be returned for various types of queries.[22]

(c) Estimated Cost Savings

Based on current data volumes, archiving Operational Data older than 15 days is expected to result in approximate annual cost savings of approximately $1.0 million.[23] CAT LLC believes that these cost savings substantially outweigh the minimal impact on regulatory access to CAT Data.

(d) Proposed Revisions to CAT NMS Plan

CAT LLC proposes to amend the CAT NMS Plan to permit the Plan Processor

[20] CAT Data is available to the Participants' regulatory staff and to the SEC for regulatory purposes only.

[21] Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696, 84833 (Nov. 23, 2016) (emphasis added). *See also* Exchange Act Release No. 67457, 77 FR 45722, 45729 (Aug. 1, 2012) (noting that obtaining audit trail data ''can take days or weeks, depending on the scope of the information requested,'' and that the Commission ''must commit a significant amount of time and resources to process and cross-link the data from the various formats used by different SROs before it can be analyzed and used for regulatory purposes'').

[22] *See also* Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023) (granting conditional exemptive relief from certain performance requirements related to the online targeted query tool).

[23] For a discussion of how cost savings estimates are calculated, *see supra* note 8. This estimate represents additional savings to be achieved following the implementation of the options quotes ''single pass'' proposal targeted for the end of April 2024, which eliminates interim operational copies of options quotes.

to move Operational Data older than 15 days to a more cost-effective storage tier. Specifically, CAT LLC proposes to add new Section 6.3 to Appendix D of the CAT NMS Plan. New Section 6.3 would be entitled ''Exceptions to Data Availability Requirements'' and would state the following:

''6.3 Exceptions to Data Availability Requirements

Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a–1, the following types of data may be retained in an archive storage tier, in which case they will be made available upon request by Participant regulatory staff or the SEC to the CAT Help Desk. Archived data is not directly available and searchable electronically without manual intervention and will not be subject to any query tool performance requirements until it is restored to an accessible storage tier.

- All raw unprocessed data (*i.e.,* as submitted data) and interim operational data older than 15 days. Interim operational data includes all processed, validated and unlinked data made available to regulators by T+1 at 12:00 p.m. ET, and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET.
- All submission and feedback files older than 15 days.

In addition, CAT LLC proposes to add references to new Section 6.3 of Appendix D throughout the CAT NMS Plan. Specifically, CAT LLC proposes to add the phrase ''subject to the exceptions in Section 6.3 of Appendix D'' to Section 6.5(d)(i) and Section 1.4 of Appendix D.

3. Provide an Interim CAT-Order-ID on an ''As Requested'' Basis

(a) Overview

CAT LLC proposes to amend the CAT NMS Plan to provide for delivery of an interim CAT-Order-ID on an ''as requested'' basis, rather than on a regular ongoing basis. Specifically, where there is an immediate regulatory need (for example, in the case of a major market event), upon request of a senior officer of the Division of Trading and Markets, the Division of Enforcement, or the Division of Examinations to CAT LLC, the Plan Processor would be directed create an interim CAT-Order-ID and make it available to regulators by T+1 at 9 p.m. ET if the request is received prior to T+1 at 8 a.m. ET, or generally within 14 hours of receiving the request if such request was received after T+1 at 8 a.m. ET. This would preserve the SEC's ability to obtain an interim CAT-Order-ID on an as needed basis, while avoiding the substantial cost of delivering an interim CAT-Order-ID on a regular ongoing basis.

Subject to the proposals described above with respect to Options Market Maker Quotes, there would be no change to any other aspect of the CAT NMS Plan requirements for the processing of data, error feedback, and final delivery of data to regulators by T+5 at 8 a.m. ET, and no impact to Industry Members. Consistent with current CAT NMS Plan requirements, prior to 12:00 p.m. ET on T+1, regulators will continue to have access to raw unprocessed data that has been ingested by the Plan Processor, and between 12:00 p.m. on T+1 and T+5, regulators will continue to have access to all iterations of unlinked, processed data.

This change is estimated to result in approximately $2 million in annual compute savings, with minimal regulatory impact. Based on current data volumes, the estimated cost of an ad hoc interim CAT-Order-ID delivery is approximately $10,000 to $12,000 per request.[24] CAT LLC would add a separate line item to its budget to reflect costs related to any SEC requests to generate an interim CAT-Order-ID.

The Participants believe that the anticipated savings associated with this change substantially outweigh the minimal regulatory impact.

(b) Current CAT NMS Plan Requirements

Appendix D, Section 6.1 of the CAT NMS Plan states that ''Noon Eastern Time T+1 (transaction date + one day)'' is the deadline for ''initial data validation, lifecycle linkages and communication of errors to CAT Reporters.'' The CAT NMS Plan further explains that the Plan Processor must ''link and create the order lifecycle'' using a ''daisy chain approach,'' in which, ''a series of unique order identifiers assigned to all order events handled by CAT Reporters are linked together by the Central Repository and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order.'' [25]

Pursuant to a Commission exemptive order, the Plan Processor assigns an interim CAT-Order-ID by T+1 at 9 p.m. ET, rather than by the T+1 at noon Eastern Time deadline set forth in the CAT NMS Plan.[26] The Plan Processor subsequently provides a final CAT-Order-ID at T+5 at 8 a.m. ET, pursuant to the following timeline:

T+1 @8 a.m. ET: Initial submissions due
T+1 @12 p.m. ET: Initial data validation, communication of errors to CAT Reporters; unlinked data available to regulators
T+1 @9 p.m. ET: Interim CAT-Order-ID available [27]
T+3 @8 a.m. ET: Resubmission of corrected data
T+4 @8 a.m. ET: Final lifecycle assembly begins, reprocessing of late submissions and corrections
T+5 @8 a.m. ET: Corrected data available to Participant regulatory staff and the SEC

CAT LLC proposes to clarify that the Plan does not require assignment of interim CAT-Order-IDs on a regular ongoing basis; rather, interim CAT-Order-IDs shall be provided on an ''as requested'' basis. Specifically, upon request of a senior officer of the Division of Trading and Markets, the Division of Enforcement, or the Division of Examinations to CAT LLC, the Plan Processor would be directed create an interim CAT-Order-ID and make it available to regulators by T+1 at 9 p.m. ET if the request is received prior to T+1 at 8 a.m. ET, or generally within 14 hours of receiving the request if such request was received after T+1 at 8 a.m. ET. There would be no change to any other aspect of the processing timeline.

(c) Estimated Cost Savings

Based on current data volumes, providing for delivery of an interim CAT-Order-ID on an ''as requested'' basis, rather than on a regular ongoing basis, is estimated to result in approximately $2 million in annual

[24] This cost savings estimate has been calculated assuming the Plan Processor's implementation of functionality to provide a final CAT-Order-ID and lifecycle linkage for options quotes by T+2 at 8 a.m. ET (in lieu of T+5 at 8 a.m. ET), which is expected in April 2024.

[25] Appendix D, Section 3 of the CAT NMS Plan at D–8.

[26] Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023). *See also* Exchange Act Release No. 97530 (May 18, 2023), 88 FR 33655 (May 24, 2023); Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022); Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

[27] The Commission's exemptive order provides that the Plan Processor will no longer be required to provide an interim CAT-Order-ID for Options Quotes once it has developed and implemented the functionality to provide a final CAT-Order-ID and lifecycle linkage for Options Quotes by T+2 at 8 a.m. ET, including all enrichments currently provided for such order events at T+5 at 8 a.m. ET. When late or corrected data is received for Options Quotes between T+1 at 8 a.m. ET and T+4 at 8 a.m. ET, the Plan Processor must run, on an ad hoc basis, a second processing cycle such that lifecycle linkage and all enrichments currently provided for such order events are performed by T+5 at 8 a.m. ET. *See* Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128, 77130 (Nov. 8, 2023). To the extent the proposed amendments are approved, the Plan Processor would no longer be required to create any lifecycle linkages for Options Market Maker Quotes.

savings.[28] CAT LLC believes that these cost savings are readily justified given the minimal impact on regulatory access to CAT Data.

Based on current data volumes, the estimated cost of an ad hoc interim CAT-Order-ID delivery is approximately $10,000 to $12,000 per request.[29] CAT LLC would add a separate line item to its budget to reflect costs related to any SEC requests to generate an interim CAT-Order-ID.

While CAT LLC believes it would be reasonable and appropriate to incur such cost to address a pressing regulatory need on an as needed basis, such as in the event of a market event, the substantial cost of delivering an interim CAT-Order-ID on a continuous basis outweighs any regulatory benefit.

(d) Proposed Revisions to CAT NMS Plan

CAT LLC proposes to amend the CAT NMS Plan to eliminate the requirement to provide an interim CAT-Order-ID on a regular ongoing basis. Specifically, CAT LLC proposes to delete the phrase ''lifecycle linkages'' from the following bullet in Section 6.1 of Appendix D of the CAT NMS Plan: ''Noon Eastern Time T+1 (transaction date + one day)—Initial data validation, lifecycle linkages and communication of errors to CAT Reporters.'' Similarly, CAT LLC proposes to delete the phrase ''Life Cycle Linkage'' from the second box in Figure A in Section 6.1 of Appendix D of the CAT NMS Plan. The box currently states the following: ''12:00 p.m. ET T+1 Initial Validation, Life Cycle Linkage, Communication of Errors.'' With the change, this box would state ''12:00 p.m. ET T+1 Initial Validation, Communication of Errors.''

CAT LLC also proposes to amend the CAT NMS Plan to require CAT LLC to provide an interim CAT-Order-ID on an ''as requested'' basis. Specifically, CAT LLC proposes to add the following provision to Section 6.1 of Appendix D of the CAT NMS Plan: ''Where there is an immediate regulatory need (for example, in the case of a major market event), upon request of a senior officer of the Division of Trading and Markets, the Division of Enforcement, or the Division of Examinations to CAT LLC, the Plan Processor shall be directed to create an interim CAT-Order-ID and make it available to regulators by T+1 at 9 p.m. ET if the request is received prior to T+1 at 8 a.m. ET, or generally within 14 hours of receiving the request if such request was received after T+1 at 8 a.m. ET.''

4. Incorporate Exemptive Relief Permitting Deletion of Industry Test Data Older Than Three Months and Include CAIS Data

(a) Overview; Prior Commission Exemptive Order

CAT Reporters engage in testing related to the reporting of order and transaction data to the CAT, both pursuant to required testing and on a voluntary basis. In connection with this testing, CAT LLC, through the Plan Processor, retains the test data submitted by Industry Members and Participants, feedback files related to such data, and output files that hold the detailed transactions, referred to herein as ''Industry Test Data''.[30]

On June 2, 2023, CAT LLC requested exemptive relief from Rule 17a–1 under the Exchange Act and certain provisions of the CAT NMS Plan relating to the retention of Industry Test Data beyond three months.[31] On November 27, 2023, the Commission granted the requested relief.[32] The exemptive request and the Commission's order apply only to Industry Test Data related to the CAT order and transaction system, not to the customer account and information system (''CAIS'').

CAT LLC is now proposing to incorporate the exemptive relief into the CAT NMS Plan to clarify that data from industry testing for both Industry Members and Participants may be deleted after three months. In addition, the amendments would apply to Industry Test Data related to both transaction system and CAIS data.

(b) Current CAT NMS Plan Requirements; Exchange Act Rule 17a–1

Appendix D of the CAT NMS Plan specifically requires the retention of Industry Test Data for three months only.[33] Specifically, Appendix D of the CAT NMS Plan states that ''[d]ata from industry testing must be saved for three months.'' [34] Separate from this specific three-month retention requirement in Appendix D of the CAT NMS Plan, Rule 17a–1 under the Exchange Act and other more general recordkeeping provisions of the CAT NMS Plan set forth lengthier record retention periods of five and six years, respectively. Rule 17a–1 under the Exchange Act requires every national securities exchange and national securities association ''to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity,'' [35] and to keep all such documents ''for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a–6.'' [36] The CAT is a facility of each of the Participants to the CAT NMS Plan. In addition, Section 9.1 of the CAT NMS Plan, the general recordkeeping provision for the CAT NMS Plan, incorporates by reference the requirements of Rule 17a–1 under the Exchange Act. Specifically, Section 9.1 of the CAT NMS Plan states, in relevant part, that ''[t]he Company shall maintain

[28] For a discussion of how cost savings estimates are calculated, *see supra* note 8. This estimate represents additional savings to be achieved following the implementation of the options quotes ''single pass'' proposal targeted for the end of April 2024, which eliminates options quotes from the interim lifecycle processing. The average typical daily compute costs for interim lifecycle processing (Linker and ETL data processing) is estimated to be approximately $8,000/day to $10,000/day for a typical day based on current data volumes (including savings attributable to the daily ODCR and Compute Savings Plans), which totals approximately $2 million per year based on 252 trading days per year.

[29] This estimate includes compute and storage costs for a daily ad hoc interim lifecycle processing, assuming the implementation of the options quotes ''single pass'' proposal, and is based on on demand rates for a typical day with average data volumes, less options quotes data volumes and their associated storage needs. The estimated number of authorized ad hoc runs per year that would be requested by the SEC cannot be predicted by CAT LLC or the Plan Processor.

[30] Separately, CAT LLC, through the Plan Processor, also retains operational metrics associated with industry testing for six years in accordance with the Plan. Specifically, Section 1.2 of Appendix D of the CAT NMS Plan requires that ''[o]perational metrics associated with industry testing (including but not limited to testing results, firms who participated, and amount of data reported and linked) must be stored for the same duration as the CAT production data.'' The proposed amendments do not affect such operational metrics.

[31] *See* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated June 2, 2023, *https://catnmsplan.com/sites/default/files/2023-06/06.02.23-Exemptive-Request-Test-Data-Retention.pdf.* As noted in the exemptive request, CAT LLC does not believe that Industry Test Data constitutes documents covered by Rule 17a–1 under the Exchange Act and adheres to its view that the specific three-month period for Industry Test Data supersedes the more general, longer retention periods in the CAT NMS Plan, but submitted the exemptive request to obtain regulatory clarity in light of the SEC staff's comments that the longer retention periods set forth in Rule 17a–1 under the Exchange Act and the CAT NMS Plan may apply to Industry Test Data.

[32] Exchange Act Release No. 99023 (Nov. 27, 2023), 88 FR 84026 (Dec. 1, 2023).

[33] Ordinarily, specific provisions in a statute or regulation prevail over general provisions which might appear to the contrary. *See, e.g., RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank,* 566 U.S. 639, 645 (2012) (*citing Morales* v. *Trans World Airlines, Inc.,* 504 U.S. 374, 384 (1992)).

[34] Appendix D, Section 1.2 of the CAT NMS Plan at D–4.

[35] Rule 17a–1(a) under the Exchange Act.

[36] Rule 17a–1(b) under the Exchange Act.

complete and accurate books and records of the Company in accordance with SEC Rule 17a–1.''

(c) Estimated Cost Savings

Prior to the Commission's exemptive order, the Plan Processor had been retaining Industry Test Data beyond the three-month period prescribed by Appendix D of the CAT NMS Plan; eliminating Industry Test Data older than three months as permitted by the exemptive order is expected to achieve approximately $1 million per year in savings. The proposed amendments would not generate additional cost savings beyond those achievable pursuant to the exemptive order, but would incorporate the exemptive relief into the CAT NMS Plan itself.

Proposed Revisions to CAT NMS Plan

CAT LLC proposes to amend the CAT NMS Plan to clarify that Industry Test Data related to both the CAT order and transaction system and to CAIS may be deleted after three months. Specifically, CAT LLC proposes to revise the following bullet in Section 1.2 of Appendix D of the CAT NMS Plan: ''Data from industry testing must be saved for three months. Operational metrics associated with industry testing (including but not limited to testing results, firms who participated, and amount of data reported and linked) must be stored for the same duration as the CAT production data.'' CAT LLC proposes to add the following as the second sentence of the bullet: ''Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a–1, such test data (whether related to the CAT order and transaction system or the customer account and information system) may be deleted by the Plan Processor after three months.'' With this phrase, the bullet would state: ''Data from industry testing must be saved for three months. Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a–1, such test data (whether related to the CAT order and transaction system or the customer account and information system) may be deleted by the Plan Processor after three months. Operational metrics associated with industry testing (including but not limited to testing results, firms who participated, and amount of data reported and linked) must be stored for the same duration as the CAT production data.''

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants propose to implement the proposal upon approval of the proposed amendment to the CAT NMS Plan.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

CAT LLC does not believe that the proposed amendment would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Indeed, CAT LLC believes that the proposed amendments will have a positive impact on competition, efficiency and capital formation. The proposed amendments will provide substantial savings in CAT costs while providing minimal impact on the regulatory use of CAT Data. Such substantial savings would inure to the benefit of all participants in the markets for NMS Securities and OTC Equity Securities, including Participants, Industry Members, and most importantly, the investors.

F. Written Understanding or Agreements Relating To Interpretation of, or Participation in Plan

Not applicable.

G. Approval by Plan Sponsors in Accordance With Plan

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the CAT NMS Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or has otherwise become effective under Rule 608 of Regulation NMS under the Exchange Act. In addition, the proposed amendment was discussed during Operating Committee meetings. The Participants, by a vote of the Operating Committee taken on March 26, 2024, have authorized the filing of this proposed amendment with the SEC in accordance with the CAT NMS Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

* * * * *

Exhibit A

Proposed Revisions to CAT NMS Plan

Additions *underlined;* deletions [bracketed]

* * * * *

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ARTICLE VI

FUNCTIONS AND ACTIVITIES OF CAT SYSTEM

. . .

Section 6.5. Central Repository.

. . .

(b) Retention of Data.

(i) Consistent with Appendix D, Data Retention Requirements, the Central Repository shall retain the information collected pursuant to paragraphs (c)(7) and (e)(7) of SEC Rule 613 in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention by the Plan Processor for a period of not less than six (6) years**, subject to the exceptions in Section 6.3 of Appendix D**. Such data when available to the Participant regulatory staff and the SEC shall be linked.

(ii) The Plan Processor shall implement and comply with the records retention policy contemplated by Section 6.1(d)(i) (as such policy is reviewed and updated periodically in accordance with Section 6.1(d)(i)).

* * * * *

APPENDIX D

. . .

1.2 Technical Environments

The architecture must include environments for production, development, quality assurance testing, disaster recovery, industry-wide coordinated testing, and individual on-going CAT Reporter testing. The building and introduction of environments available to CAT Reporters may be phased in to align with the following agreed upon implementation milestones:

The architecture must include environments for production, development, quality assurance testing, disaster recovery, industry-wide coordinated testing, and individual on-going CAT Reporter testing. The building and introduction of environments available to CAT Reporters may be phased in to align with the following agreed upon implementation milestones:

- Development environment – the development environment must be created to build, develop, and maintain enhancements and new requirements. This environment must be separate from those listed below.

- Quality assurance environment – a quality assurance (QA) environment must be created to allow simulation and testing of all applications, interfaces, and data integration points contained in the CAT System.
    - The QA environment shall be able to simulate end-to-end production functionality and perform with the same operational characteristics, including processing speed, as the production environment.
    - The QA environment shall support varied types of changes, such as, but not limited to, the following:
        - Application patches;
        - Bug fixes;
        - Operating system upgrades;
        - Introduction of new hardware or software components;
        - New functionality;
        - Network changes;
        - Regression testing of existing functionality;
        - Stress or load testing (simulation of production-level usage); and
        - Recovery and failover.
    - A comprehensive test plan for each build and subsequent releases must be documented.
- Production environment – fully operational environment that supports receipt, ingestion, processing and storage of CAT Data. Backup/disaster recovery components must be included as part of the production environment.
- Industry test environment –
    - The Plan Processor must provide an environment supporting industry testing (test environment) that is functionally equivalent to the production environment, including:
        - End-to-end functionality (e.g., data validation, processing, linkage, error identification, correction and reporting mechanism) from ingestion to output, sized to meet the standards of the production SLA;
        - Performance metrics that mirror the production environment; and
        - Management with the same information security policies applicable to the production environment.
    - The industry test environment must also contain functionality to support industry testing, including:
        - Minimum availability of 24x6;
        - Replica of production data when needed for testing;
        - Data storage sized to meet varying needs, dependent upon scope and test scenarios; and
        - Support of two versions of code (current and pending).

- The industry test environment must support the following types of industry testing:
  - Technical upgrades made by the Plan Processor;
  - CAT code releases that impact CAT Reporters;
  - Changes to industry data feeds (e.g., SIP, OPRA, etc.);
  - Industry-wide disaster recovery testing;
  - Individual CAT Reporter and Data Submitter testing of their upgrades against CAT interfaces and functionality; and
  - Multiple, simultaneous CAT Reporter testing.
- The industry test environment must be a discrete environment separate from the production environment.
- The Plan Processor must provide the linkage processing of data submitted during coordinated, scheduled, industry-wide testing. Results of the linkage processes must be communicated back to Participants as well as to the Operating Committee.
- Data from industry testing must be saved for three months. **Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1, such test data (whether related to the CAT order and transaction system or the customer account and information system) may be deleted by the Plan Processor after three months.** Operational metrics associated with industry testing (including but not limited to testing results, firms who participated, and amount of data reported and linked) must be stored for the same duration as the CAT production data.
- The Plan Processor must provide support for industry testing, including testing procedures, coordination of industry testing, publish notifications, and provide help desk support during industry testing.
- The Participants and the SEC must have access to industry test data.

. . .

1.4 Data Retention Requirements

The Plan Processor must develop a formal record retention policy and program for the CAT, to be approved by the Operating Committee, which will, at a minimum:

- Contain requirements associated with data retention, maintenance, destruction, and holds;
- Comply with applicable SEC record-keeping requirements;
- Have a record hold program where specific CAT Data can be archived offline for as long as necessary;
- Store and retain both raw data submitted by CAT Reporters and processed data; and
- Make data directly available and searchable electronically without manual intervention for at least six years**, subject to the exceptions in Section 6.3 of Appendix D**.

. . .

3. Reporting and Linkage Requirements

All CAT Data reported to the Central Repository must be processed and assembled to create the complete lifecycle of each Reportable Event. Reportable Events must contain data elements sufficient to ensure the same regulatory coverage currently provided by existing regulatory reporting systems that have been identified as candidates for retirement.

Additionally, the Central Repository must be able to:

- Assign a unique CAT-Reporter-ID to all reports submitted to the system based on sub-identifiers, (e.g., MPIDs, ETPID, trading mnemonic) currently used by CAT Reporters in their order handling and trading processes.

- Handle duplicate sub-identifiers used by members of different Participants to be properly associated with each Participant.

- Generate and associate one or more Customer-IDs with all Reportable Events representing new orders received from a Customer(s) of a CAT Reporter. The Customer-ID(s) will be generated from a Firm Designated ID provided by the CAT Reporter for each such event, which will be included on all new order events.

- Accept time stamps on order events handled electronically to the finest level of granularity captured by CAT Reporters. Additionally, the CAT must be able to expand the time stamp field to accept time stamps to an even finer granularity as trading systems expand to capture time stamps in ever finer granularity. The Plan Processor must normalize all processed date/time CAT Data into a standard time zone/format.

In addition, the data required from CAT Reporters will include all events and data elements required by the Plan Processor in the Technical Specifications to build the:

- Life cycle of an order for defined events within a CAT Reporter;

- Life cycle of an order for defined events intra-CAT Reporter; and

- State of all orders across all CAT Reporters at any point in time.

The Plan Processor must use the "daisy chain approach" to link and create the order lifecycle. In the daisy chain approach, a series of unique order identifiers, assigned to all order events handled by CAT Reporters are linked together by the Central Repository and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order.

By using the daisy chain approach the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, the Central Repository must be able to create the lifecycle between:

- All order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (e.g., an internal ATS);

- Customer orders to "representative" orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order);
- Orders routed between broker-dealers;
- Orders routed from broker-dealers to exchanges;
- Orders sent from an exchange to its routing broker-dealer;
- Executed orders and trade reports;
- Various legs of option/equity complex orders; and
- Order events for all equity and option order handling scenarios that are currently or may potentially be used by CAT Reporters, including:
    - Agency route to another broker-dealer or exchange;
    - Riskless principal route to another broker-dealer or exchange capturing within the lifecycle both the customer leg and street side principal leg;
    - Orders routed from one exchange through a routing broker-dealer to a second exchange;
    - Orders worked through an average price account capturing both the individual street side execution(s) and the average price fill to the Customer;
    - Orders aggregated with other orders for further routing and execution capturing both the street side executions for the aggregated order and the fills to each customer order;
    - Complex orders involving one or more options legs and an equity leg, with a linkage between the option and equity legs;
    - Complex orders containing more legs than an exchange's order management system can accept, causing the original order to be broken into multiple orders;
    - Orders negotiated over the telephone or via a negotiation system;
    - Orders routed on an agency basis to a foreign exchange;
    - Execution of customer order via allocation of shares from a pre-existing principal order;
    - Market maker quotes; and
    - Complex orders involving two or more options legs.

Additionally, the Central Repository must be able to:

- Link each order lifecycle back to the originating Customer;
- Integrate and appropriately link reports representing repairs of original submissions that are rejected by the CAT due to a failure to meet a particular data validation;
- Integrate into the CAT and appropriately link reports representing records that are corrected by a CAT Reporter for the purposes of correcting data errors not identified in the data validation process;

- Assign a single CAT-Order-ID to all events contained within the lifecycle of an order so that regulators can readily identify all events contained therein; and

- Process and link Manual Order Events with the remainder of the associated order lifecycle.

As described in Section 3.4 of Appendix D, Options Market Maker Quotes in Listed Options and related Reportable Events will be subject to ingestion only and will not be subject to any linkage requirements.

. . .

3.4 Requirements for Options Market Maker Quotes in Listed Options

The provisions of this section shall govern the processing and storage of Options Market Maker Quotes in Listed Options and related Reportable Events and shall override any conflicting provisions in the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1.

Options Market Maker Quotes in Listed Options must be reported to the Central Repository as provided under Section 6.4(d)(iii) of the CAT NMS Plan. This data will undergo ingestion only and such unlinked data will be made available to regulators by T+1 at 12:00 p.m. Eastern Time. Options Market Maker Quotes in Listed Options will not be subject to any requirement to link and create an order lifecycle, and will not undergo any validation, feedback, linkage, or enrichment processing. Options Market Maker Quotes in Listed Options will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.

. . .

6.1 Data Processing

CAT order events must be processed within established timeframes to ensure data can be made available to Participants' regulatory staff and the SEC in a timely manner. The processing timelines start on the day the order event is received by the Central Repository for processing. Most events must be reported to the CAT by 8:00 a.m. Eastern Time the Trading Day after the order event occurred (referred to as transaction date). The processing timeframes below are presented in this context. All events submitted after T+1 (either reported late or submitted later because not all of the information was available) must be processed within these timeframes based on the date they were received.

The Participants require the following timeframes (Figure A) for the identification, communication and correction of errors from the time an order event is received by the processor:

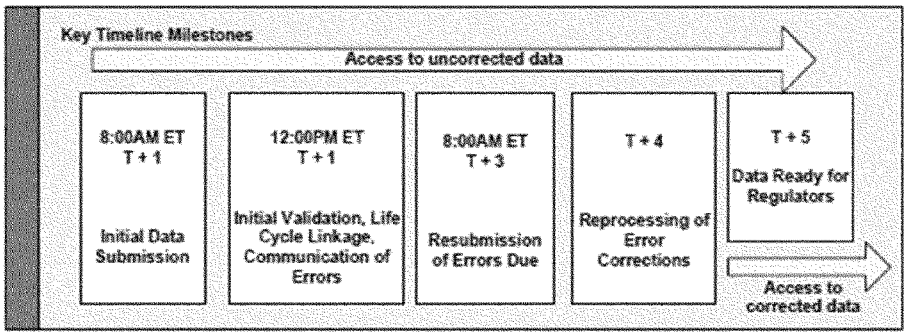
- Noon Eastern Time T+1 (transaction date + one day) – Initial data validation**[, lifecycle linkages]** and communication of errors to CAT Reporters;

- 8:00 a.m. Eastern Time T+3 (transaction date + three days) – Resubmission of corrected data; and

- 8:00 a.m. Eastern Time T+5 (transaction date + five days) – Corrected data available to Participant regulatory staff and the SEC.

Late submissions or re-submissions (after 8:00 a.m.) may be considered to be processed that day if it falls within a given time period after the cutoff. This threshold will be determined by the Plan Processor and approved by the Operating Committee. In the event that a significant portion of the data has not been received as monitored by the Plan Processor, the Plan Processor may decide to halt processing pending submission of that data.

Figure A: CAT Central Repository Data Processing Timelines



{**changes to second box in chart:** 12:00 PM ET T+1 Initial Validation, **[Life Cycle Linkage,]** Communication of Errors}

Where there is an immediate regulatory need (for example, in the case of a major market event), upon request of a senior officer of the Division of Trading and Markets, the Division of Enforcement, or the Division of Examinations to CAT LLC, the Plan Processor shall be directed to create an interim CAT-Order-ID and make it available to regulators by T+1 at 9 p.m. ET if the request is received prior to T+1 at 8 a.m. ET, or generally within 14 hours of receiving the request if such request was received after T+1 at 8 a.m. ET.

For the avoidance of doubt, processing and storage of Options Market Maker Quotes in Listed Options and related Reportable Events shall be governed by Section 3.4 of Appendix D.

. . .

6.3 Exceptions to Data Availability Requirements

Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1, the following types of data may be retained in an archive storage tier, in which case they will be made available upon request by Participant regulatory staff or the SEC to the CAT Help Desk. Archived data is not directly available and searchable electronically without manual intervention and will not be subject to any query tool performance requirements until it is restored to an accessible storage tier.

- **All interim raw unprocessed data (i.e., as submitted data) and operational data older than 15. Interim operational data includes all processed, validated and unlinked data and made available to regulators by T+1 at 12:00 p.m. ET, and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET.**

- **All submission and feedback files older than 15 days.**

. . .

8.1 Regulator Access

The Plan Processor must provide Participants' regulatory staff and the SEC with access to all CAT Data for regulatory purposes only. Participants' regulatory staff and the SEC will access CAT Data to perform functions, including economic analyses, market structure analyses, market surveillance, investigations, and examinations.

The CAT must be able to support, at a minimum, 3,000 regulatory users within the system. It is estimated that approximately 20% of all users will use the system on a daily or weekly basis while approximately 10% of all users will require advanced regulator-user access, as described below. Furthermore, it is estimated that there may be approximately 600 concurrent users accessing the CAT at any given point in time. These users must be able to access and use the system without an unacceptable decline in system performance.[37]

As stated in Appendix D, Data Security, the Plan Processor must be able to support an arbitrary number of user roles. Defined roles must include, at a minimum:

- Basic regulator users – Individuals with approved access who plan to use the Central Repository to run basic queries (e.g., pulling all trades in a single stock by a specific party).

- Advanced regulator users – Individuals with approved access who plan to use the Central Repository to construct and run their own complex queries.

Regulators will have access to processed CAT Data through two different methods, an online-targeted query tool and user-defined direct queries and bulk extracts.

As described in Section 3.4 of Appendix D, Options Market Maker Quotes in Listed Options and related Reportable Events will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.

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III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange 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 4–698 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 4–698. 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 amendment that are filed with the Commission, and all written communications relating to the proposed amendment between the Commission and any person, other than those that may be withheld from the

[37] Specific performance requirements will be included in the SLA.

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 offices of the Participants. 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 4–698 and should be submitted on or before May 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07967 Filed 4–15–24; 8:45 am]

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[38] 17 CFR 200.30–3(a)(85).

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: U.S. Small Business Administration.

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to modify its system of records titled, Small Business Investment Company Information System (SBICIS) (SBA 40), to update its inventory of records systems subject to the Privacy Act of 1974, as amended. Publication of this notice complies with the Privacy Act and the Office of Management and Budget (OMB) Circular A–108 and Circular A–130. System of Records Notice (SORN) titled, Small Business Investment Company Information System (SBA 40), serves as a centralized and automated framework for the organization, retrieval, and analysis of SBIC information which supports the SBA's oversight and risk management roles for the SBIC program.

DATES: Submit comments on or before May 16, 2024. This revised system will be effective upon publication. Routine uses will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments on this notice, identified by [DOCKET NUMBER SBA–2023–0014], by any of the following methods:

Federal e-Rulemaking Portal: *http://www.regulations.gov:* Follow the instructions for submitting comments. Mail/Hand Delivery/Courier: Submit written comments to: Kerry Vance, Director, Information Technology and Data Strategy, Office of Investment and Innovation, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: General questions, please contact Kerry Vance, Director, Information Technology and Data Strategy, Office of Investment and Innovation, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416 or via email, *Kerry.Vance@sba.gov,* telephone 202–205–6160 or Kelvin L. Moore, Chief Information Security Officer, Office of the Chief Information Officer, U.S. Small Business Administration, 409 3rd Street SW, Suite 4000, Washington, DC 20416, email address: *Kelvin.Moore@sba.gov,* telephone 202–921–6273. For Privacy related matters, please contact LaWanda Burnette, Chief Privacy Officer, Office of the Chief Information Officer, or via email to *Privacyofficer@sba.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended, embodies fair information practice principles in a statutory framework governing how federal agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A system of records is any group of records under the control of a federal agency from which information is retrieved by the name of an individual or by a number, symbol or any other identifier assigned to the individual. The Privacy Act requires each federal agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each system of records the agency maintains, the purpose for which the agency uses the Personally Identifiable Information (PII) in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals can exercise their rights related to their PII information.

The modified Privacy Act system of records titled Small Business Investment Company Information System (SBICIS) (SBA 40) will be used to provide notice to current and former (i) prospective Small Business Investment Company license applicants, (ii) SBIC applicants, (iii) SBICs (solely for the purpose of this SORN, the term ''SBIC'' refers to each of (i), (ii), and (iii). This includes managers, executives, members, and employees associated or affiliated with an SBIC, and personal and professional references for certain of the foregoing. It also includes SBIC investors, SBIC portfolio companies, certain SBIC portfolio company employees, SBIC service providers, and certain other individuals associated, affiliated or involved with an SBIC.

Additionally, this modification to the system of records Small Business Investment Company Information System (SBICIS) (SBA 40) also includes changing the short name to SBA SBICIS 40 to easily identify the system short name with its numeric value. Lastly, this modification adds three new routine uses: (H), (I) and (J), respectively.

This system of records is comprised of electronic records managed by the Office of Investment and Innovation (OII). SBA SBICIS 40 will not have any undue impact on the privacy of individuals and its use is compatible with collection.

SYSTEM NAME AND NUMBER:

Small Business Investment Company Information System (SBA SBICIS 40).

SECURITY CLASSIFICATION:

Controlled Unclassified Information

SYSTEM LOCATION:

SBA Headquarters, 409 3rd Street SW, Washington, DC 20416 and vendor cloud platform.

SYSTEM MANAGER(S):

Kerry Vance, Director, Information Technology and Data Strategy, Office of Investment and Innovation, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416 or via email *Kerry.Vance@sba.gov,* telephone 202–205–6160.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Small Business Investment Act of 1958, as amended, 15 U.S.C. 661, *et seq.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and commercial information (including name, address, telephone number, credit history, background information, business information, employer identification number, SBIC License number, financial information, investor commitments, identifying number or other personal identifiers, regulatory compliance information) on individuals and portfolio companies named in SBIC files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside SBA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is deemed by the SBA to be relevant or necessary to the litigation or SBA has an interest in such litigation when any of the following are a party to the litigation or have an interest in the litigation: (1) Any employee or former employee of the SBA in his or her official capacity; (2) Any employee or former employee of the SBA in his or her individual capacity when DOJ or SBA has agreed to represent the employee or a party to the litigation or have an interest in the litigation; or (3) The United States or any agency thereof.

B. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual. The member's access rights are no greater than those of the individual.

C. To the National Archives and Records Administration (NARA) or General Services Administration (GSA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization, including the SBA's Office of Inspector General, for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when: (1) The SBA suspects or has confirmed that the security or confidentiality of information processed and maintained by the SBA has been compromised, (2) the SBA has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by SBA or any other agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SBA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when the SBA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in: (1) Responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To another agency or agent of a government jurisdiction within or under the control of the U.S., lawfully engaged in national security or homeland defense when disclosure is undertaken for intelligence, counterintelligence activities (as defined by 50 U.S.C. 3003(3)), counterterrorism, homeland security, or related law enforcement purposes, as authorized by U.S. law or Executive Order.

H. To other Federal agencies or Federal entities when mandated by executive orders or statute, or as documented by a Memorandum of Understanding or Memorandum of Agreement or Information Exchange Agreement or Data Sharing Agreement (''Agreements'') and approved by the applicable Authorizing Officials in compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a and SBA's policies. These Agreements may be subject to review and approval by SBA's Office of General Counsel and SBA's Senior Agency Official for Privacy or designee and are for the purpose of performing analysis, metrics, or reports in support of marketing or initiatives and programs that SBICs may opt into participate in without any obligation or commitment.

I. To other Federal agencies or Federal entities in aggregate and anonymized for the purpose of marketing, trends, statistical analysis, forecasting, reporting, and research where the information must preserve anonymity.

J. To SBA contractors, grantees, interns, regulators, and experts who have been engaged by SBA to assist in the performance and performance improvement of a service related to this system of records and who need access to the records to perform this activity which may also include for regulatory purposes. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

SBICIS records are retrieved by SBIC or Portfolio Company Name, affiliation with a particular SBIC personal identifier, SBA identifier, employer identification number, or any other data field that would enable SBA to perform its official duties.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with SBA Standard Operating Procedure (SOP) 00 41 latest edition, applicable General Records Schedules (GRS) and are disposed of in accordance with applicable SBA policies.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information stored by SBICIS is stored electronically and supported by the applicable Privacy Impact Assessment(s). Data is protected through the implementation of access controls—least permissions, role-based user permissions, event logging, monitoring, security assessment and authorization reviews, encryption transmission and encrypted data at rest. Safeguards implemented comply to SBA policies, industry best practices, and Federal Government standards, memoranda, and circulars.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should submit a Privacy Act request to the SBA Chief, Freedom of Information and Privacy Act Office, U.S. Small Business Administration, 409 Third St. SW, Eighth Floor, Washington, DC 20416 or *FOIA@sba.gov.* Individuals must provide their full name, mailing address, personal email address, telephone number, and a detailed description of the records being requested. Individuals requesting access must also follow SBA's Privacy Act regulations regarding verification of identity and access to records (13 CFR part 102 subpart B).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

[FR Doc. 2019–19153, Vol. 84, No. 172]

Jennifer Shieh,

Acting, Deputy Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2024–08000 Filed 4–15–24; 8:45 am]

BILLING CODE 8026–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Establishment and Request for Nominations for the Seasonal and Perishable Agricultural Products Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for applications.

SUMMARY: The Office of the United States Trade Representative (USTR) and the U.S. Department of Agriculture (USDA) have established a new trade advisory committee known as the Seasonal and Perishable Agricultural Products Advisory Committee (Committee) to provide advice and recommendations to the U.S. Trade Representative and the Secretary of Agriculture in connection with U.S. trade policy that concerns administrative actions and legislation that would promote the competitiveness of Southeastern U.S. producers of seasonal and perishable agricultural products. USTR is accepting applications from qualified individuals interested in serving a four year term as a Committee member.

DATES: USTR will accept nominations on a rolling basis for Committee membership for an initial four-year charter term.

FOR FURTHER INFORMATION CONTACT: Anthony Reyes at *MBX.USTR.IAPE@USTR.EOP.GOV* or 202–881–4804.

SUPPLEMENTARY INFORMATION:

1. Background

Section 135(c) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)), authorizes the President to establish appropriate sectoral or functional trade advisory committees. The President delegated that authority to the U.S. Trade Representative in Executive Order 11846, section 4(d), issued on March 27, 1975.

Pursuant to this authority, the U.S Trade Representative, jointly with the Secretary of Agriculture, established the Committee to provide advice and recommendations to them on trade policy and development matters that have a significant relationship to administrative actions and legislation that would promote the competitiveness of Southeastern U.S. producers of seasonal and perishable agricultural products.

The Committee meets as needed in person or by virtual or telephone conference, generally four times per year, at the call either of the U.S. Trade Representative and the Secretary of Agriculture or their designee, depending on various factors such as the level of activity of trade negotiations and the needs of the U.S. Trade Representative and the Secretary of Agriculture.

II. Membership

The U.S. Trade Representative and Secretary of Agriculture jointly appoint up to 25 members who represent the views and interests of Southeast U.S. producers of seasonal and perishable agricultural products. In addition to general trade, investment, and development issues, members must have expertise in areas such as:

- growing and selling seasonal and perishable fruits and vegetables.
- understanding the needs and market dynamics affecting producers of seasonal and perishable fruits and vegetables in the Southeastern United States.
- understanding the existing state and federal support programs and resources for producers of seasonal and perishable fruits and vegetables.
- developing and presenting actionable recommendations to U.S. government officials.

To ensure that the Committee is broadly representative, USTR and USDA will consider qualified representatives of key sectors and groups of the economy with an interest in seasonal and perishable produce within the Southeastern United States. Fostering diversity, equity, inclusion and accessibility (DEIA) is one of the top priorities.

The U.S. Trade Representative and the Secretary of Agriculture appoint members jointly and members serve at their discretion. Members serve for a term of up to four years or until the Committee is scheduled to expire. The U.S. Trade Representative and the Secretary of Agriculture may reappoint individuals for any number of terms.

The U.S. Trade Representative and the Secretary of Agriculture are committed to a trade agenda that advances racial equity and supports underserved communities and will seek advice and recommendations on trade policies that eliminate social and economic structural barriers to equality and economic opportunity, and to better understand the projected impact of proposed trade policies on communities of color and underserved communities. USTR and USDA strongly encourage diverse backgrounds and perspectives and makes appointments to the Committee without regard to political affiliation and in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility. USTR and USDA strive to ensure balance in terms of sectors, demographics, and other factors relevant to USTR's needs.

Committee members serve without either compensation or reimbursement of expenses. Members are responsible for all expenses they incur to attend meetings or otherwise participate in Committee activities. Committee members must be able to obtain and maintain a security clearance in order to serve and have access to classified and trade sensitive documents. They must meet the eligibility requirements at the time of appointment and at all times during their term of service.

Committee members are appointed to represent their sponsoring U.S. entity's interests on U.S. trade policy that affects the competitiveness of Southeastern U.S. producers of seasonal and perishable agricultural products, and thus the foremost consideration for applicants is their ability to carry out the goals of section 135(c) of the Trade Act of 1974, as amended. Other criteria include the applicant's knowledge of and expertise in international trade issues as relevant to the work of the Committee, USTR and USDA. USTR anticipates that almost all Committee members will serve in a representative capacity with a limited number serving in an individual capacity as subject matter experts. These members, known as special government employees, are subject to conflict of interest rules and may have to complete a financial disclosure report.

III. Request for Nominations

USTR is soliciting nominations for membership on the Committee. To apply for membership, an applicant must meet the following eligibility criteria at the time of application and at all times during their term of service as a Committee member:

1. The person must be a U.S. citizen.
2. The person cannot be a full-time employee of a U.S. governmental entity.
3. If serving in an individual capacity, the person cannot be a federally registered lobbyist.
4. The person cannot be registered with the U.S. Department of Justice under the Foreign Agents Registration Act.
5. The person must be able to obtain and maintain a security clearance.
6. For representative members, who will comprise almost all of the Committee, the person must represent a U.S. organization whose members (or funders) have a demonstrated interest in issues relevant to agricultural trade or have personal experience or expertise in agricultural trade.

7. For eligibility purposes, a ''U.S. organization'' is an organization established under the laws of the United States, that is controlled by U.S. citizens, by another U.S. organization (or organizations), or by a U.S. entity (or entities), determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable. To qualify as a U.S. organization, more than 50 percent of the board of directors (or comparable governing body) and more than 50 percent of the membership of the organization to be represented must be U.S. citizens, U.S. organizations, or U.S. entities. Additionally, at least 50 percent of the organization's annual revenue must be attributable to nongovernmental U.S. sources.

8. For members who will serve in an individual capacity, the person must possess subject matter expertise regarding international trade issues.

In order to be considered for Committee membership, interested persons should submit the following to the Office of Intergovernmental Affairs and Public Engagement at *MBX.USTR.IAPE@USTR.EOP.GOV:*

- Name, title, affiliation, and contact information of the individual requesting consideration.
- If applicable, a sponsor letter on the organization's letterhead containing a brief description of the manner in which international trade affects the organization and why USTR should consider the applicant for membership.
- The applicant's personal resume.
- An affirmative statement that the applicant and the organization they represent meet all eligibility requirements.

USTR will consider applicants who meet the eligibility criteria in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility, based on the following factors:

- Ability to represent the sponsoring U.S. entity's or U.S. organization's and its subsector's interests on trade matters.
- Knowledge of and experience in U.S. trade policy that affects the competitiveness of Southeastern U.S. producers of seasonal and perishable agricultural products trade and environmental matters, as described in more detail in Part II above, that is relevant to the work of the Committee, USTR and USDA.
- How they will contribute to trade policies that eliminate social and economic structural barriers to equality and economic opportunity and to understanding of the projected impact of proposed trade policies on communities of color and underserved communities.
- Ensuring that the Committee is balanced in terms of points of view, demographics, geography, and entity or organization size.

Roberto Soberanis,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Engagement, Office of the United States Trade Representative.

[FR Doc. 2024–07953 Filed 4–15–24; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Revision of an Approved Information Collection; Comment Request; Reporting and Recordkeeping Requirements Associated With Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to its information collection titled, ''Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring.''

DATES: Comments must be received by June 17, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0323, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0323'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0323'' or ''Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor.

''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the revision of this collection.

Title: Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring. *OMB Control No.:* 1557–0323.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (the Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) implemented a quantitative liquidity requirement, known as the liquidity coverage ratio (LCR), and a stable funding requirement, known as the net stable funding ratio (NSFR), that apply to certain large banking organizations. For the OCC, these standards are implemented through 12 CFR part 50, Liquidity Risk Measurement Standards. The LCR is designed to promote the short-term resilience of the liquidity risk profile of covered banking organizations and promote improvements in the measurement and management of liquidity risk. The NSFR is designed to reduce the likelihood that disruptions to a banking organization's regular sources of funding will compromise its liquidity position, promote effective liquidity risk management, and support the ability of banking organizations to provide financial intermediation to businesses and households across a range of market conditions.

Twelve CFR part 50 applies to large national banks and Federal savings associations. Banks that must comply with part 50 (covered banks) generally include GSIB depository institutions (*i.e.,* depository institutions of global systemically important bank holding companies) supervised by the OCC; Category II national banks and Federal savings associations ; Category III national banks and Federal savings associations; [1] and any national bank or Federal savings association for which the OCC has determined that application of part 50 is appropriate in light of certain risk factors. The reporting and recordkeeping requirements contained in this collection are used to monitor covered banks' compliance with the LCR and NSFR.

The OCC proposes to revise the ''Reporting and Recordkeeping Requirements Associated with the Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring'' information collection to account for three recordkeeping requirements in part 50, contained in sections 50.4(a), 50.22(a)(1) and (a)(4), that had not been previously cleared by the OCC under the Paperwork Reduction Act (PRA).

Section-by-Section Analysis

The reporting and recordkeeping requirements are found in sections 50.4, 50.22, 50.40, 50.109, and 50.110.

Reporting Requirements

Section 50.40(a) requires a covered bank to notify the OCC on any business day when its LCR is calculated to be less than the minimum requirement set by section 50.10.

Section 50.40(b) provides that if a covered bank is required to calculate its LCR on the last business day of each calendar month and its LCR is below the minimum requirement in section 50.10 on the last business day of the applicable calendar month, or if the OCC has determined that the covered bank is otherwise materially noncompliant, then the covered bank must promptly consult with the OCC to determine whether the covered bank must provide to the OCC a plan for achieving compliance with the minimum liquidity requirement in section 50.10 and all other requirements of part 50. Section 50.40(b) further provides that if a covered bank is required to calculate its LCR each business day and its LCR is below the minimum requirement in section 50.10 for three consecutive business days, or if the OCC has determined that the covered bank is otherwise materially noncompliant, the covered bank must promptly provide to the OCC a plan for achieving compliance with the minimum liquidity requirement in section 50.10 and all other requirements of part 50.

The liquidity plan must include, as applicable, (1) an assessment of the covered bank's liquidity position; (2) the actions the covered bank has taken and will take to achieve full compliance, including a plan for adjusting the covered bank's risk profile, risk management, and funding sources in order to achieve full compliance and a plan for remediating any operational or management issues that contributed to noncompliance; (3) an estimated time frame for achieving full compliance; and (4) a commitment to provide a progress report to the OCC at least weekly until full compliance is achieved.

Section 50.110 requires a covered bank to take certain actions following any NSFR shortfall. Section 50.110(a) requires a covered bank to notify the OCC of the shortfall no later than 10 business days (or such other period as the OCC may otherwise require by written notice) following the date that any event has occurred that would cause or has caused the covered bank's NSFR to be less than 1.0.

Section 50.110(b) requires a covered bank to submit to the OCC, within 10 business days of certain triggering events (or such other period as the OCC may otherwise require by written notice), its plan for remediation of its NSFR to at least 1.0. This submission is required if the covered bank has or should have provided notice to the OCC that its NSFR is or will become less than 1.0, the covered bank's reports or disclosures to the OCC indicate that the NSFR is less than 1.0, or the OCC notifies the covered bank that a plan is required and provides a reason for requiring such a plan. Section 50.110(b) also requires a covered bank that has submitted such a plan to report to the OCC at least monthly, or at such other frequency as required by the OCC, on its progress to achieve compliance.

The NSFR remediation plan must include, as applicable, (1) an assessment of the covered bank's liquidity profile; (2) the actions the covered bank has taken and will take to achieve a net stable funding ratio equal to or greater than 1.0 as required under section 50.100, including (a) a plan for adjusting the covered bank's liquidity profile; (b) a plan for remediating any operational or management issues that contributed to noncompliance with the NSFR requirement; and (3) an estimated time frame for achieving full compliance with section 50.100.

Recordkeeping Requirements

Section 50.4(a)(1) provides that in order for a covered bank to recognize an agreement as a qualifying master netting agreement for the purpose of section 50.3, the covered bank must conduct a sufficient legal review to conclude with

[1] Category II and III national banks and Federal savings associations are defined in 12 CFR 50.3.

a well-founded basis (and maintain sufficient written documentation of that legal review) that: (i) the agreement meets the requirements of the definition of qualifying master netting agreement in section 50.3 and (ii) in the event of a legal challenge, the relevant judicial and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.

Section 50.4(a)(2) also requires a covered bank to establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in section 50.3.

Section 50.22(a)(1) requires a covered bank to demonstrate the operational capability to monetize the bank's HQLA (*i.e.,* high-quality liquid assets) by implementing and maintaining procedures and systems to monetize any HQLA at any time in accordance with relevant standard settlement periods and procedures and periodically monetizing a sample of the HQLA that reflects the composition of the covered bank's eligible HQLA.

Section 50.22(a)(2) requires a covered bank to implement policies that require the eligible HQLA to be under the control of the management function in the covered bank that is charged with managing liquidity risk. The management function must evidence its control over the HQLA by segregating the HQLA from other assets, with the sole intent to use the HQLA as a source of liquidity, or by demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business or risk management strategy of the covered bank.

Section 50.22(a)(4) requires a covered bank to implement and maintain policies and procedures that determine the composition of its eligible HQLA on each calculation date by identifying, determining, and ensuring certain required steps.

Section 50.22(a)(5) requires a covered bank to have a documented methodology that results in a consistent treatment for determining that the covered bank's eligible HQLA meets the requirements of section 50.22.

Section 50.109(b) provides that if a covered bank includes an ASF (*i.e.,* available stable funding) amount in excess of the RSF (*i.e.,* required stable funding) amount of the consolidated subsidiary, it must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from the consolidated subsidiaries. These procedures must document which types of transactions the institution could use to transfer assets from a consolidated subsidiary to the institution and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions.

Estimated Burden

Estimated Frequency of Response: On occasion, annual.

Estimated Number of Respondents: 15.

Estimated Total Annual Burden: 735 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director,Office of the Comptroller of the Currency.

[FR Doc. 2024–07950 Filed 4–15–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Request for Transfer of Property Seized/Forfeited by a Treasury Agency

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collection listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before June 17, 2024.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Transfer of Property Seized/Forfeited by a Treasury Agency.

OMB Control Number: 1505–0152.

Type of Review: Revision of a currently approved collection.

Description: Form TD F 92–22.46 is necessary for State and local law enforcement agencies to apply for the sharing of seized assets from the Treasury Forfeiture Fund after participating in joint investigations with the Federal government. Treasury will be updating the form to include collection of the SAM/Unique Entity ID number for the requesting State or local agency.

Form: TD F 92–22.46.

Affected Public: State and local law enforcement agencies.

Estimated Number of Respondents: 1,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 7,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 3,500.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on

respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–08026 Filed 4–15–24; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

Vol. 89 Tuesday,
No. 74 April 16, 2024

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Improvements to Generator Interconnection Procedures and Agreements; Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM22–14–001; Order No. 2023–A]

Improvements to Generator Interconnection Procedures and Agreements

AGENCY: Federal Energy Regulatory Commission.

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. 2023, which amended the Commission's regulations and its pro forma Large Generator Interconnection Procedures, pro forma Large Generator Interconnection Agreement, pro forma Small Generator Interconnection Procedures, and pro forma Small Generator Interconnection Agreement to address interconnection queue backlogs, improve certainty, and prevent undue discrimination for new technologies.

DATES: This rule is effective May 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Anne Marie Hirschberger (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8387, *annemarie.hirschberger@ferc.gov.*

Sarah Greenberg (Legal Information), Office of the General Counsel, 888 First St. NE, Washington, DC 20426, (202) 502–6230, *sarah.greenberg@ferc.gov.*

Franklin Jackson (Technical Information), Office of Energy Market Regulation, 888 First Street NE, Washington, DC 20426, (202) 502–6464, *franklin.jackson@ferc.gov.*

Michael G. Henry, Office of Energy Policy and Innovation, 888 First Street NE, Washington, DC 20426, (202) 502–8583, *michael.henry@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

1. On July 28, 2023, the Federal Energy Regulatory Commission (Commission) issued Order No. 2023.[1] Order No. 2023 required all public utility transmission providers to adopt revised *pro forma* Large Generator Interconnection Procedures (LGIP), *pro forma* Large Generator Interconnection Agreements (LGIA), *pro forma* Small Generator Interconnection Procedures (SGIP), and *pro forma* Small Generator Interconnection Agreements (SGIA).[2] These revisions ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, and will prevent undue discrimination.[3] In Order No. 2023, the Commission adopted a comprehensive package of reforms in three general categories: (1) reforms to implement a first-ready, first-served cluster study process, (2) reforms to increase the speed of interconnection queue processing, and (3) reforms to incorporate technological advancements into the interconnection process.

2. To implement a first-ready, first served cluster study process, Order No. 2023: (1) required transmission providers to post public interconnection information in an interactive heatmap to provide interconnection customers information before they enter the queue; (2) eliminated individual serial feasibility and system impact studies and created a cluster study; (3) created a range of allowable allocations of cluster study costs; (4) required transmission providers to use a proportional impact method to assign network upgrade costs within a cluster; (5) required increased financial commitments and readiness requirements from interconnection customers, including increased study deposits, site control, commercial readiness deposits, an LGIA deposit, and required transmission providers to institute penalties for withdrawn interconnection requests; and (6) created a transition mechanism for moving to the cluster study process adopted in Order No. 2023 from the existing serial study process.[4]

3. To increase the speed of interconnection queue processing, Order No. 2023: (1) eliminated the reasonable efforts standard for completing interconnection studies and adopted study delay penalties applicable when transmission providers fail to complete interconnection studies

[1] *Improvements to Generator Interconnection Procs. & Agreements,* Order No. 2023, 88 FR 61014 (Sept. 6, 2023), 184 FERC ¶ 61,054 (2023).

[2] *Id.* P 1 n.1 (''Section 201(e) of the Federal Power Act (FPA) defines ''public utility'' to mean ''any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter.'' 16 U.S.C. 824(e). A non-public utility that seeks voluntary compliance with the reciprocity condition of a tariff may satisfy that condition by filing a tariff, which includes the *pro forma* LGIP, the *pro forma* SGIP, the *pro forma* LGIA, and the *pro forma* SGIA. *See Standardization of Generator Interconnection Agreements & Procs.,* Order No. 2003, 68 FR 49846 (Aug. 19, 2003), 104 FERC ¶ 61,103, at PP 1, 616 (2003), *order on reh'g,* Order No. 2003–A, 69 FR 15932 (Mar. 26, 2004), 106 FERC ¶ 61,220, *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 (D.C. Cir. 2007) (*NARUC* v. *FERC*). As stated in the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and *pro forma* SGIA, transmission provider ''shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the [Transmission Provider's Tariff]. The term . . . should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.'' *Pro forma* LGIP section 1; *pro forma* LGIA art. 1; *pro forma* SGIP attach. 1; *pro forma* SGIA attach. 1.'').

[3] Order No. 2023, 184 FERC ¶ 61,054 at P 1.

[4] *Id.* P 5.

by the deadlines in their tariff; and (2) established a more detailed affected system study process in the *pro forma* LGIP, including *pro forma* affected system agreements and uniform modeling standards.[5]

4. To incorporate technological advancements into the interconnection process, Order No. 2023: (1) required transmission providers to allow more than one generating facility to co-locate on a shared site behind a single point of interconnection and share a single interconnection request; (2) required transmission providers to evaluate the proposed addition of a generating facility to an existing interconnection request prior to deeming such an addition a material modification; (3) required transmission providers to allow interconnection customers to access the surplus interconnection service process once the original interconnection customer has an executed LGIA or requests the filing of an unexecuted LGIA; (4) required transmission providers, at the request of the interconnection customer, to use operating assumptions in interconnection studies that reflect the proposed charging behavior of electric storage resources; (5) required transmission providers to evaluate an enumerated list of alternative transmission technologies during the study process; (6) required each interconnection customer requesting to interconnect a non-synchronous generating facility to submit to the transmission provider certain specific models of the generating facility; (7) established ride through requirements during abnormal frequency conditions and voltage conditions within the ''no trip zone'' defined by NERC Reliability Standard PRC–024–3 or successor mandatory ride through reliability standards; and (8) required that all newly interconnecting large generating facilities provide frequency and voltage ride through capability consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis.[6]

5. The Commission received 32 timely filed requests for rehearing and/or clarification, and two additional requests for clarification.[7] The rehearing requests raise issues related to nearly all reforms adopted in Order No. 2023.

6. Pursuant to *Allegheny Defense Project* v. *FERC,*[8] the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act (FPA),[9] we are modifying the discussion in Order No. 2023, setting aside the order, in part, and clarifying the order, as discussed below.[10]

7. Specifically, we set aside the order, in part, to specify that: (1) where an interconnection customer is in the interconnection queue of a transmission provider that currently uses, or is transitioning to, a cluster study process and the transmission provider proposes on compliance to adopt new readiness requirements for its annual cluster study, the interconnection customer must comply with the transmission provider's new readiness requirements within 60 days of the Commission-approved effective date of the transmission provider's compliance filing, where such readiness requirements are applicable given the status of the individual interconnection customer in the queue; (2) a network upgrade that is required for multiple interconnection customers in a cluster may be considered a stand alone network upgrade if all such interconnection customers mutually agree to exercise the option to build; (3) transmission providers must complete their determination that an interconnection request is valid by the close of the cluster request window such that only interconnection customers with valid interconnection requests proceed to the customer engagement window; and (4) acceptable forms of security for the Commercial Readiness Deposit and deposits prior to the Transitional Serial Study, Transitional Cluster Study, Cluster Restudy and the Interconnection Facilities Study should include not only cash or an irrevocable letter of credit, but also surety bonds or other forms of financial security that are reasonably acceptable to the transmission provider.

8. Additionally, we grant several clarifications on the following topics, as further discussed below: (1) conflicts with ongoing queue reform efforts; (2) public interconnection information; (3) cluster study process; (4) allocation of cluster network upgrade costs; (5) shared network upgrades; (6) withdrawal penalties; (7) study delay penalty and appeal structure; (8) affected systems; (9) revisions to the material modification process to require consideration of generating facility additions; (10) availability of surplus interconnection service; (11) operating assumptions for interconnection studies; (12) consideration of the enumerated alternative transmission technologies in interconnection studies; and (13) ride-through requirements.

9. Finally, in light of the revisions made to the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and *pro forma* SGIA herein, we extend the deadline for transmission providers to submit compliance filings until the effective date of this order (*i.e.,* the new deadline for compliance with Order No. 2023 will be 30 days after the publication of this order in the **Federal Register**, and must include the further revisions reflected in this order).

II. Discussion

A. Need for Reform

1. Order No. 2023

10. The Commission stated that it found substantial evidence in the record to support the conclusion that the existing *pro forma* generator interconnection procedures and agreements were unjust, unreasonable, and unduly discriminatory or preferential.[11] Therefore, pursuant to FPA section 206, the Commission concluded that certain revisions to the *pro forma* open access transmission tariff and the Commission's regulations were necessary to ensure rates that are just, reasonable, and not unduly discriminatory or preferential. Specifically, the Commission found that the existing *pro forma* generator interconnection procedures and agreements were insufficient to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, thereby ensuring that rates, terms, and conditions for Commission-jurisdictional services are just, reasonable, and not unduly discriminatory or preferential. The

[5] *Id.* P 6.

[6] *Id.* P 6.

[7] Appendix A provides the short names of the entities that filed requests for rehearing or clarification. Shell filed an answer. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.713(d)) prohibits an answer to a request for rehearing. Accordingly, we deny Shell's motion to answer and reject its answer.

[8] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

[9] 16 U.S.C. 825*l*(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.'').

[10] *Allegheny Def. Project,* 964 F.3d at 16–17. In Appendices C, D, E, and F, we provide the revisions to the provisions of the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and *pro forma* SGIA made in this order on rehearing and clarification. Additionally, these Appendices reflect several non-substantive corrections in these appendices to address stylistic inconsistencies or clerical errors in some of the new and revised *pro forma* provisions.

[11] Order No. 2023, 184 FERC ¶ 61,054 at P 37.

Commission stated that, absent reform, the interconnection process will continue to cause interconnection queue backlogs, longer development timelines, and increased uncertainty regarding the cost and timing of interconnecting to the transmission system. The Commission explained that these backlogs and delays, and the resulting timing and cost uncertainty, hinder the timely development of new generation and thereby stifle competition in the wholesale electric markets resulting in rates, terms, and conditions that are unjust, unreasonable, and unduly discriminatory or preferential.

11. The Commission cited recent data to support its findings that the dramatic increase in the number of interconnection requests and limited transmission capacity are increasing interconnection queue backlogs across all regions of the country.[12] This data indicated that, as of the end of 2022, there were over 10,000 active interconnection requests in interconnection queues throughout the United States, representing over 2,000 gigawatts (GW) of potential generation and storage capacity.[13] These interconnection requests and the generating facilities they represent amount to the largest interconnection queue size on record, more than four times the total volume (in GW) of the interconnection queues in 2010, and a 40% increase over the interconnection queue size from just the year prior. The Commission explained that these trends are not exclusive to any specific region of the country; rather, every region, including regional transmission organizations (RTO), independent system operators (ISO), and non-RTOs/ISOs, has faced an increase in both interconnection queue size and the length of time interconnection customers are spending in the interconnection queue prior to commercial operation in recent years. The Commission noted that the uncertainty and delays in the interconnection queues have resulted in fewer than 25% of interconnection requests, by capacity, reaching commercial operation between 2000 and 2017 in *any* region of the country—with some regions as low as 8%.

12. The Commission also cited recent data that interconnection customers are waiting longer in the interconnection queue before withdrawing their interconnection requests, even as overall interconnection study timelines are increasing in many regions.[14] Despite efforts to address these challenges, the Commission observed that interconnection queue backlogs and delays have persisted and worsened. For generating facilities built in 2022, wait times in the interconnection queue saw a marked increase from 2.1 years for generating facilities built in 2000–2010 to roughly five years for generating facilities built in 2022.

13. The Commission explained that delays in the interconnection study process are an important contributor to interconnection queue backlogs nationwide.[15] The Commission cited recent interconnection study metrics transmission providers filed with the Commission, as required by Order No. 845, which showed that of the 2,179 interconnection studies completed in 2022, 68% were issued late. At the end of 2022, an additional 2,544 studies were delayed (*i.e.,* ongoing and past their deadline). All of the RTOs/ISOs except CAISO and most non-RTO/ISO transmission providers (14 of 38) reported pending delayed studies at the end of 2022.

14. The Commission found that numerous factors have contributed to the increasing volume of interconnection requests, including a rapidly changing resource mix, market forces, and emerging technologies.[16] The Commission also found that available transmission capacity has been largely or fully used in many regions, creating situations where interconnection customers face significant network upgrade cost assignments to interconnect their proposed generating facilities. As an example, the Commission cited a U.S. DOE report that found that interconnection costs in MISO doubled for generating facilities for which the interconnection studies were completed between 2019 and 2021 as compared to those completed prior to 2019, and cost estimates tripled for proposed generating facilities still active in the interconnection queue between the same time periods.[17] The Commission also noted that other reports show similar cost increases in NYISO and PJM.[18] The Commission found that this combination of increased volume of interconnection requests and insufficient transmission capacity and therefore higher costs to interconnect, which can result in interconnection request withdrawals, has resulted in longer interconnection queue processing times and larger, more delayed interconnection queues.

15. The Commission explained that interconnection queue backlogs and delays have created uncertainty for interconnection customers regarding the timing and cost of ultimately interconnecting to the transmission system, which may lead to an increase in costs to consumers.[19] The Commission stated that delayed interconnection study results or unexpected cost increases can disrupt numerous aspects of generating facility development and such uncertainty, either on the part of transmission providers or interconnection customers, is ultimately passed through to consumers through higher transmission or energy rates. The Commission explained that increases in energy rates may result from wholesale customers having limited access to new and more competitive supplies of generation and that, conversely, efficient interconnection queues and well-functioning wholesale markets deliver benefits to consumers by driving down wholesale electricity costs.

16. Overall, due to continuing and increasing interconnection queue backlogs and study delays, the Commission found that the Commission's existing rules contained in the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and *pro forma* SGIA resulted in rates, terms, and conditions for Commission-jurisdictional services that are unjust, unreasonable, and unduly discriminatory or preferential.[20] The Commission found that the problems described above lead to an inability of interconnection customers to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, and

[12] *Id.* P 38 (citing Energy Markets & Policy-Berkeley Lab, *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection,* 7–8 (Apr. 2023) (Queued Up 2023), *https://emp.lbl.gov/sites/default/files/queued_up_2022_04-06-2023.pdf;* Appendix B to Order No. 2023, which provided an overview of recent data based on reporting by transmission providers in compliance with Order No. 845).

[13] *Id.* (citing Queued Up 2023).

[14] *Id.* P 39.

[15] *Id.* P 40.

[16] *Id.* P 41.

[17] *Id.* (citing Joachim Seel et al., *Generator Interconnection Cost Analysis in the Midcontinent Independent System Operator (MISO) Territory,* 1, 4–5 (Oct. 2022), *https://emp.lbl.gov/interconnection_costs.*).

[18] *Id.* (citing Julia Mulvaney Kemp et al., *Interconnection Cost Analysis in the NYISO Territory* (Mar. 2023), *https://emp.lbl.gov/publications/interconnection-cost-analysis-nyiso* (showing that costs have doubled for generating facilities studied since 2017, relative to costs for generating facilities studied from 2006 to 2016); Joachim Seel et al., *Interconnection Cost Analysis in the PJM Territory* (Jan. 2023), *https://emp.lbl.gov/publications/interconnection-cost-analysis-pjm* (showing that costs for recent ''complete'' generating facilities have doubled on average relative to costs from 2000–2019)).

[19] *Id.* P 43.

[20] *Id.* P 44.

hindered the timely development of new generation, thereby stifling competition in the wholesale electric markets. Therefore, the Commission found that reform to the Commission's existing *pro forma* generator interconnection procedures and agreements was necessary.

17. The Commission based its findings that the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and *pro forma* SGIA must be reformed on the following features: (1) the information (or lack thereof) available to prospective interconnection customers and the commitments required of them to enter and progress through the interconnection queue; (2) the reliance on a serial first-come, first-served study process and the reasonable efforts standard that transmission providers are held to for meeting interconnection study deadlines; (3) the protocols (or lack thereof) for affected system studies; (4) the provisions for studying new generating facility technologies and evaluating the list of alternative transmission technologies enumerated in Order No. 2023; and (5) the modeling or performance requirements (or lack thereof) for non-synchronous generating facilities, including wind, solar, and electric storage facilities.[21] The Commission further explained each of these five features.

18. First, the Commission explained that, without a process by which an interconnection customer can obtain information about potential interconnection costs at a specific location or point of interconnection prior to submitting an interconnection request, it is difficult for interconnection customers to assess the commercial viability of a specific proposed generating facility prior to entering the interconnection queue.[22] The Commission also found that the *pro forma* interconnection procedures and agreements failed to include meaningful financial commitments and readiness requirements to enter and stay in the interconnection queue and lacked stringent requirements to establish the commercial viability of proposed generating facilities. As a result, the Commission explained, interconnection customers often submit multiple interconnection requests for proposed generating facilities at various points of interconnection, knowing that not all of them will reach commercial operation, as an exploratory mechanism to obtain information to allow the interconnection customer to choose to proceed with the interconnection request representing the most favorable site in terms of potential interconnection-related costs.

19. Second, the Commission explained that the existing serial first-come, first-served study process created incentives for interconnection customers to submit exploratory or speculative interconnection requests pursuant to which interconnection customers seek to secure valuable queue positions as early as possible, even if they are not prepared to move forward with the proposed generating facility.[23] Such generating facilities are often not commercially viable: thus, the interconnection customers ultimately withdraw their interconnection requests from the interconnection queue, which triggers reassessments and possible restudies by the transmission provider that can delay the timing and increase the cost to interconnect for lower-queued interconnection requests. The Commission found that the lack of access to information about a specific location or point of interconnection prior to submitting an interconnection request, the lack of any meaningful financial commitments in the *pro forma* interconnection procedures and agreements for interconnection customers to enter and stay in the interconnection queue, as well as the existing serial first-come, first-served study process, together incentivized interconnection customers to submit speculative interconnection requests that contribute to interconnection study backlogs, delays, and uncertainty, and, in turn, unjust and unreasonable Commission-jurisdictional rates.[24]

20. The Commission also found that interconnection queue backlogs and delays, and the accompanying uncertainty, have been further compounded because transmission providers have limited incentive to perform interconnection studies in a timely manner.[25] The Commission stated that, despite pervasive delays in completing interconnection studies by transmission providers, transmission providers have faced few, if any, consequences for failing to meet their tariff-imposed study deadlines under the reasonable efforts standard. The Commission therefore found that the existing *pro forma* LGIP requirement for transmission providers to make a reasonable effort to meet interconnection study deadlines contributes to the interconnection study backlogs, delays, and uncertainty that erects barriers to new generation, resulting in Commission-jurisdictional rates that are unjust and unreasonable.

21. Third, the Commission found that, without requirements for how and when transmission providers should complete affected system studies, those studies often lag behind those completed by the transmission provider to whose transmission system the interconnection customer proposes to interconnect (the host transmission provider) and are sometimes completed very late in the interconnection process, causing an additional round of delays and cost uncertainty for interconnection customers.[26] Additionally, for transmission providers that have procedures for how to complete affected system studies in their tariffs or other documents (*e.g.,* business practice manuals or joint operating agreements), the Commission found that those procedures are not consistent, may be hard for interconnection customers to locate, and may not represent the actual practices in use by the transmission provider, thus still creating uncertainty for interconnection customers. As a result, the Commission found that the lack of consistent requirements for affected system modeling and procedures results in Commission-jurisdictional rates that are unjust, unreasonable, and unduly discriminatory or preferential.

22. Fourth, the Commission found that the Commission's *pro forma* LGIP failed to accommodate the operating characteristics and technical capabilities of electric storage resources when it comes to specific interconnection procedures and modeling.[27] The Commission noted that interconnection queues predominantly consist of new technologies which have operating characteristics that differ from synchronous resources and were not anticipated when the Commission established the *pro forma* generator interconnection procedures and agreements in Order Nos. 2003 and 2006. The Commission noted that the existing *pro forma* generator interconnection procedures and agreements did not contemplate the operating characteristics or technical capabilities of electric storage resources, leading to electric storage resources being studied under inappropriate operating assumptions (*e.g.,* charging at full capacity during peak load conditions) that result in the assignment of unnecessary network upgrades which increase costs to interconnection customers. Therefore, the Commission found that the inability to modify

[21] *Id.* P 45.

[22] *Id.* P 46.

[23] *Id.* P 47.

[24] *Id.* P 48.

[25] *Id.* P 50.

[26] *Id.* P 51.

[27] *Id.* P 52.

operating assumptions for electric storage resources pursuant to the *pro forma* LGIP resulted in Commission-jurisdictional rates that are unjust, unreasonable, and unduly discriminatory or preferential.

23. The Commission also found that the existing *pro forma* interconnection procedures regarding material modifications did not provide for consistent evaluation of technology additions to an existing interconnection request, and that automatically deeming a request to add a generating facility to an existing interconnection request to be a material modification creates a significant barrier to access to the transmission system.[28]

24. Finally, the Commission found that the *pro forma* LGIP and *pro forma* SGIP failed to require the consideration of alternative transmission technologies that can be used as network upgrades and can be deployed more quickly and at a lower cost than, traditional network upgrades.[29] The Commission found that failing to require transmission providers to evaluate the enumerated list of alternative transmission technologies resulted in interconnection customers paying more than is just and reasonable to reliably interconnect new generating facilities, ultimately creating Commission-jurisdictional rates that are unjust, unreasonable, and unduly discriminatory or preferential.

25. Fifth, the Commission found that the Commission's existing *pro forma* LGIP and *pro forma* SGIP did not include a modeling requirement for non-synchronous generating facilities, which is necessary to enable the transmission provider to assess and model the facility's ability to respond appropriately to transmission system disturbances.[30] The Commission explained that interconnection customers must submit accurate and validated models, which will prevent study delays and ensure that transmission providers identify the necessary interconnection facilities and network upgrades to accommodate the interconnection request and thus allow the appropriate assignment of interconnection costs to the interconnection request. Therefore, the Commission found that the lack of a modeling requirement for non-synchronous generating facilities in the *pro forma* LGIP and *pro forma* SGIP results in rates that are unjust, unreasonable, and unduly discriminatory or preferential. Additionally, the Commission explained that the physical characteristics of synchronous generating facilities allow them to continue to inject electric current during transmission system disturbances, as required by the *pro forma* LGIA and *pro forma* SGIA.[31] However, non-synchronous generating facilities did not face a comparable requirement and many cease injecting current during system disturbances through ''momentary cessation,'' which creates reliability issues on the transmission system. The Commission stated that, without requirements for non-synchronous generating facilities to remain connected to and synchronized with the transmission system during system disturbances, interconnection studies may not accurately model expected behavior and identify the appropriate interconnection facilities and network upgrades to accommodate the interconnection request, skewing the assignment of interconnection costs. As a result, the Commission found that the lack of comparable requirements for non-synchronous generating facilities to remain ''connected to and synchronized with the [t]ransmission [s]ystem'' in the *pro forma* LGIA and *pro forma* SGIA results in rates that are unjust, unreasonable, and unduly discriminatory or preferential.

26. The Commission further found that the reforms adopted in Order No. 2023 will improve the efficiency of study processes, reduce interconnection queue backlogs, and thereby ensure just, reasonable, and not unduly discriminatory or preferential rates.[32] The Commission explained that the majority of the individual reforms that the Commission adopted have already been implemented in one or more regions in order to improve the interconnection process, demonstrating incremental improvements. The Commission compiled a package of such reforms that, in their entirety, have not yet been adopted by any region, and will ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner.

2. Requests for Rehearing and Clarification

27. Dominion seeks rehearing, asserting that the Commission exceeded its FPA section 206 authority by declaring all existing interconnection tariffs, including recently accepted reforms by PJM and Dominion Energy South Carolina (DESC), as unjust, unreasonable, and unduly discriminatory or preferential without substantial evidence.[33] Dominion asserts that the Commission did not establish a sufficient legal foundation to generically find that all tariffs are unjust and unreasonable.[34] Similarly, Indicated PJM TOs argue that the Commission arbitrarily and capriciously relied on inapposite and stale evidence to impose a generic replacement rate on early adopters of the cluster study approach.[35] PJM also argues that the generic findings underlying Order No. 2023 cannot apply to its Interconnection Process Reform Task Force (IPRTF) Tariff, which was filed and approved during the time period between issuance of the NOPR and Order No. 2023.[36] Therefore, PJM contends, the data underlying Order No. 2023 is stale as to PJM and its use does not constitute reasoned decision-making based on substantial evidence.

28. Dominion acknowledges that the Commission is able to rely on generic rulemakings to support an industry wide solution, but that Order No. 2023 goes beyond the limits of this authority.[37] Dominion argues that Order No. 2023's mandate is unlike the generic rulemaking upheld by the D.C. Circuit in *Transmission Access Policy Study Group* v. *FERC* because the rule at issue in that case, Order No. 888, represented a paradigm shift for which a generic rulemaking is appropriate.[38] Dominion asserts that the other generic rulemakings upheld by the courts similarly involve more wholesale reform than Order No. 2023, such as the expansion and creation of new Order No. 1000 planning obligations upheld in *S.C. Pub. Serv. Auth.,* or the Order No. 637 requirement for gas pipelines to permit segmentation where

[28] *Id.* P 53.

[29] *Id.* P 54.

[30] *Id.* P 55.

[31] *Id.* P 56.

[32] *Id.* P 59.

[33] Dominion Rehearing Request at 2.

[34] *Id.* at 14 (citing *S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 71, 65 (D.C. Cir. 2014) (*S.C. Pub. Serv. Auth.*) (''To regulate a practice affecting rates pursuant to Section 206, the Commission must find that the existing practice is 'unjust, unreasonable, unduly discriminatory or preferential,' and that the remedial practice it imposes is 'just and reasonable.' These findings must be supported by 'substantial evidence[.]'''); *Emera Me.* v. *FERC,* 854 F.3d 9, 25 (D.C. Cir. 2017) (*Emera Me.*) (''[A] finding that an existing rate is unjust and unreasonable is the 'condition precedent' to FERC's exercise of its section 206 authority to change that rate. Section 206, therefore, imposes a 'dual burden' on FERC. Without a showing that the existing rate is unlawful, FERC has no authority to impose a new rate.'')).

[35] Indicated PJM TOs Rehearing Request at 7, 17.

[36] PJM Rehearing Request at 25–26.

[37] Dominion Rehearing Request at 12.

[38] *Id.* (citing *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)); *see also* Indicated PJM TOs Rehearing Request at 14.

operationally feasible, upheld in *Interstate Natural Gas Association of America* v. *FERC.*[39] Dominion contends that the Commission's generic findings in Order No. 2023 are disproportionate to the evidence the Commission relies on. Similarly, Indicated PJM TOs assert that the Commission's generic finding is overbroad because many RTOs/ISOs have already adopted the core reforms in Order No. 2023.[40]

29. Dominion further argues that, while the courts have held that the Commission can address case-by-case discrepancies between the generic determination and specific tariffs during compliance filings, this cannot be considered an unlimited way for the Commission to avoid its obligation under the Administrative Procedure Act (APA) to rely on substantial evidence when making FPA section 206 decisions.[41] Dominion asserts that, because the Commission recently accepted revisions to PJM's and DESC's tariffs to address the same issue that Order No. 2023 attempts to address, the Commission must consider those tariffs individually and may not sweep them up in a generic determination based on evidence of queue backlogs made under previous tariffs and regions.

30. Dominion argues that Order No. 2023 was arbitrary and capricious because it relied on out-of-date data and ignored contrary data.[42] Dominion asserts that, although the Commission is not required to rely on ''empirical evidence,'' the Commission must support its findings with substantial, up-to-date, evidence and cannot ignore new circumstances.[43] Dominion asserts that Order No. 2023 does not reflect reasoned decision-making as it relates to PJM and DESC because it relies on queue delays and backlogs that predate PJM's and DESC's revised interconnection reforms and it does not consider those currently effective interconnection reforms. Indicated PJM TOs point out that the Order No. 845 data the Commission relied on is stale because it concerns PJM's previous serial study process, and the Commission's reliance on that data is inconsistent with its decision to omit SPP's data from its consideration.[44]

31. Dominion argues that the Commission ignored evidence that PJM and DESC had recently adopted interconnection reforms to address the same problem addressed by Order No. 2023.[45] Indicated PJM TOs state that the Commission points repeatedly to problems associated with a serial study approach, which are irrelevant to regions that already implemented cluster studies.[46] Dominion and Indicated PJM TOs argue that the Commission should have considered whether PJM's, DESC's, and other similarly situated transmission providers' reforms are working or even had a chance to be fully implemented.[47] Dominion argues that the Commission cited no evidence to demonstrate that PJM's tariff is unjust and unreasonable, and that it would be difficult to do so because PJM's transitional process began on July 10, 2023, so there is no data available to determine whether it is successful.[48] Similarly, Dominion notes that DESC's transition process began on June 13, 2022, was based on 12 months of stakeholder engagement, and includes many components of Order No. 2023. Dominion contends that reasoned decision-making should at least require the Commission to consider all relevant information, including information about the efficacy of reforms in existing tariffs that are attempting to address the same problem the Commission is relying upon to make its FPA section 206 determination.[49]

32. Dominion also states that Order No. 2023 directly acknowledges that CAISO and some non-RTO/ISO transmission providers had no delayed studies at the end of 2022.[50] Dominion argues that, instead of supporting the Commission's finding that all interconnection processes are unjust and unreasonable, Order No. 2023 acknowledges that the problem is not as widespread as suggested and that intervening reforms similar to what Order No. 2023 requires may already be addressing the problem used to justify the FPA section 206 finding.

33. Dominion states that, where an industry-wide solution is imposed for a problem that only exists in isolated pockets, ''the disproportion of remedy to ailment would, at least at some point, become arbitrary and capricious.'' [51] Dominion states that the Order No. 2023 compliance obligation essentially requires all existing processes to re-prove the justness and reasonableness of their processes, creating a remedy that is ''disproportionate'' to the identified problem.[52]

34. Dominion asks the Commission to confirm that, if compliance filings are required of early adopters like PJM and DESC, the Commission has the burden under FPA section 206 to find that existing processes recently adopted are unjust and unreasonable.[53] Dominion asserts that the Commission must hew to the constraints created by FPA section 206 and cannot shift the burden to individual early adopters to defend their current rates.

3. Determination

35. We sustain our finding in Order No. 2023 [54] that the existing *pro forma* generator interconnection procedures and agreements are unjust, unreasonable, and unduly discriminatory or preferential.[55] We also continue to find that Order No. 2023's revisions to the *pro forma* open access transmission tariff and the Commission's regulations are necessary to ensure rates that are just, reasonable, and not unduly discriminatory or preferential.

36. We note that Dominion's rehearing request misstates the Commission's generic finding as ''declaring all existing interconnection tariffs, including recently accepted reforms by PJM and DESC, as unjust, unreasonable, and unduly

[39] Dominion Rehearing Request at 12–13 (citing *S.C. Pub. Serv. Auth.,* 762 F.3d at 67; *Interstate Nat. Gas Ass'n of Am.* v. *FERC,* 285 F.3d 18 (D.C. Cir. 2002) (*INGAA*)).

[40] Indicated PJM TOs Rehearing Request at 7, 17–18 (citing *PJM Interconnection, L.L.C.,* 181 FERC ¶ 61,162 (2022)).

[41] Dominion Rehearing Request at 14 (citing *INGAA,* 285 F.3d at 37).

[42] *Id.* at 2.

[43] *Id.* at 10 (citing *S.C. Pub. Serv. Auth.,* 762 F.3d at 64–65).

[44] Indicated PJM TOs Rehearing Request at 18 n.45. Indicated PJM TOs specifically point to Order No. 2023's citation to Order No. 845 data showing the number of delayed studies as of the end of 2022, ''with the vast majority of these studies (2,211)'' coming from PJM, as stale data the Commission used to support the new obligations Order No. 2023 will impose. *Id.* at 17.

[45] Dominion Rehearing Request at 12.

[46] Indicated PJM TOs Rehearing Request at 18.

[47] *Id.;* Dominion Rehearing Request at 13.

[48] Dominion Rehearing Request at 8–9.

[49] *Id.* at 13 (citing *Greater Bos. Television Corp.* v. *Fed. Communications Comm'n,* 444 F.2d 841, 851 (D.C. Cir. 1970) (an agency must give ''reasoned consideration to all the material facts and issues'' and ''engage[] in reasoned decision making''); *Tarpon Transmission Co.* v. *FERC,* 860 F.2d 439, 442 (D.C. Cir. 1988) (''We cannot accept an agency determination unless it is the result of reasoned and principled decisionmaking that can be ascertained from the record.''); *ANR Pipeline Co.,* 71 F.3d 897, 901 (D.C. Cir. 1995) (''[W]here an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious.''); *Tenneco Gas* v. *FERC,* 969 F.2d 1187, 1214 (D.C. Cir. 1992) (''Subsumed in the substantial evidence requirement is the expectation that agencies will treat fully each of the pertinent factors and issues before them.'' (internal citations omitted))).

[50] *Id.* at 15–16 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 40).

[51] *Id.* at 13 (citing *Assoc. Gas Distribs.* v. *FERC,* 824 F.2d 981, 1019 (D.C. Cir. 1987) (*Assoc. Gas*)).

[52] *Id.* at 7–8 (citing Order No. 2023, 184 FERC ¶ 61,054 at PP 1762–1764).

[53] *Id.* at 16 (citing *INGAA,* 285 F.3d at 37–39).

[54] Order No. 2023, 184 FERC ¶ 61,054 at P 37.

[55] 16 U.S.C. 824e(a); 18 CFR 385.206.

discriminatory or preferential.'' [56] The findings in Order No. 2023 relate to the Commission's existing *pro forma* generator interconnection procedures and agreements, which, among other things, relied on a serial first-come, first-served study process.[57] The Commission did not make any findings regarding specific transmission provider's tariffs, and it was not required to do so under FPA section 206.[58] Issues regarding the individual tariffs of specific transmission providers that currently deviate from the existing *pro forma* generator interconnection procedures and agreements will be addressed on an individual basis on compliance.[59]

37. We disagree with Dominion's argument that Order No. 2023 goes beyond the limits of our authority to rely on a generic rulemaking to support an industry-wide solution. As noted above, Order No. 2023 adopts reforms to the existing *pro forma* interconnection procedures and agreements, which themselves were adopted as an industry-wide reform to identified, industry-wide problems.[60] All three of the cases Dominion relies on support the Commission's authority to issue Order No. 2023.

38. When the D.C. Circuit upheld Order No. 888 in *TAPS,* the court specifically explained that the Commission can rely on general findings of systemic conditions to impose an industry-wide remedy under FPA section 206.[61] The court agreed with the Commission that specific evidence regarding individual utilities' behavior is not required under FPA section 206. Similarly, when upholding Order No. 637 in *INGAA,* the D.C. Circuit stated that ''our cases have long held that the Commission may rely on 'generic' or 'general' findings of a systemic problem to support imposition of an industry-wide solution.'' [62] The D.C. Circuit explicitly rejected an argument that the Commission impermissibly shifted the burden of proof merely by requiring *pro forma* filings.[63] Several years later, when upholding Order No. 1000 in *S.C. Pub. Serv. Auth.,* the D.C. Circuit once again affirmed the Commission's ability to promulgate nationwide rules, in lieu of case-by-case adjudication, to solve a nationwide problem.[64] The court explained that, even though some regions had already satisfied some requirements of the rule, the deficiencies identified by the Commission did not only exist in ''isolated pockets,'' and ''[a]bsent such an extreme 'disproportion of remedy to ailment,' the Commission could reasonably proceed to address a systemic problem with an industry-wide solution.'' [65] Nothing in this precedent indicates that the Commission's authority to promulgate generic rulemakings under FPA section 206 depends upon the rule representing a paradigm shift. Rather, the precedent is clear that, where the Commission finds a systemic, nationwide problem that renders the rates, terms, and conditions for Commission-jurisdictional services unjust, unreasonable, unduly discriminatory, or preferential, the Commission has authority to implement a nationwide solution.[66]

39. Here, substantial evidence indicates that interconnection queue delays and backlogs are a nationwide problem, not a problem that only exists in isolated pockets. As explained in Order No. 2023, interconnection queue backlogs are increasing across all regions of the country, and ''every single region has faced an increase in both interconnection queue size and the length of time interconnection customers are spending in the interconnection queue prior to commercial operation in recent years. This is true for RTO/ISO and non-RTO/ISO regions alike.'' [67] ''[T]he uncertainty and delays in the interconnection queues have resulted in fewer than 25% of interconnection requests, by capacity, reaching commercial operation between 2000 and 2017 in *any* region of the country—with some regions as low as 8%.'' [68] Appendix B to Order No. 2023 shows that most transmission providers in the country were late in completing interconnection studies in 2022.[69] We acknowledge that the data collected in compliance with Order No. 845 regarding PJM's queue reflected PJM's previous study process, which was recently reformed. However, excluding PJM's data would not change our overall conclusion that interconnection queue backlogs and late interconnection studies are a significant problem in most regions of the country. To the contrary, we continue to find that ''the challenges being faced across the country will be further compounded in the future,'' [70] and that the multiple factors contributing to interconnection queue backlogs, longer development timelines, and increased uncertainty regarding the cost and timing of interconnecting to the transmission system, including increasing volume of interconnection requests, increased complexity in interconnection studies, and insufficient transmission capacity, are industry-wide challenges likely to persist and potentially worsen in the future.[71]

40. Moreover, due to the early stages of PJM's reforms, the instant record does not contain any information regarding the effects of such reforms, including whether PJM is meeting all study deadlines on time, the overall length of time to reach interconnection, or the portion of interconnection customers reaching commercial operation. Nor does the record support that any region, including PJM, is unaffected by the underlying factors that are persistent and increasing drivers of widespread interconnection queue delays and backlogs. Therefore, we continue to find that the systemic problems identified in Order No. 2023 warrant a nationwide solution.

41. In response to Dominion's contention that the Commission ignored evidence regarding recent queue reform efforts, we note that Order No. 2023 specifically referenced these ongoing queue reform efforts. The Commission stated:

> We recognize that many transmission providers have adopted or are in the process of adopting similar reforms to those adopted in this final rule. We do not intend to disrupt these ongoing transition processes or stifle further innovation. On compliance, transmission providers can propose deviations from the requirements adopted in this final rule—including deviations seeking to minimize interference with ongoing transition plans—and demonstrate how those deviations satisfy the standards [72] discussed

[56] Dominion Rehearing Request at 2.

[57] Order No. 2023, 184 FERC ¶ 61,054 at P 37.

[58] *See, e.g., TAPS,* 225 F.3d at 687–88 (upholding Commission action under FPA section 206 premised on general systemic conditions rather than evidence regarding individual utilities); *S.C. Pub. Serv. Auth.,* 762 F.3d at 67 (''[T]he Commission may rely on 'generic' or 'general' findings of a systemic problem to support imposition of an industry-wide solution.'') (citing *INGAA,* 285 F.3d at 37); *Assoc. Gas,* 824 F.2d at 1008 (''The Commission is not required to make individual findings, however, if it exercises its Natural Gas Act § 5 authority by means of a generic rule.'').

[59] Order No. 2023, 184 FERC ¶ 61,054 at P 1765.

[60] *See id.* PP 8–12 (explaining the need for and adopting *pro forma* interconnection agreements and procedures); *see also NARUC* v. *FERC,* 475 F.3d at 1279 (explaining, at the outset, the structural connection between the nationwide reforms in Order No. 888 and those in Order No. 2003).

[61] *TAPS,* 225 F.3d at 687–88.

[62] *INGAA,* 285 F.3d at 37.

[63] *Id.* at 38.

[64] *S.C. Pub. Serv. Auth.,* 762 F.3d at 67.

[65] *Id.*

[66] *S.C. Pub. Serv. Auth.,* 762 F.3d at 67; *TAPS,* 225 F.3d at 687–88; *INGAA,* 285 F.3d at 37.

[67] Order No. 2023, 184 FERC ¶ 61,054 at P 38 (citing Queued Up 2023 at 7–9, 32).

[68] *Id.* (citing Queued Up 2023 at 3, 21).

[69] *Id.* at app. B.

[70] *Id.* P 58.

[71] *Id.* P 41.

[72] Specifically, where transmission providers propose variations to the Order No. 2023 transition

above, which the Commission will consider on a case-by-case basis.[73]

In fact, in the NOPR underlying Order No. 2023, the Commission made clear that it reviewed these recent queue reform efforts, learned from them, and considered them in formulating a number of its proposals.[74]

42. However, as explained above, the Commission was not required to make FPA section 206 findings specific to PJM or DESC's queue reforms. The details of a specific transmission provider's tariff, and whether its recent queue reform complies with the new requirements of Order No. 2023, are appropriately handled on an individual basis on compliance.

43. We disagree with Dominion's argument that Order No. 2023's acknowledgement that some transmission providers had no delayed studies in 2022 indicates that the problem is not as widespread as suggested. The fact that a few transmission providers complete studies on time does not mean that the problem exists only in isolated pockets. As the D.C. Circuit explained in *S.C. Pub. Serv. Auth.,* the fact that a problem may not exist in every single region of the country ''is as unastonishing as it is irrelevant, because petitioners have not shown that the deficiencies identified by the Commission exist[] only in isolated pockets.'' [75]

44. Moreover, substantial evidence indicates that these nationwide interconnection queue delays and backlogs result in rates, terms, and conditions in the wholesale electric markets that are unjust, unreasonable, and unduly discriminatory or preferential.[76] Interconnection queue delays and backlogs result in longer development timelines, uncertainty regarding the cost and timing of interconnecting to the transmission system, and ultimately higher rates, as ''wholesale customers hav[e] limited access to new and more competitive supplies of generation.'' [77]

45. Further, we believe that the remedies adopted in Order No. 2023 are proportional to the issues identified. As explained in detail in Order No. 2023, each of the reforms the Commission adopted are directly related to the need to reform the *pro forma* generator interconnection procedures and agreements to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, and will prevent undue discrimination.[78]

46. Further, we also believe that a generic, nationwide rulemaking is justified by the need for consistent interconnection policies that apply to all public utility transmission providers.[79] We continue to find that it is necessary to apply the reforms in Order No. 2023 on a nationwide basis to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, and to prevent undue discrimination. We further note that some of the critical reforms of Order No. 2023 could only have been achieved through a nationwide rulemaking; for instance, standardization of the affected systems study process requires rules that apply to all jurisdictional transmission providers.

47. For the reasons stated above, we disagree with Dominion's argument that the Commission bears the burden on compliance to find that recently adopted existing processes that deviate from the *pro forma* generator interconnection procedures and agreements are unjust and unreasonable.[80] We reiterate that the findings in Order No. 2023 relate to the Commission's existing *pro forma* generator interconnection procedures and agreements.[81] We note that, on compliance, the Commission will apply the consistent with or superior to standard for non-RTO transmission providers and the independent entity variation standard for RTOs/ISOs when analyzing deviations from the Commission's *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP and/or *pro forma* SGIA.[82]

48. In response to Indicated PJM TOs' contention that the Commission failed to grapple with the fact that many RTOs/ISOs already adopted the Commission's core substantive reforms before Order No. 2023 was issued, we acknowledge that many transmission providers have adopted many of the reforms in Order No. 2023. As explained above, that is not an accident. The Commission carefully examined recent queue reform proposals to identify best practices to implement nationwide. However, no transmission provider has yet adopted *all* of the reforms in Order No. 2023. For example, no transmission provider has eliminated the reasonable efforts standard for completing interconnection studies on time. We continue to believe that this broad suite of reforms, as a whole, is necessary to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, thereby ensuring that rates, terms, and conditions for Commission-jurisdictional services are just, reasonable, and not unduly discriminatory or preferential.[83]

49. Regarding Indicated PJM TOs' argument that the Commission should have waited for recent queue reforms to be fully implemented before determining whether additional reforms are required, we disagree. Transmission providers across the country have been working on regional queue reform for well over a decade.[84] These proposals are filed at varying intervals, and at any given time, multiple transmission providers may be in the process of proposing or implementing new queue processes. By the time one or two particular transmission providers implement one set of queue reforms, it is likely that other transmission providers would be in the process of proposing or implementing their next queue reform. The Commission would

process, the Commission will evaluate such proposals under the consistent with or superior to standard for non-RTO transmission providers and the independent entity variation standard for RTOs/ISOs.

[73] Order No. 2023, 184 FERC ¶ 61,054 at P 1765.

[74] *Improvements to Generator Interconnection Procs. & Agreements,* 87 FR 39934 (July 5, 2022), 179 FERC ¶ 61,194, at PP 86–87, 112, 127, 132, 152–54 (2022) (NOPR).

[75] *See S.C. Pub. Serv. Auth.,* 762 F.3d at 67 (citing *Wis. Gas. Co.* v. *FERC,* 770 F.2d 1144, 1157 (D.C. Cir. 1985) (*Wis. Gas.*); *Assoc. Gas,* 824 F.2d at 1019).

[76] Order No. 2023, 184 FERC ¶ 61,054 at PP 37, 44.

[77] *Id.* PP 37, 43 (citing May Joint Task Force Tr. 74:9–21 (Andrew French) (stating that generator developers complain about cost certainty); May Joint Task Force Tr. 23:18–25 (Jason Stanek) (expressing frustration with the status quo and agreement that it is ''no longer tenable'' considering the inability of generators to interconnect in a timely manner); Ameren Initial Comments at 2; ELCON Initial Comments at 2; ELCON Initial Comments at 2; Xcel Initial Comments at 8).

[78] *Id.* PP 45–56.

[79] *See* Order No. 2003, 104 FERC ¶ 61,103 at P 11 (''[T]here is a pressing need for a single set of [interconnection] procedures . . . [which] will minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.'').

[80] Elsewhere in this order, the Commission clarifies that transmission providers need only re-file and seek approval for previously approved variations where those provisions are modified by Order No. 2023. *See infra* P 77.

[81] Order No. 2023, 184 FERC ¶ 61,054 at P 37.

[82] *See Xcel Energy Servs. Inc.* v. *FERC,* 41 F.4th 548, 557 (D.C. Cir. 2022) (''The Commission has used its discretion and expertise to craft the ''consistent with or superior to'' test for deviations from its *pro forma* rules.'') (citing Order No. 2003, 104 FERC ¶ 61,103 at P 826); *see also Sacramento Mun. Util. Dist.* v. *FERC,* 428 F.3d 294, 296 (D.C. Cir. 2005) (explaining that utilities can deviate from the terms of the *pro forma* tariff if such deviations are consistent with or superior to the terms of the *pro forma* tariff).

[83] Order No. 2023, 184 FERC ¶ 61,054 at P 59.

[84] *Id.* P 16, n.39.

be waiting a very long time indeed if it could not issue a generic rulemaking while any individual transmission provider pursues its own regional queue reform.[85]

50. Furthermore, we note that the Commission has historically taken a gradual approach to addressing problems with respect to interconnection queue backlogs. In Order No. 845, for instance, the Commission implemented a number of specific reforms, but held off on other reforms in favor of collecting further information from transmission providers.[86] In doing so, the Commission noted that ''[t]his information could also be useful to the Commission in determining if additional action is required to address interconnection study delays.'' [87] In Order No. 2023, the Commission determined that additional action was required to address interconnection study delays.[88] The reforms in Order No. 845 have not eliminated the problems of interconnection queue backlogs and delayed interconnection studies; rather, these problems have only grown, notwithstanding the Commission's previous reforms. We maintain that the reforms in Order No. 2023 are necessary to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, thereby ensuring that rates, terms, and conditions for Commission-jurisdictional services are just, reasonable, and not unduly discriminatory or preferential.

B. Arguments Regarding Conflicts With Ongoing Queue Reform Efforts and Evaluation of Variations on Compliance

1. Order No. 2023 Requirements

51. The Commission addressed commenters' concerns regarding Order No. 2023's impact on early adopters of similar queue reforms or those queues currently in transition to a cluster study process. The Commission recognized that many of the individual reforms that the Commission adopted in Order No. 2023 are incremental improvements that one or more regions had already implemented.[89] The Commission explained that Order No. 2023 uses some of these individual and incremental improvements as a basis for a broad suite of reforms that, in their entirety, have not yet been adopted by any region.

52. Additionally, the Commission rejected requests to presume that any transmission provider's tariff meets the requirements of Order No. 2023.[90] The Commission recognized that many transmission providers have adopted or are in the process of adopting similar reforms to those adopted in Order No. 2023 and clarified that the Commission did not intend to disrupt these ongoing transition processes or stifle further innovation.[91] The Commission emphasized that the provisions of Order No. 2023 are not intended to interfere with the timely completion of those in-progress cluster studies and transition processes.[92] The Commission explained that, on compliance, transmission providers can propose deviations from the requirements adopted in Order No. 2023, including deviations seeking to minimize interference with ongoing transition plans,[93] provided that the reason for the variation is sufficiently justified, and may continue to propose solutions to interconnection issues under FPA section 205.[94]

53. Therefore, consistent with Order Nos. 888, 890, 2003, 2006, and 845, the Commission adopted the NOPR proposal to continue to apply the consistent with or superior to standard when considering proposals from non-RTO/ISO transmission providers to deviate from the requirements of Order No. 2023.[95] Consistent with Order Nos. 2003, 2006, and 845, the Commission adopted the NOPR proposal to continue to use the ''independent entity variation'' standard when considering such proposals from RTOs/ISOs.[96] Consistent with Order Nos. 888, 890, 2003, 2006, and 845, the Commission adopted the NOPR proposal to continue to allow non-RTO/ISO transmission providers to use the regional differences rationale to seek variations made in response to established (*i.e.,* approved by the Applicable Reliability Council) reliability requirements.[97] The Commission explained that Order No. 2023 makes no changes to the standards used to judge requested variations, as described in Order Nos. 888, 890, 2003, 2006, and 845.

2. Requests for Rehearing and Clarification

54. Several entities request clarification regarding the scope of the application of Order No. 2023 to transmission providers that have already transitioned to, or that are in the process of transitioning to, a cluster study process.[98]

55. Clean Energy Associations and IPP Coalition ask the Commission to clarify that *all* existing cluster study processes must comport with the requirements of Order No. 2023, whether the transmission provider currently operates a cluster study process or is currently undergoing a transition to a

[85] *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.,* Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051, at P 50 (2011) (finding that the need to generically establish rules addressing transmission planning, as well as the long lead times and complex problems associated with developing transmission facilities, made Commission action appropriate and prudent rather than allowing the noted transmission planning problems to persist).

[86] *Reform of Generator Interconnection Procs. & Agreements,* Order No. 845, 83 FR 21342 (May 9, 2018), 163 FERC ¶ 61,043, at P 24 (2018), *order on reh'g,* Order No. 845–A, 84 FR 8156 (Mar. 6, 2019), 166 FERC ¶ 61,137 (2019), *order on reh'g,* Order No. 845–B, 168 FERC ¶ 61,092 (2019).

[87] Order No. 845, 163 FERC ¶ 61,043 at P 309.

[88] Order No. 2023, 184 FERC ¶ 61,054 at P 3.

[89] *Id.* P 59.

[90] *Id.* P 1765.

[91] *Id.* PP 861, 1765.

[92] *Id.* P 861.

[93] *Id.* P 1765 (clarifying that transmission providers that have already adopted a cluster study process or are currently undergoing a transition to a cluster study process will not be required to implement a new transition process).

[94] *Id.* P 1767.

[95] *Id.* P 1764 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. By Pub. Utils,; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,769–770 (cross-referenced at 75 FERC ¶ 61,080); *Preventing Undue Discrimination & Preference in Transmission Serv.,* Order No. 890, 72 FR 12226 (Mar. 15, 2007), 118 FERC ¶ 61,119 at P 109 (2007) (''[W]e reiterate that any departures from the *pro forma* [open access transmission tariff] proposed by an ISO or an RTO must be 'consistent with or superior to' the *pro forma* [open access transmission tariff] in this Final Rule.''); Order No. 2003, 104 FERC ¶ 61,103 at P 825; Order No. 2006, 111 FERC ¶ 61,220 at PP 546–547; Order No. 845, 163 FERC ¶ 61,043 at P 43 (explaining that a transmission provider that is not an RTO/ISO that seeks a variation from the requirements of the final rule must present its justification for the variation as consistent with or superior to the *pro forma* LGIA or *pro forma* LGIP)).

[96] *Id.* (citing Order No. 2003, 104 FERC ¶ 61,103 at P 826 (''[w]ith respect to an RTO or ISO . . . we will allow it to seek 'independent entity variations' from the Final Rule . . . This is a balanced approach that recognizes that an RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is a market participant.''); Order No. 2006, 111 FERC ¶ 61,220 at PP 447, 549; Order No. 845, 163 FERC ¶ 61,043 at P 556).

[97] *Id.* (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,770; Order No. 890, 118 FERC ¶ 61,119 at P 109; Order No. 2003, 104 FERC ¶ 61,103 at P 826 (''if on compliance a non-RTO or ISO Transmission Provider offers a variation from the Final Rule LGIP and Final Rule LGIA, and the variation is in response to established (*i.e.,* approved by the Applicable Reliability Council) reliability requirements, then it may seek to justify its variation using the regional difference rationale.''); Order No. 2006, 111 FERC ¶ 61,220 at PP 546–547; Order No. 845, 163 FERC ¶ 61,043 at P 43).

[98] Clean Energy Associations Rehearing Request at 51–52; Dominion Rehearing Request at 17–18; IPP Coalition Rehearing Request at 10–13; PacifiCorp Rehearing Request at 15–20; PJM Rehearing Request at 1–3; Revised Early Adopters Coalition Rehearing Request at 2–7; WIRES Rehearing Request at 12.

cluster study process.[99] Clean Energy Associations and IPP Coalition argue that interconnection customers that are currently in a cluster study process should be required to satisfy the requirements of Order No. 2023, including site control requirements, within an identified time horizon (*e.g.,* 60–90 days of the compliance filing) or withdraw from the interconnection queue without penalty.[100] Clean Energy Associations and IPP Coalition argue that, if some transmission providers are not required to transition to a process that is compliant with Order No. 2023, projects currently in the queue that are not ready to proceed will not face the increased readiness requirements and delay reforms to new queue requests, undermining the central purpose of Order No. 2023.[101]

56. Clean Energy Associations and IPP Coalition argue that, absent clarification, the Commission risks leaving in place a potentially problematic oversight.[102] Specifically, Clean Energy Associations and IPP Coalition assert that the notion that transmission providers that have adopted or are currently transitioning to a cluster study process will not be required to implement a new transition process runs counter to the requirement that transmission providers may seek approval, on a case-by-case basis, to maintain variations from the *pro forma* LGIP and *pro forma* LGIA.[103] According to Clean Energy Associations and IPP Coalition, the fact that a transmission provider has an existing cluster study does not exempt that provider from its compliance obligation or the need to update its process to reflect the material elements of Order No. 2023.

57. NV Energy requests that the Commission clarify whether the new tariff changes are applicable to all interconnection customers, including those that currently participate in a cluster study process or have executed LGIAs.[104] Specifically, NV Energy requests that the Commission clarify if interconnection customers will be required to update their respective study deposits, provide commercial readiness deposits correlating to the amounts required at the various stages of the process, and update their site control documentation in order to remain in the queue.[105] NV Energy requests a one-time ability for existing interconnection customers of transmission providers who currently conduct cluster studies to withdraw penalty-free from the queue if they are unable to provide the updated study deposits, site control, commercial readiness deposits, etc.

58. NV Energy additionally requests clarification on whether a queued interconnection customer, whether in a current cluster study, with an executed facilities study agreement, or with an executed LGIA, must provide the heightened proof of site control by the effective date of the new tariff changes.[106] NV Energy seeks clarity on whether: (1) existing queued interconnection customers are required to provide 90% of site control if not impacted by a regulatory limitation and are currently within the cluster study phase of the process; (2) existing queued interconnection customers with executed facilities studies agreements are required to provide 100% of site control if the site is not impacted by a regulatory limitation; (3) existing queued interconnection customers who are impacted by a regulatory limitation are required to update their deposit in lieu of site control to the new deposit amounts; and (4) existing queued interconnection customers with executed LGIAs who are impacted by a regulatory limitation are required to provide site control within 180 days of executing their respective LGIAs.

59. EEI asks the Commission to clarify that Order No. 2023 does not require transmission providers to re-file and seek approval for portions of their existing LGIA and LGIP that have previously been approved by the Commission and are not directly impacted by Order No. 2023.[107] EEI argues that it would be inappropriate for the Commission to require transmission providers to re-file and seek approval for such portions of their existing LGIAs and LGIPs because the Commission provided no notice that it was going to review or reconsider every change it has previously approved for LGIAs and LGIPs, and thus transmission providers were not given an opportunity to defend previously approved changes.[108] EEI argues that it would be a significant administrative burden for transmission providers to re-justify every change that the Commission has already approved.[109]

60. PJM asks the Commission to provide a clearer signal as to how it will take into account recently approved reforms such as PJM's IPRTF.[110] PJM states that its recent queue reform meets the Commission's intent in promulgating Order No. 2023, substantially satisfies its requirements, and is superior for the PJM region.[111] PJM explains that there are differences between the implementation mechanisms in its IPRTF Tariff and Order No. 2023, but that these mechanisms serve the same goals and offer the same protections and benefits.[112]

61. PJM states that it has begun its transition period, and unless the Commission provides more clarity as to how it will review recently approved queue reform processes in the Order No. 2023 compliance process, it will create substantial uncertainty that will distract from the effort to process the queue backlog.[113] PJM seeks clarification that it will not be required to implement Order No. 2023 in a manner that would modify or undermine the procedures recently accepted by the Commission, and that the Commission will review PJM's request for an independent entity variation holistically, by examining whether the package as a whole is consistent with or superior to the goals and requirements of Order No. 2023 rather than forcing PJM to engage in an item-by-item justification of every variation from the minutiae of Order No. 2023's requirements.[114] PJM explains that requiring it to overhaul its tariff or justify each difference from the new *pro forma* will risk that some elements will be retained while other balancing elements will be changed, upsetting the balance that led to stakeholder approval.[115] PJM states that proceeding element by element through compliance will also provide intervenors an opportunity to re-litigate issues on which they did not prevail, which is contrary to judicial principles and would be a poor use of time.[116] PJM also explains that the elements of its tariff are interdependent, such that a

[99] Clean Energy Associations Rehearing Request at 51; IPP Coalition Rehearing Request at 10–11.

[100] Clean Energy Associations Rehearing Request at 51; IPP Coalition Rehearing Request at 11–12.

[101] Clean Energy Associations Rehearing Request at 53; IPP Coalition Rehearing Request at 13.

[102] Clean Energy Associations Rehearing Request at 51; IPP Coalition Rehearing Request at 11.

[103] Clean Energy Associations Rehearing Request at 51–52; IPP Coalition Rehearing Request at 11 (both citing Order No. 2023, 184 FERC ¶ 61,054 at P 1530).

[104] NV Energy Rehearing Request at 2 (citing Order 2023, 184 FERC ¶ 61,054 at P 861). NV Energy states that Order No. 2023 did not mention grandfathering any of the existing interconnection agreements. *Id.*

[105] *Id.* at 3.

[106] *Id.*

[107] EEI Rehearing Request at 2–3, 16.

[108] *Id.* at 16.

[109] EEI states that this would include changes that were approved by the Commission in response to other rulemakings, such as Order No. 845. *Id.* at 16–17.

[110] PJM Rehearing Request at 1–2.

[111] *Id.* at 1, 19–20.

[112] *Id.* at 19–23.

[113] *Id.* at 2, 10.

[114] *Id.* at 3, 15.

[115] *Id.* at 15.

[116] *Id.* at 16.

piecemeal approach could undermine the entire tariff.

62. If the Commission does not provide the requested clarifications, PJM seeks rehearing because the Commission should have established a presumption that ongoing, recently approved interconnection queue reform packages comply with Order No. 2023.[117] PJM explains that Order No. 2023 is internally inconsistent because it seeks to expedite the interconnection queue, and recognizes the efforts of on-going queue reform, but refuses to grant a presumption, which will cause delay and inefficiency.[118] PJM argues that it would be arbitrary and capricious and inconsistent with reasoned decision-making to require modification of PJM's tariff based on a generic rulemaking.[119] PJM also argues that failure to grant this rehearing will undermine confidence in the use of stakeholder processes.[120]

63. To the extent that the Commission does not grant PJM's request to provide a clear signal on rehearing that it will consider whether the entire package of IPRTF reforms as a whole meets the goals of Order No. 2023 rather than forcing PJM to engage in an extensive justification of every variation from every detail in Order No. 2023, PJM requests rehearing.[121]

64. Dominion argues that the Commission should cure the deficiencies in Order No. 2023's approach to compliance for early adopters like DESC and PJM.[122] Dominion suggests that the Commission could simply not require entities that have already transitioned or are in the process of transitioning to a first-ready, first-served cluster study construct to file compliance filings. Dominion alternatively argues that the Commission could defer those entities' obligations to modify their tariffs, pending an appropriate period of time to gather evidence about whether their particular, Commission-approved reforms need to be further modified. Dominion asserts that this approach would be within the Commission's statutory bounds, is administratively efficient, and maintains the settled expectations of the stakeholders that worked diligently and collaboratively to develop transmission provider-specific reforms. Dominion asserts that the Commission has on several occasions directed entities to provide reports so that it can monitor situations before deciding it is necessary to take action.[123] Dominion argues that the Commission could then require such early adopters to provide an additional report after a period of time determined by the Commission, such as two full cluster cycles following the transition, that would update the Commission on processing time under the proposed rule.

65. Dominion argues that, if the reports demonstrate that early adopters' processes are not meeting the goals of Order No. 2023, the Commission would then have a sufficient record, through the reports, to determine whether to direct further changes to conform with Order No. 2023.[124] Dominion contends that this compliance path for early adopters is superior to Order No. 2023's proposal and would allow transmission providers to demonstrate that the desired aim of Order No. 2023—facilitating quicker, more efficient interconnection processes—is being achieved.

66. Revised Early Adopter Coalition and PacifiCorp state that, to the extent a transmission provider does not seek or is not granted a variance for its existing interconnection reforms, such transmission provider appears to be required to immediately adopt the reforms in Order No. 2023 without any ability to start from a clean slate like other transmission providers utilizing a transition study process or to conclude any ongoing studies.[125] Revised Early Adopters Coalition and PacifiCorp argue that Order No. 2023 does not appear to allow early adopters of interconnection reforms an option to open the initial cluster request window under Order No. 2023 after the conclusion of the study of existing interconnection requests.[126] Revised Early Adopters Coalition and PacifiCorp assert that, because many early adopters are currently in the process of one or more cluster studies, not allowing such early adopters to use a transition cluster study process is both unworkable for such transmission providers and also contrary to Order No. 2023's assurance that ''the provisions of this final rule are not intended to interfere with the timely completion of those in-progress cluster studies and transition processes.'' [127]

67. Revised Early Adopters Coalition and PacifiCorp state that Order No. 2023 also appears to require early adopters to undertake an initial cluster request window prior to completion of cluster studies and/or restudies currently underway.[128] Revised Early Adopters Coalition and PacifiCorp argue that this would be an unexplained departure from prior precedent and the Commission's own statements in Order No. 2023.[129] Revised Early Adopters Coalition and PacifiCorp assert that this will also interfere with the timely completion of current cluster studies because it will divert already strained resources to preparing for and implementing Order No. 2023's new provisions. Revised Early Adopters Coalition and PacifiCorp further argue that this will put early adopters in the difficult, if not impossible, situation of having to undertake new cluster studies under Order No. 2023 that are reliant on outcomes of existing, not-yet-completed, cluster studies.

68. Revised Early Adopters Coalition and PacifiCorp ask the Commission to clarify that early adopters of similar interconnection reforms, to the extent they do not seek or are not granted variances for their existing interconnection reforms, may conclude their pending/existing studies before transition to the new Order No. 2023 process.[130] Revised Early Adopters Coalition and PacifiCorp alternatively request that the Commission grant rehearing to permit such study flexibility for those transmission providers who have already adopted similar reforms to Order No. 2023. PacifiCorp argues that, without this flexibility, new cluster studies pursuant to Order No. 2023 may not be reliable as they will need to rely upon

[117] *Id.* at 3, 25–26.

[118] *Id.* at 26.

[119] *Id.* at 3–4.

[120] *Id.* at 27.

[121] *Id.* at 24.

[122] Dominion Rehearing Request at 17.

[123] *Id.* at 17–18 (citing, for example, *One-Time Informational Reports 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 25 (2023) (requiring one-time informational reports related to planning for the impacts of extreme weather on system reliability); *Hybrid Res.,* 174 FERC ¶ 61,034, at P 1 (2021) (requiring RTOs and ISOs to submit information related to hybrid resources)).

[124] *Id.* at 18.

[125] Revised Early Adopters Coalition Rehearing Request at 3; PacifiCorp Rehearing Request at 16.

[126] Revised Early Adopters Coalition Rehearing Request at 4; PacifiCorp Rehearing Request at 16. Revised Early Adopters Coalition note that the initial cluster request window under Order No. 2023 would open ''after the conclusion of the transition process set out in Section 5.1 of this LGIP.'' Revised Early Adopters Coalition Rehearing Request at 3–4 (citing Order No. 2023, 184 FERC ¶ 61,054 at app. C, *pro forma* LGIP section 3.4.1).

[127] Revised Early Adopters Coalition Rehearing Request at 4, 7; PacifiCorp Rehearing Request at 16 (both citing Order No. 2023, 184 FERC ¶ 61,054 at P 861).

[128] Revised Early Adopters Coalition Rehearing Request at 6; PacifiCorp Rehearing Request at 18.

[129] Revised Early Adopters Coalition Rehearing Request at 2, 6; PacifiCorp Rehearing Request at 18 (both citing, for example, *Panhandle E. Pipe Line Co.* v. *FERC,* 196 F.3d 1273, 1275 (D.C. Cir. 1999) (*Panhandle*) (''if [FERC] wishes to depart from its prior policies, it must explain the reasons for its departure.'')).

[130] Revised Early Adopters Coalition Rehearing Request at 2; PacifiCorp Rehearing Request at 15.

assumptions, including ''higher priority requests'' that were studied in prior interconnection studies and assumed to be in service.[131] PacifiCorp emphasizes that this flexibility is imperative, given the size of its queue—326 active interconnection requests, accounting for over 59 gigawatts of requests.

69. Revised Early Adopters Coalition and PacifiCorp further assert that Order No. 2023 puts early adopters of interconnection reforms in a uniquely disadvantaged position of having to simultaneously administer two types of interconnection processes and, as a result, potentially expose them to greater likelihood of penalties than other transmission providers.[132] Revised Early Adopters Coalition asserts that exposing early adopters to such outsized risks would be arbitrary and capricious as well as discriminatory.[133]

70. Revised Early Adopters Coalition and PacifiCorp explain that, if permitted the flexibility above, any transmission provider that currently has one or more ongoing cluster studies pursuant to its Commission-accepted cluster study processes, and who has not sought and received a variance, would commence new cluster studies only after all pending interconnection request cluster studies (or restudies) have concluded and only under updated tariff provisions that are consistent with or superior to Order No. 2023.[134] Revised Early Adopters Coalition and PacifiCorp state that allowing such providers to conclude their existing cluster studies before transition to the new *pro forma* study approach will preserve the interests of current interconnection customers that have been participating in the existing cluster study process as well as ease the administrative burden for such transmission providers.

71. Revised Early Adopters Coalition and PacifiCorp also request, in the alternative, that the Commission allow early adopters to use a transition process similar to other transmission providers, if such a process better suits their needs and facilitates expedient queue processing.[135] Revised Early Adopters Coalition and PacifiCorp request that, either through clarification or rehearing, the Commission ensure that early adopters have the flexibility to choose either Order No. 2023's transition process or the ability to implement Order No 2023's reforms after completing any existing cluster studies and restudies.

72. WIRES argues that Order No. 2023 also includes new requirements that need clarification or further consideration by the Commission.[136] WIRES states that it generally agrees that the shift from a serial study process to a cluster study process is likely to result in greater efficiency and provide more certainty but argues that the Commission has not explained how this new requirement will sync up with ongoing efforts that are already under way. WIRES requests that the Commission clarify how it plans to accommodate those ongoing efforts.

3. Determination

73. We clarify that all transmission providers, including those with existing cluster study processes, have a compliance obligation to review and modify their current *pro forma* interconnection procedures and *pro forma* interconnection agreements to comply with Order No. 2023. However, we continue to find that transmission providers that have already adopted a cluster study process or are currently undergoing a transition to a cluster study process will not be required to implement the transition process laid out in Order No. 2023,[137] and thus further clarify that such transmission providers are not required to file *pro forma* LGIP section 5 (Procedures for Interconnection Requests Submitted Prior to Effective Date of the Cluster Study) and the related appendices in their compliance filings.

74. However, in response to the arguments raised by Revised Early Adopters Coalition and PacifiCorp, we note that Order No. 2023 does not prohibit such transmission providers from adopting the transition process established in Order No. 2023. Therefore, a transmission provider that does not seek or is not granted a variance for its existing cluster study process and adopts the reforms in Order No. 2023 would be able to use the Order No. 2023 transition process. Where transmission providers propose variations to the Order No. 2023 transition process, the Commission will evaluate such proposals under the consistent with or superior to standard for non-RTO transmission providers and the independent entity variation standard for RTOs/ISOs. A transmission provider currently conducting a cluster study process that does not propose to conduct an Order No. 2023 transition process must comply with the remaining requirements of Order No. 2023 other than the transition process.

75. We further grant clarification in response to requests seeking to clarify the applicability of the Order No. 2023 readiness requirements to a transmission provider currently conducting a cluster study process. On compliance, unless it proposes a variation, such a transmission provider must adopt the Order No. 2023 readiness requirements;[138] those new readiness requirements are then to be applied based on the interconnection customer's progress in the queue as of 60 calendar days after the Commission-approved effective date of the transmission provider's compliance filing. Within 60 calendar days of the Commission-approved effective date of the transmission provider's Order No. 2023 compliance filing, interconnection customers that have not executed an LGIA or requested an LGIA to be filed unexecuted with the Commission must meet the transmission provider's new readiness requirements for the relevant study phase, such as updating their respective study deposits, providing commercial readiness deposits correlating to the amounts required at the various stages of the process, and demonstrating site control. Interconnection customers that must meet the transmission provider's new readiness requirements may withdraw within the 60 days after the Commission-approved effective date of the transmission provider's Order No. 2023 compliance filing without being subject to Order No. 2023 withdrawal penalties. If the interconnection customer chooses to withdraw outside this 60-day timeline, the interconnection customer will be subject to the new withdrawal penalties. To reflect these clarifications, we set aside Order No. 2023, in part, and add new section 5.1.2 to the *pro forma* LGIP.[139]

[131] PacifiCorp Rehearing Request at 19.

[132] *Id.;* Revised Early Adopters Coalition Rehearing Request at 2–3, 6 (citing 5 U.S.C. 706(2)(A); *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983) (*Motor Vehicle Manufacturers*) (explaining that to survive review under the arbitrary and capricious standard, an agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.') (internal citations omitted)).

[133] Revised Early Adopters Coalition Rehearing Request at 6.

[134] *Id.* at 6–7; PacifiCorp Rehearing Request at 19–20.

[135] Revised Early Adopters Coalition Rehearing Request at 7; PacifiCorp Rehearing Request at 20.

[136] WIRES Rehearing Request at 12.

[137] Order No. 2023, 184 FERC ¶ 61,054 at P 861.

[138] *Id.* PP 490–813.

[139] New *pro forma* LGIP section 5.1.2 (Transmission Providers with Existing Cluster Study Processes or Currently in Transition) states that if Transmission Provider is not conducting a transition process under Section 5.1.1, it will continue processing interconnection requests under its current Cluster Study Process. Within 60

Continued

76. In response to NV Energy, we clarify that the requirement to meet the new site control requirements also requires that a queued interconnection customer, whether in a current cluster study or with an executed facilities study agreement (but not an interconnection customer with an executed LGIA or that has requested an LGIA to be filed unexecuted with the Commission), that is facing regulatory limitations must also submit the applicable deposit and information regarding the specific limitation within 60 days after the Commission-approved effective date of the transmission provider's compliance filing. An interconnection customer that withdraws within the 60-day period instead of submitting the applicable deposit and information will not be subject to Order No. 2023 withdrawal penalties.

77. We agree with EEI that transmission providers need only re-file and seek approval for previously approved variations where those provisions are modified by Order No. 2023. As the Commission explained in Order No. 2023, the Commission adopted requirements that are part of the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and *pro forma* SGIA and the Commission therefore only addressed the interaction of the requirements adopted with existing requirements that are part of the *pro forma* process and not variations thereto.[140] Transmission providers may seek variations from Order No. 2023's requirements on compliance provided the reason for the variation is sufficiently justified.[141] Transmission providers may also continue to propose interconnection process enhancements beyond Order No. 2023 through a separate filing under FPA section 205.

78. We reject requests to presume that any transmission provider's tariff meets the requirements of Order No. 2023.[142] As explained above, while the majority of reforms adopted herein are based on individual and incremental improvements that one or more regions have already implemented, no transmission provider has yet to adopt the entirety of Order No. 2023's broad suite of reforms.[143] Thus, we are unpersuaded by PJM's arguments on rehearing that ongoing, recently approved interconnection queue reform packages presumably already comply with Order No. 2023. Applying a presumption to transmission providers who recently adopted some similar reforms, but not all the reforms contained herein, will only result in incomplete change that fails to fulfill or further delays the comprehensive reform required by Order No. 2023. Additionally, because the Commission continues to find that the record supports a generic rulemaking,[144] the Commission reiterates that it did not need to make a finding specific to each transmission provider's tariff to require compliance with Order No. 2023.[145] Therefore, we also remain unpersuaded by Dominion's arguments on rehearing to defer the tariff modifications of, or to not require compliance filings from, transmission providers that have already transitioned or are in the process of transitioning to a cluster study process or to defer those entities' obligations to modify their tariffs.

79. In response to requests for clarification regarding how the Commission will review the compliance filings of entities that already adopted reforms, we continue to find, consistent with the Commission's statements in Order No. 2023, that transmission providers may explain specific circumstances on compliance and justify why any deviations from the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and *pro forma* SGIA are either consistent with or superior to the reforms adopted in Order No. 2023 for non-RTO transmission providers or merit an independent entity variation for RTOs/ISOs.[146] An item-by-item justification must be offered for each variation from the *pro forma* provisions modified in Order No. 2023; general statements alone are insufficient under the consistent with or superior to or the independent entity variation standard. Region-specific concerns like those raised by PJM and Dominion are appropriately addressed on compliance where the Commission will review the compliance filings on a case-by-case basis.

C. Reforms To Implement a First-Ready, First-Served Cluster Study Process

1. Public Interconnection Information

a. Order No. 2023 Requirements

80. In Order No. 2023, the Commission adopted section 6.1 (Publicly Posted Interconnection Information) of the *pro forma* LGIP to require transmission providers to maintain and make publicly available an interactive visual representation of available interconnection capacity (commonly known as a ''heatmap'') as well as a table of relevant interconnection metrics that is produced in response to user-specified input about their prospective generating facility.[147] The table will allow prospective interconnection customers to see certain estimates of a potential generating facility's effect on the transmission provider's transmission system. Specifically, the Commission required transmission providers to post on their public website a heatmap of estimated incremental injection capacity (in MW) available at each point of interconnection to the whole transmission provider's footprint under N–1 conditions, as well as provide a table of results in response to a specific user's input showing the estimated impact of the addition of the proposed project (based on the user-specified MW amount, voltage level, and point of interconnection) for each monitored facility impacted by the proposed project on: (1) the distribution factor; (2) the MW impact (based on the proposed project size and the distribution factor); (3) the percentage impact on the monitored facility (based on the MW values of the proposed project and the monitored facility rating); (4) the percentage of power flow on the monitored facility before the proposed project; and (5) the percentage power flow on the monitored facility after the injection of the proposed project. The Commission required that heatmaps be calculated under N–1 conditions and studied based on the power flow model of the transmission system used in the most recent cluster study or restudy, and with the transfer simulated from each point of interconnection to the whole transmission provider's footprint (to approximate NRIS), and with the incremental capacity at each point of interconnection decremented by the existing and queued generation at that location (based on the existing or requested interconnection service limit of such generation). The Commission required transmission providers to

calendar days of the Commission-approved effective date of Transmission Provider's Order No. 2023 compliance filing, Interconnection Customers that have not executed an LGIA or requested an LGIA to be filed unexecuted must meet the requirements of Sections 3.4.2, 7.5, or 8.1 of this LGIP, based on Interconnection Customer's Queue Position. Any Interconnection Customer that fails to meet these requirements within 60 calendar days of the Commission-approved effective date of this LGIP shall have its Interconnection Request deemed withdrawn by Transmission Provider pursuant to Section 3.7 of this LGIP. In such case, Transmission Provider shall not assess the Interconnection Customer any Withdrawal Penalty.

[140] Order No. 2023, 184 FERC ¶ 61,054 at P 1530.

[141] *Id.* P 1767.

[142] *Id.* P 1765.

[143] *Id.* P 59.

[144] Order No. 2023, 184 FERC ¶ 61,054 at P 1766; *supra* section II.A.3.

[145] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1766 (citing *TAPS*, 225 F.3d at 687–88).

[146] *Id.* PP 1764–1765.

[147] *Id.* P 135.

update their heatmaps within 30 calendars days after the completion of each cluster study and cluster restudy. Further, the Commission clarified that transmission providers are not required to make their heatmaps available until after their transition period.[148]

b. Requests for Rehearing and Clarification

81. Clean Energy Associations ask the Commission to clarify that transmission providers may use ERIS or NRIS assumptions for their heatmaps, as appropriate for their particular region.[149] Clean Energy Associations argue that the requirement to use only NRIS assumptions fails to account for regional differences and could reduce the value of providing a heatmap. For example, Clean Energy Associations assert that in SPP and MISO, ERIS is the primary driver of determining network upgrades for new generation. If the Commission declines to grant clarification, Clean Energy Associations seek rehearing of the requirement to use NRIS assumptions for heatmaps.

82. Non-RTO Providers request rehearing and modification of Order No. 2023's requirement that non-RTO/ISO transmission providers develop interactive heatmap websites.[150] Non-RTO Providers assert that the mandate is arbitrary and capricious and contrary to reasoned decision-making. Non-RTO Providers state that the Commission did not perform an adequate cost-benefit analysis to weigh the high cost and administrative burden on non-RTO transmission providers against the ''limited and speculative benefits'' of the heatmaps for non-RTO/ISO interconnection customers.[151] Non-RTO Providers assert that the mandate will require the 37 non-RTO/ISO regions [152] to each develop separate heatmap websites. Non-RTO Providers estimate that the cumulative upfront cost for these 37 heatmap websites is $7.4 million, and that the cumulative annual maintenance cost for the 37 heatmap websites is $666,000. Non-RTO Providers assert that the heatmaps will require regular attention from interconnection engineers who will otherwise be focused on transitioning to cluster studies. Non-RTO Providers contend that the heatmap requirement amounts to a penalty on non-RTO/ISO transmission providers, who cannot socialize the costs as broadly as RTOs/ISOs can.[153] Non-RTO Providers request that the Commission reverse the mandate on rehearing and (1) issue a modified version of section 6.1 of the *pro forma* LGIP for non-RTO regions that allows static public information postings of interconnection capacity based on cluster study results and (2) adopt a voluntary approach for the potential development and maintenance of interactive heatmaps in non-RTO regions.

83. Non-RTO Providers note that the heatmap concept is a novel concept and that transmission providers have no special expertise in website development.[154] Non-RTO Providers contend that the legal question on rehearing is whether the benefits of a proposed reform can reasonably be said to outweigh the costs and assert that the Commission did not provide sufficient legal foundation under FPA section 206 to justify the mandate. Non-RTO Providers aver that the Commission did not acknowledge that interactive websites make financial sense only when done at scale. Therefore, Non-RTO Providers agree that the costs of the requirement are justified for RTO/ISO regions, which would require seven websites to serve approximately two-thirds of the nation's transmission system, but not for non-RTO/ISO regions, which would have to develop 37 websites to serve the remaining one-third of the transmission system. Non-RTO Providers explain that the Commission appears to prohibit non-RTO/ISO regions from developing joint, regional heatmaps to reduce the number of websites needed, which they claim demonstrates that the cost burden and administrative burden on engineering staff to non-RTO/ISO regions was not adequately considered.[155]

84. Non-RTO Providers contend that the Commission wrongly relies on Clean Energy Associations' proposition that the heatmaps will be automated to conclude that engineering resources will not be strained by the heatmap requirement.[156] Non-RTO Providers state that such updates will require one or two full-time employees to prepare data for the first three weeks of a given 30-day update period and send the updated data to the vendor during the last week. Non-RTO Providers contend that the N–1 conditions reflected by the heatmap will offer no practical value to prospective interconnection customers but will result in five times as many engineering staff in non-RTOs/ISOs making heatmap updates compared to those in RTOs/ISOs.[157] Non-RTO Providers contend that the Commission did not adequately address these discrepancies in arguing that non-RTOs/ISOs have the technical capacity to create heatmaps.

85. Further, Non-RTO Providers argue that the record does not demonstrate that the incremental rate increase to non-RTO/ISO regions from the heatmaps will be justified by meaningful overall queue efficiency improvements for non-RTO/ISO customers in the long run.[158] For example, Non-RTO Providers contend that the Commission failed to consider that heatmaps could increase speculative interconnection requests if many interconnection customers seek to interconnect at the same uncongested points reflected by the heatmap. For the above reasons, Non-RTO Providers argue that the connection between improving queue efficiency and benefits to transmission customers is too tenuous to support a FPA section 206 finding that the heatmap mandate is just and reasonable for non-RTO transmission providers.[159]

86. Non-RTO Providers claim that the Commission erred by failing to consider a non-interactive website alternative for the public information posting mandate in non-RTO regions.[160] Non-RTO Providers state that the Commission never explains why such information needs to be provided in an interactive heatmap format, rather than in static public information postings regarding system conditions after each cluster study or restudy.

87. In the alternative to granting rehearing, Non-RTO Providers propose that the Commission revise section 6.1 of the *pro forma* LGIP to allow static data postings and adopt a voluntary funding approach for heatmap development in non-RTO Regions.[161] In particular, Non-RTO Providers state that they are not opposed to providing increased public access to base case data after cluster studies have been performed that shows the estimated incremental injection capacity (in megawatts) available at each bus in the transmission provider's footprint under N–1 conditions in table format. Non-RTO Providers explain that data in this format could still be uniform and

[148] *Id.* P 141.

[149] Clean Energy Associations Rehearing Request at 48–49.

[150] Non-RTO Providers Rehearing Request at 1–2.

[151] *Id.* at 3.

[152] Non-RTO Providers arrive at this number by subtracting the RTOs/ISOs from the 44 transmission providers estimated to be required to comply with Order No. 2023. *Id.* n.6.

[153] *Id.* at 4.

[154] *Id.* at 4–5.

[155] *Id.* at 5–6.

[156] *Id.* at 6 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 89).

[157] *Id.* at 6–7.

[158] *Id.* at 8.

[159] *Id.* at 9.

[160] *Id.*

[161] *Id.* at 10.

standardized to the Commission's specifications.[162] Non-RTO Providers state that with the voluntary funding approach, website developers aligned with any of the relevant stakeholders, including transmission providers and prospective interconnection customers and even the Commission itself, would be free to develop their own voluntary interactive heatmaps based on this publicly available data.

88. NV Energy requests clarification on (1) whether the heatmap must include proposed network upgrades with capacity amounts to reflect the available transfer capacity or only the existing facilities and (2) when a heatmap must be made available and posted to OASIS by transmission providers that do not conduct a new transition period.[163] NV Energy asserts that, presently, the heatmap will provide limited value and will be consistently red [164] because interconnection requests greatly exceed the available capacity or load.[165] NV Energy asks if the heatmap requirement for transmission providers already conducting cluster studies could be implemented at the same time as study penalties (after the third cluster study cycle/three years), which would allow transmission providers to issue requests for proposals for the necessary heatmap software for implementation and would allow suspended projects to withdraw as well as remove from the queue those that fail to (1) submit complete applications, (2) meet various deadlines, and (3) reach commercial readiness.

89. PacifiCorp likewise seeks clarification on when transmission providers will be required to submit heatmaps for those transmission providers that do not conduct a transition cluster study process because the Commission is not requiring transmission providers to submit heatmaps until *after* the transition period ends.[166]

90. Public Interest Organizations assert that the Commission erred by not providing an adequate method for prospective interconnection customers to obtain information about potential interconnection costs at a specific location prior to submitting an interconnection request, and that the limited information publicly available to interconnection customers will lead to unjust, unreasonable, unduly discriminatory, and preferential rates.[167] Public Interest Organizations also note that the level of cost uncertainty for different interconnection customers is not balanced because transmission owner affiliates, particularly in non-RTO/ISO regions, have greater access to interconnection cost information relative to independent power producers. Public Interest Organizations contend that the Commission's decision to not adopt the proposed informational studies and optional solicitation studies make Order No. 2023's adopted reforms insufficient to remedy its finding that the *pro forma* interconnection procedures ''fail[ ] to contain a process by which an interconnection customer can obtain information about potential interconnection costs at a specific location or point of interconnection prior to submitting an interconnection request.'' [168] Public Interest Organizations explain that both the informational studies and optional solicitation studies were specifically intended to provide additional cost information to prospective interconnection customers, while the public access information requirement was intended to provide high-level information to assist interconnection customers with comparing multiple points of interconnection and estimate congestion.[169]

91. Public Interest Organizations state that many parties suggested that the Commission add more data to the heatmap to provide information for interconnection customers to readily identify network upgrades, which would help them estimate the costs to interconnect their project before they join the interconnection queue.[170] Public Interest Organizations note, for example, that NextEra suggested including information on the circuit and ratings of equipment, and Public Interest Organizations argued that the heatmaps should include information on the number of megawatts that could be interconnected without substantial costs, among other suggestions. Public Interest Organizations argue that, without such additional data, interconnection customers continue to bear the burden of determining potential costs, and that not all interconnection customers possess the resources to use software or hire consultants to extract meaningful data from the heatmaps. Public Interest Organizations contend that the heatmap requirement ultimately falls short of providing a reasonable method for interconnection customers to predict potential network upgrade costs prior to entering the queue, leading interconnection customers to make the ''rational'' decision to submit multiple interconnection requests to obtain information, which contributes to study delays and withdrawals. For these reasons, Public Interest Organizations request the Commission revisit the record to evaluate and adopt requirements that transmission providers must also make available the additional data that will allow all customers to estimate the potential network upgrade costs using reasonable efforts.

92. Public Interest Organizations further assert that the Commission's decision not to require more information be made publicly available to potential interconnection customers is arbitrary and capricious, contrary to the weight of the comments and record, and not based on substantial evidence.[171] Public Interest Organizations argue that the Commission's finding that adding any additional data requirements to assist interconnection customers is outweighed by the potential burden to transmission providers failed to consider countervailing evidence of the benefits of additional data. Public Interest Organizations assert that the benefits of providing cost information prior to interconnection customers submitting an interconnection request is clear: fewer speculative interconnection requests and therefore less backlogged queues. However, Public Interest Organizations contend that MISO's heatmap demonstrates that a heatmap alone is not enough. Public Interest Organizations also argue that the marginal burden on transmission providers to provide additional heatmap data is minimal as they can take advantage of automation.

93. PJM seeks rehearing of Order No. 2023's blanket requirement to update the heatmap 30 calendar days after completion of each cluster study because PJM states that it is unreasonable for such a large, multi-state RTO like PJM with hundreds of expected interconnection requests in each cluster.[172] PJM states that publishing study results to its interconnection screening tool, queue scope, requires detailed, precise analysis using the latest inputs available at the time and would hold PJM to an unrealistically strict and expedited

[162] *Id.* at 11.

[163] NV Energy Rehearing Request at 4.

[164] An ''all red'' heatmap would indicate no available interconnection capacity. *See* Order No. 2023, 184 FERC ¶ 61,054 at P 157.

[165] NV Energy Rehearing Request at 4.

[166] PacifiCorp Rehearing Request at 22–23 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 141).

[167] Public Interest Organizations Rehearing Request at 7.

[168] *Id.* at 8 (citing Order No. 2023, 184 FERC ¶ 61,054 at PP 46, 152).

[169] *Id.* (citing Order No. 2023, 184 FERC ¶ 61,054 at P 68).

[170] *Id.* at 9–10.

[171] *Id.* at 10–12.

[172] PJM Rehearing Request at 23–24.

schedule of updating data, tools, simulations, and results, and the fact that such publishing would be necessary several times a year is burdensome and adds to the scope of study work required, taking resources away from other processing efforts. PJM instead anticipates annually published studies. PJM also states that ''the models'' are already made available to interconnection customers via a Critical Energy Infrastructure Information (CEII) request and can provide information about points of interconnection.

94. PJM requests rehearing of Order No. 2023's clarification in P 162, which it interprets as stating that transmission providers must absorb heatmap costs but are not barred from seeking recovery of them through their transmission rates (and paid by interconnection customers).[173] PJM states that interconnection customers, rather than transmission providers or transmission customers, benefit from heatmap posting, so there is no good reason that transmission providers must always charge the costs of maintaining and posting heatmaps to transmission service customers rather than considering other structures such as fees for prospective developers not yet in the queue. PJM states that this rule departs from the Commission's and judicial cost-causation principles, requiring that costs should be paid by those who benefit from their incurrence,[174] and it does so (by assigning heatmap costs to transmission providers or transmission customers) without explanation, presents free-ridership issues, and would be arbitrary and capricious.[175] PJM asserts that not granting rehearing of this item would set a precedent that transmission providers must absorb or pass on to transmission customers costs that are caused by or that benefit interconnection customers only.

c. Determination

95. We deny Clean Energy Associations' request for the Commission to clarify that transmission providers may use ERIS or NRIS assumptions for their public heatmaps. As the Commission explained in Order No. 2023, generating facilities seeking NRIS are generally subject to more stringent study requirements.[176] Therefore, requiring transmission providers to produce heatmap results that approximate NRIS assumptions will provide actionable information on the viability of a given proposed generating facility to both ERIS and NRIS customers. On the other hand, requiring heatmaps to approximate ERIS assumptions would not be helpful to NRIS customers. Even in regions where ERIS may be more commonly selected or lead to a greater number of network upgrades, we find that the use of stricter NRIS assumptions would more consistently alert prospective interconnection customers to the possibility of required network upgrades compared to ERIS assumptions. We therefore find that using NRIS assumptions as a baseline would prevent false negatives, in which the heatmap incorrectly indicates to prospective interconnection customers that their projects would not trigger network upgrades. This finding reasonably balances the resources required of transmission providers in making heatmaps available with the value of providing non-binding system impact information to all prospective interconnection customers ahead of entering the interconnection queue. We note, however, that Order No. 2023 states that ''if transmission providers find value in providing additional or different information [than required by Order No. 2023], they may propose such variations on compliance.'' [177] Therefore, if a transmission provider believes that it would be informative to interconnection customers, it may propose on compliance an option for heatmap users to view results using ERIS assumptions in addition to NRIS assumptions. As such, we reiterate that ''heatmaps must be calculated under N–1 conditions and studied based on the power flow model of the transmission system with the transfer simulated from each point of interconnection to the whole transmission provider's footprint (to approximate NRIS), and with the incremental capacity at each point of interconnection decremented by the existing and queued generation at that location (based on the existing or requested interconnection service limit of such generation).'' [178] For the same reasons noted above, we are unpersuaded by the arguments raised in Clean Energy Associations' alternative request for rehearing.

96. We are also unpersuaded by Non-RTO Providers' argument that the Commission failed to properly evaluate the costs and benefits of the heatmap requirement for non-RTO/ISO regions and that they cannot socialize the costs as broadly as RTOs/ISOs. First, without a comparison to estimated heatmap costs for RTO/ISO regions, Non-RTO Providers' cost estimates do not support its assertion that the cost of developing interactive heatmaps is more burdensome for non-RTO/ISO regions.[179] While RTO/ISO regions do have larger customer bases from which to recover costs, their heatmaps will also reflect larger and potentially more complex power systems and need to accommodate a larger pool of users and, therefore, may cost more.

97. We further disagree that the labor requirements Non-RTO Providers refer to will be overly burdensome relative to RTO/ISO regions. First, as the Commission clarified in Order No. 2023, transmission providers are not required to update their heatmaps on a rolling 30-day basis, but rather within 30 days of the completion of a cluster study or restudy.[180] Thus, transmission providers will likely update their heatmaps at most two times per year, accounting for one cluster study and one cluster restudy.

98. Second, to Non-RTO Providers' argument that annual heatmap maintenance would divert attention from interconnection engineers who would otherwise be focused on transitioning to cluster studies, we reiterate that transmission providers are not required to make heatmaps available until *after* their transition period, which will help ensure that transmission providers' implementation of this final rule, beginning with the transition period, has begun to reduce backlogged interconnection queues.

[173] *Id.* at 42–43.

[174] *Id.* at 43 (citing *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.,* Order No. 1000–A, 77 FR 32184 (May 31, 2012), 139 FERC ¶ 61,132 at P 578). PJM includes an excerpt from Commissioner Christie's concurrence to Order No. 2023, which states, ''Commission policy may dictate that interconnection queue efficiency benefits transmission customers; however, that should not result in the costs of a requirement that best benefits interconnection customers, and really prospective interconnection customers that may ultimately not seek to interconnect, being recovered from consumers through transmission rates carte blanche. The Commission simply cannot ask retail consumers to foot the bill for every single ''efficiency,'' especially where many of these ''efficiencies'' largely benefit generation developers and then get folded into transmission rates and receive an ROE.'' Order No. 2023, concur op. (Comm'r Christie) at P 22.

[175] PJM Rehearing Request at 43–44 (citing *Motor Vehicle Manufacturers,* 463 U.S. at 57; *Sw. Airlines Co.* v. *FERC,* 926 F.3d 851, 858 (D.C. Cir. 2019); *Panhandle,* 196 F.3d at 1275).

[176] Order No. 2023, 184 FERC ¶ 61,054 at P 148.

[177] *Id.* P 156.

[178] *Id.* P 135.

[179] *See, e.g., Ill. Commerce Comm'n* v. *FERC,* 721 F.3d 764, 775 (7th Cir. 2013) (stating that not all benefits can be calculated in advance, and if FERC cannot quantify the benefits to a particular utility or utilities but ''has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' total electricity sales in [the] region,'' then the Commission can approve the pricing scheme on that basis) (internal citations omitted).

[180] Order No. 2023, 184 FERC ¶ 61,054 at P 141.

99. Third, Non-RTO Providers' cost estimates are based on an extrapolation of one transmission provider's initial estimate, and Non-RTO Providers do not describe any assumptions of this estimate beyond the assertion that, after each cluster study or restudy, it would take two full-time engineers several weeks to ''prepare the data'' before having a vendor update the heatmap.[181] We are unpersuaded by this assertion because, as Order No. 2023 states, transmission providers must use the results of their most recent cluster study or restudy to update the heatmap.[182] Therefore, to update their heatmaps, little additional analysis should be required beyond what transmission providers have already completed for their cluster studies and restudies. We recognize that engineering labor will likely be required during heatmap website development, either directly, in developing the software and processes, or in consultation with the firm developing the heatmap. However, we believe that it is feasible for transmission providers, or their heatmap developers, to develop their heatmap websites to accept their base case files as inputs for each update such that little to no modification of the base case files and data is necessary. To that point, and Non-RTO Providers' concern that transmission providers have no special expertise in website development, we note that Order No. 2023 does not require transmission providers themselves to develop the requisite software and processes, and they may contract with firms whose expertise includes website development and data management. Further, Order No. 2023 does not preclude transmission providers from proposing on compliance to develop joint, regional heatmaps.

100. Finally, we disagree that Non-RTO Providers' proposal to require that transmission providers post only static data and allow other entities to voluntarily develop heatmaps accomplishes the goals outlined in Order No. 2023. The purpose of the heatmap requirement is, in part, to provide comparable information to all interconnection customers, prior to entering the queue, regardless of the transmission provider. Non-RTO Providers' proposal would not ensure such comparability, but rather would favor interconnection customers that have more resources to devote towards modeling and favor some transmission providers' own proposed generation. Thus, interconnection customers that cannot afford to process the static data Non-RTO Providers propose to post would still need to submit speculative interconnection requests to obtain information. Further, the voluntary funding approach Non-RTO Providers propose would not ensure that non-RTO/ISO regions have public interconnection information available and therefore would discriminate against interconnection customers seeking to interconnect outside of RTO/ISO regions.

101. In response to NV Energy's request for clarification on whether heatmaps must include proposed network upgrades or only existing facilities, we reiterate that heatmaps must be based on the power flow model and base case assumptions used in the most recent cluster study or restudy. Therefore, heatmaps will incorporate in-service network upgrades and network upgrades proposed for clusters higher queued than the most recent cluster study or restudy, as the base case and power flow models for any cluster will include proposed network upgrades for higher queued clusters.

102. We agree with NV Energy and PacifiCorp on the need for clarification regarding when heatmaps must be made available by transmission providers that do not conduct transition processes. We therefore clarify that transmission providers that do not conduct transition periods do not need to make their heatmap available until 360 calendar days after the Commission-approved effective date of the transmission provider's Order No. 2023 compliance filing. This timeline will give transmission providers that do not conduct transition periods the same amount of time as transitioning transmission providers (*i.e.,* completion of the transitional cluster study within 360 days after the Commission-approved effective date of the compliance filing) to develop their heatmaps. Further, while we agree that heatmaps for some transmission providers may initially appear as all red, which indicates no available interconnection capacity, we reiterate our finding that an all red heatmap still ''sends a valuable signal to interconnection customers regarding where proposed generating facilities may be more or less economic to interconnect prior to entering the interconnection queue.'' [183] We are therefore unpersuaded that such a result necessitates delaying the posting of the interactive heatmap.

103. We are also unpersuaded by NV Energy's request for clarification that transmission providers that do not conduct transition processes because they already use cluster studies should be required to post publicly available heatmaps only after three cluster cycles, similar to the transition to study delay penalties. This would delay transmission providers already using cluster studies, and their potential interconnection customers, from realizing the benefits of a heatmap (*e.g.,* a reduced volume of speculative interconnection requests) for more than twice as long as those transmission providers who do conduct a transition process and their potential interconnection customers.

104. We are unpersuaded by Public Interest Organizations' assertion that the Commission erred in not requiring transmission providers to include additional data in their heatmaps that would assist interconnection customers in estimating interconnection costs at potential points of interconnection. We further disagree with Public Interest Organizations' contention that the Commission did not fully consider the record on this matter in coming to its decision. On the contrary, as numerous commenters explain—and as the Commission stated in Order No. 2023—cost estimates produced prior to an interconnection customer entering the queue would be highly uncertain and subject to a high degree of change depending on the actions of other interconnection customers in the queue and study results, and therefore would provide little to no value to interconnection customers in terms of improving cost certainty.[184] We believe this to be true regardless of whether the transmission provider or the interconnection customer produces those cost estimates. Further, Public Interest Organizations do not argue that cost estimates should be directly incorporated into transmission providers' heatmaps, but rather that transmission providers should include additional information in their heatmaps that would allow interconnection customers to ascertain information about potential costs at points of interconnection. At the same time, however, Public Interest Organizations argue that many interconnection customers lack the resources to develop cost estimates based on transmission providers' heatmaps. Thus, Public Interest Organizations' proposal would not only increase the burden on transmission providers but require interconnection

[181] Non-RTO Providers Rehearing Request at 6.

[182] Order No. 2023, 184 FERC ¶ 61,054 at PP 139–140.

[183] *Id.* P 157.

[184] *See id.* P 138.

customers themselves to dedicate more resources towards developing cost estimates that are likely to change once they enter the queue. We therefore continue to find that the heatmap requirements set forth in Order No. 2023 strike a reasonable balance between the burden on transmission providers to develop and maintain heatmaps and the benefit of providing interconnection customers with sufficient information to identify viable points of interconnection, given that cost estimates produced prior to entering the queue would be unreliable. We note, however, that, consistent with the Commission's statements in Order No. 2023, transmission providers may explain specific circumstances on compliance and justify why any deviations are either consistent with or superior to the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs.[185]

105. We are unpersuaded by PJM's request to modify the requirement for transmission providers to update their heatmaps within 30 calendar days of completing a cluster study or restudy. We find PJM's argument regarding its queue scope tool to be inapposite. As the Commission explained in Order No. 2023, because the heatmap should use the results of the most recent cluster study or restudy, the heatmap requirement should require minimal additional analysis beyond the cluster study or restudy and should not necessitate detailed analysis.[186] Transmission providers must simply make the data and assumptions used in the analyses they already completed available in a public, interactive form. Updating heatmaps within 30 calendar days of completion of a cluster study or restudy will also ensure that interconnection customers can use the heatmap during the customer engagement window to determine whether to proceed in the queue or withdraw. Finally, we disagree that interconnection customers' ability to request CEII achieves the same goal as the heatmap requirement. The heatmaps are intended to improve transparency and ease the burden of producing interconnection-related information for prospective interconnection customers. On the other hand, requests for CEII typically require an entity to submit certain identifying information and/or legal documents like non-disclosure agreements and require the transmission provider to review and verify such information, and weigh the need for the information against the potential harm of its release, before potentially granting access to a protected part of its website or OASIS portal.[187] Reliance on such a process would impose an unnecessary burden on the prospective interconnection customer, the transmission provider, and other interested stakeholders because, as commenters explain, the information to be published in transmission providers' heatmaps does not raise CEII concerns.[188]

106. Further, we are unpersuaded by PJM's request to modify the finding in Order No. 2023 that transmission providers must bear the costs associated with their heatmaps or recover them through transmission rates to the extent they are recoverable consistent with Commission accounting and ratemaking policy. First, transmission providers already maintain interconnection information and other related information online for the purposes of transparency and facilitating participation amongst various stakeholders. Thus, we disagree with PJM's requested modification because transmission providers may recover the costs associated with heatmaps through transmission rates to the extent they are recoverable consistent with Commission accounting and ratemaking policy. Second, we disagree that interconnection customers are the sole or primary beneficiaries of the heatmap requirement, and that transmission providers themselves do not benefit from it. The heatmap requirement will reduce the number of speculative interconnection requests submitted to transmission providers by providing prospective interconnection customers with information to evaluate the viability of their potential interconnection requests, thus improving overall queue efficiency for the benefit of both transmission providers and prospective interconnection customers.

2. Cluster Study Process

a. Order No. 2023 Requirements

107. In Order No. 2023, the Commission revised the *pro forma* LGIP and *pro forma* LGIA to require transmission providers to study interconnection requests in clusters.[189] The Commission adopted numerous revisions to the *pro forma* LGIP and *pro forma* LGIA to effectuate this change. Specifically, and as relevant here, the Commission revised the definitions of material modification and stand alone network upgrades, and defined interconnection facilities study report.[190] The Commission adopted section 3.1.2 (Submission) of the *pro forma* LGIP to require an interconnection customer to select a definitive point of interconnection when executing the cluster study agreement.[191] The Commission adopted section 3.4.1 (Cluster Request Window), section 3.4.4 (Deficiencies in Interconnection Request), and section 3.4.5 (Customer Engagement Window) of the *pro forma* LGIP to provide a process for interconnection customers to submit a cluster study interconnection request.[192] The Commission adopted section 3.4.6 (Cluster Study Scoping Meetings) of the *pro forma* LGIP to require transmission providers to hold a scoping meeting with interconnection customers in the cluster.[193] The Commission revised section 3.5.2 (Requirement to Post Interconnection Study Metrics) of the *pro forma* LGIP to require transmission providers to post metrics for cluster study and restudy processing time.[194]

108. The Commission adopted several revisions to the *pro forma* LGIP related to the process by which interconnection customers can make an interconnection request. The Commission revised section 4.1 (Queue Position) of the *pro forma* LGIP to provide that all interconnection requests within a cluster be considered equally queued and accordingly modified the definition of queue position.[195] The Commission renamed and revised section 4.2 (General Study Process) of the *pro forma* LGIP to require transmission providers to perform interconnection studies within the cluster study process.[196] The Commission revised section 4.4 (Modifications) of the *pro forma* LGIP to provide that moving a point of interconnection shall result in the loss of a queue position if it is deemed a material modification by the transmission provider.[197] The Commission also revised section 4.4.1 of the *pro forma* LGIP to incorporate the material modification process as part of the cluster study process.[198] The Commission revised section 4.4.5 of the *pro forma* LGIP to require that interconnection customers receive an

[185] *Id.* P 1764.

[186] *Id.* PP 139–140.

[187] PJM's CEII request process, for example, includes all these process components. *See https://www.pjm.com/library/request-access.*

[188] Order No. 2023, 184 FERC ¶ 61,054 at P 144.

[189] *Id.* P 177.

[190] *Id.* P 192.

[191] *Id.* P 200.

[192] *Id.* P 223.

[193] *Id.* P 245.

[194] *Id.* P 259.

[195] *Id.* PP 277, 283.

[196] *Id.* P 278.

[197] *Id.* P 283.

[198] *Id.* P 285.

extension of fewer than three cumulative years of the generating facility's commercial operation date without requiring them to request such an extension from the transmission provider.[199]

109. The Commission adopted revisions to the *pro forma* LGIP to implement several cluster study provisions. The Commission replaced section 6 (Interconnection Feasibility Study) of the *pro forma* LGIP with the new public interconnection information requirements as discussed in section II.C.1 of Order No. 2023.[200] The Commission revised section 7 (Cluster Study) of the *pro forma* LGIP to set out the requirements and scope of the cluster study agreement, as well as the cluster study and restudy procedures.[201] The Commission revised section 7.4 (Cluster Study Procedures) of the *pro forma* LGIP to permit transmission providers to use subgroups in their cluster study process if they so choose.[202] The Commission revised section 8.5 (Restudy) of the *pro forma* LGIP to make clear that restudies can be triggered by the withdrawal or modification by a higher- or equally-queued interconnection requests.[203] The Commission revised sections 11.1 (Tender) and 11.3 (Execution and Filing) of the *pro forma* LGIP regarding the tendering, execution, and filing of the LGIA to incorporate the site control demonstrations and LGIA deposit requirements of Order No. 2023.[204]

b. Requests for Rehearing and Clarification

110. Clean Energy Associations contend that the Commission acted arbitrarily and capriciously and failed to engage in reasoned decision-making by changing the definition of stand alone network upgrades such that only ''single customers'' are eligible to build them.[205] Clean Energy Associations claim that, when considered with the shift to a cluster study process and other stated goals for the sharing of network upgrade costs amongst interconnection customers, the revised definition effectively forecloses the opportunity for any future interconnection customer to exercise their discretion to build stand alone network upgrades or identified transmission provider interconnection facilities. Additionally, Clean Energy Associations aver that the revisions ignore the relationship of the option to build to the project sponsor, nearly eliminating the benefits of the option to build, such as controlling project schedules.[206] Finally, Clean Energy Associations assert that the Commission's reasoning is based on a hypothetical situation which has not occurred since Order No. 845, or possibly ever.

111. Clean Energy Associations argue that the Commission's assertion that ''confusion and potentially lengthy negotiations and/or disputes'' would result without revisions to the definition of stand alone network upgrades is unsupported by the record of this proceeding.[207] Clean Energy Associations note that transmission providers already using cluster studies have operated for years under the Order No. 845 definition, demonstrating that the revisions were not necessary. Clean Energy Associations explain that Order No. 2023 neither cites previous instances of confusion or lengthy disputes regarding the construction of stand alone network upgrades, nor any other facts or evidence that would support a finding that the current definition is insufficient or inadequate. Clean Energy Associations also note that one transmission provider using cluster studies supported the concept of allowing stand alone network upgrades to be shared among interconnection customers.[208]

112. Clean Energy Associations contend that this aspect of Order No. 2023 is arbitrary and capricious because the Commission fails to acknowledge or adequately explain departures from its precedent.[209] Clean Energy Associations note that Order No. 845 explains that the option to build benefits the interconnection process by giving interconnection customers more control and certainty, and that interconnection customers are in the best position to determine if the option to build in their interest. However, Clean Energy Associations assert that the revised definition removes interconnection customers' ability to exercise their discretion regarding the option to build for the majority of network upgrades identified in a cluster study, and modifies the *status quo* by reducing the number of network upgrades that would qualify as stand alone network upgrades because the proportional impact method of cost allocation will reduce the likelihood of finding a single customer 100% responsible for a network upgrade.[210] Clean Energy Associations contend that this renders the Order No. 845 policy moot and is inconsistent with the Commission's intent in Order No. 2023 to maintain the status quo.

113. Clean Energy Associations state that the Commission can redress this error on rehearing by (1) reversing its decision to revise the definition of stand alone network upgrade, and (2) requiring transmission providers to address, in their compliance filings and OATTs, the process through which interconnection customers with shared network upgrades that qualify as stand alone network upgrades can exercise their option to build.[211] Alternatively, Clean Energy Associations suggest that the Commission require transmission providers to allow the interconnection customers amongst whom a stand alone network upgrade was shared to unanimously exercise the option to build and, then, to either select a third party to construct the upgrade or to determine responsibility for doing so amongst themselves. Clean Energy Associations assert that this would prevent the concern of disputes among interconnection customers within a cluster. Clean Energy Associations state that both of these options would be consistent with, and would preserve, the policy set forth in Order No. 845, while also addressing the Commission's concerns that disputes or confusion may arise and further delay the interconnection process, while striking an appropriate balance between the Commission's policy and efforts in Order No. 845 and Order No. 2023, honoring both efforts and further enhancing and benefiting the interconnection process.

114. Clean Energy Associations state that the Commission erred in finding that modifications to project size can only be made during the customer engagement window and that interconnection customers must select a single, definitive point of interconnection at that time.[212] Clean Energy Associations assert that the record does not support the conclusion that the customer engagement window is sufficient for the interconnection customer to enter the cluster study with confidence in its project size and definitive point of interconnection and, thus, this timeline does not reflect an appropriate balance that will reduce the need for restudies and delays. Clean Energy Associations assert the

[199] *Id.* P 293.
[200] *Id.* P 316.
[201] *Id.* P 317.
[202] *Id.* P 363.
[203] *Id.* P 335.
[204] *Id.* P 344.
[205] Clean Energy Associations Rehearing Request at 8–9.
[206] *Id.* at 9–10.
[207] *Id.* at 10 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 193).
[208] *Id.* at 11–12 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 185).
[209] *Id.* at 12–13.
[210] *Id.* at 13–14.
[211] *Id.* at 14–15.
[212] *Id.* at 15–16.

opposite—that the record indicates that failure to provide flexibility to interconnection customers to modify project size and point of interconnection after receipt of initial cluster study results will increase the likelihood of withdrawals and cascading restudies by not allowing interconnection customers to make beneficial adjustments earlier in the interconnection process that could be determinative in a project's decision to stay in the cluster or withdraw. Clean Energy Associations disagree with the Commission's conclusion that the extended 60 calendar day customer engagement window is sufficient to provide interconnection customers with ''time to consider information collected during this period of engagement with the transmission provider,'' [213] which will allow customers to determine when to withdraw their interconnection requests and avoid penalties while improving queue efficiency due to fewer late-stage cluster study withdrawals. Clean Energy Associations assert that, prior to the cluster study, it is difficult for an interconnection customer to make any informed conclusion about expected costs of potential network upgrades and such costs' impact on project viability, which the interconnection customer must learn from the cluster study.

115. The 60-day customer engagement window, Clean Energy Associations assert, only provides interconnection customers 46 calendar days to evaluate publicly posted information and make any potential project modifications prior to entering the cluster study, and any such early-acquired information will be incomplete, lacking modeling data, new model sets, and other study assumptions such as confidential merit order dispatch lists used by transmission providers to set up power transfers from new generators, despite publicly posted information by transmission providers.[214] Clean Energy Associations state that substantial information gained through the study process may necessitate a change in point of interconnection, making choosing a single point of interconnection implausible. They claim that not requiring transmission owners to attend scoping meetings further limits an interconnection customer's access to information. Clean Energy Associations assert that an interconnection customer will not have sufficient time and information to evaluate project viability during the customer engagement window or modify project size and location in response to pre-study information obtained during that window.

116. Clean Energy Associations assert that limiting post-initial cluster study entry modifications to the interconnection request to those the transmission provider deems not to be material ignores record evidence that this practice will not result in a more reliable, efficient, transparent, and timely interconnection process.[215] Clean Energy Associations assert that allowing flexibility in project size reductions through the initial cluster study will allow for optimization of projects based on official study results, resulting in fewer withdrawals due to increased project viability and contribution to reliability through reduced impacts to the transmission provider's system, which it asserts will be less disruptive to the interconnection process than a full withdrawal. Clean Energy Associations state that, likewise, inability to change the point of interconnection or to submit an alternate point of interconnection could cause delays and can trigger the restudy of an entire cluster. Clean Energy Associations assert that the record demonstrates that interconnection customers lack sufficient time or information to optimize project characteristics prior to entering the initial cluster study, and that flexibility to make beneficial modifications after receipt of initial study results would reduce rather than increase uncertainty, restudy, and administrative burden.

117. Clean Energy Associations further state that the option to instead pursue a material modification exemption does not provide sufficient flexibility because: (1) it leaves this determination to the discretion of the transmission provider; and (2) it ignores that minor project modifications that could have slight impacts on other interconnection customers in the same cluster might nonetheless be far less disruptive than project withdrawal.[216] Clean Energy Associations argue that the material modification review is often based on ''opaque assumptions'' available only to the transmission provider and may divert resources at a relatively more intense part of the study process.

118. Clean Energy Associations note that SPP, PJM, and MISO have adopted provisions allowing 50%–100% reduction allowance and minor point of interconnection changes, and also permit smaller size adjustments similar to that found in *pro forma* LGIP section 4.4.2 through the initial cluster restudy, which Clean Energy Associations state belie the Commission's assertion that the timing for modifications in Order No. 2023 reflects a natural translation of the timing for modification in the existing serial study process to a cluster study process.[217] Clean Energy Associations therefore request that the Commission grant rehearing and modify the language in revised *pro forma* LGIP section 4.4.1 to allow modifications to project size (specifically, up to a 60% size reduction) prior to entering the cluster restudy, and to allow minor modifications to project size (specifically, up to a 15% size reduction) after the receipt of a cluster restudy but prior to the start of the facilities study. Clean Energy Associations further request that the Commission grant rehearing and allow interconnection customers the option to present a primary and alternative definitive point of interconnection in an electrically proximate area, provided that the transmission provider and transmission owner verify the alternative as acceptable during the customer engagement window and prior to the scoping meeting.

119. IPP Coalition also asks the Commission to reconsider its requirement that customers identify a single point of interconnection and, instead, allow for an electrically proximate alternative point of interconnection that is verified as acceptable by the transmission provider during the cluster study customer engagement window and listed in the cluster study agreement.[218] IPP Coalition asserts that electrically proximate point of interconnection locations can be effectively implemented within a study process without materially impacting a study process, and that this general standard should be applied consistently to a potential change, whether it is sought by an interconnection customer as part of the interconnection request or ultimately required on the basis of a public policy decision.

120. Ørsted requests that the Commission clarify that, in circumstances where state or federal agency policy or regulation requires a change to the point of interconnection, projects should be restudied based upon the new regulatory or statutory requirements.[219] Alternatively, Ørsted requests that the Commission clarify that, in such circumstances, the transmission provider, the state, or the

[213] *Id.* at 17–18 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 233).

[214] *Id.* at 18–19.

[215] *Id.* at 19–20.

[216] *Id.* at 21–22.

[217] *Id.* at 22.

[218] IPP Coalition Rehearing Request at 7–8.

[219] Ørsted Rehearing Request at 11.

interconnection customer may request a waiver of applicable tariff and LGIA/LGIP provisions that might be affected in order to comply with the federal or state regulatory requirement.

121. Clean Energy Associations state that the Commission should grant rehearing and amend Order No. 2023 to stipulate that, if an interconnection customer submits an interconnection request at least 15 business days prior to the close of the cluster request window, and if failure by the transmission provider to issue a deficiency notice within five business days of receipt results in the interconnection customer having fewer than 10 business days to respond to the deficiency notice prior to the close of the customer request window, the interconnection customer shall still be granted a full 10 business days to respond prior to facing the consequences outlined in revised *pro forma* LGIP section 3.4.4.[220] Clean Energy Associations state that, to ensure a full 10 business days to respond, an interconnection customer would have to submit its interconnection request more than 15 business days before the close of the cluster request window to account for the five business day window for the transmission provider to issue a deficiency notice, and that even if an interconnection customer submitted its interconnection request more than 15 business days before the close of the cluster window, the interconnection customer may be left with fewer than 10 business days to provide a response in the event that the transmission provider failed to meet the five business day notification requirement. Clean Energy Associations state that, because of this oversight, an interconnection customer may, through no fault of its own, have as little as one day to respond to a deficiency notice. Clean Energy Associations argue that revised *pro forma* LGIP section 3.4.4 includes significant consequences for interconnection customers that fail to meet the 10 business-day deadline, but no consequences for transmission providers that fail to meet the five-business day deficiency notice deadline. Clean Energy Associations argue that the Commission acted arbitrarily and capriciously and failed to engage in reasoned decision-making by failing to account for potential delay on the part of the transmission provider.

122. Clean Energy Associations and Ørsted argue that the Commission acted arbitrarily and capriciously and failed to engage in reasoned decision-making when it declined to require transmission owners to attend scoping meetings.[221] Clean Energy Associations and Ørsted state that requiring transmission owners to attend may help RTOs/ISOs address potential challenges sooner, avoiding penalties caused by transmission owner delays. Clean Energy Associations and Ørsted assert that the purpose of the customer engagement window is to provide interconnection customers with information to help them determine the viability of their proposed generating facilities earlier in the process, and without transmission owners in these meetings, interconnection customers are deprived of critical information necessary to determine the costs and commercial viability of their projects.[222] Ørsted additionally states that transmission owners are fully responsible for design of network upgrades, including both substation and system network upgrades, as well as play an important role in informing point of interconnection decisions by providing information about the existing grid conditions and capabilities as well as information related to interconnection requirements.[223] Ørsted therefore argues that the transmission owner is in the best position to give interconnection customers a sense of the work required to expand the transmission facilities to accommodate new interconnection customers, and that a failure to include transmission owners in these meetings deprives interconnection customers of critical information necessary to determine the costs and commercial viability of their projects. Ørsted asserts that not requiring transmission owners to attend the scoping meeting creates an additional burden on both the interconnection customer and the transmission owner because customer will need to schedule separate meetings with the transmission owners to get additional information.

123. EEI, NYISO, and NYTOs seek rehearing of Order No. 2023's elimination of the feasibility study.[224] EEI argues that carrying out physical feasibility studies, which determine whether the project is ''physically constructable'' to the point of interconnection, early in the interconnection process will allow for the early disqualification of infeasible interconnection requests, which will save resources.[225] NYTOs contend that analyzing feasibility is especially needed in highly congested areas like New York City and Long Island, where geographic and environmental limitations often restrict the ability to interconnect new generation at certain locations, which cannot be reflected in a heatmap.[226] NYISO and NYTOs note that, because physical feasibility issues are particularly important in New York, NYISO needs to address early in the interconnection study process which proposed projects will be eligible to make use of those limited points of interconnection.[227] NYISO and NYTOs assert that the Commission's determination to eliminate the feasibility study and replace it with a heatmap to provide project developers with a rough indication of interconnection capacity before they submit their interconnection requests will not address critical physical feasibility issues.

124. EEI asks the Commission to clarify that provisional interconnection service requests will continue to be processed as received and outside the cluster study process.[228] EEI states that the Commission may have inadvertently failed to include provisional service in its response to PacifiCorp's comments regarding processing interconnection requests (including provisional service requests) in Order No. 2023.

125. EEI requests that the Commission clarify how the 150-day study deadline applies to cascading restudies.[229] EEI states that a withdrawal has the potential to trigger the restudy of every subsequent cluster, which will have to be conducted in turn. EEI specifically asks the Commission to clarify that transmission providers have 150 days to complete the restudy from the initiation of the restudy, rather than from when the interconnection customers are informed that the restudy is needed. EEI argues that this clarification is necessary so that transmission providers have the full 150-day period for each restudy.

126. MISO asks the Commission to clarify that Order No. 2023's statements that decline to allow transmission providers the flexibility to set their own study deadlines were intended to respond to requests to allow transmission providers to establish deadlines for specific study clusters other than through deadlines fixed in

[220] Clean Energy Associations Rehearing Request at 25–26.

[221] *Id.* at 26; Ørsted Rehearing Request at 3.

[222] Clean Energy Associations Rehearing Request at 27–28; Ørsted Rehearing Request at 3–4.

[223] Ørsted Rehearing Request at 4–5.

[224] EEI Rehearing Request at 13–14; NYISO Rehearing Request at 11; NYTOs Rehearing Request at 6; *see also* WIRES Rehearing Request at 12 (asking the Commission to clarify that feasibility studies can continue to be performed under the ''Independent Entity Regional Variation Standard'').

[225] EEI Rehearing Request at 13–14.

[226] NYTOs Rehearing Request at 8.

[227] *Id.* at 7; NYISO Rehearing Request at 11.

[228] EEI Rehearing Request at 14–15.

[229] *Id.* at 15–16.

their tariffs, and were not intended to preempt transmission providers from proposing to maintain existing tariff-defined study deadlines that may differ from the *pro forma* LGIP's 150 day schedule.[230] MISO explains that it uses a three-phase process that has a different length than the one phase process in the *pro forma,* and MISO's tariff includes fixed study deadlines for each phase that are not subject to discretionary adjustment.

127. NYISO asserts that the one-size-fits-all, 150-calendar day cluster study timeframe is arbitrary and capricious, does not reflect reasoned decision-making, and is not based on substantial evidence.[231] NYISO states that the timeframes for the cluster restudy and facilities studies are also arbitrary and capricious and deficient. NYISO asserts that the Commission did not establish a basis for the 150-day timeframe, but rather stated that the timeframe for performing the stability analyses, power flow analyses, and short circuit analyses was based on the record without providing detail as to what in the record supports that conclusion. NYISO also claims the Commission cites to a limited number of parties, none of which it claims performs such studies, in support of the 150-day timeframe.

128. NYISO contends that the Commission has not considered the impact to the study timeline of any evaluations required to address applicable reliability requirements.[232] NYISO explains that in New York, for example, the system impact study encompasses numerous steps critical to evaluating reliability impacts of proposed generating facilities, which must be performed to fully evaluate a proposed interconnection under all Applicable Reliability Requirements. NYISO notes that in New York, Applicable Reliability Requirements include Northeast Power Coordinating Council rules and New York State Reliability Council rules, which are often more stringent than NERC rules because of New York's unique transmission system complexities, including congestion around New York City and Long Island, and an influx of offshore wind generation.

129. NYISO contends that the Commission has also failed to consider how the size or complexity of the cluster could affect the study timeframe.[233] NYISO explains that the system impact study timeframe is driven by the study scope (*e.g.,* whether the study addresses physical feasibility), the number of impacted parties, the complexity of the project, and unique challenges at the project's point of interconnection. NYISO further explains that, for a system impact study to effectively evaluate a proposed interconnection, the transmission provider requires accurate modeling data from an interconnection customer, study cases built for the proposed project, and precise thermal, voltage, steady state, and short circuit analyses. NYISO explains that accomplishing this requires a potential several-month collaboration with transmission owners to: (1) build applicable study base cases and the associated auxiliary study files; (2) complete any short circuit base cases necessary to determine point of interconnection requirements; (3) build pre-and post-project steady-state base cases that represent various system conditions (*e.g.,* summer peak load, winter peak load, and spring light load conditions).[234] NYISO further explains that it: (1) collaborates with applicable transmission owners and/or interconnection customers to determine upgrade solutions that constitute the least cost solution to mitigate reliability violations consistent with good utility practice and all applicable reliability requirements; (2) must sometimes iteratively redo the reliability analyses to ensure network upgrades can be reliably interconnected; and (3) must conduct stability analysis, transfer analysis, deliverability analysis, short circuit analysis, NPCC/NYSRC bulk power system transmission facility testing analysis, sub-synchronous torsional interaction screening analysis, and additional analyses. NYISO states that the study results must be summarized and shared with impacted parties and stakeholders and reviewed by the appropriate NYISO committees and subcommittees. NYISO avers that, if it had to comply with the 150-day timeline, it may likely be forced to eliminate this review and approval process.[235]

130. Additionally, NYISO asserts that cluster studies are unlikely to create the time savings expected by the Commission.[236] NYISO disagrees with the Commission's statement that the transmission provider ''will be conducting only one interconnection study, or at most a small number of interconnection studies, at a time, allowing them to devote more resources to completing the studies in a timely manner'' because, NYISO argues, this statement does not accurately reflect the type and amount of work required for the cluster study that it proposes and the resources that will need to be committed to such study.[237] NYISO explains that a large portion of cluster study work is spent identifying network upgrades at or near points of interconnection for individual projects or subsets of projects within the cluster which, as NYISO asserts, effectively requires transmission providers to perform individual studies within the broader cluster study and requiring resources similar to that of a serial study.[238] NYISO contends that only a small portion of cluster study work involves assessing the impacts on the system of the cluster as a whole. NYISO adds that each additional project in the cluster adds to the total amount of work required because each project must be modeled.

131. Further, NYISO argues that efficiencies gained by transitioning to a cluster study may be offset by increased participation and resultant large clusters.[239] NYISO contends that the more stringent study deposit, commercial readiness, and site control rules adopted in Order No. 2023 will not materially reduce the number of projects entering interconnection queues. NYISO notes that it and other RTOs/ISOs haves adopted similar rules without seeing a corresponding decrease in projects entering and progressing through their queues.[240] NYISO states that, if the Commission does establish a firm deadline for cluster study completion, it should define a maximum number of projects in a cluster or allow for extending the 150-day timeframe according to cluster size.

132. NYISO requests that the Commission allow RTOs/ISOs to propose alternative study deadlines as independent entity variations.[241] NYISO argues that requiring a single, firm study timeframe for all transmission providers does not recognize that interconnection study process requirements, challenges, reliability criteria, and queue size will be different in each region. In the alternative, NYISO requests that the Commission grant clarification that

[230] MISO Rehearing Request at 26.

[231] NYISO Rehearing Request at 4–5.

[232] *Id.* at 6–7.

[233] *Id.* at 8.

[234] *Id.* at 9–10.

[235] *Id.* at 11.

[236] *Id.* at 12.

[237] *Id.* (citing Order No. 2023, 184 FERC ¶ 61,054 at P 326).

[238] *Id.* at 13.

[239] *Id.* at 14.

[240] *Id.* (citing, for example, Midcontinent Independent System Operator Presentation, Generator Interconnection Queue Improvements, Planning Advisory Committee (July 19, 2023) (proposing increasing initial milestone payment from $4000/MW to $10,000/MW), at: *https://cdn.misoenergy.org/20230719%20PAC%20Item%2006%20GI%20Queue%20Improvements%20Proposal629634.pdf*).

[241] *Id.* at 15–16.

Order No. 2023 was not intended to prevent RTOs/ISOs from proposing region-specific study deadlines for some or all future studies in their individual Order No. 2023 compliance filings.

133. NYISO also asks the Commission to confirm that, during the 45-day cluster request window, the interconnection customer is limited to one 10-business day opportunity (or shorter at the end of the request window) to cure a deficiency in its application.[242] Further, NYISO asks the Commission to confirm that it did not intend to require the transmission provider to issue a second deficiency notice even if time allowed for such notice in the cluster request window and that, if the interconnection customer fails to fully cure its application within its single cure period, its application will be withdrawn. NYISO notes that section 3.4.4 of the *pro forma* LGIP provides that: ''At any time, if Transmission Provider finds that the technical data provided by Interconnection Customer is incomplete or contains errors, Interconnection Customer and Transmission Provider shall work expeditiously and in good faith to remedy such issues.'' NYISO argues that the Commission should clarify that this language is not intended to extend the time period by which an interconnection customer must address deficiencies for the transmission provider's acceptance of a valid, complete interconnection request, but instead is simply intended to permit the transmission provider and interconnection customer to address any minor issues that may be discovered later in the interconnection process, subject to applicable deadlines. NYISO proposes revisions to section 3.4.4 of the *pro forma* LGIP which it states would accomplish this clarification.

134. NYISO asks the Commission to confirm that the transmission provider may complete its determination that an interconnection request is valid into the customer engagement window, including assessing any updated information provided by the interconnection customer, within its permitted deficiency cure period in the cluster request window.[243] NYISO also requests confirmation that the transmission provider is not required to permit interconnection customers to address any further deficiencies identified in the customer engagement window. Further, NYISO states the Commission should confirm that, if the transmission provider determines in the customer engagement window that an interconnection customer's updated interconnection request remains deficient and is not valid, the transmission provider may withdraw the project upon such determination. In particular, NYISO notes that Paragraph 234 of Order No. 2023 appears to reject withdrawals for interconnection requests that are not deemed valid until the close of the customer engagement window. NYISO argues that this statement is inconsistent with the Commission's requirements to not permit interconnection customers to cure deficiencies during the customer engagement window and to limit participation in the Scoping Meeting during that window to only customers ''whose valid Interconnection Requests were received in the Cluster Request Window.'' [244]

135. NYISO requests rehearing of the requirement that transmission providers post an anonymized list of the projects eligible to participate in the cluster study during the customer engagement window.[245] NYISO argues that the requirement creates another administrative burden on the transmission provider for which the Commission has not provided a reasonable basis and could result in the unequal public disclosure of certain information to only a subset of developers. NYISO asserts that the Commission has not provided support for this anonymity requirement, aside from a general assertion that such requirement is appropriate ''to reduce opportunities for developers to gain competitive advantage over others before interconnection requests have been finalized and accepted by the transmission provider.'' [246] NYISO further states that the Commission has not provided a description of any means by which publicly identifying the developers of projects with valid interconnection requests would provide the developer or other parties with a competitive advantage. NYISO also explains that its OATT requires transmission providers to publicly post queue information that includes certain identifying information about valid interconnection requests. NYISO argues that the proposed requirement would therefore require a further administrative step for NYISO to have to conceal certain information in its publicly posted queue, including the developer's name and/or the status of the project, as well as take additional steps to maintain the projects' anonymity, such as masking information in any other public communications.[247] Further, NYISO notes that the group scoping meeting required during the customer engagement window will reveal many of the cluster participants, and that even if developer names are not provided during the meeting, many developers in a region are aware of the employees of other developers in that region. Therefore, NYISO argues that anonymity of developer names will not mask the identity of the underlying developers from other cluster participants but would simply give them an information advantage over other developers. Finally, NYISO explains that in many cases, such information would be public anyway, such as through a developer posting its projects on its website or participating in public request for proposals, permitting processes, Commission submissions, or other federal, state, or local proceedings.

136. NewSun argues that the 30-day timeline permitted following receipt of the cluster study report for interconnection customers to execute the facilities study agreement and provide deposits is arbitrary and capricious because it is commercially unreasonable, counterproductive to the Commission's goals of reducing withdrawals and restudies, fails to address record evidence, and inconsistent with the rationale provided in Order No. 2023.[248] NewSun argues that the 30-day timeline does not leave time for the proper review and discussion of the study information, especially where third party information is involved, or where the interconnection customer's understanding of the information (even assuming the study was without errors) is contingent upon study results meetings. NewSun explains that it takes time to, for example, read the report, formulate questions, set up meetings with consultants, run financial models, and engage with outside bankers and financiers.[249] NewSun asserts that companies with ''near infinite resources can just play chicken with their balance sheets, many of whom can merely post a letter of credit (by paying points) to proceed, and/or make the strategic decision to hold their noses and stay in, hope it works out, and just treat withdrawal penalties as a cost of doing business,'' while companies like NewSun have to arrange cash-backed

[242] *Id.* at 44–45.

[243] *Id.* at 45.

[244] *Id.* (citing *pro forma* LGIP section 3.4.5).

[245] *Id.*

[246] *Id.* at 46 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 237).

[247] *Id.* at 46–47.

[248] NewSun Rehearing Request at 7–8.

[249] *Id.* at 8–9.

letter of credit facilities which takes longer than 30 days to arrange.[250] NewSun states that forcing all interconnection customers, big and small, to make such huge decisions in short windows creates biases towards ''nose-holding behavior, fearful exits, and inability to thoughtfully consider outcomes—or changes—much less to collaborate and/or adapt to avoid delay-causing or costly upgrades.[251]

137. NewSun requests rehearing of the requirement that, if any interconnection customer withdraws from the cluster after receiving the cluster study report and the transmission provider concludes that such withdrawal triggers a restudy, the transmission provider has 30 days from the cluster study report meeting (or cluster restudy report meeting, if applicable) to notify affected interconnection customers.[252] NewSun states that notice of restudy will occur up to 10 days after the interconnection customer is required to sign a facilities study agreement and make the associated deposit 10% of the estimated network upgrade costs. NewSun states that, because the time frames for notice of restudy and for execution of the facilities study agreement overlap, the interconnection customer almost certainly will not know if a restudy—which entails potentially significant additional delays and increases in interconnection costs—is required before it is required to commit to a facilities study and making deposits that in many cases will requiring financing of millions or even tens of millions of dollars in financial security. NewSun asserts that, even if the transmission provider somehow manages to give the interconnection customers notice of intent to conduct a cluster restudy and tolls the due date for the facilities study agreement and 10% network upgrade deposit within 30 days of furnishing the cluster study report, the interconnection customer will have only 20 days to increase the amount on deposit to 5% of its estimated network upgrade costs. NewSun notes that this decision point could require financing of millions of dollars and, even in cases where monies may have already been financed, if refunds are not received, they cannot be recycled or reused. NewSun seeks rehearing of these timing issues and requests that the Commission change the 30-calendar day timeline to 60 days, as well as make several other changes to multiple timelines in Order No. 2023.[253]

138. PJM argues that the Commission erred in its apparent requirement that transmission providers determine whether a change in a project's point of interconnection is a material modification.[254] PJM explains that it interprets Order No. 2023 to mean that transmission providers will need to evaluate every single request from interconnection customers for a change to their point of interconnection to determine whether it is a material modification. PJM asserts, however, that analyzing each request would consume already limited engineering time, and that most change requests come from developers seeking to optimize their projects mid-process instead of performing their due diligence in advance of entering the queue. PJM also implies that most changes to points of interconnection would result in a material modification. PJM asks the Commission to clarify that transmission providers need not evaluate every single request to change a point of interconnection to determine if it would be a material modification. PJM recommends instead that the Commission allow transmission providers to establish rules that (1) changes to a project's point of interconnection may be made at certain defined points in the cluster cycle, and (2) changes to points of interconnection outside those defined times would be presumed material modifications. PJM seeks rehearing on this issue if the Commission declines to provide its requested clarification.

139. NYTOs seek clarification of Order No. 2023's elimination of queue priority and finding that all interconnection requests in a cluster should hold equal priority.[255] NYTOs explain that there is at least one instance in which interconnection priority is necessary: if it is not physically possible to connect all interconnection requests at a single point of interconnection, but it is feasible to connect some of the requests, then prioritization based on request dates should be applied to determine which interconnection customers have priority to proceed. NYTOs explain that this scenario occurs when the number of interconnection requests exceeds the available points of interconnection at a substation, and the substation cannot be expanded due to physical space or environmental limitations. NYTOs explain that allowing for this prioritization is critical in highly congested areas like New York City and Long Island. NYTOs state that the Commission should clarify that providing interconnection queue priority in this situation is permissible, at least under the independent entity variation. If the clarification is not provided, NYTOs request rehearing on the grounds that in the absence of such priority, the Commission acted arbitrarily and capriciously by failing to consider all aspects of the problem.

140. Several commenters request rehearing regarding reforms the Commission did not adopt in Order No. 2023. AEP argues that the Commission failed to adequately consider the need for, benefits of, and record support for enhanced generation retirement replacement processes and erred in deeming the generation retirement replacement process beyond the scope of this proceeding.[256] AEP states that four parties commented on the importance of generator replacement programs and argues that, while the Commission may not be able to direct with specificity the generator replacement reforms required, it has sufficient evidence to provide guidance on the basic requirements for such programs.[257] MISO asks the Commission to clarify that Order No. 2023 does not require transmission providers with Commission-approved generator replacement processes to change, abandon, or re-justify these processes on compliance.[258] Alternatively, if the Commission did intend to require transmission providers with existing generator replacement processes to re-justify those processes, MISO requests rehearing.[259] AEP urges the Commission to include in the *pro forma* LGIP an option for transmission providers to process some interconnection requests outside the cluster study process where required for LSEs to meet reserve margin requirements.[260] AEP argues that, if not included in the *pro forma* LGIP, AEP asks the Commission, in the alternative, to remain open to the future consideration of tariff revisions that allow for such outside-the-cluster reviews or fast-track processing.[261]

c. Determination

141. We agree with Clean Energy Associations that revisions to the definition of stand alone network

[250] *Id.* at 9.

[251] *Id.* at 10.

[252] *Id.* at 13 (citing *pro forma* LGIP section 7.5(3)–(4)).

[253] *Id.* at 22–24.

[254] PJM Rehearing Request at 44–45.

[255] NYTOs Rehearing Request at 9–10.

[256] AEP Rehearing Request at 6.

[257] *Id.* at 24.

[258] MISO Rehearing Request at 21–22.

[259] *Id.* at 23.

[260] AEP Rehearing Request at 24–25.

[261] *Id.* at 25–26.

upgrades in the *pro forma* LGIP and *pro forma* LGIA and option to build section of the *pro forma* LGIA are necessary to maintain the pre-Order No. 2023 *status quo* opportunity for interconnection customers to exercise the option to build as part of the cluster study process. Accordingly, we set aside this aspect of Order No. 2023 and modify the definition of stand alone network upgrades in section 1 (Definitions) of the *pro forma* LGIP and *pro forma* LGIA as follows, with brackets indicating deletions:

Stand Alone Network Upgrades shall mean Network Upgrades that are not part of an Affected System that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction [and the following conditions are met: (1) a Substation Network Upgrade must only be required for a single Interconnection Customer in the Cluster and no other Interconnection Customer in that Cluster is required to interconnect to the same Substation Network Upgrades, and (2) a System Network Upgrade must only be required for a single Interconnection Customer in the Cluster, as indicated under the Transmission Provider's Proportional Impact Method]. Both Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement. If Transmission Provider and Interconnection Customer disagree about whether a particular Network Upgrade is a Stand Alone Network Upgrade, Transmission Provider must provide Interconnection Customer a written technical explanation outlining why Transmission Provider does not consider the Network Upgrade to be a Stand Alone Network Upgrade within 15 days of its determination.

142. Accordingly, we also modify article 5.1.3 (Option to Build) of the *pro forma* LGIA as follows, with italicized language indicating additions:

Individual or Multiple Interconnection Customer*s* shall have the option to assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades on the dates specified in Article 5.1.2, *if the requirements of this Article 5.1.3 are met. When multiple Interconnection Customers exercise this option, multiple Interconnection Customers may agree to exercise this option provided (1) all Transmission Provider's Interconnection Facilities and Stand Alone Network upgrades constructed under this option are only required for Interconnection Customers in a single Cluster and (2) all impacted Interconnection Customers execute and provide to Transmission Provider an agreement regarding responsibilities, and payment for, the construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades planned to be built under this option.* Transmission Provider and *the individual Interconnection Customer or each of the multiple* Interconnection Customer*s* must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A. Except for Stand Alone Network Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

143. We find that this revision to the definition of stand alone network upgrades and addition to the option to build section in the *pro forma* LGIA will allow interconnection customers to exercise the option to build whether the stand alone network upgrade is attributable to a single interconnection customer or a shared network upgrade shared by multiple interconnection customers. These revisions will also avoid potentially lengthy disputes between interconnection customers, which was the Commission's original concern in Order No. 2023, because, for interconnection customers with shared network upgrades that qualify as stand alone network upgrades, interconnection customers must mutually agree to such agreement outside the transmission provider's interconnection process and thus will not slow down that process.[262] We clarify that, for such circumstances, we expect such a written agreement among the relevant interconnection customers to be reached among the interconnection customers on their own and outside of the transmission provider's interconnection process. Further, we clarify that, if no mutual agreement is reached among the interconnection customers, no interconnection customer will have the ability to exercise the option to build a stand alone network upgrade that is a shared network upgrade.

144. We are unpersuaded by Clean Energy Associations' argument that the Commission should modify the allowed reductions in project size in *pro forma* LGIP sections 4.4.1 and 4.4.2. We find that implementing Clean Energy Associations' requested change under a cluster study process is likely to lead to delays in the interconnection study process. Therefore, we continue to rely on the transmission provider to assess such a change under *pro forma* LGIP section 4.4 (Modifications), where the transmission provider would be able to assess whether modifications to project size (*e.g.,* up to a 60 percent reduction) would have a material impact on the cost or timing of any interconnection requests with an equal or later queue position.

145. We disagree with Clean Energy Associations' argument that the customer engagement window is too short. We note that Order No. 2023 required transmission providers to develop a heatmap of public interconnection information to provide interconnection customers with information prior to submitting an interconnection request, which should obviate the need for a longer engagement window. We further note that Order No. 2023 adopted readiness requirements to encourage interconnection customers to submit commercially viable interconnection requests, so interconnection customers should be relatively confident in the viability of their interconnection requests.[263]

146. We also are unpersuaded by Clean Energy Associations' request regarding circumstances in which the transmission provider fails to issue a deficiency notice within five business days. We find the requested revision unnecessary because a transmission provider taking longer than five business days to issue the deficiency notice would violate its tariff requirements to issue such a notice within five business days. We find that the requirement for interconnection customers to cure deficiencies before the close of the cluster request window is necessary to ensure the timely processing of the interconnection queue.

147. We disagree with Ørsted's and Clean Energy Associations' requests to require transmission owners (when not the transmission provider) to attend scoping meetings. The *pro forma* LGIP contemplates that the transmission owner and transmission provider may be the same entity, except in the case of an RTO/ISO, in which case the transmission owner does not have operational control of the facilities and does not perform cluster studies. We note that transmission providers have incentive, particularly in light of the study delay penalties adopted in Order No. 2023, to facilitate interconnection customers' access to information they need in order to efficiently navigate the interconnection study process. Accordingly, we will not require transmission owners to attend scoping meetings where the transmission owner and transmission provider are separate entities. However, RTOs/ISOs may seek an independent entity variation and propose to require attendance of any entities they feel are necessary to provide critical information to interconnection customers.

[262] Order No. 2023, 184 FERC ¶ 61,054 at P 193.

[263] *Id.* P 691.

148. We disagree with requests that the Commission include a feasibility study as part of the interconnection process. The NOPR did not propose, and Order No. 2023 did not adopt, a feasibility study. We reiterate our findings in Order No. 2023 that the move from a serial interconnection process to the new cluster study process, coupled with the Commission's heatmap requirements, render the feasibility study redundant and an unnecessary burden on transmission provider resources.

149. However, in response to requests for clarification that transmission providers can continue performing feasibility studies as an independent entity variation, we reiterate that transmission providers may explain specific circumstances on compliance and justify why any deviations are either consistent with or superior to the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and/or *pro forma* SGIA or merit an independent entity variation in the context of RTOs/ISOs.

150. In response to EEI's request that the Commission clarify that provisional interconnection service requests continue to be processed as received, we clarify that Order No. 2023 did not modify the process for transmission providers to study provisional interconnection service requests.

151. In response to EEI's request that the Commission clarify how the 150-day study deadline applies to restudies, we clarify that transmission providers have 150 days from the point that they inform interconnection customers of the restudy to complete each restudy, which must occur within 30 calendar days after the cluster study report meeting. We further clarify that, in the case of multiple restudies, we expect that the transmission provider will not definitively know whether to initiate a restudy of later-in-time clusters—and thus inform those interconnection customers that restudy is needed—until it has completed the initial restudy.

152. In response to Clean Energy Associations and IPP Coalition, we continue to find, as the Commission did in Order No. 2023, that interconnection customers must select a definitive point of interconnection to be studied when executing the cluster study agreement. As the Commission explained in Order No. 2023, requiring interconnection customers to select one definitive point of interconnection when executing the cluster study agreement allows the interconnection customer to submit its interconnection request with a proposed point of interconnection, participate in the scoping meeting during the customer engagement window, and receive feedback on its proposed point of interconnection. We continue to believe that this strikes the right balance between allowing for flexibility and potential adjustments to the point of interconnection, based on discussion with the transmission provider and the transmission provider's detailed knowledge of its transmission system, and providing transmission providers with the information necessary to conduct the cluster study, thus reducing the potential for restudies that would be required if interconnection customers could change their points of interconnection later in the process.[264]

153. Similarly, we continue to believe that allowing multiple points of interconnection (whether they are ''electrically proximate'' or not) to be studied before the interconnection customer is required to select the definitive point of interconnection fails to take into account the fact that, if an interconnection customer changes the definitive point of interconnection after the cluster study, it may impact the study results of the other interconnection customers in the cluster and could lead to restudies and delays. It may be the case that an ''electrically proximate'' point of interconnection location can be effectively implemented within a study process without materially impacting a study process, and the current process allows the transmission provider to determine whether that change to the point of interconnection will be considered a material modification. We find this sufficient to address IPP Coalition's concern.

154. We find Ørsted's request for clarification regarding circumstances where a regulatory limitation requires a change to the point of interconnection to be beyond the scope of Order No. 2023. The Commission did not adopt a process to change the point of interconnection when there is a regulatory limitation in Order No. 2023. In such a circumstance, changes to the point of interconnection are addressed in section 4.4 of the *pro forma* LGIP, which governs modifications to an interconnection request.

155. We disagree with PJM's request for clarification, and in the alternative, rehearing, that transmission providers need not evaluate whether every request to change an interconnection customer's point of interconnection is a material modification. First, while we agree that evaluating a change of point of interconnection will require engineering labor, we note that the availability of the public interactive heatmap will provide interconnection customers with far more transparency into the viability of the points of interconnection on the transmission provider's system prior to entering the interconnection queue. Thus, we expect the heatmap requirement to reduce the frequency with which interconnection customers request changes to their point of interconnection, as they will be better informed prior to submitting an interconnection request. The *pro forma* LGIP defines ''material modifications'' as ''those modifications that have a material impact on the cost or timing of any Interconnection Request with an equal or later Queue Position.'' [265] Other than that provision, we leave the determination of what constitutes a material modification to the transmission providers' currently-effective processes for determining materiality. We are unpersuaded that (1) interconnection customers should be limited to one change to their point of interconnection and (2) that all changes to points of interconnection should be presumed to be material outside of certain points in the cluster study, because interconnection customers already have a relatively limited window in which to request changes to points of interconnection. *Pro forma* LGIP sections 3.1.2, 4.4, and 4.4.3 make clear that a request to change an interconnection customer's point of interconnection that comes after the return of the executed cluster study agreement shall constitute a material modification. We find these provisions to address PJM's concern regarding point of interconnection change requests that arise from ''project developers seeking to optimize their projects in mid-process'' [266] by limiting most point of interconnection change requests to early in the study process and presuming those later in the study process to be material modifications. We also find that this approach strikes a reasonable balance between the use of engineering labor to advance feasible projects and reducing late-stage interconnection request modifications or withdrawals that could slow down the study process or lead to restudy. For these reasons, we find that the existing *pro forma* LGIP provisions referenced above adequately address PJM's concerns, and therefore no clarification or rehearing is necessary.

156. As we explain in detail below in section D.1.c.ii, we are unpersuaded by NYISO's assertions that the 150-day cluster study deadline is unjust and unreasonable and that the Commission's

[264] *Id.* P 200.

[265] *Pro forma* LGIP, section 1 (Definitions).

[266] PJM Rehearing Request at 44.

determination reflects arbitrary and capricious decision-making. As we note below, and consistent with the Commission's statements in Order No. 2023, transmission providers may explain specific circumstances on compliance and justify why any deviations are either consistent with or superior to the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs. Accordingly, we grant MISO's and NYISO's requests for clarification that Order No. 2023 does not preempt transmission providers from proposing tariff-defined study deadlines that may differ from the *pro forma* LGIP's 150-day schedule. Rather, the statements MISO and NYISO refer to in Order No. 2023 decline to allow transmission providers flexibility to set *ad-hoc* deadlines beyond their standard, tariff-defined deadlines.

157. NYISO requests that the Commission clarify that, during the 45-day cluster request window, interconnection customers are limited to one 10-business day opportunity to cure a deficiency in their applications. We disagree with NYISO's interpretation of the applicable *pro forma* LGIP language and note that NYISO offers no argument to support this interpretation. We therefore clarify that interconnection customers must receive as many cure periods as needed to remedy a deficient interconnection request, as long as the end of such cure periods fall prior to the last day of the 45-day cluster request window. In other words, if an interconnection customer fails to fully cure its application within the first cure period, transmission providers must issue a second (or third) deficiency notice to an interconnection customer during the cluster request window, if time allows. We clarify that, if a transmission provider finds an interconnection request to be deficient less than 10 days before the close of the cluster request window, the interconnection customer may have until the close of the cluster request window to cure those deficiencies.[267]

158. NYISO seeks clarification regarding the sentence in section 3.4.4 of the *pro forma* LGIP, which reads ''At any time, if Transmission Provider finds that the technical data provided by Interconnection Customer is incomplete or contains errors, Interconnection Customer and Transmission Provider shall work expeditiously and in good faith to remedy such issues.'' We grant NYISO's requested clarification that this language is not meant to extend the time period by which an interconnection customer must address deficiencies for the transmission provider's acceptance of a valid, complete interconnection request, but instead is simply intended to permit the transmission provider and interconnection customer to address any issues that may be discovered in the interconnection process, subject to applicable deadlines. In other words, the interconnection customer and transmission provider shall work expeditiously and in good faith to remedy any errors or incomplete information (that do not merit finding the interconnection request deficient) either during the cluster request window or later, *i.e.,* during the customer engagement window. We decline to modify the *pro forma* LGIP as proposed by NYISO because it is unnecessary.

159. NYISO seeks further clarification around when a transmission provider must complete its determination that an interconnection request is valid, the timeline in which an interconnection customer may cure deficiencies in its application, and treatment of interconnection requests deemed invalid during the customer engagement window. We clarify that the transmission provider must complete its determination that an interconnection request is valid by the close of the cluster request window, and therefore, interconnection customers must also cure deficient interconnection requests by the close of the cluster request window. In other words, only interconnection customers with valid interconnection requests, for which there is no need to cure deficiencies, proceed to the customer engagement window. As such, transmission providers may not continue determining whether interconnection requests are valid into the customer engagement window. This means that there is no need for transmission providers to deem interconnection requests withdrawn during the customer engagement window, as all invalid interconnection requests will already have been deemed withdrawn at the close of the cluster request window. We acknowledge NYISO's confusion regarding Paragraph 234 of Order No. 2023, which rejects the notion of withdrawing invalid interconnection requests before the end of the customer engagement window. We set aside Paragraph 234 of Order No. 2023 and clarify that an interconnection customer's cure period ends at the close of the cluster request window at the latest. Nevertheless, interconnection customers with valid interconnection requests may work with the transmission provider, per section 3.4.4 of the *pro forma* LIGP and as explained above, to resolve minor errors or incompletions in technical data throughout the process, without the need for the transmission provider to deem an interconnection request deficient, invalid, or withdrawn. To improve clarity with regard to these issues, we modify section 3.4.5 of the *pro forma* LGIP as follows, with italics indicating additions and brackets indicating deletions:

> At the end of the Customer Engagement Window, all Interconnection Requests deemed valid that have executed a Cluster Study Agreement in the form of Appendix 2 to this LGIP shall be included in the Cluster Study. Any Interconnection Requests *for which the Interconnection Customer has not executed a Cluster Study Agreement* [not deemed valid at the close of the Customer Engagement Window] shall be deemed withdrawn (without the cure period provided under Section 3.7 of this LGIP) by Transmission Provider, the application fee shall be forfeited to the Transmission Provider, and the Transmission Provider shall return the study deposit and Commercial Readiness Deposit to Interconnection Customer. Immediately following the Customer Engagement Window, Transmission Provider shall initiate the Cluster Study described in Section 7 of this LGIP.

160. We also modify *pro forma* LGIP section 3.4.4 to clarify that all items in *pro forma* LGIP section 3.4.2 must be received during the cluster request window. Taken together, these modifications make clear that the condition to proceed from the cluster request window to the customer engagement window is a valid interconnection request, and the condition to proceed from the customer engagement window is an executed cluster study agreement.

161. We are unpersuaded by NYISO's arguments to modify the requirement for transmission providers to post an anonymized list of the projects eligible to participate in the cluster study during the customer engagement window. NYISO's position is that the requirement would complicate NYISO's own specific processes, rather than the processes of transmission providers more broadly. Consistent with the Commission's statements in Order No. 2023, transmission providers may explain specific circumstances on compliance and justify why any deviations are either consistent with or superior to the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP, and/or *pro forma* SGIA or merit an independent entity variation in the context of RTOs/ISOs.

162. We disagree with NewSun's request to extend the 30-calendar day

[267] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 226.

period for an interconnection customer to execute the facilities study agreement. The NOPR did not propose, and Order No. 2023 did not adopt, any modifications to section 8.1 of the *pro forma* LGIP regarding the 30-calendar day period. We believe that 30 calendar days is a sufficient amount of time to meet the requirements of *pro forma* LGIP section 8.1. We believe that 30-calendar day timeframe balances providing certainty about the timeline for the interconnection process and ensuring that studies progress in a timely manner while providing sufficient time for an interconnection customer to execute the facilities study agreement and submit the appropriate deposit. We note that, while the Commission implemented changes in Order No. 2023 such as the commercial readiness deposit in *pro forma* LGIP section 8.1 that increase certain burdens on interconnection customers with the goal of discouraging speculative requests, the Commission also implemented changes such as the new study delay penalty structure that reasonably incentivizes transmission providers to ensure the timely processing of interconnection requests.[268]

163. However, we are persuaded by NewSun's arguments regarding the overlapping timelines for the notice of restudy and execution of the facilities study agreement (with associated deposits). Therefore, we modify sections 7.3 and 8.1 of the *pro forma* LGIP to remove the requirement for transmission providers to tender an interconnection facilities study agreement simultaneously with issuance of a cluster study (or restudy) report. We modify section 8.1 of the *pro forma* LGIP to clarify that transmission providers shall tender the interconnection facilities study agreement within 5 business days after the transmission provider notifies interconnection customers that no further restudies are required. This modification addresses NewSun's concern that an interconnection customer will not know if a restudy is required before the interconnection customer is required to commit to a facilities study and make the required deposits.

164. Regarding NYTOs' request for clarification about equal queue priority, we continue to find that, under the *pro forma* LGIP, interconnection requests studied in the same cluster have equal queue priority.[269] To address the situation that NYTOs describe, which appears specific to New York, we reiterate that NYISO, as an ISO, may explain its specific circumstances on compliance and justify why any deviations merit an independent entity variation.

165. We are not persuaded by arguments raised by several commenters regarding reforms not adopted in Order No. 2023. We are not persuaded by AEP's argument that the Commission should have included a generator replacement process in the *pro forma* LGIP. The NOPR did not propose such a process, and we continue to believe that the record in this proceeding is insufficient to require such a process generically. To AEP's alternative request for clarification, we clarify that nothing in Order No. 2023 limits transmission providers' ability to make an FPA section 205 filing, and we will continue to assess such filings on a case-by-case basis. In response to MISO, we clarify that Order No. 2023 does not require transmission providers to change, eliminate, or re-justify existing Commission-approved generator replacement processes on compliance. We reiterate our determination in Order No. 2023 that comments concerning generator replacement processes are beyond the scope of Order No. 2023.[270]

166. We also disagree with AEP's argument that the Commission should include an option for processing some interconnection requests outside the cluster study process. We continue to find, as the Commission did in Order No. 2023, that, based on the record before us, establishing a separate interconnection process outside the cluster study process could detract from transmission providers' efforts to efficiently process cluster studies.[271]

167. Finally, we revise the *pro forma* LGIP to correct inadvertent errors and add minor, clarifying edits as follows. First, we revise section 3.4.6 to correct an inadvertent omission of the word ''or'' to clarify that the non-disclosure agreement used for the group cluster study scoping meeting will provide for confidentiality of identifying information *or* commercially sensitive information, consistent with the discussion in Order No. 2023.[272] Second, we also revise *pro forma* LGIP section 7.5 to clarify that cluster restudies can be triggered by withdrawal of a higher-queued interconnection customer, and that interconnection customers being restudied are responsible for the cost of any restudy, except as provided in section 3.7. Third, we revise *pro forma* LGIP section 3.5.2.4 to clarify that the requirement to track and post metrics on interconnection queue withdrawals includes each stage of the study process. Fourth, we revise *pro forma* LGIP section 3.4.6 to remove the phrase ''and one or more available alternative Point(s) of Interconnection,'' consistent with the discussion in Order No. 2023.[273] Fifth, we revise the *pro forma* LGIP definition of ''interconnection study'' to reference all interconnection studies discussed in the *pro forma* LGIP.

3. Allocation of Cluster Network Upgrade Costs

a. Order No. 2023 Requirements

168. In Order No. 2023, the Commission added new section 4.2.1 (Cost Allocation for Interconnection Facilities and Network Upgrades) to the *pro forma* LGIP to require that transmission providers (1) allocate network upgrade costs based on the proportional impact method and (2) allocate the costs of substation network upgrades on a per capita basis.[274] To implement this requirement, the Commission added definitions for proportional impact method, substation network upgrades, and system network upgrades to the *pro forma* LGIP and *pro forma* LGIA and modified the existing definition of stand alone network upgrades. The Commission also required transmission providers to allocate the costs of interconnection facilities (*i.e.,* both the interconnection customer's interconnection facilities and transmission provider's interconnection facilities) on a per capita basis.[275] The Commission further provided that interconnection customers may agree to share interconnection facilities, that the per capita cost allocation will apply only where interconnection customers agree to share interconnection facilities, and that interconnection customers may choose a different cost sharing arrangement upon mutual agreement.

169. The Commission found that transmission providers must provide tariff provisions that describe the method they will use for allocating costs of each type of network upgrade, but

[268] *See id.* P 962. We also note that MISO and SPP currently only provide for 15 days to enter the facilities study phase (called Decision Point 2 in their respective generator interconnection procedures), and they each require a 20% commercial readiness deposit to enter the facilities study, whereas Order No. 2023 only requires a 10% deposit.

[269] *Id.* P 858.

[270] *See id.* PP 1736, 1743.

[271] *Id.* P 392.

[272] *Id.* P 247.

[273] *Id.* P 202 (declining to permit interconnection customers to submit multiple alternative points of interconnection).

[274] *Id.* P 453.

[275] *Id.* P 454.

specific metrics and thresholds for implementing the allocation, or other specific technical information, may be included in business practice manuals, or publicly posted on the transmission provider's website.[276] The Commission found that, in particular, the technical information surrounding implementation of the proportional impact method by a particular transmission provider does not need to be included in the transmission provider's tariff under the rule of reason because these provisions are properly classified as implementation details that do not significantly affect rates, terms, and conditions of service.

170. In response to requests for the Commission to direct transmission providers to use a specific type of proportional impact method or distribution factor analysis and apply minimum distribution factor thresholds that will be used to evaluate NRIS and ERIS requests, the Commission stated that it was unpersuaded that such level of prescription is needed to ensure just, reasonable, and not unduly discriminatory or preferential rates.[277] The Commission stated that, instead, it believes that flexibility for transmission providers to develop such details as part of their compliance filings—and in their business practice manuals, where consistent with the rule of reason—is important to ensure that the proportional impact method used by each transmission provider reflects the characteristics of its region (*e.g.,* types of network upgrade facilities identified in the region, or preferred analyses in the region for determining the share of the need for the specific network upgrade type).

b. Requests for Rehearing and Clarification

171. Generation Developers request clarification that Order No. 2023 does not prejudge whether any implementation detail regarding the proportional impact method needs to be included in the tariff rather than in a business practice manual, and that Order No. 2023 gives transmission providers flexibility to develop a method consistent with the Commission's rule of reason.[278] Generation Developers express concern that Order No. 2023 could be misinterpreted such that any implementation detail regarding the proportional impact method does not significantly affect rates and thus need not be included in the tariff. Generation Developers aver that the Commission has recognized that the rule of reason must be applied on a case-by-case basis and thus it would be inappropriate to make a generic determination that any specific detail can be placed in a business practice manual.[279] Generation Developers further argue that the Commission currently lacks the information necessary to make such a determination because whether a specific threshold or metric will significantly affect rates depends on several factors that will be detailed in the transmission provider's Order No. 2023 compliance filings.

172. Longroad Energy requests rehearing of Order No. 2023's decision to not require minimum impact thresholds for purposes of the proportional impact method.[280] Longroad Energy argues that minimum impact thresholds are necessary to ensure that interconnection customers are not required to finance network upgrades for which they have a de minimis impact.[281] Longroad Energy avers that the absence of a minimum impact threshold is administratively burdensome for transmission providers because they must track a larger number of interconnection requests. Longroad Energy asserts that interconnection customers may be exposed to construction delays for network upgrades for which they only have a de minimis impact. Longroad Energy notes that the Commission has accepted minimum impact thresholds in other instances.[282] Longroad Energy further argues that minimum impact thresholds are necessary to prevent any withdrawing interconnection request from materially impacting the remaining interconnection customers and thus triggering a withdrawal penalty.[283] Finally, Longroad Energy requests clarification that Order No. 2023 does not preclude a transmission provider from using minimum impact thresholds.

173. Clean Energy Associations request clarification that substation network upgrade cost allocation is based on the number of interconnection facilities (*i.e.,* generator tie lines) connecting to the substation at the point of interconnection and not based on the number of generating facilities connecting to the substation.[284] Clean Energy Associations explain that it is the number of interconnection facilities, not the number of generating facilities, that drive substation expansion. Clean Energy Associations request that the Commission clarify that the transmission provider should first allocate substation network upgrade costs on a per capita basis for each interconnection facility connecting to the substation, and secondly divide those costs between the multiple generating facilities using that interconnection facility.

174. Clean Energy Associations also request clarification that substation network upgrades are at distinctive voltage levels.[285] Clean Energy Associations explain that definitive selection of a point of interconnection requires a voltage level to be specified as well as a substation, and that expansion costs for different voltage levels are normally unrelated and may be very different.

c. Determination

175. In response to Generation Developers' request for clarification regarding the location of details on the implementation of the proportional impact method, we clarify that, consistent with the rule of reason, the Commission will consider the details of the transmission provider's proposed proportional impact method and whether those details should be in the tariff in its individual Order No. 2023 compliance filing.

176. We are unpersuaded by Longroad Energy's request for rehearing to require all transmission providers to use minimum impact thresholds. We reiterate the Commission's finding in Order No. 2023 that it is appropriate for transmission providers to propose such details in their Order No. 2023 compliance filings to ensure that the method used by each transmission provider reflects the characteristics of its region.[286] For example, different regions may identify different types of network upgrades or have preferred analyses for identifying specific network upgrade types. We disagree with Longroad Energy's assertion that minimum impact thresholds are necessary to prevent any withdrawal

[276] *Id.* P 462.

[277] *Id.* P 463.

[278] Generation Developers Rehearing Request at 3–5.

[279] *Id.* at 4 (citing *Cal. Indep. Sys. Operator Corp.,* 141 FERC ¶ 61,237, at P 35 (2012)).

[280] Longroad Energy Rehearing Request at 4–9.

[281] *Id.* at 5–6.

[282] *Id.* at 7–8 (citing *Tenaska Clear Creek Wind, LLC* v. *Sw. Power Pool, Inc.,* 177 FERC ¶ 61,200, *order on compliance and reh'g,* 180 FERC ¶ 61,160, at P 99 (2021), *reh'g denied by operation of law,* 181 FERC ¶ 62,090 (2022), *order addressing arguments on reh'g and denying motion for stay,* 182 FERC ¶ 61,084, at PP 33, 36 (2023); *Midcontinent Indep. Sys. Operator, Inc.,* 171 FERC ¶ 61,236, at PP 44, 56, *reh'g denied by operation of law,* 172 FERC ¶ 62,102, *order addressing arguments on reh'g,* 172 FERC ¶ 61,235 (2020)).

[283] *Id.* at 8–9.

[284] Clean Energy Associations Rehearing Request at 54–55.

[285] *Id.* at 55–56.

[286] Order No. 2023, 184 FERC ¶ 61,054 at P 463.

from triggering a withdrawal penalty, as the transmission provider must still assess whether the withdrawal has a material impact on the cost or timing of equal or lower-queued interconnection requests in accordance with section 3.7.1 of the *pro forma* LGIP. In response to Longroad Energy's request for clarification, we clarify that Order No. 2023 does not preclude transmission providers from proposing a minimum impact threshold.

177. In response to Clean Energy Associations' request for clarification regarding substation network upgrade cost allocation, we clarify that the cost allocation is based on the number of interconnection facilities connecting to the substation located at the point of interconnection. Accordingly, to allocate such costs per capita to each generating facility in accordance with section 4.2.1.1.a of the *pro forma* LGIP, the transmission provider must first allocate the costs of substation network upgrades on a per capita basis for each interconnection facility connecting to the substation, and then allocate those costs on a per capita basis between each generating facility using the interconnection facility.

178. We also grant Clean Energy Associations' request for clarification that substation network upgrades are at distinct voltage levels. Accordingly, we modify section 4.2.1.1.a of the *pro forma* LGIP as follows, with brackets indicating deletions and italics indicating additions:

> Substation Network Upgrades, including all switching stations, shall be allocated *first to Interconnection Facilities interconnecting to the substation at the same voltage level, and then per capita* to each Generating Facility *sharing the Interconnection Facility* [interconnecting at the same substation].

4. Shared Network Upgrades

a. Order No. 2023 Requirements

179. In Order No. 2023, the Commission declined to adopt the NOPR proposal to implement cost sharing of network upgrades between interconnection customers in an earlier cluster and interconnection customers in a subsequent cluster.[287] The Commission stated that it declined to adopt the NOPR proposal because of its potentially significant administrative burden and because Order No. 2023's cluster network upgrade cost allocation reform would address the ''first mover/free rider'' issue that motivated the NOPR proposal.

[287] *Id.* PP 486–488.

b. Requests for Rehearing and Clarification

180. Shell requests clarification that Order No. 2023 does not prohibit existing mechanisms of inter-cluster cost sharing of network upgrades and that the Commission will not prohibit inter-cluster cost sharing in the future.[288] Shell avers that network upgrade cost sharing between initial and subsequent interconnection customers is common in the industry, for example in the ISO–NE market.

c. Determination

181. We clarify that Order No. 2023 does not require transmission providers to eliminate, change, or re-justify existing tariff mechanisms regarding cost sharing of network upgrades between earlier-in-time and later-in-time clusters because such provisions are not impacted by the requirements of Order No. 2023. We reiterate that transmission providers need only seek approval to maintain previously approved variations from the *pro forma* LGIP and *pro forma* LGIA if such variations are impacted by the requirements of Order No. 2023.

5. Increased Financial Commitments and Readiness Requirements

a. Financial Security Generally

i. Order No. 2023 Requirements

182. In Order No. 2023, the Commission modified sections 3.4.2(vi), 5.1.1.1, 5.1.1.2, 7.5, and 8.1(3) of the *pro forma* LGIP to require that an interconnection customer pay the commercial readiness deposit and deposits prior to the transitional serial study, transitional cluster study, cluster restudy and the interconnection facilities study via cash or a letter of credit.[289] The Commission also established a *pro forma* two-party affected system facilities construction agreement in Appendix 11 to the *pro forma* LGIP and a *pro forma* multiparty affected system facilities construction agreement in Appendix 12 to the *pro forma* LGIP.[290] In section 4.1 of Appendix 11 to the *pro forma* LGIP and section 4.1 of Appendix 12 to the *pro forma* LGIP, the Commission required that an affected system interconnection customer provide financial security to the transmission provider in an amount sufficient to cover the costs for constructing, procuring, and installing the applicable portion of affected system network upgrade(s) in the form of a guarantee, a surety bond, a letter of credit or other form of security that is reasonably acceptable to transmission provider, at the affected system interconnection customer's option.

[288] Shell Rehearing Request at 14–15.

[289] Order No. 2023, 184 FERC ¶ 61,054 at P 690.

[290] *Id.* P 1193.

ii. Requests for Rehearing and Clarification

183. Clean Energy Associations request clarification or, in the alternative, rehearing that acceptable forms of security for the commercial readiness deposit, transitional serial study deposit, and transitional cluster study deposit are not limited to only irrevocable letters of credit and cash.[291] Clean Energy Associations assert that the Commission did not explain the decision to list these forms of security to the exclusion of other forms, such as surety bonds or other forms of security that may be acceptable to the transmission provider, and ignored comments in the record explicitly requesting flexibility for these alternative forms of security to be considered.

184. Similarly, Longroad Energy requests rehearing to allow generator interconnection customers to pay deposits or provide security in the form of cash, irrevocable letter of credit, surety bond, or other reasonably acceptable form of financial security, at the generator interconnection customer's discretion.[292] Additionally, if the interconnection customer submits its required deposit or security in the form of a letter of credit or surety bond, and ultimately some or all of the security is drawn by the transmission provider, Longroad Energy argues that the interconnection customer should be given the option to pay the amount due in cash rather than drawing on the letter of credit or bond. Longroad Energy argues that limiting the acceptable forms of financial assurance to only irrevocable letters of credit and cash is arbitrary and capricious and an unexplained departure from Commission precedent in Order No. 2003.[293] In addition to the deposits mentioned by Clean Energy Associations, Longroad Energy requests rehearing regarding the acceptable form of security for the deposits prior to the cluster restudy and the interconnection facilities study.[294] Longroad Energy notes that Order No. 2023 explicitly allows surety bonds or other forms of reasonably acceptable financial security for affected system network upgrade

[291] Clean Energy Associations Rehearing Request at 63–65.

[292] Longroad Energy Rehearing Request at 12.

[293] *Id.* at 9–14.

[294] *Id.* at 10–11.

deposits but not other deposits, which is unduly discriminatory.[295]

iii. Determination

185. We are persuaded by Clean Energy Associations and Longroad Energy's arguments on rehearing. We believe that allowing surety bonds or other forms of financial security that are reasonably acceptable to the transmission provider for the commercial readiness deposit and all study deposits will help ensure that interconnection customers do not face unjust and unreasonable or unduly discriminatory hurdles to the interconnection of new generation through limitations on the acceptable forms of financial security. We find that acceptable forms of security for the commercial readiness deposit and deposits prior to the transitional serial study, transitional cluster study, cluster restudy and the interconnection facilities study should include not only cash or an irrevocable letter of credit, but also surety bonds or other forms of financial security that are reasonably acceptable to the transmission provider. Accordingly, we modify sections 3.4.2, 5.1.1.1, 5.1.1.2, 7.5, and 8.1 of the *pro forma* LGIP to reflect this finding.

186. However, we are not persuaded by Longroad Energy's request that, if the interconnection customer submits its required deposit or security in the form of a letter of credit or surety bond, the interconnection customer should be given the option to pay any amount drawn by the transmission provider in cash rather than drawing on the letter of credit or surety bond. Longroad Energy did not provide sufficient reasoning or evidence as to why this clarification is necessary to ensure just and reasonable and not unduly discriminatory or preferential rates. However, we clarify that we do not preclude transmission providers from allowing interconnection customers to pay cash in lieu of drawing on a previously submitted letter of credit or surety bond.

b. Increased Study Deposits

i. Order No. 2023 Requirements

187. In Order No. 2023, the Commission adopted the following study deposit framework in section 3.1.1.1 (Study Deposit) of the *pro forma* LGIP: [296]

Size of proposed generating facility associated with interconnection request	Amount of deposit
>20 MW <80 MW	$35,000 + $1,000/MW.
≥80 MW <200 MW ..	$150,000.
≥200 MW	$250,000.

The Commission required transmission providers to collect this study deposit once, upon entry into the cluster.[297]

ii. Determination

188. Given that interconnection customers developing small generating facilities requesting NRIS submit their interconnection requests under the relevant transmission providers' LGIP,[298] we modify 3.1.1.1 as follows to clarify the applicable study deposits in such instances:

Size of proposed generating facility associated with interconnection request under the *pro forma* LGIP	Amount of deposit
<80 MW	$35,000 + $1,000/MW.
≥80 MW <200 MW ..	$150,000.
≥200 MW	$250,000.

189. We also modify section 3.1.1.1 of the *pro forma* LGIP to clarify that the $5,000 application fee is non-refundable. We also modify section 13.3 of the *pro forma* LGIP to remove language ''or offset against the cost of any future Interconnection Studies associated with the applicable Cluster prior to beginning of any such future Interconnection Studies,'' given that the study deposit structure under Order No. 2023 includes an initial study deposit at the beginning of the study process, rather than separate deposits before each phase of study.

c. Demonstration of Site Control

i. Order No. 2023 Requirements

190. In Order No. 2023, the Commission adopted revisions to the *pro forma* LGIP and *pro forma* LGIA to add more stringency to the site control requirements and to help prevent speculative interconnection requests from entering the interconnection queue.[299] The Commission found that, taken together, these reforms will help ensure that commercially viable interconnection requests with demonstrated site control or with demonstrated regulatory limitations will be able to enter the interconnection queue, thereby reducing the negative impacts of speculative interconnection requests.

191. As relevant to the requests for rehearing and clarification, in Order No. 2023, the Commission revised: (1) the definition for ''site control'' in section 1 of the *pro forma* LGIP and in article 1 of the *pro forma* LGIA; [300] and (2) section 3.4.2 of the *pro forma* LGIP to include a limited option for interconnection customers to submit a deposit in lieu of site control when they submit their interconnection request—only if qualifying regulatory limitations prohibit the interconnection customer from obtaining site control.[301]

192. Also relevant to the requests for clarification, in Order No. 2023, the Commission clarified that deposits in lieu of site control for interconnection customers with regulatory limitations are refundable and cannot be applied to the costs of interconnection studies or withdrawal penalties.[302] The Commission also clarified that the site control demonstration requirements apply only to the land needed for the generating facility and explained that, because it did not propose site control requirements for interconnection facilities in the NOPR, it declined to address comments suggesting alternative site control requirements for interconnection facilities or network upgrades.[303]

ii. Requests for Rehearing and Clarification

193. IPP Coalition requests rehearing and urges the Commission to establish a requirement for full site control over generator interconnection facilities without a deposit in lieu of site control demonstration option at the facilities study phase.[304] IPP Coalition contends that Order No. 2023 limited site control requirements to ''the land needed for

[295] *Id.* at 12–13.

[296] Order No. 2023, 184 FERC ¶ 61,054 at PP 502–503; *pro forma* LGIP section 3.1.1.1.

[297] Order No. 2023, 184 FERC ¶ 61,054 at P 505.

[298] *Small Generator Interconnection Agreements & Procs.,* Order No. 792, 78 FR 73240 (Dec. 5, 2013), 145 FERC ¶ 61,159, at PP 232, 235 (2013).

[299] Order No. 2023, 184 FERC ¶ 61,054 at P 583.

[300] *Id.* P 584 (''Site Control shall mean the exclusive land right to develop, construct, operate, and maintain the Generating Facility over the term of expected operation of the Generating Facility. Site Control may be demonstrated by documentation establishing: (1) ownership of, a leasehold interest in, or a right to develop a site of sufficient size to construct and operate the Generating Facility; (2) an option to purchase or acquire a leasehold site of sufficient size to construct and operate the Generating Facility for such purpose; or (3) any other documentation that clearly demonstrates the right of Interconnection Customer to exclusively occupy a site of sufficient size to construct and operate the Generating Facility. Transmission Provider will maintain acreage requirements for each Generating Facility type on its OASIS or public website.'').

[301] *Id.* P 605.

[302] *Id.* P 612.

[303] *Id.* P 604.

[304] IPP Coalition Rehearing Request at 6.

the generating facility'' and declined to extend any site control requirements to the interconnection customer's interconnection facilities without substantive consideration and a reasoned response to the comments urging such a requirement,[305] which is contrary to reasoned decision-making principles in violation of the APA. IPP Coalition argues that requiring site control for interconnection facilities would increase the quality of interconnection study results and increase certainty for interconnection customers as the interconnection process becomes more costly and risky to navigate. IPP Coalition further argues that the record reflects that such a requirement could prevent gaming and reduce the risk of more speculative projects delaying the interconnection process.[306]

194. Clean Energy Associations ask the Commission to clarify that the revised definition of site control in the *pro forma* LGIP and *pro forma* LGIA is not meant to impose term requirements on site control.[307] Further, Clean Energy Associations urge the Commission to clarify and modify the definition of site control to prevent future confusion and misinterpretation by transmission providers regarding any term requirements for site control. Clean Energy Associations assert that Order No. 2023 revised the definition of site control in a way that is not discussed in the order or in the preceding NOPR to include the words ''right to develop, *construct, operate, and maintain* the Generating Facility *over the term of expected operation* of the Generation Facility'' (emphasis added).[308] Clean Energy Associations assert that this revision implies that a lease option or other form of site control must have a term that is valid for the entire life of the generating facility. Clean Energy Associations argue that such a term is contrary to standard industry practice,[309] is unnecessary to ensure that developers have sufficient rights to develop, construct, operate, and maintain their generating facilities, and unnecessarily increases the cost of development, resulting in rates to consumers that are unjust and unreasonable.[310]

195. ACP requests that the Commission clarify that, in their compliance filings, transmission providers may seek to expand opportunities for interconnection customers to submit deposits in lieu of demonstrating 90% site control when submitting an interconnection request to address other exigent circumstances beyond regulatory constraints.[311] ACP argues that land acquisition in dense urban areas where battery storage facilities are more frequently sited is much more difficult and costly to achieve at the time an interconnection request is submitted than is typically the case for project sites much further from load. ACP asserts that denying such flexibility on compliance could result in key battery storage projects and other projects near load being unable to move forward, endangering grid reliability where and when those resources are most needed.[312] ACP argues that this clarification would not alter any aspect of Order No. 2023 but would provide valuable information to transmission providers and interconnection customers in developing effective compliance filings.[313]

196. In the event the point of interconnection must change due to a new government policy or regulatory requirement, Ørsted requests clarification that any deposits submitted in lieu of site control would still be treated as refundable and the project would not be subject to withdrawal penalties if the change cannot be accommodated.[314]

iii. Determination

197. We are unpersuaded by IPP Coalition's request for rehearing of the Commission's decision to apply site control demonstration requirements only to the land needed for the generating facility. We reiterate that the Commission did not propose site control requirements for interconnection facilities in the NOPR. While we note that some comments were submitted on this topic,[315] we continue to find the record insufficient for the Commission to assess alternative site control requirements for interconnection facilities and impose them on a nationwide basis. We also note that some of the comments that were submitted argued that interconnection customers require flexibility when siting interconnection facilities because the route for such facilities may not be identified until the very end of the interconnection process.[316]

198. We are also unpersuaded by Clean Energy Associations' request for clarification and to modify the definition of site control to avoid imposing term limits. We disagree with Clean Energy Associations that Order No. 2023 revised the definition of site control in a way that was not discussed in the NOPR and note that the proposed definition of site control in the NOPR included the words ''right to develop, construct, operate, and maintain the Generating Facility over the term of expected operation of the Generation Facility.'' [317] We find that allowing interconnection customers to submit site control documentation with a term shorter than the expected operation of the generating facility would increase risks for all parties. For example, in the event a shorter lease expires, an interconnection customer could face property rights disputes that threaten its ability to operate its generating facility, which in turn, could jeopardize the transmission provider's ability to reliably operate its transmission system. Consistent with Order No. 2023, we find that it is the interconnection customer's responsibility to obtain exclusive site control over the term of expected operation of the generating facility.

199. We are further unpersuaded by ACP's request for clarification. We reiterate that, because a deposit in lieu of site control does not demonstrate that an interconnection customer has the exclusive right to develop a site, it does not indicate that an interconnection customer is ready to proceed with construction and commercial operation of the generating facility. As a result, we believe that allowing transmission providers to expand the option for interconnection customers to submit a deposit in lieu of demonstrating site

[305] *Id.* at 3–4 (citing AEE Initial Comments at 18; AEP Initial Comments at 21–23; Cypress Creek Initial Comments at 22; Enel Initial Comments at 41–42; MISO Initial Comments at 56; National Grid Initial Comments at 22–23; and Shell Reply Comments at 23).

[306] *Id.* at 4–5 (citing Order No. 2023, 184 FERC ¶ 61,054 at PP 537–539).

[307] Clean Energy Associations Rehearing Request at 63.

[308] *Id.* at 61.

[309] Clean Energy Associations states that the standard industry practice is to execute a development lease with a development term and an extended term. Clean Energy Associations explain that the development term typically lasts until the start of construction, is less than ten years, and expires if not extended by the interconnection customer. Clean Energy Associations further explain that, when an interconnection customer is ready to begin construction, the lease grants the customer the unilateral right to enter the extended term at a pre-determined higher payment rate. *Id.*

[310] *Id.* at 62–63.

[311] ACP Clarification Request at 1–3.

[312] *Id.* at 3 (also arguing that lease options available in dense urban areas typically have shorter terms than the phases of interconnection studies that determine project feasibility and capacity deliverability, which in turn can serve to justify more definitive site control).

[313] *Id.* at 4.

[314] Ørsted Rehearing Request at 11.

[315] Order No. 2023, 184 FERC ¶ 61,054 at PP 535–539.

[316] *Id.* P 535.

[317] NOPR, 179 FERC ¶ 61,194, at app. B, section 1.

control to address other exigent circumstances, beyond regulatory limitations, would not help to prevent speculative, commercially non-viable interconnection requests from entering the interconnection queue. In cases where it is particularly challenging or costly to achieve exclusive site control, the interconnection customer may not be ready to proceed with the construction and commercial operation of the generating facility, and therefore it may be inappropriate to submit an interconnection request for such a facility. Thus, we decline to clarify that transmission providers may expand the option for interconnection customers to submit a deposit in lieu of demonstrating site control.

200. In the event a new regulatory limitation requires a change to the point of interconnection that cannot be accommodated and results in an interconnection request being withdrawn, we grant Ørsted's request for clarification and clarify that any deposits submitted by the interconnection customer in lieu of site control must be refundable. Nevertheless, the interconnection customer may be subject to a withdrawal penalty. We acknowledge that certain interconnection customers, such as offshore wind resources, may be required to modify their point of interconnection, after they have already submitted an interconnection request, in response to a state or federal policy or regulation. However, the Commission did not adopt a process for interconnection customers to modify their point of interconnection due to a regulatory limitation in Order No. 2023. An interconnection customer can request to modify its interconnection request pursuant to section 4.4 of the *pro forma* LGIP, but if the transmission provider determines that the change to the point of interconnection is a material modification, and the interconnection customer elects to withdraw its interconnection request, the interconnection customer may be subject to a withdrawal penalty.

d. Commercial Readiness

i. Order No. 2023 Requirements

201. In Order No. 2023, the Commission revised sections 3.4.2, 7.5, 8.1, and 11.3 of the *pro forma* LGIP to require interconnection customers to submit commercial readiness deposits to help reduce the submission of speculative, commercially non-viable interconnection requests into interconnection queues.[318] The Commission found that, because the interconnection customer's total commercial readiness deposit held by the transmission provider increases as the interconnection process proceeds, this approach will encourage interconnection customers not ready to proceed through the interconnection process—or whose projects become commercially non-viable during the interconnection process—to withdraw earlier in the process, thereby lessening the incidence of late-stage withdrawals that result in delays and restudies.[319]

202. The Commission declined to adopt the non-financial commercial readiness demonstrations proposed in the NOPR because they were not necessary to address the need for reform—providing additional deterrence of speculative, commercially non-viable interconnection requests—given the significant, increasing commercial readiness deposits adopted instead.[320] The Commission also indicated that the non-financial commercial readiness demonstrations proposed in the NOPR may not necessarily serve as appropriate indicators of a proposed generating facility's commercial viability on a national basis, or may not match the timelines of state procurement efforts.[321] Additionally, the Commission expressed concern that the proposed non-financial commercial readiness demonstrations could incentivize power purchasers in some regions to execute purchase contracts with interconnection customers whose generating facilities will later be determined to be commercially non-viable.[322]

203. Because the Commission did not adopt the non-financial commercial readiness demonstrations proposed in the NOPR, the Commission found that it was unnecessary to address commenter concerns that certain non-financial commercial readiness demonstrations could provide an unduly discriminatory or preferential advantage to projects being developed by transmission providers or their affiliates.[323] Although the Commission found that commercial readiness deposits are sufficient to address the need for reform in this proceeding, the Commission stated that this finding does not preclude transmission providers from proposing to adopt non-financial commercial readiness demonstrations on compliance, provided they meet the requirements of the relevant standards (*i.e.,* an independent entity variation or the ''consistent with and superior to'' standard) when requesting a variation.[324]

ii. Requests for Rehearing and Clarification

204. Clean Energy Associations request that the Commission clarify Order No. 2023 by indicating the evaluation framework to determine if non-financial commercial readiness criteria are unduly discriminatory or preferential.[325] Clean Energy Associations urge the Commission to clarify how it will ensure that any additional non-financial commercial readiness demonstrations that a transmission provider may propose will not provide an unduly or preferential advantage to projects being developed by the transmission provider or its affiliates. Clean Energy Associations further request that the Commission clarify whether it will require a proposing transmission provider to use the *pro forma* readiness requirements before, or along with, implementing non-financial demonstrations. In the alternative, Clean Energy Associations seek rehearing on the basis that the Commission failed to meaningfully respond to evidence that the non-financial commercial readiness demonstrations present ample opportunity for non RTO/ISO transmission providers to discriminate against independent power producers.[326] Clean Energy Associations argue that it is nearly impossible for independent power producers to enter the queue by making a non-financial demonstration of commercial readiness, whereas transmission providers may be able to use non-financial readiness demonstrations to grant their own projects preferential contracts, resulting in undue discrimination against independent power producers.[327]

[318] Order No. 2023, 184 FERC ¶ 61,054 at P 690.

[319] *Id.* P 691.

[320] *Id.* P 694.

[321] *Id.* PP 695–696.

[322] *Id.* P 698.

[323] *Id.* P 700.

[324] *Id.* P 701.

[325] Clean Energy Associations Rehearing Request at 67.

[326] *Id.* (citing ACORE Reply Comments at 4; ACPA And Renew Northeast Reply Comments at 4–6; AEE Initial Comments at 20; AEE Reply Comments at 12; Alliant Energy Initial Comments at 5–6; Clean Energy Associations Initial Comments at 34–35; CREA/New Sun Initial Comments at 57; CREA and NewSun Energy Reply Comments at 22–45; Cypress Creek Initial Comments at 22–23; Enel Initial Comments at 44; ENGIE Initial Comments at 5; ENGIE Reply Comments at 2–3; EPSA Initial Comments at 9; Fervo Energy Reply Comments at 6–7; New Jersey Commission Reply Comments at 6–8; NextEra Initial Comments at 25; NextEra Reply Comments at 14–16; Pine Gate Initial Comments at 27; PIOs Initial Comments at 29–30; R Street Initial Comments at 13; SEIA Initial Comments at 25; and Vistra Initial Comments at 6).

[327] *Id.* at 68–69 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 667).

iii. Determination

205. We are unpersuaded by Clean Energy Associations' arguments on rehearing that the Commission must establish an evaluation framework to determine if non-financial commercial readiness criteria are unduly discriminatory or preferential. The Commission did not adopt non-financial commercial readiness demonstrations in Order No. 2023, and therefore such an evaluation framework is not needed to evaluate compliance with Order No. 2023. Rather, we reiterate the Commission's finding that non-financial commercial readiness demonstrations are not necessary to address the need for reform—providing additional deterrence of speculative, commercially non-viable interconnection requests—given the significant, increasing commercial readiness deposits the Commission adopted in Order No. 2023. Given that the Commission did not adopt non-financial commercial readiness demonstrations, we do not need to respond to arguments that such demonstrations could be unduly discriminatory. As such, we are not prejudging any compliance proposals that might include non-financial commercial readiness demonstrations, and transmission providers may explain specific circumstances on compliance and justify why any deviations from Order No. 2023 are either consistent with or superior to the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs.[328]

e. Withdrawal Penalties

i. Order No. 2023 Requirements

206. In Order No. 2023, the Commission added the term ''withdrawal penalty'' to section 1 of the *pro forma* LGIP; revised section 3.7 of the *pro forma* LGIP; and added sections 3.7.1, 3.7.1.1, and 3.7.1.2 related to withdrawal penalties to the *pro forma* LGIP.[329] The Commission required transmission providers to apply withdrawal penalties to an interconnection customer if: (1) the interconnection customer withdraws its interconnection request at any point in the interconnection process; (2) the interconnection customer's interconnection request has been deemed withdrawn by the transmission provider at any point in the interconnection process; or (3) the interconnection customer's generating facility does not reach commercial operation (such as when an interconnection customer's LGIA is terminated prior to reaching commercial operation).[330] However, a withdrawal penalty must only be assessed if the withdrawal has a material impact on the cost or timing of any interconnection requests with an equal or lower queue position. The Commission stated that the interconnection customer will also be exempt from paying a withdrawal penalty if (1) the interconnection customer withdraws its interconnection request after receiving the most recent cluster study report and the network upgrade costs assigned to the interconnection customer's request have increased 25% compared to the previous cluster study report, or (2) the interconnection customer withdraws its interconnection request after receiving the individual facilities study report and the network upgrade costs assigned to the interconnection customer's request have increased by more than 100% compared to costs identified in the cluster study report.[331]

207. The Commission required a transmission provider to assess a withdrawal penalty on an interconnection customer with a proposed generating facility that does not reach commercial operation based either on the actual study costs or on a percentage of the interconnection customer's assigned network upgrade costs, depending on what phase the interconnection customer withdraws its interconnection request.[332] Thus, the withdrawal penalty for an interconnection customer will be calculated as the greater of the study deposit or: (1) two times the study cost if the interconnection customer withdraws during the cluster study or after receipt of a cluster study report; (2) 5% of the interconnection customer's identified network upgrade costs if the interconnection customer withdraws during the cluster restudy or after receipt of any applicable restudy reports; (3) 10% of the interconnection customer's identified network upgrade costs if the interconnection customer withdraws during the facilities study, after receipt of the individual facilities study report, or after receipt of the draft LGIA; or (4) 20% of the interconnection customer's identified network upgrade costs if, after executing, or requesting to file unexecuted, the LGIA, the interconnection customer's LGIA is terminated before its generating facility achieves commercial operation.

208. The Commission required transmission providers to use the withdrawal penalty funds as follows: (1) to fund studies and restudies in the same cluster; (2) if withdrawal penalty funds remain, to offset net increases in costs borne by other remaining interconnection customers from the same cluster for network upgrades shared by both the withdrawing and non-withdrawing interconnection customers prior to the withdrawal; and (3) if any withdrawal penalty funds remain, to be returned to the withdrawing interconnection customer.[333]

209. Section 3.7.1.2.1 of the *pro forma* LGIP describes the transmission provider's handling of withdrawal penalty funds and the first step of distributing them to fund studies and restudies.[334] For a single cluster, the transmission provider shall hold all withdrawal penalty funds until all interconnection customers in that cluster have: (1) withdrawn or been deemed withdrawn; (2) executed an LGIA; or (3) requested an LGIA to be filed unexecuted. Any withdrawal penalty funds collected shall first be used to fund studies for interconnection customers in the same cluster that have executed an LGIA or requested an LGIA to be filed unexecuted. Distribution of the withdrawal penalty funds for such study costs shall not exceed the total actual study costs.

210. The Commission adopted section 3.7.1.2.2 of the *pro forma* LGIP, which provides that if, after the first distribution step is complete, withdrawal penalty funds remain, the transmission provider must proceed to the second step of distributing them to offset net increases in network upgrade cost assignments driven by the withdrawal.[335] The transmission provider will determine if the withdrawn interconnection customers, at any point in the cluster study process, shared cost assignment for one or more network upgrades with any remaining interconnection customers in the same cluster based on the cluster study report, cluster restudy report(s), interconnection facilities study report, and any subsequent issued restudy report for the cluster.

211. If the transmission provider determines that withdrawn interconnection customers shared cost assignment for network upgrades with remaining interconnection customers in the same cluster, the transmission provider will calculate the remaining interconnection customers' net increase in costs (*i.e.,* financial impact) due to a shared cost assignment for network

[328] Order No. 2023, 184 FERC ¶ 61,054 at P 1764.

[329] *Id.* P 780.

[330] *Id.* P 783.

[331] *Id.* P 784.

[332] *Id.* P 791.

[333] *Id.* P 798.

[334] *Id.* P 801.

[335] *Id.* P 802.

upgrades with the withdrawn interconnection customer.[336] It will then distribute withdrawal penalty funds as described in section 3.7.1.2.3 of the *pro forma* LGIP, depending on whether the withdrawal occurred before the withdrawing interconnection customer executed an LGIA (*i.e.,* during the cluster study process) or afterward.

212. If the transmission provider determines that more than one interconnection customer in the same cluster was financially impacted by the same withdrawn interconnection customer, the transmission provider will apply the relevant withdrawn interconnection customer's withdrawal penalty to reduce the financial impact to each impacted interconnection customer based on each withdrawn interconnection customer's proportional share of the financial impact.[337] Each interconnection customer's proportional share will be determined by either the proportional impact method if the net cost increase is related to a system network upgrade or on a per capita basis if the net cost increase is related to a substation network upgrade.

213. Section 3.7.1.2.4 of the *pro forma* LGIP details the process by which the transmission provider will provide amended LGIAs to any interconnection customers in the cluster that qualify for distribution of withdrawal penalty funds under this framework.[338] To account for withdrawals that occurred *during the cluster study process,* the transmission provider must do the following: within 30 calendar days of all interconnection customers in the same cluster having: (1) withdrawn or been deemed withdrawn; (2) executed an LGIA; or (3) requested an LGIA to be filed unexecuted, determine if, and to what extent, any interconnection customers qualify to have their increased network upgrade costs offset by withdrawal penalty funds and provide such interconnection customers with an amended LGIA that provides the reduction in network upgrade cost assignment and associated reduction to the interconnection customer's financial security requirements.

214. To account for withdrawals that occurred in the same cluster after the withdrawing interconnection customer executed an LGIA, or requests the filing of an unexecuted LGIA, the transmission provider must do the following: within 30 calendar days of such withdrawal or termination, determine if, and to what extent, any interconnection customers qualify to have their increased network upgrade costs offset by withdrawal penalty funds and provide such interconnection customers with an amended LGIA that provides the reduction in network upgrade cost assignment and associated reduction to the interconnection customer's financial security requirements.[339]

215. For any given withdrawal, if the transmission provider determines that there are no network upgrade cost assignments in the withdrawn interconnection customer's cluster shared with the withdrawn interconnection customer, or if the transmission provider determines that the withdrawn interconnection customer's withdrawal did not cause a net increase in the shared cost assignment for any remaining interconnection customers in the cluster, the transmission provider must return the remaining withdrawal penalty to the withdrawn interconnection customer.[340] Such remaining withdrawal penalties will be returned to withdrawn interconnection customers based on the proportion of each withdrawn interconnection customer's contribution to the total amount of withdrawal penalty funds collected for the cluster. The transmission provider must make such disbursement within 60 calendar days of the date on which all interconnection customers in the same cluster have either: (1) withdrawn or been deemed withdrawn; (2) executed an LGIA; or (3) requested an LGIA to be filed unexecuted.

216. Finally, section 3.7.1.2.5 of the *pro forma* LGIP provides that if, after the first and second distribution steps are complete, some or all of an interconnection customer's withdrawal penalty remains, the transmission provider must return the balance of the withdrawn interconnection customer's withdrawal penalty funds to the withdrawn interconnection customer.[341]

ii. Requests for Rehearing and Clarification

217. NYISO states that the Commission's withdrawal penalty structure adopted in Order No. 2023 does not reflect reasoned decision-making as it is unnecessarily complicated and establishes significant new administrative burdens on the transmission provider that are at odds with the intent of Order No. 2023 to enable transmission providers to more efficiently and timely process interconnection requests.[342] NYISO states that the Commission's framework substantially deviates from its straightforward proposal in the NOPR, in which the transmission provider would solely use the collected penalties to offset study costs for the cluster. NYISO asserts that the Commission has not provided a reasonable basis for expanding this process to insert an additional layer to address offsetting increases in network upgrade costs for shared network upgrades. NYISO states that the new requirements will require the transmission provider to keep track of multiple penalty streams tied to each withdrawing developer, of which there will likely be a substantial number, across multiple studies while also requiring the performance of extensive analysis concerning the impact of the withdrawal of each of these projects on the remaining projects. NYISO asserts that the Commission should select one approach that can be reasonably implemented without requiring the commitment of significant additional resources or, alternatively, should permit each transmission provider to determine how such collected penalty costs can be best put to use in its region.[343]

218. NYISO states that, if the Commission elects to retain its withdrawal penalty approach, NYISO requests rehearing and/or clarification of certain elements of these requirements.[344] First, NYISO states that the Commission should clearly establish that withdrawal penalties cannot exceed the dollar amount secured by transmission providers. NYISO asserts that transmission providers cannot be responsible for and should not have to incur the administrative resource and expense of having to hunt down or to enter into litigation with withdrawn interconnection customers to obtain any withdrawal penalties that they fail to pay, and should not be required to pass on any gaps in uncollected penalty amounts to their market participants. NYISO therefore argues that the Commission should modify the withdrawal penalty rules: (1) to permit the transmission provider to require increases in deposits from interconnection customers when it becomes evident that the secured amount is not sufficient to offset penalty amounts; and/or (2) to establish that, in the event of a gap between the secured amount and withdrawal penalties, the transmission provider is not required to

[336] *Id.* P 803.
[337] *Id.* P 804.
[338] *Id.* P 805.
[339] *Id.* P 806.
[340] *Id.* P 807.
[341] *Id.* P 809.
[342] NYISO Rehearing Request at 47–48.
[343] *Id.* at 48–49.
[344] *Id.* at 49–50.

pay out any uncollected amount under the penalty distribution rules or to recover such difference from its market participants.

219. Clean Energy Associations request rehearing and state that, while they support the inclusion of the penalty-free withdrawal provisions as a necessary protection for interconnection customers, the thresholds set by the Commission are unjust and unreasonable and will result in significant uncertainty for interconnection customers and inefficient queue processing.[345] Clean Energy Associations first argue that the 100% increase in network upgrade costs threshold for penalty-free withdrawal from the interconnection queue at the facilities study stage (compared to costs identified in a previous cluster study report) requires interconnection customers to withstand an unjust and unreasonable cost increase at such a late stage. Clean Energy Associations state that requiring a 100% increase after the facilities study for a penalty-free withdrawal is arbitrary and capricious, as well as unjust and unreasonable because it would serve to effectively penalize interconnection customers for determinations beyond their control, at a late phase when costs should become more certain—not subject to potential doubling. Clean Energy Associations assert that this is inconsistent with Order No. 2023's goal and justification for subjecting interconnection customers to increasing cost and risk in the form of higher milestone payments and withdrawal penalties as they move through the stages of the interconnection process, which is intended to incentivize interconnection customers to drop out as soon as they learn that their projects are commercially non-viable.[346] Clean Energy Associations submit that the Commission should lower this threshold to a 50% cost increase post-study for a penalty-free withdrawal, consistent with the penalty-free withdrawal provisions approved in SPP, MISO, and PJM.[347]

220. NYISO explains that the Order No. 2023 withdrawal penalty requirements establish certain exceptions to an interconnection customer's responsibility for withdrawal penalties, including in cases in which the transmission provider determines that ''the withdrawal does not have a material impact on the cost or timing of any Interconnection Request with an equal or lower Queue Position.'' [348] NYISO argues that the Commission should eliminate this material impact threshold exception, which it argues is inconsistent with the Commission's rationale for the withdrawal penalties, is not well defined, and will create an additional administrative, time-intensive burden on transmission providers. NYISO states that an interconnection customer's withdrawal at the conclusion of a study phase made use of the transmission provider's limited time and resources to the detriment of other interconnection customers that are ready to proceed and the overall time for completing the study phase, and that this harm occurs regardless of whether or not the actual study results indicate that the withdrawal of its project has a material impact on the cost or timing of other interconnection requests.

221. NYISO further states that the Commission neither defined nor provided guidance concerning what constitutes a material impact, leaving it instead to the transmission provider to determine.[349] NYISO argues that this creates significant inefficiencies and administrative burdens to require transmission providers to assess each withdrawing project—which could potentially be dozens—at each study phase and determine on a case-by-case basis what individual impact that project has on the cost and timing of any interconnection request with an equal or lower queue position. NYISO states that this would require reviewing such impacts for not only all other projects participating in the cluster, but also all other lower queued large and small generating facilities in a transmission provider's interconnection queue. NYISO argues that this time intensive analysis required upon each withdrawal is counter to one of the primary goals of Order No. 2023: to increase efficiencies in the interconnection process.

222. Clean Energy Associations also seek clarification to provide consistency and objectivity regarding what constitutes a material impact resulting from a withdrawal.[350] Clean Energy Associations urge the Commission to clarify that transmission providers must develop criteria to use in assessing materiality and include such criteria in their compliance filings and tariffs, and suggest modifications to *pro forma* LGIP section 3.7.1.[351] Clean Energy Associations assert that such clarification would still allow transmission providers the deference to make materiality determinations, but would also provide interconnection customers with a clear understanding of how materiality will be determined by each provider, while also ensuring consistent treatment of interconnection customers by transmission providers and consistent application of the required withdrawal penalty approach. Clean Energy Associations also ask the Commission to clarify that, when a transmission provider makes a materiality determination after a withdrawal, that such determination or other information associated therewith be made available along with and at the same time as the penalty revenue posting required by revised *pro forma* LGIP section 3.7.1.2. Clean Energy Associations argue that, absent the mechanisms requested in this clarification, the Commission and interconnection customers would have little or no visibility into transmission providers' implementation of the immateriality exemption, the inconsistent application of which could have significant impacts on competition and could result in undue discrimination and preferential treatment amongst similarly situated interconnection customers.

223. WIRES states that Order No. 2023 provides that any withdrawal penalty funds collected by the transmission provider are to be distributed among the remaining interconnection customers in the relevant cluster.[352] Specifically, WIRES explains that Order No. 2023 indicates that such withdrawal penalties are to be used to reduce any net increases to the existing network upgrade cost assignments to remaining customers that saw increased costs as a result of the withdrawing customer. WIRES states that, read together with new section 3.7.1.2.2 of the *pro forma,* the new rule provides that penalty revenues are not directly returned to non-withdrawing customers; rather, the transmission provider is to use those funds to reduce the costs of network upgrades that are ultimately assigned to non-withdrawing interconnection customers. WIRES states that, because penalty revenues do not appear to be directly returned to non-withdrawing customers, it is unclear *how* the rule requires the transmission provider to use those funds to reduce the interconnection customers' network upgrade cost assignment. As a consequence, WIRES asserts that Order No. 2023 could be read to require the

[345] Clean Energy Associations Rehearing Request at 29–30.

[346] *Id.* at 30–31 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 691).

[347] *Id.* at 31 (citations omitted).

[348] NYISO Rehearing Request at 50–51.

[349] *Id.* at 51.

[350] Clean Energy Associations Rehearing Request at 56.

[351] *Id.* at 58–59.

[352] WIRES Rehearing Request at 9–10.

transmission provider to reduce its construction costs included in rates associated with the network upgrade and preclude it from earning a return on the full cost of the network upgrades that transmission owners develop to serve the needs of the cluster. WIRES claims that, in effect, the withdrawal penalty crediting mechanism could infringe upon a transmission provider's right to self-fund network upgrades and earn a return of and on their investment. WIRES argues that the Commission's proposed rule never specified, much less suggested, that withdrawal penalties would be used to offset network upgrade costs, and the Commission should clarify that the Order No. 2023 withdrawal penalty distribution may be used to offset payment amounts by the remaining interconnection customers to the transmission owner but does not affect the overall revenue requirement for the network upgrades.

224. WIRES states that the Commission could also clarify that the withdrawal penalty funds are to be distributed directly to remaining interconnection customers as cash payments, which it claims would achieve the Commission's apparent objectives without impermissibly interfering with a transmission owner's right to fund network upgrades.[353] WIRES states that, absent the Commission granting the above clarification, WIRES seeks rehearing on the basis that the Commission failed to provide adequate notice and opportunity for public comment on the consequences, impacts, and legality of, and possible alternatives to, this new withdrawal penalty distribution scheme prior to issuing Order No. 2023 as required by the Administrative Procedure Act, and failed to consider the effects of its withdrawal distribution penalty.

225. NYISO requests that the Commission confirm or otherwise clarify the timeframes for the specific withdrawal penalty application process steps from the date on which all interconnection customers in the cluster have either withdrawn or been deemed withdrawn, executed an LGIA, or requested the LGIA be filed unexecuted.[354] NYISO states that it understands the transmission provider to have the following responsibilities within either 30 or 60 calendar days of this start date. NYISO understands that the transmission provider must within 30 days: (1) determine the use of the collected withdrawal penalty funds for study costs; (2) refund study costs; (3) determine the use of any remaining collected withdrawal penalty funds for net increases to network upgrade costs; and (4) provide an amended LGIA in the case of any offset of increases to network upgrade costs. NYISO states that it further understands that the transmission provider must return any remaining security to interconnection customer within 60 calendar days. NYISO requests that the Commission confirm these are the intended deadlines or clarify the actual deadlines for these responsibilities.

226. NYISO next states that *pro forma* LGIP section 3.7.1.2.1 indicates that the transmission provider must use the collected withdrawal penalties first ''to fund studies conducted under the cluster study process,'' and that the cluster study process is defined to include all of the interconnection studies and re-studies.[355] However, NYISO states that section 3.7.1.2.1 elsewhere describes distributing withdrawal penalties only in the context of the cluster study. NYISO asks the Commission to clarify whether this tariff language was intended to apply solely to distribution of penalty funds for cluster study costs or for all the interconnection studies—*e.g.,* cluster re-studies and the interconnection facilities study.

227. NYISO also asks the Commission to clarify whether the requirements in *pro forma* LGIP section 3.7.1.2.2 for refunding any penalty amounts not used to offset study costs and net increases in upgrade costs are intended to be the same or different from the requirements for distributing such remaining penalty funds under section 3.7.1.2.5.[356] NYISO requests that the Commission provide an expanded version of the helpful example it provided in Paragraph 808 of Order No. 2023 that walks through the different potential variations of this process.

228. Clean Energy Associations and Shell ask the Commission to clarify the scope of the withdrawal penalty contained in revised *pro forma* LGIP sections 5.1.1.1 and 5.1.1.2.[357] Clean Energy Associations state that the withdrawal penalty definition's reference to revised *pro forma* LGIP section 3.7.1, and its subsection 3.7.1.1, leads to a conclusion that every withdrawal penalty is to be calculated consistent with revised *pro forma* LGIP section 3.7.1.[358] Clean Energy Associations and Shell state that section 5 of the revised *pro forma* LGIP procedures for the transitional cluster study process refers to the withdrawal penalty provisions of section 3.7, but that certain cross references are unclear.[359] Clean Energy Associations argue that the Commission should clarify whether the term ''Withdrawal Penalty'' in revised *pro forma* LGIP sections 5.1.1.1 and 5.1.1.2 either: (1) should not be capitalized so that the revised *pro forma* LGIP section 1 defined term ''Withdrawal Penalty,'' and its corresponding reference to the calculation in *pro forma* LGIP section 3.7.1, do not apply to withdrawals during the transition process; or (2) a new term ''Transitional Withdrawal Penalty'' should be defined as a specific withdrawal penalty that applies only during the transition process and is calculated pursuant to Revised *pro forma* LGIP sections 5.1.1.1 and 5.1.1.2.[360] Clean Energy Associations and Shell further argue that the Commission also should clarify whether the term ''study cost,'' as used in the calculation of the transitional withdrawal penalty, includes the cost of the entire cluster study or the study cost that has been assigned to the withdrawing interconnection customer up to the point of its withdrawal.

229. Clean Energy Associations ask the Commission to clarify that the new penalty-free withdrawal thresholds will apply to transitional projects.[361] Clean Energy Associations argue that this clarification will increase project certainty and fairly allow projects that go through the transition to proceed in good faith without the risk that new results that show substantially higher costs will not allow them to withdraw penalty-free.

iii. Determination

230. We deny NYISO's rehearing request as it pertains to the withdrawal penalty structure. Specifically, we disagree with NYISO's assertion that the withdrawal penalty structure adopted in Order No. 2023 is unnecessarily complicated and burdensome on transmission providers and that it does not reflect reasoned decision-making. While NYISO asserts that the requirement to distribute withdrawal penalties to remaining interconnection customers facing net increases of costs

[353] *Id.* at 11.

[354] NYISO Rehearing Request at 52–53.

[355] *Id.* at 53 (citing revised *pro forma* LGIP section 1).

[356] *Id.*

[357] Clean Energy Associations Rehearing Request at 59–60; Shell Rehearing Request at 10.

[358] Clean Energy Associations Rehearing Request at 60.

[359] *Id.;* Shell Rehearing Request at 10.

[360] Clean Energy Associations Rehearing Request at 60–61; *see also* Shell Rehearing Request at 11.

[361] Clean Energy Associations Rehearing Request at 74–75.

for shared network upgrades will complicate and slow the interconnection study process, we continue to find that the benefits of reducing the harm of such cost shifts outweighs the potential for added complexity. We continue to maintain that incorporating such a mechanism will decrease the risk that very large cost shifts due to withdrawals result in cascading withdrawals,[362] which in turn create substantial uncertainty, cost, and inefficiency for the interconnection study process. Moreover, the tracking of withdrawal penalty funds is necessary to ensure that funds related to individual interconnection customers' withdrawals are appropriately allocated. The concern of ensuring transparency to interconnection customers regarding such funds outweighs the perceived burden to transmission providers, especially because transmission providers are likely to track the impact of an interconnection customer's withdrawal regardless: this is valuable information to the transmission provider because withdrawals could lead to a study delay and accompanying penalty for the transmission provider and such information could be useful to the transmission provider in an appeal.

231. We grant NYISO's request to clarify that withdrawal penalties cannot exceed the dollar amount collected from interconnection customers that have withdrawn from the interconnection study process secured by transmission providers. As stated in section 3.7.1.2.1 of the *pro forma* LGIP, withdrawal penalty funds are collected from the cluster for the purposes of (1) funding studies conducted under the cluster study process for interconnection customers in the same cluster that have executed the LGIA or requested the LGIA to be filed unexecuted, and (2) reducing net increases, for interconnection customers in the same cluster, in interconnection customers' network upgrade cost assignment and associated financial security requirements. The total amount of funds used for (1) and (2) must not exceed the total amount of withdrawal penalty funds collected from the cluster. We accordingly modify the language in *pro forma* LGIP section 3.7.1.2.1 to reflect this clarification. Given this clarification, we need not adopt NYISO's request for additional modifications.

232. We are unpersuaded by Clean Energy Associations' request for rehearing as it pertains to the 100% increase in network upgrade costs requirement after the facilities study phase for penalty-free withdrawal. We disagree that the thresholds for penalty-free withdrawal laid out in Order No. 2023 expose interconnection customers to unjust and unreasonable cost increases. We continue to find that the trigger thresholds are set at an amount providing sufficient room for estimates to change as the cluster evolves while limiting interconnection customer exposure to withdrawal penalties when such estimates change by a significant amount. We acknowledge that the thresholds for penalty-free withdrawal are higher at later stages of the interconnection study process, but continue to find that this structure is reasonable, given the greater harms of late-stage withdrawals and the importance of incentivizing earlier withdrawal of non-viable interconnection requests. An interconnection customer will know to factor in both the cost estimates and the potential withdrawal penalty but also the exemption trigger thresholds as it makes the business decision to proceed in the interconnection queue. Accordingly, we retain the penalty-free withdrawal threshold exemptions set forth in Order No. 2023.

233. We disagree with NYISO's and Clean Energy Associations' requests for the Commission to define materiality in the context of the withdrawal penalty exceptions in *pro forma* LGIP section 3.7.1. Consistent with the Commission's finding in Order No. 2003,[363] we find it unnecessary to revise *pro forma* LGIP section 3.7.1 to specify what constitutes a material impact on the cost or timing of any interconnection request with an equal queue position. We also note a discrepancy between the *pro forma* LGIP language in section 3.7.1 and the withdrawal penalty framework as described in Order No. 2023. Accordingly, we revise section 3.7.1 such that there will be no withdrawal penalty assessed if the withdrawal does not have a material impact on any interconnection request in the same cluster. Withdrawal penalty funds are allocated to those interconnection customers in the same cluster as the withdrawing interconnection customer, so we find it necessary for clarity to remove the reference to lower-queued interconnection customers, as adopted in Order No. 2023. We note that the materiality of the impact caused by a withdrawal could depend on the factors pertaining to the individual project (size, location, type) and other projects in the cluster (proximity to the withdrawing project, size of remaining projects relative to the withdrawing project), as well as the configuration of the transmission provider's transmission system. Therefore, we leave it to the transmission provider to make this determination of materiality. We are also unpersuaded by Clean Energy Associations' request for clarification that, when a transmission provider makes a materiality determination after a withdrawal regarding a delay in timing or increase in cost of network upgrades of other proposed generating facilities in the same cluster, such determination or other information associated therewith be made available along with and at the same time as the penalty revenue posting required by revised *pro forma* LGIP section 3.7.1.2. The benefit to the interconnection customers would not outweigh the substantial burden on transmission providers to detail the materiality determination for each individual withdrawal.

234. In response to WIRES, we clarify that using the Order No. 2023 withdrawal penalties to offset financial security payment amounts provided to the transmission provider by the remaining interconnection customers would not reduce the total network upgrade cost that a transmission provider places in rate base. When the Order No. 2023 withdrawal penalties are used to offset financial security payment amounts, some network upgrade payments will come from the withdrawal penalties and some will come from the remaining interconnection customer, but the fact that a portion of the network upgrade payment comes from withdrawal penalties does not reduce the total network upgrade cost that a transmission provider places in rate base. Order No. 2023 provides that an interconnection customer's reduced network upgrade cost obligation will be effectuated by the transmission provider amending the interconnection customer's LGIA or reducing the network upgrade cost estimate provided to the interconnection customer if there is not yet an LGIA to provide a reduction in network upgrade cost assignment and an associated reduction in the interconnection customer's financial security requirement.[364] Given this clarification, we believe it unnecessary to address WIRES' alternative request for clarification that these withdrawal penalty disbursements must be distributed as cash payments. For the same reasons, we believe it unnecessary to address WIRES' alternative request for rehearing

[362] Order No. 2023, 184 FERC ¶ 61,054 at P 799.

[363] Order No. 2003, 106 FERC ¶ 61,220 at P 168.

[364] Order No. 2023, 184 FERC ¶ 61,054 at P 806.

regarding notice of the new withdrawal penalty regime.

235. We are persuaded by NYISO's request to clarify the timeframes for the specific withdrawal penalty application process steps. The transmission provider is required to complete the following steps within 30 calendar days of all interconnection customers in the cluster having either withdrawn or been deemed withdrawn, executed an LGIA, or requested the LGIA be filed unexecuted: (1) apply a refund to invoiced study costs for interconnection customers that remain in the cluster (per *pro forma* LGIP section 3.7.1.2.1); (2) determine whether withdrawn interconnection customers, at any point in the cluster study process, shared cost assignment for one or more network upgrades with any remaining interconnection customers in the same cluster (per *pro forma* LGIP section 3.7.1.2.2); (3) where the withdrawn interconnection customers have shared a cost assignment for one or more network upgrades with any remaining interconnection customers in the same cluster, transmission provider is to perform the calculations described in *pro forma* LGIP subsection 3.7.1.2.3(a) to determine the reduction in the remaining interconnection customers' net increase in network upgrade costs and associated financial security requirements (per *pro forma* LGIP section 3.7.1.2.4); and (4) where applicable, provide interconnection customers with an amended LGIA that provides the reduction in network upgrade cost assignment and associated reduction to the interconnection customer's financial security requirements (per *pro forma* LGIP section 3.7.1.2.4).

236. Where the transmission provider conducts step (2) above and determines that a withdrawn interconnection customer did not share cost assignments with remaining interconnection customers or cause a net increase in the cost assignment for any remaining interconnection customers in the same cluster, the transmission provider must return any remaining withdrawal penalty funds to the withdrawn interconnection customer(s) within 60 calendar days of all interconnection customers in the cluster having either withdrawn or been deemed withdrawn, executed an LGIA, or requested the LGIA be filed unexecuted (per *pro forma* LGIP section 3.7.1.2.2). The 60-day period here allows the transmission provider time to focus on steps 1–4 in the previous paragraph before it must disburse funds to withdrawn interconnection customers.

237. We grant NYISO's request to clarify that *pro forma* LGIP section 3.7.1.2.1 requires the transmission provider to use the collected withdrawal penalties first to fund all the interconnection studies conducted for interconnection customers in the cluster—including cluster restudies and the interconnection facilities study. We accordingly modify the language in section 3.7.1.2.1 of the *pro forma* LGIP to be inclusive of these studies.

238. We grant NYISO's request to clarify the difference between the requirements to return withdrawal penalty funds to withdrawn interconnection customers in *pro forma* LGIP sections 3.7.1.2.2 and 3.7.1.2.5. *Pro forma* LGIP section 3.7.1.2.2 establishes that, where the interconnection customer's withdrawal *does not cause* a net increase in the shared cost assignment for any remaining interconnection customers' network upgrades in the same cluster, the withdrawal penalty funds returned to the withdrawn interconnection customers will be net of the amount used to pay the study costs for interconnection customers in the same cluster that did not withdraw. *Pro forma* LGIP section 3.7.1.2.5 addresses the case where any interconnection customer's withdrawal *does cause* a net increase in the shared cost assignment for any remaining interconnection customers' network upgrades. In this case, the withdrawal penalty funds returned to the withdrawn interconnection customers will be net of both the study costs and the amount paid to offset net increases in shared cost assignments for network upgrades.

239. We are not persuaded by NYISO's request for an expanded version of the withdrawal penalty example included in Order No. 2023 because another purely illustrative example is unnecessary.

240. We agree with Clean Energy Associations and Shell regarding the withdrawal penalty contained in *pro forma* LGIP sections 5.1.1.1 and 5.1.1.2. We agree that it is necessary to distinguish the transition process withdrawal penalty of nine times study costs from the withdrawal penalty assessed under the normal cluster study process which is calculated based on *pro forma* LGIP section 3.7.1. Accordingly, we modify section 1 to define ''transitional withdrawal penalty,'' [365] and modify *pro forma* LGIP sections 5.1.1, 5.1.1.1, and 5.1.1.2 to reference the transitional withdrawal penalty.

241. We grant Clean Energy Associations' and Shell's requests for clarification of whether the term ''study cost,'' as used in the calculation of the transitional withdrawal penalty, includes the cost of the entire cluster study or the study cost that has been assigned to the withdrawing interconnection customer up to the point of withdrawal, inclusive of any costs incurred in the transition process under the transitional serial facilities study or transitional cluster study. We clarify that study costs include all costs incurred by the interconnection customer in the transmission provider's existing interconnection study process prior to the Commission-approved effective date of the transmission provider's Order No. 2023 compliance filing. For example, where a transmission provider was operating under the previous *pro forma* LGIP, the study costs would include the amount incurred by the interconnection customer for the completion of its interconnection feasibility study, interconnection system impact study, and the interconnection facilities study. As explained in Order No. 2023 and *pro forma* LGIP sections 5.1.1.1 and 5.1.1.2, study costs for purposes of calculating this withdrawal penalty will also include any costs incurred in the transition process under the transitional serial facilities study or transitional cluster study.

242. In response to Clean Energy Associations, we decline to clarify that the penalty-free withdrawal thresholds will apply to transitional projects. We find it important to the goal of reducing speculative behavior that any interconnection customer that enters the transition process is required to pay a penalty if it does not reach commercial operation. We note that interconnection customers can elect not to enter the transition process and instead enter the transmission provider's first annual cluster study where the withdrawal penalty exemptions will be applied. We also note that the penalty-free exemption provisions are more appropriate for the normal cluster study process where the withdrawal penalty could be much higher than the nine times study costs amount assessed as the transitional withdrawal penalty.

243. We also add minor, clarifying edits to *pro forma* LGIP section 3.7.1

[365] Transitional Withdrawal Penalty shall mean the penalty assessed by Transmission Provider to an Interconnection Customer that has entered the Transitional Cluster Study or Transitional Serial Interconnection Facilities Study and chooses to withdraw or is deemed withdrawn from Transmission Provider's interconnection queue or whose Generating Facility does not otherwise reach Commercial Operation. The calculation of the Transitional Withdrawal Penalty is set forth in sections 5.1.1.1 and 5.1.1.2 of this LGIP.

and 3.7.1.1(a) to reference cluster restudies, where appropriate.

6. Transition Process

a. Order No. 2023 Requirements

244. In Order No. 2023, the Commission established a transition process for moving to the first-ready, first-served cluster study process.[366] The Commission required transmission providers to offer existing interconnection customers up to three transition options, depending on which phase of the serial study process their interconnection requests are in: (1) a transitional serial study, (2) a transitional cluster study, and (3) withdrawal from the interconnection queue without penalty.

245. The Commission agreed with commenters that, given current interconnection queue backlogs in multiple regions, it is essential that the Commission craft a transition process to give interconnection customers, along with other market participants time to adjust to new processes and requirements.[367] The Commission explained that the transition process will create an efficient way to prioritize and process interconnection requests based on how far they have advanced through the interconnection process and their level of commercial readiness.

246. The Commission required transmission providers to offer the transitional serial study option to interconnection customers that have been tendered a facilities study agreement, even if they have not yet executed the agreement, as of 30 calendar days after the filing date of the transmission provider's initial filing to comply with Order No. 2023.[368] Similarly, the Commission required transmission providers to offer the transitional cluster study option to interconnection customers with an assigned queue position as of 30 calendar days after the filing date of the transmission provider's initial filing to comply with Order No. 2023. The Commission found that the adopted transition process appropriately balances the need to move expeditiously to the new cluster study process with the need to respect the investments and expectations of interconnection customers at an advanced stage in the existing interconnection process.[369]

247. The Commission stated that interconnection customers will have 120 calendar days after the publication of Order No. 2023 to achieve eligibility for the transition process (90 calendar days for transmission providers to submit compliance filings, plus the 30-calendar day eligibility cut-off).[370] The Commission also required the transmission provider to tender the appropriate transitional study agreements to eligible interconnection customers no later than the Commission-approved effective date of the transmission provider's compliance filing with Order No. 2023.[371] The Commission stated that this will help ensure that interconnection customers are informed about their eligibility for the transitional studies (including the associated requirements and deadlines) in a timely manner.

248. The Commission also adopted transition process deposits, withdrawal penalties, and deadlines.[372] The Commission required that: (1) interconnection customers electing the transitional serial study must provide a deposit equal to 100% of the interconnection facility and network upgrade costs allocated to the interconnection customer in the system impact study; and (2) interconnection customers electing the transitional cluster study must provide a deposit equal to $5 million.[373] The Commission explained that the transition process is anticipated to involve more interconnection customers than standard annual clusters (due to existing interconnection queue backlogs), which greatly increases the risk of late-stage withdrawals. The Commission found that adopting deposit requirements for the transitional studies higher than those adopted for the cluster study process will help to ensure that the transitional process is used by interconnection customers that intend to proceed with their proposed generating facilities. In response to arguments that the proposed deposit amounts are arbitrary and/or excessive, the Commission explained that the deposit amounts are ''based on expected costs to the extent practicable and that only a portion of these deposits are ultimately at-risk.'' [374] The Commission noted that the withdrawal penalty is set at nine times the study cost with the remainder of deposits to be refunded. The Commission also noted that existing interconnection customers that are currently in an interconnection queue can opt to withdraw their interconnection requests without penalty and wait for the first standard cluster study with associated lower deposit requirements.

249. In response to EDF Renewable's claim that the transitional serial study deposit conflicts with the Commission's intentions in Order No. 2003,[375] the Commission found that the heightened need to avoid late-stage withdrawals during the transition process—a need that the Commission could not have anticipated in Order No. 2003—warrants the use of this requirement for the transitional serial study.[376]

250. As noted earlier, the Commission established a transitional study withdrawal penalty equaling nine times the study cost.[377] The Commission explained that the withdrawal penalty plays an important role in deterring speculative interconnection requests in both the standard cluster study and the transition process. The Commission disagreed with commenters that call for a lower penalty to apply during the transition process, given that the risk of withdrawals is heightened during the transition process. The Commission noted that, regardless of the cause, a withdrawal may cause harm to other interconnection customers in the transition process and therefore found it appropriate to impose penalties on those that choose to withdraw, notwithstanding that withdrawal may at times be due to circumstances beyond the interconnection customer's control. The Commission explained that interconnection customers will bear the risk of withdrawal penalties and should consider that risk in deciding whether to elect to join a transition process.

b. Requests for Rehearing and Clarification

251. Clean Energy Associations ask that the Commission grant rehearing to revise the deposit amounts required for customers entering the transitional serial or transitional cluster process, and revise the withdrawal penalty amounts for customers that proceed through the transitional process.[378] Clean Energy

[366] Order No. 2023, 184 FERC ¶ 61,054 at P 855.

[367] *Id.* P 856.

[368] *Id.* P 855.

[369] *Id.* P 856.

[370] *Id.* P 866. On rehearing, the Commission extended the compliance date to 150 calendar days of the effective date of the final rule but did not adjust the transition date. *Improvements to Generator Interconnection Procs. & Agreements,* 185 FERC ¶ 61,063 (2023).

[371] Order No. 2023, 184 FERC ¶ 61,054 at P 867.

[372] *Id.* P 855.

[373] *Id.* P 859.

[374] *Id.*

[375] EDF Renewables Initial Comments at 9 (stating that Order No. 2003 specifically rejected requiring interconnection customers, at the time of execution of the transitional serial study agreement, to provide a deposit equal to 100% of the interconnection facility and network upgrade costs allocated to them in the system impact study report in favor of requiring security for discrete portions of these costs).

[376] Order No. 2023, 184 FERC ¶ 61,054 at P 859.

[377] *Id.* P 860.

[378] Clean Energy Associations Rehearing Request at 36–39.

Associations argue that the Commission acted arbitrarily and capriciously by imposing excessive and arbitrary deposit requirements and withdrawal penalties on interconnection customers electing to proceed through transitional studies. Clean Energy Associations assert that the Commission ignored substantial record evidence, failed to ''articulate a rational connection between the facts found and the choice made,'' and failed to respond meaningfully to the arguments of commenters.[379]

252. Clean Energy Associations argue that the Commission failed to provide any record evidence to support the $5 million deposit amount required for an interconnection customer to proceed to a transitional cluster study, nor did it meaningfully respond to contrary evidence that the transitional serial study deposit would be unduly burdensome or have unintended consequences that frustrate the purpose of Order No. 2023.[380] Clean Energy Associations argue that there is no discussion in the record of how Order No. 2023's calculus relates to expected costs, nor practical limitations to more accurately estimating those costs.[381] Clean Energy Associations assert that the $5 million amount originates from a single utility's claim that $5 million is consistent with interconnection costs on its system, and not from Commission reasoning or evidence that this figure is appropriate on a *pro forma* basis. Clean Energy Associations argue that establishment of a flat deposit amount is inconsistent with the Commission's own determination elsewhere in Order No. 2023, where the Commission found that study deposits under the new cluster study process should differ based on project size and estimated network upgrade costs, depending on the stage of the process.[382] Clean Energy Associations also contend that this deposit requirement could become a barrier to entry for smaller projects that do not have the ability to put up a $5 million deposit, and for which a $5 million deposit would have little linkage to actual upgrade costs or project economics, which the Commission acknowledged was the appropriate driver for deposit amounts.

253. Clean Energy Associations also argue that the Commission inappropriately disregarded EDF Renewable's concern that Order No. 2023 conflicts with Order No. 2003, which specifically rejected a proposal to require customers to post security up front for the total cost of such facilities.[383] Clean Energy Associations note that the Commission justifies its alternative approach due to the heightened need to avoid late-stage withdrawals during the transition process, but argues that the Commission failed to provide substantial evidence to further explain or support this heightened need.

254. Clean Energy Associations request rehearing of the transition process set forth in revised *pro forma* LGIP section 5.1.1.2 because they argue that the scope of the transition cluster group established by the Commission is too broad.[384] Clean Energy Associations assert that the Commission unjustly and unreasonably groups customers that submitted interconnection requests on the eve of the transmission providers' Order No. 2023 compliance filing with customers that have been pending in the queue for substantially longer periods of time.[385] Clean Energy Associations state that recently-accepted queue reform transmission procedures have commonly implemented a ''cut-off'' date for transitional study entry that coincides with notice of the relevant reforms.[386] Clean Energy Associations argue that this prevents ''mixing'' future interconnection customers' applications with existing interconnection customers relative to transitional studies. Clean Energy Associations argue that treating new and future interconnection customers the same as customers that have been waiting for an extended period of time to begin their studies is unjust and unreasonable.

255. Clean Energy Associations and Shell request that the Commission revise the transitional cluster study process and sections 5.1.1.2 to set the July 28, 2023 issuance date of Order No. 2023 as the date of eligibility for transitional cluster study participation.[387] Shell asserts that *pro forma* LGIP section 5.1.1.2 is too broad because it treats new and future generator interconnection customers the same as interconnection customers that may have been waiting in the queue for years.[388] Shell contends that the regulatory expectations of existing and new customers subject to queue reform are fundamentally different because existing customers submitted their requests under one queue structure and new customers will submit their requests with reasonable notice of the new structure. Shell argues that allowing the transitional cluster study to remain open for several months beyond the Order No. 2023 issuance date may provide an opportunity for interconnection customers to develop strategies that will overwhelm specific transitional cluster studies with unnecessarily high volumes of new interconnection requests, which may enable them to alter the progress of the transitional cluster study by strategically withdrawing a specific subset of these generator interconnection requests at each decision point.[389] Shell asserts that this is akin to the queue speculation the Commission is trying to discourage pursuant to Order No. 2023. Shell states that this may allow new interconnection requests to manipulate the transitional cluster study process, thereby triggering multiple restudies until they achieve a result that favors their projects.

256. Clean Energy Associations also ask the Commission to clarify that any interconnection requests submitted after the Order No. 2023 issuance date will be placed in the first cluster study that follows the transitional cluster study.[390] Shell states that compliance filings that include interconnection requests in a transitional cluster study queued after

[379] *Id.* at 36 (citing *Motor Vehicle Manufacturers,* 463 U.S. at 43 (action arbitrary and capricious if agency ''failed to consider an important aspect of the problem'' or ''offered an explanation for its decision that runs counter to the evidence before the agency''); *Allentown Mack Sales & Serv., Inc.* v. *Nat'l Labor Relations Bd.,* 522 U.S. 359 (1998); *Del. Div. of Pub. Advoc.* v. *FERC,* 3 F.4th 461, at 469 (D.C. Cir. 2021) (*Delaware Public Advocate*); *Pub. Utils. Comm'n of Cal.* v. *FERC,* 462 F.3d 1027, 1051 (9th Cir. 2006); *PPL Wallingford Energy* v. *FERC,* 419 F.3d 1134, 1198 (D.C. Cir. 2005); *N. States Power Co.* v. *FERC,* 30 F.3d 177, 180 (D.C. Cir. 1994)).

[380] *Id.* at 37 (citing Advanced Energy Economy Initial Comments at 19–20; Clean Energy Associations Initial Comments at 43; CREA and NewSun Energy Initial Comments at 81; EDF Renewables Initial Comments at 9; Pine Gate Initial Comments at 36).

[381] *Id.* at 38–39 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 859; *Del. Div. of Pub. Advoc.,* 3 F.4th at 469).

[382] *Id.* (citing Order No. 2023, 184 FERC ¶ 61,054 at PP 502, 690).

[383] *Id.* at 39 (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 1, 171, 596).

[384] *Id.* at 44 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1583).

[385] *Id.* at 44–45 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 6 (Comm'r Christie, Concurring)).

[386] *Id.* at 45 (noting PJM's recently implemented generator interconnection process tariff reforms, with a transition process that made projects assigned queue positions in the existing interconnection queue between April 1, 2018 through September 30, 2021, subject to ''Transition Period Rules,'' requiring a ''retool'' study and commercial readiness deposits and site control evidence) (citing *PJM Interconnection, L.L.C.,* 181 FERC ¶ 61,162 at PP 1, 8, 31, *reh'g denied by operation of law,* 182 FERC ¶ 62,055, *order addressing arguments raised on reh'g,* 184 FERC ¶ 61,006 (2023)).

[387] *Id.* at 46; Shell Rehearing Request at 6.

[388] Shell Rehearing Request at 4–5.

[389] *Id.* at 6–7.

[390] Clean Energy Associations Rehearing Request at 46.

the deadline should explain why their proposed cut-off date for the transitional cluster study will advance the goals of facilitating the reduction of queue backlogs in a more efficient and cost-effective manner.[391]

c. Determination

257. We are unpersuaded by Clean Energy Associations' request to revise the deposit amounts required for customers entering the transitional serial or transitional cluster process, and to revise the withdrawal penalty amounts for customers that proceed through the transitional process. As the Commission explained in Order No. 2023, the transition process is anticipated to involve more interconnection customers than standard annual clusters due to existing interconnection queue backlogs.[392] With more interconnection customers than normal, there is an increased risk of late-stage withdrawals leading to restudies and delays that would further frustrate the goals of Order No. 2023. We continue to find that adopting deposit requirements for the transition studies that are higher than those adopted for the cluster study process will help to lower the risk of restudies and delays resulting from late-stage withdrawals from the transition studies. This requirement is necessary to ensure that the transition process is used by interconnection customers that accept the heightened financial risks and nevertheless remain confident in the commercial viability of their proposed generating facilities.

258. We further note that the Commission explained in Order No. 2023 that the transitional deposit amounts are based on expected costs ''to the extent practicable.'' [393] In the case of the transitional cluster study, it is not practical to create deposits based on individualized estimates of network upgrade costs because, unlike the transitional serial study, projects entering the transitional cluster study are not required to have any previous study results on which such estimates could be based. Therefore, the Commission reasonably relied upon available evidence as to general network upgrade cost estimates.[394] We further note that no comments in the record provided a more persuasive estimate.

259. Additionally, we disagree with Clean Energy Associations' argument that a flat deposit is inconsistent with other Order No. 2023 requirements because we find that the need for strict transition requirements warrants the use of a flat deposit. Furthermore, as the Commission explained, only a portion of these deposits are ultimately at risk, and there is no withdrawal penalty if existing interconnection customers currently in the queue opt to withdraw and wait for the first standard cluster study with associated lower deposit requirements rather than proceed in the transitional cluster.[395] For similar reasons, we also decline to modify the withdrawal penalty amount. In light of the heightened risk of withdrawals leading to restudies and delays during the transition process, we disagree with Clean Energy Associations' argument that the withdrawal penalty is excessive and arbitrary.

260. We are not persuaded by Clean Energy Associations' and Shell's calls to set an earlier cut-off date, the issuance date of Order No. 2023, as the date for eligibility for transitional cluster study participation. Clean Energy Associations and Shell argue that an earlier cut-off date would be fair to those generators who have been waiting in interconnection queues for years and submitted their interconnection request under a different queue structure. However, the fact that more recent interconnection requests may be included in the transitional cluster does not in and of itself render the eligibility cut-off date unjust and unreasonable. As the Commission has stated in multiple queue reform proceedings, ''any cut-off date inevitably will [exclude certain interconnection customers].'' [396] Likewise, the inverse of this statement holds true: any cut-off date inevitably will include certain interconnection customers. The Commission's decision to set the eligibility cut-off date as 30 calendar days after the filing date of the transmission provider's initial compliance filing was reasonable.

261. Additionally, Commission precedent does not require a certain cluster size, nor do Clean Energy Associations and Shell provide evidence to suggest that the size of the transitional cluster would be unworkable. Rather, because there are stricter requirements to join the transitional cluster than those adopted for the cluster study process,[397] it is unlikely that non-ready projects would be able to join the transitional cluster. Furthermore, due to existing interconnection queue backlogs, the Commission anticipated that the transition process will involve more interconnection customers than standard annual clusters and established the transition date along with the accompanying requirements to enter the transition with this knowledge in mind. The alternative, moving the eligibility date earlier, would simply shift interconnection customers into the first cluster following the transitional cluster. We lack a basis in the record to conclude, as Clean Energy Associations and Shell appear to argue, that a somewhat larger transitional cluster is not just and reasonable, but a somewhat larger post-transition cluster would be just and reasonable.

262. We are also unpersuaded by Shell's assertion that the current eligibility cut-off date could lead to a queue rush. Such a concern is speculative. We reiterate that the higher deposit requirements for the transitional cluster study process than those adopted for the non-transitional cluster study process helps ensure that the transitional process is used by interconnection customers that intend to proceed with their proposed generating facilities.

263. Lastly, we add definitions to the *pro forma* LGIP for the terms ''Transitional Cluster Study Agreement'' and ''Transitional Serial Interconnection Facilities Study Agreement.''

D. Reforms To Increase the Speed of Interconnection Queue Processing

1. Elimination of Reasonable Efforts Standard and Implementation of a Replacement Rate

a. Order No. 2023 Requirements

264. In Order No. 2023, the Commission revised sections 2.2, 3.5.4(i), 7.4, 8.3, and Attachment A to Appendix 3 (formerly Appendix 4) of the *pro forma* LGIP to eliminate the reasonable efforts standard for conducting cluster studies, cluster restudies, facilities studies, and affected system studies by the tariff-specified deadlines.[398] The Commission added new section 3.9 to the *pro forma* LGIP

[391] Shell Rehearing Request at 7.

[392] Order No. 2023, 184 FERC ¶ 61,054 at P 859.

[393] *Id.* P 860.

[394] *See* Pub. Serv. Co. of Colo., Transmittal Letter, Docket No. ER19–2774–000, at 86–87 (filed Sept. 9, 2019) (explaining that $5 million is ''likely on the low end'' of estimated network upgrade costs that may be allocated to any individual interconnection customer); *Pub. Serv. Co. of Colo.,* 169 FERC ¶ 61,182, at P 65 n.83 (2019) (approving transitional cluster study deposit at $5 million); *Tri-State Generation & Transmission Ass'n, Inc.,* 173 FERC ¶ 61,015, at PP 19, 56 (2020) (same); *Tri-State Generation & Transmission Ass'n, Inc.,* 174 FERC ¶ 61,021, at P 19 (2021) (same).

[395] Order No. 2023, 184 FERC ¶ 61,054 at P 859.

[396] *PJM Interconnection, L.L.C.,* 181 FERC ¶ 61,162 at P 60; *Tri-State Generation & Transmission Ass'n, Inc,* 175 FERC ¶ 61,128, at P 14 (2021); *PacifiCorp,* 173 FERC ¶ 61,016, at P 25 (2020).

[397] *Compare pro forma* LGIP section 5.1.1.2 (Transitional Cluster Study) *and* section 3.4.2 (Initiating an Interconnection Request).

[398] Order No. 2023, 184 FERC ¶ 61,054 at P 962.

to implement a study delay penalty structure. Specifically, delays of cluster studies beyond the tariff-specified deadline will incur a penalty of $1,000 per business day; delays of cluster restudies beyond the tariff-specified deadline will incur a penalty of $2,000 per business day; delays of affected system studies beyond the tariff-specified deadline will incur a penalty of $2,000 per business day; and delays of facilities studies beyond the tariff-specified deadline will incur a penalty of $2,500 per business day. The Commission explained that, among other things, these penalty amounts are intended to incentivize transmission providers to meet study deadlines and that the structure of increasing penalties reflects the progressively greater harm caused by delayed studies at later interconnection stages.[399]

265. The Commission also specified that the study delay penalty regime contains the following safeguards for transmission providers: (1) no study delay penalties will be assessed until the third cluster study cycle (including any transitional cluster study cycle, but not transitional serial studies) after the Commission-approved effective date of the transmission provider's filing in compliance with Order No. 2023; (2) there will be a 10-business day grace period, such that no study delay penalties will be assessed for a study that is delayed by 10 business days or fewer; (3) deadlines may be extended for a particular study by 30 business days by mutual agreement of the transmission provider and all interconnection customers with interconnection requests in the relevant study; (4) study delay penalties will be capped at 100% of the initial study deposits received for all of the interconnection requests in the relevant study; and (5) transmission providers will have the ability to appeal any study delay penalties to the Commission, with the Commission determining whether good cause exists to grant the relief requested on appeal.[400]

266. The Commission further included the following features in the study delay penalty structure: (1) transmission providers must distribute study delay penalties to interconnection customers in the relevant study that did not withdraw, or were not deemed withdrawn, from the interconnection queue before the missed study deadline on a pro rata per interconnection request basis to offset their study costs; (2) non-RTO/ISO transmission providers and transmission-owning members of RTOs/ISOs may not recover study delay penalties through transmission rates; (3) RTOs/ISOs may submit an FPA section 205 filing to propose a default structure for recovering study delay penalties and/or to recover the costs of any specific study delay penalties;[401] and (4) transmission providers must post quarterly on their OASIS or other publicly accessible website (a) the total amount of study delay penalties from the previous reporting quarter and (b) the highest study delay penalty paid to a single interconnection customer in the previous reporting quarter.[402] The Commission also added new section (f)(1)(ii) to 18 CFR 35.28(f)(1) to specify that any public utility that conducts interconnection studies shall be subject to and eligible to appeal penalties following that public utility's failure to complete an interconnection study by the appropriate deadline.[403]

267. The Commission explained that the lengthy interconnection study delays and interconnection queue backlogs throughout the country support a conclusion that the reasonable efforts standard does not provide an adequate incentive for transmission providers to complete interconnection studies on time.[404] The Commission stated that there is every reason to believe that many of the factors contributing to significant interconnection queue backlogs and delay—including the rapidly changing resource mix, market forces, and emerging technologies—will persist. The Commission explained that the reasonable efforts standard worsens current-day challenges, as it fails to ensure that transmission providers are keeping pace with the changing and complex dynamics of today's interconnection queues.[405] Therefore, in response to those ongoing challenges and based on the record, the Commission found that the elimination of the reasonable efforts standard and its replacement with firm deadlines and penalties are needed to remedy unjust and unreasonable rates and ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner.[406]

268. The Commission noted that its conclusions were not based on a finding that transmission providers have necessarily acted in bad faith or that their actions are the sole reason for the queue delays.[407] The Commission explained that it adopted numerous other reforms to appropriately incentivize interconnection customers to help reduce interconnection delays that may result from their conduct. However, the Commission found that the elimination of the reasonable efforts standard and the adoption of firm deadlines and penalties for late studies are needed to create an incentive for transmission providers, which will help reduce interconnection delays and ensure that Commission-jurisdictional rates are just, reasonable, and not unduly discriminatory or preferential. The Commission further found that distribution of these penalties to interconnection customers in the relevant studies was appropriate as a means of offsetting these customers' study costs. The Commission further explained that the study delay penalty regime balances the harm to interconnection customers of interconnection study delays and the associated need to incentivize transmission providers to timely complete interconnection studies with the burdens on transmission providers of conducting interconnection studies and potentially facing penalties for delays, including those that may be caused or exacerbated by factors beyond their control.[408]

269. As noted above, the Commission adopted a process for transmission providers to appeal any study delay penalties they incur.[409] The Commission explained that any such appeal must be filed no later than 45 calendar days after the late study has been completed. The Commission stated that it will evaluate whether good cause exists to grant relief from the study delay penalty and will issue an order granting or denying relief. The Commission noted that in evaluating whether there is good cause to grant such relief, the Commission may consider, among other factors: (1) extenuating circumstances outside the transmission provider's control, such as delays in affected system study results; (2) efforts of the transmission provider to mitigate delays; and (3) the extent to which the transmission provider has proposed process enhancements either in the stakeholder process or at the Commission to prevent future delays. The Commission further provided that the filing of an appeal will stay the

[399] *Id.* PP 974–978.

[400] *Id.* P 972.

[401] The typical standard of review under FPA section 205 would apply to these filings: *i.e.,* the filer must show that any proposal to recover study delay penalties is just, reasonable, and not unduly discriminatory or preferential. *See* 16 U.S.C. 824d.

[402] Order No. 2023, 184 FERC ¶ 61,054 at P 963.

[403] *Id.* P 995.

[404] *Id.* P 966.

[405] *Id.* P 967.

[406] *Id.* P 968.

[407] *Id.* P 966.

[408] *Id.* P 972.

[409] *Id.* P 987.

transmission providers' obligation to distribute the study delay penalty funds to interconnection customers until 45 calendar days after (1) the deadline for filing a rehearing request has ended, if no requests for rehearing of the Commission's decision on the appeal have been filed, or (2) the date that any requests for rehearing of the Commission's decision on the appeal are no longer pending before the Commission. The Commission explained that the appeals process balances the need to ensure that transmission providers have an incentive to meet interconnection study deadlines with protections to ensure that any such penalties are fair and not triggered if good cause justifies the delay.[410] The Commission further explained that the protections embedded in this appeal process address commenters' concerns that there should be adequate process and/or fact-finding before imposing a study delay penalty on transmission providers.

270. Additionally, the Commission specified that transmission providers must distribute study delay penalties to the interconnection customers and affected system interconnection customers included in the relevant study that did not withdraw, or were not deemed withdrawn, from the interconnection queue before the missed study deadline.[411] The Commission explained that, unless the transmission provider files an appeal to the study penalty, the study delay penalty must be distributed no later than 45 calendar days after the late study has been completed. The Commission further specified that a study delay penalty for a delayed cluster study or cluster restudy must be distributed on a pro rata basis per interconnection request to all interconnection customers in the cluster, while a study delay penalty for a delayed facilities study must be distributed to the interconnection customer whose facilities were being studied, and a study delay penalty for a delayed affected system study must be distributed to the affected system interconnection customer(s) whose generating facility was being studied by an affected system transmission provider. The Commission provided that the study delay penalties are on a per business day basis and will be distributed equally to each delayed interconnection customer per the requirements above. The Commission explained that this distribution defrays the study costs of the interconnection customers affected by that delay.[412]

271. The Commission also declined to adopt the NOPR's proposed *force majeure* penalty exception.[413] The Commission explained that this exemption is unwarranted given the adoption of an appeal mechanism, which provides transmission providers the opportunity to explain to the Commission any circumstances that caused the delay, including any events that qualify as *force majeure.*[414]

b. Elimination of the Reasonable Efforts Standard

i. Requests for Rehearing

272. Many rehearing requests argue that the decision to eliminate the reasonable efforts standard is not supported by substantial record evidence.[415] They argue that the Commission failed to meet its FPA section 206 burden because the Commission failed to show that (1) this standard is causing or materially contributing to delays or (2) the elimination of this standard will increase the timely provision of interconnection service, especially given the other factors that may cause study delays.[416] NYTOs argue that Order No. 2023's observation that, under the reasonable efforts standard, interconnection studies have been delayed ''conflates correlation with causation.'' [417] Others argue that the Commission failed to address the root cause of study delays—namely, the volume of interconnection requests, which they claim Order No. 2023 will increase.[418] Avangrid disputes Order No. 2023's conclusion that the other reforms adopted therein are expected to ease the burdens on transmission providers by streamlining and reducing the number of interconnection studies.[419]

273. Several of the rehearing requests assert that the Commission has not demonstrated that interconnection study delays and backlogs are connected to transmission provider actions, such as wrongdoing, incompetence, lack of appropriate incentives, bad faith, or failure to exercise due diligence.[420] SPP and ITC claim that there are already many strong incentives to timely perform interconnection studies and the record does not contain the necessary support to conclude that a lack of incentives, as opposed to various other factors outside of transmission providers' control, are the cause for interconnection queue backlogs or study delays.[421] Many rehearing requests detail numerous factors contributing to delays and backlogs that they assert are outside of the transmission provider's control (*e.g.,* the volume of interconnection requests, complexity of studies, staffing shortages, the shortage of qualified engineers, withdrawals triggering the need for restudies, delayed data from interconnection customers, affected system coordination, a rapidly changing resource mix, market forces, and emerging technologies) and argue that these conditions will persist, such that study delay penalties on transmission providers cannot be effective and are unsupported.[422]

[410] *Id.* P 988.

[411] *Id.* P 990.

[412] *Id.* P 991.

[413] *Id.* PP 963, 1003.

[414] *Id.* P 1003.

[415] AEP Rehearing Request at 10; Avangrid Rehearing Request at 8–9; MISO TOs Rehearing Request at 11–13; NYISO Rehearing Request at 39–40; NYTOs Rehearing Request at 15–19; PJM Rehearing Request at 30; WIRES Rehearing Request at 4–6.

[416] AEP Rehearing Request at 11–13; Avangrid Rehearing Request at 8–9, 13–14; MISO TOs Rehearing Request at 11–13; NYTOs Rehearing Request at 15–17; WIRES Rehearing Request at 4–6.

[417] NYTOs Rehearing Request at 15–17 (asserting that the Commission has not undertaken a ''root cause assessment'' to determine the extent to which the reasonable efforts standard causes or contributes to study delays or shown that this standard is a ''material contributing cause of study delays''); *see id.* at 18–19 (noting the Commission's recognition that there are factors outside of the transmission providers' control that may contribute to delays, that timeframes for such studies have historically been treated by transmission providers as estimates, and that transmission customers may cause delays); *see also* Avangrid Rehearing Request at 8–9; Dominion Rehearing Request at 19; NYISO Rehearing Request at 40; WIRES Rehearing Request at 4–6.

[418] Avangrid Rehearing Request at 9–11; NYTOs Rehearing Request at 14; PJM Rehearing Request at 30.

[419] Avangrid Rehearing Request at 11–13 (''[T]here is scant evidence in the record that the easing of burdens will be sufficient to justify the broad imposition of arbitrary, strict, one-size-fits-all deadlines and penalties for non-attainment.'').

[420] AEP Rehearing Request at 12–13; Dominion Rehearing Request at 18; EEI Rehearing Request at 4–7 (noting that the Commission identifies other factors as contributing to such delays and backlogs and has never found a transmission provider at fault for delays in the interconnection process); ITC Rehearing Request at 5; PacifiCorp Rehearing Request at 4–7 (noting that the Commission confirmed that it was not finding that transmission providers necessarily acted in bad faith or were the sole reason for queue delays); SPP Rehearing Request at 5–6 (noting that the Commission has never found a transmission provider to have violated the reasonable efforts standard, and commenters did not provide evidence that transmission providers have failed to use reasonable efforts).

[421] ITC Rehearing Request at 6; SPP Rehearing Request at 6–7.

[422] Avangrid Rehearing Request at 4–5, 12–13; Dominion Rehearing Request at 19–22; MISO TOs Rehearing Request at 14; PacifiCorp Rehearing

Continued

274. AEP, EEI, and MISO TOs contend that the Commission's elimination of the reasonable efforts standard and its replacement with the deadline and penalty framework is based on notions of fairness or equity between transmission providers and interconnection customers, but they contend that this is an inadequate basis for reform.[423] EEI asserts that penalties assessed against transmission providers therefore cannot be effective in reducing such delays and backlogs.[424]

275. Certain rehearing requests also cite the purported benefits of the reasonable efforts standard, including the consistency of that standard with good utility practice and the flexibility afforded by that standard, urging that the reasonable efforts standard remains just and reasonable.[425] As a result, ITC argues that the ''reasonable efforts'' standard ensures that transmission providers treat other parties comparably to how they will protect their own interests.[426] NYTOs assert that the reasonable efforts standard is just and reasonable because each generator project and interconnection request is unique, such that flexibility is warranted in the face of the challenges posed by the study process, the uniqueness of each study request, mounting volumes of such requests, and because delays in that process may not be the fault of transmission providers.[427] EEI argues that retaining the reasonable efforts standard is particularly appropriate given the other requirements of Order No. 2023, contending that flexibility will be necessary given the complexity of the cluster study process, the new technologies that must be evaluated, and new NERC standards.[428] Indicated PJM TOs assert that the reasonable efforts standard provides the optimal balance of incentives to complete studies in a timely manner and the reasonable flexibility for planners to take the time needed to ensure grid reliability will be maintained in a cost-effective manner.[429]

276. Many of the rehearing requests assert that the Commission failed to demonstrate that there are steps that transmission providers can take that will, in fact, improve the timeliness of study processes and challenge the Commission's determination that transmission providers can feasibly take steps to better ensure timely interconnection request processing, such as deploying resources, exploring administrative efficiencies, and using innovative study approaches.[430] They contend that this determination is vague, poorly supported, and based on ''notions that transmission providers are not sufficiently imaginative'' or that they will be easily able to find and hire qualified staff and deploy automation and computing solutions in short order.[431] EEI asserts that replacing the reasonable efforts standard with deadlines and penalties cannot alter the number of requests submitted or the number of qualified individuals that can perform these studies.[432] SPP observes that qualified engineers may not want to work for transmission providers if they risk being identified as a cause of study delays that result in penalties or face potential liability.[433]

277. A number of the rehearing requests also contend that the Commission should have allowed the other reforms in Order No. 2023 to take effect before eliminating the reasonable efforts standard and adopting a structure of study deadlines and penalties.[434] AEP argues that the Commission should require transmission providers to augment the reports required under section 3.5 of the *pro forma* LGIP and Order No. 845 to require information regarding the effects of cluster study reforms, giving the Commission real world data regarding the causes of interconnection study delays.[435]

278. Some rehearing requests also argue that the Commission relied on stale and inapposite evidence to support the elimination of the reasonable efforts standard and replacement with the deadline and penalty structure.[436] Indicated PJM TOs assert that the vast majority of study delays reflected in the Order No. 845 data for the end of 2022 came from PJM, which had recently transitioned to a first-ready, first-served cluster cycle approach effective in January 2023.[437] Indicated PJM TOs also assert that the Commission relied on a stale record from Order No. 890 as support for imposing penalties on RTOs/ISOs that fail to meet deadlines.[438] PacifiCorp similarly contends that the evidence the Commission relied on relates to delays in the serial study process, rather than the new cluster-based process, and ''implementation of penalties, therefore, is attempting to fix a problem that has not been shown to exist.'' [439] NYISO

Request at 11–13; SPP Rehearing Request at 6–7. Dominion also asserts that Order No. 2023 will increase demand for qualified engineers, such that hiring additional staff may not be feasible. Dominion Rehearing Request at 20–21.

[423] AEP Rehearing Request at 11–12; EEI Rehearing Request at 5, 7 (asserting that the Commission eliminated the reasonable efforts standard and imposed penalties to ''ensure that transmission providers are 'doing their part' '' and to establish ''a strange kind of parity in its reforms''); MISO TOs Rehearing Request at 19 (arguing that the Commission has not found bad faith on the part of transmission providers or that they are the sole reason for delays and transmission providers—unlike interconnection customers, who have control over burdens that the Commission has imposed on them—will be penalized regardless of whether they had control of the factors causing a study delay); *see also* Indicated PJM TOs Rehearing Request at 39–40 (claiming that the Commission failed to address their comments that the testimony of Chairman LeVar of the Utah Public Service Commission does not support the use of penalties as incentives).

[424] EEI Rehearing Request at 6–7.

[425] *Id.* at 8–9; Indicated PJM TOs Rehearing Request at 5–6; ITC Rehearing Request at 4; MISO TOs Rehearing Request at 8–10; NYTOs Rehearing Request at 17–20.

[426] ITC Rehearing Request at 4 (arguing that this strikes an appropriate balance between competing interests); *see also* MISO TOs Rehearing Request at 8–10 (similar argument); *id.* at 20–24 (arguing that the Commission has long recognized the need for flexibility in the study process, which reflects why a ''no fault'' and less flexible regime of automatic penalties is illogical, particularly given increasing workload and complexity of interconnection studies).

[427] NYTOs Rehearing Request at 17–20; *cf. id.* at 26 (asserting that rigid deadlines and penalties are inconsistent with flexibility that Order No. 2023 claims to support).

[428] EEI Rehearing Request at 8–9.

[429] Indicated PJM TOs Rehearing Request at 5–6.

[430] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 967.

[431] AEP Rehearing Request at 12; EEI Rehearing Request at 6–7; MISO TOs Rehearing Request at 18 (arguing that the Commission acknowledges the shortage of qualified engineers but simply dismisses this problem); PJM Rehearing Request at 32–33; SPP Rehearing Request at 7; WIRES Rehearing Request at 7–8 (contending that these steps are ''more hopeful thinking than discrete, tangible actions'').

[432] EEI Rehearing Request at 6.

[433] SPP Rehearing Request at 7.

[434] AEP Rehearing Request at 15–16; Avangrid Rehearing Request at 9; EEI Rehearing Request at 5; NYTOs Rehearing Request at 17, 20–22 (''Only if the variables outside of a transmission provider's control are removed will the Commission have a sufficient evidentiary foundation to make the determinations required under Section 206 with respect to whether the Reasonable Efforts standard is unjust and unreasonable as applied in context of actual performance.''); PacifiCorp Rehearing Request at 4–5.

[435] AEP Rehearing Request at 15–16 (setting forth AEP's view on how to augment those reports and noting other areas where reporting requirements were required and arguing that such reporting would incentivize transmission providers to perform studies in a timely fashion).

[436] Indicated PJM TOs Rehearing Request at 17–18; NYISO Rehearing Request at 39–40; PacifiCorp Rehearing Request at 7–8.

[437] Indicated PJM TOs Rehearing Request at 17–18 (arguing that, while the Commission points to deficiencies with serial study approaches, they do not apply to regions that have already implemented cluster studies and that those regions should be allowed to fully implement those new approaches).

[438] *Id.* at 18–19 (arguing that the ''world has changed'' in certain respects since Order No. 890 was issued, that the Order No. 890 deadlines were consistent with what was historically achievable, and the penalties in Order No. 890 were less draconian than those imposed by Order No. 2023).

[439] PacifiCorp Rehearing Request at 7–8 (referencing *Nat'l Fuel Gas Supply Corp.* v. *FERC,* 468 F.3d 831, 842 (D.C. Cir. 2006) (*National Fuel*), in which the D.C. Circuit vacated the prior version of the Commission's Standards of Conduct on the

argues that the data the Commission relied on concerns missed study deadlines in ''RTO/ISO regions that have been contending with unprecedented numbers of new interconnection requests and/or have recently made substantial improvements to their interconnection procedures that are not reflected in earlier metrics.'' [440]

279. Indicated PJM TOs and NYISO also argue that the Commission failed to justify eliminating the reasonable efforts standard and imposition of deadlines and penalties through a generic rulemaking.[441] Indicated PJM TOs contend that the Commission lacked substantial evidence to make a generic finding that all existing interconnection study regimes—some of which already use the cluster study approach—are unjust and unreasonable to the extent those regimes rely on the reasonable efforts standard rather than imposing deadlines and penalties.[442] Indicated PJM TOs further assert the Commission cannot use general or generic findings to enact an industry-wide solution for a problem that exists only in isolated pockets and that study delays are not sufficiently widespread to justify the Commission's generic approach.[443] NYISO argues that it is not reasoned decision-making to assume that all transmission providers need stronger incentives to timely complete studies and asserts that state regulators in New York support retaining some form of the reasonable efforts standard.[444]

ii. Determination

280. The gravity of the problem of increased interconnection queue backlogs and delays, leading to unjust and unreasonable rates, prompted the Commission in Order No. 2023 to adopt a comprehensive set of reforms to the interconnection process, including reforms to the reasonable efforts standard for the completion of interconnection studies.[445] As to that standard, the Commission explained that ''interconnection queue backlogs and delays, and the accompanying uncertainty, are further compounded because transmission providers have limited incentive to perform interconnection studies in a timely manner.'' [446] Under this standard, ''[t]here are no explicit consequences in the *pro forma* LGIP for transmission providers that fail to meet their study deadlines,'' [447] allowing ''significant discretion to the transmission providers in extending their own deadlines.'' [448] As the Commission found, ''[t]his outcome stands in stark contrast to interconnection customers that face financial and commercial consequences due to late interconnection study results and may be considered withdrawn from the interconnection queue for failing to meet their tariff-imposed deadlines.'' [449]

281. The history of the Commission's action with respect to interconnection queue backlogs, and particularly interconnection study delays as a contributor to such backlogs, reflects that the Commission has taken a gradual approach to addressing these problems. In Order No. 2003, the Commission first imposed the reasonable efforts standard for the timely completion of interconnection studies, without adopting firm deadlines or a structure of automatic penalties for delays.[450] As the Commission observed in Order No. 2023, the reasonable efforts standard allowed transmission providers significant discretion to extend their own deadlines for the completion of interconnection studies.[451] In 2018, in Order No. 845, the Commission rejected requests to eliminate the reasonable efforts standard in favor of firm interconnection study deadlines,[452] explaining that reliance on increased reporting was a preferable approach because the ''current record'' did not support elimination of the reasonable efforts standard, such that doing so would be inappropriate ''[a]t this time.'' [453] The Commission likewise decided not to implement automatic penalties for delayed studies, recognizing the extent to which delays could be caused by factors outside of transmission providers' control, instead adopting measures to ''improve transparency by highlighting where interconnection study delays are most common and the causes of delays in these regions.'' [454] It further stated that ''[t]his information could also be useful to the Commission in determining if additional action is required to address interconnection study delays.'' [455]

282. Order No. 2023 reflects a determination that such additional action is required. The reforms in Order No. 845 have not eliminated the problems of interconnection queue backlogs and delayed interconnection studies. These problems have only grown, notwithstanding the Commission's previous reforms.[456]

283. Broadly speaking, the Commission's conclusion that there is a need to reform the Commission's *pro forma* interconnection procedures and agreements received overwhelming support.[457] However, as summarized above, many of the rehearing requests challenge the elimination of the reasonable efforts standard set forth in sections 2.2, 3.5.4(i), 7.4, 8.3, and Attachment A to Appendix 4 of the *pro forma* LGIP,[458] leading to the adoption of firm study deadlines, claiming that the Commission failed to meet its burden to justify this specific reform under FPA section 206.[459] Many of these rehearing requests argue that the Commission recognized that there are many factors outside the control of transmission providers that can contribute to backlogs and delays in the

basis that, inter alia, the purported record evidence FERC relied upon were rulemaking comments that did not identify any actual examples of wrongdoing).

[440] NYISO Rehearing Request at 39–40.

[441] *Id.* at 40; Indicated PJM TOs Rehearing Request at 13–17.

[442] Indicated PJM TOs Rehearing Request at 13–17.

[443] *Id.* at 14 (citing *S.C. Pub. Serv. Auth.,* 762 F.3d at 66–67; *Assoc. Gas,* 824 F.2d at 1019; *Wis. Gas.,* 770 F.2d at 1151, 1168); *see also id.* at 15–16 (discussing the Order No. 845 data, noting that 14 of 24 non-RTOs/ISOs experienced no study delays; as to RTOs/ISOs, CAISO experienced no study delays, SPP's data was excluded, and urging that PJM's data should also have been excluded).

[444] NYISO Rehearing Request at 40.

[445] The Commission explained in Order No. 2023 how interconnection queue backlogs result in unjust and unreasonable rates, including by hindering the development of new generation, stifling competition in wholesale electric markets, and creating uncertainty that increases costs. *See, e.g.,* Order No. 2023, 184 FERC ¶ 61,054 at PP 3, 27–29, 37–60; *supra* section II.A. We disagree with arguments that the Commission failed to adequately explain or that the record does not support this conclusion. *See, e.g.,* Indicated PJM TOs Rehearing Request at 29–30.

[446] Order No. 2023, 184 FERC ¶ 61,054 at P 50.

[447] *Id.* P 872.

[448] *Id.* P 50 (noting that despite ''pervasive delays in completing interconnection studies by transmission providers . . . transmission providers have faced few, if any, consequences for failing to meet their tariff-imposed study deadlines under the reasonable efforts standard'').

[449] *Id.* (concluding that the reasonable efforts standard results in rates that are unjust and unreasonable).

[450] Order No. 2003, 104 FERC ¶ 61,103 (*pro forma* LGIP sections 7.4, 8.3).

[451] Order No. 2023, 184 FERC ¶ 61,054 at P 50.

[452] *See* Order No. 845, 163 FERC ¶ 61,043 at PP 315–21; *id.* at 322 (noting that the Commission had not proposed, in its notice of proposed rulemaking for Order No. 845, such firm study deadlines).

[453] *Id.* P 323.

[454] *Id.* P 309 (''Such information could highlight systemic problems for individual transmission providers and interconnection customers.'').

[455] *Id.*

[456] *See, e.g.,* Order No. 2023, 184 FERC ¶ 61,054 at PP 38–43 (summarizing evidence of growing queue backlogs and study delays as contributors to those backlogs); *supra* section II.A.3.

[457] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 30.

[458] *Id.* P 965; *see also id.* P 964 (''We adopt these reforms to remedy the unjust and unreasonable rates stemming from interconnection queue backlogs and to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner.'').

[459] *See supra* section II.D.1.b.i.

interconnection study process.[460] In pointing to these other factors, the rehearing requests contend that holding transmission providers to standards of performance in terms of ensuring the timely completion of interconnection studies cannot be effective to ensure the timely completion of those studies. We disagree with this argument and continue to find that the elimination of the reasonable efforts standard, and its replacement with firm study deadlines, is warranted under FPA section 206 in order to address the unjust and unreasonable rates resulting from interconnection queue delays and backlogs.

284. We are not persuaded by attempts to minimize the responsibility transmission providers have for—and the ways in which they can effectuate—the timely completion of interconnection studies. Attempts to do so fail to recognize the key role transmission providers play in timely interconnection study completion: the transmission provider conducting the study is the entity with the most control over whether the study deadline is met.[461] As the entity that conducts the study, transmission providers have control over (among other things): the resources allocated to the study process; the actual conduct of the study, *e.g.,* the use of advanced computing or other methods to improve efficiency; coordination with interconnection customers and consultants; and providing the conclusions of the study.[462] They are the entities with the most complete knowledge of the transmission system to which the generator will be interconnecting.[463] Moreover, transmission providers have significant authority to help ensure that other entities do not unduly delay the results of the interconnection study, including by deeming withdrawn the requests of interconnection customers that fail to adhere to the requirements of the *pro forma* LGIP.[464]

285. That there are other factors that may also affect the timely completion of interconnection studies—and that these factors may not be within transmission providers' control, in whole or in part—does not negate the substantial control that transmission providers have over this process. To the contrary, the existence of multiple factors influencing interconnection study timeliness favors addressing the problem of interconnection queue backlogs from multiple angles, as with the comprehensive approach adopted in Order No. 2023. Even where multiple factors may cause or contribute to delays of interconnection studies, transmission providers are responsible for conducting the studies and their actions or inaction in doing so can cause or contribute to such delays.

286. Overall, the record reflects a problem of delayed study results contributing to interconnection queue backlogs,[465] numerous comments asserting that the reasonable efforts standard fails to ensure that transmission providers take adequate steps to ensure study timeliness,[466] and evidence of significant, growing backlogs leading to unjust and unreasonable rates. Based on our statutory obligation to remedy these unjust and unreasonable rates, and also in light of the significant level of control transmission providers exercise over the timeliness of the study process, we continue to find that the elimination of the reasonable efforts standard, and its replacement with firm study deadlines, is warranted as part of a package of comprehensive reforms to address interconnection queue delays and backlogs.

287. Consistent with this approach, we are not persuaded by arguments that the Commission conflated correlation and causation in concluding that unjust and unreasonable rates resulting from interconnection queue delays and backlogs, and delayed interconnection study completion, supported elimination of the reasonable efforts standard. In this vein, several of the rehearing requests assert that other factors, principally the volume and complexity of interconnection requests, are the real causes of such backlogs and delays, and that eliminating the reasonable efforts standard will not reduce the volume of such requests. We note, however, that Order No. 2023 did not claim that the reasonable efforts standard was the only driving force behind missed study deadlines. Order No. 2023 recognized that study delays are caused by a number of factors,[467] and adopted a comprehensive package of reforms aimed at alleviating many of those factors from various angles.[468] The reasonable efforts standard is but one of these factors.

288. The Commission in Order No. 2023 took significant other steps to address the volume of interconnection requests including to reduce the number of speculative requests and to improve the efficiency of interconnection studies and interconnection queue processing.[469] But to the extent that factors contributing to study delays,

[460] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 966.

[461] *See id.* P 995.

[462] *See, e.g., id.* PP 967, 975, 1007 (noting transmission providers' ability deploy resources, hire additional personnel, invest in new software, and employ innovative study approaches).

[463] *See, e.g., id.* P 201 (noting ''the transmission provider's detailed knowledge of its transmission system''); Order No. 1000, 136 FERC ¶ 61,051 at P 260 (''[W]e acknowledge that incumbent transmission providers may have unique knowledge of their own transmission systems . . . .'').

[464] *See pro forma* LGIP section 3.7 (''Transmission Provider shall deem the Interconnection Request to be withdrawn and shall provide written notice to Interconnection Customer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal . . . . Withdrawal shall result in the loss of Interconnection Customer's Queue Position. If an Interconnection Customer disputes the withdrawal and loss of its Queue Position, then during Dispute Resolution, Interconnection Customer's Interconnection Request is eliminated from the queue until such time that the outcome of Dispute Resolution would restore its Queue Position.'').

[465] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 40; *see also supra* P 39. While the rehearing requests generally point to factors that are beyond transmission providers' control (for instance, awaiting affected system study results or deficient information from interconnection customers), the record does not demonstrate that these are, in fact, the factors exclusively or even primarily causing study delays. *See, e.g.,* Order No. 2023, 184 FERC ¶ 61,054 at P 50.

[466] *See, e.g.,* ACE NY Initial Comments at 11–12 (''The Commission's review of the reported Order No. 845 metrics helps to corroborate the anecdotal experiences of interconnection customers throughout the nation and demonstrates the widespread failure to complete interconnection studies consistent with the timelines identified in the *pro forma* LGIP.''); CAISO Initial Comments at 25 (''The reasonable efforts standard has only served as the exception that swallows the rule of study deadlines.''); EPSA Initial Comments at 10–11 (acknowledging that other factors may contribute to delays but ''there have also been vast failures by Transmission Providers to process interconnection studies and provide necessary information to prospective and existing interconnection customers in a timely manner''); Invenergy Initial Comments at 29–30 (''[I]nterconnection studies are routinely delayed by several years. This is an ongoing problem and may reflect, among other things, an apparently low priority placed on adequate staffing and the lack of any accountability under the existing interconnection procedures.''); Public Interest Organizations Initial Comments at 33 (''[T]he slow pace at which interconnection requests are evaluated has contributed to a ballooning of interconnection queues across the country. . . . [B]inding deadlines are the most effective option for ensuring that prospective generation receives timely responses to interconnection requests.'').

[467] Order No. 2023, 184 FERC ¶ 61,054 at PP 40–45.

[468] *See id.* PP 45–56. For example, Order No. 2023 acknowledged that affected system study delays are a key contributor to overall delays in the interconnection queue, and adopted several specific reforms aimed at standardizing and streamlining affected system study processes. *See id.* P 51. Order No. 2023 also acknowledged that speculative interconnection requests contribute to study delays and queue backlogs, and adopted commercial readiness deposits and site control requirements aimed at alleviating this factor. *See id.* PP 47–48.

[469] *See id.* P 968; *see also id.* P 966 (''Indeed, throughout this final rule, we adopt numerous reforms to appropriately incentivize interconnection customers to help reduce interconnection delays that may result from their conduct.'').

including higher volumes or complexity of interconnection requests, are still expected to persist,[470] this does not warrant failing to pursue other available solutions to reduce such backlogs that are within transmission providers' control, especially in light of the magnitude and growth of the overall interconnection queue backlog.[471]

289. Eliminating the reasonable efforts standard, which allowed for self-extensions of interconnection study deadlines and lacked appropriate incentives for transmission providers to help ensure study timeliness, is one such further solution.[472] In its place, the Commission has specified standards of performance in the form of deadlines, accompanied by a penalty. This penalty is a self-implementing performance incentive (subject to appropriate safeguards) that also effectively adjusts what transmission providers can charge for interconnection studies that fail to meet those standards. This incentive will help ensure that transmission providers exercise the control they have over the interconnection process as to the timely conduct of those studies,[473] and thereby contribute to alleviating the problem of interconnection queue backlogs, including to address increased volumes of interconnection requests.[474] As explained below and in Order No. 2023, these deadlines should be achievable and—where there may be factors outside of a transmission provider's control that influence whether these deadlines can be met—the Commission has adopted appropriate safeguards to account for this possibility.

290. The rehearing requests misunderstand the Commission's approach in claiming that eliminating the reasonable efforts standard and adopting firm study deadlines cannot be warranted absent findings of intentional delay, bad faith, misconduct, or a ''lack of effort'' by transmission providers that fails to meet the reasonable efforts standard. Such findings are not necessary predicates to concluding that the interconnection study process must occur more expeditiously in order to help remedy the problem of unjust and unreasonable rates caused by interconnection queue backlogs. Nor are they predicates to concluding that the reasonable efforts standard was not accomplishing this goal, and that there are steps within transmission providers' control that can facilitate the timely completion of interconnection studies on timeframes set forth in Order No. 2023.[475]

291. Similarly, we are not persuaded by arguments that the structure adopted in Order No. 2023 is disproportionate to the problems identified in that order or that study delays are not sufficiently widespread to justify adoption of penalties for study delays. As discussed above in section II.A., we find that Order No. 2023's generic finding that the existing *pro forma* interconnection procedures and agreements were unjust, unreasonable, unduly discriminatory or preferential was supported by substantial evidence. The D.C. Circuit has been clear that the Commission can rely on general findings of systemic conditions to impose an industry-wide remedy, unless the deficiencies identified exist only in isolated pockets: [476] the record here indicates that interconnection study delays are a nationwide problem, not one that exists only in isolated pockets.[477] Therefore, we continue to conclude that industry-wide reform is appropriate. Furthermore, interconnection study delays and queue backlogs are severe,[478] and we continue to find that the deadline and penalty regime adopted in Order No. 2023 is proportional to the scope of the problem.

292. It appears that, in arguing that study delays are not sufficiently widespread to justify a generically applicable incentive structure, Indicated PJM TOs misread the Order No. 845 data cited in Order No. 2023: Indicated PJM TOs state that the Commission acknowledges that at the end of 2022, 14 (of 24) non-RTO/ISO transmission providers experienced no study delays.[479] However, the Commission actually stated, and the data shows, that at the end of 2022, 14 (of 24) non-RTO/ISO transmission providers *had delayed studies* still pending at the end of the year.[480] Furthermore, of the studies completed over the course of 2022, the data indicates that 16 non-RTO transmission providers completed one or more interconnection study past the deadline.[481] As stated above in section II.A.2., we recognize that PJM's data reflects its previous, serial study process. However, even excluding both PJM and SPP, the data show that three of the four remaining RTOs/ISOs reported delayed studies at the end of 2022.[482] Moreover, although we find the data even excluding PJM and SPP's backlogs is sufficient to show that study delays are not a problem that exists only in isolated pockets, the existing interconnection study backlogs in SPP and PJM reinforce that it is imperative that these entities, too, conduct their cluster study processes in a timely fashion, as will be facilitated by firm

[470] *See id.* P 966 (''There is every reason to believe that many of the factors contributing to significant interconnection queue backlogs and delay—including the rapidly changing resource mix, market forces, and emerging technologies—will persist.'').

[471] *See id.* P 968 (''In this Section, we adopt reforms to ensure that transmission providers are doing their part as well by eliminating the reasonable efforts standard . . . . Based on the record, we find that the elimination of the reasonable efforts standard and its replacement with firm deadlines and penalties are needed to remedy unjust and unreasonable rates . . . .''); *see also id.* P 966 (reform to the reasonable efforts standard was warranted based on ''ongoing challenges'' that ''will persist'').

[472] *See id.* P 967 (noting that this standard ''worsens current-day challenges'' and there are ''steps within transmission providers' control, from deploying transmission providers' resources to exploring administrative efficiencies and innovative study approaches, to better ensure timely processing of interconnection studies to remedy existing deficiencies'').

[473] *See, e.g., Cent. Hudson Gas & Elec. Corp.* v. *FERC,* 783 F.3d 92, 109 (2d Cir. 2015) (*Cent. Hudson*) (''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''); *Sacramento Mun. Util. Dist.* v. *FERC,* 616 F.3d 520, 531 (2010) (*Sacramento*) (''[I]t was perfectly legitimate for the Commission to base its findings about the benefits of marginal loss charges on basic economic theory . . . .''); *Assoc. Gas,* 824 F.2d at 1008–09 (''Agencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall . . . .'').

[474] Indicated PJM TOs single out one piece of evidence that the Commission cited in the NOPR as supporting use of such incentives, the testimony of Chairman LeVar of the Utah Public Service Commission, claiming that the Commission failed to address their comments that this testimony does not support the use of penalties as incentives. *See* Indicated PJM TOs Rehearing Request at 39–40; Indicated PJM TOs Initial Comments at 38. We continue to find that this testimony is one piece of evidence that supports imposing such incentives: although Chairman LeVar testified that fines are not always the best approach, he described the need to impose consequences on transmission providers as ''a pretty intuitive, important step,'' testified that there ''needs to be some clear, predictable consequence for transmission providers not meeting their obligations,'' and identified such consequences as ''the first step in queue reform.'' May Joint Task Force Tr. 89:6–25.

[475] PacifiCorp's comparison of this case to *Nat'l Fuel Gas Supply Co.* v. *FERC,* 468 F.3d 831, 842 (vacating Commission standards of conduct that had been justified in part by a claimed record of abuse, where the court found no such record was apparent), is therefore not apt. *See* PacifiCorp Rehearing Request at 7. The Commission has not relied on claims of wrongdoing, bad faith, or abuse to justify the reforms in Order No. 2023, but rather acted based the substantial record that interconnection queue backlogs, driven in part by untimely interconnection studies, are resulting in unjust and unreasonable rates and transmission providers' have the ability to better ensure study timeliness.

[476] *TAPS,* 225 F.3d at 687–88; *INGAA,* 285 F.3d at 37; *S.C. Pub. Serv. Auth.,* 762 F.3d at 67.

[477] *See supra* section II.A.3.

[478] Order No. 2023, 184 FERC ¶ 61,054 at PP 38, 40, & app. B.

[479] Indicated PJM TOs Rehearing Request at 15–16.

[480] Order No. 2023, 184 FERC ¶ 61,054 at P 40 & app. B tbl. 3.

[481] *Id.*

[482] *Id.* at app. B.

study deadlines.[483] The data indicate that study delays are not a problem that only exists in isolated pockets.

293. We disagree with arguments that it was disproportionate or inappropriate for the Commission to make a generic finding eliminating the reasonable efforts standard and adopting firm study deadlines, given that some regions have already adopted cluster study processes and are, therefore, generally in accord with a number of other reforms adopted in Order No. 2023. The data do not indicate that cluster studies alone are sufficient to remedy interconnection queue backlogs. To the contrary, a number of transmission providers that have already adopted cluster studies still experience substantial study delays.[484] While cluster studies are a key component of the Order No. 2023 reforms, clustering alone has not proved sufficient to solve the problems the Commission identified in Order No. 2023. We conclude that the elimination of the reasonable efforts standard, which has not yet been adopted by any transmission providers, is an appropriate and important component of the package of reforms in Order No. 2023 to remedy study delays and queue backlogs.

294. We disagree with arguments that the Commission relied on stale data to support the elimination of the reasonable efforts standard and the adoption of deadlines and study delay penalties. It appears that these rehearing requests are premised on speculation that future data might tell a different story than the data the Commission relied upon in Order No. 2023. Such speculation about potential future data does not render current data stale.[485] Order No. 2023 relied on the most recent data available, from 2020–2022.[486] Even if this dataset is not perfect, imperfection does not amount to arbitrary decision-making.[487] We also note that, for purposes of judicial review, the record consists of the information that was before the Commission *at the time* Order No. 2023 was issued.[488] Particularly given the trends of worsening queue delays and backlogs, which we have found are likely to persist in the absence of Commission action,[489] and the gravity of the problem of such delays in interconnecting new generation, the Commission was not required to wait for pending developments before issuing Order No. 2023, nor are we required to retract Order No. 2023 in order to supplement the Commission's decision with new data.[490]

295. We disagree with Indicated PJM TOs' claim that Order No. 2023 relied on the stale record from Order No. 890, even though the world has changed substantially since 2007. Order No. 2023 cited Order No. 890 as precedent reflecting that the Commission has authority to (1) implement a study delay penalty structure for RTOs/ISOs for missed tariff deadlines notwithstanding their non-profit status,[491] and (2) prohibit non-RTO transmission provider and transmission-owning members of RTOs/ISOs from recovering penalty amounts through transmission rates.[492] Order No. 2023 further acknowledged differences between the transmission service studies addressed in Order No. 890 and interconnection studies and accounted for these differences in developing this study delay penalty regime.[493]

296. We also disagree with rehearing requests that argue that the elimination of the reasonable efforts standard and the adoption of a structure of performance standards, in the form of deadlines, and performance incentives, in the form of penalties, is premature, and that the Commission should have waited until other reforms took effect before considering whether to implement this reform, or should have instead simply augmented the reporting approach set forth in Order No. 845. While the Commission could have taken a more gradual approach in addressing interconnection queue backlogs, we find that such an approach would not represent a just and reasonable replacement rate. Indeed, not only have our prior reforms failed to adequately control interconnection backlogs and delays, but the problem has instead significantly worsened, leading to unjust and unreasonable rates. Thus, notwithstanding that certain commenters may prefer a different approach—and particularly favor one that preserves for as long as possible the ability of transmission providers to extend their own deadlines to complete interconnection studies—we sustain Order No. 2023's finding that the reasonable efforts standard is contributing to those unjust and unreasonable rates such that reform of that standard is warranted now.[494] As a result, we also continue to find that Order No. 2023's approach of addressing the problem of interconnection queue backlogs and delays from multiple angles is both permissible and warranted given the

[483] *See id.* P 40, app. B, tbls. 2 & 4; NOPR, 179 FERC ¶ 61,194, at app. A, tbl. 1 n.489 (noting that SPP's ''normal interconnection queue processing has been modified to address its large queue backlog and transition to a new interconnection study process'').

[484] Order No. 2023, 184 FERC ¶ 61,054 at P 40 (indicating that multiple transmission providers that have already adopted cluster studies—including, among others, MISO, APS, Dominion, Duke, El Paso, PNM, and PSCo—still have study delays).

[485] *See ICC* v. *Jersey City,* 322 U.S. 503, 514 (1944) (''Administrative consideration of evidence . . . always creates a gap between the time the record is closed and the time the administrative decision is promulgated . . . [if] litigants might demand rehearings . . . because some new circumstance has arisen . . . there would be little hope that the administrative process could ever be consummated[.]''); *Wis. Elec. Power Co.* v. *Costle,* 715 F.2d 323, 327 (7th Cir. 1983) (finding that the record was not stale just because it did not include data collected five days before the agency issued its decision); *Vill. of Logan* v. *U.S. Dep't of Interior,* 577 F. App'x 760, 770 (10th Cir. 2014) (''Defendants likewise cannot be faulted for failing to consider a study that was published after the [agency decision] was published[.]'').

[486] *See* Order No. 2023, 184 FERC ¶ 61,054 at app. B (summarizing data from 2020–2022); *id.* at P 38 (citing Queued Up 2023 at 7–8). Cases in which courts have found data to be stale involve significantly older data. *See N. Plains Res. Council, Inc.* v. *Surface Transp. Bd.,* 668 F.3d 1067, 1086 (9th Cir. 2011) (finding that ten-year-old data was stale); *Lands Council* v. *Powell,* 395 F.3d 1019, 1031 (9th Cir. 2005) (finding that six-year-old data was stale).

[487] *See White Stallion Energy Ctr., LLC* v. *EPA,* 748 F.3d 1222, 1248 (D.C. Cir. 2014) (agency's ''data-collection process was reasonable, even if it may not have resulted in a perfect dataset''); *In re Polar Bear ESA Listing,* 709 F.3d 1, 13 (D.C. Cir. 2013) (''That a model is limited or imperfect is not, in itself, a reason to remand agency decisions based upon it.''); *Allied Local & Reg'l Mfrs. Caucus* v. *EPA,* 215 F.3d 61, 71 (D.C. Cir. 2000) (''We generally defer to an agency's decision to proceed on the basis of imperfect scientific information''); *State of N.C.* v. *FERC,* 112 F.3d 1175, 1190 (D.C. Cir. 1997) (''The mere fact that the Commission relied on necessarily imperfect information . . . does not render [its decision] arbitrary.''); *Chemical Mfrs. Ass'n* v. *EPA,* 28 F.3d 1259, 1265 (D.C. Cir. 1994) (agency may nonetheless use model ''even when faced with data indicating that it is not a perfect fit'').

[488] *See Vt. Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 554–55 (1978) (*Vt. Yankee*) (explaining that an agency decision ''had to be judged by the information then available to it[.]'').

[489] *See, e.g.,* Order No. 2023, 184 FERC ¶ 61,054 at P 966.

[490] *See Marsh* v. *Oregon Nat. Res. Council,* 490 U.S. 360, 373 (1989) (''agenc[ies] need not supplement [a decision] every time new information comes to light[.]''); *Friends of the River* v. *FERC,* 720 F.2d 93, 109 (D.C. Cir. 1983) (''Were we to order the Commission to reassess its decisions every time new forecasts were released, we would risk immobilizing the agency.'').

[491] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 876.

[492] *See id.* P 992.

[493] *See id.* P 1013.

[494] Notably, the rehearing requests cite no authority precluding the Commission from adopting the more comprehensive approach embodied in Order No. 2023. *See 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. *U.S. E.P.A.,* 751 F.3d 649, 655–56 (D.C. Cir. 2014) (summarizing *Defenders of Wildlife* v. *Gutierrez,* 532 F.3d 913 (D.C. Cir. 2008), upholding a decision to focus on a comprehensive approach).

extreme challenges identified in section II.A, above, and Order No. 2023.[495]

297. Moreover, under FPA section 206, the Commission need only find that the existing *pro forma* is unjust and unreasonable and that the replacement rate is just and reasonable; the Commission need not demonstrate that the replacement rate is the only just and reasonable approach.[496] We continue to find that a comprehensive approach, including the elimination of the reasonable efforts standard and adoption of performance standards and incentives (study deadlines and penalties), is necessary to remedy the unjust and unreasonable rates resulting from interconnection queue backlogs and is just and reasonable. We also note that arguments that this reform is premature are based on the premise that the other reforms in Order No. 2023 will be sufficient to remedy study delays. But at the same time, parties argue on rehearing that they cannot meet study deadlines, even with the other reforms in Order No. 2023. Both cannot be true. Either the other reforms in Order No. 2023 will be sufficient to ensure transmission providers can meet study deadlines, in which case they will not incur penalties under this regime, or—consistent with the Commission's conclusions in Order No. 2023 and herein—the other reforms will not be sufficient to ensure transmission providers meet study deadlines. In contrast, the Commission has here determined that a package of reforms—including both the elimination of the reasonable efforts standard and the other reforms required by the final rule—represents a reasonable and well-supported decision regarding the appropriate replacement rate.

298. With regard to arguments that the Commission's adoption of a deadline and penalty structure does not take into account that some transmission providers have engaged in stakeholder processes on queue reform, we note that Order No. 2023 acknowledged these efforts.[497] However, we disagree that these efforts mean that the Commission cannot or should not implement further reforms. In the regions where stakeholder reforms are ultimately successful in reducing queue backlogs and preventing delayed studies, the penalties adopted in Order No. 2023 may never be relevant. However, as explained above, many regions of the country are still seeing significant and even growing queue backlogs and study delays. It is clear that further action is warranted.

299. The rehearing requests also mischaracterize Order No. 2023 in claiming that the Commission eliminated the reasonable efforts standard based on ensuring parity or fairness, rather than evidence. Given the magnitude and growth of the interconnection queue backlog, the Commission adopted a comprehensive approach to remedying the unjust and unreasonable rates caused by that backlog.[498] Order No. 2023's references to ensuring that transmission providers were ''doing their part'' [499] and ''striking a balance'' [500] were made in this context, reflecting that transmission providers have a role to play in addressing this backlog. This comprehensive approach recognizes the importance of addressing each of the principal factors contributing to interconnection queue backlogs, including those—like study timeliness—that are within the control, whether in whole or in part, of transmission providers. We are, therefore, not persuaded by arguments that the existence of factors beyond the control of transmission providers that may delay interconnection studies means that the elimination of the reasonable efforts standard, and its replacement with firm study deadlines and incentives in the form of penalties, cannot or will not be effective in reducing study delays.

300. We further conclude that contentions that the reasonable efforts standard carries benefits, including the flexibility to account for the complexities and variability of interconnection requests that may arise in the study process, do not demonstrate that this standard remains just and reasonable. While there is some benefit to such flexibility, this benefit does not outweigh the need for reform the Commission has discussed and particularly does not change the fact that interconnection queue backlogs and study delays are resulting in unjust and unreasonable rates. Indeed, unwarranted flexibility to the detriment of timely study completion represents a defect in the reasonable efforts standard in light of the record demonstrating such backlogs: it allows transmission providers too much discretion to extend their own study deadlines. We thus disagree with arguments claiming that the reasonable efforts standard is sufficient to hold transmission providers accountable and appealing to the flexible nature of the reasonable efforts standard as purportedly demonstrating that it remains just and reasonable.

301. Furthermore, we do not agree that the deadline and penalty structure set forth in Order No. 2023 is inflexible, as certain rehearing requests attempt to portray that structure in contrasting it with the reasonable efforts standard. Order No. 2023's deadline and penalty structure reasonably accounts for the interests of transmission providers, including in maintaining flexibility and accounting for the complexities of the interconnection study process,[501] in light of the need for reform to set clear standards for timeliness and effective measures to ensure those standards are met.[502] How each transmission provider determines to meet interconnection study deadlines is left up to that transmission provider. We find that this approach is appropriate given the variation in the operations of the transmission providers and how they conduct the study process, and that they have the most complete knowledge as to what actions to better ensure study timeliness will be most effective as to their specific processes. Rather than imposing a top-down approach that mandates specific actions, the Commission in Order No. 2023 provided flexibility to transmission providers as to how they achieve those standards,[503] along with appropriate safeguards.

302. We disagree with arguments that the Commission has not demonstrated that there are steps that transmission

[495] *See, e.g.,* Order No. 2023, 184 FERC ¶ 61,054 at PP 3, 27–29, 37–60.

[496] *See Emera Me.,* 854 F.3d at 22–23 (explaining the two-step analysis under section 206 and that, on the second prong, there is a substantial spread of potentially just and reasonable rates).

[497] Order No. 2023, 184 FERC ¶ 61,054 at PP 16, 59, 1765–67. Because Order No. 2023 adopted the NOPR proposal to continue to apply the ''consistent with or superior to'' and ''independent entity variation standards,'' *see id.* P 1764, the transmission providers that have engaged in these processes may still benefit from them, although we cannot prejudge any particular compliance filings.

[498] *See id.* P 968 (discussing the other reforms the Commission was adopting).

[499] *Id.*

[500] *Id.* P 972 (''The study delay penalty structure adopted in this final rule balances the harm to interconnection customers of interconnection study delays and the associated need to incentivize transmission providers to timely complete interconnection studies with the burdens on transmission providers of conducting interconnection studies and potentially facing penalties for delays, including those that may be caused or exacerbated by factors beyond their control.'').

[501] *See, e.g., supra* section II.D.1.a. (summarizing the safeguards established in Order No. 2023, particularly including the appeals process).

[502] *See also infra* PP 374–382 (rejecting arguments that the deadline and penalty structure adopted by Order No. 2023 is not just and reasonable based on purported negative consequences of that structure).

[503] *Cf., e.g., Transp. Div. of the Int'l Ass'n of Sheet Metal, Air, Rail & Transp. Workers* v. *Fed. R.R. Admin.,* 10 F.4th 869, 876 (D.C. Cir. 2021) (affirming a performance-based approach, rather than prescriptive approach, as reasonable).

providers can take to improve the timeliness of study processing, particularly given the factors that are outside of or not fully within their control, such that implementing a structure of performance standards and penalties to incentivize transmission to providers meet study deadlines is not just and reasonable. As described above, transmission providers exercise significant control over the study process through which they can influence whether the studies are timely completed.[504] It is not the case that there is no nexus between the speed of the interconnection queue and the incentives imposed on transmission providers to timely complete interconnection studies. In Order No. 2023, the Commission explained that transmission providers should be able to implement reforms to ensure that their study process is efficient and to help meet the deadlines set forth in that rule, including examples of steps that they may be able to take.[505] To the extent that transmission providers suggest that it is generically infeasible to allocate additional resources to ensure the timely completion of interconnection studies because that will require them to bear increased study costs, we are not persuaded by these concerns. As Order No. 2023 stated, ''interconnection customers, rather than transmission providers, ultimately bear the costs of interconnection studies.'' [506] The allocation of such additional resources includes the allocation of additional personnel or consultants, as appropriate and available. Moreover, increased availability of qualified personnel may be driven, over time, by increased demand on the part of transmission providers. To the extent that transmission providers seek to retain additional personnel but there are extenuating circumstances rendering necessary personnel unavailable, leading to the assessment of penalties, transmission providers can explain the specific facts of their situation in an appeal to the Commission.

303. In addition, claims that transmission providers cannot take reasonable steps to achieve the deadlines set forth in Order No. 2023 are premised on incorrectly portraying the substantive deadlines set in Order No. 2023 and the circumstances under which penalties will be assessed as unduly burdensome or punitive. In imposing these deadlines, the Commission was mindful of the burdens on transmission providers in conducting interconnection studies.[507] Moreover, in Order No. 2023 the Commission adopted a reasonable approach to selecting the deadlines in the *pro forma* interconnection procedures and, as further explained in greater detail below, we continue to conclude that the record supports that those deadlines should be achievable for the *pro forma* study process.[508] The safeguards the Commission selected—including, but not limited to, the ability to appeal a penalty—further respond to transmission providers' objections, including the extent to which study delays may be due to factors outside of their control.[509]

c. Adoption of a Study Deadline and Penalty Structure Replacement Rate

304. Having adopted the NOPR proposal to eliminate the reasonable efforts standard in Order No. 2023, the Commission was then required to adopt a replacement rate.[510] It found that a structure in which transmission providers are required to meet firm study deadlines (a standard to measure performance) and subject to penalties (an incentive to meet the tariff-prescribed firm study deadlines) with appropriate safeguards, was a just and reasonable approach.[511] This regulation of the interconnection study process is consistent with the Commission's long-standing regulation of the interconnection process, including the terms of the relationship between interconnection customers and transmission providers.

305. Courts have affirmed that this regulation of the interconnection process, and specifically the interaction between interconnection customers and transmission providers as necessary to avoid a degradation in service leading to unjust and unreasonable rates, falls squarely within the Commission's ratemaking authority.[512] For instance, in *NARUC* v. *FERC,* the D.C. Circuit affirmed the Commission's authority to issue Order No. 2003, observing that ''Order No. 2003 asserts jurisdiction over the terms of interconnection between generators and transmission providers'' [513] and citing the connection between those terms and the prices for regulated service. Indeed, the Commission established both the timelines for interconnection studies and the reasonable efforts standard in Order No. 2003,[514] which reflects the Commission's long-standing regulation of the timeliness of the interconnection study process.[515]

[504] *See supra* P 284.

[505] *See* Order No. 2023, 184 FERC ¶ 61,054 at PP 967, 975, 1004, 1007 (identifying steps including the management of operational resources, implementing reforms to increase the efficiency of study processing, investing in new software, and hiring additional personnel).

[506] *Id.* P 1007 (''To the extent that it is more costly to complete studies in a timely and accurate fashion, these interconnection study costs will be passed on to interconnection customers.''). Nothing in Order No. 2023 or herein requires or suggests that transmission providers should attempt to hold personnel liable or punish them for study delays, and we therefore are not persuaded by SPP's claim that that qualified engineers may not want to work for transmission providers if they risk being identified as a cause of study delays that result in penalties.

[507] *See, e.g., id.* P 1004 (explaining that the Commission was adopting reforms from the NOPR such that it expected ''that a transmission provider that faces the potential of a study delay penalty for failing to meet interconnection study deadlines will be able to allocate sufficient resources to conduct interconnection studies, in addition to implementing reforms to ensure that its study process is efficient'' and declining to adopt certain proposals that might have resulted in greater burdens on transmission providers).

[508] *See infra* PP 318–320 (explaining that the *pro forma* study process should not impose a greater aggregate burden on transmission providers than the serial study process and discussing the available data reflecting the ability of transmission providers that have adopted a cluster study approach to conduct those studies within the timeframes set forth in Order No. 2023).

[509] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 987 (''In evaluating whether there is good cause to grant such relief, the Commission may consider, among other factors: (1) extenuating circumstances outside the transmission provider's control, such as delays in affected system study results; (2) efforts of the transmission provider to mitigate delays; and (3) the extent to which the transmission provider has proposed process enhancements either in the stakeholder process or at the Commission to prevent future delay''); *id.* at 979 (providing a lengthy transition period to allow transmission providers time to adapt to the new processes).

[510] *See id.* P 970.

[511] *See id.* PP 970–72.

[512] *See, e.g., S.C. Pub. Serv. Auth.,* 762 F.3d at 63; *NARUC* v. *FERC,* 475 F.3d at 1279–1280; *see also FERC* v. *Elec. Power Supply Ass'n,* 577 U.S. 260, 266 (2016) (*EPSA*) (discussing the Commission's authority to ''regulate 'the transmission of electric energy in interstate commerce' and 'the sale of electric energy at wholesale in interstate commerce' under FPA section 201(b), 16 U.S.C. 824(b), and describing FPA sections 205 and 206 as affording FERC authority to ''oversee all prices for those interstate transactions and all rules and practices affecting such prices''); *see also id.* at 277.

[513] *NARUC* v. *FERC,* 475 F.3d at 1279 (''By establishing standard agreements FERC has exercised its jurisdiction over the *terms* of those relationships.''); *see id.* at 1280; *ESI Energy, LLC* v. *FERC,* 892 F.3d 321, 324 (''[E]very time a new generator of electricity asked to use a transmission network owned by another—to interconnect the two entities—disputes between the generator and the owner of the transmission grid would arise, delaying completion of the interconnection process,'' which disputes ''delay[ed] entry into the market by new generators,'' thus ''providing an unfair competitive advantage to utilities owning both transmission and generation facilities.'').

[514] *See* Order No. 2003, 104 FERC ¶ 61,103, at app. C, LGIP section 1 (defining ''Reasonable Efforts''; *id.* sections 6.3, 7.4, 8.3 (providing for the use of reasonable efforts to complete study processes within specified timeframes).

[515] The Commission further has regulated the charges for the interconnection study process through setting the study deposit amount, *see pro forma* LGIP section 3.1.1, and the recovery of the

306. The deadline and penalty structure set forth in Order No. 2023 is a replacement of the Commission's prior study timelines, including the reasonable efforts standard, with another standard directed toward that same end.[516] Specifically, the deadline and penalty structure implemented in Order No. 2023 governs the terms of the relationship between the interconnection customer and transmission provider regarding the costs that transmission providers can recover for interconnection studies that fail to meet certain standards. Given that interconnection queue backlogs—which are driven, in part, by study delays—result in unjust and unreasonable rates through, *e.g.,* increased costs and decreased competition,[517] the study delay penalty structure is a means of ensuring just and reasonable rates, consistent with the Commission's authority under FPA section 206. Moreover, delayed interconnection studies impose costs on interconnection customers,[518] such that the value of the interconnection study to such customers is linked to its timely performance. The implementation of study delay penalties reflects this fact, and—particularly because the penalties are distributed to interconnection customers in proportion to their study costs [519]—regulates what a transmission provider can charge for an interconnection study, accounting for study timeliness, as a matter of ensuring just and reasonable rates.

307. The approach adopted in Order No. 2023 of employing penalties as an incentive for regulated actors to ensure adequate service, pursuant to the Commission's statutory mandate to ensure just and reasonable rates under FPA sections 205 and 206, is not novel. The Commission has previously accepted tariff mechanisms incorporating the use of penalties for failure to meet a performance standard as a component of a just and reasonable rate.[520] Order No. 890's implementation of operational penalties for routinely delayed transmission studies similarly reflects a structure using such penalties to accomplish the Commission's ratemaking objectives.[521]

308. To that end, the Commission adopted the study deadline and penalty structure pursuant to its authority under FPA section 206.[522] In doing so, it stated that its approach was not based on a finding of bad faith on the part of transmission providers,[523] or intended to create a punitive structure,[524] but instead reflected the need for adequate incentives for transmission providers to take the steps within their control to help alleviate unjust and unreasonable rates stemming from interconnection queue delays and backlogs.[525] In this respect, the implementation of the study deadline and penalty structure in Order No. 2023 reflects that—as a component of a comprehensive package of reforms to remedy the problem of severe interconnection queue delays and backlogs—transmission providers will be held to appropriate standards, with stated consequences for failure to meet those standards, as is also the case with interconnection customers.[526] As discussed in detail below,[527] the implementation of this incentive structure pursuant to FPA section 206 is further consistent with Supreme Court precedent differentiating civil penalties that are imposed as punishment to redress a wrong to the public versus those that serve other purposes, such as the regulation of the interaction between parties to serve a compensatory function.[528] Order No. 2023's deadline and penalty structure falls within the latter category, supported by the Commission's well-established FPA authority over the interconnection process to avoid degradation of service, its authority to regulate the relationship of the parties involved in that process, and its authority to ensure just and reasonable rates under FPA section 206.

i. Interconnection Study Deadlines

(a) Requests for Rehearing

309. Several of the rehearing requests contend that the imposition of fixed, uniform study deadlines is arbitrary and capricious because it fails to account for the specific circumstances of the cluster being studied, particularly given the complexity and variability of the study process.[529] For instance, Avangrid and EEI argue that the Commission's 150-day cluster study deadline is a ''one-size-fits-all'' approach that disregards that clusters of interconnection studies will vary widely in size and complexity, and there are numerous variables outside of transmission providers' control that contribute to delays.[530] Indicated PJM TOs argue that the Commission failed to consider the uneven and unpredictable timing of interconnection requests.[531]

costs for interconnection studies, *see* Order No. 2023, 184 FERC ¶ 61,054, *pro forma* LGIP sections 7.1, 8.1, 9.4, 13.3, app. 2 at section 6, app. 7 at section 7, app. 8 at sections 7–8, app. 9 at section 6, app. 10 at section 6 (reflecting revisions to the *pro forma* LGIP and appendices set forth in Order No. 2003).

[516] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 50.

[517] *See id.* PP 37, 43, 50, 963.

[518] *See id.* PP 43, 972.

[519] *See id.* PP 984, 990; *infra* P 439 (discussing the distribution of penalties to interconnection customers).

[520] *See, e.g., Advanced Energy Mgmt. All.* v. *FERC,* 860 F.3d 656, 665 (D.C. Cir. 2017) (*AEMA*) (affirming Commission approval of revised market rules under which ''a resource that fails to meet its capacity commitment during an emergency hour must pay a penalty''); *Belmont Mun. Light Dep't* v. *FERC,* 38 F.4th 173, 177 (D.C. Cir. 2022); *Energy Harbor LLC,* 185 FERC ¶ 61,203, at P 2 (2023) (explaining that ''PJM's Capacity Performance construct creates a penalty and bonus structure for Capacity Resources to deliver energy and reserves'' under certain conditions); *PJM Interconnection, L.L.C.,* 155 FERC ¶ 61,157, at P 18 (2016) (further describing this capacity construct); *ISO New England Inc.,* 174 FERC ¶ 61,252, at PP 3–4 (2021) (discussing ISO–NE's ''pay-for-performance'' capacity market design); *ISO New England Inc.,* 165 FERC ¶ 61,266, at PP 1, 22 (2018) (accepting proposal to allow ISO–NE to levy a monthly ''Failure to Cover Charge Rate,'' described as a ''just and reasonable penalty rate,'' explaining that it will incentivize resources to cover that obligation); *cf.* PJM Rehearing Request at 30 (acknowledging that various ''RTO tariffs and other tariffs contain various penalty provisions''); Order No. 2003, 104 FERC ¶ 61,103 at PP 857, 898 (considering whether to provide for liquidated damages for delayed interconnection studies in the *pro forma* LGIP, and declining to do so, but observing that liquidated damages provisions are within the Commission's statutory authority).

[521] *See, e.g.,* Order No. 890, 118 FERC ¶ 61,119 at P 1340 (describing this structure and explaining that transmission providers ''must have a meaningful stake in meeting study time frames''); *id.* P 1347 (explaining the Commission's rationale for the penalty amounts selected as ''in line with the cost the transmission provider would incur to focus additional resources on processing'' study requests and as an effective incentive to comply with study deadlines); Order No. 2023, 184 FERC ¶ 61,054 at PP 1013, 1015 & nn.1958–60 (discussing the penalty structure implemented under Order No. 890 for transmission service studies and automatic penalties for ''traffic ticket'' violations).

[522] Order No. 2023, 184 FERC ¶ 61,054 at P 1014.

[523] *See id.* P 966.

[524] *See, e.g., id.* P 999 (''[W]e believe that the study delay penalty structure strikes a reasonable balance by providing an adequate incentive without being punitive'').

[525] *See id.* PP 37–43, 50, 970–72.

[526] *See, e.g., supra* section II.A.3 (discussing the need for comprehensive reform to address this problem); *pro forma* LGIP sections 3.4, 3.5, 3.7, 3.7.1 (reflecting examples of such consequences applicable to interconnection customers, including that their interconnection requests may be deemed withdrawn, loss of queue position, and application of the withdrawal penalty).

[527] *See infra* section II.D.1.c.iv.

[528] *See Kokesh* v. *SEC,* 581 U.S. 455, 461 (2017) (*Kokesh*).

[529] Avangrid Rehearing Request at 4–5; EEI Rehearing Request at 10; Indicated PJM TOs Rehearing Request at 16; NYISO Rehearing Request at 4; NYTOs Rehearing Request at 13–15; 26–27 (arguing that there are conflicting directives in Order No. 2023 that support regional flexibility but also provide for study penalties following strict deadlines that do not account for unique challenges and dynamics in different regions, which it claims could hinder ongoing regional queue reform initiatives and stifle innovation); SPP Rehearing Request at 9–10.

[530] Avangrid Rehearing Request at 4–5; EEI Rehearing Request at 10.

[531] Indicated PJM TOs Rehearing Request at 16 (citing factors driving variability in the number and

Continued

310. Relatedly, Indicated PJM TOs also assert that the uniform study deadline and penalty framework is unduly discriminatory against transmission owners in regions with substantial renewable generation in development, because such regions with long queues will experience greater risk of penalties due to factors they cannot control.[532] Dominion asserts that, within RTOs and ISOs, there may be disparate outcomes in different zones because of an uneven distribution of interconnection requests, such that different transmission owners or transmission providers will face very different risks.[533]

311. A number of the rehearing requests also challenge the specific deadlines the Commission selected—including, in particular, the 150-day cluster study deadline—as insufficiently supported and/or too short, risking a less efficient interconnection process.[534] MISO TOs and NYISO argue that the deadlines imposed in Order No. 2023 have not been shown to be appropriate and achievable or are not supported by evidence.[535] NYISO argues that study deadlines should be tailored to each region.[536] NYISO and PJM argue that a 150-day timeframe for the cluster study is not achievable in their regions in particular.[537] PacifiCorp asserts that the Commission should extend the 150-day cluster study and restudy deadlines by 45 days to provide transmission providers adequate time to address third-party delays.[538]

312. Avangrid, NYISO, and PJM contend that the efficiency gains that can be expected from the other reforms set forth in Order No. 2023 will not render the deadlines imposed by that decision more achievable.[539] NYISO and PJM contend that the study entry requirements are not likely to materially deter participation in cluster studies, claiming that certain RTOs/ISOs—including NYISO—have already adopted similar requirements without a noticeable reduction in the number of study participants.[540]

313. Dominion, MISO TOs, and NYISO also challenge the effectiveness of one of the safeguards that the Commission imposed: the ability to extend a study deadline for 30 days, upon agreement of all interconnection customers.[541] Dominion argues that there is no incentive for interconnection customers to agree to such an extension where they would otherwise be entitled to a share of the penalty assessed against a transmission provider.[542] MISO TOs note that obtaining this relief requires unanimity among all interconnection customers.[543]

(b) Determination

314. We are not persuaded by the rehearing requests challenging the study deadlines set forth in Order No. 2023. The timelines set forth in Order No. 2023 are reforms to the Commission's *pro forma* LGIP, against which individual compliance filings will be assessed.[544] In Order No. 2023, the Commission declined to ''adopt suggestions to allow transmission providers flexibility to set their own study deadlines,'' instead imposing standard deadlines for the specific study processes set forth in the *pro forma* LGIP.[545] As explained below, we continue to find that the deadlines set in Order No. 2023 for the *pro forma* study process are just and reasonable and represent a reasonable policy determination that appropriately balances multiple competing considerations.[546]

315. We continue to conclude that the timeframes in Order No. 2023 for the completion of studies, including the 150-day timeframe for the completion of cluster studies, are just and reasonable for the *pro forma* study approach set forth in Order No. 2023.[547] The underlying reason for the reforms in Order No. 2023, including the deadlines imposed on transmission providers to

timing of interconnection requests in different locations); *id.* at 30–31 (arguing that the evidence of widespread study delays show that the aggressive deadlines are unreasonable, unrealistic, and arbitrary, particularly given the increased burdens that can be expected going forward, including new NERC standards; arguing that uniform study deadlines are not justified).

[532] *Id.* at 31–32.

[533] Dominion Rehearing Request at 24–25.

[534] EEI Rehearing Request at 9–10 (''Experience has shown that reliability and deliverability studies take longer than 50 days and that the development of binding cost estimates may be complex, especially in high-density urban areas.''); MISO TOs Rehearing Request at 11–12; NYISO Rehearing Request at 5–6; NYTOs Rehearing Request at 13–15; PacifiCorp Rehearing Request at 5, 15; PJM Rehearing Request at 32.

[535] MISO TOs Rehearing Request at 11–12 (also arguing that the Commission has not shown why a uniform deadline is appropriate irrespective of ''the cluster size, scope, geography, make up, proposed resource mix, and other circumstances of the particular cluster'' and that the automatic imposition of penalties exacerbates the problem posed by the deadlines); NYTOs Rehearing Request at 13–15 (citing *N.Y.* v. *EPA,* 964 F.3d 1214, 1224 (D.C. Cir. 2020) and *All. for Cannabis Therapeutics* v. *DEA.,* 930 F.2d 936, 940 (D.C. Cir. 1991) for the propositions that standards that are not reasonably attainable and conditions which are ''impossible to fulfill'' are arbitrary and capricious).

[536] NYISO Rehearing Request at 5–6; *see also id.* at 15–17 (arguing that the Commission should allow RTOs/ITOs to propose alternative study deadlines as independent entity variations, and that failure to do so unreasonably treats all transmission providers similarly, regardless of how they may be differently situated); *id.* at 40 (''[T]he Commission has not adequately addressed, or explained its response to, arguments that study deadlines themselves are unreasonable.'').

[537] *Id.* at 6–11 (describing the applicable New York reliability requirements and discussing particular challenges applicable to New York); PJM Rehearing Request at 32 (''This simply is not possible in a region such as the PJM Region, where the typical queue over a one-year period in the last few years has included in excess of 1,000 projects'').

[538] PacifiCorp Rehearing Request at 5, 15.

[539] Avangrid Rehearing Request at 12; NYISO Rehearing Request at 12–15 (arguing that much of the work in cluster studies still concerns individual projects or subsets of projects, and thus require many of the same resources as would be necessary to conduct individual studies); *see also id.* at 34 (contending that the Commission assumes, without evidence, that other improvements will fully offset the burdens imposed by Order No. 2023 on transmission providers); PJM Rehearing Request at 32.

[540] NYISO Rehearing Request at 14–15 (asserting that the entry requirements and withdrawal penalties adopted by Order No. 2023 for cluster studies are comparatively modest and likely to be only minimal deterrent to speculative projects); PJM Rehearing Request at 32 (noting that MISO received more than 960 requests following the close of its 2022 Definitive Planning Process cycle that closed in 2022).

[541] Dominion Rehearing Request at 24; MISO TOs Rehearing Request at 18–19; NYISO Rehearing Request at 35.

[542] Dominion Rehearing Request at 24.

[543] MISO TOs Rehearing Request at 18–19 (contending that this safeguard is therefore ''wholly illusory''); *see also* NYISO Rehearing Request at 35 (arguing that a 30-day extension is not a reasonable safeguard; noting that it will be conducting interconnection studies potentially involving more than 100 interconnection requests and arguing that each interconnection customer will have an incentive to oppose an extension since their study costs would be offset by penalty charges).

[544] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 10 (''We note that the compliance obligations that result from this final rule will be evaluated in light of the independent entity variation standard for [RTOs] and [ISOs] and the consistent with or superior to standard for non-RTO/ISO transmission providers.''); *id.* P 1764; *see also* Order No. 2003 104 FERC ¶ 61,103 at P 26 (discussing the standards for non-independent and independent transmission providers to seek variations from the terms of the *pro forma* LGIP and LGIA); *Preventing Undue Discrimination & Preference in Transmission Serv.,* Order No. 890–B, 123 FERC ¶ 61,299, at PP 95, 101 (2008) (''The Commission clarifies, in response to NYISO, that transmission providers are free to make filings under FPA section 205 to seek variations from the *pro forma* OATT and demonstrate that alternative tariff provisions are consistent with or superior to the *pro forma* OATT.''); *N.Y. Indep. Sys. Operator, Inc.,* 125 FERC ¶ 61,274, at P 24 & n.23 (2008) (''NYISO proposed to increase the transmission study deadlines from 60 days to 120 days. The Commission accepted the filing . . . .'').

[545] Order No. 2023, 184 FERC ¶ 61,054 at P 331 (explaining that allowing transmission providers to propose their own deadlines in the first instance ''would undermine the purpose of ensuring that transmission providers complete interconnection studies by standard deadlines prescribed by their tariffs and would thus be insufficient to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner'').

[546] Transmission providers are also allowed to propose variations from the requirements of Order No. 2023, under the applicable standard, including as to the deadlines set for the *pro forma* study processes, although we cannot prejudge any such filings. *See id.* P 1764.

[547] *See id.* PP 324, 326.

conduct studies, is that interconnection queue backlogs are causing unjust and unreasonable rates and that these backlogs must, therefore, be remedied pursuant to our statutory mandate.[548] We find that the timelines set forth in Order No. 2023 appropriately address transmission providers' role and control in the interconnection study process and strike a reasonable balance between the transmission provider and other interests, such as those of interconnection customers, in addressing such unjust and unreasonable rates. As explained in greater detail below, we further find that these timelines are reasonably achievable to accomplish the *pro forma* study processes set forth in Order No. 2023. We therefore disagree that these timelines are too short or inappropriately uniform.

316. As the Commission explained in Order No. 2023, ''[t]he *pro forma* LGIP [set forth in Order No. 2003] requires that transmission providers use reasonable efforts to complete: (1) feasibility studies within 45 calendar days; (2) system impact studies within 90 calendar days; and (3) facilities studies within 90 or 180 calendar days.'' [549] Under the Commission's *pro forma* LGIP set forth in Order No. 2003, the interconnection study process for large generating facilities was a ''serial first-come, first-served study process by which transmission providers study interconnection requests individually in the order the transmission provider received them.'' [550] Under this process, the transmission provider had 135 total days to conduct both the feasibility study and system impact study for each interconnection request, with each study conducted separately.

317. Order No. 2023 eliminated the requirement to conduct a separate feasibility study under section 6 of the *pro forma* LGIP,[551] and provides a modestly longer timeframe (150 days) to conduct the cluster study and another 150 days to conduct any necessary restudy. The 150-day period to conduct the cluster study runs from the conclusion of a new 60-day customer engagement window, during which time the transmission provider can begin to coordinate with customers that have submitted interconnection requests that will be included in a particular study and ensure that the provider is considering only valid interconnection requests.[552]

318. We acknowledge that conducting a cluster study of many interconnection requests may involve increased complexity or require an increased commitment of resources in a given study timeframe as compared to conducting a single, individual study of a particular interconnection request under the serial process.[553] However, arguments to this effect do not take into account the full package of reforms aimed at improving efficiency of the study process, supporting our determination that the 150-day cluster study and cluster restudy deadlines reflect a reasonable balance of competing interests.

319. Indeed, various reforms in Order No. 2023 are directed toward ensuring that transmission providers can conduct their interconnection studies more efficiently under the cluster study process than the *pro forma* study approach previously applicable under Order No. 2003.[554] For instance, the Commission found that the cluster study ''process will increase efficiency because transmission providers can perform larger interconnection studies encompassing many proposed generating facilities, rather than separate studies for each individual interconnection customer.'' [555] Under this approach, transmission providers will be able to focus their resources on a single study, rather than conducting multiple individual studies.[556] For that reason, even if cluster studies prove more complex, that point does not undercut the Commission's conclusion that they can be performed in the time allotted in the *pro forma* LGIP. The Commission also explained that a cluster study process is likely to result in fewer interconnection customer withdrawals—which can result in cascading restudies, delays, and wasted resources which could otherwise be used productively—because ''conducting a single cluster study and cluster restudy will minimize delays that arise from proposed generating facility interdependencies under the existing serial study process.'' [557] The Commission also adopted further measures to increase efficiency, including to ''disincentivize interconnection customers from submitting interconnection requests for speculative generating facilities and ensure that ready, more viable proposed generating facilities can proceed through the study process.'' [558]

320. Thus, for the *pro forma* LGIP approach set forth in Order No. 2023, we conclude that conducting cluster studies and restudies should not, in terms of the total transmission provider resources required, be materially more burdensome than conducting serial studies and expect that the process should, in fact, be more efficient. We acknowledge that conducting a cluster study in 150 days may require a more concerted deployment of transmission provider resources than conducting serial studies, because cluster studies typically involve the evaluation of multiple interconnection requests, rather than allowing a full 135 days to separately evaluate each interconnection request. However, even absent the efficiency gains the adopted in Order No. 2023, the record here does

[548] *Id.* P 964; *see also* 16 U.S.C. 824e(a); *Coal. of MISO Transmission Customers* v. *FERC,* 45 F.4th 1004, 1020 (D.C. Cir. 2022) (''[T]he Commission is under a statutory mandate to ensure that all rates are just and reasonable . . . .'').

[549] Order No. 2023, 184 FERC ¶ 61,054 at P 13. Challenges to the timelines for interconnection studies set forth in Order No. 2023 are focused on the deadlines for conducting cluster studies, rather than facilities studies. Order No. 2023 provides 90 or 180 days to conduct facilities studies, which is consistent with the timeframe specified in Order No. 2003 under the reasonable efforts standard. *See pro forma* LGIP section 8.3. Thus, Order No. 2023 effectively eliminates the ability of transmission providers to unilaterally grant themselves extensions as to the deadline for facilities studies, but provides other avenues for relief in the form of the safeguards adopted in Order No. 2023. We continue to conclude that this is a just and reasonable result.

[550] NOPR, 179 FERC ¶ 61,194 at P 18.

[551] Order No. 2023, 184 FERC ¶ 61,054 at PP 67, 92, 316. Instead, the stability analysis, short circuit analysis, and power flow analysis that were previously part of the feasibility study and conducted on a serial basis, *see id.* at PP 297, 317; *pro forma* LGIP section 7.3, are now conducted as components of the cluster study and restudy process.

[552] *See* LGIP section 3.4.5 (describing tasks to be performed in the Customer Engagement Window and that interconnection requests not deemed valid at the close of this window shall be deemed withdrawn, with no cure period); Order No. 2023, 184 FERC ¶ 61,054 at PP 223, 233–34.

[553] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 326 (''While we have extended the timeline from that provided in the individual serial study process, we believe that 150 calendar days is a reasonable extension to account for the more complex study.'').

[554] *Id.* PP 326, 1004.

[555] *Id.* P 177.

[556] *Id.* P 326 (''We also note that transmission providers will be conducting only one interconnection study, or at most a small number of interconnection studies, at a time, allowing them to devote more resources to completing the studies in a timely manner.'').

[557] *Id.* P 177.

[558] *Id.* (discussing the cluster study process, combined with ''the increased financial commitments and requirements to enter the interconnection queue, such as a demonstration of site control''); *see also id.* P 977 (noting the ''the new site control requirements, commercial readiness deposits, and withdrawal penalties we adopt in this final rule, which also become increasingly stringent as the study process progresses''); *cf. also* LGIP sections 3.4.5, 3.7 (providing that, at the close of the customer engagement window, only valid interconnection request are included in the study process; further providing that interconnection requests may be deemed withdrawn if interconnection customers fail to adhere to the requirements of the LGIP).

not reflect that conducting a cluster study will be, in aggregate, more burdensome, let alone significantly more burdensome, than conducting a study of each interconnection request on an individualized basis. Moreover, balancing this concern regarding the burdens associated with cluster studies against interconnection customers' need for timely processing of their requests, interconnection queue backlogs, and the unjust and unreasonable rates resulting from such backlogs, we conclude that this is a necessary reform in order to improve the timeliness of interconnection study processing and should be within transmission providers' capabilities.[559]

321. Data reported as required by Order No. 845 by the non-RTO/ISO transmission providers that conducted cluster studies in 2022 also supports our conclusion that the deadlines for conducting cluster studies, restudies, and facilities studies are just and reasonable.[560] While the approaches of each transmission provider to conducting cluster studies vary and no transmission provider represented in this data employs precisely the *pro forma* study approach set forth in Order No. 2023, we find that this data provides a valid basis of comparison to assess the deadlines set in Order No. 2023. In general, this represents the most recent data set available at the time the record closed and these transmission providers' approach to cluster studies reflect some of the key substantive reforms required in Order No. 2023.[561]

322. The data reflects that five (of eight) such transmission providers were able, applying a cluster study approach, to complete system impact studies in an average of fewer than 150 days. In several cases, they did so for clusters containing significant numbers of interconnection requests. Thus, the experience of these transmission providers supports that it is reasonably feasible to complete cluster studies in the timeframe specified by Order No. 2023. Particularly given the other reforms provided in Order No. 2023 to increase the efficiency of this process, the ability of transmission providers to increase efficiency and devote more resources to this process, and the need to ensure timely processing of interconnection studies in order to ensure just and reasonable rates, this data supports our conclusion that the deadlines set by Order No. 2023 to complete such studies are just and reasonable.

323. We acknowledge that three of the transmission providers represented in this data exceeded this timeframe, in some cases by a substantial amount. This, however, does not rebut the evidence from other transmission providers that these deadlines are reasonably achievable. Moreover, that these transmission providers did not complete their studies in fewer than 150 days, operating under a regime governed by the reasonable efforts standard and the ability to self-extend such deadlines, does not demonstrate that they could not have done so if appropriately incentivized to meet these performance standards, as under the deadline and penalty structure adopted in Order No. 2023.[562]

324. We also find that the safeguards provided in Order No. 2023 help ensure that the balance struck by Order No. 2023 in setting the timeframes for the *pro forma* interconnection study process is reasonable because transmission providers will not unduly incur penalties for failing to meet these timeframes. Two of those safeguards, namely the ten-business day grace period and the potential availability of a 30-day extension upon agreement of the interconnection customers in the cluster study,[563] help accommodate the possible need for extensions to study deadlines. The significant transition period that the Commission afforded before study delay penalties might be assessed allows transmission providers ''time to adapt to the new processes'' and ''will help ensure that transmission providers' implementation of this final rule has begun to reduce backlogged interconnection queues.'' [564] The appeals process allows transmission providers the opportunity to demonstrate that, under their individualized circumstances, they should receive relief from the application of penalties for failing to meet the deadlines set in Order No. 2023.[565] To the extent that transmission providers assert that factors allegedly outside of their control may render it difficult or infeasible to meet the interconnection study deadlines, this appeals process is the avenue to raise those considerations in particular cases and seek relief.[566] Moreover, as addressed above, where transmission providers conclude that the 150-day deadline for the *pro forma* study process is not appropriate for their particular study processes, they can raise this issue in their compliance filings, under the appropriate standard. Thus, we continue to conclude that the deadlines imposed by Order No. 2023 are reasonable as to the *pro forma* LGIP approach to interconnection studies set forth therein.

325. The challenges on rehearing arguing that the timeframes set forth to conduct interconnection studies are too short or inappropriately uniform do not persuade us that these deadlines are not reasonable for the timely completion of the *pro forma* study process. We disagree with arguments that the Commission failed to adequately set forth its rationale for adopting these deadlines, and find that our reasons for adopting these deadlines have been adequately explained, including through our discussion herein. Arguments that the deadlines are too short are largely conclusory, do not support a finding that the deadlines set for the *pro forma* LGIP processes are not generally achievable as to those processes, and fail to establish that these deadlines—in light of the overall structure of Order No. 2023, including the relevant safeguards and ability to seek variations—reflect an unreasonable balance of the competing interests.

326. We are unpersuaded by arguments that uniform study deadlines are inappropriate. First, these arguments disregard the mechanisms in Order No. 2023 to account for variability, including the safeguards attendant to the potential assessment of penalties and the ability to seek variations from the *pro forma* LGIP in the compliance process. Second, general assertions that some transmission providers may have higher workloads than others do not establish that the relevant deadlines will not, as a general matter, be sufficient to allow most transmission providers to conduct the relevant studies. Third, to the extent that some transmission

[559] Order No. 2023, 184 FERC ¶ 61,054 at P 1007.

[560] *See* app. B.

[561] Moreover, that several transmission providers with somewhat variable approaches to cluster studies completed system impact studies in fewer than 150 days, on average, corroborates that—in general—it is possible to conduct such studies on this time frame.

[562] *See, e.g., Cent. Hudson,* 783 F.3d at 109 (holding that the Commission may permissibly rely on economic theory so long as it has applied the relevant economic principles in a reasonable manner and adequately explained its reasoning); *Sacramento,* 616 F.3d at 531 (''[I]t was perfectly legitimate for the Commission to base its findings about the benefits of marginal loss charges on basic economic theory, given that it explained and applied the relevant economic principles in a reasonable manner.'').

[563] *See* Order No. 2023, 184 FERC ¶ 61,054 at PP 963, 981–83; *see also infra* P 335 (recognizing that the 30-day extension is not guaranteed in all cases but disagreeing with claims that it will be ineffective in practice).

[564] Order No. 2023, 184 FERC ¶ 61,054 at P 979.

[565] *Id.* PP 987–89.

[566] *See also infra* P 363 (noting that concerns that transmission providers may not be afforded relief in the appeals process, where they believe such relief would be warranted, are premature).

providers have higher workloads associated with interconnection requests than other providers, the deadlines in Order No. 2023 incentivize those transmission providers to devote resources commensurate with those workloads to the timely processing of the interconnection requests in their queue. On that point, it bears repeating that the Commission has determined that the *status quo* is leading to unjust and unreasonable rates. As such, while the reforms in Order No. 2023 may require transmission providers to reprioritize their allocation of resources, we find that such reallocation may be necessary to satisfy the statutory mandate.

327. In response to arguments that the Commission ignored the uneven and unpredictable timing of interconnection requests, we conclude that Order No. 2023 adequately accounts for these considerations. First, interconnection requests will be submitted during an annual cluster request window, which is a 45-calendar day period with the start date to be determined by each transmission provider: under this structure, the timing of interconnection requests will not be unpredictable.[567] Second, we acknowledge that the number of interconnection requests submitted in a given cluster request window is unpredictable and impacts the deployment of resources that may be required to complete that cluster of interconnection studies.[568] However, we continue to find that it is necessary for transmission providers to have explicit and firm deadlines prescribed by their tariffs to ensure customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner.[569] These deadlines, subject to the safeguards articulated in Order No. 2023 (including the appeals process), represent a just and reasonable approach that balances the competing interests of transmission providers and other entities, and should be reasonably achievable for the *pro forma* study approach adopted in Order No. 2023. And as noted above, Order No. 2023 does not foreclose transmission providers from proposing different deadlines as part of their compliance filings and supporting such proposals using either the consistent with or superior to or independent entity variation standard, as appropriate.

328. NYISO specifically asserts that the 150-day deadline for completing cluster studies is not adequate to accommodate NYISO's process.[570] In support, it introduces a new affidavit describing NYISO's performance of interconnection studies, and the timing associated with the relevant tasks.[571] Acknowledging that the Commission does not typically consider new evidence on rehearing, NYISO asserts that the Nguyen Affidavit is not new evidence because it ''provides clarifying details regarding publicly available information about the NYISO's Commission-approved interconnection procedures that the NYISO has already described in this proceeding.'' [572] It further claims that, even if the Nguyen Affidavit constitutes new evidence, the Commission should accept it to because NYISO could not have reasonably anticipated certain alleged factual misunderstandings regarding the interconnection study process, the potential benefits of interconnection studies, and the level of collaboration required to complete studies in New York in Order No. 2023.

329. We are not persuaded that the Nguyen Affidavit is properly before us. To the extent that the Nguyen Affidavit contains material not otherwise present in the record, it is new evidence. And NYISO has not shown that the evidence in this affidavit could not have been presented previously; this affidavit is not prompted by information that only recently became available or concerns driven by a material change in circumstance.[573] Indeed, NYISO's argument that the Commission should consider this evidence is, essentially, that it believes the Commission erred [574] but—if so—NYISO's proper recourse would be to demonstrate that purported error based on the existing record.

330. Regardless, we would not be persuaded by NYISO's arguments even if we were to consider the Nguyen Affidavit in assessing them. The question before the Commission in establishing the deadlines for the *pro forma* study process set forth in Order No. 2023 is whether those deadlines are reasonable as applied to that process. NYISO's argument does not address this question. Rather, NYISO's position is that the 150-day timeframe is not sufficient for NYISO's specific interconnection process, which it has adopted under the independent entity variation standard and which differs significantly from the process specified in Order No. 2023.[575] NYISO itself obliquely recognizes this point, asserting that ''NYISO anticipates that it will seek an independent entity variation from this study timeframe to better align with the study scope it will propose for the unique interconnection issues in New York.'' [576] As noted above, we will consider such arguments in individual transmission provider compliance proceedings.

331. NYISO more generally asserts that the efficiencies associated with a cluster study approach that the Commission identified in Order No. 2023 may be offset by increased volumes of interconnection requests that might participate in each cluster study.[577] NYISO further claims that additional financial requirements to enter the interconnection queue have not, in its experience, materially decreased the number of projects entering the queue.[578] Similarly,

[567] Order No. 2023, 184 FERC ¶ 61,054 at PP 223, 236.

[568] *Cf. id.* P 324 (''We note that depending on the cluster size, cluster studies may not always consume the entire 150 calendar days, and if a cluster study is complete prior to this deadline, transmission providers have flexibility to provide the cluster study report at that time prior to the deadline indicated in its LGIP[.]'')

[569] *Id.* P 331.

[570] *See* NYISO Rehearing Request at 5–6 (arguing that the Commission has not established a basis for the 150-day deadline for cluster studies and should allow each transmission provider to propose its own study deadline); *id.* at 6–12 (arguing that a 150-day study timeframe is not consistent the process NYISO follows).

[571] *See id.,* attach. I (Nguyen Aff.).

[572] NYISO Rehearing Request at 7 n.15; *see also NRG Power Mktg., LLC* v. *FERC,* 862 F.3d 108, 116–17 (D.C. Cir. 2017) (citing *PJM Interconnection, L.L.C.,* 108 FERC ¶ 61,187, at P 49 (2004) (''Parties seeking rehearing of Commission orders are not permitted to include additional evidence in support of their position, particularly when such evidence is available at the time of the initial filing.''); *NO Gas Pipeline* v. *FERC,* 756 F.3d 764, 770 (D.C. Cir. 2014) (*NO Gas*) (''FERC regularly rejects requests for rehearing that raise issues not previously presented where there is no showing that the issue is 'based on matters not available for consideration . . . at the time of the final decision.' '').

[573] *See* 18 CFR 713.385(c)(3); *Pub. Ser. Co. of N.M.,* 181 FERC ¶ 61,013, at P 12 & n.25 (2022).

[574] We also disagree with NYISO's generalized assertion that the Commission misunderstood the interconnection study process, the benefits of such studies, or the level of collaboration involved in such studies.

[575] *See, e.g.,* NYISO Rehearing Request at 6–11; NYISO Initial Comments at 2–3 (''Among the significant variations, the NYISO already uses a first-ready, first served approach for managing projects in its interconnection queue and uses a cluster Class Year Study as the final, hallmark study in its LFIP.''); NYISO Initial Comments, app. A at 1 (explaining that ''NYISO's interconnection procedures include numerous independent-entity variations accepted by the Commission that are specifically tailored to the distinct circumstances in New York and the NYISO's wholesale market rules and planning processes.''); National Grid Initial Comments at 13–14 (discussing the NYISO ''Class Year Study'' approach and asserting that 150 days may not be sufficient for this process).

[576] NYISO Rehearing Request at 4.

[577] *Id.* at 12–14.

[578] *Id.* at 14–15 (stating that increasing study deposits and adding regulatory milestone deposits has not resulted in a corresponding decrease in projects entering the queue; also citing MISO's July 19, 2023, proposal to impose more stringent entry requirements); *see also* PJM Rehearing Request at 32 (asserting that MISO received more than 960

Continued

Avangrid claims that there is insufficient evidence that the easing of burdens on transmission providers, under Order No. 2023's reforms, will be adequate to justify the deadlines imposed by Order No. 2023.[579]

332. These arguments do not persuade us that the *pro forma* deadlines selected in Order No. 2023 for the conduct of interconnection studies are not just and reasonable. Neither NYISO nor Avangrid disputes that there will be efficiency gains from transitioning to cluster studies, which was a reform broadly supported by commenters. We further expect that the more stringent requirements to enter the interconnection queue set forth in Order No. 2023, including but not limited to financial requirements,[580] will help reduce speculative interconnection requests. To the extent that volumes of interconnection requests remain high, this counsels in favor of—not against—ensuring that that transmission providers exercise the control they have over the process to help ensure interconnection studies proceed more expeditiously. As discussed, these reforms are necessary to ensure the timely processing of interconnection requests and thereby remedy the problem of unjust and unreasonable rates resulting from queue delays and backlogs.

333. Indicated PJM TOs rely on a non-sequitur in claiming that the existence of widespread study delays in 2022 is evidence that the deadlines set in Order No. 2023 are ''inherently unreasonable.'' [581] The mere existence of past study delays, under a standard that allowed transmission providers significant discretion to extend those deadlines, does not show that any given set of deadlines to perform studies are unachievable or unreasonable.[582] It particularly does not demonstrate that the deadlines for the specific *pro forma* LGIP process set forth in Order No. 2023, with the accompanying reforms to improve efficiency, are not reasonable.[583]

334. Dominion, MISO TOs, and NYISO assert that the ability to extend a study deadline for 30 days by mutual agreement of the transmission provider and all interconnection customers with interconnection requests in the relevant study will not be effective in practice.[584] They contend that interconnection customers lack incentives to agree to such an extension, particularly given that they will be the beneficiaries of any assessed penalty, and that it will be particularly infeasible to secure agreement from all interconnection customers to such an extension.

335. We are not persuaded by speculation that interconnection customers will adopt an unreasonably adversarial approach to requests for modest extensions to study deadlines. The interconnection process is one that, by its nature, tends to require cooperation and collaboration, and all parties have a continuing interest in this process functioning smoothly.[585] Moreover, because interconnection customers have a particular interest in reliable interconnection studies, interconnection customers are not well served by refusing to accede to a transmission provider's reasonable request for an extension that is necessary, particularly in light of unique circumstances, to ensure accurate study results.[586] Likewise, there may be circumstances in which a modest extension of a cluster study would save time, for all interconnection customers in a study, for example by helping reduce the need for a restudy.[587] The prospect that interconnection customers may receive penalties for late studies is not likely to override this need for collaboration and cooperation, particularly given that any award of penalties to interconnection customers is uncertain (given the availability of an appeal) and any such penalties will be split among all interconnection customers involved in the study. Moreover, this 30-day extension is just one safeguard among several, to extend deadlines that we generally conclude should be achievable on their own terms, such that we would still reach the same result even if invocation of this safeguard turns out to be uncommon in practice.

336. NYISO challenges the 10 day grace period, under which no penalties would be assessed for a study delayed by no more than 10 business days, claiming that this grace period does not provide meaningful relief to transmission providers that will study large numbers of interconnection requests.[588] This challenge is not persuasive. The grace period is one component of the penalty structure—and, again, one safeguard among several—through which Order No. 2023 strikes an appropriate balance between

requests following the close of its 2022 Definitive Planning Process cycle that closed in 2022).

[579] Avangrid Rehearing Request at 12.

[580] NYISO discusses the effects of increased deposits, but Order No. 2023 also imposed site control requirements and withdrawal penalties that we expect will also deter speculative interconnection requests. Moreover, the MISO PowerPoint presentation that NYISO cites is best understood as reflecting MISO's view that more stringent queue requirements will help reduce speculative interconnection requests. *See* MISO Presentation, Generator Interconnection Queue Improvements, Planning Advisory Committee (July 19, 2023), *https://cdn.misoenergy.org/20230719%20PAC%20Item%2006%20GI%20Queue%20Improvements%20Proposal629634.pdf* (proposing to increase such requirements and referring to its current tariff rules as incentivizing speculative projects because they require a ''small financial commitment'' and have ''ineffective withdrawal rules'' that allow withdrawn requests ''to get most of their money back, with interest, due to lack of penalties'').

[581] Indicated PJM TOs Rehearing Request at 30.

[582] Indeed, this is a one-size-fits-all argument that could be directed toward essentially any effort to impose an interconnection study deadline as a means of expediting the study process.

[583] Indicated PJM TOs also cite new NERC standards that may require additional study elements, broadly claiming that this will add to transmission providers' workloads, Indicated PJM TOs Rehearing Request at 30–31, but do not explain why any additional workload associated with these standards would render the deadlines set in Order No. 2023 unjust and unreasonable.

[584] Dominion Rehearing Request at 24; MISO TOs Rehearing Request at 18–19; NYISO Rehearing Request at 35.

[585] *See, e.g.,* EEI Initial Comments at 16 (describing the interconnection study process as benefitting from collaboration, in which transmission providers ''work with project developers as they refine their requests, redesign projects, or modify study parameters for optimum results''); Eversource Initial Comments at 25 (similarly describing interconnection as a collaborative process between the interconnection customer and transmission provider); Indicated PJM TOs Rehearing Request at 37 (describing the ''cooperative engagement'' between transmission owners and interconnection customers and providing examples of such collaboration to resolve issues arising in the study process).

[586] *See, e.g.,* Order No. 2023, 184 FERC ¶ 61,054 at P 30 (noting that the ''vast majority of commenters overwhelmingly agree'' that reform of the Commission's *pro forma* interconnection procedures and agreements is necessary ''to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner''); MISO Initial Comments at 78 (''Errors or omissions discovered later may drive the need for a restudy, causing unscheduled surprises for Interconnection Customers who have already made decisions based on the results of a rushed study.''); SPP Initial Comments at 12 (''Interconnection Customers have expressed to SPP that timely results that are inaccurate are useless and that it is imperative that they be able to rely on study results to make sound business decisions.''); *cf.* Order No. 2023, 184 FERC ¶ 61,054 at P 1007 (rejecting arguments that imposing study deadlines and penalties will necessarily reduce study accuracy).

[587] In addition, any such extension would be time-limited and transparent, allowing interconnection customers to better plan around such extensions as compared to ad hoc self-extensions under the reasonable efforts standard. *Cf.* Fervo Reply Comments at 7–8 (explaining that under the status quo with the reasonable efforts standard, interconnection customers face uncertainty, which imposes barriers to entry); NARUC Initial Comments at 14 (explaining that missed deadlines create uncertainty in bringing new generation online); SEIA Initial Comments at 32 (noting that backlogs deprive developers of needed business certainty, which can lead to issues like losing site control rights and financing).

[588] NYISO Rehearing Request at 35 (arguing also that the grace period should not be uniform given variability in study workloads and challenges to the study deadlines themselves).

creating an incentive for transmission providers to help ensure that interconnection studies are completed in a timely fashion, while not being punitive. Specifically, the grace period, in particular, provides a ''level of flexibility for transmission providers to address unforeseen circumstances or complexities that arise in the study process,'' [589] which may necessitate modest delays. This grace period was not intended to provide an automatic, lengthy extension to the study deadlines.

337. Likewise, the longer transition period the Commission adopted does not, as NYISO claims, simply ''postpone[ ] the RTO/ISO penalty cost recovery problem.'' [590] Rather, the transition period [591] is another measure to ensure that the structure adopted in Order No. 2023 provides incentives that are appropriate, but fair. The transition period allows time for transmission providers to address and adapt to the requirements of Order No. 2023, reduce backlogs, and address other issues (which may include, for example, FPA section 205 filings to address RTO/ISO penalty cost recovery).[592] The transition process will thus help ensure that the standards for timeliness set by Order No. 2023 are reasonably achievable before penalties are assessed. Neither of NYISO's arguments regarding the ten-day grace period or the transition period demonstrates any defect in Order No. 2023's deadline and penalty structure.

ii. Reasonableness of the Study Delay Penalty and Appeal Structure

(a) Requests for Rehearing

338. Many of the rehearing requests state that Order No. 2023 assigns penalties to transmission providers without an assessment of fault, as a ''strict liability'' matter, until they demonstrate their lack of fault through the appeals process.[593] These rehearing requests variously contend that this is unjust and unreasonable, arbitrary and capricious, unsupported by substantial evidence, inequitable, and/or offends due process. Many of them object to this framework as placing the burden on the transmission provider or transmission owner to demonstrate an entitlement to relief from the assessed penalty.

339. Avangrid argues that the Commission has deemed transmission providers who fail to meet the deadlines set forth in Order No. 2023 guilty unless they can prove their innocence and thereby denies transmission providers and transmission owners due process.[594] Avangrid argues that the appeals process is inequitable because it does not ensure exoneration where a transmission provider is not at fault, such as in the case of *force majeure*.[595] Avangrid further asserts that the lack of clarity concerning when relief will be granted violates the fair notice doctrine and renders the appeals process unjust and unreasonable.

340. Indicated PJM TOs argue that the imposition of penalties subject to an appeal mechanism applying a good cause standard contravenes due process requirements.[596] They assert that it is not clear how the appeals process would apply to transmission owners seeking relief from a penalty after an RTO or ISO has determined that the transmission owner is responsible for some or all of the penalty.[597] Indicated PJM TOs claim that an RTO/ISO assignment of a penalty cannot receive deference in a proceeding where a transmission owner seeks relief from a penalty.[598]

341. MISO TOs argue that the Commission erred in creating a ''no-fault, strict liability regime'' whereas tort law reflects that strict liability is only warranted in circumstances involving very dangerous activities, such as product liability for harm caused.[599] MISO TOs also claim that the penalty and appeals structure conflicts with Commission penalty procedures in enforcement cases by imposing a penalty automatically unless the transmission provider pursues an appeal, resulting in a deprivation of due process. They further contend that the appeals process is lacking in detail and fails to address these concerns because it puts the onus on the transmission provider to appeal penalties—which the Commission does not review *de novo*—and requires transmission providers to expend resources to seek relief for penalties caused by the actions of others.[600]

342. PacifiCorp claims that ''[t]he assessment of a civil penalty before any agency adjudication is made violates the due process clause of the Fifth Amendment to the U.S. Constitution.'' [601] PacifiCorp also objects that the transmission provider has the burden to show ''good cause'' and that the Commission suggested that ''if the transmission provider offers proof that it did not cause the study delay at issue, that is only 'potentially' exculpatory.'' [602] PacifiCorp further contends that Order No. 2023 lacks a cogent explanation of the showing necessary to avoid a penalty, which offends due process requirements and renders the appeal a moving target.[603]

343. NYISO contends that the appeals process wrongly places the burden on RTOs/ISOs to demonstrate that they are not at fault, when there are good reasons to anticipate that RTOs/ISO will not actually be responsible for many study delays.[604] Moreover, NYISO asserts that, while the Commission has set forth certain factors it will consider, it does

[589] Order No. 2023, 184 FERC ¶ 61,054 at P 981.

[590] NYISO Rehearing Request at 37.

[591] Under the transition process, in Order No. 2023, the Commission specified that transmission providers already using a cluster study process will not be subject to penalties until the third cluster study cycle after the transmission providers' compliance filing becomes effective. Order No. 2023, 184 FERC ¶ 61,054 at P 980.

[592] *Id.* PP 979–80.

[593] *See, e.g.,* MISO TOs Rehearing Request at 27–29; NYISO Rehearing Request at 29–30 (arguing that ''[t]he Commission may not reasonably presume that RTOs/ISOs should be penalized at the same time that it recognizes that overwhelming record evidence demonstrates that other parties will often be solely or substantially responsible for delays'' and that RTO/ISO interconnection metrics compliance reports under Order No. 845 are specific evidence of how a variety of complex and interactive factors can cause study delays); NYTOs Rehearing Request at 11–12, 23 (citing factors that may drive delays due to following Good Utility Practice; asserting that only if the variables outside of a transmission provider's control are removed can the Commission have a sufficient evidentiary basis to determine the reasonable efforts standard is unjust and unreasonable); PacifiCorp Rehearing Request at 8–9.

[594] Avangrid Rehearing Request at 12–13.

[595] *Id.* at 15.

[596] Indicated PJM TOs Rehearing Request at 23.

[597] *Id.* at 23–24 (arguing that it is ''not clear whether the Commission intends to impose the burden of proof on transmission owners to demonstrate that the assignment of costs by the transmission provider was unreasonable'' or whether transmission owners can show good cause by showing that the transmission provider or another entity caused the delay).

[598] *Id.* at 24 (arguing that the appeals process must be conducted *de novo*); *see also id.* at 24–25 (asserting that the other safeguards to the imposition of penalties that the Commission adopted in Order No. 2023 are inadequate to alleviate these concerns).

[599] MISO TOs Rehearing Request at 31–32 (citing *Acosta Orellana* v. *CropLife Int'l,* 711 F. Supp. 2d 81, 105 (D.D.C. 2010)).

[600] *Id.* at 34–36 (arguing that this inappropriately shifts the Commission's burden to prove a violation to the transmission provider to disprove it and asserting that it is not clear under what statutory provision, or under what authority, the penalty appeal will be conducted).

[601] PacifiCorp Rehearing Request at 8–9; *see also id.* at 4–5 (''The Final Rule violates the due process clause of the Fifth Amendment to the U.S. Constitution by assessing penalties with no development of a factual record about whether the transmission provider did anything wrong.'').

[602] *Id.* at 9 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 993).

[603] *Id.* (asserting that the Commission has well-established standards for tariff waivers but has not been clear that the traditional waiver standards apply).

[604] NYISO Rehearing Request at 32–33 (noting that due process requirements dictate fair and proportionate penalties, rather than excessively punitive penalties) (citing *Enf't of Statutes, Ords., Rules & Reguls.,* 132 FERC ¶ 61,216, at P 222 (2008); *Enf't of Statutes, Reguls. & Ords.,* 123 FERC ¶ 61,156, at PP 50–71 (2008)).

not provide guidance as to what exactly a transmission provider must do to establish good cause for relief.[605]

344. WIRES states that the penalty structure adopted by Order No. 2023 is not just and reasonable because it is a strict liability approach that sanctions transmission providers for missing deadlines for reasons beyond the control of those providers.[606] WIRES asserts that strict liability for penalties can only reasonably be imposed if transmission providers have full control over the interconnection study process, but the Commission has acknowledged that this is not the case.[607]

345. NYTOs argue that the deadline and penalty structure, with the right to seek relief through an appeal, is vague and impermissibly presumes fault without conducting a *de novo* review of whether a penalty is warranted.[608] NYTOs claim that, in Order No. 2023, the Commission has reserved its discretion to uphold a penalty even in the absence of substantial evidence that a sanctioned transmission provider was at fault, and that the Commission will grant whatever relief it determines is appropriate.[609]

346. PJM argues that the Commission failed to adequately explain its refusal to adopt a structure in which transmission providers incur penalties only where a study delay is due to a factor that can be conclusively demonstrated to be within a transmission provider's control, and that it failed to show that this approach was consistent with due process.[610] PJM asserts that the appeals process is not just and reasonable and violates the constitutional guarantee of due process if it only provides due process ''to some extent.'' [611] PJM argues that ''[i]f a transmission provider knows it will be penalized for *any* delay in interconnection studies regardless of its role in the delays, and will have to appeal that penalty and demonstrate that the penalty imposed on it should not be assessed, *i.e.,* that it is guilty until it can prove its innocence, it might reasonably ask what deterrence or incentive purpose the penalty actually serves.'' [612]

347. Certain of the rehearing requests also assert that the appeals process set forth in Order No. 2023 is too vaguely defined. Avangrid refers to the appeal as a ''vaguely-defined waiver process.'' [613] MISO TOs assert that ''the appeals process is rife with ambiguity, making it unworkable and overly time-consuming'' and lacks detail on the process for an appeal, including the form and forum, whether interventions will be permitted, whether discovery will be allowed, and under what statutory provision the appeal is conducted.[614] NYISO asserts that the Commission did not indicate whether it would use fact-finding neutrals, paper hearing procedures, or some other method to conduct appeals of penalties, or how appeals would be further reviewed on rehearing or under the APA.[615] NYTOs state that the Commission failed to explain how the process will work, including whether—in assessing good cause—the Commission will apply the standard applicable to tariff waivers, the burdens of proof, how genuine issues of material fact will be adjudicated, clear standards for granting relief, and the parameters of the appeals process.[616]

348. A number of the rehearing requests assert that the Commission should have adopted exceptions to the assessment of penalties for failure to meet the required deadlines. Several of these rehearing requests challenge the Commission's decision not to provide an exception to such penalties for circumstances involving *force majeure*.[617] PacifiCorp argues, more broadly, that because study delays are often driven by third parties or factors beyond the control of transmission providers, the Commission should have adopted self-effectuating exemptions for study delays that are outside of a transmission provider's control.[618] In support, PacifiCorp contends that failing to provide such exemptions ''(1) ignores the frequency at which delays are caused by third parties and; (2) mistakenly assumes: (a) transmission providers can take actions to mitigate delays caused by third parties, and (b) it is prudent for transmission providers to increase expenditures in an effort to offset causes for delays that are outside of their control.'' [619]

349. Indicated PJM TOs and NYTOs also take issue with the Commission's statement that appeals of penalties for missing study deadlines ''should not be filed under FPA section 206.'' [620] Indicated PJM TOs assert that, to the extent that the Commission intends to withhold the right to seek relief under FPA section 206, ''[t]he Commission cannot deprive any aggrieved party of the right to file a complaint under FPA section 206'' [621] or limit the scope of such challenges.[622] NYTOs state that ''the appeals process specified by the Order, which requires appeals to be

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[605] *Id.* at 33–34 (claiming that the burden will be ''unreasonably heavy'' given that the Commission decided not to adopt a structure providing for penalties only when a factor causing delay can conclusively be determined to be within a transmission provider's control).

[606] WIRES Rehearing Request at 6–7.

[607] *Id.* (arguing that penalties cannot reduce delays that occur for reasons beyond the transmission providers' control).

[608] NYTOs Rehearing Request at 12–13.

[609] *Id.* at 12; *see also id.* at 27 (asserting that Order No. 2023 does not confirm that transmission providers will not be penalized when a delay is not their fault, and that the cost of an appeal may cause transmission providers to accede to minor penalties).

[610] PJM Rehearing Request at 31 (arguing that the Commission has recognized the need to protect due process rights in other instances; citing *Enf't of Statutes, Reguls. & Ords.,* 123 FERC ¶ 61,156 at PP 40, 51; 16 U.S.C. 825o–1).

[611] *Id.* (asserting that Order No. 2023 stated that ''details such as whether the penalized transmission provider actually is responsible for the study delay are 'addressed to some extent through the ability to appeal.' '' (quoting Order No. 2023, 184 FERC ¶ 61,054 at P 989)).

[612] *Id.* at 31–32.

[613] Avangrid Rehearing Request at 12–13.

[614] MISO TOs Rehearing Request at 35–36.

[615] NYISO Rehearing Request at 33–34.

[616] NYTOs Rehearing Request at 24–25 & n.67 (asserting that courts have found that due process requires hearing procedures for the adjudication of genuine disputes of material fact; arguing that the ''good cause'' standard is a novel ratemaking standard that the Commission fails to justify).

[617] *See* Avangrid Rehearing Request at 15 (arguing that the appeals process is inequitable because it does not ensure exoneration where a transmission provider is not at fault, such as in the case of *force majeure* or where the delay may be due to multiple factors); EEI Rehearing Request at 8 (arguing that the Commission failed to provide an exception for *force majeure,* which has a specific definition in the *pro forma* LGIP and *pro forma* LGIA reflecting circumstances beyond a parties' control, and asserting that where a transmission provider has declared *force majeure* assessing a penalty and requiring an appeal is an unnecessary burden and will take time away from completing pending studies); NYISO Rehearing Request at 37–38 (arguing that the Commission erroneously failed to adopt the *force majeure* exception given the purported flaws associated with the appeals process); NYTOs Rehearing Request at 27 (requesting clarification on this point); PJM Rehearing Request at 31–32 (''Moreover, the Final Rule fails to explain how removing *force majeure* as a reason penalties would not apply and refusing to impose penalties 'only where a factor can be conclusively demonstrated to be within a transmission provider's control' is logical'').

[618] PacifiCorp Rehearing Request at 13–15 (''Transmission providers therefore should not: (1) be penalized if, as portrayed in the example above, it takes more than 150 Calendar Days to complete as the study due to responding to such interconnection customer actions; or (2) expend resources and effort to submit an appeal when the transmission provider is prudently incorporating changes from one or more interconnection customers . . . .'').

[619] *Id.* at 15.

[620] Indicated PJM TOs Rehearing Request at 26 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 987 n.1911); NYTOs Rehearing Request at 23.

[621] Indicated PJM TOs Rehearing Request at 26 (citing *Papago Tribal Util. Auth.* v. *FERC,* 723 F.2d 950, 953 (D.C. Cir. 1983) (noting the Commission's ''indefeasible right . . . under [FPA section] 206 to replace rates that are contrary to the public interest''); *Me. Pub. Util. Comm'n* v. *FERC,* 454 F.3d 278, 283 (D.C. Cir. 2006) (same)).

[622] *Id.* (''The scope of a challenge could not be limited by the factors the Commission identified as affecting a ''good cause'' determination, nor could it be limited to whether the transmission owner caused or contributed to the study delay.'').

pursued under the Commission's procedural rules and not under section 206, effectively imposes a mandatory waiver of transmission providers' statutory rights, which is contrary to law.'' [623]

350. Many of the rehearing requests argue that replacing the reasonable efforts standard with the deadline and penalty structure set forth in Order No. 2023 will have negative, unintended consequences. Avangrid contends that this structure will result in transmission providers focusing on ''processing speed and 'checking the boxes' specified in Order No. 2023 over providing flexibility and collaboration with interconnecting generators on challenging issues unique to their situations.'' [624] Indicated PJM TOs add that this structure will divert attention from optimal system planning.[625] MISO TOs and SPP emphasize that interconnection studies must be conducted with precision to avoid inefficiency or costly mistakes.[626] NYISO argues that this structure will incentivize transmission providers to prioritize meeting deadlines over ensuring the quality and completeness of studies and that inferior studies conducted under time pressure could lead to suboptimal results or negatively impact reliability.[627] WIRES further asserts that this structure will require transmission providers to take a more rigid approach to managing the interconnection queue, reducing flexibility to allow interconnection customers to redesign projects or modify their requests, and inhibit efforts to streamline the interconnection process.[628]

351. Certain rehearing requests assert that the deadline and penalty structure in Order No. 2023 will foster a combative atmosphere and discord, potentially leading to delays. Avangrid asserts that this structure incentivizes transmission providers to no longer use reasonable efforts to work with interconnection customers to fulfill the completeness of their application information and improve effectiveness, but instead declare interconnection customers in breach for delays and remove them from the interconnection process.[629] PJM asserts that the Commission failed to address arguments that this structure would undermine collaboration, with RTOs and transmission owners instead focusing on the need to simply protect against legal exposure.[630] Indicated PJM TOs assert that this structure will lead to acrimony—particularly in the regions where the interconnection queues are the longest—that will counter any efficiency gains.[631] SPP similarly argues that Order No. 2023 leaves open the question of how transmission providers would recover study delay penalties assessed to them, and could erode the working relationship of RTOs and the transmission owners in their footprint.[632]

352. Several of the rehearing requests argue that the deadline and penalty structure will create administrative or other burdens on transmission providers, which may be counterproductive because it will consume the same resources that would otherwise be used to perform interconnection studies. AEP argues that study delay penalties will overcomplicate the interconnection process and increase litigation, administrative burden, and costs.[633] MISO TOs, PacifiCorp, and SPP claim that imposing penalties on transmission providers will make it more difficult to complete studies in a timely fashion because such penalties will deprive them of funds that could be used for qualified engineering personnel, and pursuing an appeal will create administrative burdens.[634] PJM claims that the Commission failed to address difficulties in assigning fault for delays, which will likely lead to litigation.[635] PJM also argues that the penalty structure will add time consuming study and reporting requirements, including administration to track study metrics, pursue penalty appeals, and collect and disburse penalty amounts. Indicated PJM TOs assert that the burdens imposed by the deadline and penalty structure will further strain already scarce utility resources, given other industry trends that will likely increase transmission providers' workloads.[636]

353. Indicated PJM TOs also note that managing new study deadlines by deploying additional resources will come at a cost to transmission providers.[637] Indicated PJM TOs contend that the Commission failed to consider the extent of such costs and their impacts in Order No. 2023. Indicated PJM TOs also argue that the Commission failed to respond to the argument that the NOPR misrepresented statements by Utah Public Service Commission Chairman LeVar as providing support for study delay penalties.

354. Indicated PJM TOs and NYTOs assert that Order No. 2023's deadline and penalty structure will negatively affect transmission providers' own efforts at reforming the interconnection process.[638] Indicated PJM TOs claim that imposing this structure on regions that have already adopted cluster-study processes, but chose to retain the reasonable efforts standard, sends the message that their efforts to reach consensus as to appropriate reforms do not matter.[639] NYTOs assert that strictly enforcing deadlines and penalties, without exceptions, will hinder ongoing regional queue reform efforts, perhaps stifling innovation and necessary

[623] NYTOs Rehearing Request at 23 (citing *Atl. City Elec. Co.* v. *FERC,* 295 F.3d 1, 10 (D.C. Cir. 2002) (*Atl. City I*)); *see also id.* at 13.

[624] Avangrid Rehearing Request at 13.

[625] Indicated PJM TOs Rehearing Request at 34–37 (asserting that transmission providers have no incentive to delay interconnection studies and that it is ''is poor policy on the part of the Commission to confront transmission planners with the potential option of either avoiding concrete penalties associated with a strict arbitrary deadline or taking more time to ensure that a study is complete and comprehensive'' and noting the shortage of qualified engineers).

[626] MISO TOs Rehearing Request at 10, 16–17; SPP Rehearing Request at 6, 8–9 (discussing examples of the consequences of inaccurate or suboptimal studies).

[627] NYISO Rehearing Request at 27–29 (arguing that the Commission failed to provide a reasoned response to these concerns, but instead dismissed them by asserting transmission providers can increase timely study processing without necessarily facing such tradeoffs); *see also id.* at 19 (arguing that this problem is particularly acute for NYISO ''because New York State is pursuing what is arguably the most ambitious clean energy agenda in the country,'' driving high volumes of interconnection requests and that New York City also presents the most complex reliability challenges in the country).

[628] WIRES Rehearing Request at 7–8.

[629] Avangrid Rehearing Request at 14–15.

[630] PJM Rehearing Request at 32–33.

[631] Indicated PJM TOs Rehearing Request at 37–38.

[632] SPP Rehearing Request at 8.

[633] AEP Rehearing Request at 28–29.

[634] MISO TOs Rehearing Request at 17–18 (noting also the shortage of qualified personnel and that the Commission did not point to evidence of better software that would allow transmission providers to escape study delay penalties); *id.* at 35 (noting that the same personnel that perform interconnection studies will likely be the fact witnesses in any Commission penalty appeal proceeding); PacifiCorp Rehearing Request at 11–13 (arguing that it is highly likely that appeals will be filed faster and more frequently than the Commission can process them and noting that interconnection customers will be incentivized to protest appeals, which will increase administrative and resource costs of pursuing such appeals); SPP Rehearing Request at 7, 9 (arguing also that this will create a litigious environment that threatens timely study completion).

[635] PJM Rehearing Request at 32–33.

[636] Indicated PJM TOs Rehearing Request at 38 (citing the need to analyze advanced transmission technologies and increased burdens surrounding modeling, and also noting that the same staff who are responsible for processing interconnection requests will need to be deployed to address disputes regarding interconnection study timeliness).

[637] *Id.* at 39–40.

[638] *Id.* at 16–17; NYTOs Rehearing Request at 27.

[639] Indicated PJM TOs Rehearing Request at 17.

changes to address circumstances applicable in each region.[640]

355. Dominion contends that the Commission failed to consider whether the study deposits assessed for interconnection studies would be sufficient to support the increased personnel costs required to complete those studies by the deadlines set forth in Order No. 2023.[641] Dominion further claims that there may be perverse incentives for interconnection customers to delay the completion of studies, given that customers can benefit from the penalty funds awarded to them, and Order No. 2023 does not penalize such customers for delays.

356. Certain of the rehearing requests also assert that the deadline and penalty structure set forth in Order No. 2023 is one-sided, and therefore unduly discriminatory or unjust and unreasonable, noting that interconnection customers (or other parties) are not subject to potential penalties for the role they may play in delayed interconnection studies.[642] Avangrid also contends that Order 2023's incentives are one-sided, with interconnecting generators having both ''carrot'' incentives (in the form of profits from having generation interconnected) and ''stick'' incentives, but transmission providers and transmission owners, who perform generator interconnection activities (often on a non-profit basis) are limited to avoiding the ''stick'' of a study delay penalty.[643] Indicated PJM TOs assert that the Commission's reasoning for declining to assess such penalties against interconnection customers—that transmission providers may deem non-compliant interconnection requests withdrawn—underestimates the difficulty of removing an interconnection customer that fails to meet deadlines from the queue, particularly given that customers may seek redress at the Commission.[644]

357. Avangrid, MISO TOs, and NYTOs assert that the assessment of penalties for failing to meet a study deadline without regard to fault is confiscatory, asserting that this renders the penalties regulatory takings in violation of the Takings Clause of the Constitution.[645] Avangrid and NYTOs further contend that the penalty framework may potentially deny recovery of costs incurred for interconnection studies performed using good utility practice.[646] MISO TOs assert that the penalty framework may require transmission providers to perform interconnection studies ''*for free,* simply if they miss a deadline.''[647]

(b) Determination

358. We disagree with the rehearing requests that argue that Order No. 2023's penalty structure is unjust and unreasonable, violates due process, or is otherwise inequitable because it is a ''strict liability'' structure that assigns penalties to transmission providers regardless of fault. To begin with, the imposition of standards of performance—namely, deadlines—on transmission providers to conduct interconnection studies was based on the need for reform to ensure the timely processing of such studies given the control that transmission providers exercise over the study process. Likewise, the deadlines were selected based on timeframes that, as a general matter, should be reasonably achievable for transmission providers under the *pro forma* LGIP process, including other reforms adopted in Order No. 2023. As a result, based on the record and the Commission's findings in this proceeding, we have concluded that a failure to meet these deadlines presumptively reflects that a transmission provider has failed to respond appropriately to the need for timely interconnection study processing such that a penalty is warranted in order to ensure just and reasonable rates. That penalty reduces what transmission providers can charge for interconnection studies that fail to meet the performance standards set forth in Order No. 2023.

359. Moreover, the characterization of this structure as ''strict liability'' is inaccurate because section 3.9(3) of the *pro forma* LGIP provides a robust framework for transmission providers to appeal any study delay penalties to the Commission. Under that framework, and unlike a ''strict liability'' regime, transmission providers can raise case-specific facts and circumstances for the Commission's consideration in determining whether there is good cause to grant relief from a penalty. The list of factors that the Commission set forth in Order No. 2023 reflects that transmission providers have the opportunity to demonstrate that a penalty for a late study is not warranted, including based on considerations of the transmission provider's conduct or lack of fault for any delay.[648] In fact, the Commission will consider affording relief based not just on the transmission provider's conduct in any particular study, but also their efforts to prevent future delays. This list of factors, while reflecting the considerations that the Commission deems most likely to be pertinent to establishing good cause for relief from a penalty, is also non-exhaustive such that transmission providers may raise, for the Commission's consideration, any other circumstances that they deem pertinent to a request for relief.[649] Any final Commission order finding that there is not good cause for relief from a penalty is subject to rehearing, as appropriate, and may also be subject to judicial review, pursuant to FPA section 313.[650]

360. Arguments in the rehearing requests that the deadline and penalty structure set forth in Order No. 2023

[640] NYTOs Rehearing Request at 27.

[641] Dominion Rehearing Request at 23–24 (''There is also no discussion in Order No. 2023 as to how cost recovery for these expenses would be recovered other than through the study deposits.''); *see also id.,* attach. A (Affidavit of James R. Bailey).

[642] *See* Avangrid Rehearing Request at 14; Indicated PJM TOs Rehearing Request at 27–29; *id.* at 29 (arguing that while modification of Order No. 2023 to subject interconnection customers to penalties is necessary, it would only complicate the process further and is an additional reason the penalty structure is not workable); MISO TOs Rehearing Request at 28–29; NYTOs Rehearing Request at 23–24.

[643] Avangrid Rehearing Request at 7.

[644] Indicated PJM TOs Rehearing Request at 28.

[645] Avangrid Rehearing Request at 16 (citing *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (*Hope*); *Ameren Servs. Co.* v. *FERC,* 880 F.3d 571, 580 (D.C. Cir. 2018) (*Ameren*)); MISO TOs Rehearing Request at 33–34; NYTOs Rehearing Request at 25–26.

[646] Avangrid Rehearing Request at 16; NYTOs Rehearing Request at 25–26 (''In properly balancing the interests of investors and consumers, the Commission is required to allow the public utility transmission provider to recover its reasonably incurred operating expenses.'' (citing *Hope,* 320 U.S. at 603; *Bluefield Water Works & Improvement Co.* v. *Pub. Serv. Comm'n of the State of W.Va.,* 262 U.S. 679, 690 (1923); *Ameren,* 880 F.3d at 580, 581–82, 584–85; *Jersey Cent. Power & Light Co.,* 810 F.2d 1168, 1175 (D.C. Cir. 1987) (*Jersey Cent.*)); *see also id.* at 28 (''penalties are shifted to transmission owner members of RTOs/ISOs without regard to fault, equity and the Takings Clause demand that the transmission owners should be allowed to recover such costs'').

[647] MISO TOs Rehearing Request at 33–34 (''The FPA does not permit the Commission to compel utilities to provide service to others for free.'' (citing *Ameren,* 880 F.3d at 582)).

[648] Order No. 2023, 184 FERC ¶ 61,054 at P 987 (''[T]he Commission may consider, among other factors: (1) extenuating circumstances outside the transmission provider's control, such as delays in affected system study results; (2) efforts of the transmission provider to mitigate delays; and (3) the extent to which the transmission provider has proposed process enhancements either in the stakeholder process or at the Commission to prevent future delays . . . .'').

[649] In this respect, the ''good cause'' standard allows the Commission to consider the totality of the circumstances resulting in any delay, as appropriate given the variety of facts and circumstances that may arise; balances competing interests while addressing concerns that the Commission provide for adequate due process and fact-finding; and will help avoid punitive results. *See id.* PP 987–89; *cf.* NYTOs Rehearing Request at 24 (arguing that the ''good cause'' standard is a novel standard that the Commission in Order No. 2023 failed to justify).

[650] 16 U.S.C. 825*l* (setting forth the procedures for a party aggrieved by an order issued by the Commission to obtain judicial review of such orders).

violates due process are not well developed, as they largely fail to address the governing legal standards,[651] or explain how Order No. 2023 is inconsistent with judicial or Commission precedent,[652] in this respect. Moreover, the Commission's adoption of the deadline and penalty structure in Order No. 2023 reflects an exercise of its ratemaking authority under FPA section 206, setting performance standards associated with the conduct of interconnection studies and financial consequences for the failure to meet those standards.[653] In this context, the Commission exercised its discretion to adopt an appeals process. Although commenters have not established what, if any, constitutional due process rights they might possess in this context, we need not reach this question. Rather, based on the arguments that have been presented and the record before us, we find that the deadline and penalty structure in Order No. 2023 does not violate any transmission providers' potential rights to due process and is just and reasonable.

361. In particular, even assuming *arguendo* that transmission providers have due process rights relating to the appeals process the Commission chose to adopt in Order No. 2023, the hallmarks of due process are fair notice and an opportunity to be heard.[654] Transmission providers have received fair notice and an extensive opportunity to be heard through this notice-and-comment rulemaking proceeding as to, among other things, the conduct that (absent an appeal demonstrating good cause for relief) will result in a penalty,[655] the amount of the potential penalty,[656] and the ability to seek relief from a penalty through the appeals process.[657] The appeals process provides a further opportunity, prior to any obligation to distribute an assessed study penalty,[658] for transmission providers to be heard regarding whether relief from a particular assessment of a penalty, on the facts of a given case, is warranted.[659] A party aggrieved by a Commission order addressing such an appeal—which order will state the Commission's reasoning for any denial of relief—has yet another opportunity to be heard by seeking rehearing of that order.

362. Transmission providers also have fair notice[660] of the factors that the Commission has concluded are most likely to be pertinent to demonstrating good cause for relief.[661] We disagree that the Commission must specify ''exactly'' what transmission providers must do to demonstrate good cause for relief or that failing to do so renders the appeal impermissibly vague or a ''moving target'' that offends due process. The Commission's decisions addressing appeals will also be subject to the standard requirements of administrative law regarding reasoned decision-making, including that the Commission develop a consistent body of precedent in considering such appeals and explain any deviation from that precedent in a reasoned fashion.[662]

363. Indeed, arguments speculating that the Commission might, in the appeals process, decline to afford relief where a transmission provider believes the facts warrant relief, are premature. Arguments that the Commission should or must grant relief from a penalty (such that failure to do so is arbitrary and capricious, violates due process, or is otherwise unlawful) can be raised in the context of the appeals process in a given case, rehearing, and—if appropriate—judicial review, where the particular facts of the case at issue have been developed.[663] The Commission is not at this time presented with determining, and declines to prejudge, whether any particular set of facts will necessarily warrant relief, as such considerations are best left to a case-by-case assessment.[664]

364. A number of the rehearing requests assert that the appeals process impermissibly places the burden of seeking relief from a penalty on the transmission provider, rather than requiring that the penalty be determined ''de novo'' before the Commission.[665] Here, too, the rehearing requests cite no legal authority supporting this argument that the appeals process, for this reason, is unjust and unreasonable, offends due process, or is otherwise unlawful. In Order No. 2023, the Commission determined, as a rulemaking and based on the record before it, that in the

[651] *See, e.g., Mathews* v. *Eldridge,* 424 U.S. 319 (1976) (*Mathews*).

[652] A limited exception is that certain of the rehearing requests contend that the Commission's approach is inconsistent with its enforcement policies. *See* NYISO Rehearing Request at 29–30; PJM Rehearing Request at 31; *infra* P 417 (explaining that those enforcement policies are not applicable in the ratemaking context).

[653] *See supra* section II.D.1.c; *infra* section II.D.1.c.iv.

[654] *Mathews,* 424 U.S. at 348–49 (''The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it. All that is necessary is that the procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard to insure that they are given a meaningful opportunity to present their case.'' (citations and quotation marks omitted)).

[655] *See* Order No. 2023, 184 FERC ¶ 61,054 at PP 962–63, 979–83.

[656] *See id.* PP 962, 973, 984.

[657] *See id.* P 987.

[658] *See id.* (''The filing of an appeal will stay the transmission providers' obligation to distribute the study delay penalty funds to interconnection customers until 45 calendar days after (1) the deadline for filing a rehearing request has ended, if no requests for rehearing of the Commission's decision or the appeal have been filed, or (2) the date that any requests for rehearing of the Commission's decision on the appeal are no longer pending before the Commission.'').

[659] *See Opp Cotton Mills, Inc.* v. *Adm'r of Wage & Hour Div.,* 312 U.S. 126, 152–53 (1941) (''The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in time in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective.'').

[660] *See, e.g., Fed. Express Corp.* v. *U.S. Dep't of Com.,* 39 F.4th 756, 773 (D.C. Cir. 2022) (explaining that ''[t]he Due Process Clause's fair notice requirement generally requires only that the government make the requirements of the law public and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply'' and that even trained lawyers may find it necessary to consult legal dictionaries, treatises, and precedent); *Ramsingh* v. *Transport. Sec. Admin.,* 40 F.4th 625, 636 (D.C. Cir. 2022) (''An enactment violates the Due Process Clause if it is so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.'' (quotation marks omitted)).

[661] Order No. 2023, 184 FERC ¶ 61,054 at P 987. Having set forth these factors as most likely to be pertinent to a showing of good cause, we do not intend to apply our traditional waiver factors and confirm that the appeals process, as a tariff-specified mechanism to seek relief from penalties, is distinct from seeking a waiver of a tariff provision. *See* PacifiCorp Rehearing Request at 9–10 (asserting that the Commission had not been clear as to whether such waiver standards would apply).

[662] *See, e.g., Fairless Energy, LLC* v. *FERC,* 77 F.4th 1140, 1147 (D.C. Cir. 2023) (agencies must generally conform to prior practice and decisions or explain the reasons for departure from precedent).

[663] *See, e.g., Ohio Forestry Ass'n, Inc.* v. *Sierra Club,* 523 U.S. 726, 732–33 (1998) (explaining that, in assessing whether an argument is ripe for resolution, courts consider ''(1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented''); *Abbott Lab'ys* v. *Gardner,* 387 U.S. 136, 148–49 (1967) (explaining that the basic rationale the ripeness requirement ''is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties'').

[664] *See N. Y. State Comm'n on Cable Television* v. *F.C.C.,* 749 F.2d 804, 815 (D.C. Cir. 1984) (''The decision whether to proceed by rulemaking or adjudication lies within the Commission's discretion'' (citing *N.L.R.B.* v. *Bell Aerospace Co. Div. of Textron,* 416 U.S. 267, 293 (1974))).

[665] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 989 (''We disagree with Indicated PJM TOs that a complete *de novo* review is needed to assess study delay penalties. We find that the good cause standard adopted in this final rule provides an adequate framework through which the Commission can evaluate whether it is appropriate to grant relief from any applicable penalties.'').

context of what constitutes a just and reasonable rate, failure to meet performance standards for the timely completion of interconnection studies warrants a penalty that effectively reduces what transmission providers can charge for interconnection studies that fail to meet those standards. The appeals process is a safeguard in which the transmission provider is the proponent of a requested order seeking relief from the penalty.[666] Requiring the transmission provider to demonstrate good cause for relief is also just and reasonable under the circumstances. The application of a penalty in defined amounts for failure to meet study deadlines, absent a showing of good cause for relief, helps to ensure that transmission providers are on notice of the instances when penalties apply and in what magnitude, and that they will take seriously the prospect of a penalty. Transmission providers are also the entities with the most control over, and most knowledge regarding, the conduct of the study process and the reasons that the process may be delayed, such that it is reasonable to put the burden on transmission providers to establish a basis for relief from a penalty.

365. Likewise, we are not persuaded by arguments that, because there are other factors that can contribute to interconnection study delays, the imposition of penalties on transmission providers, under the structure set forth in Order No. 2023, is not just and reasonable. We disagree that adopting performance standards and incentives, in the form of deadlines and penalties, in Order No. 2023 cannot be just and reasonable unless the Commission first addresses and removes every other variable that may influence the timely completion of interconnection studies. As discussed above, the existence of multiple factors that may delay interconnection studies is a consideration that favors taking a comprehensive approach to address the unjust and unreasonable rates resulting from interconnection queue backlogs. Having found that the reasonable efforts standard was failing to ensure adequate incentives for transmission providers for timely study completion, we have also found that imposing deadlines[667] subject to penalties for late interconnection studies—subject to appropriate safeguards[668]—will help ensure that transmission providers take the steps that are within their control to ensure study timeliness.

366. Arguments that the procedures for an appeal are too vaguely defined are not meritorious. The Commission has broad discretion as to procedural matters,[669] and we conclude that the exercise of that discretion on a case-by-case basis is appropriate, including because doing so will help avoid undue administrative burdens attendant to employing set procedures in appeals that may not require those procedures. Similarly, as to NYTO's argument that cases involving genuine disputes of material fact require hearing beyond evaluation of a written record,[670] the Commission can order such hearings in cases that require them. If parties believe that particular procedures in a given appeal are necessary or would be beneficial, they can so inform the Commission in the context of that case.[671]

367. We disagree with arguments that the Commission inappropriately discouraged transmission providers from filing appeals of study delay penalties under FPA section 206. Order No. 2023 only clarified that, when a transmission provider that conducts interconnection studies appeals study delay penalties incurred automatically under 18 CFR 35.28(f)(1)(ii) or § 3.9 of the *pro forma* LGIP, that appeal should not be filed under FPA section 206.[672] The appeals process supplements, rather than diminishes, the transmission provider's ability to make a section 206 filing. To the extent that commenters are concerned about the ability of a transmission owner to challenge a penalty assigned to it by a transmission provider,[673] we note that nothing in Order No. 2023 prevents any entity from protesting a transmission providers' FPA section 205 filing that seeks to assign penalties or seeks to create a default structure for recovery of penalty costs. Nor does Order No. 2023 prevent any entity from challenging a transmission provider's assignment of study delay penalties to that entity under FPA section 206. Nothing in Order No. 2023 prevents any entity from exercising any statutory filing rights.

368. We also disagree with NYTOs' suggestion that the requirement for transmission providers to pursue appeals under the Commission's procedural rules and not under FPA section 206 ''effectively imposes a mandatory waiver of transmission providers' statutory rights, which is contrary to law.'' [674] The Commission did not foreclose transmission providers' abilities to exercise their statutory rights, but rather provided the appeals process as the avenue for transmission providers to seek relief under the just and reasonable tariff process established by Order No. 2023, applying the ''good cause'' standard, which provides more flexibility and is more favorable to transmission providers than requiring them to show that the penalty would be ''unjust and unreasonable'' under FPA section 206. Because Order No. 2023 provided a specific tariff-based mechanism for appeals, the filing of such appeals under FPA section 206 is unnecessary.[675]

369. We sustain the decision, in Order No. 2023, not to create generic exceptions for study delay penalties or to exempt transmission providers from such penalties in cases where they assert that *force majeure* applies, for the reasons articulated in Order No. 2023.[676] In further support, we find that creating ''self-effectuating'' exceptions

[666] *See, e.g.,* 5 U.S.C. 556(d) (''Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.''). Similarly, under FPA sections 205 and 206, the burden of proof typically rests with the proponent of a Commission order. *See* 16 U.S.C. 824e(b); *FirstEnergy Serv. Co.* v. *FERC,* 758 F.3d 346, 353 (D.C. Cir. 2014); *Midwest Indep. Transmission Sys. Operator, Inc.,* 148 FERC ¶ 61,206, at P 51 (2014).

[667] *See supra* section II.D.1.c.i (explaining why the selected deadlines are just and reasonable).

[668] *See supra* PP 359, 361 (explaining, *inter alia,* that the appeal process is a safeguard to address considerations relevant to individual cases that may warrant relief).

[669] *See Vt. Yankee,* 435 U.S. at 524–25 (agencies have broad discretion over the formulation of their procedures); *Mich. Pub. Power Agency* v. *FERC,* 963 F.2d 1574, 1578–79 (D.C. Cir. 1992) (the Commission has discretion to mold its procedures to the exigencies of the particular case); *Woolen Mill Assoc.* v. *FERC,* 917 F.2d 589, 592 (D.C. Cir. 1990) (the decision as to whether to conduct an evidentiary hearing is in the Commission's discretion).

[670] *See* NYTO Rehearing Request at 24 n.67.

[671] Similar to our reasoning above, *see supra* P 363, arguments contending that a particular procedure may be required in a particular case are premature.

[672] Order No. 2023, 184 FERC ¶ 61,054 at PP 963, 987 n.1911.

[673] Indicated PJM TOs Rehearing Request at 26 (''transmission owners should be entitled to challenge the propriety or size of the penalty amount assigned to it either 'automatically' or by a transmission provider as an unjust, unreasonable, or unduly discriminatory rate based on grounds of its own choosing.).

[674] NYTOs Rehearing Request at 23 (citing *Atl. City I,* 295 F.3d at 10).

[675] Transmission providers have initiated complaints under FPA section 206 alleging that their own tariff provisions are unjust and unreasonable, but this procedure is generally used when there is no other mechanism by which a transmission provider could change or challenge such tariff provisions. For example, PJM has initiated FPA section 206 complaints regarding its own Operating Agreement because it does not have FPA section 205 filing authority to file market rule changes to the Operating Agreement without supermajority stakeholder approval. *See, e.g.,* PJM Intra-PJM Tariffs, § 8.4, OA § 8.4 (Manner of Acting) (1.0.0); *PJM Interconnection, L.L.C.,* 180 FERC ¶ 61,051, at PP 8–9 (2022).

[676] *See* Order No. 2023, 184 FERC ¶ 61,054 at PP 1003, 1019, 1024 (explaining that transmission providers could raise these issues in an appeal). For the same reasons, we deny NYTO's request for clarification on this point.

to penalties where a delay is caused by factors outside of the control of the transmission provider is not a preferable approach to the appeals process, particularly given that there may be disputes as to whether and to what extent a delay was within a transmission provider's control. Creating an exemption for circumstances of *force majeure* is an example of this problem, as there may be disputes as to whether the declaration of *force majeure* was valid or the extent to which a delay is attributable to the alleged *force majeure.* The appeals process is a just and reasonable approach to addressing these issues.

370. MISO TOs' argument that strict liability under tort law is only imposed in circumstances involving very dangerous activities is not persuasive. As discussed above,[677] the adoption of a deadline and penalty structure in Order No. 2023 is supported by the record in this case and does not reflect a ''strict liability'' approach that is analogous to these tort law regimes. Nor did the Commission rely on tort law governing hazardous activities to support Order No. 2023.[678]

371. We disagree with arguments that Order No. 2023 created a strict liability structure. The portion of Order No. 2023 quoted by NYISO's request for rehearing in this respect [679] was addressing the ability to appeal—the mechanism through which transmission providers' responsibility for delay in individual cases can be assessed.[680] We have already explained, in both Order No. 2023 and herein, why the presumptive imposition of penalties on transmission providers should they fail to meet their study deadlines, with a subsequent evaluation of whether relief is warranted in a particular case, reflects reasoned decision-making and is a just and reasonable approach.

372. We also disagree with arguments that Order No. 2023's implementation of a study delay penalty structure is unjust and unreasonable, or unduly discriminatory or preferential, because it limits the assessment of penalties for late studies to transmission providers rather than also extending them to other entities—including interconnection customers—that may contribute to delays of interconnection studies. We similarly disagree with claims that Order No. 2023's incentives are impermissibly one-sided. Interconnection customers and transmission providers are not similarly situated with respect to the conduct of interconnection studies: transmission providers control and are responsible for the conduct of those studies, while other entities, including interconnection customers, generally are not.[681] Moreover, transmission providers are further differently situated from interconnection customers because interconnection customers already are subject to significant incentives to avoid delaying the study process that transmission providers do not face. These include interconnection customers' interest in achieving timely commercial operation of their facilities, that failure to meet their obligations in the interconnection process may result in their interconnection requests being deemed withdrawn,[682] and that they may be subject to withdrawal penalties.[683] The adoption of a penalty structure for transmission providers that fail to meet the study timeframes set by Order No. 2023 reflects, in part, that transmission providers lacked adequate incentives to ensure study timeliness and the role they can play in ensuring the timeliness of interconnection study processes.[684] It further reflects that the value of interconnection studies depends in part on their timely completion and, therefore, that it is reasonable that transmission providers may recover less for these studies where they are delayed without good cause.[685] Thus, we disagree that we must apply the study delay penalties set by Order No. 2023 to these other entities.

373. We are also not persuaded by arguments that under Order No. 2023's deadline and penalty structure, interconnection customers are incentivized to affirmatively delay the completion of interconnection studies. As explained in Order No. 2023, the economic harms to the interconnection customer of delayed study completion significantly outweigh any incentive to delay the interconnection process.[686] Moreover, the appeals process available to transmission providers undermines any incentive for strategic delay on the part of interconnection customers because it provides an opportunity for transmission providers to argue for relief from penalties, including because delays were caused by factors beyond their control, such as the actions of interconnection customers. And even if a transmission provider is subject to a penalty, those amounts will be distributed among all the interconnection customers included in the relevant study that did not withdraw, which further reduces the purported incentive for any individual interconnection customer to cause delays, as they will not receive the entirety of any penalty assessed to the transmission provider.

374. Many of the rehearing requests contend that the study deadline and penalty structure under Order No. 2023 will have certain negative consequences. As explained below, we continue to find this structure to be just and reasonable, notwithstanding these arguments. In many cases we disagree that these purported negative consequences will manifest and, to the extent there may be such consequences, we continue to find that Order No. 2023's deadline and penalty structure is just and reasonable.

375. The Commission in Order No. 2023 concluded that there is not an inherent trade-off between firm study deadlines with study delay penalties

[677] *See supra* PP 358–359.

[678] *Cf.* Order No. 2023, 184 FERC ¶ 61,054 at PP 1001, 1013, 1015 (discussing Commission precedent for the approach in Order No. 2023 including traffic ticket penalties and penalties under Order No. 890); *infra* section II.D.1.c.v (same); *infra* section II.D.1.c.iv (discussing Order No. 2023 as an application of the Commission's ratemaking authority).

[679] *See* NYISO Rehearing Request at 29–30.

[680] Order No. 2023, 184 FERC ¶ 61,054 at P 989. The Commission was particularly explaining that it would be inappropriate to adopt a structure providing for penalties ''only where a factor can be conclusively demonstrated to be within a transmission provider's control, as this would impose significant administrative burden.'' *Id.*

[681] *See, e.g., Ark. Elec. Energy Consumers* v. *FERC,* 290 F.3d 362, 367 (D.C. Cir. 2002) (''A rate is not 'unduly' preferential or 'unreasonably' discriminatory if the utility can justify the disparate effect.''); *Cities of Bethany* v. *FERC,* 727 F.2d 1131, 1139 (D.C. Cir. 1984) (*Cities of Bethany*); *El Paso Nat. Gas Co.,* 104 FERC ¶ 61,045, at P 115 (2003) (''Discrimination is undue when there is a difference in rates or services among similarly situated customers that is not justified by some legitimate factor.'').

[682] Being deemed withdrawn from the interconnection queue carries significant consequences for an interconnection customer, and—while the interconnection customer may dispute that decision—loss of queue position occurs automatically after a failure to cure (if an opportunity to cure is allowed) and lasts ''until such time that the outcome of Dispute Resolution would restore its Queue Position.'' *Pro forma* LGIP section 3.7. We are therefore not persuaded by Indicated PJM TOs' suggestion that this will not be a significant consideration discouraging interconnection customers from delaying interconnection studies. *See* Indicated PJM TOs Rehearing Request at 28.

[683] *See, e.g.,* Order No. 2023, 184 FERC ¶ 61,054 at PP 37, 43, 50, 780–84, 1020; *pro forma* LGIP section 3.7.

[684] *See* Order No. 2023, 184 FERC ¶ 61,054 at PP 50, 968, 972.

[685] *See id.* P 972 (''The study delay penalty structure adopted in this final rule balances the harm to interconnection customers of interconnection study delays and the associated need to incentivize transmission providers to timely complete interconnection studies with the burdens on transmission providers of conducting interconnection studies and potentially facing penalties for delays, including those that may be caused or exacerbated by factors beyond their control.'').

[686] *Id.* P 1020.

versus ''interconnection study flexibility and accuracy, as well as system reliability.'' [687] As explained in Order No. 2023, we are not persuaded by arguments on rehearing that such deadlines and penalties will necessarily incentivize speed and meeting deadlines over accuracy, with deleterious results. These arguments present a false dichotomy between the accuracy of interconnection studies and their timely completion,[688] fail to give appropriate weight to the reliability and economic risks associated with failure to timely interconnect new generating facilities,[689] and fail to consider the safeguards adopted in the deadline and penalty structure that allow transmission providers avenues of relief from the strict application of study deadlines.[690]

376. We are also not persuaded that Order No. 2023's deadline and penalty structure will foster a combative atmosphere, potentially increasing delays. As noted above, the interconnection process is one that has generally been characterized by cooperation.[691] Interconnection customers and transmission providers—who are all generally professional and sophisticated parties—share a reciprocal interest in the smooth functioning of the interconnection process. While it is possible that, in some cases, the increased accountability on transmission providers for timely interconnection study completion may mean that transmission providers are less inclined to accede to interconnection customer actions that may delay the study process, we find that—given the need to ensure timely interconnection study completion to ensure just and reasonable rates—this possibility is an acceptable consequence of Order No. 2023.[692] Indeed, it reflects that transmission providers can use the knowledge and control they have with respect to the study process to ensure that individual interconnection customers are not allowed to unduly delay the overall study process.[693] As to claims that the deadline and penalty structure may motivate transmission providers, including RTOs/ISOs and transmission owners, to focus on the need to protect against exposure to penalties and undermine constructive collaboration among them, the principal way for these entities to minimize that exposure will be to endeavor to complete interconnection studies in a timely fashion, which is the purpose of the deadline and penalty structure. In this respect, the interests of RTOs/ISOs and transmission owners will be aligned, and we expect that Order No. 2023 will not undermine the incentives for cooperation among RTOs/ISOs and transmission owners.

377. Several of the rehearing requests contend that adoption of interconnection study deadlines and penalties, with an appeals process, will divert resources that would otherwise be used for interconnection studies. We sustain the Commission's rejection of these arguments, for the reasons already stated in Order No. 2023.[694] We particularly note that it is not the case that the funds used to pay for penalties (or to appeal such penalties) necessarily must be diverted from those used to perform interconnection studies.[695] Indeed, although we do not prejudge the facts of any particular case, it would not appear to be generally rational or appropriate for a transmission provider to respond to the assessment of a penalty for a late interconnection study by diverting significant resources from future interconnection studies in a way that will increase the likelihood that it will incur additional penalties.

378. Similarly, while several rehearing requests contend that managing deadlines and penalties, as well as the appeals process, may create burdens on transmission providers, we conclude that—particularly given the need for replacement of the reasonable efforts standard with a standard that will better ensure the timeliness of interconnection study completion—the deadline and penalty structure is just and reasonable notwithstanding such burdens. Here, too, we do not believe it would be rational or appropriate for a transmission provider to divert significant resources from the timely completion of interconnection studies to the appeals process. As stated above, when considering appeals the Commission intends to exercise its discretion as to procedural matters on a case-by-case basis, which will help reduce the burdens attendant to pursuing an appeal.[696] Moreover, many alternative mechanisms directed toward ensuring study timeliness would consume transmission provider resources to explain why they are not responsible for study delays, and likewise invite arguments from other entities addressing such responsibility, but would have lesser utility in responding to the problem of interconnection queue backlogs.[697] In addition, the amounts of the penalties [698] are not so large that we expect that transmission providers will unduly divert large amounts of resources to an appeal of penalties, particularly those assessed for relatively short delays.[699] While the administrative appeals process may draw protests, *e.g.,* by interconnection customers, resulting in litigation, filing those protests and engaging in such litigation will also consume resources for the filing parties and any penalty funds assessed to the transmission provider will be allocated among the relevant interconnection customers.

[687] *Id.* P 1007.

[688] *See id.* (''We reiterate that it is within transmission providers' ability to improve interconnection study processes and policies and take other measures, such as hiring additional staff, to efficiently process interconnection queues without sacrificing accuracy, flexibility, or reliability.''); *id.* (also noting that transmission providers can recover increased costs of interconnection studies); *see also supra* section II.D.1.c.i (explaining that the deadlines selected for the completion of interconnection studies are just and reasonable).

[689] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1007 (''[W]e further agree that the failure to bring new generating facilities online in a timely manner can also create reliability and economic risk.'').

[690] *See id.* (''[T]he study delay penalty structure includes significant safeguards for the transmission provider, such as the transition period, the 10-business day grace period, the penalty cap, the ability to extend deadlines by mutual agreement, and the ability to appeal any study delay penalties to the Commission.''); *id.* P 1005 (''If, for whatever reason, the transmission provider is not able to meet firm study deadlines, that is an issue the transmission provider is free to raise in appealing any penalties it incurs.'').

[691] *See supra* P 335.

[692] The various safeguards attendant to the deadline and penalty structure should also limit the likelihood that transmission providers feel constrained to take an unduly stringent response to reasonable interconnection customer requests.

[693] In this respect, the adoption of a deadline and penalty structure for transmission providers to ensure timely study completion may translate into increased accountability for interconnection customers not to delay the study process.

[694] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1005; *see also id.* P 1007 (noting that the costs of timely completing interconnection studies are ultimately borne by interconnection customers)

[695] *See, id.* P 992 (noting that at-fault transmission provider's shareholders may pay the penalty).

[696] *See supra* P 366.

[697] *See infra* PP 429–430 (discussing why the Commission found that differences between deadline and penalty structure under Order No. 2023 and the structure under Order No. 890 were warranted).

[698] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 962 (''[D]elays of cluster studies beyond the tariff-specified deadline will incur a penalty of $1,000 per business day; delays of cluster restudies beyond the tariff-specified deadline will incur a penalty of $2,000 per business day; delays of affected system studies beyond the tariff-specified deadline will incur a penalty of $2,000 per business day; and delays of facilities studies beyond the tariff-specified deadline will incur a penalty of $2,500 per business day.'').

[699] The 10-day grace period also helps to address concerns that, for relatively short delays leading to minor penalties, transmission providers may wish to forego the burdens of seeking such an appeal. *See* NYTOs Rehearing Request at 27. It is, of course, up to transmission providers to manage their resources and determine whether taking an appeal of a minor penalty is in their best interest.

This decreases the incentive to file protests in cases where delays are small and penalty amounts are low or where there is not a genuine, credible dispute as to where responsibility for a delay of an interconnection study properly resides.[700] We conclude that the burdens that Order No. 2023 places on transmission providers do not render the rule unjust and unreasonable.

379. While Dominion argues that higher study deposits may be necessary to address increased personnel costs resulting from the penalty regime, Dominion fails to acknowledge that the Commission has already significantly increased the required study deposits for interconnection customers in Order No. 2023,[701] and that study costs exceeding study deposits can be recovered from interconnection customers.[702] We are therefore not persuaded by this argument.

380. We do not agree with Indicated PJM TOs' contention that adopting a structure of deadlines and penalties for regions that have already adopted a cluster study process sends a message that their stakeholder processes do not matter. That the Commission found, in generic proceedings, that a suite of reforms to its *pro forma* LGIP and *pro forma* LGIA approach to interconnection were necessary to ensure just and reasonable rates does not reflect any disparagement of an individual entity's or region's efforts at similar reforms, such as the adoption of cluster studies. The Commission has found that adoption of a cluster study approach is such a just and reasonable reform, but that additional reforms are also necessary. Adopting Indicated PJM TOs' contrary view in this case would—in effect—be to conclude that the Commission should have adopted a self-imposed limit on acting through a generic proceeding out of deference to stakeholder processes that have resulted in only a partial solution to the problem at hand, contrary to the Commission's FPA section 206 authority and obligation to ensure just and reasonable rates.[703]

381. We are further not convinced by NYTOs' claim that if Order No. 2023's deadlines and penalties are strictly enforced without exceptions (such as demonstration of compliance with Good Utility Practice or the presence of *force majeure*), it will hinder ongoing regional queue reform initiatives. This argument is conclusory and unexplained as to why strict application of deadlines and penalties without such exceptions would have this alleged effect.[704] Regardless, Order No. 2023 does not provide for an unduly inflexible approach by allowing for numerous flexibilities including the appeals process, as explained above.

382. We are not persuaded by PJM's claim that under Order No. 2023 transmission providers will incur penalties on a strict liability basis, reducing their deterrence and incentive effects. As already discussed, Order No. 2023 does not adopt a ''strict liability'' approach to penalties.[705] More fundamentally, PJM fails to explain why a penalty as a presumptive matter, based on objective conduct, that is then subject to an appeal, would reduce the incentive to avoid triggering the penalty.[706] Indeed, PJM's argument here appears circular: in support of its claim that the penalty structure in Order No. 2023 will reduce the deterrence and incentive effects of a penalty, PJM offers nothing more than a characterization of that structure and assertion that this structure will cause transmission providers to question the deterrence or incentive purpose of the penalty.

383. NYISO also claims that the Commission increased penalty levels from the levels proposed by the NOPR without sufficient explanation. It asserts that the example the Commission provided in support of doing so—explaining that, under the NOPR approach, a full six months of study delay (roughly 126 business days) would result in an estimated penalty of only $63,000[707]—does not support this result or show that the penalties adopted in Order No. 2023 will be non-punitive.[708] We sustain the Commission's determination to increase the study delay penalties as specified in Order No. 2023.[709] This example reflects that, under the NOPR penalty amount, a transmission provider that takes roughly twice as long as allowed to perform a cluster study would incur a relatively modest penalty,[710] which we find would not provide an appropriate incentive to spur the investments or allocation of resources necessary to facilitate timely study completion, or strike an appropriate balance between transmission provider and interconnection customer interests.[711] One point of comparison supporting this conclusion is to consider that a single proposed 250 MW generating facility is required to tender $755,000 (*i.e.,* a $5,000 application fee, a $250,000 study deposit, and a $500,000 commercial readiness deposit in cash or as an irrevocable a letter of credit) to enter the study process under the Commission's *pro forma* LGIP.[712] That facility must then progressively increase its investment in the process through increasing deposits, study costs, and potential withdrawal penalties, not to mention the dedication of resources to develop the project and shepherd it through the interconnection process.[713]

[700] We are also not persuaded by PacifiCorp's suggestion that the appeals process is not workable because ''it is highly likely that appeals will be filed faster and more frequently than the Commission can process them,'' PacifiCorp Rehearing Request at 12, which is founded on speculation that transmission providers will frequently fail to meet their deadlines leading to such appeals, and that such appeals will be onerous to process.

[701] *See pro forma* LGIP section 3.1.1.1. To the extent that study deposits must be further increased, beyond these levels, the Commission can consider that going forward, including in response to compliance proposals or—if necessary—further reforms to the *pro forma* LGIP.

[702] Order No. 2023, 184 FERC ¶ 61,054 at P 1007; *see also, e.g., pro forma* LGIP sections 7.1, 8.1, 9.4, 13.3, app. 2 at section 6, app. 7 at section 7, app. 8 at sections 7–8, app. 9 at section 6, app. 10 at section 6.

[703] This argument also overlooks transmission providers' ability to propose alternative reforms, as informed by their stakeholder processes, under the ''consistent with or superior to'' or ''independent entity variation'' standards, as applicable. *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1764.

[704] *Cf. id.* P 967 (''The reasonable efforts standard worsens current-day challenges, as it fails to ensure that transmission providers are keeping pace with the changing and complex dynamics of today's interconnection queues.'').

[705] *See supra* PP –360. Indeed, PJM acknowledges that transmission providers have the ability to ''demonstrate that the penalty imposed on it should not be assessed.'' PJM Rehearing Request at 31.

[706] The economically rational response to a potential penalty, even one that is presumptively applied subject to an appeal, is to take the steps necessary to avoid or reduce the penalty, to the extent that the cost of taking such steps is lower than the expected value of the reduction in the amount of the penalty.

[707] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 975.

[708] NYISO Rehearing Request at 37 (arguing that this does not demonstrate that the Commission has set non-punitive penalty levels, particularly as applied to RTOs/ISOs).

[709] *See* Order No. 2023, 184 FERC ¶ 61,054 at PP 973–78.

[710] *Cf., e.g., pro forma* LGIP section 3.1.1.1 (specify study deposit amounts for each interconnection request).

[711] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 975 (''We view such a penalty as insufficient considering that the purpose of the penalty is to incentivize timely study completion that may be achieved, for example, by hiring additional personnel or investing in new software.''); *cf., e.g., EPSA,* 577 U.S. at 295 (ratemaking involves both technical understanding and policy judgment); *Cities of Bethany,* 727 F.2d at 1138 (explaining that because ''ratemaking is less of a science than it is an art'' such that ''substantial deference'' to the Commission's expert judgment is warranted (citing *Alabama Elec. Co-op., Inc.* v. *FERC,* 684 F.2d 20, 27 (D.C. Cir. 1982)).

[712] *See pro forma* LGIP section 3.1.1.1 (requiring $5,000 application fee and a $250,000 study deposit for interconnection requests greater than or equal to 200 MW) and section 3.4.2(vi) (requiring a commercial readiness deposit of twice the study deposit).

[713] *See, e.g., pro forma* LGIP sections 7.5(1)(b), 8.1(3), 11.3 (requiring adjustments to commercial readiness deposits to equal an increasing percentage

Continued

Viewed in this context, we disagree that the revised penalty amounts are punitive on their own, and they are particularly not punitive when considered in light of the safeguards [714] provided and avenues for RTO/ISO penalty cost recovery.

384. We disagree with Indicated PJM TOs' and Dominion's contentions that the penalty and deadline framework is unduly discriminatory, citing the uneven distribution of interconnection requests among transmission providers, such that some transmission providers may face a heightened risk of penalties as compared to other transmission providers. At the outset, given the structure of Order No. 2023—under which we have imposed deadlines that should be reasonably achievable, replaced the serial study process with cluster studies, and afforded several safeguards, including the appeals process [715]—it is not necessarily the case that some transmission providers will be more likely to have to pay penalties than others based on the uneven distribution of interconnection requests. Moreover, transmission providers may propose variations from the requirements of Order No. 2023, under the applicable standard, which provides a further vehicle to ensure that the late study deadline and penalty structure does not unduly burden certain transmission providers as compared to others.

385. But even accepting, *arguendo,* the premise of this argument that such disparate outcomes might occur, we disagree that this would necessarily render Order No. 2023's penalty structure unduly discriminatory. The increased possibility for penalties to be assessed in regions facing higher volumes of interconnection requests necessarily results from the increased likelihood of delayed results in those regions. That, however, correspondingly reflects in an increased need in these regions to ensure timely processing of those requests.[716] Thus, any increased possibility of penalties in those regions is a just and reasonable and not unduly discriminatory result.[717]

386. We reject arguments from Avangrid, MISO TOs, and NYTOs that incurring a penalty for failure to meet an interconnection study deadline is confiscatory, compelling transmission providers to provide service while not allowing them to recover their costs,[718] because these arguments were not raised in the comments received in response to the NOPR but have instead been raised for the first time on rehearing. We typically reject 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.[719] Commenters had the opportunity to argue that the study deadline and penalty structure is confiscatory in response to the NOPR but did not do so. We find that these arguments are, therefore, not properly before us.[720]

387. Even had these arguments been properly raised, these arguments would also be premature because they depend on speculative assertions that the result of applying penalties to transmission providers will be confiscatory.[721] For a transmission provider to establish this premise will necessarily depend on the facts of each individual case. Transmission providers will have the opportunity to argue on appeal that there is good cause to grant relief from the penalty, for example, because delays in completing interconnection studies were due to factors beyond their control

of interconnection customer's assigned network upgrade cost as the customer progresses through the interconnection process); section 13.3 (requiring the interconnection customer to pay for interconnection study costs); and section 3.7.1 (unless certain exemptions apply, requiring interconnection customer that withdraws from the interconnection process to pay a withdrawal penalty that increases as the customer progresses through the interconnection process).

[714] Order No. 2023, 184 FERC ¶ 61,054 at P 976 (''Based on the record before us, we believe the $1,000/$2,000/$2,500 per business day penalty structure, combined with the transition, grace period, cap on penalties, and ability to appeal that we adopt below, strikes an appropriate balance because it creates an incentive for transmission providers to meet study deadlines while not being overly punitive.'').

[715] Dominion and Indicated PJM TOs' arguments also presuppose that, in any appeal, the Commission would find there is not good cause for relief from penalties, on the facts of the relevant case. That the Commission can consider the individualized factors in a particular case to determine whether to grant relief from penalties is another avenue to ensure that undue discrimination does not occur.

[716] Similarly, where transmission providers are facing comparatively high volumes of interconnection requests in a given cluster study, there are more interconnection customers who will face uncertainty and increased costs due to any delays.

[717] *See, e.g., AEMA,* 860 F.3d at 670–71 (''The law provides no basis to claim the Commission cannot approve uniform performance requirements simply because those requirements will be easier to satisfy for some generators than for others. . . . Using an annual performance standard is a reflection of the Commission's policy judgment as to the level of capacity performance the market requires, not an undue privileging of one resource's costs over another's.''); *BP Energy Co.* v. *FERC,* 828 F.3d 959, 967 (D.C. Cir. 2016) (''No undue discrimination exists where there is 'a rational basis for treating [two entities] differently' and such differential treatment is 'based on relevant, significant facts which are explained.'' (quoting *Complex Consol. Edison Co. of N.Y., Inc.* v. *FERC,* 165 F.3d 992, 1012–13 (D.C. Cir. 1999))); *Town of Norwood, Mass.* v. *FERC,* 202 F.3d 393, 402 (1st Cir. 2000) (explaining that ''differential treatment does not necessarily amount to *undue* preference where the difference in treatment can be explained by some factor deemed acceptable by the regulators (and the courts)'' (emphasis in original) (citing *Cities of Newark* v. *FERC,* 763 F.2d 533, 546 (3d Cir. 1985))).

[718] Although Avangrid and NYTOs assert that study delay penalties are ''regulatory takings,'' their arguments focus on the purportedly confiscatory nature of the study delay penalties and they do not otherwise argue that the penalties are regulatory takings under the relevant legal standard. *See, e.g., N. Y. Indep. Sys. Operator, Inc.,* 151 FERC ¶ 61,075, 61,534, at PP 64–67 (2015) (discussing the three-factor test to determine whether an action constitutes a regulatory taking under *Penn Cent. Transport. Co.* v. *City of New York,* which requires consideration of ''[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations;'' and ''the character of the governmental action.'' 438 U.S. 104, 123 (1978)).

[719] *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,* 756 F.3d at 770 (''We finally note that Jersey City's alleged constitutional claim of actual bias is also barred 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.''); *see also* 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.'').

[720] *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).

[721] *See* Avangrid Rehearing Request at 16 (similarly arguing that penalties that ''potentially denies recovery of reasonable costs incurred for interconnection studies performed according to Good Utility Practice''); MISO TOs Rehearing Request at 33–34 (arguing that ''[t]he FPA does not permit the Commission to compel utilities to provide service to others for free'' and that applying a penalty in a ''strict liability'' fashion to transmission providers ''when the fault is not theirs'' is particularly problematic); NYTOs Rehearing Request at 25–26 (arguing that penalties will be ''confiscatory'' because transmission providers may not be provided ''cost recovery plus a reasonable return on prudent investment'' such that the imposition of penalties will ''conscript public utility transmission providers into performing services without just and reasonable compensation'').

and that, as a result, they should be entitled to recovery of their costs of performing such studies; and that failure to allow such recovery would be confiscatory.

388. In the alternative, even if we were to consider these arguments as properly raised as a procedural matter and ripe for consideration at this time, we would reject them. While transmission providers have historically recovered the full costs of interconnection studies from interconnection customers, the structure adopted in Order No. 2023 reflects a different approach under which the amount transmission providers can charge for such studies will be effectively reduced if transmission providers fail to meet the relevant deadlines.[722] As the Supreme Court explained in *FPC* v. *Hope Natural Gas Co.,* ratemaking involves ''a balancing of the investor and the consumer interests,'' [723] under which regulated utilities are generally entitled to a reasonable opportunity to recover their prudently incurred costs, but are not guaranteed such cost recovery.[724]

389. Order No. 2023's deadline and penalty structure reflects this balancing of interests, providing a reasonable opportunity for cost recovery dependent on the transmission provider's performance in providing the service at issue. It allows the opportunity for full cost recovery for the conduct of interconnection studies, should transmission providers meet the relevant standards of performance (deadlines) for the timely conduct of those studies. Should transmission providers fail to meet those standards, the penalties reduce the compensation available, consistent with interconnection customers' interests in the timely completion of those studies and the extent to which delays in the completion of those studies contribute to interconnection queue backlogs, resulting in unjust and unreasonable rates to consumers. Even then, however, transmission providers may still obtain relief from penalties through the appeals process, including by arguing that factors outside of their control rather than their own conduct caused the delay, further confirming their reasonable opportunity to recover their costs.[725] Avangrid, MISO TOs, and NYTOs do not demonstrate that the deadline and penalty structure under Order No. 2023 is confiscatory.

iii. RTO/ISO Issues

(a) Requests for Rehearing

390. Several parties on rehearing raise challenges to the Commission's treatment of RTOs/ISOs under the deadline and penalty structure. NYISO asserts that imposing penalties on RTOs/ISOs is inappropriate because such penalties will be disproportionate or ineffective, and may pose an existential risk to RTOs/ISOs given their non-profit nature, lack of shareholders, and the risk that they will be denied recovery of their costs.[726] NYISO argues that Commission precedent prevents passing penalty costs to customers, but RTOs/ISOs lack shareholders to absorb the costs such that penalties pose an existential risk—and that the Commission arbitrarily and capriciously dismissed these concerns.[727] NYISO claims that the ability to make FPA section 205 filings to recover costs associated with penalties (whether through individual filings or a default structure) does not eliminate the risk that penalties pose, because such proposals will likely be contested and may be rejected.[728] NYISO also observes that Order No. 2023 ''asserts for the first time that RTOs/ISOs actually are authorized to pay penalty costs, seemingly without first making any kind of section 205 filing, by using funds that are not related to transmission services,'' but claims that the Commission ignores that any funds collected by RTOs/ISOs must come from market participants.[729] NYISO asserts that it is not clear why the Commission would allow recovery of penalty costs automatically from non-transmission charges but require FPA section 205 filings to recover costs from transmission customers.[730] NYISO also claims it is unduly discriminatory to subject them to the same penalty regime as traditional transmission providers.[731]

391. AEP argues that the Commission's approach to penalties as applied to RTOs/ISOs—providing that the transmission owner responsible for conducting a late study in an RTO/ISO will directly incur the penalty and allowing recovery of penalty costs incurred by RTOs/ISOs through FPA section 205 filings—underestimates the complexity of assigning fault for study delays.[732] AEP argues that assigning fault for study delays is not a straightforward proposition in RTOs/ISOs, noting the collaborative nature of the study process and citing an example from a recent SPP informational report that identified multiple drivers of delays, at least two of which were outside of SPP's control. AEP argues that the Commission failed to justify the imposition of administrative and litigative burdens on RTOs and ISOs related to assigning fault for delays to the completion of interconnection studies.[733] AEP also contends that the Commission appears to have restricted the appeal process to the party that conducts the interconnection study, such that other contributors to fault—to whom the RTO/ISO assigns some portion of the penalty—may be unable to appeal.[734] In addition, AEP argues that, at a minimum, the Commission should reconsider who has standing to appeal penalties under the Order No. 2023 procedures and broaden the

[722] For the reasons provided herein and in Order No. 2023, we find that this approach, under which transmission providers will be held to appropriate performance standards and incentivized to complete studies in a timely fashion, is permitted under FPA section 206, *see supra* section II.D.1.c; *infra* section II.D.1.c.iv, is just and reasonable, and reflects a preferable policy approach in light of the gravity of the problem of interconnection queue delays and backlogs.

[723] *Hope*320 U.S. at 603; *see also Jersey Cent.,* 810 F.2d at 1177–78. *Hope* interpreted the Natural Gas Act, whereas the instant proceedings concern the FPA. Nevertheless, ''courts rely interchangeably on cases construing each of these Acts when interpreting the other,'' including the standards articulated by the Court in *Hope. See Jersey Cent.,* 810 F.2d at 1175.

[724] *See Hope,* 320 U.S. at 603 (ratemaking does not guarantee that the regulated utility will produce net revenues).

[725] The arguments that Order No. 2023 is confiscatory or works a regulatory taking also depend on claims that the penalty structure set forth in Order No. 2023 is ''strict liability'' or that the deadlines selected for the completion of studies are ''unjustified and arbitrary.'' *See* Avangrid Rehearing Request at 16; MISO TOs Rehearing Request at 33*e.* As explained above, these arguments are not meritorious. *See supra* section II.D.1.c.i; PP 359–360.

[726] NYISO Rehearing Request at 17–18 (asserting that this penalty structure as applied to RTOs/ISOs is ''unjust, unreasonable, unduly discriminatory, and violative of due process, and would impede the Commission's policy goals'').

[727] *Id.* at 21–23 (arguing that NYISO and similarly-situated RTOs/ISOs cannot pay penalties without recovering costs from customers in some form and that being denied permission to recover such costs could threaten their financial viability).

[728] *Id.* at 23–24 (noting that in *N.Y. Indep. Sys. Operator, Inc.,* 127 FERC ¶ 61,196, at P 36 (2009), the Commission indicated that Commission review serves as a check on NYISO's ability to pass through a penalty and that denial of relief or other appropriate action is a possibility).

[729] *Id.* at 25.

[730] *Id.* at 25–26 (noting that NYISO anticipates that there will be objections to allowing automatic recovery via non-transmission related charges, such that recovery through this avenue is also not guaranteed).

[731] *Id.* at 38–39 (arguing that ''the same penalties are harsher when applied to the RTO/ISO'' because of potential uncertainties around the ability of RTOs/ISOs to recover penalty costs and the risks penalties pose to RTOs/ISOs).

[732] AEP Rehearing Request at 17–19.

[733] *Id.* at 18–19 (arguing that imposing such burdens is particularly unwarranted because the record does not support that penalties will reduce delays and if penalties are not assigned to the right entity, penalties cannot constitute an effective incentive).

[734] *Id.* at 19–20 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 963).

standard to include parties taking part in the study process that are not tasked with conducting a study.

392. As to the direct assignment of study delay penalties, Indicated PJM TOs contend that penalties cannot be automatically assigned in this fashion and the Commission is incorrect to suggest that such assignment could occur with little to no factfinding.[735] Indicated PJM TOs assert that, to the extent that the Commission intends to assign the penalty only to the singular entity that performed the study, it is not clear how the penalty would be assigned if the study is primarily executed by the RTO/ISO but also depends on a collaborative effort between the RTO/ISO and transmission owners. On the other hand, they argue that, to the extent the Commission intends that penalties be directly assigned to the entity with the ''most control'' over the study (or allocated proportionately based on the level of control or responsibility for the delay), significant factfinding will be required, given the collaborative nature of the process. Indicated PJM TOs also note that interconnection customers may be responsible for delays, reinforcing the need for a factual analysis to determine which entity had ''more control'' over a study and caused or contributed to the study delay.[736] In addition, Indicated PJM TOs assert that Order No. 2023 empowers RTOs/ISOs to determine a transmission owner's responsibility for study delay penalties, such that RTOs/ISOs will have incentives to blame transmission owners for delays, rather than assigning fault to themselves or mitigating delays, and forcing transmission owners to appeal penalties.[737] Furthermore, they argue that the Commission cannot delegate to third parties (*i.e.,* RTOs/ISOs) the obligation to ensure the justness and reasonableness of rates.[738]

393. MISO TOs also contend that, in providing for the direct assignment of penalties where the transmission-owning members of an RTO/ISO perform interconnection studies, the Commission failed to consider the complexity of the study process and how fault for delays can rest with more than one entity.[739] They argue that, in the RTO context, both the RTO and transmission owner perform critical tasks for the completion of studies and factors outside of their control may cause delays.

394. NYISO claims that the automatic assignment of penalties to transmission-owning members of RTOs/ISOs for studies that they conduct is not a reasoned solution to how penalties should apply to RTOs/ISOs, likewise citing the complexities of how the study process works in practice and collaborative nature of that process.[740] NYISO argues that allocating responsibility for delays will be highly subjective and contentious, leading to adversarial postures and undermining necessary cooperation. NYISO further argues that if ''transmission owners bear 100% of the penalty for any study that they have any involvement with then there will foreseeably be transmission owner challenges to every penalty assignment'' and that assigning penalties to transmission owners ''only to the extent that they contributed to a missed deadline'' will require a determination of relative responsibility.[741]

395. Dominion also questions the automatic allocation of the penalty for missing deadlines to the transmission owner versus the RTO/ISO.[742] Pointing to the collaborative nature of the study process in PJM, Dominion challenges the Commission's blanket assumption that the interconnection transmission owner conducting the study has the most control over the study.

396. A number of the rehearing requests assert that the deadline and penalty structure does not impose proper or effective incentives on RTOs/ISOs. Avangrid asserts that the Commission failed to establish how this structure would incentivize RTOs/ISOs to meet fixed deadlines, but rather ''asks the non-profit transmission provider to propose how it would penalize itself.'' [743] NYSPSC argues that the Commission failed to explain how, given the mechanisms it discussed for RTOs/ISOs to recover the costs of penalties, RTOs/ISOs will be subject to an incentive to meet the study deadlines set in Order No. 2023, asserting that if RTOs/ISOs can pass-through penalty costs to market participants they will be indifferent to those penalties.[744] NYTOs argue that allowing RTOs/ISOs to avoid penalty costs ''contradicts the intended incentive, making the penalty ineffective and therefore arbitrary and capricious.'' [745] Avangrid also notes that allowing RTOs/ISOs to collect penalties from market participants ''provides no financial motivation to the ISO to change behavior to meet deadlines, as the ISO would merely be passing along the penalty costs to others.'' [746]

397. Avangrid, NYISO, NYSPC, and NYTOs assert that RTOs/ISOs may attempt to recover the cost of penalties in a manner that is not consistent with principles of cost causation or is otherwise unjust and unreasonable. Avangrid argues that allowing RTOs/ISOs to collect penalties from market participants violates cost causation principles and expresses concerns that RTOs/ISOs may attempt to allocate 100% of the penalty to a transmission owner that contributes to a delay in only a minor fashion, particularly if the RTO/ISO has no other way to recover the penalty costs. NYISO argues that RTOs/ISOs must recover costs associated with a penalty regime from their customers, and that penalties would simply punish customers that have nothing to do with missed deadlines.[747] NYSPSC contends that it is unjust and unreasonable to allow RTOs/ISOs to seek to recover the costs associated with penalties from administrative fees charged to market participants, as these are beyond the costs necessary to provide electric service to customers and should not be borne by them.[748] NYTOs claim that ''passing penalties to transmission owner members of RTOs/ISOs when those providers are not responsible for a delay violates cost causation and is not just and reasonable.'' [749]

398. NYISO argues that that it was unlawful for the Commission in Order No. 2023 to not further address the question of how RTOs/ISOs will recover the costs of study delay penalties that are not automatically imposed on a transmission-owning member, asserting that this question was raised in comments, acknowledged by the Commission, and is central to Order No. 2023's penalty regime.[750] Similarly,

[735] Indicated PJM TOs Rehearing Request at 9–10.

[736] *Id.* at 11, 21.

[737] *Id.* at 25.

[738] *Id.* at 22.

[739] MISO TOs Rehearing Request at 30–31.

[740] NYISO Rehearing Request at 35–37 (''In the NYISO, transmission owners perform some part of all interconnection studies, and none are performed entirely by transmission owners.'').

[741] *Id.* at 36.

[742] Dominion Rehearing Request at 25.

[743] Avangrid Rehearing Request at 6 (noting that the Commission indicated that RTOs/ISOs could submit FPA section 205 filings).

[744] NYSPSC Rehearing Request at 6–8 (arguing the Commission recognized, for non-RTO/ISO transmission providers and transmission-owning members of RTOs/ISOs, the need to have ''skin in the game'' by making shareholders accountable and urging the Commission to consider other mechanisms to incentivize RTOs/ISOs).

[745] NYTOs Rehearing Request at 28 (citing *Garcia* v. *U.S. Bd. of Parole,* 409 F. Supp. 1230, 1239 (N.D. Ill. 1976)).

[746] Avangrid Rehearing Request at 6–7.

[747] NYISO Rehearing Request at 18.

[748] NYSPC Rehearing Request at 8–9.

[749] NYTOs Rehearing Request at 28.

[750] NYISO Rehearing Request at 19–20 (''The Commission should not defer the question to future section 205 or penalty appeal proceedings. It must resolve the problem now.'').

Dominion asserts that the Commission has not articulated a sensible approach to RTO/ISO penalty costs that is supported by substantial evidence in the first instance, but is instead inappropriately deferring the issue to future RTO/ISO filings to propose a penalty allocation structure.[751]

399. MISO argues that Order No. 2023 should be revised to provide that RTOs are not required to pay any penalties until there is a Commission accepted mechanism to collect such penalties—and that the Commission failed to respond to comments raising this concern in a reasoned fashion.[752] MISO notes that the Commission recognizes that RTOs have no ability to pay study delay penalties without collecting them from another party and asserts that, until there is a mechanism in place to collect the funds to pay study delay penalties in RTOS, the RTOs may lack the authority and funds to collect and pay the penalties. However, MISO also notes that section 3.9 of the *pro forma* LGIP provides for distribution of penalties no later than 45 calendar days after the late study has been completed or 45 calendar days after the completion of any appeal and rehearing of the penalty.

(b) Determination

400. As an initial matter, we disagree with arguments that applying the penalty regime to RTOs/ISOs is inappropriate or unduly discriminatory because RTOs/ISOs do not have shareholders or guaranteed means of absorbing penalty costs whereas non-RTO/ISO transmission providers do. We believe that it would be inappropriate to categorically exempt RTOs/ISOs from the study delay penalties adopted in Order No. 2023.[753] RTOs/ISOs manage interconnection queues and process interconnection studies like non-RTO transmission providers. The available evidence indicates that study delays are just as significant a problem in RTOs/ISOs as non-RTO/ISO regions.[754] RTOs/ISOs, just like non-RTOs, are facing increases in interconnection queue size, study duration, and length of time interconnection customers are spending in the queue.[755] As noted above, Order No. 2023 explained the gravity of the national problem of interconnection queue backlogs,[756] and we continue to believe that this is a dire problem that requires nationally implemented solutions.

401. Moreover, while we agree that there are differences between RTOs/ISOs and non-RTO transmission providers, we conclude that the penalty regime adopted in Order No. 2023 sufficiently accounts for the differences. First, in RTOs/ISOs, where an interconnection study is performed by a transmission-owning member of the RTO/ISO (as is often the case for facilities studies), under Order No. 2023 the penalty for missing a study deadline is incurred by that transmission-owning member, not the RTO/ISO.[757] Second, as to penalties that are incurred directly by the RTO/ISO, the RTO/ISO is permitted to seek cost recovery of penalty costs from their transmission-owning members or other market participants, whereas non-RTO/ISO transmission providers are not. Additionally, RTOs/ISOs, as well as non-RTOs, can appeal the imposition of penalties in specific instances. In light of these avenues for an RTO/ISO to avoid or reduce the prospect that it is responsible for payment of a penalty, we find that any residual uncertainty as to an RTO/ISO's ability to recover penalty costs is outweighed by the critical need for all transmission providers, including RTOs/ISOs, to process interconnection studies in a timely manner. Furthermore, particularly given that the daily amount of the penalties is not punitive and that the penalties will be capped, we do not view the possibility that RTOs/ISOs may face some uncertainty in recovering penalty costs as an existential threat.

402. We are not persuaded by the following arguments to eliminate or modify the penalty regime: (1) RTOs/ISOs will not be incentivized to meet study deadlines; (2) the complexity of studies in RTOs/ISOs may lead to inappropriate assignment of cost responsibility; or (3) where RTOs/ISOs have dispute resolution processes, these procedures may delay assignment of fault. We continue to find that allowing RTOs/ISOs to recover penalty costs is warranted because RTOs/ISOs are differently situated than non-RTO transmission providers in terms of their ability to bear penalty costs, as RTOs/ISOs are non-profit entities and do not have shareholders. Therefore, it is appropriate for RTOs/ISOs to be permitted to seek to recover the cost of penalties they incur. We disagree that this structure will not incentivize RTOs/ISOs to mitigate study delays. Comments on the NOPR explained that RTOs/ISOs have good reason to try to avoid collecting penalty costs from their transmission-owning members, as that could create tension between RTOs/ISOs and their transmission-owning members.[758] RTO/ISOs have an interest in limiting unnecessary charges to their member transmission owners or other market participants because the case for participating in RTO/ISOs, which remains voluntary and subject to state law, is founded on the increased efficiencies and cost-savings of RTO/ISO membership. If RTO/ISOs ignore opportunities within their control to eliminate or reduce the risk of incurring penalties, they erode these benefits.

403. As a result, the record indicates that RTOs/ISOs will be incentivized to avoid incurring penalties in the first instance. And to the extent that an RTO/ISO does incur a penalty cost, it will be incentivized to appeal that penalty, where appropriate, to avoid the need to collect that penalty cost. For these reasons, we find that the incentive structure created by Order No. 2023 will function as the Commission contemplated, helping to ensure just and reasonable rates.

404. In response to the argument that assigning penalties directly to the transmission owner that conducted the study is complicated because of the collaboration between the RTO and its transmission-owning members, we note that penalties will only be directly assigned to the applicable transmission owner within an RTO/ISO where there is an identifiable transmission-owning member who is formally responsible for conducting the applicable study. In other words, even where there is collaboration between entities, it is only if the transmission-owning member is the formally designated ''lead'' of the process that the transmission-owning member will directly incur the study delay penalty. To contrast, where there is no identifiable transmission-owning member that is formally responsible for leading the interconnection study, the penalty will be incurred by the RTO/ISO itself.

405. We decline to implement MISO's suggestion that Order No. 2023 be revised to provide that RTOs/ISOs should not be required to pay any penalties until there is a Commission-accepted mechanism to recover such penalties. Order No. 2023 provides that RTOs/ISOs may—but are not required to—submit section 205 filings to propose cost recovery mechanisms to recover the costs of penalties they

[751] Dominion Rehearing Request at 25–26.

[752] MISO Rehearing Request at 8–11.

[753] *See also* Order No. 890, 118 FERC ¶ 61,119 at P 1353.

[754] *See* Order No. 2023, 184 FERC ¶ 61,054 at app. B.

[755] Queued Up 2023 at 9, 27, 32.

[756] Order No. 2023, 184 FERC ¶ 61,054 at PP 37–58.

[757] *Id.* P 995.

[758] *See id.* P 921; OPSI Initial Comments at 9.

incur.[759] Revising the penalty structure as MISO suggests would leave open the possibility that RTOs/ISOs could avoid the penalty regime altogether by simply not proposing any cost recovery mechanism. Additionally, Order No. 2023 notes that RTOs/ISOs have multiple options for collecting necessary funds, and that one of these options is to submit an FPA section 205 filing after-the-fact to assign the cost of a specific study delay penalty. MISO's suggested revision is inconsistent with that potential avenue for cost recovery.

406. We find speculative arguments that RTOs/ISOs may attempt to recover penalties in a manner inconsistent with cost causation. RTOs/ISOs may propose under FPA section 205 either a default structure for recovering penalty costs or file section 205 proceedings to recover the costs of individual penalty costs. We will not prejudge those filings. Any arguments that those hypothetical proposals might violate cost causation principles are best addressed in the context of the specific proposal and should be raised in those FPA section 205 proceedings.

407. We disagree with arguments that it is unlawful for the Commission to defer resolution of how RTOs/ISOs can recover penalties to future section 205 filings. In Order No. 2023, the Commission responded to comments on the penalty regime as it relates to RTOs/ISOs by identifying potential avenues for RTOs/ISOs to recover penalties and modifying the NOPR proposal where appropriate.[760] We do not believe that it is unlawful to allow section 205 filings to implement specific details of this regime. We further disagree that the particulars of how RTOs/ISOs recover penalty costs are integral to this rulemaking, which is focused on the overarching penalty structure that will apply nationwide. The specifics of RTO/ISO cost recovery will be highly fact dependent based on regional tariff variations. We continue to believe that it is appropriate to address cost recovery issues in individual proceedings that can take into account the variations in tariffs in each RTO/ISO region.

iv. Statutory Authority To Implement a Study Delay Penalty Structure Under FPA Section 206

(a) Requests for Rehearing

408. Certain of the rehearing requests challenge the Commission's authority to adopt the deadline and penalty structure set forth in Order No. 2023 and/or contend that it is contrary to or not supported by Commission precedent. NYTOs and PacifiCorp claim that the penalty structure is *ultra vires* because the Commission's civil penalty authority resides in FPA sections 316[761] and 316A,[762] and that the Commission is impermissibly reading such authority into section 206, which contains no civil penalty authority.[763] PacifiCorp argues that the Commission is attempting to ''get around due process and other limits on its civil penalty authority by claiming it is only engaged in a rate-setting exercise'' but ''[a] civil penalty is a civil penalty.'' [764] NYTOs also assert that, under the Commission's policy statements on enforcement and compliance, penalties are meted out for wrongdoing or misconduct.[765] Thus, NYTOs claim, the Commission cannot adopt a structure in which transmission providers will incur penalties where the willful and knowing *mens rea* requirement is absent, or where the transmission provider is not at fault for a study delay.

409. PJM asserts that the study delay penalty structure violates FPA section 315 [766] because that section governs forfeitures for willful failures to comply with a Commission order, rule, or regulation or timely file a required report, and requires that such forfeitures be remitted to the United States Treasury.[767] PJM concedes that RTO tariffs, including its own, and other tariffs contain various penalty provisions; however, PJM attempts to differentiate these provisions by asserting that here, the Commission is imposing a mandate on transmission providers to include such a provision in their tariffs involuntarily, calling it a penalty, and using the compliance process to bypass the penalty provisions that Congress established in section 315 of the FPA.

410. AEP asserts that the penalty structure set forth in Order No. 2023 is unlawful because it constitutes monetary damages—defraying the study costs of the interconnection customers affected by a delay—and the Commission lacks authority to grant such damages.[768] AEP also contends that the Commission's decision to adopt a penalty structure for late studies is contrary to precedent, including Order No. 2003 and Order No. 845, in which the Commission rejected proposed requirements to impose liquidated damages or automatic penalties if a transmission provider failed to meet deadlines.[769]

(b) Determination

411. We are not convinced by PacifiCorp's, NYTOs', or PJM's arguments that the Commission lacked authority to implement Order No. 2023's performance standard and incentive structure by relying on deadlines and penalties because, they argue, the Commission's civil penalty authority resides exclusively in certain provisions of the FPA. To begin with, these arguments were not raised prior to rehearing, as required by the Commission's Rule of Practice and Procedure 713(c)(3).[770] Here, because the NOPR proposed the elimination of the reasonable efforts standard and its replacement with a materially similar penalty structure to that adopted in Order No. 2023,[771] nothing precluded commenters from raising these arguments prior to the issuance of Order No. 2023—yet they did not do so. Thus, here too, these arguments are not properly before us.

412. Regardless, even considering these arguments on their substance, we find that they are not meritorious. As discussed above, the deadline and penalty structure adopted in Order No. 2023 reflects an exercise of the Commission's authority under FPA section 206, consistent with its longstanding regulation of the interconnection process.[772] PJM, NYTOs, and PacifiCorp fail to acknowledge this authority or precedent. Instead, they view FPA sections 315, 316, and 316A's grant of

[759] Order No. 2023, 184 FERC ¶ 61,054 at P 994.

[760] *Id.* PP 994–1001.

[761] 16 U.S.C. 825o.

[762] 16 U.S.C. 825o–1.

[763] NYTOs Rehearing Request at 22–23; PacifiCorp Rehearing Request at 10–11 (asserting that the Commission cites no precedent for civil penalties under section 206; also claiming that the Commission failed to address whether a study timely violation was itself a tariff violation).

[764] PacifiCorp Rehearing Request at 11.

[765] NYTOs Rehearing Request at 22 (citing *Enf't of Statutes, Ords., Rules, & Reguls.,* 113 FERC ¶ 61,068, at PP 14, 26 (2005); *Kokesh,* 581 U.S. at 461 (government-assessed penalties are ''for the purpose of punishment, and to deter others from offending in like manner.'')).

[766] 16 U.S.C. 825n.

[767] PJM Rehearing Request at 29–30.

[768] AEP Rehearing Request at 7–8 (citing *Bachofer* v. *Calpine Corp.,* 134 FERC ¶ 61,100, at P 9 (2011); *New England Power Pool,* 98 FERC ¶ 61,299, at 62,290 n.6 (2002); *TranSource, LLC* v. *PJM Interconnection, L.L.C.,* 168 FERC ¶ 61,119 at n.896 (2019)).

[769] *Id.* at 8–9 (asserting that the Commission failed to explain this change) (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 883, 898; Order No. 2003–A, 106 FERC ¶ 61,220 at P 249; Order No. 845, 163 FERC ¶ 61,043 at P 309; *N.Y. Indep. Sys. Operator, Inc.,* 108 FERC ¶ 61,159, at PP 77–78 (2004)).

[770] *See supra* P 386 & nn. 723–724; 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'').

[771] *See* NOPR, 179 FERC ¶ 61,194 at PP 161–73.

[772] *See supra* section II.D.1.c.

authority to assess a particular kind of monetary sanction—a civil penalty pursuant to statutorily-granted enforcement authority—as necessarily reflecting an across-the-board restriction of the Commission's other authority, including its FPA section 206 ratemaking authority. For instance, NYTOs cite the Supreme Court's decision in *Kokesh* v. *SEC* as standing for the proposition that ''government-assessed penalties are 'for the purpose of punishment, and to deter others from offending in like manner,' '' [773] while PacifiCorp asserts that ''a civil penalty is a civil penalty.'' [774] These arguments fail to recognize that not all monetary sanctions, even when labeled as penalties, are civil penalties and that monetary sanctions can serve different purposes, have different structures, and flow from different sources of authority.

413. The Supreme Court's decision in *Kokesh* [775] supports our conclusion that the fact that a financial sanction is assessed for conduct—here, failure to complete a study by the required deadline—does not render it a civil penalty of the sort that conflicts with or exceeds Congress's enactment of statutory civil penalty authorities in the FPA. In *Kokesh,* the Supreme Court differentiated between penalties, even those expressly labeled as ''penal,'' that are imposed as punishment versus other pecuniary sanctions. It explained that this inquiry turned on whether (1) the wrong sought to be redressed is a wrong to the public (an offense committed against the State) or a wrong to the individual and (2) whether it was imposed for the purpose of punishment and to deter others from offending in like manner, as opposed to compensating a victim for a loss.[776] Similarly, in *Meeker* v. *Lehigh Valley Railroad Company,* the Court held that an order by the Interstate Commerce Commission, which directed a railroad company to refund and pay damages to a shipping company for excessive shipping rates, was not imposing a penalty for purposes of the statute of limitations, given that the payment was to redress a private injury, rather than punitive.[777] Here, Order No. 2023 implemented a system of deadlines and penalties for late studies not to redress a wrong to the public, as under FPA sections 315, 316, and 316A, or to punish, but instead to effectively adjust what transmission providers can charge based on study timeliness.

414. Specifically, Order No. 2023's deadline and penalty structure was adopted to define substantive terms of the commercial relationship between particular parties—transmission providers and interconnection customers—in the Commission-jurisdictional context of regulating interconnection, ensuring just and reasonable rates, and avoiding degradation of service.[778] The Commission in Order No. 2023 did not invoke a need to punish or to label transmission providers as wrongdoers as a rationale for its action and, in fact, stated that it was ''not finding that transmission providers have necessarily acted in bad faith.'' [779] The Commission established safeguards to avoid punitive results, including the cap on penalties [780] and the appeals process.[781] The appeals process also takes into account the broader economic effects of regulating this interaction between interconnection customers and transmission providers by ensuring that transmission providers are not held to unduly strict standards that could result in economically inefficient outcomes or unjust and unreasonable rates.[782] Likewise, and contrary to PJM's claim that the failure to remit the penalties under Order No. 2023 to the Treasury demonstrates that these penalties are beyond the Commission's authority, the fact that the penalties are disbursed to interconnection customers distinguishes them from the sort of sanctions addressed in *Kokesh* and authorized in FPA sections 315, 316, and 316A.[783] And, as the Commission recognized, delayed interconnection studies impose financial harm on interconnection customers,[784] reinforcing that the penalties under Order No. 2023 help to ensure that the transmission provider is compensated for performing interconnection studies based on whether it achieves (or the extent that it fails to achieve) performance standards relating to the timeliness of those studies.[785]

415. Thus, and consistent with our broad discretion in determining how to ensure just and reasonable rates,[786] we continue to find that the study delay penalty structure implemented in Order No. 2023 is an appropriate exercise of our authority under FPA section 206. Likewise, we also are not persuaded by related arguments asserting that the study delay penalty structure is

[773] NYTOs Rehearing Request at 22–23 n.60 (quoting *Kokesh,* 581 U.S. at 461); *see also id.* at 22–23 nn. 56, 61 (citing *Cal. Indep. Sys. Operator Corp.* v. *FERC,* 372 F.3d 395, 398 (D.C. Cir. 2004) (the Commission's authority is defined by Congress); *Altamont Gas Transmission Co.* v. *FERC,* 92 F.3d 1239, 1248 (D.C. Cir. 1996) (the Commission cannot do indirectly what it could not do directly)).

[774] PacifiCorp Rehearing Request at 11.

[775] In *Kokesh,* the Court considered whether the general statute of limitations applicable for ''action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise,'' 28 U.S.C. 2462, applied to claims for disgorgement as a sanction for violating a federal securities law. 581 U.S. at 457.

[776] *Id.* at 461 (quoting *Huntington* v. *Attrill,* 146 U.S. 657, 667 (1892)).

[777] 236 U.S. 412, 423 (1915) (''The words 'penalty or forfeiture' in this section refer to something imposed in a punitive way for an infraction of a public law, and do not include a liability imposed solely for the purpose of redressing a private injury, even though the wrongful act be a public offense, and punishable as such. Here the liability sought to be enforced was not punitive, but strictly remedial . . . .'').

[778] *See supra* section II.D.1.c (explaining that the penalty structure reflects how the interconnection relationship may impact overall rates for consumers and the costs to interconnection customers of late studies, in terms of defining the charges transmission providers may assess for such studies as a function of their timeliness); *Kokesh,* 581 U.S. at 463 (explaining that one factor that favored concluding that disgorgement was a penalty falling within 28 U.S.C. 2462 was that the SEC was acting to protect the public interest, writ large, rather than standing in the shoes of particular parties, reflecting that the violation for which the remedy was sought was committed against the United States, rather than aggrieved individuals); *cf. Oneok, Inc.* v. *Learjet, Inc.,* 575 U.S. 373, 385 (2015) (discussing, in the context of preemption, the importance of looking to the aim of an initiative in assessing whether it crosses a jurisdictional boundary).

[779] Order No. 2023, 184 FERC ¶ 61,054 at P 966; *see Gabelli* v. *SEC.,* 568 U.S. 442, 451–52 (2013).

[780] *See Kokesh,* 581 U.S. at 466–67 (finding it significant that disgorgement sometimes exceeds the profits gained as the result of a violation, in rejecting an argument that disgorgement was remedial rather than punitive); *cf. also Liu* v. *Sec. & Exch. Comm'n,* 140 S. Ct. 1936, 1940, 1947 (2020) (holding that ''a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under [15 U.S.C. 78u(d)(5)]'').

[781] *See* Order No. 2023, 184 FERC ¶ 61,054 at PP 875, 972, 984–85.

[782] *Cf. id.* P 1003 (noting that the appeals process is an avenue to account for delays beyond a transmission provider's control, such as those due to *force majeure,* which could excuse a failure to perform at a particular standard).

[783] *Kokesh,* 581 U.S. at 464–65 (explaining that in many cases SEC disgorgement is not compensatory, because disgorged profits are not necessarily paid to investors but rather paid to the district court and may ultimately be paid to the Treasury); *see also id.* at 462–63.

[784] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 971.

[785] *Cf. Kokesh,* 581 U.S. at 462–63 (discussing cases in which liability was found to remedy private wrongs, with payments made to the party suffering the injury, as essentially compensatory not imposing penalties).

[786] *See, e.g., Morgan Stanley Cap. Grp. Inc.* v. *Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.,* 554 U.S. 527, 532 (2008) (explaining that the just and reasonable standard is ''obviously incapable of precise definition'' such that the Commission is afforded ''great deference'' in its rate decisions); *Mobil Oil Expl. & Producing Se. Inc.* v. *United Distrib. Cos.,* 498 U.S. 211, 214 (1991) (explaining that the just and reasonable standard, ''far from binding the Commission . . . accords it broad ratemaking authority'' and does not compel a particular approach); *MISO Transmission Owners* v. *FERC,* 45 F.4th at 261 (''FERC is entitled to adopt any methodology it believes will help it ensure that rates are just and reasonable, so long as it doesn't adopt that methodology in an arbitrary and capricious manner.'') (citing *S. Cal. Edison Co.* v. *FERC,* 717 F.3d 177, 182 (D.C. Cir. 2013)).

otherwise in tension with the civil penalty provisions in the FPA or contradicts the Commission's policies on enforcement.

416. For instance, PJM argues that, in contrast to other tariff penalty provisions adopted pursuant to FPA section 205, the Commission in Order No. 2023 ''impos[ed] a mandate on transmission providers to include such a provision in their tariffs involuntarily,'' thereby bypassing the penalty provision in FPA section 315.[787] As just discussed, the study delay penalty structure does not bypass any penalty provisions of the FPA but, instead, was adopted pursuant to the Commission's independent ratemaking authority. Moreover, PJM fails to explain its assertion that the scope of permissible tariff mechanisms to ensure such rates are just and reasonable should substantially differ between FPA sections 205 and 206.[788] We do not find this argument supported by the statute, particularly given that a purpose of section 206 is to allow the Commission to replace, by its own initiative, rates that may have resulted from section 205 filings but have since become unjust and unreasonable.

417. We are also not persuaded by NYTO's reliance on the Commission's policy statements in the enforcement context.[789] These policy statements are not directed toward the study delay penalty structure set forth in Order No. 2023 as an exercise of the Commission's authority under FPA section 206, but instead address how the Commission will consider civil penalties and other remedies pursuant to its separate enforcement authorities granted under other sections of the FPA. As to similar arguments by MISO TOs, PJM, and NYISO asserting that the study delay penalty structure set forth in Order No. 2023 is in tension with Commission policy in enforcement cases,[790] the study delay penalty structure adopted in Order No. 2023 is not an implementation of the Commission's enforcement authority under FPA sections 315, 316, or 316A. Moreover, and contrary to these arguments, the Commission has adopted appropriate mechanisms to ensure that the study delay penalty structure is not punitive and can account for the facts of particular cases, as discussed above.

418. We disagree with PacifiCorp's claim that the Commission erred in Order No. 2023 because it failed to address a comment questioning whether a violation of the study deadlines giving rise to penalties under Order No. 2023 could also be treated as a tariff violation under the FPA. As an invocation of the Commission's ratemaking authority under section 206, Order No. 2023 did not address or invoke the Commission's civil enforcement authority, practices, or policies. The Commission may consider whether a particular failure to meet a study deadline meets the statutory, regulatory, and policy considerations to constitute a tariff violation warranting enforcement action in an appropriate case, on the facts presented. Attempting to further resolve this issue at this time is beyond the scope of this proceeding.

419. We further disagree with AEP's claim that the Commission lacks authority to adopt the study delay penalty structure set forth in Order No. 2023 on the theory that Commission precedent forbids it from awarding monetary damages. None of the cases AEP cites addressed a penalty structure similar to that presented here, supported by the Commission's authority to ensure just and reasonable rates. Rather, in *Bachofer* v. *Calpine Corp.,* the Commission found that it lacked jurisdiction to address claims for property damage due to the alleged actions of a generation facility, that such allegations ''are more appropriately addressed in some other forum,'' and that ''monetary damages are also beyond the scope of the Commission's authority under Part II of the Federal Power Act.'' [791] In *TranSource, LLC* v. *PJM Interconnection, L.L.C.,* the Commission explained that monetary relief for ''lost business opportunities and other litigation-related expense'' allegedly suffered by TranSource was beyond the scope of relief the Commission could award.[792] *New England Power Pool* involved a rehearing request directed toward the effective date of certain tariff changes, where no waiver of the Commission's prior notice requirements had been sought, and reflected that the Commission cannot engage in retroactive ratemaking.[793] Here, the Commission is not confronted by claims seeking post-hoc, consequential monetary damages to make a specific party whole following alleged wrongdoing. Rather, it is exercising its FPA section 206 authority to prospectively and generically regulate the commercial relationship between interconnection customers and transmission providers, including as to the appropriate charges for interconnection studies.

v. Commission Precedent

(a) Requests for Rehearing

420. MISO TOs assert that the Commission failed to heed its precedent in Order No. 2003, which rejected liquidated damages for study delays, because that approach might undermine the transmission provider's ability to economically administer its study process.[794] Likewise, MISO TOs also point to Order No. 845, asserting that the Commission there rejected requests to include penalties for study delays, recognizing that often the transmission provider will not be at fault for such delays.[795] MISO TOs also contend that, as recently as November 29, 2022, the Commission affirmed the reasonable efforts standard and rejected firm study deadlines and does not discuss in Order No. 2023 why it now abandons that result.[796] Additionally, MISO TOs claim that Order Nos. 890 and 890–A reflect that the Commission imposed study delay penalties only when transmission providers routinely failed to meet deadlines, failed to meet deadlines for a certain number of studies, and were imposed only after they had the opportunity to present evidence of extenuating circumstances.[797] MISO

[787] PJM Rehearing Request at 30.

[788] PJM's implication that penalties have only been previously adopted under FPA section 205 is also incorrect. *See* Order No. 890, 118 FERC ¶ 61,119 at PP 40, 1324–57, *order on reh'g,* Order No. 890–A, 121 FERC ¶ 61,297, *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299, *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (adopting, through generic proceedings under FPA section 206, a penalty structure that is similar in several respects to that adopted in Order No. 2023).

[789] *See* NYTOs Rehearing Request at 22 & n.60 (''Under the Commission's policy statements on enforcement and compliance, penalties are meted out for wrongdoing and misconduct.'' (citing *Enf't of Statutes, Ords., Rules, and Reguls.,* 113 FERC ¶ 61,068 at PP 14, 26); *see also id.* at 27.

[790] *See* MISO TOs Rehearing Request at 31 (asserting that the study delay penalty structure results in a deprivation of due process whereas ''both the Commission's Office of Enforcement and NERC Reliability Standard enforcement involve fact finding and affording the targeted entity the opportunity to present evidence to demonstrate lack of fault or mitigating circumstances *before* a penalty is imposed''); NYISO Rehearing Request at 31 & n.89 (arguing that ''the Commission may not establish penalties that are excessively punitive in relation to the severity of a violation'' and citing Commission policies in the enforcement context); PJM Rehearing Request at 31 n.67.

[791] 134 FERC ¶ 61,100 at P 9.

[792] 168 FERC ¶ 61,119 at P 285 & n.896.

[793] 98 FERC ¶ 61,299 at 62,290 & n.6.

[794] MISO TOs Rehearing Request at 24–25 (arguing that the Commission failed to respond to MISO TOs comments on this point).

[795] *Id.* at 25 (arguing that the Commission failed to articulate a meaningful response, but instead simply asserts that it is attempting to remedy unjust and unreasonable rates and ensure interconnection in a reliable, efficient, transparent, and timely manner; contending that the penalty structure will not accomplish these aims).

[796] *Id.* at 26 (citing *PJM Interconnection, L.L.C.,* 181 FERC ¶ 61,162 at P 138).

[797] *Id.* at 20–24 (noting that in Order 890–A, the Commission clarified that such penalties would

TOs contrast Order No. 2023's penalty structure with that in Order No. 890, arguing that it does not make sense to grant less flexibility to transmission providers for conducting interconnection studies than transmission studies, given that interconnection studies are more complex, more numerous, and involve more requests to be studied.[798]

421. NYISO and Indicated PJM TOs assert that the Commission was wrong in Order No. 2023 to compare the penalty structure it adopted to ''traffic ticket'' penalties, asserting that such penalties are applied solely based on objective criteria that can be applied automatically, whereas study delays raise more complex questions regarding the fault for any delay.[799] NYISO contends that the Commission failed to address, in a reasoned fashion, NYISO's argument that reliability penalties are distinguishable from the penalty structure adopted under Order No. 2023 because reliability penalties are generally non-financial and, when such penalties apply, there are numerous mechanisms in place to avoid unfairly harsh results.[800]

422. Indicated PJM TOs also claim that Order No. 2023's penalty structure is unlawful because it impermissibly attempts to override RTO/ISO governing documents.[801] In particular, they assert that the PJM Consolidated Transmission Owners Agreement (PJM CTOA) does not authorize PJM to assign penalty amounts to PJM transmission owners. According to Indicated PJM TOs, under the *Atlantic City* precedent, the Commission cannot prevent transmission providers from deciding how to propose to recover their costs and cannot direct transmission providers to make cost recovery filings in any prescribed manner (here, in alleged contravention of the CTOA).[802]

(b) Determination

423. We are not persuaded by arguments that the deadline and penalty structure in Order No. 2023 is inconsistent with the Commission's precedent or that, to the extent it differs from other penalty structures in the Commission's precedent, that departure is insufficiently explained. For instance, certain parties argue that in Order No. 845 the Commission acknowledged that study delays may be attributable to factors not within the control of transmission providers and that the Commission in Order No. 845 declined to implement automatic penalties for study delays.[803] The Commission in Order No. 2023, however, explained the reasons for its change in approach: that its determination was based on the evidence in the record, including evidence of worsening queue delays based on the reporting data collected under Order No. 845 and that failure on the part of transmission providers to timely complete studies was a significant reason for those delays.[804] Thus, even though it remains the case that there are factors outside of a transmission providers' control that may contribute to interconnection study delays, on this record the Commission reasonably concluded that elimination of the reasonable efforts standard and adoption of a study delay penalty structure is warranted notwithstanding that it took a different approach in Order No. 845.[805] We sustain that determination.

424. We are also not convinced that the adoption of penalties for late interconnection studies conflicts with Order No. 2003, in which the Commission declined to include a liquidated damages provision in the *pro forma* LGIP, observing that it ''may undermine the Transmission Provider's ability to economically administer its study process.'' [806] At the outset, to the extent that the rehearing requests rely on the Commission's decision not to include the proposed liquidated damages provision in Article 5.1 of the *pro forma* LGIA, that proposed liquidated damages provision is distinguishable in that it is related to a transmission provider's failure to complete construction of interconnection facilities in a timely fashion.[807] Furthermore, even in this context, the Commission simply declined to impose a liquidated damages provision in the *pro forma* LGIP, but was clear that such provisions were permissible in LGIAs upon agreement of the parties.[808]

425. Moreover, the Commission in Order No. 2023 did not take action based on the record that was available in 2003. Instead, the Commission has adopted the specific deadline and penalty structure set forth in Order No. 2023, as clarified herein, based on the record before us in this proceeding. This record is informed by an additional two decades of experience,[809] which justify the need for the reforms adopted in Order No. 2023, including the adoption of study delay penalties.[810] The Commission has also taken steps (*e.g.,* site control requirements, commercial readiness deposits, and withdrawal penalties) directed toward reducing the number of speculative interconnection requests and has discussed the costs to interconnection customers of interconnection queue backlogs and late interconnection studies.[811] The penalty structure adopted in Order No. 2023 further includes several safeguards,

apply only to transmission providers unable to justify their repeated failure to meet deadlines and discussed the factors that might excuse such failures).

[798] *Id.* at 23–24; *see also* NYISO Rehearing Request at 31–32.

[799] NYISO Rehearing Request at 31 (stating that ''[t]he fact that the Commission recognized the need for an appeals process to resolve inevitable factual disputes about penalties demonstrates that the traffic ticket model is not relevant''); Indicated PJM TOs Rehearing Request at 19–21.

[800] NYISO Rehearing Request at 31–32 (asserting that the appeals process, which the Commission discussed in response to these arguments, is not an adequate process because it is inchoate and unreasonably presumes fault on the part of transmission providers and presumes that penalties are warranted for delays); *see id.* at 31 n.85 (''Violators may avoid penalties for a variety of reasons including demonstrating a culture of compliance, cooperating with investigations, and taking effective remedial actions. Thus, the reliability penalty regime incorporates due process.'').

[801] Indicated PJM TOs Rehearing Request at 8–12 (citing *Atl. City I,* 295 F.3d at 10 (''Nor may FERC prohibit public utilities from filing changes in the first instance.''); *Atl. City Elec. Co.* v. *FERC,* 329 F.3d 856, 859 (2003) (per curiam) (*Atl. City II*) (''FERC has no jurisdiction to enter limitations requiring utilities to surrender their rights under § 205 of the FPA to make filings to initiate rate changes.'')).

[802] *Id.* at 11–12.

[803] *See* AEP Rehearing Request at 7–8; MISO TOs Rehearing Request at 24–25.

[804] Order No. 2023, 184 FERC ¶ 61,054 at P 1012; *see supra* PP 281–282.

[805] In particular, the Commission has established the appeals process to take into account the possibility that an interconnection study is delayed due to factors beyond the control of the transmission provider.

[806] Order No. 2003, 104 FERC ¶ 61,103 at P 898.

[807] *See id.* PP 851–52 (describing the liquidated damages provision proposed the Commission proposed to include in Article 5.1); *id.* P 854 (explaining that while there were some common issues regarding the two liquidated damages provisions the Commission was considering, ''the provisions serve different functions''); *id.* PP 868–85 (discussing the proposed LGIA liquidated damages provision, and the Commission's rationale for declining to adopt it).

[808] *See, e.g.,* Order No. 2003–A, 106 FERC ¶ 61,220 at P 249; *see also N.Y. Indep. Sys. Operator, Inc.* 108 FERC ¶ 61,159 at PP 77–78 (liquidated damages are permissible upon agreement of the parties).

[809] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 3 (''The electricity sector has transformed significantly since the issuance of Order Nos. 2003 and 2006 . . . . These new challenges are creating large interconnection queue backlogs and uncertainty regarding the cost and timing of interconnecting to the transmission system, increasing costs for consumers.'').

[810] Even in Order No. 2003—when it was not confronting the magnitude of interconnection queue backlogs and late studies occurring now—the Commission recognized ''value of providing an incentive to complete Interconnection Studies.'' Order No. 2003, 104 FERC ¶ 61,103 at P 898. It also concluded that it had statutory authority to adopt liquidated damages provisions. *Id.* P 857.

[811] *See, e.g.,* Order No. 2023, 184 FERC ¶ 61,054 at PP 3, 27, 37–40, 43, 50.

including the appeal mechanism to seek relief from penalties, and we do not believe that the penalty structure will be punitive.[812] On the record before us now, we continue to find that a structure where penalties are incurred for late interconnection studies is warranted notwithstanding that the Commission declined to adopt a proposal for liquidated damages for study delays on a different record twenty years ago.

426. MISO TOs also point to a Commission decision from the end of 2022 in which—MISO TOs claim—the Commission ''affirmed the reasonable efforts standard and eschewed the adoption of firm study deadlines.'' [813] In that decision, however, the Commission approved PJM's FPA section 205 proposal because, at that time, the reasonable efforts standard was ''the currently applicable standard under the Commission's *pro forma* LGIP and LGIA,'' noting that in Order No. 845 the Commission had declined to eliminate the reasonable efforts standard.[814] The Commission has now determined, based on the record in this proceeding and under FPA section 206, that the reasonable efforts standard is no longer just and reasonable and specified the replacement standards, and transmission providers (including PJM) are required to submit compliance filings to adopt the requirements of Order No. 2023, as modified herein.

427. We disagree with Indicated PJM TOs' and NYISO's claims that the Commission erred in comparing the penalty structure under Order No. 2023 to traffic ticket penalties, asserting that such traffic ticket penalties are assessed solely based on objective criteria. Under Order No. 2023's penalty structure, penalties are incurred based on objectively identifiable criteria set forth in the tariff (failure to complete the study in the required timeframe) and transmission providers are not subject to sanctions or consequences other than the penalty set forth in the tariff and approved by the Commission.[815] While Indicated PJM TOs and NYISO argue that, in light of the appeal process, the ultimate imposition of the penalty is not based on objectively identifiable behavior, the approach adopted in Order No. 2023 is consistent with the Commission's traffic ticket penalty precedent which includes an ''appeals process'' under which the Commission considers ''all relevant circumstances.'' [816]

428. Nor, contrary to Indicated PJM TOs' claim, is any aspect of the penalty structure impermissibly ''delegate[d] . . . to third parties'' such as ''jurisdictional utilities.'' [817] As just discussed, the trigger for penalties occurs through objective criteria, which were determined by the Commission on the record in this proceeding. The appeals process is conducted by the Commission. To the extent that RTOs/ISOs seek to recover the costs of penalties assessed to them through section 205 filings, whether through individual filings or a default structure, the Commission will review those filings to determine whether they are just and reasonable, and not unduly discriminatory or preferential.[818]

429. As to NYISO's argument that Order No. 890's transmission study penalties are not relevant to the Commission's adoption of the penalty structure in Order No. 2023, NYISO does not refute the numerous similarities between these two structures. These include that, in Order No. 890, the Commission: imposed set time frames for the completion of transmission studies and found that transmission providers must have a meaningful stake in meeting those deadlines; [819] included a process to waive penalties in unique circumstances but declined to create broad categories of exemptions from penalties; [820] rejected arguments that imposing deadlines and penalties will necessarily decrease study quality or harm system reliability; [821] discussed other reforms that would help achieve transmission deadlines, but did not take piecemeal action by waiting to observe the effects of those reforms; [822] provided for the distribution of penalties to transmission customers; [823] did not exempt RTOs; [824] and prohibited transmission providers from recovering study delay penalties through their transmission rates.[825] In light of these similarities, we continue to conclude that Order No. 890 is relevant Commission precedent supporting the study delay penalty structure adopted in Order No. 2023.[826]

430. The Commission in Order No. 2023 also recognized that there were differences between the penalty structure in Order No. 2023 as compared to Order No. 890, but found that they were ''warranted by the significant and growing interconnection queue backlogs.'' [827] In other words, far from NYISO's suggestion that the Commission was unreasonably citing ''the fact that interconnection studies are more numerous, complex, and susceptible to delays than transmission studies as a reason for treating the two identically,'' [828] the Commission was here explaining why the differences between these two structures were appropriate.[829] We continue to find

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[812] *Id.* P 972.

[813] MISO TOs Rehearing Request at 26 (citing *PJM Interconnection, L.L.C.,* 181 FERC ¶ 61,162 at P 138).

[814] *PJM Interconnection, L.L.C.,* 181 FERC ¶ 61,162 at P 138 (''Accordingly, *at this time,* we decline to require PJM to adopt firm study deadlines instead of its proposed 'Reasonable Efforts' standard.'' (emphasis added)). Because the Commission relied on the fact that the reasonable efforts standard was the then-applicable *pro forma* standard, nothing in that case conflicts with our decision here.

[815] *See Cal. Indep. Sys. Operator Corp.,* 134 FERC ¶ 61,050, at P 34 (2011) (''[T]hree qualifications must be met: (1) The activity must be expressly set forth in the tariff; (2) The activity must involve objectively identifiable behavior; and (3) The activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.'').

[816] *Id.* P 37.

[817] Indicated PJM TOs Rehearing Request at 22.

[818] Indicated PJM TOs also argue that the Commission ''cannot delegate authority to RTOs and ISOs to determine the reasonableness of study delay penalty allocations'' such that it would be inappropriate to ''giv[e] deference to the RTO's/ISO's decision in a 'good cause' proceeding.'' Indicated PJM TOs Rehearing Request at 24. This argument conflates appeals of penalties incurred by RTOs/ISOs with how those penalties may be allocated as a matter of RTO/ISO cost recovery under FPA section 205 proposals. Moreover, as just explained, the Commission has not impermissibly delegated its authority to RTOs/ISOs.

[819] Order No. 890, 118 FERC ¶ 61,119 at P 1340; Order No. 890–A, 121 FERC ¶ 61,297 at P 741.

[820] Order No. 890, 118 FERC ¶ 61,119 at PP 1342–43, 1349; Order No. 890–A, 121 FERC ¶ 61,297 at PP 743–45.

[821] Order No. 890, 118 FERC ¶ 61,119 at P 1345; Order No. 890–A, 121 FERC ¶ 61,297 at P 742.

[822] Order No. 890, 118 FERC ¶ 61,119 at P 1346.

[823] *Id.* P 1351.

[824] *Id.* P 1353.

[825] *Id.* P 1357; *see also* Order No. 890–A, 121 FERC ¶ 61,297 at PP 486, 754–57 (noting that the Commission could consider case-specific cost recovery proposals from RTOs/ISOs under FPA section 205).

[826] NYISO's argument that it does not conduct the kinds of transmission studies that Order No. 890 addressed and that such studies are ''not a major issue for most other RTOs/ISOs,'' NYISO Initial Comments at 36; *see also* NYISO Rehearing Request at 32 n.87, does not negate these similarities for purposes of determining a just and reasonable *pro forma* approach to ensuring interconnection study timeliness under Order No. 2023. *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1001 (rejecting NYISO's argument); *cf.id.* PP 965–72 (finding that the imposition of study delay penalties was just and reasonable and would not be punitive as to transmission providers); *id.* PP 1004–07, 1013.

[827] Order No. 2023, 184 FERC ¶ 61,054 at P 1013 (noting that interconnection studies ''are more numerous, complex, and susceptible to delays'' and ''there is a growing number of interconnection customers affected by study delays. We believe that these factors underscore the need for transmission providers to meet study deadlines and the need to provide an incentive, in the form of study delay penalties'').

[828] NYISO Rehearing Request at 32 n.87.

[829] *See also supra* PP 281–282 (explaining how previous reforms had failed to ensure timely interconnection study queue processing or resolve significant interconnection queue backlogs). This

those differences warranted, based on the same considerations articulated in Order No. 2023,[830] notwithstanding arguments that the approach in Order No. 2023 represents a departure from the approach the Commission took in Order No. 890. These considerations reflect greater need for direct, clear, and straightforward incentives for transmission providers to achieve interconnection study timeliness than were pertinent in the context of transmission studies in Order No. 890.

431. We also find that the Commission adequately responded to NYISO's argument that ''reliability penalties are generally non-financial and that when financial penalties do apply there are numerous mechanisms in place to avoid unfairly harsh results,'' particularly a ''risk-based evaluation of all the facts and circumstances related to an individual violation.'' [831] Under Order No. 2023, transmission providers have ''the opportunity to seek relief from a penalty by filing an appeal, which the Commission will closely scrutinize and in response to which the Commission will issue an order.'' [832] We have elsewhere rejected arguments that this appeals process is impermissibly ''inchoate'' and arguments that Order No. 2023 unreasonably presumes that ''transmission providers are at fault for study delays and that all study delays warrant penalties.'' [833]

432. Indicated PJM TOs' contention that Order No. 2023 is unlawful because the Commission has attempted therein to override RTO/ISO governing documents, in contravention of *Atlantic City I* and *Atlantic City II,*[834] is misplaced.[835] Indicated PJM TOs are misreading *Atlantic City I* and *Atlantic City II,* which do not stand for the proposition that a particular RTO/ISO's approach to its own governance can override the Commission's authority under FPA section 206 to set just and reasonable rates. Rather, in *Atlantic City I,* the Commission had required modifications to a proposed ISO structure including ''to eliminate a provision allowing utilities 'to unilaterally file to make changes in rate design, terms or conditions of jurisdictional services,' except that they could still unilaterally seek a change in the transmission revenue requirements.'' [836] As a result of these required modifications, changes in rate design could not be made through unilateral FPA section 205 filings by individual utilities, but instead ''only the ISO could propose changes in rate design.'' [837] The court held that the Commission erred in doing so, explaining that the Commission lacked statutory authority ''to require the utility petitioners to cede rights expressly given to them in section 205 of the Federal Power Act.'' [838]

433. Thus, the basis for the court's remands in *Atlantic City I* and *Atlantic City II* was that the Commission exceeded its jurisdiction in requiring utilities to surrender, to an RTO/ISO, their FPA section 205 right to propose changes to rate designs. These cases do not establish that the Commission's power under FPA section 206, following appropriate findings, to ''determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force'' [839] is subordinate to a particular RTO/ISO's governing documents. To the contrary, the court acknowledged the Commission's authority to require transmission providers to file particular rates upon a finding that existing rates are unlawful, under FPA section 206.[840]

vi. Alternative Approaches and Miscellaneous Issues

(a) Requests for Rehearing

434. A number of the rehearing requests assert that the Commission could have taken an alternative approach to eliminating the reasonable efforts standard and adopting the deadline and penalty structure set forth in Order No. 2023. EEI urges that the Commission could have instead ''ensure[d] transmission providers are afforded specified timeframes to complete certain tasks during studies.'' [841] MISO TOs assert that the Commission should have taken an approach that parallels the one adopted for transmission studies in Order No. 890 of monitoring for chronic delays, investigating causes, and then imposing a remedy.[842] NYISO argues that the Commission could instead allow ''individual RTO/ISO regions to propose alternative rules as independent entity variations'' or build on Order No. 845 by updating and enhancing its reporting requirements, which would allow more targeted actions to address problems.[843]

435. NYISO asserts that Order No. 2023's adoption of a 10 business-day grace period does not provide meaningful relief to transmission providers, like NYISO, that will be required to study large numbers of interconnection requests, and that affording the same grace period to all transmission providers despite differing

explanation for the differences between Order No. 2023 and Order No. 890 also addresses the substance of NYISO's comment in which it also observed such differences. *See* NYISO Rehearing Request at 32 n.87; NYISO Initial Comments at 36 (arguing that the penalty structure proposed in the NOPR differed from that in Order No. 890 because transmission study penalties were not imposed automatically, without notification to the Commission). We further note that NYISO's characterization of Order No. 2023 as strict liability is inaccurate, and that the appeal process in particular addresses these concerns. *See supra* PP –360.

[830] Order No. 2023, 184 FERC ¶ 61,054 at P 1013 (''[C]ompared to transmission service requests, interconnection studies are more numerous, complex, and susceptible to delays. Further, as noted above, there is a growing number of interconnection customers affected by study delays. We believe that these factors underscore the need for transmission providers to meet study deadlines.'').

[831] NYISO Rehearing Request at 31–32 & n.85.

[832] Order No. 2023, 184 FERC ¶ 61,054 at P 1001.

[833] NYISO Rehearing Request at 31; *see, e.g., supra* section II.D.1.c.ii.

[834] *See* Indicated PJM TOs Rehearing Request at 6 (arguing that ''the PJM CTOA does not authorize PJM to assign penalty amounts to PJM transmission owners'' and, under these cases ''the Commission cannot prevent public utilities from deciding how to recover their costs and cannot direct public utilities to make cost recovery filings in any prescribed manner''); *id.* at 8–12.

[835] We note that this argument overstates the effect of Order No. 2023, which did not ''direct'' any RTOs/ISOs, including PJM, to make cost recovery filings at all, let alone do so according to any particular structure. *See* Order No. 2023, 184 FERC ¶ 61,054 at P 994 (providing that RTOs/ISOs ''may'' submit FPA section 205 filings and that they may propose a default structure or make individual section 205 filings to recover costs); *id.* P 998 (noting potential avenues to fund study delay penalties, such as collecting administrative fees).

[836] *Atl. City I,* 295 F.3d at 7; *see also id.* at 6–7 (explaining that the proposed agreement permitted the ''transmission owners to file changes in transmission service rate design and non-rate terms and conditions to the tariff under section 205,'' subject to potential rejection of a proposed change by the independent PJM Board by majority vote).

[837] *Id.* at 7.

[838] *Id.* at 9; *see also id.* at 10 (explaining that the Commission was ''purport[ing] to deny the utility petitioners *any* ability to initiate rate design changes with respect to services provided with their own assets,'' thereby ''eliminat[ing] the very thing that the statute was designed to protect—the ability of the utility owner to set the rates it will charge prospective customers, and change them at will, subject to review by the Commission.'' (quotation marks omitted); *id.* at 11 (holding that the Commission cannot deny ''the petitioners their rights provided for by a statute enacted by both houses of Congress and signed into law by the [p]resident''); *Atl. City II,* 329 F.3d at 859 (''[W]e reaffirm and clarify our prior decision that FERC has no jurisdiction to enter limitations requiring utilities to surrender their rights under § 205 of the FPA to make filings to initiate rate changes.'').

[839] 16 U.S.C. 824e(a).

[840] *See, e.g., Atl. City I,* 295 F.3d at 10 (''The courts have repeatedly held that FERC has no power to force public utilities to file particular rates *unless it first finds the existing filed rates unlawful.* . . . [T]he power to initiate rate changes rests with the utility and cannot be appropriated by FERC *in the absence of a finding that the existing rate was unlawful.*'' (emphasis added)).

[841] EEI Rehearing Request at 9 (arguing that this approach acknowledges that one entity's actions often cannot commence until another entity's work is completed).

[842] MISO TOs Rehearing Request at 36–37.

[843] NYISO Rehearing Request at 20–21.

workloads is not reasoned decision-making.[844] It further argues that the transition period the Commission adopted in Order No. 2023 simply postpones the problems with RTO/ISO penalty cost recovery, without resolving that problem.[845] And NYISO claims that the Commission significantly increased penalty levels from the levels proposed by the NOPR, without a reasoned basis for doing so.[846]

436. Indicated PJM TOs argue that *pro rata* disbursement of penalties to interconnection customers is unduly discriminatory, given that study deposits increase based on the size of the generating facility making the interconnection request.[847] They assert that Order No. 2023 disregards the different costs associated with larger generating facilities and seeks to treat interconnection customers with substantially fewer costs as equals, which they claim is inconsistent with precedent.[848]

437. Invenergy argues that the Commission erred in failing to provide for penalties when an affected system misses a pre-study deadline, such as the 20 business day deadline to indicate whether it will conduct an affected system study, or the 15 business day deadline to provide a cost estimate and schedule for that study.[849] Invenergy notes that, in contrast to the 150-day deadline for cluster studies, which is measured from the end of the customer engagement window, an affected system will be expected to meet pre-study deadlines only when and if the host transmission provider provides a notice that it has been identified as an affected system for a particular interconnection customer.[850] Invenergy argues that the Commission should apply a $2,000 per business day penalty on affected systems for failing to meet pre-study deadlines. Clean Energy Associations present similar arguments in a request for clarification.[851]

438. MISO argues that Order No. 2023 should be revised to provide that RTOs that conduct multiple system impact studies may include a combined timeline for cluster studies for penalty purposes.[852] MISO also argues that the Commission should modify the transition period to properly account for delays in clusters that pre-date the effective date of Order No. 2023, because delays in such clusters could cause backlogs that will affect future studies.[853] It claims that doing so is necessary to avoid retroactive effects that penalize RTOs for delays prior to Order No. 2023's effective date, which would contravene the filed rate doctrine and the rule against retroactive ratemaking.

(b) Determination

439. In Order No. 2023, the Commission stated that transmission providers should distribute any collected study delay penalties ''to interconnection customers in the relevant study on a pro rata per interconnection request basis to offset their study costs.'' [854] Indicated PJM TOs assert that this approach is unduly discriminatory because it results in equal treatment of differently situated customers, specifically those that paid larger study deposits or that may have larger final study costs versus those that paid smaller study deposits or that may have smaller final study costs.[855] While the Commission in Order No. 2023 stated that disbursement of interconnection study delay penalties would be on a ''pro rata'' (*i.e.,* proportionate) basis per interconnection request, it did not further specify how penalties would be distributed. We clarify here that study delay penalties must be distributed on a pro rata basis proportionate to the final study costs paid by each interconnection customer in the relevant study. This approach ensures that the distribution of the penalty (*i.e.,* the amount of the ''offset'' each interconnection customer receives) is related to the costs paid by the interconnection customer for the relevant study.

440. We decline Invenergy's request that the Commission grant rehearing and find that the study delay penalty of $2,000 per business day applies to the pre-study deadlines for affected systems.[856] The penalties the Commission adopted in Order No. 2023 focus on the process of conducting interconnection studies, and how delays in that process contribute to interconnection queue backlogs. The record in this proceeding does not contain sufficient information regarding persistent delays in the pre-study process for affected systems that contribute to interconnection queue backlogs to persuade us to extend the study delay penalties to such pre-study deadlines.[857] We further find that imposing penalties on affected system transmission providers would result in unduly discriminatory treatment of similarly situated entities: host transmission providers are also required to meet pre-study deadlines in the *pro forma* LGIP,[858] including deadlines for communications with affected system transmission providers, but incur no penalties for missing those deadlines.

441. In Order No. 2023, the Commission explained that it ''decline[d] to adopt alternative proposals [instead of the deadline and penalty approach set forth in Order No. 2023] suggested by various commenters,'' [859] and we sustain that decision here in response to similar arguments on rehearing.[860] As to MISO TOs' argument that the Commission should grant rehearing and adopt an approach similar to the approach taken in Order No. 890, the Commission considered the differences from the approach set forth in Order No. 890. It determined that these differences were

[844] *Id.* at 35.

[845] *Id.* at 37.

[846] *Id.* (asserting that the Commission's example estimating a $63,000 penalty for a six-month delay under the NOPR structure does not show that the penalties assessed under Order No. 2023 will be proportionate or non-punitive, particularly as to not-for-profit RTOs/ISOs).

[847] Indicated PJM TOs Rehearing Request at 40–41.

[848] *Id.* at 40 (citing *Ala. Elec. Coop.,* 684 F.2d at 28).

[849] Invenergy Rehearing Request at 2–3.

[850] *Id.* (asserting that there is a ''risk that the failure of an Affected System to meet pre-study deadlines will delay commencement of the Affected System study (and thus the start of the 150-day clock applicable to that study)'').

[851] *See* Clean Energy Associations Rehearing Request at 76–77.

[852] MISO Rehearing Request at 11–14.

[853] *Id.* at 15–16.

[854] Order No. 2023, 184 FERC ¶ 61,054 at P 963; *see also id.* at P 990; *pro forma* LGIP section 3.9.

[855] Indicated PJM TOs Rehearing Request at 40–41.

[856] For the same reasons discussed in this paragraph, we also reject Clean Energy Associations' similar argument couched as a request for clarification.

[857] The opportunities for delay that Invenergy cites are associated with tasks that—particularly compared to the conduct of an interconnection study—are relatively straightforward: providing notice of intent to conduct an affected system study and a non-binding cost estimate and schedule for that study. *See id.* It is therefore not apparent that there should be significant delays associated with these tasks as a general matter, and we will not presume that affected systems will tactically delay such tasks to avoid triggering other deadlines. If such delays arise we may consider further action.

[858] *See, e.g., pro forma* LGIP sections 3.1, 3.4, 3.6.

[859] Order No. 2023, 184 FERC ¶ 61,054 at P 1025.

[860] Even assuming that one or more of these alternative approaches might also address the problem of late interconnection studies contributing to interconnection queue backlogs, leading to unjust and unreasonable rates, this does not demonstrate that the deadline and penalty structure in Order No. 2023 is not just and reasonable. *See Petal Gas Storage, LLC* v. *FERC,* 496 F.3d 695, 703 (D.C. Cir. 2007) (''[The Commission]is not required to choose the best solution, only a reasonable one.''); *ExxonMobil Oil Corp.* v. *FERC,* 487 F.3d 945, 955 (D.C. Cir. 2007) (''We need not decide whether the Commission has adopted the best possible policy as long as the agency has acted within the scope of its discretion and reasonably explained its actions.''); *Midwest Indep. Transmission Sys. Operator, Inc.,* 127 FERC ¶ 61,109, at P 20 (2009) (''It is well established that there can be more than one just and reasonable rate . . . .'').

warranted,[861] and—on rehearing—we affirm that conclusion. The study delay penalty structure appropriately responds to the problem of interconnection study delays contributing to unjust and unreasonable rates by creating strong, direct, and clear incentives on transmission providers while recognizing that the value of interconnection studies is related to their timeliness. Moreover, given that interconnection study delays are already a significant and widespread problem, we find that it would not be appropriate to further delay imposing meaningful incentives while we further ''monitor for chronic study delays'' [862] by individual transmission providers. Likewise, we find that ''updating and enhancing [Order No. 845's] reporting requirements'' to ''create even more transparency,'' as NYISO urges,[863] or that, instead of imposing deadlines supported by penalties, the Commission simply provide ''specified timeframes to complete certain tasks during studies'' as EEI suggests,[864] would not be sufficient to address the problem of interconnection queue backlogs and repeatedly delayed interconnection studies.[865]

442. We also decline AEP's request to expand appeal rights beyond the transmission provider that is directly assigned the penalty. In instances where an RTO/ISO incurs a penalty and seeks to recover the cost of that penalty from transmission-owning members, such transmission owners would have the right to intervene in any proceeding under FPA section 205 or file a complaint challenging the recovery of that penalty cost under FPA section 206, as appropriate. We believe that this adequately protects the interests of transmission-owning members of RTOs/ISOs.

443. MISO argues that the Commission should modify the transition period to account for delays in clusters that pre-date the effective date of Order No. 2023 and can cause backlogs that will affect future studies, claiming that this modification is necessary because delays in prior study clusters may affect studies in future clusters.[866] According to MISO, it must be allowed to ''clear all pre-effective date 'baked-in' delays before penalties begin'' in order to avoid ''statutory retroactive effects by penalizing RTOs based on delays that occur prior to its effective date.'' [867] We do not agree. Order No. 2023 is directed toward future cluster studies, and—in fact—already provides a generous transition period to adapt and address existing backlogs, as a matter of ensuring that the impacts of the deadline and penalty structure are not unduly burdensome or punitive. It is not clear to us how the prospective application of penalties to the third cluster study cycle after a transmission provider's compliance filing becomes effective implicates concerns about retroactivity or the filed rate doctrine.[868] More generally, all transmission providers, including RTOs/ISOs, retain the option to argue on compliance why their particular circumstances warrant variations from Order No. 2023 using the appropriate standard.

vii. Requests for Clarification

(a) Summary of Requests for Clarification

444. AEP asks the Commission to clarify that the study delay penalties will not incur interest prior to distribution of the penalty funds and that the entity (*i.e.,* transmission provider or transmission owner) conducting the study will have no obligation to pay interest on study delay penalties.[869]

445. Joint RTOs ask the Commission to clarify that Order No. 2023's one-phase cluster study was not intended to require RTOs or others that conduct multiple system impact studies in a multi-phase study process (*e.g.,* MISO, SPP, and PJM) to impose penalties for each delayed system impact study on an individual basis.[870] They argue that an RTO with a multi-phase interconnection process should be allowed to propose on compliance that the penalty for delayed interconnection studies will be assessed based on whether the RTO has complied with the aggregate timeline provided for all of the system impact studies in a cluster.[871] They also seek clarification from the Commission that, in establishing study completion timelines in their tariffs (to the extent such timelines do not already exist), they may propose specific factors they would apply in assessing the complexity of individual clusters for the purposes of establishing such timelines and the application of penalties for exceeding such timelines.[872]

446. Joint RTOs and PJM seek clarification that all penalties for delayed studies will apply on a per cluster basis, per business day rather than per interconnection customer in the cluster, per business day.[873]

447. Joint RTOs ask the Commission to clarify that the RTO/ISO penalty recovery options provided in Order No. 2023 are not mutually exclusive, nor intended to be an exhaustive list, and that an RTO/ISO may propose using a combination of such options.[874] They also ask the Commission to clarify that, where interconnection customers contributed to the study delay, any resulting penalty may be collected from such interconnection customers under the penalty collection mechanism(s) that an RTO/ISO may adopt pursuant to Order No. 2023 and that an RTO/ISO may propose to limit any penalty distribution to those interconnection customers that have not contributed to a study delay. In addition, Joint RTOs ask the Commission to clarify that, in cases where a transmission-owing member(s) conducted the late study, the tariff mechanisms by which payments flow can be addressed in individual compliance filings where transmission providers can account for their regional processes. Lastly, Joint RTOs ask the Commission to clarify that RTOs/ISOs

[861] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1013 (noting that interconnection studies ''are more numerous, complex, and susceptible to delays'' and ''there is a growing number of interconnection customers affected by study delays. We believe that these factors underscore the need for transmission providers to meet study deadlines and the need to provide an incentive, in the form of study delay penalties''); *id.* P 1025.

[862] MISO TOs Rehearing Request at 36.

[863] NYISO Rehearing Request at 21.

[864] EEI Rehearing Request at 9.

[865] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1025; *supra* PP 281–282 (explaining that the Commission's previous efforts to address interconnection queue backlogs through Order No. 845's reporting requirements have not been sufficient to remedy this problem, which has worsened since those efforts were undertaken). The Commission has already addressed NYISO's suggestion that ''the Commission could allow individual RTO/ISO regions to propose alternative rules as independent entity variations in their Order No. 2023 compliance filings.'' NYISO Rehearing Request at 20–21; *see* Order No. 2023, 184 FERC ¶ 61,054 at P 1764. We do not, and cannot, prejudge whether such requested variations will be acceptable.

[866] *See* MISO Rehearing Request at 15–16.

[867] *Id.* at 16.

[868] Neither of the cases MISO cites supports the notion that, where the Commission regulates future activity, retroactivity and filed rate concerns may arise simply because pre-existing facts might influence the ease of compliance with the Commission's forward-looking regulation. *See Ark. La. Gas Co.* v. *Hall,* 453 U.S. 571, 573 (1981) (considering whether the filed rate doctrine ''forbids a state court to calculate damages in a breach-of-contract action based on an assumption that had a higher rate been filed, the Commission would have approved it''); *Old Dominion Elec. Coop.* v. *FERC,* 892 F.3d 1223, 1226 (D.C. Cir. 2018) (affirming Commission decision that it could ''waive provisions of the governing tariff retroactively so that [Old Dominion] could recover its costs'').

[869] AEP Rehearing Request at 21.

[870] Joint RTOs Rehearing Request at 10.

[871] *Id.* at 10–11 (noting that in its three-phase study process, MISO is required to complete a preliminary, revised, and final system impact study in 65, 75, and 50 calendar days, respectively).

[872] *Id.* at 12.

[873] *Id.;* PJM Rehearing Request at 28.

[874] Joint RTOs Rehearing Request at 13–14.

are not required to collect any penalty prior to concluding the appeals process under section 3.9(3) of the *pro forma* LGIP.

448. NYTOs request clarification that Order No. 2023's prohibition against transmission owners recovering delay penalties in rates does not preclude a transmission owner from recovering such penalty costs that were caused by, and initially assessed to, the RTO/ISO.[875]

449. NYISO asks the Commission to clarify that Order No. 2023 authorizes RTOs/ISOs to recover study penalty costs from consumers without first seeking the Commission's permission, so long as they do so through non-transmission-related charges, such as administrative fees assessed against market participants.[876]

450. NYISO asks the Commission to clarify that the Commission will allow penalty waivers when a transmission provider is not solely responsible for a study delay [877] or in cases where identifying the extent to which different parties are to blame for a late study would be difficult and time-consuming.[878] NYISO also asks the Commission to clarify that reasonable penalty waiver requests will be compatible with its traditional four-prong waiver analysis.[879]

451. NYISO requests clarification that RTOs/ISOs may include study penalty cost recovery proposals in their individual compliance filings.[880] Specifically, it asks the Commission to clarify that ''default structure'' penalty cost recovery proposals may be included in Order No. 2023 compliance filings in addition to FPA section 205 filings.[881] NYISO argues that the Commission has traditionally afforded RTOs/ISOs considerable flexibility regarding the scope of compliance filings made in response to major new rules and that it would be unduly discriminatory for the Commission to leave RTOs/ISOs that need stakeholder approval to file tariff revisions with less ability to recover study penalty costs than those that do not.[882]

(b) Determination

452. We grant AEP's request for clarification that study delay penalties will not incur interest prior to distribution of the penalty funds and that the entity conducting the study (*i.e.,* transmission provider or transmission owner) will have no obligation to pay interest on study delay penalties. Assessing interest during the pendency of an appeal could be viewed as penalizing the transmission provider for making the appeal, particularly to the extent that the transmission provider does not control the timeline for resolution of the appeal.

453. We deny requests for clarification of how the penalty process would apply to RTOs/ISOs with multi-phase interconnection procedures that include multiple sequential cluster studies. Order No. 2023 did not contemplate such sequential phased cluster study procedures: thus, any such procedures and attendant penalty processes are outside the scope of the rule. However, the Commission recognized that many transmission providers have adopted or are in the process of adopting similar reforms to those adopted in Order No. 2023 and noted that it did not intend to disrupt these ongoing transition processes.[883] On compliance, transmission providers can propose deviations from the requirements adopted in Order No. 2023 and demonstrate how those deviations meet the relevant standard.[884]

454. We grant requests for clarification that all penalties for delayed studies will apply on a per-study basis, per business day that the study is delayed past the tariff-specific deadline, rather than per interconnection customer. As noted in Order No. 2023, delays of cluster studies beyond the tariff-specified deadline will incur a penalty of $1,000 per business day; delays of cluster restudies beyond the tariff-specified deadline will incur a penalty of $2,000 per business day; delays of affected system studies beyond the tariff-specified deadline will incur a penalty of $2,000 per business day; and delays of facilities studies beyond the tariff-specified deadline will incur a penalty of $2,500 per business day.[885]

455. We grant Joint RTOs' request for clarification regarding the mutual exclusivity of RTO/ISO penalty recovery options and reiterate that Order No. 2023 did not require adoption of any specific RTO/ISO penalty recovery mechanism. Order No. 2023 recognized that RTOs/ISOs have several options for collecting study delay penalties, such as submitting FPA section 205 filings to seek recovery for study delay penalties from transmission owners contributing to study delays or proposing to either establish a tariff mechanism for assigning costs generally or for assigning costs for specific study delay penalties.[886] These options were not intended to be mutually exclusive or exhaustive; rather, the Commission recognized RTOs/ISOs' flexibility to propose penalty recovery mechanisms that work for their regions.

456. We deny Joint RTOs' request to clarify that, where interconnection customers contribute to a study delay, any resulting penalty may be collected from such interconnection customers under the penalty collection mechanisms that an RTO/ISO may adopt pursuant to Order No. 2023. Indeed, the Commission explicitly stated in Order No. 2023 that it ''decline[d] to allow any transmission provider to recover study delay penalties from interconnection customers to the extent the interconnection customers cause delays.'' [887] We note, however, that to the extent that study delays result from an interconnection customer's actions, transmission providers may record the length of those delays and report that information in any appeal of study delay penalties filed with the Commission.[888] Further, in the event that an interconnection request is incomplete or an interconnection customer misses a deadline, those interconnection requests are subject to the withdrawal provisions of *pro forma* LGIP section 3.7.

457. We deny Joint RTOs' request to clarify that an RTO/ISO may propose to

[875] NYTOs Rehearing Request at 29 (arguing that ''[t]ransmission providers' investors should not bear such third-party risks and costs, especially when they have no ownership stake in the non-profit RTO/ISO,'' and that ''forcing such a burden breaches basic cost causation principles, is arbitrary and capricious, and is an uncompensated taking'').

[876] NYISO Rehearing Request at 26.

[877] *Id.* at 40 (for example, if it were shown that interconnection customers substantially caused a study delay with transmission owners and/or an RTO/ISO playing comparatively smaller roles or other potentially likely scenarios).

[878] *Id.* at 41 (arguing that it would be better for all parties and the Commission to avoid complex contested appeal proceedings).

[879] *Id.* (for example, if a study delay impacts numerous interconnection customers, that will not mean that a waiver request would be denied because it is ''not limited in scope'').

[880] *Id.* at 41–42.

[881] *Id.* at 42 (explaining that, because it must obtain super majority stakeholder approval to submit tariff revisions under FPA section 205, it and other similarly situated RTOs/ISOs would be prevented from filing ''default structure'' recovery mechanisms if a minority of their stakeholders opposed them).

[882] *Id.* at 43.

[883] Order No. 2023, 184 FERC ¶ 61,054 at P 1765.

[884] *Id.* PP 1764–1765 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 825; Order No. 2006, 111 FERC ¶ 61,220 at PP 546–547; Order No. 845, 163 FERC ¶ 61,043 at P 43 (explaining that a transmission provider that is not an RTO/ISO that seeks a variation from the requirements of the final rule must present its justification for the variation as consistent with or superior to the *pro forma* LGIA or *pro forma* LGIP); Order No. 2003, 104 FERC ¶ 61,103 at P 826 (''[w]ith respect to an RTO or ISO . . . we will allow it to seek 'independent entity variations' from the Final Rule . . .)).

[885] Order No. 2023, 184 FERC ¶ 61,054 at P 973.

[886] *Id.* P 998.

[887] *Id.* P 993.

[888] *See id.* P 1019.

limit any penalty distribution to those interconnection customers that have not contributed to a study delay. We note that we agree with the principle that interconnection customers who contribute to study delays should not benefit from penalty payments the same as other interconnection customers who were affected by, but did not contribute to, the delayed study. However, the appeals process established by Order No. 2023 provides a strong safeguard against that scenario. Specifically, transmission providers will be able to appeal any penalties to the Commission and show that there is good cause to grant relief from such penalties. As Order No. 2023 noted, to the extent that study delays result from an interconnection customer's actions, transmission providers may record the length of those delays and report that information in any appeal of study delay penalties filed with the Commission.[889] Thus, if the record shows that a study delay is caused solely by the actions or inactions of interconnection customers, the Commission is likely to grant relief from that penalty, meaning that there will be no penalty to distribute to interconnection customers.

458. We recognize that a study delay might be caused only in part by an interconnection customer and in part by the actions of the transmission provider, in which case the transmission provider could incur a penalty that would then be distributed to all interconnection customers affected by the delay. Even so, we provide two reasons why the at-fault interconnection customer in that situation would likely still not benefit from penalty payments. First, interconnection customers that contribute to study delays, for example because they fail to timely submit information needed to commence a study, are not likely to remain in the queue past the missed study deadline. This is because all interconnection customers have strict deadlines during the study process and, as Order No. 2023 noted, if an interconnection customer fails to adhere to all requirements in the *pro forma* LGIP (except in the case of disputes), the transmission provider may deem the interconnection customer's interconnection request to be withdrawn pursuant to section 3.7 of the *pro forma* LGIP, in which case they would be ineligible to receive study delay penalty payments. Second, in the unlikely scenario that interconnection customers that contribute to study delays remain in the queue past the missed study deadline, and a study penalty is incurred by the transmission provider, the transmission provider would be able to provide, in an appeal to the Commission, facts sufficient to assess the length of the delay caused by the interconnection customers, because any missed LGIP deadlines and subsequent delays should be well-documented. Thus, the Commission could, for example, reduce the penalty by the length of the delay (in business days) that is attributable to the interconnection customers. In this case, the penalty distributed to all interconnection customers would exclude the number of business days the study was delayed due to the actions of the at-fault interconnection customers and would only be calculated based on the number of business days the study was delayed due to the actions of the transmission provider. In this fashion, the interconnection customers that contributed to the delay would not benefit from their contributions to the study delay.

459. For these reasons, we believe that the burden of establishing such a penalty distribution limitation would outweigh the benefit. This process would create additional litigation around penalties beyond the established appeals process, which would take up more of the parties' and Commission's resources. As discussed above, given the low likelihood that interconnection customers who contribute to study delays would be eligible for distribution of the penalty amount assessed for such delays, we do not find that the additional administrative burden is warranted.

460. We deny Joint RTOs' request for clarification that, in cases where the transmission-owning member(s) conducted the late study, the mechanisms by which payments flow can be addressed in individual compliance filings where transmission providers can account for their regional tariff processes. In Order No. 2023, the Commission adopted 18 CFR 35.28(f)(1)(ii) to specify that, for RTOs/ISOs in which the transmission-owning members perform certain interconnection studies, the study delay penalties under the new *pro forma* LGIP will be incurred directly by the transmission-owning member(s) that conducted the late study, thereby mooting the issue of how RTOs/ISOs recover those specific penalties. RTOs/ISOs will thus not be required to make any filings establishing how late study penalty payments flow from at-fault transmission owners. However, we note that RTOs/ISOs may explain specific circumstances on compliance and justify any deviations under the independent entity variation standard.

461. We grant Joint RTOs' request for clarification that transmission providers are not required to collect or earmark any late study penalty prior to concluding the appeals process under section 3.9(3) of the *pro forma* LGIP. We agree that this is not required because collecting or earmarking study penalties before the appeals process runs its course would be administratively burdensome and could entail unnecessary refund processes.

462. In response to NYISO's request for clarification that the Commission will entertain requests for appeal of a penalty in various situations, we clarify that the Commission did not limit the evidence that a transmission provider might present in its appeal. The Commission will evaluate each appeal on a case-by-case basis and determine whether good cause has been shown to grant relief from any applicable penalties.

463. We deny NYISO's request for clarification that reasonable penalty waiver requests will be compatible with the Commission's traditional four-prong waiver analysis. The four-prong waiver analysis will not be the relevant standard used in the penalty appeals process; rather, as the Commission made clear in Order No. 2023, the Commission will evaluate whether good cause exists to grant relief from the study delay penalty and will issue an order granting or denying relief.[890] We continue to find that the good cause standard provides an adequate framework through which the Commission can evaluate whether it is appropriate to grant relief from any applicable penalties.

464. We deny NYISO's request to clarify that ''default structure'' penalty cost recovery proposals may be included in Order No. 2023 compliance filings in addition to FPA section 205 filings. Order No. 2023 declined to adopt the NOPR proposal to require RTOs/ISOs to submit requests to recover the costs of specific study delay penalties; instead, Order No. 2023 stated that RTOs/ISOs may make such filings under FPA section 205 in the future if they choose.[891] We find it inappropriate to invite such proposals on compliance because the Commission did not make an FPA section 206 finding that any such default penalty structure would be just, reasonable, and not unduly discriminatory or preferential. In response to NYISO's concerns about obtaining majority stakeholder approval

[889] *Id.*

[890] *Id.* PP 987, 989.

[891] *Id.* P 994.

for FPA section 205 filings, we note that, to the extent it is concerned that the lack of a mechanism for the transmission provider to recover the costs of delay penalties renders its tariff unjust and unreasonable, NYISO has the opportunity to file an FPA section 206 complaint.

465. We deny NYTOs' request to clarify that Order No. 2023's prohibition against transmission providers recovering delay penalties in rates does not preclude a transmission owner from recovering such penalty costs that were caused by, and initially assessed to, the RTO/ISO. NYTOs are concerned that RTOs/ISOs will pass penalties to transmission owner members when those providers are not responsible for a delay. We find this concern premature because the Commission does not yet have before it any FPA section 205 proposals by an RTO/ISO to recover the costs of study delay penalties. We continue to find that concerns about any RTO/ISO proposal to recover the costs of study delay penalties are best addressed on a case-by-case basis in the relevant FPA section 205 proceedings.[892]

2. Affected Systems

a. Affected Systems Study Process

i. Order No. 2023 Requirements

466. In Order No. 2023, the Commission adopted an affected system study process and added several related definitions to the *pro forma* LGIP.[893] The Commission found that a detailed affected system study process in the *pro forma* LGIP would: (1) prevent the use of ad hoc approaches that may give rise to interconnection customers being treated in an unjust, unreasonable, and unduly discriminatory or preferential manner; (2) provide interconnection customers greater certainty regarding expectations throughout the interconnection process, including greater cost certainty, which will lead to fewer late-stage withdrawals and fewer delays; (3) ensure that the affected system study process moves along expediently, providing clarity, cost certainty, and increased transparency throughout the study process, which will minimize opportunities for undue discrimination, through firm affected system study deadlines; and (4) ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner.

467. The Commission adopted several definitions in section 1 of the *pro forma* LGIP related to the affected system reforms, specifically, ''affected system facilities construction agreement,'' ''affected system interconnection customer,'' ''affected system network upgrades,'' ''affected system queue position,'' ''affected system study,'' ''affected system study agreement,'' ''affected system study report,'' ''multiparty affected system facilities construction agreement,'' and ''multiparty affected system study agreement.'' [894]

468. The Commission adopted section 3.6.1 (Initial Notification) of the *pro forma* LGIP, which requires the transmission provider to notify the affected system operator within 10 business days of the first instance of an identified potential affected system impact, which may occur at the completion of either the cluster study or the cluster restudy.[895]

469. The Commission next adopted several requirements for the transmission provider when it is acting as the affected system transmission provider (*i.e.,* when the transmission provider is studying the impacts on its own transmission system of proposed interconnections to other transmission providers' transmission systems) in *pro forma* LGIP section 9 (Affected System Study).[896] First, the Commission adopted section 9.2 (Response to Initial Notification) of the *pro forma* LGIP, which requires the affected system transmission provider to respond to notification of a potential affected system impact in writing within 20 business days indicating whether it intends to conduct an affected system study.[897] Section 9.2 also requires that, within 15 business days of the affected system transmission provider's affirmative response of its intent to conduct an affected system study, the affected system transmission provider must share a non-binding good faith estimate of the cost and schedule to complete the affected system study.

470. The Commission next adopted section 9.3 (Affected System Queue Position) of the *pro forma* LGIP.[898] Under section 9.3, the interconnection requests of affected system interconnection customers that have executed an affected system study agreement will be higher-queued than the interconnection requests of those host system interconnection customers that have not yet received their cluster study results, and lower-queued than those interconnection customers that have already received their cluster study results. All affected system interconnection requests studied within the same affected system cluster will be equally queued.

471. The Commission next adopted section 9.4 (Affected System Study Agreement/Multiparty Affected System Study Agreement) of the *pro forma* LGIP to require that the transmission provider tender the affected system study agreement within 10 business days of sharing the schedule for the study with the affected system interconnection customers.[899] Section 9.4 also requires the affected system interconnection customer to compensate the affected system transmission provider for the actual costs of the affected system study, and the difference between the affected system study deposit and actual cost of the affected system study will be detailed in an invoice and paid by or refunded to the affected system interconnection customer within 30 calendar days of the receipt of such invoice.[900] An affected system interconnection customer's failure to pay the difference between these amounts will result in loss of that affected system interconnection customer's affected system queue position. Section 9.4 also requires that the affected system transmission provider notify the host transmission provider of the affected system interconnection customer's breach of its obligations under this section, should such breach occur.[901]

472. The Commission next adopted section 9.5 (Execution of Affected System Study Agreement/Multiparty Affected System Study Agreement) of the *pro forma* LGIP, which provides the affected system interconnection customer with 10 business days from the date of receipt of the affected system study agreement to execute and deliver it to the affected system transmission provider.[902] Section 9.5 also provides that, if the affected system interconnection customer does not provide all required technical data when it delivers the affected system study agreement, the affected system transmission provider shall notify the affected system interconnection customer of the deficiency within five business days of the receipt of the

[892] *Id.* P 996.

[893] *Id.* P 1110.

[894] *Id.* P 1112; *see pro forma* LGIP section 1.

[895] Order No. 2023 184 FERC ¶ 61,054 at P 1119; *see pro forma* LGIP section 3.6.1.

[896] Order No. 2023, 184 FERC ¶ 61,054 at P 1113; *see pro forma* LGIP section 9.1.

[897] Order No. 2023, 184 FERC ¶ 61,054 at P 1120; *see pro forma* LGIP section 9.2.

[898] Order No. 2023, 184 FERC ¶ 61,054 at P 1138; *see pro forma* LGIP section 9.3.

[899] Order No. 2023, 184 FERC ¶ 61,054 at P 1154; *see pro forma* LGIP section 9.4.

[900] Order No. 2023, 184 FERC ¶ 61,054 at P 1157.

[901] *Id.* P 1159.

[902] *Id.* P 1158; *see pro forma* LGIP section 9.5.

affected system study agreement, and the affected system interconnection customer has 10 business days to cure the deficiency after receipt of such notice (provided that the deficiency does not include failure to deliver the executed affected system study agreement or deposit).

473. The Commission next adopted section 9.6 (Scope of Affected System Study) of the *pro forma* LGIP, which requires the affected system study to consider the base case as well as all higher-queued generating facilities on the affected system transmission provider's transmission system and to consist of a power flow, stability, and short circuit analysis.[903] Section 9.6 also requires the affected system study to provide a list of affected system network upgrades that are required because of the affected system interconnection customer's proposed interconnection, a non-binding good faith estimate of cost responsibility, and a non-binding good faith estimated time to construct.

474. The Commission next adopted section 9.7 of the *pro forma* LGIP (Affected System Study Procedures), which requires clustering of affected system interconnection customers for study purposes where multiple interconnection requests that are part of a single cluster in the host system's cluster study process cause the need for an affected system study.[904] Section 9.7 also requires the affected system transmission provider to complete the affected system study and provide the affected system interconnection customer with affected system study results within 150 calendar days after receipt of the affected system study agreement. Section 9.7 also requires the affected system transmission provider to provide the affected system study report to the host transmission provider at the same time it provides the report to the affected system interconnection customer. The affected system transmission provider must notify the affected system interconnection customer that an affected system study will be late.[905] Lastly, *pro forma* LGIP section 9.7 requires affected system transmission providers to study all affected system interconnection requests using ERIS modeling standards.[906]

475. The Commission added a new section 11.2.1 to the *pro forma* LGIP (Delay in LGIA Execution, or Filing Unexecuted, to Await Affected System Study Report).[907] Under this section, if the interconnection customer does not receive its affected system study results before the deadline in its host system for LGIA execution, or the deadline to request that the LGIA be filed unexecuted, the host transmission provider must, at the interconnection customer's request, delay the deadline for the interconnection customer to finalize its LGIA.[908] The interconnection customer will have 30 calendar days after receipt of the affected system study report to execute the LGIA, or request that the LGIA be filed unexecuted. Additionally, if the interconnection customer prefers to proceed to the execution of its LGIA, or request that the LGIA be filed unexecuted, before it has received its affected system study results, it may notify the host transmission provider of its intent to proceed with the execution of the LGIA, or request that the LGIA be filed unexecuted.[909] If the host transmission provider determines that further delay to the LGIA execution date would cause a material impact on the cost or timing of an equal- or lower-queued interconnection customer, the transmission provider must notify the relevant interconnection customer of such impact and establish that the new deadline is 30 calendar days after such notice is provided.

476. The Commission adopted section 9.8 of the *pro forma* LGIP (Meeting with Transmission Provider), which requires the affected system transmission provider and the affected system interconnection customer to meet within 10 business days of the affected system transmission provider tendering the affected system study report to the affected system interconnection customer.[910]

477. The Commission adopted section 9.9 of the *pro forma* LGIP (Affected System Cost Allocation), which requires the allocation of affected system network upgrade costs using a proportional impact method in accordance with *pro forma* LGIP section 4.2.1(1)(b).[911]

478. The Commission adopted section 9.10 of the *pro forma* LGIP (Tender of Affected System Facilities Construction Agreement/Multiparty Affected System Facilities Construction Agreement).[912] Under section 9.10, an affected system transmission provider must tender an affected system facilities construction agreement to the affected system interconnection customer within 30 calendar days of providing the affected system study report. The affected system transmission provider must provide 10 business days after receipt of the affected system facilities construction agreement for the affected system interconnection customer to execute the agreement or have the affected system transmission provider file it unexecuted with the Commission.

479. The Commission adopted section 9.11 of the *pro forma* LGIP (Restudy) to include a maximum 60-calendar day restudy period for any affected system restudies.[913] Section 9.11 also adopts a 30-calendar day notification requirement for the affected system transmission provider to notify the affected system interconnection customer of the need for affected system restudy upon discovery of such need.[914]

ii. Requests for Rehearing and Clarification

480. Clean Energy Associations and Invenergy ask the Commission to clarify that there are deadlines for determining that an affected system study will be conducted.[915] Clean Energy Associations and Invenergy note that Order No. 2023 requires transmission providers to notify affected system transmission providers of potential affected system impacts at the completion of the cluster study or cluster restudy, and affected system transmission providers have 20 business days to determine whether or not to conduct an affect system study. However, Clean Energy Associations and Invenergy state that it is unclear whether an affected system may decline to conduct an affected system study after the initial notification but later elect to conduct an affected system study after the cluster restudy, even if no new potential affected system impact is found. Clean Energy Associations and Invenergy argue that affected system transmission providers may have an incentive to perform affected system studies as late as possible to: (1) give priority to queue requests on their own system; (2) avoid the volume of studies created by restudies; or (3) reduce the amount of necessary studies to reduce

[903] Order No. 2023, 184 FERC ¶ 61,054 at P 1160; *see pro forma* LGIP section 9.6.

[904] Order No. 2023, 184 FERC ¶ 61,054 at P 1133; *see pro forma* LGIP section 9.7.

[905] Order No. 2023, 184 FERC ¶ 61,054 at P 1135.

[906] *Id.* P 1276.

[907] *Id.* P 1123; *see pro forma* LGIP section 11.2.1.

[908] Any interconnection customer that is not awaiting the results of an affected system study must proceed under the timelines set forth in *pro forma* LGIP section 11.1.

[909] Order No. 2023, 184 FERC ¶ 61,054 at P 1124.

[910] *Id.* P 1169; *see pro forma* LGIP section 9.8.

[911] Order No. 2023, 184 FERC ¶ 61,054 at P 1149; *see pro forma* LGIP section 9.9.

[912] Order No. 2023, 184 FERC ¶ 61,054 at P 1165; *see pro forma* LGIP section 9.10.

[913] Order No. 2023, 184 FERC ¶ 61,054 at P 1170; *see pro forma* LGIP section 9.11.

[914] Order No. 2023, 184 FERC ¶ 61,054 at P 1171.

[915] Clean Energy Associations Rehearing Request at 78–79; Invenergy Rehearing Request at 18–19.

the risk of study delay penalties. Clean Energy Associations and Invenergy explain that interconnection customers need to know as soon as possible if affected system studies will be performed and what the results of those studies are. Clean Energy Associations and Invenergy argue that, while it is possible that new information about an affected system impact could show up when the host transmission provider conducts its restudy (which would then require the affected system to conduct its own study), the affected system should not be permitted to wait until the restudy stage to make its determination to perform studies unless new information has been identified in the restudy. Clean Energy Associations and Invenergy therefore request clarification that, if an affected system declines to perform an affected system study after the cluster study and host transmission provider's notification of an impact on the affected system, the affected system is not eligible to run a study after the cluster restudy unless the cluster restudy results in information that was not identified in the initial notification.

481. Clean Energy Associations and Invenergy agree with Order No. 2023's directive that, if the interconnection customer does not have the results of the affected system study prior to finalizing the LGIA, the interconnection customer may request that the host transmission provider delay finalizing the LGIA.[916] However, Clean Energy Associations and Invenergy argue that a host transmission provider should not be able to reject that request if it determines that delaying the LGIA pending completion of the affected system study would materially impact the cost or timing of equal or lower-queued interconnection customers. Clean Energy Associations and Invenergy explain that, when an interconnection customer executes its LGIA, it should be able to rely on those costs and other agreement provisions without significant changes, and that allowing the host transmission provider to reject requests for delaying LGIA execution is directly at odds with the Commission's goal of ensuring that interconnection customers have adequate time to evaluate their costs prior to committing to the LGIA. When the affected system costs are not known, Clean Energy Associations and Invenergy explain, it exacerbates the cost uncertainty and late-stage upgrades that Order No. 2023 sought to ameliorate.[917] Further, they argue, allowing the host transmission provider alone to determine when the material threshold is met creates potential for undue discrimination. Therefore, Clean Energy Associations and Invenergy request that the Commission strike the last sentence in revised *pro forma* LGIP, section 11.2.1.

482. Clean Energy Associations and Invenergy also seek clarification of *pro forma* LGIP section 11.2.1, which states that the interconnection customer is not required to post security under the LGIA and fund network upgrades if the deadline for LGIA execution, or to request that the LGIA be filed unexecuted, is delayed.[918] Clean Energy Associations state that the ability to not post security or fund network upgrades should also apply when the host transmission provider determines a material impact from delay and requires that the interconnection customer move forward with LGIA execution. If the Commission does not grant this request, Clean Energy Associations and Invenergy contend that the Commission should clarify that, when an interconnection customer is not allowed to delay LGIA execution under the material impact standard, the interconnection customer will receive a refund of the deposit upon deciding to not move forward with the interconnection after receiving the affected system studies.

483. Duke Southeast Utilities ask for clarification of the requirement for a host transmission provider to notify an affected system transmission provider within 10 days of the completion of a cluster study or restudy of potential affected system impacts identified in the study.[919] Specifically, Duke Southeast Utilities ask the Commission to clarify the meaning of the ''completion of'' a cluster study or restudy, referring to a number of possible interpretations, including: (1) the date stated on the study report; (2) the date the report is provided to interconnection customers; (3) the date the report is posted to OASIS; and (4) the date of the cluster study report meeting. Duke Southeast Utilities assert that a lack of clarity will lead to lack of uniformity in how transmission providers calculate their 10-day deadline. Further, Duke Southeast Utilities note that, because affected system transmission providers have 20 days to decide whether to conduct an affected system study, and host transmission providers have 30 days after the cluster study report meeting to decide whether to conduct a cluster restudy, there is potential for an affected system transmission provider to have begun conducting an affected system study before being notified that the host transmission provider will conduct a cluster restudy. Duke Southeast Utilities request clarification on whether an affected system transmission provider may terminate an affected system study once it learns of the host transmission provider's restudy, or whether it must continue with the affected system study. Duke Southeast Utilities explain that continuing an affected system study in this case would cause affected system interconnection customers to pay for an unnecessary study.

484. Clean Energy Associations and Invenergy ask for rehearing or clarification with respect to the exclusion of affected system network upgrade costs from the penalty-free withdrawal calculation in *pro forma* LGIP section 3.7.1, which allows for penalty-free withdrawal if the withdrawal follows significant, unanticipated increases in network upgrade cost estimates.[920] Clean Energy Associations request rehearing and argue that failing to include affected system network upgrade costs in withdrawal penalty exemption calculations will discourage generating facilities that experience significant cost increases from withdrawing from the interconnection process in a timely way.[921] Clean Energy Associations state that an interconnection customer will be incentivized to remain in the queue despite significant cost increases from the transmission provider and affected system transmission provider in the hopes that either other interconnection customers withdraw, or other conditions change such that the generating facility faces reduced network upgrade and affected system network upgrade costs and becomes financially viable again. Clean Energy Associations further state that it is unreasonable to penalize an interconnection customer for proceeding when its costs increase dramatically due to affected system interconnection study results. Clean Energy Associations state that affected system study results are not known at the conclusion of the cluster study and are also subject to errors or significant

[916] Clean Energy Associations Rehearing Request at 79; Invenergy Rehearing Request at 4 (both citing Order No. 2023, 184 FERC ¶ 61,054 at PP 1124–1125).

[917] Clean Energy Associations Rehearing Request at 80; Invenergy Rehearing Request at 5.

[918] Clean Energy Associations Rehearing Request at 80–81; Invenergy Rehearing Request at 5–6.

[919] Duke Southeast Utilities Rehearing Request at 2–4.

[920] Clean Energy Associations Rehearing Request at 34; Invenergy Rehearing Request at 7.

[921] Clean Energy Associations Rehearing Request at 34–35.

inaccuracies. Invenergy argues that the differing treatment in withdrawal penalties for host transmission system studies versus affected system studies is arbitrary and capricious and not a result of reasoned decision-making.[922]

485. Clean Energy Associations and Invenergy further argue that the Commission erred by failing to set any penalty-free withdrawal threshold based upon costs identified in an affected system study, which would result in essentially uncapped liability for interconnection customers.[923]

486. Clean Energy Associations and Invenergy disagree with the Commission's statement that the use of ERIS modeling standard to conduct affected system studies should reduce the number and total cost of affected system network upgrades assigned to affected system interconnection customers.[924] Clean Energy Associations argue that the ERIS modeling standard in no way guarantees a small number of assigned affected system network upgrades or total assigned network upgrade costs to any one affected system interconnection customer, and that significant impacts can occur in both large and small transmission systems.[925] Invenergy similarly argues that the ERIS modeling standard does not guarantee fewer assigned costs, and that even if using ERIS modeling decreases the number of interconnection customers receiving significant affected system upgrade costs, the lack of penalty-free withdrawal for when affected system network upgrade costs remain significant is unjust and unreasonable.[926] Invenergy states that the Commission's reasoning does not ameliorate the differing treatment of interconnection customers with significant network upgrades and those with significant affected system network upgrades merely because significant affected system upgrade costs might occur less often.

487. Clean Energy Associations request that the Commission match the penalty-free withdrawal cost increase thresholds for both the host and affected systems at the facilities study phase at 50%.[927] In the alternative, Clean Energy Associations argue that the Commission should allow penalty-free withdrawal for interconnection customers based upon the same 100% cost increase on the affected system as on the host transmission system. Invenergy requests that the Commission modify *pro forma* LGIP section 3.7.1 to include that an interconnection customer may withdraw penalty free after receiving the affected system study and the affected system network upgrade costs identified in the report have increased the interconnection customer's costs by more than 25% compared to the costs assigned by the host system.[928] Invenergy asserts that such modification is consistent with MISO's withdrawal process, which progressively increases when interconnection customers may withdraw penalty free, including for affected system network upgrade costs.[929]

488. SPP states that the Commission's decision to require affected system operators to study all interconnection requests on neighboring systems using the ERIS modeling standard is unsupported.[930] SPP argues that limiting affected system transmission providers to use of the ERIS standard will result in significant equity issues when certain generating facilities that are deemed firm by one transmission provider will not be required to mitigate issues on another transmission provider's system unless they impact a constraint at a level significantly higher than internal generating facilities requesting firm service. SPP asserts that Order No. 2023 ignores this issue by claiming to ensure that all affected system interconnection customers are studied similarly, while the root issue of the inequity (*i.e.,* the point at which deliverability is determined) remains unaddressed. SPP states that the Commission's rationalization, that studying affected system impacts using ERIS lowers affected system network upgrade costs and makes requests less likely to withdraw at a late stage, conflicts with the Commission's long-standing policy that interconnection customers should be responsible for the costs of all network upgrades that would not be required ''but for'' their interconnection.

489. SPP contends that the Commission's reliance on MISO's use of only ERIS in affected system studies fails to recognize that SPP assesses deliverability through the transmission service process.[931] As such, SPP asserts that MISO has the opportunity to assess the impacts on its system of firm deliverability granted to generating facilities on the SPP system through transmission service study coordination. SPP states that it does not get the same opportunity as MISO, who determines and grants deliverability on its own system through its awarding of NRIS during the interconnection process without a subsequent request for transmission service. SPP concludes that the Commission's failure to recognize this problem renders Order No. 2023 both discriminatory toward interconnection customers in RTOs/ISOs like SPP and arbitrary and capricious.

490. Similarly, PJM asserts that, because it studies affected system interconnection customers to ensure deliverability anywhere on PJM's transmission system, studying affected systems interconnection customers based on a lesser standard than that applied to directly connected interconnection customers would be unduly discriminatory and inconsistent with how PJM plans its transmission system.[932] PJM requests clarification that the requirement for all affected system studies to be performed using ERIS will not apply to affected system studies that PJM performs under the interconnection reforms accepted by the Commission in November 2022.

491. SPP notes that Order No. 2023 directly contradicts recent Commission precedent holding that use of NRIS modeling standards in affected system studies is just and reasonable where the interconnection customer requested NRIS-level interconnection service on the host transmission system.[933] SPP asserts that, by failing to acknowledge its prior holdings and relying on a blanket unsupported assertion that any significant impact would generally be captured by an ERIS study, the Commission's determination in Order No. 2023 constitutes an arbitrary and capricious departure from prior precedent.

iii. Determination

492. In response to Clean Energy Associations' and Invenergy's requests for clarification that there are deadlines for determining that an affected system study will be conducted, we clarify that there are such deadlines. Pursuant to

[922] Invenergy Rehearing Request at 7.

[923] *Id.* at 6; Clean Energy Associations Rehearing Request at 31.

[924] Clean Energy Associations Rehearing Request at 33; Invenergy Rehearing Request at 7–8 (both citing Order No. 2023, 184 FERC ¶ 61,054 at P 1151).

[925] Clean Energy Associations Rehearing Request at 33.

[926] Invenergy Rehearing Request at 7–8.

[927] Clean Energy Associations Rehearing Request at 36.

[928] Invenergy Rehearing Request at 9.

[929] *Id.* at 9–10 (citing MISO, Open Access Transmission, Energy and Operating Markets Tariff, attach. X (Generator Interconnection Procedures (GIP)) (161.0.0), § 7.6.2.4).

[930] SPP Rehearing Request at 12–14.

[931] *Id.* at 14.

[932] PJM Rehearing Request at 24.

[933] SPP Rehearing Request at 16–17 (citing *Tenaska Clear Creek Wind, LLC* v. *Sw. Power Pool, Inc.,* 180 FERC ¶ 61,160 at P 62; *EDF Renewable Energy Inc.* v. *Midcontinent Indep. Sys. Operator, Inc.,* 168 FERC ¶ 61,173, at P 86 (2019)).

pro forma LGIP section 9.2, the affected system transmission provider is required to respond in writing within 20 business days of receipt of the initial notification from the host transmission provider that interconnection requests may impact the affected system transmission provider's transmission system. From the point of written notification of the intention to conduct the affected system study, the affected system transmission provider then has 15 business days to share a non-binding good faith estimate of the cost and schedule to complete the affected system study.

493. We reject Clean Energy Associations' and Invenergy's requests for clarification that, if an affected system transmission provider declines to perform an affected system study after the cluster study and the host transmission provider's notification of an impact on the affected system, the affected system transmission provider is ineligible to run a study after the cluster restudy unless the cluster restudy results in information that was not identified in the initial notification. We understand Clean Energy Associations' and Invenergy's concern to be that affected system transmission providers may have an incentive to perform affected system studies as late as possible, and therefore might decline to conduct an affected system study after the initial notification but later elect to conduct an affected system study, even if no new potential affected system impact is found. We expect affected system transmission providers to adhere to the affected system study process timelines prescribed in Order No. 2023. We therefore expect that an affected system transmission provider will respond within 20 business days following notification, pursuant to *pro forma* LGIP section 9.2, if it intends to conduct an affected system study based on the initial host transmission provider notification, and there is no need for the further clarification requested.

494. We are not persuaded by Clean Energy Associations' request to strike the last sentence of *pro forma* LGIP section 11.2.1, which allows a transmission provider to reject an interconnection customer's request for extension of the deadline to execute its LGIA (or request that the LGIA be filed unexecuted) if the transmission provider determines that such delay would cause a material impact on the cost or timing of an equal- or lower-queued interconnection customer. We also disagree with Invenergy's assertion that the material exception language in *pro forma* LGIP section 11.2.1 makes Order No. 2023 arbitrary and capricious and not the result of reasoned decision-making. We find that allowing a transmission provider to determine what constitutes a material impact on interconnection customers in a single cluster due to another interconnection customer's delay in LGIA execution appropriately balances the benefits of delay due to one interconnection customer's network upgrade cost certainty with the potential burdens on other interconnection customers in that cluster as a result of such delay. Allowing the transmission provider discretion in determining what constitutes a material impact provides a necessary degree of flexibility for each transmission provider. We disagree with Clean Energy Associations that this provision undermines the goal of LGIA cost certainty for interconnection customers because there is no requirement for affected system network upgrade costs to be known at the time of LGIA execution: the costs included in the LGIA are estimates and always subject to true-up once final costs are known, pursuant to *pro forma* LGIA article 12.2 (Final Invoice). The goal is a better estimate of costs at the time of LGIA execution, and the material impact language in *pro forma* LGIP section 11.2.1 provides a check to ensure a balance between multiple interconnection customers' competing needs for certainty.

495. We reject Clean Energy Associations' and Invenergy's requests for clarification that the interconnection customer should be exempt from the requirement to post security or fund network upgrades when the host transmission provider determines a material impact from delay and requires that the interconnection customer moves forward with LGIA execution. We further disagree with Clean Energy Associations' assertion that we should clarify that when an interconnection customer is not allowed to delay LGIA execution under the material impact standard the interconnection customer will receive a refund of the deposit upon deciding to not move forward with the interconnection after receiving the affected system studies. Once an interconnection customer executes an LGIA, or requests that it be filed unexecuted, it must fulfill its obligations under the LGIA, which include the requirements to provide financial security and fund assigned network upgrades.[934] Similarly, an interconnection customer that has finalized its LGIA is not entitled to a refund of its deposit.[935] We note that the transmission provider may only require an interconnection customer to finalize its LGIA, despite waiting for its affected system study report, because it materially impacts other interconnection customers. Allowing an interconnection customer to avoid its financial responsibilities under a finalized LGIA or to have its deposit refunded upon withdrawal after it has finalized its LGIA would nullify the purpose of requiring the interconnection customer to finalize its LGIA—to provide greater certainty to other interconnection customers that would be materially impacted by the interconnection request's delay or withdrawal. To the contrary, allowing an interconnection customer to evade these financial risks increases the likelihood it proceeds to finalize its LGIA although its proposed generating facility may no longer be commercially viable. The other materially impacted interconnection customers, who, for example, may share network upgrade costs with the delayed interconnection customer, would face greater risk of cost increases or timing delays should the delayed interconnection request later be withdrawn, even as they are required to finalize their LGIAs.[936]

496. In response to Duke Southeast Utilities' request for clarification of the requirement for a host transmission provider to notify an affected system transmission provider within 10 days of the completion of a cluster study or restudy of potential affected system impacts identified in the study, we clarify that the meaning of the ''completion of'' a cluster study or restudy is the date the cluster study report or cluster restudy report is provided to interconnection customers.

497. In response to Duke Southeast Utilities' request for clarification regarding whether an affected system transmission provider may terminate an affected system study once it learns of the host transmission provider's restudy or whether it must continue with the affected system study, we clarify that an affected system transmission provider may pause an affected system study that is planned or in progress if the host transmission provider decides to conduct a cluster restudy. We also clarify that, if a host transmission provider decides to conduct a cluster restudy, then the affected system transmission provider may delay the affected system study until after the completion of the cluster restudy, following which the host transmission provider will notify the affected system transmission provider that the cluster

[934] *See pro forma* LGIA arts. 11.5, 12.1.

[935] *See pro forma* LGIP section 11.3.

[936] *See infra* P 502.

restudy is complete and of any possible affected system impacts. The cluster restudy may result in further withdrawals on the host transmission system, which in turn, would impact the affected system study results, possibly resulting in an affected system restudy. Allowing an affected system transmission provider to delay the affected system study in the event that the host transmission provider is conducting a cluster restudy will prevent unnecessary studies, and potentially cascading restudies, and the resultant costs to interconnection customers, in the affected system transmission provider's queue.

498. To ensure that the affected system transmission provider is timely informed of the host transmission provider's decision to conduct a cluster restudy, we add to *pro forma* LGIP section 3.6.2 (Notification of Cluster Restudy) the requirement that the host transmission provider notify any relevant affected system operators of a cluster restudy at the same time that it notifies the interconnection customers in the cluster restudy. Through this modification, the affected system transmission provider will receive notification of the cluster restudy before commencement or completion of a planned or in-progress affected system study and can use that information to decide whether to move forward with the affected system study or to delay the affected system study until the host transmission provider completes the cluster restudy. We also add *pro forma* LGIP section 9.2.2 (Response to Notification of Cluster Restudy) to allow the affected system transmission provider five business days from receiving notification of the cluster restudy to send a written notification to the relevant affected system interconnection customers and the host transmission provider if it intends to delay commencement or completion of a planned or in-progress affected system study until after the completion of the cluster restudy. If the affected system transmission provider decides to delay the affected system study, then it is not required to perform its obligations under *pro forma* LGIP section 9 until the time that it receives notification from the host transmission provider that the cluster restudy is complete. In contrast, if the affected system transmission provider decides to move forward with its affected system study despite the cluster restudy, then it must meet all obligations to proceed with the affected system study process under *pro forma* LGIP section 9.

499. Additionally, we modify *pro forma* LGIP section 9.5 (Execution of Affected System Study Agreement/Multiparty Affected System Study Agreement) to remove the requirement for an affected system interconnection customer to execute and return its previously received affected system study agreement/multiparty affected system study agreement and submit its affected system study deposit if the affected system transmission provider decides to delay the affected system study, pursuant to *pro forma* LGIP section 9.2.2. We find this modification necessary because the affected system transmission provider will provide the affected system interconnection customer with a new affected system study agreement/multiparty affected system study agreement in this circumstance, and the previously tendered agreement will be moot.

500. We add a new *pro forma* LGIP section 3.6.3 (Notification of Cluster Restudy Completion) to require that, upon the completion of the host transmission provider's cluster restudy, the host transmission provider will notify the affected system transmission provider the completion of the cluster restudy and of a potential affected system impact caused by an interconnection request within 10 business days of the completion of the cluster restudy, regardless of whether that potential affected system impact was previously identified. At the time of the notification of the completion of the cluster restudy to the affected system operator, the host transmission provider must provide the interconnection customer with a list of potential affected systems, along with relevant contact information.

501. Moreover, we clarify that, upon the receipt of notification of any potential affected system impacts from interconnection customers in the cluster restudy, the affected system transmission provider must respond in writing to such interconnection customers within 20 business days whether it intends to conduct an affected system study. Accordingly, we rename former *pro forma* LGIP section 9.2 (Response to Initial Notification) to ''Response to Notifications'' and move the requirements into new section 9.2.1 (Response to Initial Notification). We revise the requirements to clarify that an affected system transmission provider's obligations under section 9.2.1 apply whether in response to a notification that an affected system interconnection customer's proposed interconnection to its host transmission provider may impact the affected system based on a cluster study or a cluster restudy. Finally, we revise a reference in *pro forma* LGIP section 9.4 (Affected System Study Agreement/Multiparty Affected System Study Agreement) from section 9.2 to section 9.2.1.

502. We disagree with Clean Energy Associations' and Invenergy's assertions that Order No. 2023 was arbitrary and capricious because it failed to allow interconnection customers to withdraw penalty-free from the interconnection queue if such withdrawal follows significant, unanticipated increases in affected system network upgrade cost estimates. Although the affected system study process reforms seek to coordinate the host system and affected system studies, there is no guarantee that affected system network upgrade costs will be known even at the time of LGIA finalization, particularly where the affected system is non-jurisdictional and, therefore, not governed by the *pro forma* LGIP affected systems processes. The possibility of a long lag between delivery of host system facilities study report and affected system study report could lead to uncertainty for other interconnection customers in the same cluster who are not awaiting affected system study reports and thus must finalize their LGIAs pursuant to *pro forma* LGIP section 11.2.1. Allowing late-stage, penalty-free withdrawal for interconnection customers after potentially delayed receipt of the affected system study report could substantially harm those interconnection customers who had to finalize their LGIAs and share network upgrade costs with the withdrawing interconnection customer. Such a practice of penalty-free withdrawal after other interconnection customers in the same cluster have finalized their LGIAs would give greater weight to cost certainty of a few interconnection customers who are awaiting affected system study results than to the many interconnection customers who did not impact an affected system and had to finalize their LGIAs. Furthermore, penalty-free withdrawal of interconnection customers after they have received their affected system study results and after other interconnection customers in the same cluster have finalized their LGIAs could lead to one of the very problems Order No. 2023 sought to mitigate—cascading withdrawals and restudies—which can result in cost increases and delays, which in turn can prompt further late-stage withdrawals.[937] It is, therefore, more important for *all* interconnection customers in a cluster to have greater certainty that, once interconnection customers decide whether to proceed after the final facilities study report,

[937] Order No. 2023, 184 FERC ¶ 61,054 at P 49.

withdrawals are less likely, than for one or few interconnection customers in a cluster to have cost estimate certainty inclusive of affected system study results.

503. We expect that the affected system study process reforms in Order No. 2023 should reduce affected system network upgrade costs. Specifically, as Clean Energy Associations and Invenergy point out, the Commission stated in Order No. 2023 that the use of ERIS to conduct affected system studies *should* reduce the number and total cost of affected system network upgrades assigned to interconnection customers with affected system impacts. We did not, as Invenergy implies, state that the use of ERIS in affected system studies *guarantees* fewer assigned costs. As the Commission noted in Order No. 2023, interconnection customers inherently assume some risk.[938] Interconnection customers will calculate that risk into their decision as to whether to stay in the queue following the receipt of their facilities study reports, and we note that interconnection customers are always able to withdraw, pursuant to *pro forma* LGIP section 3.7, if their project becomes uneconomical based on significant affected system network upgrade costs. We also note that the language in *pro forma* LGIP section 3.7.1 applies to network upgrades costs assigned to the interconnection request, and, because an affected system network upgrade is a subset of network upgrades, affected system network upgrade cost estimates should be included in the total cost increase if listed in the facilities study report. In such a situation, if the network upgrades costs (including the affected system network upgrade costs) in the facilities study report were more than 100% higher than the cluster study report, then the interconnection customer may be eligible for penalty-free withdrawals.

504. We are unpersuaded by Clean Energy Associations' and Invenergy's assertions that, even if ERIS modeling decreases the number of interconnection customers receiving significant affected system network upgrades costs, this does not ameliorate the differing treatment between interconnection customers with significant network upgrades and those with significant affected system network upgrades. An interconnection customer that is notified of significant network upgrades and one that is notified of significant affected system network upgrades are not differently situated, as alleged, because affected system network upgrade costs may occur less often, but rather because of the timing within the interconnection study process that such notices occur, and the increased impacts on other interconnection customers of allowing for penalty-free withdrawal late within that process. As discussed above, because allowing late-stage, penalty-free withdrawal for interconnection customers after potentially delayed receipt of the affected system study report could substantially harm those interconnection customers who had to finalize their LGIAs and share network upgrade costs with the withdrawing interconnection customer, the differing requirements are justified.

505. We, therefore, are not persuaded to extend penalty-free withdrawal provisions to interconnection customers for affected system network upgrade cost increases beyond a certain threshold. As noted, in the interest of greater cost certainty for all interconnection customers, we maintain that penalty-free withdrawal exemptions triggered by cost increases above a certain threshold are not applicable after the finalization of the LGIA for any interconnection customers in the same cluster, even an interconnection customer that must finalize its LGIA before receiving its affected system study report. We also disagree that the lack of penalty-free withdrawal thresholds essentially results in uncapped liability because the interconnection customer may still withdraw and face only the withdrawal penalty.

506. We disagree with Clean Energy Associations' and Invenergy's arguments that failing to include affected system network upgrade costs in withdrawal penalty exemption calculations will discourage generating facilities that experience significant cost increases from withdrawing from the interconnection process in a timely manner. As long as the interconnection customer fulfills its obligations under the *pro forma* LGIP, it may opt to stay in the queue until it decides that its project is uneconomical. If the interconnection customer decides after receiving its affected system study report that significant cost increases render its project uneconomical, nothing in the *pro forma* LGIP prohibits it from withdrawing from the queue at that time. Moreover, if affected system network upgrade costs were included as a basis for withdrawal penalty-free in all cases, this could encourage interconnection customers waiting for their affected systems study results to remain in the queue, even if they have determined that their proposed generating facility is no longer commercially viable, because the possibility of significant affected systems network upgrade costs in such study could allow for withdrawal penalty-free.

507. We disagree with SPP's assertion that requiring affected system transmission providers to use ERIS in affected system studies will result in significant equity issues because of the differences in how neighboring transmission providers study generators requesting firm transmission service. SPP states that each RTO/ISO evaluates deliverability of resources pursuant to its individual Commission-approved processes and relies on the differences between SPP's and MISO's interconnection and transmission service study processes as evidence for its need to use NRIS for affected system interconnection requests requesting NRIS on their host system to ensure deliverability. However, as the Commission found in Order No. 2003 and reiterated in Order No. 2023, interconnection service is an element of, but separate from the delivery component of, transmission service, and, in the majority of circumstances, interconnection alone is unlikely to affect the reliability of an affected system transmission provider's transmission system.[939] Furthermore, the differences between SPP's and MISO's interconnection and transmission study processes that SPP describes do not undermine the bases on which the Commission determined that continuing to permit affected system transmission providers to study affected system interconnection customers using NRIS assumptions would allow unjust and unreasonable rates to persist.[940] A primary basis on which the Commission found the ERIS requirement just and reasonable is that even when an interconnection customer seeks NRIS on the host system, it does not seek—and an affected system transmission provider has no obligation to continually ensure—deliverability on the affected system.[941] To instead permit an affected system transmission provider to use NRIS assumptions risks

[938] *Id.* P 1151.

[939] *Id.* P 1288 (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 118–120; Order No. 2003–A, 106 FERC ¶ 61,220 at P 113); *see also Tenn. Power Co.,* 90 FERC ¶ 61,238, at 61,761 (2000) (finding that interconnection is an element of transmission service but that the interconnection component of transmission service may be requested separately from the delivery component (*i.e.,* interconnection is distinct from transmission service)); *see also* Fervo Energy Initial Comments at 6, Shell Initial Comments at 32, Utah Municipal Power Initial Comments at 6 (all stating that the use of ERIS in affected system studies will reduce the assignment of unnecessary network upgrades).

[940] *Id.* P 1278.

[941] *Id.* P 1277. *See also infra* n.1193.

''an affected system interconnection customer [facing] increased costs without a commensurate increase in service.'' [942] We continue to find that adopting the ERIS requirement for affected system transmission providers will provide important benefits [943] even where the details of study processes may differ somewhat across transmission providers, and that such requirement is sufficient to capture reliability impacts of affected system interconnection requests on the affected system.[944]

508. We similarly reject PJM's request for clarification that Order No. 2023's requirement for affected system transmission providers to use ERIS when conducting affected system studies will not apply to PJM's affected system studies. We reject this clarification because it is essentially a request for the Commission to allow PJM to deviate from the requirements outlined in Order No. 2023 based on its individual interconnection study procedures. Consistent with the Commission's statements in Order No. 2023, transmission providers may explain specific circumstances on compliance and justify why any deviations are either 'consistent with or superior to' the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs.[945]

509. We also disagree with SPP's assertion that the Commission's rationale for requiring ERIS conflicts with the Commission's long-standing policy that interconnection customers should be responsible for the costs of all network upgrades that would not be required ''but for'' their interconnection. This policy only requires interconnection customers to pay initially the costs of network upgrades that would not have been needed but for the interconnection of the interconnection customer's generating facility.[946] The Commission has not defined a particular technical approach that must be implemented in order to reasonably capture these ''but for'' network upgrade costs; instead, the Commission has accepted varying approaches as just and reasonable and not unduly discriminatory or preferential.[947] In Order No. 2023, the Commission found that ''any significant impact would generally be captured by an ERIS study'' and such study would ''ensure any reliability impacts on the affected system are mitigated to accommodate the affected systems interconnection customer's proposed generating facility to the host system.'' [948] Accordingly, requiring use of an ERIS study to assign affected system network upgrades to affected system interconnection customers does not conflict with the Commission's ''but for'' pricing policy.

510. We disagree with SPP's assertion that the Commission's reliance on MISO's use of ERIS in affected system studies fails to recognize that SPP assesses deliverability through the transmission service process. Order No. 2023 relies on MISO's use of ERIS in affected system studies simply to demonstrate that, as noted by MISO itself, this requirement does not result in reliability issues and will not cause unnecessary curtailment or redispatch on affected systems.[949]

511. We are unpersuaded by SPP's claim that the findings in Order No. 2023 contradict recent Commission precedent holding that the use of NRIS modeling standards in affected system studies is just and reasonable where the interconnection customer requested NRIS-level interconnection service on the host transmission system.[950] While the Commission previously allowed affected system transmission providers to justify their own approach to selecting the modeling standard used to evaluate affected system impacts, we found in Order No. 2023 that the assignment of significant affected system network upgrades under an NRIS study without a commensurate increase in service would result in unjust and unreasonable rates.[951] This is because the affected system transmission provider has no obligation to ensure that the output from an affected system interconnection customer's generating facility is integrated on the affected system similar to generating facilities that serve the affected system transmission provider's native load customers or network resources.[952] The Commission found that the mismatch between costs and services received would occur because the affected system transmission provider has no obligation to ensure that the output from the affected system interconnection customer's generating facility is studied so that it could be integrated on the affected system similar to generating facilities that serve the affected system transmission provider's native load or customers and could lead to curtailment of the generating facility or there could be congestion on the affected system preventing deliverability of the generating facility's output.[953] Thus, we sustain Order No. 2023's finding that being assigned significant affected system network upgrades under an NRIS study, without the obligation for the affected system transmission provider to ensure that the output from an affected system interconnection customer's generating facility is integrated on the affected system similar to generating facilities that serve the affected system transmission provider's native load customers or network resources, results in unjust and unreasonable rates by increasing the cost for affected system interconnection customers without a

[942] Order No. 2023, 184 FERC ¶ 61,054 at P 1278.

[943] *Id.* at PP 1278–1280 (identifying as benefits that affected system interconnection customers (1) will not be required to construct significant network upgrades on the affected system while not receiving deliverability on that system due to curtailment or congestion on the affected system; (2) will not face significant upfront costs to construct affected system network upgrades, which could lead to late-stage withdrawals given that interconnection customers will not receive affected system study results until late in the interconnection process; and (3) will be studied in a consistent and transparent manner across transmission provider regions, thus avoiding potentially dramatically different affected system network upgrades costs due to varying modeling standards without any factual or service differences to justify discriminatory treatment).

[944] *Id.* PP 1285, 1290. As Order No. 2023 explained transmission providers may explain specific circumstances on compliance and justify why any deviations are either ''consistent with or superior to'' the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs. *Id.* P 1764.

[945] *Id.*

[946] Order No. 2003, 104 FERC ¶ 61,103 at P 694 (finding that ''it is appropriate for the Interconnection Customer to pay initially the full cost of . . . Network Upgrades that would not be needed but for the interconnection'').

[947] We note that MISO's joint operating agreement with SPP states that MISO will use ERIS to study the impact of SPP's interconnection customers on MISO's system. *See* Southwest Power Pool Inc., Rate and Schedules and Seams Agreement Tariff, MISO–SPP Joint Operating Agreement, § 9.4 (Analysis of Interconnection Requests) § 9.4.d.iii (7.0.0); *Xcel Energy Servs., Inc.* v. *FERC,* 77 F.4th 1057, 1064 (D.C. Cir. 2023) (finding that the plain text of SPP's Attachment Z2, Section II.B, was ambiguous with respect to what methodology could be used to calculate charges under the ''but for'' standard in the tariff).

[948] Order No. 2023, 184 FERC ¶ 61,054 at P 1285.

[949] *Id.* P 1285 (citing MISO Initial Comments at 98).

[950] *See Tenaska Clear Creek Wind, LLC* v. *Sw. Power Pool, Inc.,* 180 FERC ¶ 61,160; *EDF Renewable Energy Inc.* v. *Midcontinent Indep. Sys. Operator, Inc.,* 168 FERC ¶ 61,173.

[951] Order No. 2023, 184 FERC ¶ 61,054 at P 1288.

[952] The *pro forma* LGIP defines NRIS service as ''an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market-based congestion management, in the same manner as Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.'' *Pro forma* LGIP section 1.

[953] Order No. 2023, 184 FERC ¶ 61,054 at P 1278.

commensurate increase in service.[954] Given this finding, the Commission's previous permissiveness in allowing transmission providers to justify their own approach to affected system study modeling criteria is no longer appropriate.

512. Additionally, we note that the issue raised in *EDF Renewable Energy Inc.* v. *Midcontinent Indep. Sys. Operator, Inc.* was not whether the use of NRIS in affected system studies results in just and reasonable and not unduly discriminatory or preferential treatment of affected system interconnection customers. Rather, the issue was whether lack of transparency as to whether MISO, SPP, and PJM, as affected system transmission providers, would conduct affected system studies using NRIS or ERIS standards results in unjust and unreasonable rates. The Commission addressed in its holding the complainants' core concerns regarding transparency, finding, on the record in that proceeding, that there was not sufficient evidence to demonstrate that current modeling practices in those RTOs were unjust and unreasonable.[955] In any event, the Commission has sufficiently explained its evolution in thinking, as discussed above.

b. Affected System Pro Forma Agreements

i. Order No. 2023 Requirements

513. The Commission adopted several *pro forma* agreements to improve the efficiency and transparency of the interactions among the parties during the affected system study process. The Commission first adopted a *pro forma* affected system study agreement in new Appendix 9 of the *pro forma* LGIP and a *pro forma* multiparty affected system study agreement in new Appendix 10 of the *pro forma* LGIP.[956] These *pro forma* affected system study agreements stipulate how to study the impact of interconnecting generating facilities on an affected system to identify network upgrades needed to accommodate the interconnection request. The Commission next adopted a *pro forma* affected system facilities construction agreement in new Appendix 11 of the *pro forma* LGIP and a *pro forma* multiparty affected system facilities construction agreement in new Appendix 12 of the *pro forma* LGIP.[957] These *pro forma* affected system facilities construction agreements standardize the terms and conditions regarding construction of affected system network upgrades.

ii. Requests for Rehearing and Clarification

514. Duke Southeast Utilities take issue with article 3.2.2.1 (Repayment) of the *pro forma* affected system facilities construction agreement, which states that the affected system interconnection customer shall be entitled to a cash repayment of the amount it paid for any affected system network upgrades.[958]

515. Duke Southeast Utilities state that, despite conceding that the repayment policy for affected system network upgrades was a NOPR proposal, the Commission declined to address arguments on the merits of this policy on the basis that the Commission simply proposed to memorialize the Commission's existing policy in a *pro forma* agreement for affected systems.[959] Duke Southeast Utilities contend that the Commission's refusal to engage on this critical question was wrong on the law and renders this portion of Order No. 2023 reversible error. Duke Southeast Utilities state that the Commission's central argument is that the cost allocation question is beyond the scope of Order No. 2023 because the Commission did not propose to change its existing policy. Duke Southeast Utilities assert that the Commission's ''existing policy'' is the subject of significant debate and ongoing litigation in the courts.[960] Duke Southeast Utilities state that they have steadfastly maintained that, before Order No. 2023, there was no such existing policy that required affected system operators to reimburse distant interconnection customers. Duke Southeast Utilities explain that, first, because there was no *pro forma* affected system facilities construction agreement before now, transmission owners fashioned their own agreements and filed them with the Commission. Duke Southeast Utilities state that the Commission had routinely accepted such affected system agreements *without* reimbursement provisions, which it clearly would not have done if such filed agreements violated an ''existing policy'' of the Commission.[961]

516. Duke Southeast Utilities explain that, second, while the Commission has claimed that Order No. 2003 and the LGIA contain a requirement that affected system operators reimburse distant interconnection customers, the Commission was equally clear that the LGIA adopted in Order No. 2003 by its terms does not apply to affected system operators.[962] Duke Southeast Utilities state that, in *Midwest Independent Transmission System Operator, Inc.,* the Commission accepted an agreement between an affected system and an interconnection customer that allocated 50% of the network upgrade costs to the interconnection customer without reimbursement.[963] Duke Southeast Utilities state that, in the process of accepting that agreement, the Commission rejected the interconnection customer's argument that Order No. 2003 entitled it to 100% reimbursement, because the affected system there ''was not a party to the interconnection agreement and cannot be bound by a contract to which it is not a party'' and because ''Order [ ] 2003 [ ] acknowledges that an Affected System is not bound by the Final Rule [Large Generator Interconnection Procedures] and interconnection agreement.'' [964] Duke Southeast Utilities conclude that it is therefore clear that there was no ''existing policy'' that would justify the Commission's refusal to engage this question in the present rulemaking.

517. Duke Southeast Utilities state that the Commission adopted a brand new agreement—the *pro forma* affected system facilities construction agreement—that includes a mandatory reimbursement requirement without acknowledging its past practice of accepting such agreements without

[954] *Id.* P 1288; *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 536 (2009) (''The question in each case is whether the agency's reasons for the change, when viewed in light of the data available to it, and when informed by the experience and expertise of the agency, suffice to demonstrate that the new policy rests upon principles that are rational, neutral, and in accord with the agency's proper understanding of its authority.'').

[955] *EDF Renewable Energy Inc.* v. *Midcontinent Indep. Sys. Operator, Inc.,* 168 FERC ¶ 61,173 at P 86.

[956] Order No. 2023, 184 FERC ¶ 61,054 at PP 1171, 1232; *see pro forma* LGIP, apps. 9, 10.

[957] Order No. 2023, 184 FERC ¶ 61,054 at P 1233; *see pro forma* LGIP, apps. 10, 11.

[958] Duke Southeast Utilities Rehearing Request at 4.

[959] *Id.* (citing Order No. 2023, 184 FERC ¶ 61,054 at PP 1211, 1244).

[960] *Id.* at 5 (citing *Duke Energy Progress, LLC* v. *FERC,* Petitions for Review, Case No. 21–1272, (D.C. Cir., Dec. 27, 2021), Case No. 22–1072 (D.C. Cir., May 4, 2022), Case No. 22–1284 (D.C. Cir., Nov. 3, 2022), Case No. 22–1327 (D.C. Cir., Dec. 20, 2022); *Duke Energy Progress, LLC* v. *FERC,* Petition for Review, Case No. 23–1114 (D.C. Cir. Apr. 14, 2023)).

[961] *Id.* (citing *S. Co. Servs., Inc.,* Docket No. ER21–1701–000 (June 10, 2021) (delegated letter order); *S. Co. Servs., Inc.,* Docket No. ER20–2825–000 (Oct. 9, 2020) (delegated letter order); *Duke Energy Fla., LLC,* Docket No. ER20–2419–000 (Sept. 2, 2020) (delegated letter order) (accepting two agreements); *Fla. Power & Light Co.,* Docket No. ER19–2445–000 (Aug. 30, 2019) (delegated letter order); *MidAmerican Energy Co.,* Docket No. ER09–1654–000 (Oct. 22, 2009) (delegated letter order)).

[962] *Id.*

[963] *Id.* at 5–6 (citing *Midcontinent Indep. Trans. Sys. Operator, Inc.,* 120 FERC ¶ 61,066, at PP 16, 23–25 (2007) (*Midwest ISO*)).

[964] *Id.* at 6 (citing *Midwest ISO,* 120 FERC ¶ 61,066 at P 25 (capitalization altered) (citation omitted)).

reimbursement language.[965] Duke Southeast Utilities assert that the Commission has repeatedly accepted proposed affected system agreements that allocate affected system network upgrade costs to affected system interconnection customers without reimbursement.[966] Duke Southeast Utilities argue that this reflects the Commission's practice of accepting as just and reasonable and not unduly discriminatory affected system agreements in which the affected system interconnection customer has no right to reimbursement. Duke Southeast Utilities contend that the Commission's failure to explain its change of course on its reimbursement policy without addressing the precedent from which it departs is a direct violation of the APA.[967]

518. Duke Southeast Utilities contend that, under this repayment provision, customers on the affected system must bear higher transmission costs to pay for network upgrades they do not need (by reimbursing interconnection customers who provide upfront funding), so that an interconnection customer can interconnect on a neighboring transmission system.[968] Duke Southeast Utilities state that, in the case of the Duke Southeast Utilities, and as shown in the rulemaking comments filed by North Carolina state regulators and consumer advocate bodies, this often means that the retail customers of North Carolina are forced to subsidize generating facilities interconnecting to, and selling into, PJM.[969] Duke Southeast Utilities assert that the Commission was not entitled to willfully ignore changed circumstances and refuse to provide meaningful answers to arguments presented by North Carolina stakeholders.[970] Duke Southeast Utilities state that the Commission (1) acted arbitrarily and capriciously by failing to address the various commenters' concerns, and such actions without substantial evidence in support is grounds for reversal on its own under the APA[971] and (2) violated section 205 of the FPA by mandating a new *pro forma* cost allocation agreement without meaningfully considering the needs of impacted customers.[972]

519. Duke Southeast Utilities state that the Commission has not conducted an analysis based on the specific facts and record presented in this case to justify allocating these network upgrade costs to Duke Southeast Utilities' existing transmission customers.[973] Duke Southeast Utilities state that Order No. 2023 contains no explanation or evidence that the Commission considered the impacts to native transmission customers at all. Duke Southeast Utilities assert that, if the Commission undertook such a balancing of interests, it had a responsibility under the APA to explain itself.[974] Duke Southeast Utilities argue that, on rehearing, the Commission should explain in detail what this analysis entailed.[975]

520. Duke Southeast Utilities argues that the Commission's cost allocation decision is inconsistent with the cost causation principle, which states that all approved rates must reflect to some degree the costs actually caused by the customer who must pay them[976] and that benefits must be at least roughly commensurate with costs.[977]

521. Duke Southeast Utilities state that the Commission declined in Order No. 2023 to respond to Duke Southeast Utilities' arguments that the reimbursement policy goes against the Commission's cost causation principles.[978] Duke Southeast Utilities state that the mere fact is that, ''but for'' the affected system interconnection customers' interconnection with the host transmission provider, there would be no need for the affected system network upgrades. Duke Southeast Utilities contend that customers on the affected system will not benefit from the interconnection of the affected system interconnection customers onto the interconnecting transmission provider's transmission system from an energy and capacity perspective because the affected system is not receiving energy and capacity from the host transmission provider: therefore, Duke Southeast Utilities' retail customers will not be receiving the generation. Duke Southeast Utilities state that the required network upgrades also provide no benefit to the customers of the affected system from a transmission perspective because they are not needed ''but for'' the affected system interconnection customers interconnection to the host transmission provider.

522. Duke Southeast Utilities' argue that, in the context of affected system network upgrades, the Commission should require affected system interconnection customers to fund the cost of affected system network upgrades because (a) such network upgrades would not be necessary but for the affected system interconnection request and (b) doing so would allocate the network upgrades costs to the party that caused the costs to be incurred and reaps the resulting benefits—the affected system interconnection customers.[979]

iii. Determination

523. We disagree with Duke Southeast Utilities' characterization that the Commission conceded that the affected system network upgrade reimbursement provisions in the *pro forma* affected system facilities construction agreements were a ''NOPR proposal;'' rather, the Commission merely acknowledged that in the NOPR it included the existing affected system network upgrade reimbursement in the newly proposed *pro forma* affected system facilities construction agreements. The Commission did not state that the affected system network upgrade reimbursement was a ''NOPR proposal'' of new regulations.

524. In response to Duke Southeast Utilities' request for rehearing of the affected system network upgrade reimbursement provisions in the *pro forma* affected system facilities construction agreements, we note that, although we are not changing existing Commission policy, we continue to find that policy to be just, reasonable, and not unduly discriminatory or preferential. We disagree with Duke Southeast Utilities' assertion that, before Order No. 2023, there was no such existing affected system network

[965] *Id.* at 8.

[966] *Id.* (citing *Duke Energy Progress, LLC,* 177 FERC ¶ 61,001, at P 7 & n.16 (2021) (listing numerous examples cited by DEP with full allocation), *appeal pending,* Petition for Review, Case No. 21–1272, *order on reh'g,* 179 FERC ¶ 61,007 (2022), *appeal pending,* Petition for Review, Case No. 22–107).

[967] *Id.* (citing 5 U.S.C. 551 *et seq).*

[968] *Id.* at 4.

[969] *Id.* at 4, 10 (citing Joint Comments of the North Carolina Utilities Commission and the North Carolina Utilities Commission Public Staff, at 23, Docket No. RM22–14–000 (filed Oct. 13, 2022). The North Carolina Commission and Staff further provided that the total of the affected system costs for DEP of recent projects in the DENC territory that have already been studied is currently estimated at $126 million and there are several additional PJM queues for which affected system studies have yet to be completed and are projected to interconnect a total of 7,312 MW. *Id.* at 21–22.

[970] *Id.* at 6.

[971] *Id.* at 7.

[972] *Id.* at 9.

[973] *Id.* at 10.

[974] *Id.* at 10–11 (citing *Gen. Chem. Corp.* v. *U.S.,* 817 F.2d 844, 857 (D.C. Cir. 1987) (finding an administrative agency order arbitrary and capricious because the agency's analysis was ''internally inconsistent and inadequately explained.'')).

[975] *Id.* at 11.

[976] *Id.* at 11–12 (citing Order No. 845–A, 166 FERC ¶ 61,137 at P 78 (citation omitted); *Ill. Commerce Comm'n,* 576 F.3d 470, at 476 (7th Cir. 2009)).

[977] *Id.* (citing *Ill. Commerce Comm'n,* 756 F.3d 556, at 562 (7th Cir. 2014)).

[978] *Id.* at 12–13 (citing Order No. 2023, 184 FERC ¶ 61,054 at PP 1243–44).

[979] *Id.* at 13.

upgrade reimbursement policy. As the Commission concluded in Order No. 2003, and we affirm here, the Commission's interconnection pricing policy as it applies to a non-independent affected system transmission provider should be consistent with the policy the Commission adopted for non-independent host transmission providers.[980] Specifically, under the Commission's interconnection pricing policy, the costs of interconnection facilities are the responsibility of the interconnection customer and the costs of network upgrades are funded initially by the interconnection customer (unless the transmission provider elects to fund them), and the interconnection customer is entitled to a cash equivalent refund equal to the total amount paid for the network upgrades.[981]

525. We find that it is important for the repayment provisions for affected system interconnection customers to be consistent with the manner that the transmission provider repays its own interconnection customers. For example, the Commission in Order No. 2003 explained that non-independent transmission providers have an incentive to frustrate rival interconnection customers, and, absent a reimbursement requirement, such transmission providers might discriminate against independent interconnection customers by, for example, finding that a disproportionate share of the costs of expansions needed to serve its own power customers is attributable to competing interconnection customers.[982] This rationale applies equally to affected system transmission providers.

526. Affected system transmission providers might source generation from the host transmission provider's transmission system to serve its own load, and such affected system transmission provider's interests might benefit from additional network upgrades to facilitate transactions across the seam between transmission providers. If that is the case, the affected system transmission provider would have an incentive to impose additional burdensome and unnecessary affected system network upgrades on affected system interconnection customers; however, because under Commission policy the affected system transmission providers are required to reimburse the affected system interconnection customer for those network upgrade costs, the incentive for discriminatory behavior is absent.

527. The Commission also found in Order No. 2003 that the reimbursement requirement would enhance competition by promoting new generation.[983] We similarly find that the requirement for affected system transmission providers to repay affected system interconnection customers will enhance competition because it will discourage affected system transmission providers from assigning unnecessary affected system network upgrade costs to interconnection customers if the transmission provider ultimately must reimburse the affected system interconnection customer for such costs.[984] In doing so, we continue to maintain that such additional generation and related enhanced competition will generally cause the average embedded cost transmission rate to decline for all remaining customers.[985]

528. We also continue to find, as we did in Order Nos. 2003 and 2003–A, that ''network facilities are not 'sole use' facilities but facilities that benefit all Transmission Customers . . . the addition [of a network upgrade facility] represents a system expansion used by and benefiting all users due to the integrated nature of the grid.'' [986]

529. In response to Duke Southeast Utilities' assertion that the Commission has routinely accepted affected system agreements without affected system network upgrade reimbursement provisions, we clarify that such acceptances were in error and in contravention of Commission policy as established in Order No. 2003.[987] In Docket No. ER20–2419–000, the two service agreements at issue involved system protection facilities, the costs of which, per Duke Southeast Utilities' tariff, are directly assignable to an interconnection customer without reimbursement.[988]

530. We also disagree with Duke Southeast Utilities' assertion that the Commission has been clear that the *pro forma* LGIA adopted in Order No. 2003 does not apply to affected system operators. We reiterate that Order No. 2003's reimbursement requirements are reflected both in the preamble of Order No. 2003 and *pro forma* LGIA Article 11.4, which Order No. 2003 explicitly made applicable to all jurisdictional affected system operators.[989]

531. The *Midwest Independent Transmission System Operator, Inc.* proceeding that Duke Southeast Utilities cites is inapposite to the status quo as established in Order No. 2003. First, the affected system transmission owner was not a party to the agreement in that proceeding and was not required to reimburse the interconnection customer in a region that had transitioned to participant funding prior to the filing of the interconnection agreement at issue in that proceeding.[990] Second, the affected system ''operator'' was a transmission owner within the MISO footprint, not a transmission provider in a separate service territory with its own tariff.[991] Furthermore, in Order No. 2003, the Commission limited the use of participant funding to independent transmission providers, such as MISO, because of its concern that for a non-independent transmission provider, such as Duke Southeast Utilities, the implementation of participant funding creates opportunities for undue discrimination.[992] The Commission also stated that, if the affected system operator is an independent transmission provider, then it has flexibility regarding its interconnection pricing policy (including participant funding) that the affected system operator may propose while as discussed above, an affected system operator that is not independent must be consistent with the policy adopted for non-independent transmission providers (*i.e.,*

[980] Order No. 2003, 106 FERC ¶ 61,220 at P 738; Order No. 2003–A, 106 FERC ¶ 61,220 at P 636.

[981] Order No. 2003, 106 FERC ¶ 61,220 at PP 676, 693.

[982] *Id.* P 696.

[983] *Id.* PP 694–696.

[984] *See id.* P 696.

[985] Order No. 2003–A, 106 FERC ¶ 61,220 at P 581 (stating that the Commission's ''experience indicates that the incremental rate associated with network upgrades required to interconnect a new generator (dividing the costs of any necessary network upgrades by the projected transmission usage by the new generator) will generally be less that the embedded average cost rate (including the costs of the new facilities in the numerator and the additional usage of the system in the denominator).'').

[986] Order No. 2003, 106 FERC ¶ 61,220 at PP 21, 65, Order No. 2003–A, 106 FERC ¶ 61,220 at P 585; *see also Pub Serv. Co. Colo.,* 59 FERC ¶ 61,311 (1992), *reh'g denied,* 62 FERC ¶ 61,013 (1993); *W. Mass. Elec. Co.,* 77 FERC ¶ 61,268, at 62,119 (1996).

[987] *See Duke Energy Progress, LLC,* 181 FERC ¶ 61,197, at P 39 (2022); *Duke Energy Progress, LLC,* 177 FERC ¶ 61,001 at P 37.

[988] *Duke Energy Fla., LLC,* Docket No. ER20–2419–000 (Sept. 20, 2020) (delegated letter order).

[989] Order No. 2003, 106 FERC ¶ 61,220 at P 738; *see also Duke Energy Progress, LLC,* 177 FERC ¶ 61,001, *on reh'g,* 179 FERC ¶ 61,007, at P 33 (''Order No. 2003 explicitly requires jurisdictional affected system operators to reimburse interconnection customers for network upgrade costs.'').

[990] *Midwest Indep. Transmission Sys. Operator, Inc.,* 120 FERC ¶ 61,066, at PP 24–25.

[991] In MISO, the definition of affected system encompasses an electric transmission or distribution system other than the transmission *owner's* transmission system that is affected by an interconnection request. MISO, FERC Electric Tariff, attach. X (Generator Interconnection Procedures (GIP)), (161.0.0) § 1.

[992] Order No. 2003, 106 FERC ¶ 61,220 at P 696.

reimbursement).[993] This circumstance does not even speak to Order No. 2003's network upgrade reimbursement requirement for jurisdictional affected system operators, much less undermine it.

532. In response to Duke Southeast Utilities' allegation that the Commission failed to address commenters' concerns in Order No. 2023, we are not obligated to respond to each argument that goes to issues outside the scope of the proceeding one-by-one.[994] We reiterate that the affected system network upgrade reimbursement provisions in the *pro forma* affected system facilities construction agreements are a codification of existing Commission policy and are not a new policy proposal. Order No. 2023 is not a vehicle for challenging existing Commission policy [995] and, accordingly, the Commission did not need to address each individual argument attempting to undermine existing Commission policy because Order No. 2023 did not revise the Commission's existing reimbursement policy.

533. Finally, we remove from the *pro forma* affected system facilities construction agreements sections 3.1.2.2 (Recommencing of Work) and 3.1.2.3 (Right to Suspend Due to Default). We find that these provisions are inconsistent with the *pro forma* LGIA and, accordingly, are unnecessary.

c. Miscellaneous

i. Requests for Rehearing and Clarification

534. MISO asks the Commission to require MISO, PJM, and SPP to coordinate their affected systems revisions on compliance.[996] MISO explains that Order No. 2023 only encourages, but does not require, ''voluntary coordination between transmission providers who share transmission system seams and whose customers frequently impact each other's systems.'' [997] MISO argues that this could potentially allow neighboring RTOs/ISOs to independently develop affected systems approaches that could conflict with each other's procedures and disrupt or sideline existing joint operating agreement coordination processes.[998] MISO states that MISO, PJM, and SPP would need to intervene in each other's compliance proceedings to monitor proposed revisions and protest if needed, which would be less efficient than the current joint affected system coordination process. MISO adds that misalignment on affected systems studies between MISO, PJM, and SPP could lead to delayed study penalties. Further, MISO explains that the Commission has previously required coordinated filings by RTO/ISOs proposing identical changes to their joint operating agreements. MISO states that it addressed these concerns in its comments but asserts that Order No. 2023 did not meaningfully respond to them and failed to acknowledge the unique status of MISO, PJM, and SPP's affected system coordination procedures. Rather, MISO explains that Order No. 2023 states that the Commission ''is not persuaded that any potential efficiencies of such coordination outweigh the burdens that may be placed on host transmission providers.'' [999] MISO argues that ignoring these arguments violates the requirement of reasoned decision-making and asserts that it is arbitrary and capricious that the Commission did not justify its departure from its precedent of requiring coordination between transmission providers.

535. Shell requests clarification that affected system transmission providers must reimburse affected system interconnection customers for affected system network upgrades, not only when those network upgrades are identified via a traditional affected system study, but also when identified through a seams study.[1000] Shell explains that seams studies integrate generator interconnection and regional and inter-regional transmission planning and cost allocation. Shell asserts that it would be unjust, unreasonable, and unduly discriminatory to reimburse interconnection customers for affected systems network upgrades identified under the revised *pro forma,* but not those identified under a seams arrangement.

536. Southeastern Utilities agree with the Commission that, in most cases, an affected system transmission provider will receive the opportunity to study a delivery request if the ''affected system interconnection customer subsequently seeks deliverability on either the host system or an affected system.'' [1001] However, Southeastern Utilities explain that, in some cases, the host transmission provider may not perform a transmission service study before power flows from a generating facility based on an NRIS request, and in those cases, it is not clear how or when the affected system transmission provider would have the opportunity to study the transmission service request. For example, Southeastern Utilities note that MISO's business practice manual allows MISO to accept a network service request ''without further analysis'' if the generating facility implicated in the request is a MISO aggregate deliverable resource that is identified during an NRIS deliverability study.[1002] Therefore, Southeastern Utilities ask the Commission to clarify that, in the event a host transmission provider performs a delivery analysis as part of its interconnection study, the affected system transmission provider can also study both interconnection and delivery requirements because the affected system transmission provider may not have an opportunity to study a transmission service request related to the generating facility.[1003] Southeastern Utilities argue that this clarification is needed to better consider impacts on their systems from delivery of power on neighboring systems. If the Commission does not provide clarification, Southeastern Utilities request rehearing on this matter. Southeastern Utilities argue that prohibiting affected system transmission providers to perform a delivery study along with an interconnection study under the circumstances it describes would be arbitrary and capricious and contrary to law for failing to consider all aspects of the issue under consideration, inconsistent with the Commission's stated rationale, and would jeopardize system reliability.

ii. Determination

537. We reject MISO's request that the Commission require MISO, PJM, and SPP to coordinate their affected systems revisions on compliance. We disagree with MISO's argument that failing to include a directive for joint operating parties to coordinate affected systems was arbitrary and capricious. Order No. 2023 sets the requirements in the *pro forma* LGIP for the affected system study process. As MISO acknowledges

[993] Order No. 2003–A, 106 FERC ¶ 61,220 at PP 636–637.

[994] *See Pub. Serv. Elec. & Gas Co.* v. *FERC,* 989 F.3d 10, 20 (D.C. Cir. 2021) (finding that the Commission need only respond to significant comments raised on rehearing and is free to ignore insignificant ones (citing *NARUC* v. *FERC,* 475 F.3d at 1285).

[995] *See* Order No. 2003, 104 FERC ¶ 61,103 at PP 738–739; *see also pro forma* LGIA art. 11.4.

[996] MISO Rehearing Request at 17.

[997] *Id.* at 18 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1172).

[998] *Id.* at 19–20.

[999] *Id.* at 21 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1172).

[1000] Shell Rehearing Request at 13–14.

[1001] Southeastern Utilities Clarification and Rehearing Request at 4 (citing Order 2023, 184 FERC ¶ 61,054 at P 1288).

[1002] *Id.* (citing MISO, BPM–020–r29 (Transmission Planning Business Practices Manual), section 5.2.3 (May 2023)).

[1003] *Id.* at 5–6.

in its rehearing request, the RTOs'/ISOs' joint operating agreements are ''unique'' and thus are not part of the Commission's *pro forma* LGIP. We recognize that MISO has joint operating agreements with SPP and PJM that may need to be updated to reflect the requirements of Order No. 2023, and to the extent that revisions are needed, then we expect that MISO, PJM, and SPP will propose revisions to their joint operating agreements to ensure that there are no conflicts among their joint operating agreements, their LGIPs, and Order No. 2023's requirements.

538. We also disagree with MISO's argument that failing to include a directive for joint operating parties to coordinate affected systems is a departure from Commission precedent. We note that MISO points to a complaint that was specifically filed against MISO's, PJM's, and SPP's joint operating agreements and tariffs. However, here, we are revising the Commission's *pro forma* LGIP. Order No. 2023 does not modify or address individual seams arrangements, which are not part of the Commission's *pro forma* LGIP. We agree that alignment among neighboring processes is important, and we continue to encourage voluntary coordination between transmission providers who share transmission seams.[1004]

539. We also reject Shell's request for clarification that affected system transmission providers must reimburse affected system interconnection customers for affected system network upgrades whether identified via a traditional affected system study or through a seams study, because such clarification is outside of the scope of Order No. 2023. As discussed above, Order No. 2023 modifies the Commission's *pro forma* LGIP to establish a standardized affected system study process. Additionally, as discussed above, we note that Order No. 2023 does not alter the Commission's existing reimbursement requirements for affected system network upgrades.

540. We reject Southeastern Utilities' request for rehearing that, in the event a host transmission provider does not perform a delivery analysis as part of its interconnection study, the affected system transmission provider can also study both interconnection and delivery requirements. In Order No. 2023, the Commission found, and we continue to find, that an affected system transmission provider must use ERIS studies on affected system interconnection requests regardless of the level of service requested on the host system. Southeastern Utilities argue that there are some instances where the affected system transmission provider will not have the opportunity to study the impact of the generating facility in the context of the associated transmission service request before any power flow from that generating facility and notes, as an example, that MISO does not conduct a deliverability study for network service requests when an interconnection customer requests NRIS. However, as discussed in Order No. 2023, the ERIS modeling requirement applies to the *pro forma* LGIP affected system study process and the Commission explicitly stated that it would not address whether a transmission provider has adequate transmission service studies.[1005] As discussed above, the Commission found in Order No. 2003 and reiterated in Order No. 2023 that interconnection service is an element of, but separate from the delivery component of, transmission service.[1006]

E. Reforms To Incorporate Technological Advancements Into the Interconnection Process

1. Increasing Flexibility in the Generation Interconnection Process

a. Co-Located Generating Facilities Behind One Point of Interconnection

i. Order No. 2023 Requirements

541. In Order No. 2023, the Commission revised *pro forma* LGIP section 3.1.2 to require transmission providers to allow more than one generating facility to co-locate on a shared site behind a single point of interconnection and share a single interconnection request.[1007] The Commission clarified that interconnection customers have the choice to structure their interconnection requests for co-located generating facilities according to their preference (*i.e.,* as separate interconnection requests or as a shared interconnection request) and that Order No. 2023 does not require interconnection customers to share a single interconnection request for multiple generating facilities located on the same site.[1008] The Commission also clarified that co-located generating facilities can be owned by a single interconnection customer with multiple generating facilities sharing a site, or by multiple interconnection customers that have a contract or other agreement that allows for shared land use.[1009]

542. The Commission found that co-located generating facilities, in spite of being prevalent in current interconnection queues, face barriers to interconnection under existing interconnection procedures, and that this reform will effectively remove such barriers.[1010] The Commission further found that requiring transmission providers to allow interconnection customers to submit a single interconnection request that represents multiple generating facilities that are located behind a single point of interconnection is required to ensure just and reasonable rates. The Commission stated that this reform will improve efficiency for transmission providers in the study process by reducing the number of interconnection requests in the interconnection queue and will reduce costs for interconnection customers because they will only submit a single set of deposits to enter the interconnection queue. The Commission also stated that this reform will improve interconnection queue efficiency without imposing an adverse impact on the efficacy of interconnection study results or other interconnection customers.[1011]

ii. Requests for Rehearing and Clarification

543. MISO urges the Commission to clarify that the requirement to allow co-located resources to share an interconnection request is limited to co-located resources owned by the same interconnection customer.[1012] MISO states that requiring or even allowing separate interconnection customers to combine their projects into a single interconnection request would create numerous opportunities for conflict and interconnection management challenges. MISO argues, for example, that, if one of two interconnection customers sharing an interconnection request fails to adhere to the requirements of MISO's LGIP and must be withdrawn, MISO would need to develop an extensive set of revisions to the LGIP and new procedures for separating one interconnection customer's facilities out of a shared interconnection request. MISO asserts that it is not necessary to require a transmission provider to allow separate interconnection customers to share an interconnection request for separate projects just to allow them to co-locate

[1004] Order No. 2023, 184 FERC ¶ 61,054 at PP 1172, 1194.

[1005] *Id.* P 1290.

[1006] *Id.* P 1288 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 118; Order No. 2003–A, 106 FERC ¶ 61,220 at P 113).

[1007] *Id.* P 1346.

[1008] *Id.* PP 1351–1352.

[1009] *Id.* P 1355.

[1010] *Id.* P 1349.

[1011] *Id.* P 1350.

[1012] MISO Rehearing Request at 23–25.

behind a common point of interconnection. Therefore, MISO asks the Commission to clarify that allowing multiple interconnection customers to share an interconnection request is merely one mechanism to achieve Order No. 2023's goal allowing interconnection customers to co-locate their generating facilities and that transmission providers are not required to use that particular mechanism provided they adopt procedures to allow the intended result.

544. NYTOs ask the Commission to clarify the definition of stand alone network upgrades and the option to build standalone network upgrades in situations of co-located generating facilities.[1013] Specifically, NYTOs note that Order No. 2023 maintains the definition of stand alone network upgrades as ''only those required for a single interconnection customer,'' [1014] but also requires transmission providers to allow interconnection customers to submit a single interconnection request that represents multiple generating facilities that are located behind a single point of interconnection.[1015] Therefore, NYTOs urge the Commission to clarify application of the option to build stand alone network upgrades when required for a shared interconnection request.

iii. Determination

545. We are unpersuaded by MISO's arguments that the requirement to allow co-located resources to share an interconnection request should be limited to co-located resources owned by the same interconnection customer. We sustain our findings in Order No. 2023 that transmission providers must allow more than one generating facility to co-locate on a shared site behind a single point of interconnection and share a single interconnection request, and that such co-located generating facilities can be owned by a single interconnection customer with multiple generating facilities sharing a site, or by multiple interconnection customers that have a contract or other agreement that allows for shared land use.[1016] We continue to find that this reform will improve efficiency for transmission providers in the study process by reducing the number of interconnection requests in the interconnection queue and will reduce costs for interconnection customers because they will only submit a single set of deposits to enter the interconnection queue. For these reasons, we continue to believe that this reform will improve efficiency for both transmission providers and interconnection customers, and that this reform is necessary to ensure just and reasonable rates.

546. Regarding the situation that MISO describes, in which one of the co-located generating facilities sharing an interconnection request is withdrawn or requested to be withdrawn, we do not believe that revisions to the *pro forma* LGIP are needed to separate the facilities in the shared interconnection request. Rather, we believe that transmission providers should determine whether the entire shared interconnection request should proceed or be withdrawn using the existing withdrawal provisions in section 3.7 of the *pro forma* LGIP or the existing material modification procedures in section 4.4 of the *pro forma* LGIP. If a transmission provider would like to propose revisions to its LGIP to allow one co-located generating facility sharing an interconnection request to withdraw from the queue while allowing another co-located generating facility sharing the same interconnection request to proceed in the interconnection queue, it may do so in an FPA section 205 filing.

547. In response to NYTOs' request for clarification, we believe that the revisions to the definition of stand alone network upgrades earlier in this order in response to Clean Energy Associations' request for rehearing should resolve NYTOs' concern and clarify the option to build stand alone network upgrades when required for a shared interconnection request.[1017]

b. Revisions to the Modification Process To Require Consideration of Generating Facility Additions

i. Order No. 2023 Requirements

548. In Order No. 2023, the Commission revised section 4.4.3 of the *pro forma* LGIP to require transmission providers to evaluate the proposed addition of a generating facility at the same point of interconnection prior to deeming such an addition a material modification, if the addition does not change the originally requested interconnection service level.[1018] The Commission found that automatically deeming a request to add a generating facility to an existing interconnection request to be a material modification without such evaluation creates a significant barrier to access to the transmission system and renders existing interconnection processes unjust and unreasonable.[1019]

549. The Commission clarified that interconnection customers may continue to request changes to proposed generating facilities at any time in the interconnection process; however, transmission providers are only required to evaluate whether a request to add a generating facility to an existing interconnection request is material if the request is submitted before the interconnection customer returns the executed facilities study agreement to the transmission provider. Once the executed facilities study agreement is returned, the transmission provider may decide to automatically treat requests to add a generating facility to an existing interconnection request as material modifications without review.[1020] The Commission also created an exception from these requirements for transmission providers that employ fuel-based dispatch assumptions.[1021]

550. The Commission clarified that, per *pro forma* LGIP section 4.4.1, prior to the return of the cluster study agreement from the transmission provider to the interconnection customer, a decrease of up to 60% of electrical output (MW) must not be considered a material modification.[1022] In addition, per *pro forma* LGIP section 4.4.2, prior to the return of the executed interconnection facilities study, an additional 15% decrease of electrical output of the proposed project must not be considered a material modification if the change occurred either through a decrease in plant size (MW) or a decrease in interconnection service level accomplished by applying transmission provider-approved injection-limiting equipment.

ii. Requests for Rehearing and Clarification

551. PJM seeks rehearing of this reform because it believes that the Commission fails to address the concerns PJM raised in its NOPR comments that locating an additional facility at the site of the first project can affect other interconnection customers, especially if the additional facility has a different fuel type than the initial facility.[1023] PJM adds that the Commission's determination is arbitrary and capricious because a project developer who is unsure which facilities it seeks to interconnect at the time of its application is not ready to

[1013] NYTOs Rehearing Request at 39.

[1014] *Id.* (citing Order No. 2023, 184 FERC ¶ 61,054 at P 193).

[1015] *Id.* (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1349).

[1016] Order No. 2023, 184 FERC ¶ 61,054 at P 1355.

[1017] *See supra* section II.C.2.c.

[1018] Order No. 2023, 184 FERC ¶ 61,054 at P 1406.

[1019] *Id.* P 1407.

[1020] *Id.* PP 1409–1410.

[1021] *Id.* P 1411.

[1022] *Id.* P 1417.

[1023] PJM Rehearing Request at 41–42.

proceed and performing a material modification analysis is time-consuming: therefore, this requirement is inconsistent with Order No. 2023's stated goal of facilitating a prompt study process that allows ready projects to move forward.

552. Shell seeks rehearing regarding the deadlines by which an interconnection customer can reduce the size of its generating facilities without the change being deemed a material modification.[1024] Shell notes that Order No. 2023 allows an initial 60% size reduction prior to the interconnection customer executing the cluster study agreement. Shell states that, because Order No. 2023 eliminated the feasibility study from the interconnection study process, interconnection customers no longer have a basis at that point in the study process from which to determine if they should decrease the size of their generating facility. Shell argues that the Commission should revise *pro forma* LGIP section 4.4.1 to allow interconnection customers to reduce their project size after the initial cluster study report and prior to the start of the subsequent cluster re-study or facilities study.

553. Clean Energy Associations ask the Commission to clarify that changing solar modules or wind turbines, adding storage capacity, or making minor adjustment to inverter performance are presumptively immaterial if the project's planned export and import capacity remains the same.[1025] Clean Energy Associations state that finalizing procurement is highly reliant on the results and timing of the interconnection studies and argue that this clarification is necessary to ensure that project developers are not effectively forced into locking in inefficient equipment early in the interconnection process.

iii. Determination

554. We disagree with PJM that the Commission did not sufficiently address PJM's concerns that locating an additional facility at the site of the first project could affect other interconnection customers. In Order No. 2023, the Commission established a procedural requirement for transmission providers to evaluate the proposed addition of a generating facility at the same point of interconnection prior to deeming such an addition a material modification, if the addition does not change the originally requested interconnection service level.[1026] The Commission did not require any particular substantive outcome following this evaluation; rather, transmission providers may still find that a proposed modification involving the proposed addition of a generating facility at the same point of interconnection would have a material impact on the cost or timing of any interconnection request with an equal or later queue position, and therefore constitutes a material modification. While such evaluation likely entails some additional burden on the transmission provider, we continue to find that this outcome is warranted given the countervailing benefits. Specifically, we sustain our finding that transmission providers automatically deeming a request to add a generating facility to an existing interconnection request to be a material modification creates a significant barrier to access to the transmission system and renders existing interconnection processes unjust and unreasonable.[1027] Further, we continue to find that this reform will ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, and will prevent undue discrimination.

555. We are not persuaded by Shell's arguments on rehearing that the Commission should allow a 60% size reduction after the initial cluster study report and prior to the start of the subsequent cluster re-study or facilities study. We find that allowing every interconnection customer in a cluster a 60% size reduction after the initial cluster study report will significantly impact the amount of uncertainty faced by interconnection customers in a cluster—because each change in proposed generating facility size may shift network upgrade costs to other interconnection customers, who in turn, may elect to re-size—and may lead to withdrawals and restudies. Rather, we reiterate our finding that, per *pro forma* LGIP section 4.4.1, prior to the return of the cluster study agreement from the transmission provider to the interconnection customer, the proposed decrease of up to 60% of a generating facility's electrical output (MW) must not be considered a material modification.[1028] We clarify that this allowable decrease of up to 60% of a generating facility's electrical output may occur during the customer engagement window (*i.e.,* prior to the return of the cluster study agreement from the transmission provider to the interconnection customer). Further, we note that interconnection customers have an additional opportunity to propose a decrease in the output of the generation facility after the cluster study report: per *pro forma* LGIP section 4.4.2, prior to the return of the executed interconnection facilities study, an additional 15% decrease of electrical output of the proposed project must not be considered a material modification if the change occurred either through a decrease in plant size (MW) or a decrease in interconnection service level accomplished by applying transmission provider-approved injection-limiting equipment.

556. We find Clean Energy Associations' requested clarification that changing solar modules or wind turbines, adding storage capacity, or making minor adjustments to inverter performance are presumptively immaterial if the project's planned export and import capacity remains the same, is outside the scope of this rulemaking. In Order No. 2023, the Commission did not establish a presumption of immateriality for any specific changes to an interconnection request that do not impact the requested interconnection service level. Rather, the Commission established a procedural requirement for transmission providers to evaluate the proposed addition of a generating facility at the same point of interconnection prior to deeming such an addition a material modification, if the addition does not change the originally requested interconnection service level.[1029] We decline to establish any presumption of immateriality here for specific changes to an interconnection request that do not impact the requested interconnection service level. We do note that Order No. 845 established the technological change procedure to provide for the evaluation of whether a technological advancement can be incorporated into an interconnection request without the change being considered a material modification (*i.e.,* whether the change is a permissible technological advancement).[1030] Any such technical change procedures are in the transmission provider's tariff, and Order No. 2023 did not affect them.

[1024] Shell Rehearing Request at 7.

[1025] Clean Energy Associations Rehearing Request at 75–76.

[1026] Order No. 2023, 184 FERC ¶ 61,054 at P 1406.

[1027] *Id.* P 1407.

[1028] *Id.* P 1417.

[1029] *Id.* P 1406.

[1030] Order No. 845, 163 FERC ¶ 61,043 at PP 510–536.

c. Availability of Surplus Interconnection Service

i. Order No. 2023 Requirements

557. In Order No. 2023, the Commission revised section 3.3.1 of the *pro forma* LGIP to require transmission providers to allow interconnection customers to access the surplus interconnection service process once the original interconnection customer has an executed LGIA or requests the filing of an unexecuted LGIA.[1031] The Commission found that this reform will enable interconnection customers with unused interconnection service to let other generating facilities use that interconnection service earlier than is currently allowed and, therefore, increase overall efficiency of the interconnection queue and in turn ensure just and reasonable rates.[1032] The Commission clarified that this reform does not modify how the surplus interconnection service process is conducted, but rather addresses when a request for surplus interconnection service may be submitted.[1033] The Commission further clarified that the original interconnection customer must have an LGIA in place, either executed or requested to be filed unexecuted with the Commission, prior to the transmission provider tendering any LGIA for surplus interconnection service.[1034]

ii. Requests for Rehearing and Clarification

558. PJM requests clarification or, in the alternative, rehearing of Order No. 2023's requirement regarding surplus interconnection service.[1035] PJM asserts that, when the initial interconnection customer signs an LGIA, none of the network upgrades or customer interconnection facilities will have been built, such that there will be no service, much less ''surplus'' service, available. PJM argues that the requirement would introduce additional administrative burden, thereby detracting from the timely completion of interconnection studies and increasing the potential for study delay penalties, while providing little additional benefit to interconnection customers.[1036] PJM adds that studying co-located generating facilities of different fuel types is appropriate within the same cluster study rather than at disjointed points in time given that such generating facilities can have very different electrical characteristics. Therefore, PJM seeks clarification that it is entitled to an independent entity variation to not provide surplus interconnection service at such an early stage of project development or to not provide the service at any stage if it demonstrates that surplus interconnection service requests are inconsistent with its cluster study processes and will hinder efficient and timely clustered interconnection studies. In the alternative, PJM seeks rehearing of the requirement for being arbitrary and capricious because the expansion of surplus interconnection service runs contrary to Order No. 2023's goal of speeding up interconnection processes.

559. SPP asks the Commission to clarify that Order No. 2023 requires transmission providers to allow interconnection customers to *apply for* surplus interconnection service once the underlying GIA is executed or filed unexecuted, not that transmission providers must allow interconnection customers to begin receiving surplus interconnection service at that point.[1037] Because surplus interconnection service fundamentally relies upon another interconnection service request, SPP asks the Commission to clarify that Order No. 2023 does not obligate transmission providers to provide surplus interconnection service earlier than they provide interconnection service to the underlying interconnection service request. In the alternative, SPP requests rehearing of the requirement because it would be impossible for transmission providers to provide surplus interconnection service before providing service for the underlying interconnection request and would threaten system reliability.

iii. Determination

560. We are unpersuaded by PJM's arguments on rehearing that the Commission should eliminate this reform because it would detract from the timely completion of interconnection studies without providing any measurable benefit to interconnection customers. We reiterate that the reform solely modifies when an interconnection customer can submit a request for surplus interconnection service, allowing interconnection customers to access the surplus interconnection service process once the initial interconnection customer has an executed LGIA or requests the filing of an unexecuted LGIA. Surplus interconnection service is defined as any unneeded portion of interconnection service established in an LGIA, such that if surplus interconnection service is utilized, the total amount of interconnection service at the point of interconnection would remain the same.[1038] PJM notes that, when the initial interconnection customer signs an LGIA, the interconnection facilities and network upgrades to accommodate the initial interconnection customer's generating facility will not yet have been built. At that point, however, it will be known whether there is any unneeded portion of interconnection service established in the LGIA that a surplus interconnection customer could utilize. For this reason, we disagree with PJM that interconnection customers should not be allowed to request surplus interconnection service once the initial interconnection customer signs an LGIA. We continue to find that this reform will enable interconnection customers with unused interconnection service to allow other generating facilities to use that interconnection service earlier than was previously allowed and, therefore, will increase the overall efficiency of the interconnection queue. We continue to find that this reform will ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, and will prevent undue discrimination.

561. We also decline to grant PJM's request for clarification that PJM is entitled to an independent entity variation to not provide surplus interconnection service. Consistent with the Commission's statements in Order No. 2023, transmission providers may explain specific circumstances on compliance and justify why any deviations are either consistent with or superior to the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs.

562. We grant SPP's request for clarification that Order No. 2023 requires transmission providers to allow interconnection customers to *apply for* surplus interconnection service once the underlying LGIA is executed or filed unexecuted, not that transmission providers must allow interconnection customers to begin receiving surplus interconnection service at that point. As the Commission stated in Order No. 2023, and as SPP describes, this reform modifies when a request for surplus interconnection service may be submitted.[1039] We reiterate the

[1031] Order No. 2023, 184 FERC ¶ 61,054 at P 1436.

[1032] *Id.* P 1437.

[1033] *Id.* P 1447.

[1034] *Id.* P 1445.

[1035] PJM Rehearing Request at 35–36 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1438).

[1036] *Id.* at 37–38.

[1037] SPP Rehearing Request at 21.

[1038] *Pro forma* LGIP section 1.

[1039] Order No. 2023, 184 FERC ¶ 61,054 at P 1447.

clarification in Order No. 2023 that the initial interconnection customer must have an LGIA in place, either executed or requested to be filed unexecuted with the Commission, prior to the transmission provider tendering any LGIA for surplus interconnection service.[1040]

d. Operating Assumptions for Interconnection Studies

i. Order No. 2023 Requirements

563. In Order No. 2023, the Commission revised sections 3.1.2, 3.2.1.2, 3.2.2.2, 3.3.1, 3.4.2, 4.4.3, 7.3, 8.2, and Appendix 1 of the *pro forma* LGIP and article 17.2 and Appendix H of the *pro forma* LGIA to require transmission providers, at the request of the interconnection customer, to use operating assumptions in interconnection studies that reflect the proposed charging behavior of electric storage resources [1041] (whether standalone, co-located generating facilities,[1042] or part of a hybrid generating facility [1043])—*i.e.,* whether the interconnecting generating facility will or will not charge during peak load conditions—unless good utility practice, including applicable reliability standards,[1044] otherwise requires the use of different operating assumptions.[1045] The Commission clarified that studying electric storage resources, at the request of the interconnection customer, according to their planned operating assumptions refers only to the operating assumptions for withdrawals of energy (*e.g.,* the charging of an electric storage resource) in interconnection studies. The Commission further clarified that the reforms described in that determination section of Order No. 2023 and the related sections of the *pro forma* LGIP apply to all interconnecting electric storage resources, whether they are standalone, co-located generating facilities, or part of a hybrid generating facility.[1046]

564. The Commission stated that, if an interconnection customer fails to operate its electric storage resource in accordance with the operating assumptions memorialized in the interconnection customer's LGIA, the procedure for termination of the LGIA pursuant to articles 17.1.1 and 17.1.2 of the *pro forma* LGIA is appropriate.[1047] The Commission further found that an electric storage resource that operates contrary to the operating assumptions specified in its LGIA must not be considered in breach of its LGIA by the transmission provider if its operation is at the direction of the transmission provider to maintain the reliable and efficient operation of the transmission system.

565. The Commission found that, by more accurately reflecting the technical capabilities of electric storage resources in interconnection studies through the use of appropriate operating assumptions, this reform will ensure the reliable interconnection of new electric storage resources without overestimating their impact on the transmission system, thereby ensuring just and reasonable rates by avoiding excessive and unnecessary network upgrades that may hinder the timely development of new generating facilities that stifles competition in the wholesale market.[1048] The Commission also found that this reform reduces unduly discriminatory or preferential barriers to the interconnection of electric storage resources.

566. The Commission found that, taken together, the revisions to the *pro forma* LGIP and *pro forma* LGIA adopted in Order No. 2023 will ensure that interconnection customers adhere to the operating assumptions used to study their electric storage resource and ameliorate concerns about possible reliability problems expressed by commenters.[1049] The Commission further found that: (1) control devices can prevent electric storage resources from charging during peak load conditions; (2) modern electric storage resources can respond to signals from the transmission provider within seconds; (3) electric storage resources generally do not have an economic incentive to charge during peak load conditions; and (4) the consequence of being considered in breach of the LGIA provides an additional incentive for electric storage resources to follow the agreed-upon operating assumptions memorialized in their LGIA. Further, the Commission noted that some transmission providers already assume in their interconnection studies that electric storage resources will not charge during peak load conditions.[1050] The Commission emphasized that, irrespective of these changes to operating assumptions, all electric storage resources must continue to meet all requirements in the *pro forma* LGIP and *pro forma* LGIA, as well as all applicable reliability standards.

567. The Commission found that the speed and control with which electric storage resources can respond to signals from transmission providers sufficiently distinguishes the charging behavior of electric storage resources from that of firm customer end-use load.[1051] Therefore, for purposes of determining any network upgrades necessary to accommodate the reliable interconnection of electric storage resources, the Commission found that the charging of electric storage resources should not be modeled equivalently to firm customer end-use load in interconnection studies if the interconnection customer memorializes its operating assumptions in the LGIA and installs control technologies, if required, to limit its operations as specified. The Commission further clarified that the transmission provider must not assign network upgrade costs to the interconnection customer based on those worst-case operating assumptions (*e.g.,* charging at maximum capacity during peak load conditions) where there is agreement from the interconnection customer to, if required, implement operating restrictions including installing or demonstrating that the generating facility already has control technologies (software and/or hardware) to limit its operations during peak load conditions.[1052]

568. Additionally, in Order No. 2023 the Commission declined to extend the reform to apply to additional generating facility technologies (*e.g.,* natural gas, solar, wind) or to other operating assumptions, including the injection of power.[1053] The Commission encouraged

[1040] *Id.* P 1445.

[1041] An electric storage resource is a generating facility capable of receiving electric energy from the grid and storing it for later injection of electricity. *See id.* P 1509 n.2854.

[1042] Co-located generating facilities are more than one generating facility that are located on the same site and that are connected at the same point of interconnection that are operated and dispatched as separate generating facilities. *See id.* P 1346 n. 2552.

[1043] A hybrid generating facility is a generating facility composed of more than one device of different technology types for the production and/or storage for later injection of electricity that are located on the same site and are operated and dispatched as a single integrated generating facility. *See id.* P 604 n.1204.

[1044] Applicable reliability standards means ''the requirements and guidelines of the Electric Reliability Organization and the Balancing Authority Area of the Transmission System to which the Generating Facility is directly interconnected.'' *See pro forma* LGIP section 1 (Definitions).

[1045] Order No. 2023, 184 FERC ¶ 61,054 at P 1509.

[1046] *Id.* n.2858.

[1047] *Id.* P 1521.

[1048] *Id.* P 1510.

[1049] *Id.* P 1522.

[1050] *Id.* n.2865 (citing to Bonneville Initial Comments at 23; MISO Comments at 117; *PacifiCorp,* 182 FERC ¶ 61,131 (2023) (accepting, subject to condition, revisions to PacifiCorp's LGIP and LGIA to allow PacifiCorp to study electric storage resources in its interconnection study process using operating assumptions that more accurately reflect their expected operation)).

[1051] *Id.* P 1523.

[1052] *Id.* P 1525.

[1053] *Id.* P 1529.

transmission providers to examine on an individual basis what operating assumptions used to study the injection of power may be appropriate to render the study process more accurate. The Commission also clarified that this requirement does not apply to transmission service requests and that Order No. 2023 does not modify the process for requesting transmission service.[1054]

ii. Requests for Rehearing and Clarification

569. Joint RTOs and PJM request rehearing of the operating assumptions reform because they assert that the Commission failed to respond meaningfully to the concerns raised that the use of customer-provided operating assumptions in interconnection studies (1) is not consistent with how planning studies are performed, (2) will add additional administrative burdens for transmission providers, and (3) may jeopardize reliability and shift costs to load.[1055] Joint RTOs also urge the Commission to revise or clarify Order No. 2023 to allow RTOs/ISOs to develop generally applicable procedures for addressing storage charging assumptions rather than burdensome ad hoc analyses for each interconnection customer.[1056] Joint RTOs argue that the operating assumptions reform is impractical and creates reliability problems due to the complexities of the required studies and lack of feasible enforcement mechanisms, and will burden real-time operations to limit these units to assumptions they provided as part of their interconnection application.[1057]

570. Joint RTOs and PJM assert that transmission providers have no ability to monitor in real time if an interconnection customer violates its operating limits, which could threaten reliability, and contend that Order No. 2023 does not explain how transmission providers would police storage resources' operations and enforce the operating assumptions on which their interconnection studies were based.[1058] Joint RTOs and PJM add that, to the extent electric storage resources exceed their operating parameters in real time, the costs of network upgrades would fall unfairly upon load because, once interconnected, load (rather than the interconnection customer) is responsible for the costs of upgrading the system to maintain the unit's deliverability over its lifetime.[1059] Joint RTOs and PJM state that interconnection studies are not designed to incorporate the real-time dispatch of resources or withdrawals of load or storage resources, arguing that the Commission fails to distinguish how storage resources differ from other generating facilities so as to justify this unwarranted departure from the principles which underlie planning and interconnection analyses. Joint RTOs and PJM also argue that implementing this reform, including the requirement to provide an interconnection customer with an explanation of why the submitted operating assumptions are insufficient or inappropriate and allow the interconnection customer to revise and resubmit the operating assumptions, is likely to add more time to the interconnection study process and engender arguments of unequal treatment by other resources within a cluster.[1060] PJM adds that Order No. 2023 is unduly discriminatory and provides no clear basis for favoring storage projects over all other types of generating resources or other types of load.[1061]

571. NYISO requests rehearing of the operating assumptions reform because it is inconsistent with the NYISO-administered markets given that storage resources participating as installed capacity suppliers are required to bid, schedule, and/or declare unavailable their entire withdrawal operating range during the day-ahead market, or otherwise may be subject to financial penalties.[1062] NYISO adds that grid or market conditions may make it desirable for storage resources to charge during peak demand hours and/or during NYISO's peak load window, for example to capture energy production during peak output of solar generating facilities.[1063] NYISO argues that the reform will add significant new complexity to interconnection studies and increase the time required to complete such studies, which is at odds with the intent of Order No. 2023 to expedite such studies by establishing firm deadlines subject to penalties.[1064] NYISO asserts that requiring a transmission provider to consider the individual operating assumptions of each storage project would require that it create additional off-peak system base cases that are tailored for each individual project as the standardized set of system base cases may not represent the system conditions where the developer of the storage project opts to charge.

572. In contrast, Public Interest Organizations argue that the Commission erred in limiting the reform to only the operating parameters for withdrawals of energy by storage resources and declining to extend it to storage injections or other technologies.[1065] Public Interest Organizations contend that the Commission's reasoning that the potential reliability impacts and administrative burden of extending the reform to injections of energy is arbitrary and capricious given (1) the broad support among commenters that the failure to use realistic operating assumptions for injections of power can result in unnecessary network upgrades, stifle competition, and create unduly discriminatory barriers and (2) the ample evidence presented of how the reliability impacts of injections are already being sufficiently managed by grid operators during real-time operations. Public Interest Organizations aver that, without consideration of operating parameters in interconnection studies, certain interconnection customers will be forced to pay for increasingly excessive and unnecessary upgrades that will sit unused, which will ultimately lead to a less efficient power system and unjust and unreasonable electricity costs for ratepayers.[1066]

573. Clean Energy Associations request clarification, or in the alternative rehearing, so that the *pro forma* LGIP requires that the interconnection customer and transmission provider mutually agree in the cluster study agreement as to (1) which loading cases are applied to storage charging and discharging and (2) what power level or percentage output or percentage charging is applied to each case.[1067] Clean Energy Associations also ask the Commission to require transmission providers to identify which loading case triggered identified upgrades in the cluster study results. Further, to ensure that interconnection customers and transmission providers have clarity

[1054] *Id.* P 1526.

[1055] Joint RTOs Rehearing Request at 3, 6; PJM Rehearing Request at 12, 38.

[1056] Joint RTOs Rehearing Request at 6.

[1057] *Id.* at 4.

[1058] *Id.* at 7–8; PJM Rehearing Request at 40.

[1059] Joint RTOs Rehearing Request at 5–6; PJM Rehearing Request at 40–41.

[1060] Joint RTOs Rehearing Request at 6–7; PJM Rehearing Request at 39.

[1061] PJM Rehearing Request at 38–39.

[1062] NYISO Rehearing Request at 3, 54–55.

[1063] *Id.* at 54 (citing NYISO, Market Administration and Control Area Services Tariff, § 5.12 (MST Requirements Applicable to Installed Capacity Supply) (41.0.0) § 5.12.14).

[1064] *Id.* at 55–56.

[1065] Public Interest Organizations Rehearing Request at 17–18.

[1066] *Id.* at 19–20.

[1067] Clean Energy Associations Rehearing Request at 70–73.

about the operating constraints that apply in an LGIA, Clean Energy Associations urge the Commission to specify requirements for operating assumptions in the cluster study agreement as well as what the transmission provider must deliver to the electric storage resource owner interconnection customer in cluster study results, rather than having the utility state when their peak load applies. Clean Energy Associations state that, because Order No. 2023 does not provide for any means to address situations in which the interconnection customer and transmission provider continue to have a disagreement after the revision and resubmittal of the operating assumptions during the customer engagement window, they seek clarification or, in the alternative rehearing, that interconnection customers may submit conflicting situations to the Commission along with a request to file the applicable study agreement unexecuted, with a request that the Commission determine which operating assumption should be used in the applicable study.

574. Clean Energy Associations ask the Commission to clarify that the planned operating assumptions of electric storage resources must be considered as part of the interconnection process.[1068] Clean Energy Associations assert that planned operating assumptions should also be considered part of transmission service requests. Clean Energy Associations also ask the Commission to clarify that the operating assumption requirement applies not just to standalone storage, but to hybrid and co-located resources as well. Clean Energy Associations add that, given the Commission's findings regarding the capabilities and incentives of energy storage resources, the Commission should clarify that modeling energy storage charging equivalently to firm customer end-use load for purposes of determining network upgrades is inconsistent with good utility practice going forward.[1069]

iii. Determination

575. We are not persuaded by PJM's and Joint RTOs' arguments on rehearing. First, we disagree with PJM and Joint RTOs that the Commission did not sufficiently articulate how electric storage resources are distinct from other types of generating facilities, why this reform is needed to ensure just and reasonable rates, and why this reform is not unduly discriminatory or preferential. As the Commission stated in Order No. 2023, electric storage resources have operating parameters that differ from traditional types of generating facilities for which the generator interconnection process was originally designed, namely their ability to both inject power and withdraw power.[1070] The instant reform is directed specifically and exclusively at how transmission providers study the withdrawal of power from electric storage resources (*i.e.,* the unique feature of electric storage resources compared to other types of generating facilities) within the generator interconnection process.

576. As the record indicates, the existing practice of some transmission providers is to study withdrawals of power from electric storage resources during peak load conditions equivalently to firm customer end-use load, and this practice results in excessive and unnecessary network upgrades and may hinder the timely development of new generation, thereby stifling competition in the wholesale markets, and resulting in rates, terms, and conditions that are unjust and unreasonable.[1071] We continue to find that the speed and control with which electric storage resources can respond to signals from transmission providers sufficiently distinguishes the charging behavior of electric storage resources from that of firm customer end-use load, and that reflecting the technical capabilities of electric storage resources through the use of appropriate operating assumptions in interconnection studies reduces unduly discriminatory or preferential barriers to the interconnection of electric storage resources.[1072]

577. We are unpersuaded by PJM's and Joint RTOs' arguments that reflecting whether an interconnecting electric storage resource will or will not charge during peak load conditions is fundamentally incompatible with interconnection studies. We reiterate that Order No. 2023 requires transmission providers, at the request of the interconnection customer, to reflect in their interconnection studies whether an interconnecting electric storage resource will or will not charge during peak load conditions (unless good utility practice, including applicable reliability standards, otherwise requires the use of different operating assumptions).[1073] We clarify that the instant reform does not require transmission providers to develop new base cases for each interconnecting electric storage resource to reflect when that resource intends to charge. Rather, the reform requires transmission providers to reflect whether an electric storage resource will or will not charge in any studies of peak load conditions in the interconnection process. Transmission providers regularly evaluate the impact of an interconnecting generating facility on the transmission system during anticipated peak load conditions as part of their interconnection studies, and we note that some transmission providers already assume in their interconnection studies that electric storage resources will not charge during peak load conditions.[1074] Further, we agree with commenters in this record that, when transmission providers' interconnection studies rely on the assumption that all electric storage resources will withdraw power at their maximum capacity during peak load conditions (*i.e.,* modeling the charging of electric storage resources equivalently to firm end-use customer demand), this practice fails to recognize the real-time attributes of electric storage resources, such as the ability to respond within seconds to dispatch signals from the transmission provider.[1075]

578. We disagree with PJM and Joint RTOs that this requirement will compromise reliability because, they argue, transmission providers are unable to monitor and enforce interconnection customer-provided operating assumptions. We continue to maintain that this reform will ensure the reliable operation of the transmission system because: (1) control devices are able to prevent electric storage resources from charging during peak load conditions; (2) modern electric storage resources are able to respond to signals from the transmission provider within seconds; (3) electric storage resources generally

[1068] *Id.* at 69–70.

[1069] *Id.* at 72–73.

[1070] Order No. 2023, 184 FERC ¶ 61,054 at P 1448.

[1071] *See, e.g.,* AEE Initial Comments at 42; Alliant Energy Initial Comments at 8; Clean Energy Associations Initial Comments at 52–53; Hydropower Commenters Initial Comments at 21–22; Longroad Reply Comments at 10–12; NARUC Initial Comments at 36–37; NESCOE Reply Comments at 18; Pine Gate Initial Comments at 51, 54; Public Interest Organizations Initial Comments at 47; rPlus Initial Comments at 6; SEIA Initial Comments at 40; SEIA Reply Comments at 27.

[1072] Order No. 2023, 184 FERC ¶ 61,054 at P 1523.

[1073] *Id.* P 1509.

[1074] *See* Bonneville Initial Comments at 23; MISO Comments at 117; *see also PacifiCorp,* 182 FERC ¶ 61,131 (accepting, subject to condition, revisions to PacifiCorp's LGIP and LGIA to allow PacifiCorp to study electric storage resources in its interconnection study process using operating assumptions that more accurately reflect their expected operation).

[1075] *See, e.g.,* Clean Energy Alliance Initial Comments at 14–15; NARUC Initial Comments at 37; NESCOE Reply Comments at 18; PacifiCorp Initial Comments at 41; Pattern Energy Initial Comments at 12; Pine Gate Initial Comments at 51; SEIA Initial Comments at 40; Union of Concerned Scientists Reply Comments at 10–11.

do not have an economic incentive to charge during peak load conditions; and (4) the consequence of being considered in breach of the LGIA provides an additional incentive for electric storage resources to follow the agreed-upon operating assumptions memorialized in their LGIA, unless otherwise directed by the transmission provider. Further, we believe that ensuring that an electric storage resource adheres to the operating assumptions memorialized in its LGIA presents substantially similar concerns to ensuring that any generating facility stays within its interconnection service level (*e.g.,* a generating facility that requests interconnection service less than its full generating facility capacity). We emphasize again that, irrespective of these changes to operating assumptions, all electric storage resources must continue to meet all requirements in the *pro forma* LGIP and *pro forma* LGIA, as well as all applicable reliability standards.

579. We disagree with Joint RTOs and PJM that, if an electric storage resource fails to adhere to its operating assumptions during real-time operations, load will be required to bear the costs of network upgrades needed to maintain deliverability of the electric storage resource over its lifetime. As the Commission stated in Order No. 2023, if an interconnection customer fails to operate its electric storage resource in accordance with the operating assumptions memorialized in the interconnection customer's LGIA (absent instructions from the transmission provider to the contrary), the transmission provider may consider the electric storage resource to be in breach and may pursue termination of the LGIA pursuant to article 17 of the LGIA.[1076]

580. Regarding Joint RTOs' and PJM's argument that this reform will add administrative burdens for transmission providers, we continue to find that the benefits of this reform—reducing unduly discriminatory or preferential barriers to the interconnection of electric storage resources—outweigh the added burden to transmission providers. We decline to grant Joint RTOs' request for clarification that the Joint RTOs are entitled to an independent entity variation to develop generally applicable procedures for addressing storage charging assumptions rather than the reform as constructed in Order No. 2023. Consistent with the Commission's statements in Order No. 2023, transmission providers may explain specific circumstances on compliance and justify why any deviations are either consistent with or superior to the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs.

581. We are not persuaded by NYISO's arguments on rehearing. We note that NYISO's arguments relate to NYISO's specific market rules and do not necessarily apply to the reform more broadly. In Order No. 2023, the Commission clarified that, if done so at the direction of the transmission provider to maintain the reliable and efficient operation of the transmission system, an electric storage resource that operates contrary to the operating assumptions specified in its LGIA must not be considered in breach of its LGIA by the transmission provider.[1077] We believe this clarification ensures that the instant reform will work in concert with RTOs'/ISOs' existing congestion management practices. Additionally, we reiterate the clarification above that the instant reform does not require transmission providers to develop new base cases for each interconnecting electric storage resource to reflect when that resource intends to charge, as NYISO suggests. Rather, the reform requires transmission providers to reflect whether an electric storage resource will or will not charge in any studies of peak load conditions in the interconnection process. However, if NYISO continues to believe the instant reform conflicts with its market rules, NYISO may explain the specific circumstances on compliance and justify why any deviations merit an independent entity variation.

582. We are unpersuaded by Public Interest Organizations' arguments on rehearing that the Commission should extend this reform to apply to operating assumptions for injections of power from electric storage resources and other technologies. Although several commenters urged the use of more accurate operating assumptions for injections of power from certain types of generating facilities, we believe that the current record does not sufficiently support extending the instant reform to injections of power from all types of generating facilities and does not provide sufficient information on the incremental burden that such a reform could place on transmission providers' study methods and timelines. Further, we are concerned that extending the reform to apply to operating assumptions for injections of power from only some types of generating facilities and not all types of generating facilities that are capable of injecting power could potentially be unduly discriminatory or preferential. We continue to encourage transmission providers to examine on an individual basis what operating assumptions used to study the injection of power from generating facilities may be appropriate to render the study process more accurate. Similarly, we continue to acknowledge that fuel-based dispatch assumptions may be able to address some of the identified challenges associated with inaccurate modeling assumptions for all generating facility types and encourage transmission providers to evaluate the merits of adopting them.[1078]

583. We decline to grant Clean Energy Associations' requested clarification that the *pro forma* LGIP requires the interconnection customer and transmission provider to mutually agree in the cluster study agreement as to (1) which loading cases are applied to storage charging and discharging and (2) what power level or % output or % charging is applied to each case. The instant reform is directed specifically and exclusively at how transmission providers study the withdrawal of power from electric storage resources within the generator interconnection process (namely, whether an electric storage resource will or will not charge during peak load conditions). The Commission did not require transmission providers to revise how they study injections of power from electric storage resources, and we decline to do so now. For the same reason, we are unpersuaded by Clean Energy Associations' rehearing request on the same issue.

584. We also decline to grant Clean Energy Associations' requested clarification that, in situations in which the interconnection customer and transmission provider disagree about operating assumptions, the interconnection customers may request to file the applicable study agreement with the Commission unexecuted, with a request that the Commission determine which operating assumptions should be used in the applicable study. In such a situation, we find it more appropriate for the interconnection customer to instead use the dispute resolution procedures in section 13.5 of the *pro forma* LGIP. For the same reason, we are unpersuaded by Clean Energy Associations' rehearing request on the same issue.

585. We decline to grant Energy Associations' requested clarification that the planned operating assumptions of electric storage resources must be considered as part of the

[1076] Order No. 2023, 184 FERC ¶ 61,054 at P 1521.

[1077] *Id.* P 1521.

[1078] *Id.* P 1529.

interconnection process and in transmission service requests. In Order No. 2023, the Commission explained that the instant reform does not require transmission providers to study charging as part of the interconnection process if they do not already to so, and we decline to require so now.[1079] We reiterate that, if a transmission provider does not determine the network upgrades needed to accommodate the charging of an electric storage resource through the interconnection process (*e.g.,* the transmission provider determines such upgrades as part of the transmission service request process), then the transmission provider must demonstrate on compliance why this reform does not apply to that particular transmission provider. Additionally, the Commission clarified in Order No. 2023 that the instant reform does not apply to transmission service requests, and Order No. 2023 does not modify the process for requesting transmission service.

586. In response to Clean Energy Associations' requested clarification that all aspects of the operating assumption reform of Order No. 2023 [1080] apply not just to standalone storage, but also to hybrid and co-located generating facilities that contain an electric storage resource, we reiterate the clarification the Commission made in Order No. 2023: ''For clarity, we note that the reforms described in this determination section and the related sections of the *pro forma* LGIP apply to all interconnecting electric storage resources, whether they are standalone, co-located generating facilities, or part of a hybrid generating facility.'' [1081]

587. We decline to grant Clean Energy Associations' requested clarification that modeling the charging of an electric storage resource equivalently to firm customer end-use load for purposes of determining network upgrades is inconsistent with good utility practice. We reiterate our finding that, for purposes of determining any network upgrades necessary to accommodate the reliable interconnection of electric storage resources, the charging of electric storage resources should not be modeled equivalently to firm customer end-use load in interconnection studies if the interconnection customer agrees to memorialize its operating assumptions in the LGIA and installs control technologies, if required by the transmission provider, to limit its operations as specified.[1082] However, there are still situations in which we believe it is acceptable, and Order No. 2023 allows, for a transmission provider to continue to model an electric storage resource in interconnection studies as charging during peak load conditions, for example: (1) if the interconnection customer does not request during the interconnection process that the transmission provider study the electric storage resource as not charging during peak load conditions; (2) if the interconnection customer declines the transmission provider's request to install or demonstrate that it has installed control technologies sufficient to prevent it from charging during peak load conditions unless otherwise directed by the transmission provider; or (3) if the interconnection customer declines the transmission provider's request to memorialize the requested operating assumptions in its LGIA.

2. Incorporating the Enumerated Alternative Transmission Technologies Into the Generator Interconnection Process

a. Consideration of the Enumerated Alternative Transmission Technologies in Interconnection Studies Upon Request of the Interconnection Customer

i. Order No. 2023 Requirements

588. In Order No. 2023, the Commission revised section 7.3 of the *pro forma* LGIP, and sections 3.3.6 and 3.4.10 of the *pro forma* SGIP.[1083] The Commission required transmission providers to evaluate the following enumerated list of alternative transmission technologies: static synchronous compensators, static VAR compensators, advanced power flow control devices, transmission switching, synchronous condensers, voltage source converters, advanced conductors, and tower lifting. The Commission revised *pro forma* LGIP section 7.3 to require transmission providers to evaluate the list of alternative transmission technologies enumerated in Order No. 2023 during the cluster study, including any restudies, of the generator interconnection process in all instances (*i.e.,* for all interconnection customers in a cluster), without the need for a request from an interconnection customer. The Commission required transmission providers to evaluate each alternative transmission technology listed in *pro forma* LGIP section 7.3 and to determine, in the transmission provider's sole discretion, whether it should be used, consistent with good utility practice, applicable reliability standards, and other applicable regulatory requirements. Finally, the Commission required transmission providers to include, in the *pro forma* LGIP cluster study report, an explanation of the results of the evaluation of the enumerated alternative transmission technologies for feasibility, cost, and time savings as an alternative to a traditional network upgrade.

589. The Commission modified the enumerated list of alternative transmission technologies from the NOPR proposal to: (1) retain synchronous, static VAR compensators, advanced power flow control, and transmission switching in the list; (2) add synchronous condensers, voltage source converters, advanced conductors, and tower lifting to the list; and (3) remove dynamic line ratings from the list.[1084] Generally, the Commission found that these enumerated alternative transmission technologies are those with the most potential to be useful to reduce interconnection costs by providing lower cost network upgrades to interconnect new generating facilities and thus required transmission providers to evaluate these technologies in the interconnection process for their feasibility, cost, and time savings potential.

590. The Commission revised sections 3.3.6 and 3.4.10 of the *pro forma* SGIP, consistent with the *pro forma* LGIP requirement, to require transmission providers to evaluate the enumerated alternative transmission technologies when performing interconnection studies for small generating facilities, without the need for a request from an interconnection customer.[1085] The Commission required such evaluations to occur during the *pro forma* SGIP feasibility study and system impact study of the generator interconnection process. The Commission found that it is appropriate for these evaluations to occur during the relevant *pro forma* SGIP studies where network upgrades are identified, consistent with the *pro forma* LGIP requirement. The Commission required transmission providers to evaluate each alternative transmission technology listed in *pro forma* SGIP sections 3.3.6 and 3.4.10 and determine, in the transmission provider's sole discretion, whether it should be used, consistent with good utility practice, applicable reliability standards, and other applicable regulatory requirements. Finally, the Commission required transmission providers to include, in the feasibility study report and system impact study report, an explanation of

[1079] *Id.* P 1526.

[1080] *Id.* PP 1509–1533.

[1081] *Id.* P 1509 n.2858.

[1082] *Id.* P 1523.

[1083] *Id.* P 1578.

[1084] *Id.* P 1579.

[1085] *Id.* P 1580.

the results of the evaluation of the enumerated alternative transmission technologies for feasibility, cost, and time savings as an alternative to a traditional network upgrade.[1086] The Commission noted that this reform is one of the few reforms in Order No. 2023 that applies to small generating facilities, in addition to large generating facilities. The Commission found that the enumerated alternative transmission technologies that it required transmission providers to evaluate in their interconnection studies are appropriate for evaluation in the *pro forma* SGIP context because they are scalable and that the enumerated alternative transmission technologies have the potential to provide similar benefits in the context of both small and large generating facilities, including cost and time savings.

592. Based on the record, the Commission found that alternative transmission technologies have the potential to provide benefits to optimize the transmission system in specific scenarios.[1087] The Commission found that failing to evaluate the enumerated alternative transmission technologies renders Commission-jurisdictional rates unjust and unreasonable and fails to ensure that interconnection customers are able to interconnect in a reliable, efficient, transparent, and timely manner.[1088]

593. The Commission found that the record demonstrated that the requirements adopted in Order No. 2023 will not overly burden transmission providers.[1089] The Commission also maintained that the requirement that transmission providers evaluate the enumerated alternative transmission technologies for an entire cluster—rather than on an individual interconnection customer-request basis—and the modifications to the enumerated list of alternative transmission technologies will ease the burden on transmission providers, thereby lessening the risk that they are unable to complete studies by the required deadlines.[1090] The Commission noted that it was not dictating how a transmission provider must evaluate each enumerated alternative transmission technology on the list in each instance. The Commission recognized that in some cases transmission providers may be able to rapidly determine if a certain enumerated alternative transmission technology is inappropriate for further study.

594. The Commission also found that the benefits of evaluating and implementing the enumerated alternative transmission technologies outweigh any potential burden or the potential of increased study times.[1091] The Commission stated that, as recognized by commenters and explained earlier in Order No. 2023, the evaluation and use, at the transmission provider's sole discretion, of the enumerated alternative transmission technologies could decrease network upgrade costs, withdrawals, and restudies, thereby increasing the efficiency of the interconnection process overall. For these reasons, the Commission disagreed with commenters who argued that requiring transmission providers to evaluate the enumerated alternative transmission technologies is contrary to the NOPR's goal of increasing the speed of interconnection queue processing.

595. The Commission explained that Order No. 2023 did not create a presumption in favor of substituting alternative transmission technologies for necessary traditional network upgrades, either categorically or in specific cases.[1092] The Commission stated that Order No. 2023 is agnostic as to whether, in a specific case, an alternative transmission technology is an acceptable alternative to a traditional network upgrade.[1093] The Commission explained that the rule mandates a *process* of evaluation of alternatives to traditional network upgrades, not outcomes in specific cases.[1094]

596. The Commission stated that the requirement is to evaluate the enumerated alternative transmission technologies in the interconnection process for feasibility, cost, and time savings and to determine whether, in the transmission provider's sole discretion, an alternative transmission technology should be used as a solution—consistent with good utility practice, applicable reliability standards, and other applicable regulatory requirements.[1095] The Commission found that it is appropriate to continue to rely on transmission providers to use good utility practice, applicable reliability standards, and other applicable regulatory requirements, in their evaluations of alternative transmission technologies, including the enumerated list, because the specific evaluation may depend on the transmission provider's individual transmission system, cluster makeup, and other factors.[1096]

597. The Commission explained that the transmission provider must determine whether using any of the enumerated alternative transmission technologies is an appropriate and reliable network upgrade ''that would allow the interconnection customer to flow the output of its generating facility onto the transmission provider's transmission system in a safe and reliable manner.'' [1097] The Commission

[1086] *Id.* P 1581.

[1087] *Id.* P 1583 (noting arguments that selecting alternative transmission technologies: may reduce interconnection costs by providing lower cost transmission solutions to interconnecting new generating facilities; may allow faster interconnection by providing solutions that can be implemented more quickly; may allow better use of the existing transmission system, enhance reliability, reduce withdrawals, restudies, and overall interconnection delays; would decrease network upgrade costs that will reduce the number of withdrawals from interconnection queues, ultimately creating a more efficient interconnection process by reducing the number of restudies triggered by withdrawals; and would offer additional value because they are scalable and modular to address evolving needs and can be redeployed as those needs continue to change).

[1088] *Id.* (citing NOPR, 179 FERC ¶ 61,194 at P 296; *see* Clean Energy Associations Reply Comments at 9–10; Environmental Defense Fund Initial Comments at 7; Fervo Reply Comments at 9; NARUC Initial Comments at 38).

[1089] *Id.* P 1586 (citing AEE Initial Comments at 44; ENGIE Initial Comments at 13; ACORE Reply Comments at 3–4).

[1090] *Id.* P 1590.

[1091] *Id.* P 1586 (citing AEE Initial Comments at 44; ENGIE Initial Comments at 13; ACORE Reply Comments at 3–4).

[1092] *Id.* PP 1582, 1584 (citing PJM Initial Comments at 68 (''PJM therefore cautions the Commission not to conflate the operational benefits of alternative transmission technologies . . . with the need to address significant capacity enhancement needs (short and long-term) or long-range transmission needs under rapid growth or changing resource mix scenarios.''); MISO Initial Comments at 120 (''However, the Commission fails to recognize that these technologies may be evaluated in the generator interconnection process already but may nonetheless not be adopted as they are not the appropriate solution to a Transmission Issue related to an interconnection.'')).

[1093] *Id.* P 1582 (citing MISO Initial Comments at 121–22 (''Further, although these technologies may be evaluated, the technologies identified by the Commission still may not provide the appropriate solution from a planning perspective. Many of the technologies identified are appropriately considered as operational tools or short-term solutions but are not necessarily appropriate for planning to support a particular generator interconnection.'') (citation omitted)).

[1094] *Id.* PP 1582, 1584.

[1095] *Id.* PP 1584, 1587, 1589.

[1096] *Id.* P 1589 (adding that ''the transmission provider—consistent with good utility practice, applicable reliability standards, and other applicable regulatory requirements—retains the sole discretion to determine whether a particular technology in the enumerated list of alternative transmission technologies is appropriate and reliable as a network upgrade, or not, for a given cluster.'').

[1097] *Id.* P 1582 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 767 (''Both Energy Resource Interconnection Service and Network Resource Interconnection Service provide for the construction of Network Upgrades that would allow the Interconnection Customer to flow the output of its Generating Facility onto the Transmission Provider's Transmission System in a safe and reliable manner''); Order No. 2003–A, 106 FERC

Continued

further explained that the requirement to make such a determination before allowing for the use of the enumerated alternative transmission technologies addresses concerns that their use may impinge on reliability, delay network upgrades instead of reducing the need for them or obviating the need for them altogether, or fail to address all transmission system issues that a traditional network upgrade would address. The Commission recognized the need to avoid time-consuming delays and costly disputes or litigation over interconnection costs that could arise as a result of this reform.[1098] Therefore, the Commission found that, if a transmission provider evaluates the enumerated alternative transmission technologies as required herein and, in its sole discretion, determines not to use any enumerated alternative transmission technologies as an alternative to a traditional network upgrade, the transmission provider has complied with Order No. 2023, including tariffs filed pursuant thereto.

598. The Commission explained that transmission providers are required to include an explanation of the results of the evaluation of the required alternative transmission technologies for feasibility, cost, and time savings as an alternative to a traditional network upgrade in the applicable study report.[1099] The Commission found the required explanation of the results of the transmission provider's evaluation included in the applicable study report provides sufficient transparency without placing a further burden on transmission providers that would delay the processing of interconnection requests.

¶ 61,220 at P 404; *pro forma* LGIA art. 9.3 (''Transmission Provider shall cause the Transmission System and the Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA''); *Midwest Indep. Transmission Sys. Operator, Inc.,* 138 FERC ¶ 61,233, at P 190, *reh'g denied,* 139 FERC ¶ 61,253, *partial reh'g granted on other grounds,* 150 FERC ¶ 61,035). *See also pro forma* LGIA art. 9.4 (''Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA'')).

[1098] Order No. 2023, 184 FERC ¶ 61,054 at P 1587 (citing SPP Initial Comments at 26 (''Even though the Commission has stated that transmission providers retain the discretion regarding whether to use such technologies, the very fact that the transmission provider is required to evaluate them will lead to disputes if the transmission provider then exercises that discretion.'')).

[1099] *Id.* P 1590.

ii. Requests for Rehearing and Clarification

599. SPP seeks rehearing of the requirement for transmission providers to evaluate certain enumerated alternative transmission technologies in the interconnection study process because SPP argues that this requirement will burden transmission providers and lengthen the interconnection process.[1100] SPP also asserts that the Commission does not provide adequate guidance on what metrics would be sufficient to support the use or non-use of a specific alternative technology, which SPP contends will invite litigation from interconnection customers and further lengthen the interconnection process. WATT Coalition also contends that, to comply with the FPA, the Commission must grant rehearing to set a meaningful standard for evaluation and ensure that alternative transmission technologies are used if they are the most cost-effective and fastest interconnection upgrade solution.[1101]

600. PJM asks the Commission to clarify that Order No. 2023's requirement for transmission providers to explain their evaluation of the enumerated alternative transmission technologies in their cluster study reports does not apply when a transmission provider already includes all the enumerated technologies in its studies.[1102] PJM argues that this reporting requirement is administratively burdensome with no corresponding benefit because PJM already studies all of the enumerated technologies in its interconnection process. PJM also asserts that Order No. 2023's requirement that transmission providers evaluate the enumerated alternative transmission technologies will be burdensome because interconnection customers are likely to demand re-evaluation of the technologies.

601. Clean Energy Associations, Public Interest Organizations, and WATT Coalition request rehearing of Order No. 2023's requirement that transmission providers have sole discretion over the evaluation and use of an enumerated alternative transmission technologies.[1103] Public Interest Organizations argue that Order No. 2023's requirement that transmission providers' decisions be consistent with good utility practice, applicable reliability standards, and other applicable regulatory requirements is vague and will allow transmission providers to reject the enumerated alternative transmission technologies, even when studies demonstrate them to be lower cost and faster than traditional network upgrades.[1104] Public Interest Organizations further argue that, because transmission providers have sole discretion over implementing the enumerated alternative transmission technologies, the study process will be a mere formality that allows the transmission provider to reject an enumerated alternative transmission technology, even if its own studies have demonstrated that they are the least cost and/or fastest solutions. Public Interest Organizations contend that requiring traditional network upgrades when a transmission provider's own study has found that an enumerated alternative transmission technology would be cheaper and/or faster imposes excessive costs on consumers, leading to unjust and unreasonable rates, and unduly discriminates against providers of alternative transmission technologies.

602. Clean Energy Associations contend that giving transmission providers sole discretion insulates transmission providers from challenges to inadequate evaluations or unjustified adoption decisions.[1105] Clean Energy Associations assert that, absent some form of review and recourse, transmission providers might only cursorily evaluate alternative transmission technologies and interconnection customers will have no opportunity to respond to unjust and unreasonable charges. Clean Energy Associations argue that the FPA requires a more nuanced analysis than Order No. 2023's requirement that determinations be consistent with good utility practice, applicable reliability standards, and other applicable regulatory requirements. Clean Energy Associations ask the Commission to allow challenges to the transmission provider's evaluation of the enumerated alternative transmission technologies as a means to ensure meaningful consideration of these technologies.

603. WATT Coalition argues that Order No. 2023 unlawfully gives transmission providers unfettered discretion to disregard and disadvantage alternative transmission technologies as

[1100] SPP Rehearing Request at 19.

[1101] WATT Coalition Rehearing Request at 24.

[1102] PJM Rehearing Request at 45–46.

[1103] Clean Energy Associations Rehearing Request at 48; Public Interest Organizations Rehearing Request at 13–15; WATT Coalition Rehearing Request at 1–2, 14–15, 24–30.

[1104] Public Interest Organizations Rehearing Request at 13–15.

[1105] Clean Energy Associations Rehearing Request at 46–48.

network upgrades.[1106] WATT Coalition argues that the Commission undermined its decision to provide a pre-defined list of alternative transmission technologies evaluated as a matter of course in every cluster study by failing to require meaningful consideration of alternative transmission technologies and by placing alternative transmission technologies at an artificial disadvantage to ''traditional'' network upgrades.[1107] WATT Coalition asserts that enshrining a preferential advantage for more expensive and longer lead-time traditional network upgrades, at the expense of more efficient, cost-effective, and quicker solutions, will increase rates and slow down the interconnection process. WATT Coalition points to dynamic line ratings' ability to resolve a thermal overload, rather than spending $50 million on a line rebuild, to demonstrate that requiring a traditional network upgrade would unduly discriminate against interconnection customers and in favor of transmission providers, impose excessive costs on interconnection customers (and ultimately consumers), and work against Order No. 2023's goal of making the interconnection process more efficient. WATT Coalition argues that, contrary to the FPA, the Commission has deprived interconnection customers of the opportunity to interconnect at a just and reasonable rate and unduly discriminates against interconnection customers to the benefit of transmission providers.

604. WATT Coalition questions the Commission's reliance on MISO's initial comments as ground for allowing transmission providers to use their sole discretion consistent with ''good utility practice'' and ''applicable regulatory standards.'' [1108] WATT Coalition argues that MISO's comments merely quoted the NOPR, which suggested that the use of alternative transmission technologies may not meet these standards, without providing justification. WATT Coalition contends that requiring transmission providers to ''use good utility practice, applicable reliability standards, and other applicable regulatory requirements'' is insufficient because making such a determination is not the same as determining whether that decision is consistent with the FPA, which is a transmission provider's most fundamental responsibility.[1109] WATT Coalition argues that the Commission made no attempt to explain whether it believes satisfying those standards will, in all cases, produce a lawful result under the FPA.[1110] WATT Coalition argues that the Commission has no authority to grant transmission providers the ability to unduly discriminate or implement a rate that is unjust and unreasonable.[1111] WATT Coalition asserts that the Commission's failure to explain and support that decision violates the APA.[1112]

605. WATT Coalition adds that Order No. 2023 deprives interconnection customers of a meaningful opportunity to inform the evaluations and appears to close off any input or challenge to transmission provider evaluation.[1113] WATT Coalition asks the Commission to grant rehearing to allow interconnection customers to engage in the transmission provider's alternative transmission technologies evaluations and ensure that they are both technically sound and consistent with the FPA. WATT Coalition suggests allowing either the interconnection customer or the transmission provider to request such an evaluation at any point during the interconnection study process as more information becomes available. WATT Coalition asks the Commission to allow developers to conduct their own analysis in response to an initial interconnection study result to demonstrate that a FERC-enumerated technology, or another technology, can reduce interconnection costs or timelines and require transmission providers to evaluate those solutions. WATT Coalition states that interconnection customers' right to register objections and identify deficiencies in a transmission provider's identification of network upgrades in interconnection studies must extend to an interconnection study's evaluation of alternative transmission technologies, not just traditional network upgrades.[1114] WATT Coalition asserts that including interconnection customer input on the evaluation of alternative transmission technologies after the initial phase of the cluster study, with a requirement for the transmission provider's decision regarding deployment to be in line with the FPA, would achieve just and reasonable rates.[1115]

606. If the Commission does not grant rehearing, WATT Coalition requests that the Commission make two clarifications.[1116] First, WATT Coalition asks the Commission to clarify that interconnection customers have the right and opportunity to identify potential deficiencies and errors in a transmission provider's evaluation of alternative transmission technologies in a cluster study, and the transmission provider must address those potential deficiencies and errors in its cluster study report. WATT Coalition states that the Commission must correct the implication that a transmission provider's evaluation and determination to deploy or not deploy alternative transmission technologies are immune from challenge by allowing interconnection customers to review the initial evaluation and provide their own analysis to inform the transmission provider's decision. Second, WATT Coalition asks the Commission to clarify that it did not intend to exempt transmission providers' consideration of, and determinations regarding, the use of alternative transmission technologies in a cluster study from compliance with the FPA, making clear that complying with ''good utility practice'' does not supersede the foundational requirements of the FPA.

607. A number of parties seek rehearing or clarification regarding the technologies included in the list of the enumerated alternative transmission technologies that transmission providers are required to evaluate. SPP asks the Commission to reconsider the inclusion of transmission switching in the list of enumerated alternative transmission technologies, arguing that it is a short-term operational tool that is inappropriate for use in long-term planning applications.[1117] VEIR asks the Commission to clarify the scope of the technologies that are considered advanced conductors under Order No. 2023.[1118] VEIR argues that, although Order No. 2023 does not describe the advanced conductors that must be studied, it is consistent with the Commission's intent and the intent of the Energy Policy Act of 2005 for the Commission to clarify that there are a range of permissible present and future technologies that ''significantly increase transmission capacity and allow for the interconnection of new generating facilities without the construction of

[1106] WATT Coalition Rehearing Request at 1–2, 14 (arguing that Order No. 2023 violates APA section 706(2)(A)).

[1107] *Id.* at 24–25 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1585).

[1108] *Id.* at 26.

[1109] *Id.* at 27 (quoting Order No. 2023, 184 FERC ¶ 61,054 at P 1589).

[1110] *Id.* at 26.

[1111] *Id.* at 27 (quoting Order No. 2023, 184 FERC ¶ 61,054 at P 1589).

[1112] *Id.* at 26.

[1113] *Id.* at 29 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1587).

[1114] *Id.* (citing, *e.g.,* MISO Business Practice Manual 015 Section 5.3.1).

[1115] *Id.* at 24, 30.

[1116] *Id.* at 30.

[1117] SPP Rehearing Request at 20.

[1118] VEIR Rehearing Request at 3–6.

new network upgrades.'' [1119] VEIR contends that this clarification will help ensure that Commission regulations will help stimulate innovation—rather than freeze it within the confines of an existing set of technologies—consistent with the Commission's overall mandate that alternative transmission technologies be considered by transmission providers seeking to provide reliable transmission solutions in the most cost effective manner. VEIR adds that this clarification will ensure that the term ''advanced conductors'' contemplates a wide-range of present and future transmission line technologies, such as VEIR's technology, whose power flow capacities exceed the power flow capacities of conventional transmission line technologies, thus achieving the Commission's objectives for transmission providers to evaluate technologies that are deployed more quickly and at a lower cost than other network upgrades.[1120]

608. Clean Energy Associations and WATT Coalition request rehearing of Order No. 2023's exclusion of dynamic line ratings from the enumerated list of alternative transmission technologies.[1121] WATT Coalition claims that the Commission excluded dynamic line ratings, while retaining four other technologies in the NOPR and adding four that were not included in the NOPR, without a reasoned basis for why dynamic line ratings provided less relative potential to be useful in reducing interconnection costs.[1122] WATT Coalition argues that it is arbitrary and capricious and contrary to law to exclude dynamic line ratings on the basis that they ''may'' not be as beneficial, while at the same time conceding that other technologies that were included on the list have certain limitations that render them no more or less useful than dynamic line ratings. WATT Coalition states that dynamic line ratings are regularly a cost-effective solution in generator interconnection. WATT Coalition claims that its comments on the value of dynamic line ratings in planning, including interconnection, and statements in support of dynamic line ratings are not addressed in the Commission's reasoning.[1123] WATT Coalition states that the only citation the Commission provided to support its determination to exclude dynamic line ratings refers only to the few adverse comments submitted by PJM Transmission Owners, ISO–NE, NYTOs, PacifiCorp, Tri-State, and the Chamber of Commerce.[1124] WATT Coalition argues that the Commission did not address the Environmental Defense Fund's argument that excluding dynamic line ratings is not consistent with transmission providers' least-cost obligation and concerns about technology implementation do not warrant failing to consider alternative transmission technologies.[1125] Clean Energy Associations assert that the Commission's general justification that alternative transmission technology could decrease network upgrade costs, withdrawals, and restudies, which increases the efficiency of the interconnection process, applies to dynamic line ratings, arguing that the Commission acknowledges that dynamic line ratings could be beneficial to the interconnection process.[1126]

609. Clean Energy Associations and WATT Coalition contend that the Commission did not address the benefits of dynamic line ratings set forth in the record.[1127] WATT Coalition notes the Commission previously recognized the potential of dynamic line ratings to provide benefits to the interconnection process.[1128] WATT Coalition further notes that, in Order No. 881, the Commission took initial steps to reduce barriers to operational deployment by requiring RTO/ISOs to ''establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly.'' [1129] WATT Coalition argues that dynamic line ratings is a solution that could bring projects into viability if permitted by the transmission owner.[1130]

610. WATT Coalition contends that the Commission has failed to meet its burden to provide an explanation supported by evidence in the record for its suggestion that dynamic line ratings are better applied in operations and planning.[1131] WATT Coalition adds that, because transmission planning and interconnection processes typically use similar or identical study processes (for example, steady state, short circuit, and stability analysis) and share common models of the transmission system representing expected future system conditions such as Summer Peak or High Wind Low Load, it is not logical to expect the consideration of dynamic line ratings to benefit transmission planning and interconnection in a demonstrably different manner.

611. However, WATT Coalition argues that the relative value of dynamic line ratings in interconnection versus transmission planning is irrelevant.[1132] WATT Coalition contends that the Commission made no determination as to the absolute value of dynamic line ratings in the interconnection context, which it argues is the relevant inquiry in determining whether the interconnection reforms are just and reasonable.[1133] WATT Coalition argues

[1119] *Id.* at 4–5 (quoting Order No. 2023, 184 FERC ¶ 61,054 at P 1597 (citing Energy Policy Act of 2005, 42 U.S.C. 16422(a), (b))). VEIR points to several definitions of advanced conductors: (1) advanced conductor technology include advanced composite conductors high temperature low-sag conductors, and fiber optic temperature sensing conductors, 42 U.S.C. 16422(a); (2) advanced conductors and cables include advanced overhead conductors that are facilities that ''employ advanced aluminum alloys, steel, and composite material in novel ways that provide enhanced performance over conventional overhead conductors,'' advanced-transmission-technologies-report (energy.gov), at p. 26, and (3) advanced conductors and cables are ''superconducting cables'' composed of materials that have near zero resistance at extremely low temperatures, offering little to no electrical losses if used in transmission, advanced-transmission-technologies-report (energy.gov), at p. 26.

[1120] VEIR Rehearing Request at 5–6.

[1121] Clean Energy Associations Rehearing Request at 44; WATT Coalition Rehearing Request at 1–31.

[1122] WATT Coalition Rehearing Request at 13–14 (citing Order No. 2023, 184 FERC ¶ 61,054 at PP 1578, 1598).

[1123] *Id.* at 19–20 (citing WATT Coalition Reply Comments at 7–15, 16–17).

[1124] *Id.* at 20 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1598 (citing PJM Transmission Owners Initial Comments at 56; ISO–NE Initial Comments at 41; NYTOs Initial Comments at 32–33; PacifiCorp Initial Comments at 4; Tri-State Initial Comments at 23; Chamber of Commerce Initial Comments at 12–13)).

[1125] *Id.* at 20–21 (Environmental Defense Fund NOPR Reply Comments at 11–12).

[1126] Clean Energy Associations Rehearing Request at 41.

[1127] *Id.* at 40–42; WATT Coalition Rehearing Request at 6–11, 20–21. *See* WATT Coalition Rehearing Request at 6–9 (pointing to use of dynamic line ratings in Europe, Australia and Sweden, including the European Network of Transmission System Operators for Electricity Technopedia rating dynamic line ratings as ''system ready for full-scale deployment;''; to the U.S. Canada Power System Outage Task Force recommendation for NERC to use dynamic line ratings to prevent and mitigate outages; to the U.S. Department of Energy support for the deployment of dynamic line ratings in the United States (*e.g.,* the Oncor Electric Delivery Company pilot); to U.S. utilities piloting dynamic line ratings and the 95th Edison Award in 2023 to PPL Electric Utilities for the first operational deployment of dynamic line ratings in the United States, and to the use of dynamic line ratings in the place of a 200MW standalone battery in MISO).

[1128] *Id.* at 9–11 (citing NOPR, 179 FERC ¶ 61,194 at PP 289–290, 294–95; FERC, Grid-Enhancing Technologies, Notice of Workshop, Docket No. AD19–19–000 (Sept. 9, 2019); *Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation & Generator Interconnection,* 86 FR 40266 (July 15, 2021), 176 FERC ¶ 61,024 at P 158 (2021)).

[1129] *Id.* at 13 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1598; *Managing Transmission Line Ratings,* Order No. 881, 87 FR 2244 (Jan. 13, 2022), 177 FERC 61,179 at P 251 (2021)).

[1130] *Id.* at 9.

[1131] *Id.* at 21–22.

[1132] *Id.* at 22.

[1133] *Id.* at 22–23 (citing *Am. Clean Power Ass'n* v. *FERC,* 54 F.4th 722 (D.C. Cir. 2022) (finding that the Commission failed to reasonably explain its decision, noting it gave short shrift to the Petitioner's concern)).

that, if dynamic line ratings are highly beneficial in one and extremely beneficial in the other, it should be adopted in both, not excluded from the former.[1134] WATT Coalition adds that the example the Commission gave for why dynamic line ratings may be less beneficial in the interconnection context is flawed. WATT Coalition argues that the assertion that its value ''depends on favorable weather and congestion parameters'' is wrong. WATT Coalition explains that many lines are chronically underrated, regardless of weather and congestion parameters, ''congestion parameters'' themselves are often inaccurate precisely because dynamic line ratings are not used on a line.

612. WATT Coalition claims that the following statement in Order No. 2023 is inaccurate and does not reflect the record:

> [W]hile dynamic line ratings may relieve congestion to increase available interconnection service temporarily or in the short-term, they may not be an adequate substitute for building interconnection facilities and/or traditional network upgrades identified through the interconnection study process that are needed to reliably interconnect a generating facility to the transmission system during all hours.[1135]

WATT Coalition states that dynamic line ratings are not a temporary or short-term fix; they are a long-term fix for the specific parameters of the cluster study. WATT Coalition explains that, if system conditions change subsequent to the cluster study such that additional investment in the transmission system is needed, that does not mean that the value of dynamic line ratings is diminished. WATT Coalition states that any other alternative transmission technology or even traditional upgrade could see its value change based on system conditions in the same way. WATT Coalition argues that implementing network upgrades when dynamic line ratings would satisfy the identified need will cause overbuilding the system and saddling interconnection customers and consumers with unnecessary costs.

613. WATT Coalition contends that these unnecessary costs mean that the Commission's decision is also contrary to the FPA.[1136] WATT Coalition argues that the Commission has failed to demonstrate that the rates established through this order will be just and reasonable because it lacks justification for the exclusion of dynamic line ratings and fails to respond to the comments arguing that including dynamic line ratings would reduce costs to consumers. WATT Coalition claims that, if the Commission included dynamic line ratings in all studies, all generators would potentially see their interconnection costs reduced and timelines shortened. WATT Coalition argues that, by excluding dynamic line ratings, generators in windy regions especially will be disadvantaged because one of the core solutions for increasing transmission capacity rapidly will not be evaluated in their interconnection studies. WATT Coalition notes Advanced Energy Economy's comment that, ''[w]hile not all interconnections may benefit from [grid enhancing technologies], evaluating their use at every opportunity ensures that their contributions and savings will not be lost.'' [1137] WATT Coalition contends that the Commission erred by instead ensuring that dynamic line ratings' contributions and savings will be lost, interconnection customers will pay vastly higher costs for network upgrades, and consumers ultimately will pay higher rates as a result.[1138]

614. Clean Energy Associations request rehearing of Order No. 2023's exclusion of energy storage serving as a transmission asset from the enumerated list of alternative transmission technologies.[1139] Clean Energy Associations argue that excluding storage resources because ''the evaluation of whether a storage resource performs a transmission function requires a case-by-case analysis'' does not constitute reasoned decision-making because the Commission directs the transmission providers to conduct a case-by-case evaluation of the alternative transmission technologies included in Order No. 2023's list of enumerated technologies.[1140] Clean Energy Associations assert that, without a specific requirement to evaluate dynamic line ratings and energy storage, these technologies will be excluded from the interconnection process despite the record demonstrating that these technologies can improve interconnection process efficiency.[1141]

iii. Determination

615. We are not persuaded by SPP's request to revisit the requirement to evaluate the enumerated list of alternative transmission technologies, which SPP argues will burden transmission providers and lengthen the interconnection process. As explained in Order No. 2023, the Commission found that the record supported a finding that these alternative transmission technologies can provide benefits to optimize the transmission system in specific scenarios.[1142] SPP has not convinced us otherwise. We also find it unnecessary to provide metrics for determining what would support the use, or non-use of, an alternative transmission technology to avoid litigation and lengthening the interconnection process, as SPP requests. In Order No. 2023, the Commission recognized the need to avoid time-consuming delays and costly disputes or litigation over interconnection costs that could arise as a result of this reform.[1143] Consequently, the Commission found that, if a transmission provider evaluates the enumerated alternative transmission technologies as required herein and, in its sole discretion, determines not to use any enumerated alternative transmission technologies as an alternative to a traditional network upgrade, the transmission provider has complied with Order No. 2023, including tariffs filed pursuant to Order No. 2023. Similarly, we disagree with WATT's contention that Order No. 2023 does not set a standard for evaluation and does not ensure that alternative transmission technologies are used if they are the most cost-effective and fastest interconnection upgrade solution. In Order No. 2023, as modified below, the Commission set forth the standard for evaluation, explaining that the requirement is to evaluate the enumerated alternative transmission technologies in the interconnection process for feasibility, cost, and time savings and to determine whether, in the transmission provider's sole discretion, an alternative transmission technology should be used as a solution—consistent with good utility practice, applicable reliability standards, and applicable laws and

[1134] *Id.* at 22 (pointing to the background information demonstrating that dynamic line ratings have specific and appreciable value in generator interconnection).

[1135] *Id.* at 23 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1598).

[1136] *Id.*

[1137] *Id.* (citing Advanced Energy Economy NOPR Reply Comments at 41–42).

[1138] *Id.* at 23–24.

[1139] Clean Energy Associations Rehearing Request at 44.

[1140] *Id.* at 42–43 (citing Order No. 2023, 184 FERC ¶ 61,054 at PP 1582, 1584).

[1141] *Id.* at 43–44.

[1142] Order No. 2023, 184 FERC ¶ 61,054 at P 1583 (citing NOPR, 179 FERC ¶ 61,194 at PP 294–295).

[1143] *Id.* P 1587 (citing SPP Initial Comments at 26 (''Even though the Commission has stated that transmission providers retain the discretion regarding whether to use such technologies, the very fact that the transmission provider is required to evaluate them will lead to disputes if the transmission provider then exercises that discretion.'')).

regulations.[1144] This standard will ensure transmission providers identify network upgrades in a manner that ensures just and reasonable rates.

616. We deny PJM's requested clarification about whether Order No. 2023 requires transmission providers that already include all the enumerated technologies in its studies to explain their evaluation of the enumerated alternative transmission technologies in their cluster study reports. Consistent with the Commission's statements in Order No. 2023, transmission providers may explain specific circumstances on compliance and justify why any deviations are either consistent with or superior to the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs.[1145]

617. We disagree with PJM that the requirement in Order No. 2023 for transmission providers to evaluate the enumerated alternative transmission technologies will be burdensome because interconnection customers are likely to demand re-evaluation of the technologies. The Commission determined that, if a transmission provider evaluates the enumerated alternative transmission technologies as required herein and, in its sole discretion, determines not to use any enumerated alternative transmission technologies as an alternative to a traditional network upgrade, and explains its evaluation of the enumerated alternative transmission technologies in the applicable study report(s), the transmission provider has complied with Order No. 2023, including tariffs filed pursuant thereto. We continue to find that these limitations on review address concerns about time-consuming delays and costly disputes or litigation.

618. In response to Clean Energy Associations', Public Interest Organizations', and WATT Coalition's requests for rehearing regarding transmission provider discretion, we sustain the discretion that Order No. 2023 affords transmission providers in determining whether to use an alternative transmission technology for several reasons. First, we continue to find that this level of discretion is justified because (1) the transmission provider is responsible for determining whether using any of the enumerated alternative transmission technologies is an appropriate and reliable network upgrade that allows the interconnection customer to flow the output of its generating facility onto the transmission provider's transmission system in a safe and reliable manner; [1146] (2) the requirement to make such a determination before allowing for the use of the enumerated alternative transmission technologies addresses concerns that their use may impinge on reliability, delay network upgrades instead of reducing the need for them or obviating the need for them altogether, or fail to address all transmission system issues that a traditional network upgrade would address; [1147] and (3) there is a need to avoid time-consuming delays and costly disputes or litigation over interconnection costs that could arise as a result of this reform.[1148]

619. Second, contrary to WATT Coalition's and Clean Energy Associations' assertions, Order No. 2023 does not give transmission providers unfettered discretion to disregard alternative transmission technologies. In spite of the discretion provided to transmission providers, they must explain their evaluation of the enumerated alternative transmission technologies for feasibility, cost, and time savings as an alternative to a traditional network upgrade in their applicable study report(s), and their use determinations must be consistent with good utility practice, applicable reliability standards, and applicable laws and regulations.[1149] An interconnection customer may contest a transmission provider's evaluation and use determination, just as it does with respect to traditional network upgrades.[1150] This ensures that the transmission provider's explanation of its evaluation of the enumerated alternative transmission technologies for feasibility, cost, and time savings as an alternative to a traditional network upgrade in its applicable study report(s) as well as its determinations regarding the use of a network upgrade and/or an alternative transmission technology are consistent with the FPA and the transmission provider's tariff.

620. Finally, the level of discretion that Order No. 2023 affords transmission providers is consistent with the general discretion the Commission affords transmission providers to maintain a reliable system.[1151] The transmission provider is the only entity responsible for determining appropriate and reliable network upgrades for its transmission system. Applying this general interconnection *status quo ante* to the determination of whether an alternative transmission technology could serve as a network upgrade inevitably means that the transmission provider is the only entity responsible for determining ''whether using any of the enumerated alternative transmission technologies is an appropriate and reliable network upgrade 'that would allow the interconnection customer to flow the output of its generating facility onto the transmission provider's transmission system in a safe and reliable manner.' '' [1152] In fact, the transmission provider may be subject to penalties if its transmission system does not function in a reliable manner as required by the provisions of the Reliability Standards.[1153] Thus, Commission precedent supports a finding that the transmission provider is the entity with sole discretion as to which network upgrades must be constructed to ensure the safe and reliable operation of the transmission system as a new generating facility interconnects.[1154] The term ''sole discretion'' does not absolve the transmission provider from making a use determination that is consistent with the FPA and its tariff.

621. We sustain the performance standards that Order No. 2023 applies to a transmission provider's evaluation of each alternative transmission technology listed in *pro forma* LGIP section 7.3 and *pro forma* SGIP sections 3.3.6 and 3.4.10 and to its determination whether it should be used. Specifically, Order No. 2023 requires that a

[1144] *Id.* PP 1578, 1579, 1581, 1587, 1590.

[1145] *Id.* P 1764.

[1146] *Id.* P 1589.

[1147] *Id.* P 1587.

[1148] *Id.* P 1764.

[1149] *See infra* PP 621–627.

[1150] *See, e.g., Sw. Power Pool, Inc.,* 171 FERC ¶ 61,068, *order on reh'g,* 172 FERC ¶ 61,286 (2020).

[1151] Order No. 2003–A, 106 FERC ¶ 61,220 at P 404; *pro forma* LGIA art. 9.3 (''Transmission Provider shall cause the Transmission System and the Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA''); *Interconnection for Wind Energy,* 111 FERC ¶ 61,353, at P51, *reh'g granted in part on other grounds,* 113 FERC ¶ 61,254 (2005) (''because the Transmission Provider is responsible for the safe and reliable operation of its transmission system (pursuant to NERC and regional reliability council standards), it is in the best position to establish if reactive power is needed in individual circumstances''); *Big Sandy Peaker Plant, LLC* v. *PJM Interconnection, L.L.C.,* 154 FERC ¶ 61,216, at P 50 (2016) (the Commission gives ''reliability-related discretion to [ISOs], and [will] not second-guess their decisions in that regard'').

[1152] Order No. 2023, 184 FERC ¶ 61,054 at PP 1582, 1584, 1589.

[1153] *See, e.g.,* Reliability Standard TOP–001–5, ''Transmission Operations,'' which requires each Transmission Operator to act to maintain the reliability of its Transmission Operator Area; *see also Interconnection for Wind Energy,* 113 FERC ¶ 61,254, at P 42 (2005) (''Transmission Providers are required to complete a detailed System Impact Study, and are required to ensure that NERC reliability standards are met in all instances.'').

[1154] Order No. 2023, 184 FERC ¶ 61,054 at P 1582 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 767; Order No. 2003–A, 106 FERC ¶ 61,220 at P 404; *pro forma* LGIA arts. 9.3, 9.4).

transmission provider evaluate each alternative transmission technology listed in *pro forma* LGIP section 7.3 and *pro forma* SGIP sections 3.3.6 and 3.4.10 and determine whether it should be used ''consistent with good utility practice, applicable reliability standards, and other applicable regulatory requirements.'' [1155] Order No. 2023 also adopted corresponding modifications to the *pro forma* LGIP and *pro forma* SGIP. Below, we discuss further modifications to these *pro forma* documents.

622. As discussed above, Order No. 2023 requires transmission providers to conduct their alternative transmission technology evaluations and use determinations consistent with good utility practice, applicable reliability standards, and other applicable regulatory requirements. We address each performance standard in turn. First, we disagree with Public Interest Organizations that ''good utility practice'' is vague or ambiguous because that term is defined in the *pro forma* LGIP [1156] and the *pro forma* SGIP.[1157]

623. Second, we disagree with Public Interest Organizations that ''applicable reliability standards'' is vague or ambiguous because that term is defined in the *pro forma* LGIP.[1158] We note, however, that, unlike the *pro forma* LGIP, ''applicable reliability standards'' is not defined in the *pro forma* SGIP. Therefore, consistent with the definition in the *pro forma* LGIP and Order No. 2023, we modify the *pro forma* SGIP to define ''Applicable Reliability Standards'' as ''the requirements and guidelines of the Electric Reliability Organization and the Balancing Authority Area of the Transmission System to which the Generating Facility is directly interconnected.'' [1159] We also find that the words ''applicable reliability standards'' were inadvertently not included in the performance standards that Order No. 2023 added to *pro forma* LGIP section 7.3 and *pro forma* SGIP sections 3.3.6 and 3.4.10. Therefore, we include that term in those *pro forma* sections now.

624. Finally, we find that the use of the catchall phrase ''*other applicable regulatory requirements*'' is vague or ambiguous. Unlike the two standards discussed above, this phrase is not defined in either the *pro forma* LGIP or the *pro forma* SGIP. In order to remedy this deficiency, we modify Order No. 2023 to replace ''other applicable regulatory requirements'' with the term ''applicable laws and regulations,'' which is a defined term in the *pro forma* LGIP. We note, however, that, unlike the *pro forma* LGIP, ''applicable laws and regulations'' is not defined in the *pro forma* SGIP. Therefore, consistent with the definition in the *pro forma* LGIP and Order No. 2023, we modify the *pro forma* SGIP to define ''applicable laws and regulations'' as ''all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.'' [1160] We also modify *pro forma* LGIP section 7.3 and *pro forma* SGIP sections 3.3.6 and 3.4.10 to reflect this change in terminology.

625. Finally, we find that, although Order No. 2023 applies the performance standards to both the transmission provider's evaluation of the enumerated alternative transmission technologies *and* the determination to use the technology,[1161] *pro forma* LGIP section 7.3 does not apply the standards to the former. We therefore modify *pro forma* LGIP section 7.3 to remedy this deficiency.

626. Based on these findings, we modify *pro forma* LGIP section 7.3, in relevant part, as follows: ''Transmission Provider shall *evaluate each identified alternative transmission technology and* determine whether the above technologies should be used, consistent with Good Utility Practice, *Applicable Reliability Standards,* and [other applicable regulatory requirements]*Applicable Laws and Regulations*.''

627. We also modify *pro forma* SGIP sections 3.3.6 and 3.4.10, in relevant part, as follows: ''Transmission Provider shall evaluate each identified alternative transmission technology and determine whether it should be used, consistent with Good Utility Practice, *Applicable Reliability Standards,* and [other applicable regulatory requirements]*Applicable Laws and Regulations*.''

628. We disagree with Clean Energy Associations, Public Interest Organizations and WATT Coalition that requiring a transmission provider to evaluate the list of enumerated alternative transmission technologies and determine the use of those technologies consistent with these performance standards will negatively impact an interconnection customer's ability to challenge a transmission provider's actions. As explained above, the performance standards applied in this context are the same as, or similar to, those that apply to other sections of the *pro forma* LGIP and *pro forma* SGIP. Therefore, the use of these performance standards in this context does not in and of itself change an interconnection customer's ability to challenge a transmission provider's conduct. As discussed above, an interconnection customer may challenge a transmission provider's evaluation of the enumerated alternative transmission technologies and its determination about whether to use alternative transmission technologies as it can challenge other conduct in the *pro forma* LGIP and *pro forma* SGIP that is allegedly inconsistent with the performance standards.[1162]

629. We do not believe that WATT's suggestion to allow an interconnection customer to provide input on the evaluation of alternative transmission technologies after the initial phase of the cluster study within the *pro forma* LGIP is necessary. The existing interconnection procedures already provide the opportunity for interconnection customer input with respect to all aspects of a cluster study after the cluster study report is completed, which necessarily provides an opportunity for input as to the evaluation of the enumerated alternative transmission technologies. Specifically, *pro forma* LGIP section 7.4 provides that, ''[w]ithin ten (10) Business Days of simultaneously furnishing a Cluster Study Report to each Interconnection Customer within the Cluster and posting such report on OASIS, Transmission Provider shall convene a Cluster Study Report Meeting.'' *Pro forma* LGIP section 7.5 provides a similar opportunity for input after the completion of a cluster restudy report. WATT Coalition does not explain how an additional opportunity to provide input after the initial phase of a cluster study would be beneficial and ensure just and reasonable rates. We find that, to the contrary, WATT's request for an additional opportunity to provide input would slow down the interconnection process, which would undermine the Commission's efforts to ensure a reliable, efficient, transparent, and timely interconnection process.

630. We address in turn rehearing parties' requests for rehearing and/or clarification related to the list of enumerated alternative transmission

[1155] *Id.* PP 1578, 1580, 1582, 1584, 1587, 1589. Below, we discuss modifying this standard to refer to ''applicable laws and regulations'' rather than ''other applicable regulatory requirements.'' *See infra* PP 624, 626–627.

[1156] *Pro forma* LGIP section 1 (Definitions).

[1157] *Pro forma* SGIP attach. 1 (Glossary of Terms).

[1158] *Pro forma* LGIP section 1 (Definitions).

[1159] *See id.*

[1160] *See id.*

[1161] Order No. 2023, 184 FERC ¶ 61,054 at P 1589.

[1162] *See supra* P 619.

technologies in Order No. 2023. We are not persuaded by SPP's request to reconsider the inclusion of transmission switching in the list of enumerated alternative transmission technologies. While transmission switching may be used more often in short-term, operational timeframes, we continue to find that it is just and reasonable to include transmission switching on the list of technologies that transmission providers are required to evaluate because it could provide topology solutions that relieve transmission constraints for the duration of the requested interconnection service and does not rely only on transient conditions. As discussed above, Order No. 2023 did not create a presumption in favor of substituting alternative transmission technologies for necessary traditional network upgrades, either categorically or in specific cases.[1163]

631. We are persuaded by VEIR's arguments raised on rehearing and clarify that there are a range of permissible present and future advanced conductor technologies that fall within this class of technologies that transmission providers are required to evaluate pursuant to Order No. 2023. We agree that this clarification will ensure that the term ''advanced conductors'' includes present and future transmission line technologies whose power flow capacities exceed the power flow capacities of conventional transmission line technologies, thus achieving the Commission's objectives in Order No. 2023. Consistent with VEIR's request for clarification, we further clarify that advanced conductors are advanced relative to conventional aluminum conductor steel reinforced conductors and include, but are not limited to, superconducting cables, advanced composite conductors, high temperature low-sag conductors, fiber optic temperature sensing conductors, and advanced overhead conductors.[1164]

632. We sustain the Commission's decision in Order No. 2023 not to include dynamic line ratings in the enumerated list of alternative transmission technologies that a transmission provider must evaluate. In Order No. 2023, the Commission properly exercised its discretion to determine just and reasonable rates and balanced various factors to establish a list of alternative transmission technologies that transmission providers are required to evaluate.[1165] Specifically, the Commission balanced two competing objectives in its effort to ensure just and reasonable rates: (1) the speed of interconnection queue processing times and (2) the cost and the speed at which network upgrades can be constructed. In particular, the Commission recognized that evaluating the enumerated alternative transmission technologies in the cluster studies has the potential to identify network upgrade solutions that are cheaper and faster to construct but, all else equal, may also increase interconnection study processing times by increasing the scope and complexity of the cluster studies.[1166]

633. The list of alternative transmission technologies enumerated in Order No. 2023 that transmission providers must evaluate includes those technologies that can serve as network upgrade solutions even in high stress conditions and scenarios in which weather conditions are less favorable. Unlike the alternative transmission technologies on the list, dynamic line ratings are dependent on weather conditions (*e.g.,* wind speed and direction and solar irradiance level). If weather conditions change, the interconnection customer and the load reliant on that interconnection customer are both at risk of the interconnection customer's energy not being deliverable during real-time operations. Given that interconnection studies for NRIS incorporate a range of simulations assuming worst-case conditions,[1167] worst-case line rating input assumptions are appropriate in this context as inputs to interconnection studies, as explained further below. Because dynamic line ratings use non-worst case scenario input assumptions, it is not arbitrary and capricious to exempt dynamic line ratings from the enumerated list of technologies that must be considered in interconnection studies.

634. WATT Coalition further asserts that line ratings in interconnection studies are chronically underrated, and that, without dynamic line ratings, lower wind assumptions are used, causing transmission lines to be rated lower in planning studies. This assertion does not properly address how transmission providers conduct interconnection studies. Under the current approach to interconnection studies, which the Commission did not fundamentally change in Order No. 2023, transmission providers study requests for NRIS using line ratings that assume worst case inputs in order to ensure reliability under the most restrictive operating conditions anticipated to occur.[1168]

635. We also disagree that the evaluation of potential benefits of dynamic line ratings in transmission planning and interconnection should be analogous. Operational studies, transmission planning studies, and interconnection studies have distinct goals. The objective of an interconnection study, which is inherently a type of reliability study, is to identify interconnection facilities and/or traditional network upgrades that are needed to safely and reliably interconnect a generating facility to the transmission system.[1169] Contrary to WATT Coalition's assertion, there is limited record evidence that dynamic line ratings are well-suited to meeting the reliability goals of interconnection studies, and several commenters express concerns that dynamic line ratings cannot reliably serve as network upgrades.[1170] In particular, dynamic line ratings only alter line ratings as operational conditions, such as wind speed and direction or solar irradiance level, warrant as forecasted over a particular timeframe. Therefore, dynamic line ratings cannot guarantee that an increased line rating will be available at any particular time, including times of system stress such as those studied to evaluate the reliability impact of an interconnection request.

636. In terms of evidence, WATT Coalition provides instances in which dynamic line ratings have been studied as a pilot project or have been used in operations and some theoretical examples of how dynamic line ratings can raise line ratings and thus could be helpful in interconnection; however, WATT Coalition does not provide evidence that interconnection studies have relied upon dynamic line ratings in the place of a network upgrade to resolve potential reliability violations.

[1163] Order No. 2023, 184 FERC ¶ 61,054 at PP 1582, 1584.

[1164] *See* VEIR Rehearing Request at 3–6 (citing 42 U.S.C. 16422(a); U.S. Department of Energy December 2020 Report (Advanced Transmission Technologies)).

[1165] Order No. 2023, 184 FERC ¶ 61,054 at P 1586.

[1166] We acknowledge that the Commission found that ''in some cases transmission providers may be able to rapidly determine if a certain enumerated alternative transmission technology is inappropriate for further study.'' *See id.* P 1590. In such instances, the transmission provider would be able to exclude dynamic line ratings as a possible solution for certain reliability violations identified in the cluster study. In so doing, interconnection queue processing times would be unaffected.

[1167] Order No. 2003–A, 106 FERC ¶ 61,220 at P 500.

[1168] *Id.*

[1169] *See, e.g.,* LGIP section 7.3 (''[t]he [c]luster [s]tudy shall evaluate the impact of the proposed interconnection on the reliability of the [t]ransmission [s]ystem.'').

[1170] Order No. 2023, 184 FERC ¶ 61,054 at P 1545 (citing AECI Initial Comments at 9; AEP Initial Comments at 51; Avangrid Initial Comments at 36; Southern Initial Comments at 29; U.S. Chamber of Commerce Initial Comments at 12).

We are not persuaded by the examples that WATT Coalition uses as the basis for its rehearing request for both procedural and substantive reasons. First, WATT Coalition provides a few examples for the first time on rehearing that could have been provided earlier in the proceeding, which is impermissible under the Commission's precedent.[1171]

637. Second, substantively, WATT Coalition's reliance on the scenarios is also misplaced. In particular, in the case of high-wind scenarios cited by WATT Coalition, it is possible that a dynamic line rating studied in lieu of a traditional network upgrade would be able to resolve a thermal overload in a high-wind scenario. However, under NRIS, ''[t]ransmission [p]roviders must study the [t]ransmission [s]ystem at peak load, under a variety of severely stressed conditions to determine whether, with the [g]enerating [f]acility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load, consistent with [t]ransmission [p]rovider's reliability criteria and procedures.'' [1172] As a weather dependent technology, if there are thermal overloads or other contingencies not connected to a high-wind scenario, dynamic line ratings cannot necessarily ensure the needed local area deliverability to the aggregate of load.[1173]

638. We are also not persuaded by WATT Coalition's contention that Order No. 2023's statements that dynamic line ratings may relieve congestion by increasing available interconnection capacity only temporarily or in the short-term are incorrect and that, instead, dynamic line ratings are a long-term solution for the specific parameter of the cluster study. The issue is not whether dynamic line ratings can provide additional transmission capacity at a specific point in time; rather, the issue is whether, as a weather dependent technology, they can be relied upon to replace the need for a different network upgrade by ensuring the necessary local area deliverability to the aggregate of load if there are thermal overloads or other contingencies not connected to a high-wind scenario. Moreover, because transmission providers generally consider worst-case scenarios in interconnection studies, such transmission providers would still have to use worst-case line rating input assumptions, which are typically the seasonal line rating (assuming high air temperature, full sun, and low or no wind) on a system using dynamic line ratings, not the highest dynamic rating that would apply in more favorable conditions (*e.g.,* low air temperature, no sun, strong sustained winds). For these reasons, WATT Coalition's rehearing arguments do not refute Order No. 2023's finding that dynamic line ratings ''may be less beneficial in the interconnection context.'' [1174] As explained above, in Order No. 2023, the Commission balanced various factors (*i.e.,* the potential benefits of studying the technology with the burden on the transmission provider and the increase in study times) and established a list of alternative transmission technologies that are most likely to ensure just and reasonable rates.[1175]

639. We disagree with WATT Coalition's assertion that the Commission did not engage in reasoned decision-making by excluding dynamic line ratings from this enumerated list of alternative transmission technologies. In Order No. 2023, the Commission explained that, because the benefits of evaluating dynamic line ratings did not outweigh the burden and the potential increase in study times, dynamic line ratings were less beneficial than other alternative transmission technologies in the interconnection context and did not include it on the final enumerated list. Regarding the burden, for example, both MISO and the MISO TOs highlighted the additional studies and requirements that an obligation to evaluate dynamic line ratings would impose on the first phase of the interconnection study process.[1176] These entities further highlighted that these additional obligations could also necessitate further debate about the impact that such dynamic line ratings may have on the rest of the transmission system and were in contrast to the need to accelerate the interconnection process. After having determined that the existing *pro forma* LGIP and *pro forma* SGIP are not just and reasonable, the Commission must determine, based on substantial evidence, a replacement rate that is just, reasonable and not unduly preferential.[1177] Thus, the Commission both provided a reasoned explanation for excluding dynamic line ratings from the final enumerated list of alternative transmission technologies and established a just and reasonable replacement rate. Further, we note, that the Commission did not ''exclude'' dynamic line ratings from consideration in cluster studies, as WATT Coalition claims. Order No. 2023 specifically provided that transmission providers are permitted to go beyond the enumerated list and can do so without changing their tariffs.[1178]

640. We are not persuaded by Clean Energy Associations' arguments that energy storage serving as a transmission asset should be included in the enumerated list of alternative transmission technologies. We agree with Clean Energy Associations that energy storage, like other alternative transmission technologies on the list, would need to be evaluated on a case-by-case basis to determine if the technology can serve in the place of a network upgrade. However, we continue to find that, as discussed in Order No. 2023, energy storage requires an *additional* case-by-case analysis that distinguishes it from the enumerated list of alternative transmission technologies: storage resources must also be evaluated to determine whether a storage resource performs a transmission function through a case-by-case analysis of either how a particular storage resource would be operated or the requirements set forth in a tariff governing selection of such

[1171] *See supra* PP 386, 609 n.1145.

[1172] Order No. 2003–A, 106 FERC ¶ 61,220 at P 500 (also stating that, ''[h]owever, [NRIS] does not necessarily provide the [i]nterconnection [c]ustomer with the capability to physically deliver the output of its [g]enerating [f]acility to any particular load without incurring congestion costs. Nor does [NRIS] convey a right to deliver the output of the [g]enerating [f]acility to any particular customer.'').

[1173] *Id. See also* Order No. 881, 177 FERC ¶ 61,179 at P 35 (explaining that ''while current transmission line rating practices usually understate transfer capability, they can also overstate transfer capability . . .'').

[1174] WATT Coalition Rehearing Request at 21–23 (quoting Order No. 2023, 184 FERC ¶ 61,054 at P 1598).

[1175] Order No. 2023, 184 FERC ¶ 61,054 at P 1586.

[1176] *Id.* P 1549 (citing MISO TOs Initial Comments at 30; MISO Initial Comments at 11).

[1177] FPA section 206 requires that, when the Commission finds a rate subject to its jurisdiction to be ''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.'' 16 U.S.C. 824e; *see also Del. Pub. Serv. Comm'n* v. *PJM Interconnection, L.L.C,* 166 FERC ¶ 61,161, at P 16 (2019) (''In finding [certain tariff provisions] unjust and unreasonable . . . pursuant to FPA section 206, the Commission is required to establish the just and reasonable replacement rate.'').

[1178] Order No. 2023, 184 FERC ¶ 61,054 at P 1600. While we are declining to include dynamic line ratings among the enumerated technologies for the reasons explained herein, we note that dynamic line ratings may have greater utility when studying an interconnection customer requesting ERIS because such a customer is opting for ''as available'' service. *See* Order No. 2003–A, 106 FERC ¶ 61,220 at P 499. By contrast, for NRIS, ''[t]ransmission [p]roviders must study the [t]ransmission [s]ystem at peak load, under a variety of severely stressed conditions to determine whether, with the [g]enerating [f]acility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load, consistent with [t]ransmission [p]rovider's reliability criteria and procedures.'' Order No. 2003–A, 106 FERC ¶ 61,220 at P 500.

storage resources.[1179] That analysis would determine whether the storage resource's cost can be recovered in transmission rate base or as a network upgrade. This additional analysis distinguishes energy storage from the other technologies on the enumerated list of alternative transmission technologies and is the basis for its exclusion from the list. We reiterate, however, that Order No. 2023 does not preclude a transmission provider from studying or evaluating any technology that was not included in the enumerated list of alternative transmission technologies.[1180]

3. Modeling and Ride Through Requirements for Non-Synchronous Generating Facilities

a. Modeling Requirements

i. Order No. 2023 Requirements

641. In Order No. 2023, the Commission revised Attachment A to Appendix 1 of the *pro forma* LGIP and Attachment 2 of the *pro forma* SGIP to require each interconnection customer requesting to interconnect a non-synchronous generating facility to submit to the transmission provider: (1) a validated user-defined root mean square (RMS) positive sequence dynamic model; (2) an appropriately parameterized generic library RMS positive sequence dynamic model, including a model block diagram of the inverter control system and plant control system, that corresponds to a model listed in a new table of acceptable models or a model otherwise approved by the Western Electricity Coordinating Council (WECC); and (3) a validated electromagnetic transient (EMT) model, if the transmission provider performs an EMT study as part of the interconnection study process.[1181]

642. The Commission also adopted the NOPR proposals to: (1) define a user-defined model as any set of programming code created by equipment manufacturers or developers that captures the latest features of controllers that are mainly software-based and represent the entities' control strategies but does not necessarily correspond to any particular generic library model, as contained in Attachment A to Appendix 1 of the *pro forma* LGIP and Attachment 2 of the *pro forma* SGIP; (2) revise Attachment A to Appendix 1 of the *pro forma* LGIP and Attachment 2 of the *pro forma* SGIP to add a table of acceptable generic library models, based on the current WECC list of approved dynamic models for renewable energy generating facilities; and (3) revise section 4.4.4 of the *pro forma* LGIP and section 1.4 of the *pro forma* SGIP to require that any proposed modification of the interconnection request be accompanied by updated models of the proposed generating facility.[1182]

ii. Requests for Rehearing and Clarification

643. Invenergy asks the Commission to modify the *pro forma* LGIP, Appendix 1, Attachment A to state that, if a validated EMT model is not available, a preliminary EMT model may be provided, and, if a validated EMT model is determined to be necessary, the interconnection customer shall submit the validated EMT model no later than needed for the cluster restudy.[1183] Invenergy argues that requiring validation of EMT models at the time of the interconnection application will impede an interconnection customer's ability to use an advanced product with higher annual energy production values because such products will not be validated.[1184] Invenergy explains that the only equipment with an available, validated EMT model is equipment that has been in the market for some years, and it is unreasonable to require an interconnection customer to submit a validated EMT model at the time of interconnection application even if the proposed commercial operation date may be in five or six years. Invenergy asserts that it is unclear whether a project developer might be able to provide EMT models for different equipment later in the process as newer equipment becomes field tested without the transmission provider determining that it is a material modification, leading some developers to forego using state-of-the-art technology otherwise available under the commercial operation deadline.

644. Invenergy contends that the Commission's alternative to a validated EMT model that the customer could pursue is not accurate.[1185] Invenergy asserts that the interconnection customer cannot attest to the accuracy of model information because model information is provided by the manufacturer, and equipment manufacturers will not attest to model data until the field test is done, which is later in the process. Invenergy argues that requiring validation is not necessary to achieve the Commission's goal of ensuring that accurate information is used in studies. In particular, Invenergy notes that preliminary models contain the same information as a validated model and are developed based on real design codes but have not been field tested.

645. Invenergy contends that, much like EMT models, requiring validated RMS models at the beginning of the interconnection process will force developers to use older technology and thus stifle innovation and waste time and resources.[1186] Invenergy also argues that the Commission's requirement is not necessary to ensure accurate model information. Therefore, Invenergy asks the Commission to modify the *pro forma* LGIP, Appendix 1, Attachment A and *pro forma* SGIP, Attachment 2, to state that, if a validated RMS model is not available, a preliminary RMS model may be provided and the interconnection customer shall submit the validated RMS model no later than needed for the cluster restudy.

646. Ørsted argues that the Commission's decision to require a validated EMT model when seeking to interconnect is arbitrary and capricious and not supported by reasoned decision-making.[1187] Ørsted contends that accurate models for nonsynchronous resources may not be available early in the interconnection process due to rapid advances in inverter and control technologies and that some resources may need customization requiring interconnection customers to make decisions about specific types of technology they may use later in the interconnection process. Ørsted claims that the Commission's requirement does not provide a path forward for such resources and could deter the use of new and more efficient technologies or delay interconnection of needed resources.

647. Ørsted also argues that transmission providers generally do not conduct EMT studies until much later in the interconnection process, resulting in minimal value in the interconnection customer providing and subsequently updating EMT models at the time of interconnection application.[1188] Ørsted asserts that EMT study results typically reveal the need for items such as control

[1179] Order No. 2023, 184 FERC ¶ 61,054 at P 1599. In Order No. 2023, the Commission pointed to the process in SPP, which takes into account five considerations that, together, ensure that a selected storage resource will serve a transmission function. *Id.* (citing *Sw. Power Pool, Inc.,* 183 FERC ¶ 61,153, at P 29 (2023)).

[1180] *Id.* P 1600.

[1181] *Id.* P 1659.

[1182] *Id.* P 1660.

[1183] Invenergy Rehearing Request at 13.

[1184] *Id.* at 10–12.

[1185] *Id.* at 12–13.

[1186] *Id.* at 14.

[1187] Ørsted Rehearing Request at 6–7.

[1188] *Id.* at 7–8.

tuning rather than additional transmission system upgrades, but this requires an EMT model that accurately represents how the plant is installed and configured as well as transmission system data that can only be provided by the transmission provider, so the Commission's requirement is not likely to provide information that is useful for reliability studies and will waste time and resources for both the interconnection customer and the transmission provider.[1189]

648. Ørsted asks the Commission to clarify how to provide a validated model for equipment that does not yet exist.[1190] Ørsted suggests, as example, that the interconnection customer or vendor could self-attest that, to the best of their knowledge, the equipment response is expected to be consistent with the RMS and the EMT models provided at the time of interconnection study.

649. PacifiCorp asks the Commission to add two models to the table of acceptable models that are approved by WECC and relate to ride through requirements.[1191] PacifiCorp states that these qualify as validated user-defined root mean squared positive sequency dynamic models and their inclusion will allow transmission providers to accurately model the ride through characteristics of these resources and help understand if the resource will be tripped for any transmission related event away from the resource.

iii. Determination

650. We are unpersuaded by Invenergy's request for rehearing regarding potential barriers to validation of EMT models at the time of the interconnection application. Pursuant to Order No. 2023's definition of a validated model, the interconnection customer has a number of options that do not require field data, such as an attestation that the models accurately reflect the expected behavior of a proposed generating facility based on the interconnection customer's best understanding at the time of the interconnection request.[1192] Therefore, we are not persuaded that the interconnection customer is unable to provide this attestation, even for advanced products.

651. We also find it unnecessary to grant Invenergy's request to modify the *pro forma* LGIP, Appendix 1, Attachment A and *pro forma* SGIP, Attachment 2, to state that, if a validated EMT or RMS model is not available, a preliminary model may be provided, and the interconnection customer shall submit the validated model no later than needed for the cluster restudy. As noted above, such preliminary models are acceptable under Order No. 2023's definition of a validated model, as long as it is based on the actual programming code used by the manufacturer to program equipment.

652. We deny Ørsted's request for clarification regarding how to provide a validated model for equipment that does not yet exist. An interconnection request that fails to specify the equipment to be used, including, for example, the inverter manufacturer, model name, number, and version, is not a complete application.[1193] However, we acknowledge that equipment, including inverters, may advance over the period of time an interconnection customer proceeds through the queue. We note that section 4.6 of the *pro forma* LGIP contains the transmission provider's technological change procedure, which is designed to allow transmission providers to evaluate equipment changes to an interconnection request.[1194]

653. We are unpersuaded by Invenergy's request for rehearing regarding whether a project developer might be able to provide EMT models for different equipment later in the process as newer equipment becomes field tested without the transmission provider determining that it is a material modification. Order No. 2023 was clear that section 4.4 of the *pro forma* LGIP and section 1.4 of the *pro forma* SGIP set forth procedures for modifications to an interconnection request, including the evaluation of technical changes to a request, and such changes may be determined to be a material modification.[1195] Furthermore, as noted above, section 4.6 of the *pro forma* LGIP contains the transmission provider's technological change procedure, which is designed to allow transmission providers to evaluate equipment changes to an interconnection request.

654. We are unpersuaded by Ørsted's rehearing request regarding the timing of EMT model availability. While the Commission has approved proposals to perform an EMT study following execution of the LGIA, the *pro forma* LGIP and *pro forma* SGIP contain no such study.[1196] We sustain the finding in Order No. 2023 that requiring models to be submitted with the interconnection request is consistent with the principles underpinning other requirements in the *pro forma* LGIP and *pro forma* SGIP. Allowing model validation at a point further into the interconnection process could lead to restudies and subsequent delays that would frustrate the efficiency gained by the other reforms in Order No. 2023.[1197]

655. We are unpersuaded by PacifiCorp's request for the Commission to add two models to the table of acceptable models that are approved by WECC and relate to ride through requirements.[1198] PacifiCorp presents this issue for the first time in its rehearing request. In general, we reject rehearing requests that raise a new issue, unless we find that the issue could not have been previously presented.[1199] We are not persuaded that PacifiCorp could not have raised this issue earlier in this proceeding. However, we also note that transmission providers may explain specific circumstances on compliance and justify why any deviations are either consistent with or superior to the *pro forma* LGIP or merit an independent entity variation in the context of RTOs/ISOs.

b. Ride Through Requirements

i. Order No. 2023 Requirements

656. The Commission revised article 9.7.3 of the *pro forma* LGIA and article 1.5.7 of the *pro forma* SGIA to require that, during abnormal frequency conditions and voltage conditions within the ''no trip zone'' defined by Reliability Standard PRC–024–3 or successor mandatory ride through reliability standards, the non-synchronous generating facility must ensure that, within any physical limitations of the generating facility, its control and protection settings are configured or set to: (1) continue active power production during disturbance and post disturbance periods at pre-disturbance levels unless providing primary frequency response or fast frequency response; (2) minimize reductions in active power and remain within dynamic voltage and current limits, if reactive power priority mode is enabled, unless providing primary frequency response or fast frequency response; (3) not artificially limit

[1189] *Id.* at 8–9.

[1190] *Id.* at 9.

[1191] PacifiCorp Rehearing Request at 23–24.

[1192] Order No. 2023, 184 FERC ¶ 61,054 at P 1675.

[1193] *See pro forma* LGIP, attach. A to app. 1.

[1194] Order No. 2023, 184 FERC ¶ 61,054 at P 1682.

[1195] *Id.*

[1196] *See Sw. Power Pool Inc.,* 181 FERC ¶ 61,018, at P 8 (2022).

[1197] Order No. 2023, 184 FERC ¶ 61,054 at P 1669.

[1198] PacifiCorp Rehearing Request at 23–24. It is unclear which models PacifiCorp would like to add, but it appears that they might be LHFRT (Low/High Frequency Ride Through) and LHVRT (Low/High Voltage Ride Through).

[1199] *See supra* P 386.

dynamic reactive power capability during disturbances; and (4) return to pre-disturbance active power levels without artificial ramp rate limits if active power is reduced, unless providing primary frequency response or fast frequency response.[1200]

ii. Requests for Rehearing and Clarification

657. Invenergy argues that the proposed ride through requirements impose requirements on non-synchronous generators that they may not be able to meet because the generator can only maintain active current, not power, and may not have a choice to choose between reactive and real power output during a disturbance due to equipment limitations.[1201] Invenergy asserts that requiring a non-synchronous generator to produce active power instead of providing reactive support is very likely to exacerbate, rather than alleviate, the disturbance. Therefore, Invenergy asks the Commission to modify section 9.7.3 of the *pro forma* LGIA to limit the prioritization of active power to frequency response disturbances and clarify that the default ride-though rule for other disturbances can be prioritizing reactive power. Invenergy also asks the Commission to consider establishing a technical conference to obtain information directly from the standards setting bodies, the companies that design and supply the equipment, and other engineering experts to support the Commission's determinations.

658. Similarly, Clean Energy Associations ask the Commission to clarify that the text ''within any physical limitations of the generating facility'' allows a resource that is responding to a disturbance in reactive power priority mode to reduce its active power production if it does not have sufficient headroom to increase reactive power to provide required voltage support, without violating the requirement to continue active power production during disturbance and post disturbance periods at pre-disturbance levels.[1202]

iii. Determination

659. We are not persuaded by Invenergy's request to modify section 9.7.3 of the *pro forma* LGIA to limit the prioritization of active power to frequency response disturbances and clarify that the default ride-though rule for other disturbances can be prioritizing reactive power. As further explained below, Order No. 2023 allows a non-synchronous generating facility with physical limitations to prioritize reactive power. The extent to which a non-synchronous generating facility prioritizes real or reactive power is best handled on a case-by-case basis based on the transmission provider's evaluation of the reliability needs of its system, because different transmission systems and different operating conditions may require different responses from interconnected resources, as opposed to a default response.

660. We grant Clean Energy Associations' request for clarification. In Order No. 2023, the Commission noted that the modified reform accommodates existing technical capabilities and physical limitations of non-synchronous generating facilities by providing for reductions in active power to prioritize reactive power.[1203] A generating facility's inability to prioritize reactive power without a reduction in active power is considered one of the ''physical limitations of the generating facility'' that provides an exception, albeit limited, to the requirement that the generating facility continue active power production during disturbance and post disturbance periods at pre-disturbance levels.

661. However, given the importance of prioritization of reactive power, we are persuaded that additional clarity is necessary. Accordingly, we revise section 9.7.3 of the *pro forma* LGIA and article 1.5.7 of the *pro forma* SGIA to state that a non-synchronous generating facility must ensure that, within any physical limitations of the generating facility:

> . . . its control and protection settings are configured or set to (1) continue active power production during disturbance and post disturbance periods at pre-disturbance levels, *unless reactive power priority mode is enabled* or unless providing primary frequency response or fast frequency response. . . .

662. Given this modification, we do not believe a technical conference, as suggested by Invenergy, is necessary at this time.

F. Compliance Procedures

1. Order No. 2023 Requirements

663. The Commission required transmission providers to submit compliance filings within 90 calendar days of the publication date of Order No. 2023 in the **Federal Register**, rather than the proposed 180 days from the effective date of Order No. 2023.

2. Requests for Rehearing and Clarification

664. A number of entities asked the Commission to extend the deadline for compliance established in Order No. 2023.[1204]

665. Indicated PJM TOs argue that Order No. 2023 is unduly discriminatory and will inappropriately impose substantial administrative burdens on all transmission providers, even though transmission providers who have already adopted cluster study processes are not similarly situated to those transmission providers who have not adopted such processes.[1205]

666. Dominion states that it understands that the Commission intended tariff revisions made in compliance with Order No. 2023 to be prospective, but Dominion argues that the Commission did not provide guidance as to what effective date transmission providers should use for purposes of their compliance filing.[1206] Dominion asks the Commission to clarify that any compliance filings can be made effective in a way that will align with cluster processing dates, such as the start of a new processing window. Dominion asserts that such an effective date would allow the required revisions to be implemented on a going-forward and efficient basis and would not require any mid-process changes by requiring revisions to go into effect in the middle of a cluster window.

3. Determination

667. On October 25, 2023, the Commission addressed arguments on rehearing regarding extending the deadline for compliance established in Order No. 2023.[1207] The Commission

[1200] Order No. 2023, 184 FERC ¶ 61,054 at P 1715.

[1201] Invenergy Rehearing Request at 16–17.

[1202] Clean Energy Associations Rehearing Request at 83.

[1203] Order No. 2023, 184 FERC ¶ 61,054 at P 1717.

[1204] *See* AEP Rehearing Request at 26–28 (requesting more time for compliance); Dominion Rehearing Request at 26–30 (requesting a year to submit compliance filings); EEI Rehearing Request at 10–11 (requesting the compliance deadline be set to 180 days from the effective date of the final rule); PacifiCorp Rehearing Request at 20–22 (requesting the compliance deadline be set to 180 days from the effective date of the final rule, or alternatively, 120 days); PJM Rehearing Request at 46–48 (requesting the Commission delay compliance such that the 90 day clock would start upon the Commission's issuance of an order on rehearing).

[1205] Indicated PJM TOs Rehearing Request at 17.

[1206] Dominion Rehearing Request at 30 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1769 (''This final rule will be effective as described above; however, the *pro forma* LGIP, *pro forma* LGIA, *pro forma* SGIP], and *pro forma* SGIP requirements in transmission providers' tariffs will not be effective until the Commission-approved effective date of the transmission provider's filing in compliance with this final rule.'')).

[1207] *Order on Motions and Addressing Limited Arguments Raised on Rehearing and Setting Aside*

extended the compliance deadline to require compliance filings to be submitted within 210 calendar days of the publication of Order No. 2023 in the **Federal Register** (*i.e.,* within 149 calendar days of the effective date of Order No. 2023, or April 3, 2024). To incorporate the changes made herein, we further extend the deadline until the effective date of this order (*i.e.,* the deadline for compliance with Order No. 2023 will be 30 days after the publication of this order in the **Federal Register**, and must include the further revisions reflected in this order).

668. We disagree with arguments that Order No. 2023 imposes an inappropriately large compliance burden on regions already generally in accord with the approach adopted in Order No. 2023, or that it is unduly discriminatory to impose the same compliance obligations on both entities that have already adopted cluster study processes and those that have not. We find that the compliance burden imposed by Order No. 2023 is appropriate given the scope of the problem at hand. It is not unduly discriminatory to require all transmission providers subject to the Commission's jurisdiction to comply with Commission rules.

669. Regarding Dominion's request for clarification, we confirm that transmission providers may propose effective dates in their compliance filings that align with their existing queue processing dates, such as the start of a new processing window. We will consider these requests on a case-by-case basis in each individual compliance filing. To the extent Order No. 2023 suggested, by referencing MISO's compliance filing, that transmission providers may not be granted an effective date that predates the Commission order on compliance,[1208] we clarify that the Commission will consider, and may grant, requests from transmission providers for an effective date that predates the Commission's order on their compliance filing, on a case-by-case basis.

III. Information Collection Statement

670. The information collection requirements contained in this final rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[1209] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[1210] 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.

671. Previously, the Commission submitted to OMB the information collection requirements arising from Order No. 2023 and OMB approved those requirements. In this order on rehearing, the Commission makes no substantive changes to those requirements, but does make some modifications to the Commission's standard large generator interconnection procedures and agreements (*i.e.,* the *pro forma* LGIP and *pro forma* LGIA) and the Commission's standard small generator interconnection procedures and agreement (*i.e.,* the *pro forma* SGIP and *pro forma* SGIA) that every public utility transmission provider is required to include in their tariff under section 35.28 of the Commission's regulations.[1211] This order on rehearing in Docket No. RM22–14–001 requires each transmission provider to amend its tariff to implement the modifications adopted in this order on rehearing and submit a compliance filing to the Commission for approval of those modifications. Therefore, the Commission finds it necessary to make a formal submission to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[1212]

672. The modifications in the Docket No. RM22–14–001 affect the following currently approved information collections: *FERC–516, Electric Rate Schedules and Tariff Filings (Control No. 1902–0096);* and *FERC–516A, Standardization of Small Generator Interconnection Agreements and Procedures (Control No. 1902–0203).* The Commission, in this order on rehearing, is updating the burden [1213] estimates associated with *FERC–516* and *FERC–516A* information collections to reflect the incremental burden of complying with the new requirements set forth in this order.

673. Summary of the Revisions to the Collection of Information due to the order on rehearing in Docket No. RM22–14–001:

- *FERC–516:* This order on rehearing revises the Commission's *pro forma* LGIP and LGIA and requires each public utility to amend its LGIP and LGIA. The amendments pertain to the first ready, first served cluster study process, withdrawal penalties, affected systems study process, the evaluation of alternative transmission technologies, and the maintenance of power production during abnormal frequency conditions and certain voltage conditions.
- *FERC–516A:* This order on rehearing amends the Commission's standard small generator interconnection procedures and agreement (*i.e.,* the *pro forma* SGIP and *pro forma* SGIA) regarding the evaluation of alternative transmission technologies and the maintenance of power production during abnormal frequency conditions and certain voltage conditions.
- *Title:* Electric Rate Schedules and Tariff Filings (FERC–516), and Standardization of Small Generator Interconnection Agreements and Procedures (FERC–516A).
- *Action:* Revision of information collections in accordance with Docket No. RM22–14–001.
- *OMB Control Nos.:* 1902–0096 (FERC–516) and 1902–0203 (FERC–516A).
- *Respondents:* Public utility transmission providers, including RTOs/ISOs.
- *Frequency of Information Collection:* One time during Year 1.
- *Necessity of Information:* The LGIP, LGIA, SGIP, and SGIA modifications in this order on rehearing ensure that interconnection customers can interconnect to the transmission system in a reliable, efficient, transparent, and timely manner, and prevent undue discrimination. The modifications are intended to ensure that the generator interconnection process is just, reasonable, and not unduly discriminatory or preferential.
- *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.
- *Public Reporting Burden:* As with Order No. 2023, we estimate that 44 transmission providers, including RTOs/ISOs, will be subject to this order on rehearing. The burden and cost estimates below reflect the incremental burden of complying with this order on rehearing, which will require a single

Prior Order, In Part, Docket No. RM22–14 (Oct. 25, 2023).

[1208] Order No. 2023, 184 FERC ¶ 61,054 at P 1769.

[1209] 44 U.S.C. 3507(d).

[1210] 5 CFR 1320.11.

[1211] 18 CFR 35.28(f)(1).

[1212] 44 U.S.C. 3507(d).

[1213] 5 CFR 1320.3(b)(1).

compliance filing to be submitted to the Commission. We estimate no ongoing information collection burden because there is either no information collection aspect of the requirement or the requirements would merely supplant existing ones. The Commission estimates that the order on rehearing in Docket No. RM22–14–001 will adjust the burden and cost of FERC–516 and FERC–516A as follows:

TABLE 1—INFORMATION COLLECTION REQUIREMENTS

Changes due to order on rehearing in Docket No. RM22–14–001					
Reforms	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (rounded) (1) * (2) = (3)	Average burden (hr.) & cost ($) per response [1214] (4)	Total annual burden hours & total annual cost ($) (rounded) (3) * (4) = (5)
FERC–516					
First Ready, First Served Cluster Study	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 2 hr; $200 Ongoing: 0	Year 1: 88 hr; $8,800 Ongoing: 0
Allocation of Cluster Network Upgrade Costs	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0	Year 1: 44 hr; $4,400 Ongoing: 0
Affected System Study Process	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0 [1215]	Year 1: 2 hr; $200 Ongoing: 0	Year 1: 88 hr; $8,800 Ongoing: 0
Study Deposits and LGIA Deposit	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0.	Year 1: 44 hr; $4,400 Ongoing: 0
Commercial Readiness	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 3 hrs; $300 Ongoing: 0	Year 1: 132 hr; $13,200 Ongoing: 0
Withdrawal Penalties	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 2 hr; $200 Ongoing: 0	Year 1: 88 hr; $8,800 Ongoing: 0
Elimination of Reasonable Efforts Standard	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0	Year 1: 44 hr; $4,400 Ongoing: 0
Transition Process	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0	Year 1: 44 hr; $4,400 Ongoing: 0
Co-Located Generating Facilities Behind One Point of Interconnection with Shared Interconnection Requests.	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0	Year 1: 44 hr; $4,400 Ongoing: 0
Ride Through Requirements	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0	Year 1: 44 hr; $4,400 Ongoing: 0
Incorporating Enumerated Alternative Transmission Technologies into the Generator Interconnection Process.	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0	Year 1: 44 hr; $4,400 Ongoing: 0
Total New Burden for FERC–516 (due to Docket No. RM22–14–001).	Year 1: 484 responses			Year 1: 704 hr; $70,400	
	Ongoing: 0			Ongoing: 0 hr; 0	
FERC–516A					
Ride Through Requirements	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0	Year 1: 44 hr; $4,400 Ongoing: 0
Incorporating Enumerated Alternative Transmission Technologies into the Generator Interconnection Process.	44 (TPs)	Year 1: 1 Ongoing: 0	Year 1: 44 Ongoing: 0	Year 1: 1 hr; $100 Ongoing: 0	Year 1: 44 hr; $4,400 Ongoing: 0
Total New Burden for FERC–516A (due to Docket No. RM22–14–001).	Year 1: 88 responses; Ongoing: 0			Year 1: 88 hr; $8,800; Ongoing: 0	
Grand Total (FERC–516 plus FERC–516A, including all respondents).	Year 1: 572 responses; Ongoing: 0			Year 1: 792 hr; $79,200; Ongoing: 0	
Grand Total Average Per Entity Cost (44 TPs).				Year 1: $1,800; Ongoing: 0	

674. Interested persons may obtain information on the reporting requirements by contacting Jean Sonneman via email at *DataClearance@ferc.gov* or telephone (202) 502–6362.

IV. Environmental Analysis

675. 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.[1216] We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this final rule under § 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of

[1214] Commission staff estimate that respondents' hourly wages plus benefits are comparable to those of FERC employees (2024). Therefore, the 2024 FERC hourly cost estimate in this analysis is $100 per hour ($207,786 per year).

[1215] Order No. 2023 erroneously reported 44 ongoing responses for Affected Systems Study Process reforms. This was an error and the current number of estimated ongoing responses is zero. However, the burden cost per response and total burden estimates for Affected Systems Study Process reforms were correctly calculated and reported.

[1216] *Reguls. Implementing the Nat'l. Env't Pol'y Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

the FPA 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, classification, and services.[1217]

V. Regulatory Flexibility Act

676. The Regulatory Flexibility Act of 1980 [1218] requires a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The Commission continues to certify that the reforms adopted in this order on rehearing would not have a significant economic impact on a substantial number of small entities.

677. The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,[1219] transmission providers and RTOs/ISOs fall under the category of Electric Bulk Power Transmission and Control (NAICS code 221121), that has a size threshold of under 950 employees including the entity and its associates.[1220] This order on rehearing modifies the Commission's standard large generator interconnection procedures and agreements (*i.e.,* the *pro forma* LGIP and *pro forma* LGIA) and the Commission's standard small generator interconnection procedures and agreement (*i.e.,* the *pro forma* SGIP and *pro forma* SGIA) that every public utility transmission provider is required to include in their tariff under section 35.28 of the Commission's regulations, regardless of the size of the entity.[1221]

678. As with Order No. 2023, we estimate that there are 44 transmission providers affected by the reforms proposed in this order on rehearing. Furthermore, we estimate that six of the 44 total transmission providers, approximately 14% (rounded), are small entities.

679. We estimate that one-time costs (in Year 1) associated with the reforms required by this order on rehearing for one transmission provider (as shown in the table in the Information Collection Statement above) would be $1,800. Following Year 1, we estimate that there will be no ongoing costs for transmission providers. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.'' [1222] The Year 1 estimated cost of this order on rehearing reflects 2.5% of the Year 1 estimated cost of Order No. 2023, which the Commission found to not have a significant economic impact. Further, this order on rehearing will create no ongoing costs for transmission providers in addition to those in Order No. 2023. We therefore do not consider the estimated cost of $1,800 per transmission provider due to this order on rehearing to be a significant economic impact. As a result, as the Commission concluded in Order 2023, we certify that the reforms proposed in this order on rehearing would not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

680. 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*).

681. 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.

682. 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.*

VII. Effective Date

683. This order is effective May 16, 2024.

By the Commission. Commissioner Christie is concurring with a separate statement attached.

Issued: March 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A: Abbreviated Names of Rehearing Parties

American Clean Power Association	ACP.
American Electric Power Service Corporation	AEP.
Avangrid, Inc	Avangrid.
California Independent System Operator Corporation	CAISO.
Advanced Energy United, American Clean Power Association, and Solar Energy Industries Association.	Clean Energy Associations.
Dominion Energy Services, Inc	Dominion.
Duke Energy Carolinas, LLC; Duke Energy Progress, LLC; and Duke Energy Florida, LLC	Duke Southeast Utilities.
Edison Electric Institute	EEI.
National Grid Renewables Development, LLC, Clearway Energy Group LLC, and Pine Gate Renewables, LLC.	Generation Developers.
Cypress Creek Renewables, LLC, New Leaf Energy, Inc., and Enel Green Power	IPP Coalition.
Indicated PJM Transmission Owners	Indicated PJM TOs.
Invenergy Solar Development North America LLC; Invenergy Thermal Development LLC; Invenergy Wind Development North America LLC; and Invenergy Transmission LLC.	Invenergy.

[1217] 18 CFR 380.4(a)(15).

[1218] 5 U.S.C. 601–612.

[1219] 13 CFR 121.201.

[1220] 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 Small Business Administration's regulations define the threshold for a small Electric Bulk Power Transmission and Control entity (NAICS code 221121) to be 950 employees (''the maximum allowed for a concern and its affiliates to be considered small''). *See* 13 CFR 121.201; *see also* 5 U.S.C. § 601(3) (citing to section 3 of the Small Business Act, 15 U.S.C. § 632).

[1221] 18 CFR 35.28(f)(1).

[1222] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,* at 18 (Aug. 2017), *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.*

ITC Holdings Corp., on behalf of its operating subsidiaries International Transmission Company d/b/a ITC Transmission, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.	ITC.
PJM Interconnection, LLC, Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc.	Joint RTOs.
Longroad Energy Holdings, LLC	Longroad Energy.
Midcontinent Independent System Operator, Inc	MISO.
MISO Transmission Owners	MISO TOs.
New York Independent System Operator, Inc	NYISO.
New York Public Service Commission	NYSPSC.
New York Transmission Owners	NYTOs.
NewSun Energy LLC	NewSun.
Dominion Energy South Carolina, Inc., Florida Power & Light Company, and Public Service Company of Colorado.	Non-RTO Providers.
Nevada Power Company and Sierra Pacific Power Company	NV Energy.
Ørsted North America, LLC	Ørsted.
PacifiCorp	PacifiCorp.
PJM Interconnection, L.L.C	PJM.
Sustainable FERC Project, Sierra Club, Natural Resources Defense Council, Earthjustice, Acadia Center, Environmental Defense Fund, National Audubon Society, Southern Environmental Law Center, and Southface.	Public Interest Organizations.
Dominion Energy South Carolina, Inc., PacifiCorp, and Tri-State Generation and Transmission Association, Inc.	Revised Early Adopters Coalition.
Shell Energy North America (US), L.P., Shell New Energies US, LLC, and Savion, LLC	Shell.
Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, Louisville Gas and Electric Company and Kentucky Utilities Company, PowerSouth Energy Cooperative, and Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, and Mississippi Power Company.	Southeastern Utilities.
Southwest Power Pool, Inc	SPP.
VEIR Inc	VEIR.
Working for Advanced Transmission Technologies Coalition	WATT Coalition.
WIRES	WIRES.

Appendix B: Interconnection Study Metrics

TABLE 1—2022 INTERCONNECTION STUDY METRICS FROM NON-RTOS/ISOS WITH A CLUSTERED SYSTEM IMPACT STUDY

Transmission provider	Number of interconnection requests with completed clustered system impact studies	Average number of days to complete clustered system impact study	Number of facilities studies completed	Average number of days to complete facilities study
Arizona Public Service	21	511	19	144
Avista Corp	22	61	7	136
Dominion Energy South Carolina	0	.....	0	.....
Duke Energy Carolinas	14	N/A	1	185
El Paso Electric Co	5	76	1	76
Nevada Power	67	119	36	120
PacifiCorp	189	146	13	90
Public Service Company of Colorado	25	246	16	143
Public Service Company of New Mexico	17	507	4	168
Tri-State Generation and Transmission [1223]	10	119	10	85

Appendix C: Changes to the Pro Forma LGIP

Note: Deletions are in brackets and additions are in italics.

Standard Large Generator Interconnection Procedures (LGIP)

Including

Standard Large Generator Interconnection Agreement (LGIA)

Standard Large Generator Interconnection Procedures (LGIP)

(Applicable to Generating Facilities That Exceed 20 MW)

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[1223] Data drawn from the following sources, respectively: *https://www.oasis.oati.com/azps/* (Arizona Public Service); *https://www.oasis.oati.com/avat/* (Avista Corp.); *https://www.oasis.oati.com/SCEG/* (Dominion Energy South Carolina); *http://www.oasis.oati.com/duk/index.html* (Duke Energy Carolinas); *https://www.oasis.oati.com/epe/index.html* (El Paso Electric Co.); *http://www.oasis.oati.com/NEVP/* (Nevada Power); *https://www.oasis.oati.com/PPW/* (PacifiCorp); *https://www.oasis.oati.com/psco/index.html* (Public Service Company of Colorado); *https://www.oasis.oati.com/PNM/* (Public Service Company of New Mexico); and *https://www.oasis.oati.com/tsgt/index.html* (Tri-State Generation and Transmission).

Section 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Facilities Construction Agreement shall mean the agreement contained in Appendix 11 to this LGIP that is made between Transmission Provider and Affected System Interconnection Customer to facilitate the construction of and to set forth cost responsibility for necessary Affected System Network Upgrades on Transmission Provider's Transmission System.

Affected System Interconnection Customer shall mean any entity that submits an interconnection request for a generating facility to a transmission system other than Transmission Provider's Transmission System that may cause the need for Affected System Network Upgrades on [the] Transmission Provider's Transmission System.

Affected System Network Upgrades shall mean the additions, modifications, and upgrades to Transmission Provider's Transmission System required to accommodate Affected System Interconnection Customer's proposed interconnection to a transmission system other than Transmission Provider's Transmission System.

Affected System Operator shall mean the entity that operates an Affected System.

Affected System Queue Position shall mean the queue position of an Affected System Interconnection Customer in Transmission Provider's interconnection queue relative to Transmission Provider's Interconnection Customers' Queue Positions.

Affected System Study shall mean the evaluation of Affected System Interconnection Customers' proposed interconnection(s) to a transmission system other than Transmission Provider's Transmission System that have an impact on Transmission Provider's Transmission System, as described in Section 9 of this LGIP.

Affected System Study Agreement shall mean the agreement contained in Appendix 9 to this LGIP that is made between Transmission Provider and Affected System Interconnection Customer to conduct an Affected System Study pursuant to Section 9 of this LGIP.

Affected System Study Report shall mean the report issued following completion of an Affected System Study pursuant to Section 9.[6]*7* of this LGIP.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of [the] Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Standards shall mean the requirements and guidelines of the Electric Reliability Organization and the Balancing Authority Area of the Transmission System to which the Generating Facility is directly interconnected.

Balancing Authority shall mean an entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

Balancing Authority Area shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Cluster shall mean a group of one or more Interconnection Requests that are studied together for the purpose of conducting a Cluster Study.

Cluster Request Window shall mean the time period set forth in Section 3.4.1 of this LGIP.

Cluster Restudy shall mean a restudy of a Cluster Study conducted pursuant to Section 7.5 of this LGIP.

Cluster Restudy Report shall mean the report issued following completion of a Cluster Restudy pursuant to Section 7.5 of this LGIP.

Cluster Restudy Report Meeting shall mean the meeting held to discuss the results of a Cluster Restudy pursuant to Section 7.5 of this LGIP.

[Cluster Restudy Report shall mean the report issued following completion of a Cluster Restudy pursuant to Section 7.5 of this LGIP.]

Cluster Study shall mean the evaluation of one or more Interconnection Requests within a Cluster as described in Section 7 of this LGIP.

Cluster Study Agreement shall mean the agreement contained in Appendix 2 to this LGIP for conducting the Cluster Study.

Cluster Study Process shall mean the following processes, conducted in sequence: the Cluster Request Window; the Customer Engagement Window and Scoping Meetings therein; the Cluster Study; any needed Cluster Restudies; and the Interconnection Facilities Study.

Cluster Study Report shall mean the report issued following completion of a Cluster Study pursuant to Section 7 of this LGIP.

Cluster Study Report Meeting shall mean the meeting held to discuss the results of a Cluster Study pursuant to Section 7 of this LGIP.

Clustering shall mean the process whereby one or more Interconnection Requests are studied together, instead of serially, as described in Section 7 of this LGIP.

Commercial Operation shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

Commercial Operation Date of a unit shall mean the date on which the Generating Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to the Standard Large Generator Interconnection Agreement.

Commercial Readiness Deposit shall mean a deposit paid as set forth in Sections 3.4.2, 7.5, and 8.1 of this LGIP.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Contingent Facilities shall mean those unbuilt Interconnection Facilities and Network Upgrades upon which the Interconnection Request's costs, timing, and study findings are dependent, and if delayed or not built, could cause a need for restudies of the Interconnection Request or a reassessment of the Interconnection Facilities and/or Network Upgrades and/or costs and timing.

Customer Engagement Window shall mean the time period set forth in Section 3.4.5 of this LGIP.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean [the] Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to [the] Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC.

Electric Reliability Organization shall mean the North American Electric Reliability Corporation (*NERC*) or its successor organization.

Emergency Condition shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which [the] Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service shall mean an Interconnection Service that allows [the] Interconnection Customer to connect its Generating Facility to [the] Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of [the] Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes [the] Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Generating Facility shall mean Interconnection Customer's device(s) for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility or the aggregate net capacity of the Generating Facility where it includes more than one device for the production and/or storage for later injection of electricity.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which [the] Interconnection Customer reasonably expects it will be ready to begin use of [the] Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including [the] Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with [the] Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean Transmission Provider's Interconnection Facilities and Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by Transmission Provider or a third party consultant for Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Cluster Study), the cost of those facilities, and the time required to interconnect the Generating Facility with Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of this LGIP.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 3 of this LGIP for conducting the Interconnection Facilities Study.

Interconnection Facilities Study Report shall mean the report issued following completion of an Interconnection Facilities Study pursuant to Section 8 of this LGIP.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to this LGIP, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with [the] Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by [the] Transmission Provider associated with interconnecting [the] Interconnection Customer's Generating Facility to [the] Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, [the] Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: the Cluster Study, the Cluster Restudy, the Surplus Interconnection Service [System Impact] Study, [and] the Interconnection Facilities Study, *the Affected System Study, Optional Interconnection Study, and Material Modification assessment,* described in this LGIP.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and [the] Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

LGIA Deposit shall mean the deposit Interconnection Customer submits when returning the executed LGIA, or within *ten* (10) Business Days of requesting that the LGIA be filed unexecuted at the Commission, in accordance with Section 11.3 of this LGIP.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with an equal or later Queue Position.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Generator Interconnection Agreement at the metering points, including but not limited to

instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

Multiparty Affected System Facilities Construction Agreement shall mean the agreement contained in Appendix 12 to this LGIP that is made among Transmission Provider and multiple Affected System Interconnection Customers to facilitate the construction of and to set forth cost responsibility for necessary Affected System Network Upgrades on Transmission Provider's Transmission System.

Multiparty Affected System Study Agreement shall mean the agreement contained in Appendix 10 to this LGIP that is made among Transmission Provider and multiple Affected System Interconnection Customers to conduct an Affected System Study pursuant to Section 9 of this LGIP.

Network Resource shall mean any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

Network Resource Interconnection Service shall mean an Interconnection Service that allows [the] Interconnection Customer to integrate its Large Generating Facility with [the] Transmission Provider's Transmission System (1) in a manner comparable to that in which [the] Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to [the] Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to [the] Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to [the] Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by [the] Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 4 of this LGIP for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Permissible Technological Advancement {Transmission Provider inserts definition here}.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where [the] Interconnection Customer's Interconnection Facilities connect to [the] Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to [the] Transmission Provider's Transmission System.

Proportional Impact Method shall mean a technical analysis conducted by Transmission Provider to determine the degree to which each Generating Facility in the Cluster Study contributes to the need for a specific System Network Upgrade.

Provisional Interconnection Service shall mean Interconnection Service provided by Transmission Provider associated with interconnecting [the] Interconnection Customer's Generating Facility to Transmission Provider's Transmission System and enabling that Transmission System to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Provisional Large Generator Interconnection Agreement and, if applicable, the Tariff.

Provisional Large Generator Interconnection Agreement shall mean the interconnection agreement for Provisional Interconnection Service established between Transmission Provider and/or [the] Transmission Owner and [the] Interconnection Customer. This agreement shall take the form of the *Standard* Large Generator Interconnection Agreement, modified for provisional purposes.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, established pursuant to Section 4.1 of this LGIP.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of Interconnection Customer(s) and Transmission Provider conducted for the purpose of discussing the proposed Interconnection Request and any alternative interconnection options, exchanging information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, refining information and models provided by Interconnection Customer(s), discussing the Cluster Study materials posted to OASIS pursuant to Section 3.5 of this LGIP, and analyzing such information.

Site Control shall mean the exclusive land right to develop, construct, operate, and maintain the Generating Facility over the term of expected operation of the Generating Facility. Site Control may be demonstrated by documentation establishing: (1) ownership of, a leasehold interest in, or a right to develop a site of sufficient size to construct and operate the Generating Facility; (2) an option to purchase or acquire a leasehold site of sufficient size to construct and operate the Generating Facility; or (3) any other documentation that clearly demonstrates the right of Interconnection Customer to exclusively occupy a site of sufficient size to construct and operate the Generating Facility. Transmission Provider will maintain acreage requirements for each Generating Facility type on its OASIS or public website.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that are not part of an Affected System that [an] Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction [and the following conditions are met: (1) a Substation Network Upgrade must only be required for a single Interconnection Customer in the Cluster and no other Interconnection Customer in that Cluster is required to interconnect to the same Substation Network Upgrades, and (2) a System Network Upgrade must only be required for a single Interconnection Customer in the Cluster, as indicated under the Transmission Provider's Proportional Impact Method]. Both Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement. If Transmission Provider and Interconnection Customer disagree about whether a particular Network Upgrade is a Stand Alone Network Upgrade, Transmission Provider must provide Interconnection Customer a written technical explanation outlining why Transmission Provider does not consider the Network Upgrade to be a Stand Alone Network Upgrade within *fifteen* (15) *Business* [d]*D*ays of its determination.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility that is included in [the] Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in [the] Transmission Provider's Tariff.

Substation Network Upgrades shall mean Network Upgrades that are required at the substation located at the Point of Interconnection.

Surplus Interconnection Service shall mean any unneeded portion of Interconnection Service established in a *Standard* Large Generator Interconnection Agreement, such that if Surplus Interconnection Service is utilized, the total amount of Interconnection Service at the Point of Interconnection would remain the same.

System Network Upgrades shall mean Network Upgrades that are required beyond the substation located at the Point of Interconnection.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) [the] Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on [the] Transmission Provider's Transmission System or on other delivery systems or other generating systems to which [the] Transmission Provider's Transmission System is directly connected.

Tariff shall mean [the] Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

Transitional Cluster Study shall mean an Interconnection Study evaluating a Cluster of Interconnection Requests during the transition to the Cluster Study Process, as set forth in Section 5.1.1.2 of this LGIP.

Transitional Cluster Study Agreement shall mean the agreement contained in Appendix 7 to this LGIP that is made between Transmission Provider and Interconnection Customer to conduct a Transitional Cluster Study pursuant to Section 5.1.1.2 of this LGIP.

Transitional Cluster Study Report shall mean the report issued following completion of a Transitional Cluster Study pursuant to Section 5.1.1.2 of this LGIP.

Transitional Serial Interconnection Facilities Study shall mean an Interconnection Facilities Study evaluating an Interconnection Request on a serial basis during the transition to the Cluster Study Process, as set forth in Section 5.1.1.1 of this LGIP.

Transitional Serial Interconnection Facilities Study Agreement shall mean the agreement contained in Appendix 8 to this LGIP that is made between Transmission Provider and Interconnection Customer to conduct a Transitional Serial Interconnection Facilities Study pursuant to Section 5.1.1.1 of this LGIP.

Transitional Serial Interconnection Facilities Study Report shall mean the report issued following completion of a Transitional *Serial* Interconnection Facilities Study pursuant to Section 5.1.1.1 of this LGIP.

Transitional Withdrawal Penalty shall mean the penalty assessed by Transmission Provider to Interconnection Customer that has entered the Transitional Cluster Study or Transitional Serial Interconnection Facilities Study and chooses to withdraw or is deemed withdrawn from Transmission Provider's interconnection queue or whose Generating Facility does not otherwise reach Commercial Operation. The calculation of the Transitional Withdrawal Penalty is set forth in Sections 5.1.1.1 and 5.1.1.2 of this LGIP.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from [the] Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by [the] Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to Commercial Operation.

Withdrawal Penalty shall mean the penalty assessed by Transmission Provider to an Interconnection Customer that chooses to withdraw or is deemed withdrawn from Transmission Provider's interconnection queue or whose Generating Facility does not otherwise reach Commercial Operation. The calculation of the Withdrawal Penalty is set forth in Section 3.7.1 of this LGIP.

Section 2. Scope and Application

2.1 Application of Standard Large Generator Interconnection Procedures

Sections 2 through 13 *of this LGIP* apply to processing an Interconnection Request pertaining to a Large Generating Facility.

2.2 Comparability

Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely manner as set forth in this LGIP. Transmission Provider shall process and analyze Interconnection Requests from all Interconnection Customers comparably, regardless of whether the Generating Facilities are owned by Transmission Provider, its subsidiaries or Affiliates or others.

2.3 Base Case Data

Transmission Provider shall maintain base power flow, short circuit and stability databases, including all underlying assumptions, and contingency list on either its OASIS site or a password-protected website, subject to confidentiality provisions in LGIP Section 13.1. In addition, Transmission Provider shall maintain network models and underlying assumptions on either its OASIS site or a password-protected website. Such network models and underlying assumptions should reasonably represent those used during the most recent [i]*I*nterconnection [s]*S*tudy and be representative of current system conditions. If Transmission Provider posts this information on a password-protected website, a link to the information must be provided on Transmission Provider's OASIS site. Transmission Provider is permitted to require that Interconnection Customers, OASIS site users and password-protected website users sign a confidentiality agreement before the release of commercially sensitive information or Critical Energy Infrastructure Information in the Base Case data. Such databases and lists, hereinafter referred to as Base Cases, shall include all (1) generation projects and (2) transmission projects, including merchant transmission projects that are proposed for the Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority.

2.4 No Applicability to Transmission Service

Nothing in this LGIP shall constitute a request for transmission service or confer upon an Interconnection Customer any right to receive transmission service.

Section 3. Interconnection Requests

3.1 Interconnection Requests

3.1.1 Study Deposits

3.1.1.1 Study Deposit

Interconnection Customer shall submit to Transmission Provider, during a Cluster Request Window, an Interconnection Request in the form of Appendix 1 to this LGIP, a[n] *non-refundable* application fee of $5,000, and a refundable study deposit of:

(a) $35,000 plus $1,000 per MW for Interconnection Requests [≥ 20 MW] < 80 MW; or

(b) $150,000 for Interconnection Requests ≥ 80 MW < 200 MW; or

(c) $250,000 for Interconnection Requests ≥ 200 MW.

Transmission Provider shall apply the study deposit toward the cost of the Cluster Study Process.

3.1.2 Submission

Interconnection Customer shall submit a separate Interconnection Request for each site. Where multiple Generating Facilities share a site, Interconnection Customer(s) may submit separate Interconnection Requests or a single Interconnection Request. An Interconnection Request to evaluate one site at two different voltage levels shall be treated as two Interconnection Requests.

At Interconnection Customer's option, Transmission Provider and Interconnection Customer will identify alternative Point(s) of Interconnection and configurations at a Scoping Meeting within the Customer Engagement Window to evaluate in this process and attempt to eliminate alternatives in a reasonable fashion given resources and information available. Interconnection Customer will select the definitive Point of Interconnection to be studied no later than the execution of the Cluster Study Agreement. For purposes of clustering Interconnection Requests, Transmission Provider may propose changes to the requested Point of Interconnection to

facilitate efficient interconnection of Interconnection Customers at common Point(s) of Interconnection. Transmission Provider shall notify Interconnection Customers in writing of any intended changes to the requested Point of Interconnection within the Customer Engagement Window, and the Point of Interconnection shall only change upon mutual agreement.

Transmission Provider shall have a process in place to consider requests for Interconnection Service below the Generating Facility Capacity. These requests for Interconnection Service shall be studied at the level of Interconnection Service requested for purposes of Interconnection Facilities, Network Upgrades, and associated costs, but may be subject to other studies at the full Generating Facility Capacity to ensure safety and reliability of the system, with the study costs borne by Interconnection Customer. If after the additional studies are complete, Transmission Provider determines that additional Network Upgrades are necessary, then Transmission Provider must: (1) specify which additional Network Upgrade costs are based on which studies; and (2) provide a detailed explanation of why the additional Network Upgrades are necessary. Any Interconnection Facility and/or Network Upgrade costs required for safety and reliability also would be borne by Interconnection Customer. Interconnection Customers may be subject to additional control technologies as well as testing and validation of those technologies consistent with Article 6 of the LGIA. The necessary control technologies and protection systems shall be established in Appendix C of that executed, or requested to be filed unexecuted, LGIA.

Transmission Provider shall have a process in place to study Generating Facilities that include at least one electric storage resource using operating assumptions (*i.e.,* whether the interconnecting Generating Facility will or will not charge at peak load) that reflect the proposed charging behavior of the Generating Facility as requested by Interconnection Customer, unless Transmission Provider determines that Good Utility Practice, including Applicable Reliability Standards, otherwise requires the use of different operating assumptions. If Transmission Provider finds Interconnection Customer's requested operating assumptions conflict with Good Utility Practice, Transmission Provider must provide Interconnection Customer an explanation in writing of why the submitted operating assumptions are insufficient or inappropriate by no later than thirty (30) Calendar Days before the end of the Customer Engagement Window and allow Interconnection Customer to revise and resubmit requested operating assumptions one time at least ten (10) Calendar Days prior to the end of the Customer Engagement Window. Transmission Provider shall study these requests for Interconnection Service, with the study costs borne by Interconnection Customer, using the submitted operating assumptions for purposes of Interconnection Facilities, Network Upgrades, and associated costs. These requests for Interconnection Service also may be subject to other studies at the full Generating Facility Capacity to ensure safety and reliability of the system, with the study costs borne by Interconnection Customer. Interconnection Customer's Generating Facility may be subject to additional control technologies as well as testing and validation of such additional control technologies consistent with Article 6 of the LGIA. The necessary control technologies and protection systems shall be set forth in Appendix C of [the] Interconnection Customer's LGIA.

3.2 Identification of Types of Interconnection Services

At the time the Interconnection Request is submitted, Interconnection Customer must request either Energy Resource Interconnection Service or Network Resource Interconnection Service, as described; provided, however, any Interconnection Customer requesting Network Resource Interconnection Service may also request that it be concurrently studied for Energy Resource Interconnection Service, up to the point when an Interconnection Facilities Study Agreement is executed. Interconnection Customer may then elect to proceed with Network Resource Interconnection Service or to proceed under a lower level of interconnection service to the extent that only certain upgrades will be completed.

3.2.1 Energy Resource Interconnection Service

3.2.1.1 The Product

Energy Resource Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. Energy Resource Interconnection Service does not in and of itself convey any right to deliver electricity to any specific customer or Point of Delivery.

3.2.1.2 The Study

The study consists of short circuit/fault duty, steady state (thermal and voltage) and stability analyses. The short circuit/fault duty analysis would identify direct Interconnection Facilities required and the Network Upgrades necessary to address short circuit issues associated with the Interconnection Facilities. The stability and steady state studies would identify necessary upgrades to allow full output of the proposed Large Generating Facility, except for Generating Facilities that include at least one electric storage resource that request to use operating assumptions pursuant to Section 3.1.2, unless [the] Transmission Provider determines that Good Utility Practice, including Applicable Reliability Standards, otherwise requires the use of different operating assumptions, and would also identify the maximum allowed output, at the time the study is performed, of the interconnecting Large Generating Facility without requiring additional Network Upgrades.

3.2.2 Network Resource Interconnection Service

3.2.2.1 The Product

Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as Network Resources. Network Resource Interconnection Service [A]*a*llows Interconnection Customer's Large Generating Facility to be designated as a Network Resource, up to the Large Generating Facility's full output, on the same basis as existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur.

3.2.2.2 The Study

The Interconnection Study for Network Resource Interconnection Service shall assure that Interconnection Customer's Large Generating Facility meets the requirements for Network Resource Interconnection Service and as a general matter, that such Large Generating Facility's interconnection is also studied with Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Large Generating Facility at full output, except for Generating Facilities that include at least one electric storage resource that request to use, and for which Transmission Provider approves, operating assumptions pursuant to Section 3.1.2, the aggregate of generation in the local area can be delivered to the aggregate of load on Transmission Provider's Transmission System, consistent with Transmission Provider's reliability criteria and procedures. This approach assumes that some portion of existing Network Resources are displaced by the output of Interconnection Customer's Large Generating Facility. Network Resource Interconnection Service in and of itself does not convey any right to deliver electricity to any specific customer or Point of Delivery. [The] Transmission Provider may also study the Transmission System under non-peak load conditions. However, upon request by [the] Interconnection Customer, [the] Transmission Provider must explain in writing to [the] Interconnection Customer why the study of non-peak load conditions is required for reliability purposes.

3.3 Utilization of Surplus Interconnection Service

Transmission Provider must provide a process that allows an Interconnection Customer to utilize or transfer Surplus Interconnection Service at an existing Point of Interconnection. The original Interconnection Customer or one of its affiliates shall have priority to utilize Surplus Interconnection Service. If the existing Interconnection Customer or one of its affiliates does not exercise its priority, then that service may be made available to other potential Interconnection Customers.

3.3.1 Surplus Interconnection Service Requests

Surplus Interconnection Service requests may be made by the existing Interconnection Customer or one of its affiliates or may be submitted once Interconnection Customer has executed the LGIA or requested that the LGIA be filed unexecuted. Surplus Interconnection Service requests also may be made by another Interconnection Customer. Transmission Provider shall provide a process for evaluating Interconnection Requests for Surplus Interconnection Service. Studies for Surplus Interconnection Service shall consist of reactive power, short circuit/fault duty, stability analyses, and any other appropriate studies. Steady-state (thermal/voltage) analyses may be performed as necessary to ensure that all required reliability conditions are studied. If the Surplus Interconnection Service was not studied under off-peak conditions, off-peak steady state analyses shall be performed to the required level necessary to demonstrate reliable operation of the Surplus Interconnection Service. If the original system impact study report or Cluster Study Report is not available for the Surplus Interconnection Service, both off-peak and peak analysis may need to be performed for the existing Generating Facility associated with the request for Surplus Interconnection Service. The reactive power, short circuit/fault duty, stability, and steady-state analyses for Surplus Interconnection Service will identify any additional Interconnection Facilities and/or Network Upgrades necessary.

Transmission Provider shall study Surplus Interconnection Service requests for a Generating Facility that includes at least one electric storage resource using operating assumptions (*i.e.,* whether the interconnecting Generating Facility will or will not charge at peak load) that reflect the proposed charging behavior of the Generating Facility as requested by Interconnection Customer, unless Transmission Provider determines that Good Utility Practice, including Applicable Reliability Standards, otherwise requires the use of different operating assumptions.

3.4 Valid Interconnection Request

3.4.1 Cluster Request Window

Transmission Provider shall accept Interconnection Requests during a forty-five (45) Calendar Day period (the Cluster Request Window). The initial Cluster Request Window shall open for Interconnection Requests beginning {Transmission Provider to provide number of Calendar Days} after the conclusion of the transition process set out in Section 5.1 of this LGIP and successive Cluster Request Windows shall open annually every {Transmission Provider to provide Month and Day (*e.g.,* January 1)} thereafter.

3.4.2 Initiating an Interconnection Request

An Interconnection Customer seeking to join a Cluster shall submit its Interconnection Request to Transmission Provider within, and no later than the close of, the Cluster Request Window. Interconnection Requests submitted outside of the Cluster Request Window will not be considered. To initiate an Interconnection Request, Interconnection Customer must submit all of the following:

(i) [a]*A*pplicable study deposit amount, pursuant to Section 3.1.1.1 of this LGIP,

(ii) [a]*A* completed application in the form of Appendix 1,

(iii) [d]*D*emonstration of no less than ninety percent (90%) Site Control or (1) a signed affidavit from an officer of the company indicating that Site Control is unobtainable due to regulatory limitations as such term is defined by [the] Transmission Provider; and (2) documentation sufficiently describing and explaining the source and effects of such regulatory limitations, including a description of any conditions that must be met to satisfy the regulatory limitations and the anticipated time by which Interconnection Customer expects to satisfy the regulatory requirements and (3) a deposit in lieu of Site Control of $10,000 per MW, subject to a minimum of $500,000 and a maximum of $2,000,000. Interconnection Requests from multiple Interconnection Customers for multiple Generating Facilities that share a site must include a contract or other agreement that allows for shared land use[.],

(iv) Generating Facility Capacity (MW) (and requested Interconnection Service level if the requested Interconnection Service is less than the Generating Facility Capacity),

(v) If applicable, (1) the requested operating assumptions (*i.e.,* whether the interconnecting Generating Facility will or will not charge at peak load) to be used by Transmission Provider that reflect the proposed charging behavior of the Generating Facility that includes at least one electric storage resource, and (2) a description of any control technologies (software and/or hardware) that will limit the operation of the Generating Facility to the operating assumptions submitted by Interconnection Customer[.],

(vi) A Commercial Readiness Deposit equal to two times the study deposit described in Section 3.1.1.1 of this LGIP in the form of an irrevocable letter of credit, [or] cash, *a surety bond, or other form of security that is reasonably acceptable to Transmission Provider.* This Commercial Readiness Deposit is refunded to Interconnection Customer according to Section 3.7 of this LGIP,

(vii) A Point of Interconnection, and

(viii) Whether the Interconnection Request shall be studied for Network Resource Interconnection Service or for Energy Resource Interconnection Service, consistent with Section 3.2 of this LGIP.

An Interconnection Customer that submits a deposit in lieu of Site Control due to demonstrated regulatory limitations must demonstrate that it is taking identifiable steps to secure the necessary regulatory approvals from the applicable federal, state, and/or tribal entities before execution of the Cluster Study Agreement. Such deposit will be held by Transmission Provider until Interconnection Customer provides the required Site Control demonstration for its point in the Cluster Study Process. Interconnection Customers facing qualifying regulatory limitations must demonstrate one[-] hundred percent (100%) Site Control within one[-] hundred eighty (180) Calendar Days of the effective date of the LGIA.

Interconnection Customer shall promptly inform Transmission Provider of any material change to Interconnection Customer's demonstration of Site Control under Section 3.4.2(iii) of this LGIP. If Transmission Provider determines, based on Interconnection Customer's information, that Interconnection Customer no longer satisfies the Site Control requirement, Transmission Provider shall give Interconnection Customer ten (10) Business Days to demonstrate satisfaction with the applicable requirement subject to Transmission Provider's approval. Absent such, Transmission Provider shall deem the Interconnection Request withdrawn pursuant to Section 3.7 of this LGIP.

The expected In-Service Date of the new Large Generating Facility or increase in capacity of the existing Generating Facility shall be no more than the process window for the regional expansion planning period (or in the absence of a regional planning process, the process window for Transmission Provider's expansion planning period) not to exceed seven *(7)* years from the date the Interconnection Request is received by Transmission Provider, unless Interconnection Customer demonstrates that engineering, permitting and construction of the new Large Generating Facility or increase in capacity of the existing Generating Facility will take longer than the regional expansion planning period. The In-Service Date may succeed the date the Interconnection Request is received by Transmission Provider by a period up to ten *(10)* years, or longer where Interconnection Customer and Transmission Provider agree, such agreement not to be unreasonably withheld.

3.4.3 Acknowledgment of Interconnection Request

Transmission Provider shall acknowledge receipt of the Interconnection Request within five (5) Business Days of receipt of the request and attach a copy of the received Interconnection Request to the acknowledgement.

3.4.4 Deficiencies in Interconnection Request

An Interconnection Request will not be considered to be a valid request until all items in Section 3.4.2 of this LGIP have been received by Transmission Provider *during the Cluster Request Window.* If an Interconnection Request fails to meet the requirements set forth in Section 3.4.2 of this LGIP, Transmission Provider shall notify Interconnection Customer within five (5) Business Days of receipt of the initial Interconnection Request of the reasons for such failure and that the Interconnection Request does not constitute a valid request. Interconnection Customer shall provide Transmission Provider the additional requested information needed to constitute a valid request within ten (10) Business Days after receipt of such notice but no later than the close of the Cluster Request Window. At any time, if Transmission Provider finds that the technical data provided by Interconnection Customer is incomplete or contains errors, Interconnection Customer and Transmission Provider shall work

expeditiously and in good faith to remedy such issues. In the event that Interconnection Customer fails to comply with this Section 3.4.4 of this LGIP, Transmission Provider[s] shall deem the Interconnection Request withdrawn (without the cure period provided under Section 3.7 of this LGIP), the application fee is forfeited to [the] Transmission Provider, and the study deposit and Commercial Readiness Deposit shall be returned to Interconnection Customer.

3.4.5 Customer Engagement Window

Upon the close of each Cluster Request Window, Transmission Provider shall open a sixty (60) Calendar Day period (Customer Engagement Window). During the Customer Engagement Window, Transmission Provider shall hold a Scoping Meeting with all interested Interconnection Customers. Notwithstanding the preceding requirements and upon written consent of all Interconnection Customers within the Cluster, Transmission Provider may shorten the Customer Engagement Window and begin the Cluster Study. Within ten (10) Business Days of the opening of the Customer Engagement Window, Transmission Provider shall post on its OASIS a list of Interconnection Requests for that Cluster. The list shall identify, for each anonymized Interconnection Request: (1) the requested amount of Interconnection Service; (2) the location by county and state; (3) the station or transmission line or lines where the interconnection will be made; (4) the projected In-Service Date; (5) the type of Interconnection Service requested; and (6) the type of Generating Facility or Facilities to be constructed, including fuel types, such as coal, natural gas, solar, or wind. [The] Transmission Provider must ensure that project information is anonymized and does not reveal the identity or commercial information of [i]*I*nterconnection [c]*C*ustomers with submitted requests. During the Customer Engagement Window, Transmission Provider shall provide to Interconnection Customer a non-binding updated good faith estimate of the cost and timeframe for completing the cluster Study and a Cluster Study Agreement to be executed prior to the close of the Customer Engagement Window.

At the end of the Customer Engagement Window, all Interconnection Requests deemed valid that have executed a Cluster Study Agreement in the form of Appendix 2 to this LGIP shall be included in the Cluster Study. Any Interconnection Requests *for which Interconnection Customer has not executed a Cluster Study Agreement* [not deemed valid at the close of the Customer Engagement Window] shall be deemed withdrawn (without the cure period provided under Section 3.7 of this LGIP) by Transmission Provider, the application fee shall be forfeited to [the] Transmission Provider, and [the] Transmission Provider shall return the study deposit and Commercial Readiness Deposit to Interconnection Customer. Immediately following the Customer Engagement Window, Transmission Provider shall initiate the Cluster Study described in Section 7 of this LGIP.

3.4.6 Cluster Study Scoping Meeting

During the Customer Engagement Window, Transmission Provider shall hold a Scoping Meeting with all Interconnection Customers whose valid Interconnection Requests were received in that Cluster Request Window.

The purpose of the Cluster Study Scoping Meeting shall be to discuss alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would reasonably be expected to impact such interconnection options, to discuss the Cluster Study materials posted to OASIS pursuant to Section 3.5 of this LGIP, if applicable, and to analyze such information. Transmission Provider and Interconnection Customer(s) will bring to the meeting such technical data, including, but not limited to: (i) general facility loadings, (ii) general instability issues, (iii) general short circuit issues, (iv) general voltage issues, and (v) general reliability issues as may be reasonably required to accomplish the purpose of the meeting. Transmission Provider and Interconnection Customer(s) will also bring to the meeting personnel and other resources as may be reasonably required to accomplish the purpose of the meeting in the time allocated for the meeting. On the basis of the meeting, Interconnection Customer(s) shall designate its Point of Interconnection [and one or more available alternative Point(s) of Interconnection]. The duration of the meeting shall be sufficient to accomplish its purpose. If the Cluster Study Scoping Meeting consists of more than one Interconnection Customer, Transmission Provider shall issue, no later than fifteen (15) Business Days after the commencement of the Customer Engagement Window, and Interconnection Customer shall execute a non-disclosure agreement prior to a group Cluster Study Scoping Meeting, which will provide for confidentiality of identifying *information or* commercially sensitive information pertaining to any other Interconnection Customers.

3.5. OASIS Posting

3.5.1 OASIS Posting

Transmission Provider will maintain on its OASIS a list of all Interconnection Requests. The list will identify, for each Interconnection Request: (i) the maximum summer and winter megawatt electrical output; (ii) the location by county and state; (iii) the station or transmission line or lines where the interconnection will be made; (iv) the projected In-Service Date; (v) the status of the Interconnection Request, including Queue Position; (vi) the type of Interconnection Service being requested; [and] (vii) the availability of any studies related to the Interconnection Request; (viii) the date of the Interconnection Request; (ix) the type of Generating Facility to be constructed; and (x) for Interconnection Requests that have not resulted in a completed interconnection, an explanation as to why it was not completed. Except in the case of an Affiliate, the list will not disclose the identity of Interconnection Customer until Interconnection Customer executes an LGIA or requests that Transmission Provider file an unexecuted LGIA with FERC. Before holding a Scoping Meeting with its Affiliate, Transmission Provider shall post on OASIS an advance notice of its intent to do so. Transmission Provider shall post to its OASIS site any deviations from the study timelines set forth herein. Interconnection Study reports and Optional Interconnection Study reports shall be posted to Transmission Provider's OASIS site subsequent to the meeting between Interconnection Customer and Transmission Provider to discuss the applicable study results. Transmission Provider shall also post any known deviations in the Large Generating Facility's In-Service Date.

3.5.2 Requirement To Post Interconnection Study Metrics

Transmission Provider will maintain on its OASIS or its website summary statistics related to processing Interconnection Studies pursuant to Interconnection Requests, updated quarterly. If Transmission Provider posts this information on its website, a link to the information must be provided on Transmission Provider's OASIS site. For each calendar quarter, Transmission Provider[s] must calculate and post the information detailed in Sections 3.5.2.1 through 3.5.2.4 of this LGIP.

3.5.2.1 Interconnection Cluster Study Processing Time

(A) Number of Interconnection Requests that had Cluster Studies completed within Transmission Provider's coordinated region during the reporting quarter,

(B) Number of Interconnection Requests that had Cluster Studies completed within Transmission Provider's coordinated region during the reporting quarter that were completed more than one hundred fifty (150) Calendar Days after the close of the Customer Engagement Window,

(C) At the end of the reporting quarter, the number of active valid Interconnection Requests with ongoing incomplete Cluster Studies where such Interconnection Requests had executed a Cluster Study Agreement received by Transmission Provider more than one hundred fifty (150) Calendar Days before the reporting quarter end,

(D) Mean time (in days), Cluster Studies completed within Transmission Provider's coordinated region during the reporting quarter, from the commencement of the Cluster Study to the date when Transmission Provider provided the completed Cluster Study Report to Interconnection Customer,

(E) Mean time (in days), Cluster Studies were completed within Transmission Provider's coordinated region during the reporting quarter, from the close of the Cluster Request Window to the date when Transmission Provider provided the completed Cluster Study Report to Interconnection Customer,[.]

(F) Percentage of Cluster Studies exceeding one hundred fifty (150) Calendar Days to complete this reporting quarter, calculated as the sum of *Section* 3.5.2.1(B) plus *Section* 3.5.2.1(C) divided by the sum of *Section* 3.5.2.1(A) plus *Section* 3.5.2.1(C) *of this LGIP.*

3.5.2.2 Cluster Restudies Processing Time

(A) Number of Interconnection Requests that had Cluster Restudies completed within

Transmission Provider's coordinated region during the reporting quarter,

(B) Number of Interconnection Requests that had Cluster Restudies completed within Transmission Provider's coordinated region during the reporting quarter that were completed more than one hundred fifty (150) Calendar Days after Transmission Provider notifies Interconnection Customers in the Cluster that a Cluster Restudy is required pursuant to Section 7.5(4) of this LGIP,

(C) At the end of the reporting quarter, the number of active valid Interconnection Requests with ongoing incomplete Cluster Restudies where Transmission Provider notified Interconnection Customers in the Cluster that a Cluster Restudy is required pursuant to Section 7.5(4) of this LGIP more than one hundred fifty (150) Calendar Days before the reporting quarter end,

(D) Mean time (in days), Cluster Restudies completed within Transmission Provider's coordinated region during the reporting quarter, from the date when Transmission Provider notifies Interconnection Customers in the Cluster that a Cluster Restudy is required pursuant to Section 7.5(4) of this LGIP to the date when Transmission Provider provided the completed Cluster Restudy Report to Interconnection Customer,

(E) Mean time (in days), Cluster Restudies completed within Transmission Provider's coordinated region during the reporting quarter, from the close of the Cluster Request Window to the date when Transmission Provider provided the completed Cluster Restudy Report to Interconnection Customer,[.]

(F) Percentage of Cluster Restudies exceeding one hundred fifty (150) Calendar Days to complete this reporting quarter, calculated as the sum of *Section* 3.5.2.2(B) plus *Section* 3.5.2.2(C) divided by the sum of *Section* 3.5.2.2(A) plus *Section* 3.5.2.2(C)[)] *of this LGIP.*

3.5.2.3 Interconnection Facilities Studies Processing Time

(A) Number of Interconnection Requests that had Interconnection Facilities Studies that are completed within Transmission Provider's coordinated region during the reporting quarter,

(B) Number of Interconnection Requests that had Interconnection Facilities Studies that are completed within Transmission Provider's coordinated region during the reporting quarter that were completed more than {timeline as listed in Transmission Provider's LGIP} after receipt by Transmission Provider of [the] Interconnection Customer's executed Interconnection Facilities Study Agreement,

(C) At the end of the reporting quarter, the number of active valid Interconnection Service requests with ongoing incomplete Interconnection Facilities Studies where such Interconnection Requests had executed Interconnection Facilities Studies Agreement received by Transmission Provider more than {timeline as listed in Transmission Provider's LGIP} before the reporting quarter end,

(D) Mean time (in days), for Interconnection Facilities Studies completed within Transmission Provider's coordinated region during the reporting quarter, calculated from the date when Transmission Provider received the executed Interconnection Facilities Study Agreement to the date when Transmission Provider provided the completed Interconnection Facilities Study to [the] Interconnection Customer,

(E) Mean time (in days), Interconnection Facilities Studies completed within Transmission Provider's coordinated region during the reporting quarter, from the close of the Cluster Request Window to the date when Transmission Provider provided the completed Interconnection Facilities Study to Interconnection Customer,[.]

(F) Percentage of delayed Interconnection Facilities Studies this reporting quarter, calculated as the sum of *Section* 3.5.2.3(B) plus *Section* 3.5.2.3(C) divided by the sum of *Section* 3.5.2.3(A) plus *Section* 3.5.2.3(C)[)] *of this LGIP.*

3.5.2.4 Interconnection Service Requests Withdrawn From Interconnection Queue

(A) Number of Interconnection Requests withdrawn from Transmission Provider's interconnection queue during the reporting quarter,

(B) Number of Interconnection Requests withdrawn from Transmission Provider's interconnection queue during the reporting quarter before completion of any [i]*I*nterconnection [s]*S*tudies or execution of any [i]*I*nterconnection [s]*S*tudy agreements,

(C) Number of Interconnection Requests withdrawn from Transmission Provider's interconnection queue during the reporting quarter before completion of a Cluster Study,

(D) Number of Interconnection Requests withdrawn from Transmission Provider's interconnection queue during the reporting quarter before completion of an Interconnection Facilities Study,

(E) Number of Interconnection Requests withdrawn from Transmission Provider's interconnection queue after *completion of an Interconnection Facilities Study but before* execution of a*n* [generator interconnection agreement] *LGIA* or Interconnection Customer requests the filing of an unexecuted, new [interconnection agreement] *LGIA,*

(F) Number of Interconnection Requests withdrawn from Transmission Provider's interconnection queue after execution of an LGIA or Interconnection Customer requests the filing of an unexecuted, new LGIA

([F]*G*) Mean time (in days), for all withdrawn Interconnection Requests, from the date when the request was determined to be valid to when Transmission Provider received the request to withdraw from the queue.

3.5.3

Transmission Provider is required to post on OASIS or its website the measures in [paragraph] *Section* 3.5.2.1(A) through [paragraph] *Section* 3.5.2.4([F]*G*) for each calendar quarter within *thirty (*30*) Calendar* [d]*D*ays of the end of the calendar quarter. Transmission Provider will keep the quarterly measures posted on OASIS or its website for three *(3)* calendar years with the first required report to be in the first quarter of 2020. If Transmission Provider retains this information on its website, a link to the information must be provided on Transmission Provider's OASIS site.

3.5.4

In the event that any of the values calculated in [paragraphs] *Sections* 3.5.2.1(E), 3.5.2.2(E) or 3.5.2.3(E) exceeds *twenty-five* [25] percent *(25%)* for two *(2)* consecutive calendar quarters, Transmission Provider will have to comply with the measures below for the next four *(4)* consecutive calendar quarters and must continue reporting this information until Transmission Provider reports four *(4)* consecutive calendar quarters without the values calculated in *Sections* 3.5.2.1(E), 3.5.2.2(E) or 3.5.2.3(E) exceeding [25] *twenty-five* percent *(25%)* for two *(2)* consecutive calendar quarters:

(i) Transmission Provider must submit a report to the Commission describing the reason for each Cluster Study, Cluster Restudy, or individual Interconnection Facilities Study pursuant to one or more Interconnection Request(s) that exceeded its deadline (*i.e.,* 150, 90 or 180 *Calendar* [d]*D*ays) for completion. Transmission Provider must describe the reasons for each study delay and any steps taken to remedy these specific issues and, if applicable, prevent such delays in the future. The report must be filed at the Commission within *forty-five (*45*) Calendar* [d]*D*ays of the end of the calendar quarter.

(ii) Transmission Provider shall aggregate the total number of employee-hours and third party consultant hours expended towards [i]*I*nterconnection [s]*S*tudies within its coordinated region that quarter and post on OASIS or its website. If Transmission Provider posts this information on its website, a link to the information must be provided on Transmission Provider's OASIS site. This information is to be posted within *thirty (*30*) Calendar* [d]*D*ays of the end of the calendar quarter.

3.6 Coordination With Affected Systems

Transmission Provider will coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System Operators. Interconnection Customer will cooperate with Transmission Provider and Affected System Operator in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

A Transmission Provider whose system may be impacted by a proposed interconnection on another transmission provider's transmission system shall cooperate with [the] transmission provider with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Transmission Provider's Transmission System.

3.6.1 Initial Notification

Transmission Provider must notify Affected System Operator of a potential Affected System impact caused by an Interconnection Request within ten (10) Business Days of the completion of the Cluster Study[or, if the potential Affected System impact is only determined in the Cluster Restudy, the completion of the Cluster Restudy].

At the time of initial notification, Transmission Provider must provide Interconnection Customer with a list of potential Affected Systems, along with relevant contact information.

3.6.2 Notification of Cluster Restudy

Transmission Provider must notify Affected System Operator of a Cluster Restudy concurrently with its notification of such Cluster Restudy to Interconnection Customers.

3.6.3 Notification of Cluster Restudy Completion

Upon the completion of Transmission Provider's Cluster Restudy, Transmission Provider will notify Affected System Operator of a potential Affected System impact caused by an Interconnection Request within ten (10) Business Days of the completion of the Cluster Restudy, regardless of whether that potential Affected System impact was previously identified. At the time of the notification of the completion of the Cluster Restudy to the Affected System Operator, Transmission Provider must provide Interconnection Customer with a list of potential Affected System Operators, along with relevant contact information.

3.7 Withdrawal

Interconnection Customer may withdraw its Interconnection Request at any time by written notice of such withdrawal to Transmission Provider. In addition, if Interconnection Customer fails to adhere to all requirements of this LGIP, except as provided in Section 13.5 (Disputes), Transmission Provider shall deem the Interconnection Request to be withdrawn and shall provide written notice to Interconnection Customer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal. Upon receipt of such written notice, Interconnection Customer shall have fifteen (15) Business Days in which to either respond with information or actions that cures the deficiency or to notify Transmission Provider of its intent to pursue Dispute Resolution.

Withdrawal shall result in the loss of Interconnection Customer's Queue Position. If an Interconnection Customer disputes the withdrawal and loss of its Queue Position, then during Dispute Resolution, Interconnection Customer's Interconnection Request is eliminated from the queue until such time that the outcome of Dispute Resolution would restore its Queue Position. An Interconnection Customer that withdraws or is deemed to have withdrawn its Interconnection Request shall pay to Transmission Provider all costs that Transmission Provider prudently incurs with respect to that Interconnection Request prior to Transmission Provider's receipt of notice described above. Interconnection Customer must pay all monies due to Transmission Provider before it is allowed to obtain any Interconnection Study data or results.

If Interconnection Customer withdraws its Interconnection Request or is deemed withdrawn by Transmission Provider under Section 3.7 of this LGIP, Transmission Provider shall (i) update the OASIS Queue Position posting; (ii) impose the Withdrawal Penalty described in Section 3.7.1 of this LGIP; and (iii) refund to Interconnection Customer any portion of the refundable portion of Interconnection Customer's study deposit that exceeds the costs that Transmission Provider has incurred, including interest calculated in accordance with Section 35.19a(a)(2) of FERC's regulations. Transmission Provider shall also refund any portion of the Commercial Readiness Deposit not applied to the Withdrawal Penalty and, if applicable, the deposit in lieu of site control. In the event of such withdrawal, Transmission Provider, subject to the confidentiality provisions of Section 13.1 of this LGIP, shall provide, at Interconnection Customer's request, all information that Transmission Provider developed for any completed study conducted up to the date of withdrawal of the Interconnection Request.

3.7.1 Withdrawal Penalty

Interconnection Customer shall be subject to a Withdrawal Penalty if it withdraws its Interconnection Request or is deemed withdrawn, or the Generating Facility does not otherwise reach Commercial Operation unless: (1) the withdrawal does not have a material impact on the cost or timing of any Interconnection Request [with an equal or lower Queue Position]*in the same Cluster;* (2) Interconnection Customer withdraws after receiving Interconnection Customer's most recent Cluster Restudy Report and the Network Upgrade costs assigned to the Interconnection Request identified in that report have increased by more than twenty-five percent (25%) compared to costs identified in Interconnection Customer's preceding Cluster Study Report or Cluster Restudy Report; or (3) Interconnection Customer withdraws after receiving Interconnection Customer's Interconnection Facilities Study Report and the Network Upgrade costs assigned to the Interconnection Request identified in that report have increased by more than one hundred percent (100%) compared to costs identified in the Cluster Study Report *or Cluster Restudy Report.*

3.7.1.1 Calculation of the Withdrawal Penalty

If Interconnection Customer withdraws its Interconnection Request or is deemed withdrawn prior to the commencement of the initial Cluster Study, Interconnection Customer shall not be subject to a Withdrawal Penalty. If Interconnection Customer withdraws, is deemed withdrawn, or otherwise does not reach Commercial Operation at any point after the commencement of the initial Cluster Study, that Interconnection Customer's Withdrawal Penalty will be the greater of: (1) [the] Interconnection Customer's study deposit required under Section 3.1.1.1 of this LGIP; or (2) as follows in (a)–(d):

(a) If Interconnection Customer withdraws or is deemed withdrawn during the Cluster Study or after receipt of a Cluster Study Report, but prior to commencement of the Cluster Restudy or Interconnection Facilities Study *if no Cluster Restudy is required,* Interconnection Customer shall be charged two (2) times its actual allocated cost of all studies performed for Interconnection Customers in the Cluster up until that point in the [i]*I*nterconnection [s]*S*tudy process.

(b) If Interconnection Customer withdraws or is deemed withdrawn during the Cluster Restudy or after receipt of any applicable restudy reports issued pursuant to Section 7.5 of this LGIP, but prior to commencement of the Interconnection Facilities Study, Interconnection Customer shall be charged five percent (5%) its estimated Network Upgrade costs.

(c) If Interconnection Customer withdraws or is deemed withdrawn during the Interconnection Facilities Study, after receipt of the Interconnection Facilities Study Report issued pursuant to Section 8.3 of this LGIP, or after receipt of the draft LGIA but before Interconnection Customer has executed an LGIA or has requested that its LGIA be filed unexecuted, and has satisfied the other requirements described in Section 11.3 of this LGIP (*i.e.,* Site Control demonstration, LGIA Deposit, reasonable evidence of one or more milestones in the development of the Generating Facility), Interconnection Customer shall be charged ten percent (10%) its estimated Network Upgrade costs.

(d) If Interconnection Customer has executed an LGIA or has requested that its LGIA be filed unexecuted and has satisfied the other requirements described in Section 11.3 of this LGIP (*i.e.,* Site Control demonstration, LGIA Deposit, reasonable evidence of one or more milestones in the development of the Generating Facility) and subsequently withdraws its Interconnection Request or if Interconnection Customer's Generating Facility otherwise does not reach Commercial Operation, that Interconnection Customer's Withdrawal Penalty shall be twenty percent (20%) its estimated Network Upgrade costs.

3.7.1.2 Distribution of the Withdrawal Penalty

3.7.1.2.1 Initial Distribution of Withdrawal Penalties Prior to Assessment of Network Upgrade Costs Previously Shared With Withdrawn Interconnection Customers in the Same Cluster

For a single [c]*C*luster, Transmission Provider shall hold all Withdrawal Penalty funds until all Interconnection Customers in that Cluster have either: (1) withdrawn or been deemed withdrawn; (2) executed an LGIA; or (3) requested an LGIA to be filed unexecuted. Any Withdrawal Penalty funds collected from the Cluster shall first be used to fund studies conducted under the Cluster Study Process for Interconnection Customers in the same Cluster that have executed the LGIA or requested the LGIA to be filed unexecuted. Next, after the Withdrawal Penalty funds are applied to relevant study costs in the same Cluster, Transmission Provider will apply the remaining Withdrawal Penalty funds to reduce net increases, for Interconnection Customers in the same Cluster, in Interconnection Customers' Network Upgrade cost assignment and associated financial security requirements under Article 11.5 of the *pro forma* LGIA attributable to the impacts of withdrawn Interconnection Customers that shared an obligation with the remaining

Interconnection Customers to fund a Network Upgrade, as described in more detail in Sections 3.7.1.2.3 and 3.7.1.2.4. *The total amount of funds used to fund these studies under the Cluster Study Process or those applied to any net increases in Network Upgrade costs for Interconnection Customers in the same Cluster shall not exceed the total amount of Withdrawal Penalty funds collected from the Cluster.*

Withdrawal Penalty funds shall first be applied as a refund to invoiced study costs for Interconnection Customers in the same Cluster that did not withdraw within *thirty (*30*)* Calendar Days of such Interconnection Customers executing their LGIA or requesting to have their LGIA filed unexecuted. Distribution of Withdrawal Penalty funds within one specific Cluster [Study]for study costs shall not exceed the total actual Cluster Study *Process* costs *for the Cluster.* Withdrawal Penalty funds applied to study costs shall be allocated within the same Cluster to Interconnection Customers in a manner consistent with [the] Transmission Provider's method in Section 13.3 of this LGIP for allocating the costs of [i]*I*nterconnection [s]*S*tudies conducted on a clustered basis. Transmission Provider shall post the balance of Withdrawal Penalty funds held by Transmission Provider but not yet dispersed on its OASIS site and update this posting on a quarterly basis.

If an Interconnection Customer withdraws after it executes, or requests the unexecuted filing of, its LGIA, Transmission Provider shall first apply such Interconnection Customer's Withdrawal Penalty funds to any restudy costs required due to [the] Interconnection Customer's withdrawal as a credit to as-yet-to be invoiced study costs to be charged to the remaining Interconnection Customers in the same Cluster in a manner consistent with [the] Transmission Provider's method in Section 13.3 of this LGIP for allocating the costs of [i]*I*nterconnection [s]*S*tudies conducted on a clustered basis. Distribution of the Withdrawal Penalty funds for such restudy costs shall not exceed the total actual restudy costs.

3.7.1.2.2 Assessment of Network Upgrade Costs Previously Shared With Withdrawn Interconnection Customers in the Same Cluster

If Withdrawal Penalty funds remain for the same Cluster after the Withdrawal Penalty funds are applied to relevant study costs, Transmission Provider will determine if the withdrawn Interconnection Customers, at any point in the Cluster Study Process, shared cost assignment for one or more Network Upgrades with any remaining Interconnection Customers in the same Cluster based on the Cluster Study Report, Cluster Restudy Report(s), Interconnection Facilities Study Report, and any subsequent issued restudy report issued for the Cluster.

In [s]*S*ection 3.7.1.2 of this LGIP, shared cost assignments for Network Upgrades refers to the cost of Network Upgrades still needed for the same Cluster for which an Interconnection Customer, prior to withdrawing its Interconnection Request, shared the obligation to fund along with Interconnection Customers that have executed an LGIA, or requested the LGIA to filed unexecuted.

If Transmission Provider's assessment determines that there are no shared cost assignments for any Network Upgrades in the same Cluster for the withdrawn Interconnection Customer, or determines that the withdrawn Interconnection Customer's withdrawal did not cause a net increase in the shared cost assignment for any remaining Interconnection Customers' Network Upgrade(s) in the same Cluster, Transmission Provider will return any remaining Withdrawal Penalty funds to the withdrawn Interconnection Customer(s). Such remaining Withdrawal Penalty funds will be returned to withdrawn Interconnection Customers based on the proportion of each withdrawn Interconnection Customer's contribution to the total amount of Withdrawal Penalty funds collected for the Cluster (*i.e.,* the total amount before the initial disbursement required under Section 3.7.1.2.1 of this LGIP). Transmission Provider must make such disbursement within sixty (60) Calendar Days of the date on which all Interconnection Customers in the same Cluster have either: (1) withdrawn or been deemed withdrawn; (2) executed an LGIA; or (3) requested an LGIA to be filed unexecuted. For the withdrawn Interconnection Customers that Transmission Provider determines have caused a net increase in the shared cost assignment for one or more Network Upgrade(s) in the same Cluster under [subs]*S*ection 3.7.1.2.3(a) *of this LGIP,* Transmission Provider will determine each such withdrawn Interconnection Customers' Withdrawal Penalty funds remaining balance that will be applied toward net increases in Network Upgrade shared costs calculated under [subs]*S*ections 3.7.1.2.3(a) and 3.7.1.2.3(b) *of this LGIP* based on each such withdrawn Interconnection Customer's proportional contribution to the total amount of Withdrawal Penalty funds collected for the same Cluster (*i.e.,* the total amount before the initial disbursement requirement under Section 3.7.1.2.1 of this LGIP).

If [the] Transmission Provider's assessment determines that there are shared cost assignments for Network Upgrades in the same Cluster, Transmission Provider will calculate the remaining Interconnection Customers' net increase in cost assignment for Network Upgrades due to a shared cost assignment for Network Upgrades with the withdrawn Interconnection Customer and distribute Withdrawal Penalty funds as described in Section 3.7.1.2.3, depending on whether the withdrawal occurred before the withdrawing Interconnection Customer executed the LGIA (or filed unexecuted), as described in [subs]*S*ection 3.7.1.2.3(a) *of this LGIP,* or after such execution (or filing unexecuted) of an LGIA, as described in [subs]*S*ection 3.7.1.2.3(b) *of this LGIP.*

As discussed in [subs]*S*ection 3.7.1.2.4 *of this LGIP,* Transmission Provider will amend executed (or filed unexecuted) LGIAs of the remaining Interconnection Customers in the same Cluster to apply the remaining Withdrawal Penalty funds to reduce net increases in Interconnection Customers' Network Upgrade cost assignment and associated financial security requirements under Article 11.5 of the pro forma LGIA attributable to the impacts of withdrawn Interconnection Customers on Interconnection Customers remaining in the same Cluster that had a shared cost assignment for Network Upgrades with the withdrawn Interconnection Customers.

3.7.1.2.3 Impact Calculations

3.7.1.2.3(a) Impact Calculation for Withdrawals During the Cluster Study Process

If an Interconnection Customer withdraws before it executes, or requests the unexecuted filing of, its LGIA, [the] Transmission Provider will distribute in the following manner the Withdrawal Penalty funds to reduce the Network Upgrade cost impact on the remaining Interconnection Customers in the same Cluster who had a shared cost assignment for a Network Upgrade with the withdrawn Interconnection Customer.

To calculate the reduction in the remaining Interconnection Customers' net increase in Network Upgrade costs and associated financial security requirements under Article 11.5 of the pro forma LGIA, [the] Transmission Provider will determine the financial impact of a withdrawing Interconnection Customer on other Interconnection Customers in the same Cluster that shared an obligation to fund the same Network Upgrade(s). Transmission Provider shall calculate this financial impact once all [the] Interconnection Customers in the same Cluster either: (1) have withdrawn or have been deemed withdrawn; (2) executed an LGIA; or (3) request an LGIA to be filed unexecuted. Transmission Provider will perform the financial impact calculation using the following steps.

First, Transmission Provider must determine which withdrawn Interconnection Customers shared an obligation to fund Network Upgrades with Interconnection Customers from the same Cluster that have LGIAs that are executed or have been requested to be filed unexecuted. Next, Transmission Provider shall perform the calculation of the financial impact of a withdrawal on another Interconnection Request in the same Cluster by performing a comparison of the Network Upgrade cost estimates between each of the following:

(1) Cluster Study phase to Cluster Restudy phase (if Cluster Restudy was necessary);

(2) Cluster Restudy phase to *Interconnection* Facilities Study phase (if a Cluster Restudy was necessary);

(3) Cluster Study phase to *Interconnection* Facilities Study phase (if no Cluster Restudy was performed);

(4) *Interconnection* Facilities Study phase to any subsequent restudy that was performed before the execution or filing of an unexecuted LGIA;

(5) the restudy to the executed, or filed unexecuted, LGIA (if a restudy was performed after the *Interconnection* Facilities Study phase and before the execution or filing of an unexecuted LGIA).

If, based on the above calculations, Transmission Provider determines:

(i) that the costs assigned to an Interconnection Customer in the same Cluster for Network Upgrades that a

withdrawn Interconnection Customer shared cost assignment for increased between any two studies, and

(ii) after the impacted Interconnection Customer's LGIA was executed or filed unexecuted, [the] Interconnection Customer's cost assignment for the relevant Network Upgrade is greater than it was prior to the withdrawal of [the] Interconnection Customer in the same Cluster that shared cost assignment for the Network Upgrade, then Transmission Provider shall apply the withdrawn Interconnection Customer's Withdrawal Penalty funds that has not already been applied to study costs in the amount of the financial impact by reducing, in the same Cluster, the remaining Interconnection Customer's Network Upgrade costs and associated financial security requirements under Article 11.5 of the *pro forma* LGIA.

If Transmission Provider determines that more than one Interconnection Customer in the same Cluster was financially impacted by the same withdrawn Interconnection Customer, Transmission Provider will apply the relevant withdrawn Interconnection Customer's Withdrawal Penalty funds that has not already been applied to study costs to reduce the financial impact to each Interconnection Customer based on each Interconnection Customer's proportional share of the financial impact, as determined by either the [p]*P*roportional [i]*I*mpact [m]*M*ethod if it is a System Network Upgrade or on a per capita basis if it is a Substation Network Upgrade, as described under Section 4.2.1 of this LGIP.

3.7.1.2.3(b) Impact Calculation for Withdrawals in the Same Cluster After the Cluster Study Process

If an Interconnection Customer withdraws after it executes, or requests the unexecuted filing of, its LGIA, Transmission Provider will distribute in the following manner the remaining Withdrawal Penalty funds to reduce the Network Upgrade cost impact on the remaining Interconnection Customers in the same Cluster who had a shared cost assignment with the withdrawn Interconnection Customer for one or more Network Upgrades.

Transmission Provider will determine the financial impact on the remaining Interconnection Customers in the same Cluster within *thirty (*30*)* [c]*C*alendar [d]*D*ays after the withdrawal occurs. [The] Transmission Provider will determine that financial impact by comparing the Network Upgrade cost funding obligations [the] Interconnection Customers shared with the withdrawn Interconnection Customer before the withdrawal of [the] Interconnection Customer and after the withdrawal of [the] Interconnection Customer. If that comparison indicates an increase in Network Upgrade costs for an Interconnection Customer, Transmission Provider shall apply the withdrawn Interconnection Customer's Withdrawal Penalty funds to the increased costs each impacted Interconnection Customer in the same Cluster experienced associated with such Network Upgrade(s) in proportion to each Interconnection Customer's increased cost assignment, as determined by Transmission Provider.

3.7.1.2.4 Amending LGIA To Apply Reductions to Interconnection Customer's Assigned Network Upgrade Costs and Associated Financial Security Requirement With Respect to Withdrawals in the Same Cluster

Within *thirty (*30*)* Calendar Days of all Interconnection Customers in the same Cluster having: (1) withdrawn or been deemed withdrawn; (2) executed an LGIA; or (3) requested an LGIA to be filed unexecuted, Transmission Provider must perform the calculations described in [subs]*S*ection 3.7.1.2.3(a) of this LGIP and provide such Interconnection Customers with an amended LGIA that provides the reduction in Network Upgrade cost assignment and associated reduction to [the] Interconnection Customer's financial security requirements, under Article 11.5 of the pro forma LGIA, due from [the] Interconnection Customer to [the] Transmission Provider.

Where an Interconnection Customer executes the LGIA (or requests the filing of an unexecuted LGIA) and is later withdrawn or its LGIA is terminated, Transmission Provider must, within *thirty (*30*)* Calendar Days of such withdrawal or termination, perform the calculations described in [subs]*S*ection 3.7.1.2.3(b) of this LGIP and provide such Interconnection Customers in the same Cluster with an amended LGIA that provides the reduction in Network Upgrade cost assignment and associated reduction to [the] Interconnection Customer's financial security requirements, under Article 11.5 of the pro forma LGIA, due from [the] Interconnection Customer to Transmission Provider.

Any repayment by Transmission Provider to Interconnection Customer under Article 11.4 of the pro forma LGIA of amounts advanced for Network Upgrades after the Generating Facility achieves Commercial Operation shall be limited to [the] Interconnection Customer's total amount of Network Upgrade costs paid and associated financial security provided to Transmission Provider under Article 11.5 of the pro forma LGIA.

3.7.1.2.5 Final Distribution of Withdrawal Penalty Funds

If Withdrawal Penalty funds remain for the Cluster after the Withdrawal Penalty funds are applied to relevant study costs and net increases in shared cost assignments for Network Upgrades to remaining Interconnection Customers, Transmission Provider will return any remaining Withdrawal Penalty funds to the withdrawn Interconnection Customers in the same Cluster net of the amount of each withdrawn Interconnection Customer's Withdrawal Penalty funds applied to study costs and net increases in shared cost assignments for Network Upgrades to remaining Interconnection Customers.

3.8 Identification of Contingent Facilities

Transmission Provider shall post in this section a method for identifying the Contingent Facilities to be provided to Interconnection Customer at the conclusion of the Cluster Study and included in Interconnection Customer's Large Generator Interconnection Agreement. The method shall be sufficiently transparent to determine why a specific Contingent Facility was identified and how it relates to the Interconnection Request. Transmission Provider shall also provide, upon request of Interconnection Customer, the estimated Interconnection Facility and/or Network Upgrade costs and estimated in-service completion time of each identified Contingent Facility when this information is readily available and not commercially sensitive.

3.9 Penalties for Failure To Meet Study Deadlines

(1) Transmission Provider shall be subject to a penalty if it fails to complete a Cluster Study, Cluster Restudy, Interconnection Facilities Study, or Affected Systems Study by the applicable deadline set forth in this LGIP. Transmission Provider must pay the penalty for each late Cluster Study, Cluster Restudy, and Interconnection Facilities Study on a pro rata basis per Interconnection Request to all Interconnection Customer(s) included in the relevant study that did not withdraw, or were not deemed withdrawn, from Transmission Provider's interconnection queue before the missed study deadline, *in proportion to each Interconnection Customer's final study cost.* Transmission Provider must pay the penalty for a late Affected Systems Study on a pro rata basis per interconnection request to all Affected System Interconnection Customer(s) included in the relevant Affected System Study that did not withdraw, or were not deemed withdrawn, from the host transmission provider's interconnection queue before the missed study deadline, *in proportion to each Interconnection Customer's final study cost.* The study delay penalty for each late study shall be distributed no later than forty-five (45) Calendar Days after the late study has been completed.

(2) For penalties assessed in accordance with this Section, the penalty amount will be equal to: $1,000 per Business Day for delays of Cluster Studies beyond the applicable deadline set forth in this LGIP; $2,000 per Business Day for delays of Cluster Re[-S]studies beyond the applicable deadline set forth in this LGIP; $2,000 per Business Day for delays of Affected System Studies beyond the applicable deadline set forth in this LGIP; and $2,500 per Business Day for delays of Interconnection Facilities Studies beyond the applicable deadline set forth in this LGIP. The total amount of a penalty assessed under this Section shall not exceed: (a) one hundred percent (100%) of the initial study deposit(s) received for all of the Interconnection Requests in the Cluster for Cluster Studies and Cluster Restudies; (b) one hundred percent (100%) of the initial study deposit received for the single Interconnection Request in the study for *Interconnection* Facilities Studies; and (c) one hundred percent (100%) of the study deposit(s) that Transmission Provider collects for conducting the Affected System Study.

(3) Transmission Provider may appeal to the Commission any penalties imposed under this Section. Any such appeal must be filed no later than forty-five (45) Calendar

Days after the late study has been completed. While an appeal to the Commission is pending, Transmission Provider shall remain liable for the penalty, but need not distribute the penalty until forty-five (45) Calendar Days after (1) the deadline for filing a rehearing request has ended, if no requests for rehearing of the appeal have been filed, or (2) the date that any requests for rehearing of the Commission's decision on the appeal are no longer pending before the Commission. The Commission may excuse Transmission Provider from penalties under this Section for good cause.

(4) No penalty will be assessed under this Section where a study is delayed by ten (10) Business Days or less. If the study is delayed by more than ten (10) Business Days, the penalty amount will be calculated from the first Business Day [the] Transmission Provider misses the applicable study deadline.

(5) If (a) Transmission Provider needs to extend the deadline for a particular study subject to penalties under this Section and (b) all Interconnection Customers or Affected System Interconnection Customers included in the relevant study mutually agree to such an extension, the deadline for that study shall be extended thirty (30) Business Days from the original deadline. In such a scenario, no penalty will be assessed for Transmission Provider missing the original deadline.

(6) No penalties shall be assessed until the third Cluster Study cycle (including any Transitional Cluster Study cycle, but not Transitional Serial *Interconnection Facilities* Studies) after the Commission-approved effective date of Transmission Provider's filing made in compliance with the Final Rule in Docket No. RM22–14–000.

(7) Transmission Provider must maintain on its OASIS or its public website summary statistics related to penalties assessed under this Section, updated quarterly. For each calendar quarter, Transmission Provider must calculate and post (1) the total amount of penalties assessed under this Section during the previous reporting quarter and (2) the highest penalty assessed under this Section paid to a single Interconnection Customer or Affected System Interconnection Customer during the previous reporting quarter. Transmission Provider must post on its OASIS or its website these penalty amounts for each calendar quarter within thirty (30) Calendar Days of the end of the calendar quarter. Transmission Provider must maintain the quarterly measures posted on its OASIS or its website for three (3) calendar years with the first required posting to be the third Cluster Study cycle (including any Transitional Cluster Study cycle, but not Transitional Serial *Interconnection Facilities* Studies) after Transmission Provider transitions to the Cluster Study Process.

Section 4. Interconnection Request Evaluation Process

Once an Interconnection Customer has submitted a valid Interconnection Request pursuant to Section 3.4 of this LGIP, such Interconnection Request shall become part of [the] Transmission Provider's interconnection queue for further processing pursuant to the following procedures.

4.1 Queue Position

4.1.1 Assignment of Queue Position

Transmission Provider shall assign a Queue Position as follows: the Queue Position within the queue shall be assigned based upon the date and time of receipt of all items required pursuant to the provisions of Section 3.4 of this LGIP. All Interconnection Requests submitted and validated in a single Cluster Request Window shall be considered equally queued.

4.1.2 Higher Queue Position

A higher Queue Position assigned to an Interconnection Request is one that has been placed ''earlier'' in the queue in relation to another Interconnection Request that is assigned a lower Queue Position. All requests studied in a single Cluster shall be considered equally queued. Interconnection Customers that are part of Clusters initiated earlier in time than an instant [Q]*q*ueue shall be considered to have a higher Queue Position than Interconnection Customers that are part of Clusters initiated later than an instant [Q]*q*ueue.

4.2 General Study Process

Interconnection Studies performed within the Cluster Study Process shall be conducted in such a manner to ensure the efficient implementation of the applicable regional transmission expansion plan in light of the Transmission System's capabilities at the time of each study and consistent with Good Utility Practice.

Transmission Provider may use subgroups in the Cluster Study Process. In all instances in which Transmission Provider elects to use subgroups in the [c]*C*luster [s]*S*tudy [p]*P*rocess, Transmission Provider must publish the criteria used to define and determine subgroups on its OASIS or public website.

4.2.1 Cost Allocation for Interconnection Facilities and Network Upgrades

(1) For Network Upgrades identified in Cluster Studies, Transmission Provider shall calculate each Interconnection Customer's share of the costs as follows:

(a) Substation Network Upgrades, including all switching stations, shall be allocated *first* per capita *to Interconnection Facilities interconnecting to the substation at the same voltage level, and then per capita* to each Generating Facility *sharing the Interconnection Facility* [interconnecting at the same substation].

(b) System Network Upgrades shall be allocated based on the proportional impact of each individual Generating Facility in the Cluster Study on the need for a specific System Network Upgrade. {Transmission Provider shall include in this section a description of how cost for each facility type designated as a network upgrade will be allocated using its proportional impact method.}

(c) An Interconnection Customer that funds Substation Network Upgrades and/or System Network Upgrades shall be entitled to transmission credits as provided in Article 11.4 of the LGIA.

(2) The costs of any needed Interconnection Facilities identified in the Cluster Study Process will be directly assigned to [the] Interconnection Customer(s) using such facilities. Where Interconnection Customers in the Cluster agree to share Interconnection Facilities, the cost of such Interconnection Facilities shall be allocated based on the number of Generating Facilities sharing use of such Interconnection Facilities on a per capita basis (*i.e.,* on a per Generating Facility basis), unless Parties mutually agree to a different cost sharing arrangement.

4.3 Transferability of Queue Position

An Interconnection Customer may transfer its Queue Position to another entity only if such entity acquires the specific Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change.

4.4 Modifications

Interconnection Customer shall submit to Transmission Provider, in writing, modifications to any information provided in the Interconnection Request. Interconnection Customer shall retain its Queue Position if the modifications are in accordance with Sections 4.4.1, 4.4.2, or 4.4.5 of this LGIP, or are determined not to be Material Modifications pursuant to Section 4.4.3 of this LGIP.

Notwithstanding the above, during the course of the Interconnection Studies, either Interconnection Customer or Transmission Provider may identify changes to the planned interconnection that may improve the costs and benefits (including reliability) of the interconnection, and the ability of the proposed change to accommodate the Interconnection Request. To the extent the identified changes are acceptable to Transmission Provider and Interconnection Customer, such acceptance not to be unreasonably withheld, Transmission Provider shall modify the Point of Interconnection prior to return of the executed Cluster Study Agreement, and Interconnection Customer shall retain its Queue Position.

4.4.1 Prior to the return of the executed Cluster Study Agreement to Transmission Provider, modifications permitted under this Section shall include specifically: (a) a decrease of up to [60] *sixty* percent (*60%*) of electrical output (MW) of the proposed project, through either (1) a decrease in plant size or (2) a decrease in Interconnection Service level (consistent with the process described in Section 3.1 of this LGIP) accomplished by applying Transmission Provider-approved injection-limiting equipment; (b) modifying the technical parameters associated with the Large Generating Facility technology or the Large Generating Facility step-up transformer impedance characteristics; and (c) modifying the interconnection configuration. For plant increases, the incremental increase in plant output will go in the next Cluster [Study]*Request* Window for the purposes of cost allocation and study analysis.

4.4.2 Prior to the return of the executed Interconnection Facilities Study Agreement to Transmission Provider, the modifications permitted under this Section shall include specifically: (a) additional [15] *fifteen* percent (*15%*) decrease of electrical output of the

proposed project through either (1) a decrease in plant size (MW) or (2) a decrease in Interconnection Service level (consistent with the process described in Section 3.1) accomplished by applying Transmission Provider-approved injection-limiting equipment; (b) Large Generating Facility technical parameters associated with modifications to Large Generating Facility technology and transformer impedances; provided, however, the incremental costs associated with those modifications are the responsibility of the requesting Interconnection Customer; and (c) a Permissible Technological Advancement for the Large Generating Facility after the submission of the Interconnection Request. Section 4.4.6 *of this LGIP* specifies a separate technological change procedure including the requisite information and process that will be followed to assess whether [the] Interconnection Customer's proposed technological advancement under Section 4.4.2(c) *of this LGIP* is a Material Modification. Section 1 *of this LGIP* contains a definition of Permissible Technological Advancement.

4.4.3 Prior to making any modification other than those specifically permitted by Sections 4.4.1, 4.4.2, and 4.4.5 of this LGIP, Interconnection Customer may first request that Transmission Provider evaluate whether such modification is a Material Modification. In response to Interconnection Customer's request, Transmission Provider shall evaluate the proposed modifications prior to making them and inform Interconnection Customer in writing of whether the modifications would constitute a Material Modification. Any change to the Point of Interconnection, except those deemed acceptable under Sections 3.1.2 or 4.4 of this LGIP or so allowed elsewhere, shall constitute a Material Modification. Interconnection Customer may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification. Transmission Provider shall study the addition of a Generating Facility that includes at least one electric storage resource using operating assumptions (*i.e.,* whether the interconnecting Generating Facility will or will not charge at peak load) that reflect the proposed charging behavior of the Generating Facility as requested by Interconnection Customer, unless Transmission Provider determines that Good Utility Practice, including Applicable Reliability Standards, otherwise requires the use of different operating assumptions.

{Transmission Providers using fuel-based dispatch assumptions in Interconnection Studies are not required to include Section 4.4.3.1 because it does not apply to them}

4.4.3.1 Interconnection Customer may request, and Transmission Provider shall evaluate, the addition to the Interconnection Request of a Generating Facility with the same Point of Interconnection indicated in the initial Interconnection Request, if the addition of the Generating Facility does not increase the requested Interconnection Service level. Transmission Provider must evaluate such modifications prior to deeming them a Material Modification, but only if Interconnection Customer submits them prior to the return of the executed *Interconnection* Facilities Study Agreement by Interconnection Customer to Transmission Provider. Interconnection Customers requesting that such a modification be evaluated must demonstrate the required Site Control at the time such request is made.

4.4.4 Upon receipt of Interconnection Customer's request for modification permitted under this Section 4.4 *of this LGIP,* Transmission Provider shall commence and perform any necessary additional studies as soon as practicable, but in no event shall Transmission Provider commence such studies later than thirty (30) Calendar Days after receiving notice of Interconnection Customer's request. Any additional studies resulting from such modification shall be done at Interconnection Customer's cost. Any such request for modification of the Interconnection Request must be accompanied by any resulting updates to the models described in Attachment A to Appendix 1 of this LGIP.

4.4.5 Extensions of less than three (3) cumulative years in the Commercial Operation Date of the Large Generating Facility to which the Interconnection Request relates are not material and should be handled through construction sequencing. For purposes of this section, the Commercial Operation Date reflected in the initial Interconnection Request shall be used to calculate the permissible extension prior to Interconnection Customer executing an LGIA or requesting that the LGIA be filed unexecuted. After an LGIA is executed or requested to be filed unexecuted, the Commercial Operation Date reflected in the LGIA shall be used to calculate the permissible extension. Such cumulative extensions may not exceed three years including both extensions requested after execution of the LGIA by Interconnection Customer or the filing of an unexecuted LGIA by Transmission Provider and those requested prior to execution of the LGIA by Interconnection Customer or the filing of an unexecuted LGIA by Transmission Provider.

4.4.6 Technological Change Procedures

{Insert technological change procedure here}

Section 5. Procedures for Interconnection Requests Submitted Prior to Effective Date of the Cluster Study Revisions

5.1 Procedures for Transitioning to the Cluster Study Process

5.1.1 Any Interconnection Customer assigned a Queue Position as of thirty (30) Calendar Days after {Transmission Provider to insert filing date} (the filing date of this LGIP) shall retain that Queue Position subject to the requirements in Sections 5.1.1.1 and 5.1.1.2 of this LGIP. Any Interconnection Customer that fails to meet these requirements shall have its Interconnection Request deemed withdrawn by Transmission Provider pursuant to Section 3.7 of this LGIP. In such case, Transmission Provider shall not assess [the] Interconnection Customer any Withdrawal Penalty.

Any Interconnection Customer that has received a final Interconnection Facilities Study Report before the commencement of the studies under the transition process set forth in this [s]*S*ection shall be tendered an LGIA pursuant to Section 11 of this LGIP, and shall not be required to enter this transition process.

5.1.1.1 Transitional Serial Study

An Interconnection Customer that has been tendered an Interconnection Facilities Study Agreement as of thirty (30) Calendar Days after {Transmission Provider to insert filing date} (the filing date of this LGIP) may opt to proceed with an Interconnection Facilities Study. Transmission Provider shall tender each eligible Interconnection Customer a Transitional Serial Interconnection Facilities Study Agreement, in the form of Appendix 8 to this LGIP, no later than the Commission-approved effective date of this LGIP. Transmission Provider shall proceed with the Interconnection Facilities Study, provided that [the] Interconnection Customer: (1) meets each of the following requirements; and (2) executes the Transitional Serial Interconnection Facilities Study Agreement within sixty (60) Calendar Days of the Commission-approved effective date of this LGIP. If an eligible Interconnection Customer does not meet these requirements, its Interconnection Request shall be deemed withdrawn without penalty. Transmission Provider must commence the Transitional Serial Interconnection Facilities Study at the conclusion of this sixty (60) Calendar Day period. Transitional Serial Interconnection Facilities Study costs shall be allocated according to the method described in Section 13.3 of this LGIP.

All of the following must be included when an Interconnection Customer returns the Transitional Serial Interconnection Facilities Study Agreement:

(1) A deposit equal to one hundred percent (100%) of the costs identified for Transmission Provider's Interconnection Facilities and Network Upgrades in Interconnection Customer's system impact study report. If Interconnection Customer does not withdraw, the deposit shall be trued up to actual costs once they are known and applied to future construction costs described in Interconnection Customer's eventual LGIA. Any amounts in excess of the actual construction costs shall be returned to Interconnection Customer within thirty (30) Calendar Days of the issuance of a final invoice for construction costs, in accordance with Article 12.2 of the pro forma LGIA. If Interconnection Customer withdraws or otherwise does not reach Commercial Operation, Transmission Provider shall refund the remaining deposit after the final invoice for study costs and *Transitional* Withdrawal Penalty is settled. The deposit shall be in the form of an irrevocable letter of credit,[or] cash, *a surety bond, or other form of security that is reasonably acceptable to Transmission Provider,* where cash deposits shall be treated according to Section 3.7 of this LGIP.

(2) Exclusive Site Control for 100% of the proposed Generating Facility.

Transmission Provider shall conduct each Transitional Serial Interconnection Facilities Study and issue the associated Transitional Serial Interconnection Facilities Study Report within one hundred fifty (150)

Calendar Days of the Commission-approved effective date of this LGIP.

After Transmission Provider issues each Transitional Interconnection Facilities Study Report, Interconnection Customer shall proceed pursuant to Section 11 of this LGIP. If Interconnection Customer withdraws its Interconnection Request or if Interconnection Customer's Generating Facility otherwise does not reach Commercial Operation, a *Transitional* Withdrawal Penalty shall be imposed on Interconnection Customer equal to nine (9) times Interconnection Customer's total study cost incurred since entering [the] Transmission Provider's interconnection queue (including the cost of studies conducted under Section 5 of this LGIP).

5.1.1.2 Transitional Cluster Study

An Interconnection Customer with an assigned Queue Position as of thirty (30) Calendar Days after {Transmission Provider to insert filing date} (the filing date of this LGIP) may opt to proceed with a Transitional Cluster Study. Transmission Provider shall tender each eligible Interconnection Customer a Transitional Cluster Study Agreement, in the form of Appendix 7 to this LGIP, no later than the Commission-approved effective date of this LGIP. Transmission Provider shall proceed with the Transitional Cluster Study that includes each Interconnection Customer that: (1) meets each of the following requirements listed as (1)–(3) in this section; and (2) executes the Transitional Cluster Study Agreement within sixty (60) Calendar Days of the Commission-approved effective date of this LGIP. All Interconnection Requests that enter the Transitional Cluster Study shall be considered to have an equal Queue Position that is lower than Interconnection Customer(s) proceeding with Transitional Serial Interconnection Facilities Study. If an eligible Interconnection Customer does not meet these requirements, its Interconnection Request shall be deemed withdrawn without penalty. Transmission Provider must commence the Transitional Cluster Study at the conclusion of this sixty (60) Calendar Day period. All identified Transmission Provider's Interconnection Facilities and Network Upgrade costs shall be allocated according to Section 4.2.1 of this LGIP. Transitional Cluster Study costs shall be allocated according to the method described in Section 13.3 of this LGIP.

Interconnection Customer may make a one-time extension to its requested Commercial Operation Date upon entry into the Transitional Cluster Study, where any such extension shall not result in a Commercial Operation Date later than December 31, 2027.

All of the following must be included when an Interconnection Customer returns the Transitional Cluster Study Agreement:

(1) A selection of either Energy Resource Interconnection Service or Network Resource Interconnection Service.

(2) A deposit of five million dollars ($5,000,000) in the form of an irrevocable letter of credit,[or] cash, *a surety bond, or other form of security that is reasonably acceptable to Transmission Provider,* where cash deposits will be treated according to Section 3.7 of this LGIP. If Interconnection Customer does not withdraw, the deposit shall be reconciled with and applied towards future construction costs described in the LGIA. Any amounts in excess of the actual construction costs shall be returned to Interconnection Customer within thirty (30) Calendar Days of the issuance of a final invoice for construction costs, in accordance with Article 12.2 of the pro forma LGIA. If Interconnection Customer withdraws or otherwise does not reach Commercial Operation, Transmission Provider must refund the remaining deposit once the final invoice for study costs and *Transitional* Withdrawal Penalty is settled.

(3) Exclusive Site Control for 100% of the proposed Generating Facility.

Transmission Provider shall conduct the Transitional Cluster Study and issue both an associated interim Transitional Cluster Study Report and an associated final Transitional Cluster Study Report. The interim Transitional Cluster Study Report shall provide the following information:

—identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
—identification of any thermal overload or voltage limit violations resulting from the interconnection;
—identification of any instability or inadequately damped response to system disturbances resulting from the interconnection; and
—Transmission Provider's Interconnection Facilities and Network Upgrades that are expected to be required as a result of the Interconnection Request(s) and a non-binding, good faith estimate of cost responsibility and a non-binding, good faith estimated time to construct.

In addition to the information provided in the interim Transitional Cluster Study Report, the final Transitional Cluster Study Report shall provide a description of, estimated cost of, and schedule for construction of [the] Transmission Provider's Interconnection Facilities and Network Upgrades required to interconnect the Generating Facility to the Transmission System that resolve issues identified in the interim Transitional Cluster Study Report.

The interim and final Transitional Cluster Study Reports shall be issued within three hundred (300) and three hundred sixty (360) Calendar Days of the Commission-approved effective date of this LGIP, respectively, and shall be posted on Transmission Provider's OASIS consistent with the posting of other study results pursuant to Section 3.5.1 of this LGIP. Interconnection Customer shall have thirty (30) Calendar Days to comment on the interim Transitional Cluster Study Report, once it has been received.

After Transmission Provider issues the final Transitional Cluster Study Report, Interconnection Customer shall proceed pursuant to Section 11 of this LGIP. If Interconnection Customer withdraws its Interconnection Request or if Interconnection Customer's Generating Facility otherwise does not reach Commercial Operation, a *Transitional* Withdrawal Penalty will be imposed o*n*[m] Interconnection Customer equal to nine (9) times Interconnection Customer's total study cost incurred since entering [the] Transmission Provider's interconnection queue (including the cost of studies conducted under Section 5 of this LGIP).

5.1.2 Transmission Providers With Existing Cluster Study Processes or Currently in Transition

If Transmission Provider is not conducting a transition process under Section 5.1.1, it will continue processing Interconnection Requests under its current Cluster Study Process. Within sixty (60) Calendar Days of the Commission-approved effective date of this LGIP, Interconnection Customers that have not executed an LGIA or requested an LGIA to be filed unexecuted must meet the requirements of Sections 3.4.2, 7.5, or 8.1 of this LGIP, based on Interconnection Customer's Queue Position.

Any Interconnection Customer that fails to meet these requirements within sixty (60) Calendar Days of the Commission-approved effective date of this LGIP shall have its Interconnection Request deemed withdrawn by Transmission Provider pursuant to Section 3.7 of this LGIP. In such case, Transmission Provider shall not assess Interconnection Customer any Withdrawal Penalty.

5.2 New Transmission Provider

If Transmission Provider transfers control of its Transmission System to a successor Transmission Provider during the period when an Interconnection Request is pending, the original Transmission Provider shall transfer to the successor Transmission Provider any amount of the deposit or payment with interest thereon that exceeds the cost that it incurred to evaluate the request for interconnection. Any difference between such net amount and the deposit or payment required by this LGIP shall be paid by or refunded to [the] Interconnection Customer, as appropriate. The original Transmission Provider shall coordinate with the successor Transmission Provider to complete any Interconnection Study, as appropriate, that the original Transmission Provider has begun but has not completed. If Transmission Provider has tendered a draft LGIA to Interconnection Customer but Interconnection Customer has not either executed the LGIA or requested the filing of an unexecuted LGIA with FERC, unless otherwise provided, Interconnection Customer must complete negotiations with the successor Transmission Provider.

Section 6. Interconnection Information Access

6.1 Publicly Posted Interconnection Information

Transmission Provider shall maintain and make publicly available: (1) an interactive visual representation of the estimated incremental injection capacity (in megawatts) available at each point of interconnection in Transmission Provider's footprint under N–1 conditions, and (2) a table of metrics concerning the estimated impact of a potential Generating Facility on Transmission Provider's Transmission System based on a user-specified addition of a particular number of megawatts at a particular voltage level at a particular point

of interconnection. At a minimum, for each transmission facility impacted by the user-specified megawatt addition, the following information will be provided in the table: (1) the distribution factor; (2) the megawatt impact (based on the megawatt values of the proposed Generating Facility and the distribution factor); (3) the percentage impact on each impacted transmission facility (based on the megawatt values of the proposed Generating Facility and the facility rating); (4) the percentage of power flow on each impacted transmission facility before the injection of the proposed project; (5) the percentage power flow on each impacted transmission facility after the injection of the proposed Generating Facility. These metrics must be calculated based on the power flow model of the Transmission System with the transfer simulated from each point of interconnection to the whole Transmission Provider's footprint (to approximate Network Resource Interconnection Service), and with the incremental capacity at each point of interconnection decremented by the existing and queued Generating Facilities (based on the existing or requested interconnection service limit of the generation). These metrics must be updated within thirty (30) Calendar Days after the completion of each Cluster Study and Cluster Restudy. This information must be publicly posted, without a password or a fee. The website will define all underlying assumptions, including the name of the most recent Cluster Study or Restudy used in the Base Case.

Section 7. Cluster Study

7.1 Cluster Study Agreement

No later than five (5) Business Days after the close of a Cluster Request Window, Transmission Provider shall tender to each Interconnection Customer that submitted a valid Interconnection Request a Cluster Study Agreement in the form of Appendix 2 to this LGIP. The Cluster Study Agreement shall require Interconnection Customer to compensate Transmission Provider for the actual cost of the Cluster Study pursuant to Section 13.3 of this LGIP. The specifications, assumptions, or other provisions in the appendices of the Cluster Study Agreement provided pursuant to Section 7.1 of this LGIP shall be subject to change by Transmission Provider following the conclusion of the Scoping Meeting.

7.2 Execution of Cluster Study Agreement

Interconnection Customer shall execute the Cluster Study Agreement and deliver the executed Cluster Study Agreement to Transmission Provider no later than the close of the Customer Engagement Window.

If Interconnection Customer does not provide all required technical data when it delivers the Cluster Study Agreement, Transmission Provider shall notify Interconnection Customer of the deficiency within five (5) Business Days of the receipt of the executed Cluster Study Agreement and Interconnection Customer shall cure the deficiency within ten (10) Business Days of receipt of the notice, provided, however, such deficiency does not include failure to deliver the executed Cluster Study Agreement or [S]*s*tudy [D]*d*eposit.

7.3 Scope of Cluster Study

The Cluster Study shall evaluate the impact of the proposed interconnection on the reliability of the Transmission System. The Cluster Study will consider the Base Case as well as all Generating Facilities (and with respect to (iii) below, any identified Network Upgrades associated with such higher queued interconnection) that, on the date the Cluster Study is commenced: (i) are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no Queue Position but have executed an LGIA or requested that an unexecuted LGIA be filed with FERC.

For purposes of determining necessary Interconnection Facilities and Network Upgrades, the Cluster Study shall use the level of Interconnection Service requested by Interconnection Customers in the Cluster, except where [the] Transmission Provider otherwise determines that it must study the full Generating Facility Capacity due to safety or reliability concerns.

The Cluster Study will consist of power flow, stability, and short circuit analyses, the results of which are documented in a single Cluster Study Report, as applicable. At the conclusion of the Cluster Study, Transmission Provider shall issue a Cluster Study Report. The Cluster Study Report will state the assumptions upon which it is based; state the results of the analyses; and provide the requirements or potential impediments to providing the requested [i]*I*nterconnection [s]*S*ervice, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. The Cluster Study Report shall identify the Interconnection Facilities and Network Upgrades expected to be required to reliably interconnect the Generating Facilities in that Cluster Study at the requested Interconnection Service level and shall provide non-binding cost estimates for required Network Upgrades. The Cluster Study Report shall identify each Interconnection Customer's estimated allocated costs for Interconnection Facilities and Network Upgrades pursuant to the method in Section 4.2.1 of this LGIP. Transmission Provider shall hold an open stakeholder meeting pursuant to Section 7.4 of this LGIP.

For purposes of determining necessary Interconnection Facilities and Network Upgrades, the Cluster Study shall use operating assumptions (*i.e.,* whether the interconnecting Generating Facility will or will not charge at peak load) that reflect the proposed charging behavior of a Generating Facility that includes at least one electric storage resource as requested by Interconnection Customer, unless Transmission Provider determines that Good Utility Practice, including Applicable Reliability Standards, otherwise requires the use of different operating assumptions. Transmission Provider may require the inclusion of control technologies sufficient to limit the operation of the Generating Facility per the operating assumptions as set forth in the Interconnection Request and to respond to dispatch instructions by Transmission Provider. As determined by Transmission Provider, Interconnection Customer may be subject to testing and validation of those control technologies consistent with Article 6 of the LGIA.

[The Cluster Study Report will provide a list of facilities that are required as a result of the Interconnection Requests within the Cluster and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.]

[Upon issuance of a Cluster Study Report, or Cluster Restudy Report, if any, Transmission Provider shall simultaneously tender a draft Interconnection Facilities Study Agreement to each Interconnection Customer within the Cluster, subject to the conditions in Section 8.1 of this LGIP.]

The Cluster Study shall evaluate the use of static synchronous compensators, static VAR compensators, advanced power flow control devices, transmission switching, synchronous condensers, voltage source converters, advanced conductors, and tower lifting. Transmission Provider shall *evaluate each identified alternative transmission technology and* determine whether the above technologies should be used, consistent with Good Utility Practice, *Applicable Reliability Standards,* and *Applicable Laws and Regulations*[other applicable regulatory requirements]. Transmission Provider shall include an explanation of the results of [the] Transmission Provider's evaluation for each technology in the Cluster Study Report.

The Cluster Study Report will provide a list of facilities that are required as a result of the Interconnection Requests within the Cluster and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

7.4 Cluster Study Procedures

Transmission Provider shall coordinate the Cluster Study with any Affected System *Operator* that is affected by the Interconnection Request pursuant to Section 3.6 of this LGIP. Transmission Provider shall utilize existing studies to the extent practicable when it performs the Cluster Study. Interconnection Requests for a Cluster Study may be submitted only within the Cluster Request Window and Transmission Provider shall initiate the Cluster Study [p]*P*rocess pursuant to Section 7 of this LGIP.

Transmission Provider shall complete the Cluster Study within one hundred fifty (150) Calendar Days of the close of the Customer Engagement Window.

Within ten (10) Business Days of simultaneously furnishing a Cluster Study Report to each Interconnection Customer within the Cluster and posting such report on OASIS, Transmission Provider shall convene a Cluster Study Report Meeting.

At the request of Interconnection Customer or at any time Transmission Provider determines that it will not meet the required time frame for completing the Cluster Study, Transmission Provider shall notify Interconnection Customers as to the schedule status of the Cluster Study. If Transmission Provider is unable to complete the Cluster Study within the time period, it shall notify

Interconnection Customers and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, Transmission Provider shall provide Interconnection Customers all supporting documentation, workpapers and relevant pre-Interconnection Request and post-Interconnection Request power flow, short circuit and stability databases for the Cluster Study, subject to confidentiality arrangements consistent with Section 13.1 of this LGIP.

7.5 Cluster Study Restudies

(1) Within twenty (20) Calendar Days after the Cluster Study Report Meeting, Interconnection Customer must provide the following:

(a) Demonstration of continued Site Control pursuant to Section 3.4.2(iii) of this LGIP; and

(b) An additional deposit that brings the total Commercial Readiness Deposit submitted to Transmission Provider to five percent (5%) of [the] Interconnection Customer's Network Upgrade cost assignment identified in the Cluster Study in the form of an irrevocable letter of credit,[or] cash, *a surety bond, or other form of security that is reasonably acceptable to Transmission Provider.* Transmission Provider shall refund the deposit to Interconnection Customer upon withdrawal in accordance with Section 3.7 of this LGIP.

Interconnection Customer shall promptly inform Transmission Provider of any material change to Interconnection Customer's demonstration of Site Control under Section 3.4.2(iii) of this LGIP. Upon Transmission Provider determining that Interconnection Customer no longer satisfies the Site Control requirement, Transmission Provider shall notify Interconnection Customer. Within ten (10) Business Days of such notification, Interconnection Customer must demonstrate compliance with the applicable requirement subject to Transmission Provider's approval, not to be unreasonably withheld. Absent such demonstration, Transmission Provider shall deem the subject Interconnection Request withdrawn pursuant to Section 3.7 of this LGIP.

(2) If no Interconnection Customer withdraws from the Cluster after completion of the Cluster Study or Cluster Restudy or is deemed withdrawn pursuant to Section 3.7 of this LGIP after completion of the Cluster Study or Cluster Restudy, Transmission Provider shall notify Interconnection Customers in the Cluster that a Cluster Restudy is not required.

(3) If one or more Interconnection Customers withdraw from the Cluster or are deemed withdrawn pursuant to Section 3.7 of this LGIP, Transmission Provider shall determine if a Cluster Restudy is necessary within thirty (30) Calendar Days after the Cluster Study Report Meeting. If Transmission Provider determines a Cluster Restudy is not necessary, Transmission Provider shall notify Interconnection Customers in the Cluster that a Cluster Restudy is not required and Transmission Provider shall provide an updated Cluster Study Report within thirty (30) Calendar Days of such determination.

(4) If one or more Interconnection Customers withdraws from the Cluster or is deemed withdrawn pursuant to Section 3.7 of this LGIP, and Transmission Provider determines a Cluster Restudy is necessary as a result, Transmission Provider shall notify Interconnection Customers in the Cluster and post on OASIS that a Cluster Restudy is required within thirty (30) Calendar Days after the Cluster Study Report Meeting. Transmission Provider shall continue with such restudies until Transmission Provider determines that no further restudies are required. If an Interconnection Customer withdraws or is deemed withdrawn pursuant to Section 3.7 of this LGIP during the Interconnection Facilities Study, or after other Interconnection Customers in the same Cluster have executed LGIAs, or requested that unexecuted LGIAs be filed, and Transmission Provider determines a Cluster Restudy is necessary, the Cluster shall be restudied. *If a Cluster Restudy is required due to a higher queued project withdrawing from the queue, or a modification of a higher or equally queued project subject to Section 4.4 of this LGIP, Transmission Provider shall so notify affected Interconnection Customers in writing. Except as provided in Section 3.7 of this LGIP in the case of withdrawing Interconnection Customers, any cost of Restudy shall be borne by Interconnection Customers being restudied.*

(5) The scope of any Cluster Restudy shall be consistent with the scope of an initial Cluster Study pursuant to Section 7.3 of this LGIP. Transmission Provider shall complete the Cluster Restudy within one hundred fifty (150) Calendar Days of [the] Transmission Provider informing [the] Interconnection Customers in the [c]*C*luster that restudy is needed. The results of the Cluster Restudy shall be combined into a single report (Cluster Restudy Report). Transmission Provider shall hold a meeting with [the] Interconnection Customers in the [c]*C*luster (Cluster Restudy Report Meeting) within ten (10) Business Days of simultaneously furnishing the Cluster Restudy Report to each Interconnection Customer in the Cluster Restudy and publishing the Cluster Restudy Report on OASIS.

If additional restudies are required, Interconnection Customer and Transmission Provider shall follow the procedures of this Section 7.5 of this LGIP until such time that Transmission Provider determines that no further restudies are required. Transmission Provider shall notify each Interconnection Customer within the Cluster when no further restudies are required.

Section 8. Interconnection Facilities Study

8.1 Interconnection Facilities Study Agreement

[Simultaneously with the delivery of the Cluster Study Report, or Cluster Restudy Report if applicable,] *Within five (5) Business Days following Transmission Provider notifying each Interconnection Customer within the Cluster that no further Cluster Restudy is required (per Section 7.5 of this LGIP),* Transmission Provider shall provide to Interconnection Customer an Interconnection Facilities Study Agreement in the form of Appendix 3 to this LGIP. Interconnection Customer shall compensate Transmission Provider for the actual cost of the Interconnection Facilities Study. Within five (5) Business Days following the Cluster Report Meeting or Cluster Restudy Report Meeting if applicable, Transmission Provider shall provide to Interconnection Customer a non-binding good faith estimate of the cost and timeframe for completing the Interconnection Facilities Study. Interconnection Customer shall execute the Interconnection Facilities Study Agreement and deliver the executed Interconnection Facilities Study Agreement to Transmission Provider within thirty (30) Calendar Days after its receipt, together with:

(1) Any required technical data;

(2) Demonstration of one-hundred percent (100%) Site Control or demonstration of a regulatory limitation and applicable deposit in lieu of Site Control provided to [the] Transmission Provider in accordance with [s]*S*ection 3.4.2 of this LGIP; and

(3) An additional deposit that brings the total Commercial Readiness Deposit submitted to [the] Transmission Provider to ten percent (10%) of [the] Interconnection Customer's Network Upgrade cost assignment identified in the Cluster Study or Cluster Restudy, if applicable, in the form of an irrevocable letter of credit,[or] cash, *a surety bond, or other form of security that is reasonably acceptable to Transmission Provider.* Transmission Provider shall refund the deposit to Interconnection Customer upon withdrawal in accordance with Section 3.7 of this LGIP.

Interconnection Customer shall promptly inform Transmission Provider of any material change to Interconnection Customer's demonstration of Site Control under Section 3.4.2(iii) of this LGIP. Upon Transmission Provider determining separately that Interconnection Customer no longer satisfies the Site Control requirement, Transmission Provider shall notify Interconnection Customer. Within ten (10) Business Days of such notification, Interconnection Customer must demonstrate compliance with the applicable requirement subject to Transmission Provider's approval, not to be unreasonably withheld. Absent such demonstration, Transmission Provider shall deem the subject Interconnection Request withdrawn pursuant to Section 3.7 of this LGIP.

8.2 Scope of Interconnection Facilities Study

The Interconnection Facilities Study shall be specific to each Interconnection Request and performed on an individual, *i.e.,* non-clustered, basis. The Interconnection Facilities Study shall specify and provide a non-binding estimate of the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Cluster Study Report (and any associated restudies) in accordance with Good Utility Practice to physically and electrically connect the Interconnection Facilities to the Transmission System. The Interconnection Facilities Study shall also identify the electrical switching configuration of the connection equipment, including, without limitation: the transformer, switchgear, meters, and other

station equipment; the nature and estimated cost of any Transmission Provider's Interconnection Facilities and Network Upgrades necessary to accomplish the interconnection; and an estimate of the time required to complete the construction and installation of such facilities. The Interconnection Facilities Study will also identify any potential control equipment for (1) requests for Interconnection Service that are lower than the Generating Facility Capacity, and/or (2) requests to study a Generating Facility that includes at least one electric storage resource using operating assumptions (*i.e.,* whether the interconnecting Generating Facility will or will not charge at peak load) that reflect its proposed charging behavior, as requested by Interconnection Customer, unless Transmission Provider determines that Good Utility Practice, including Applicable Reliability Standards, otherwise require the use of different operating assumptions.

8.3 Interconnection Facilities Study Procedures

Transmission Provider shall coordinate the Interconnection Facilities Study with any Affected System *Operator* pursuant to Section 3.6 of this LGIP. Transmission Provider shall utilize existing studies to the extent practicable in performing the Interconnection Facilities Study. Transmission Provider shall complete the study and issue a draft Interconnection Facilities Study Report to Interconnection Customer within the following number of days after receipt of an executed Interconnection Facilities Study Agreement: ninety (90) Calendar Days after receipt of an executed Interconnection Facilities Study Agreement, with no more than a +/− [20] *twenty* percent *(20%)* cost estimate contained in the report; or one hundred eighty (180) Calendar Days, if Interconnection Customer requests a +/− [10] *ten* percent *(10%)* cost estimate.

At the request of Interconnection Customer or at any time Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Facilities Study, Transmission Provider shall notify Interconnection Customer as to the schedule status of the Interconnection Facilities Study. If Transmission Provider is unable to complete the Interconnection Facilities Study and issue a draft Interconnection Facilities Study Report within the time required, it shall notify Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required.

Interconnection Customer may, within thirty (30) Calendar Days after receipt of the draft Interconnection Facilities Study Report, provide written comments to Transmission Provider, which Transmission Provider shall include in completing the final Interconnection Facilities Study Report. Transmission Provider shall issue the final Interconnection Facilities Study Report within fifteen (15) Business Days of receiving Interconnection Customer's comments or promptly upon receiving Interconnection Customer's statement that it will not provide comments. Transmission Provider may reasonably extend such fifteen (15) Business Day period upon notice to Interconnection Customer if Interconnection Customer's comments require Transmission Provider to perform additional analyses or make other significant modifications prior to the issuance of the final Interconnection Facilities Study Report. Upon request, Transmission Provider shall provide Interconnection Customer supporting documentation, workpapers, and databases or data developed in the preparation of the Interconnection Facilities Study, subject to confidentiality arrangements consistent with Section 13.1 of this LGIP.

8.4 Meeting with Transmission Provider

Within ten (10) Business Days of providing a draft Interconnection Facilities Study Report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Facilities Study.

8.5 Restudy

If [R]*r*estudy of the Interconnection Facilities Study is required due to a higher or equally queued project withdrawing from the queue or a modification of a higher or equally queued project pursuant to Section 4.4 of this LGIP, Transmission Provider shall so notify Interconnection Customer in writing. Transmission Provider shall ensure that such [R]*r*estudy takes no longer than sixty (60) Calendar Days from the date of notice. Except as provided in Section 3.7 of this LGIP in the case of withdrawing Interconnection Customers, any cost of [R]*r*estudy shall be borne by Interconnection Customer being restudied.

Section 9. Affected System Study

9.1 Applicability

This Section 9 outlines the duties of Transmission Provider when it receives notification that an Affected System Interconnection Customer's proposed interconnection to its host transmission provider may impact Transmission Provider's Transmission System.

9.2 *Response to Notifications*

9.2.1 Response to Initial Notification

When Transmission Provider receives *initial* notification *either following the Cluster Study or a Cluster Restudy* that an Affected System Interconnection Customer's proposed interconnection to its host transmission provider may impact Transmission Provider's Transmission System, Transmission Provider must respond in writing within twenty (20) Business Days whether it intends to conduct an Affected System Study.

By fifteen (15) Business Days after [the] Transmission Provider responds with its affirmative intent to conduct an Affected System Study, Transmission Provider shall share with Affected System Interconnection Customer(s) and the Affected System Interconnection Customer's host transmission provider a non-binding good faith estimate of the cost and the schedule to complete the Affected System Study.

9.2.2 Response to Notification of Cluster Restudy

Within five (5) Business Days of receipt of notification of Cluster Restudy, Transmission Provider will send written notification to Affected System Interconnection Customer(s) involved in the Cluster Restudy and the host transmission provider that Transmission Provider intends to delay a planned or in-progress Affected System Study until after completion of the Cluster Restudy. If Transmission Provider decides to delay the Affected System Study, it is not required to meet its obligations under Section 9 of this LGIP until the time that it receives notification from the host transmission provider that the Cluster Restudy is complete. If Transmission Provider decides to move forward with its Affected System Study despite the Cluster Restudy, then it must meet all requirements under Section 9 of this LGIP.

9.3 Affected System Queue Position

Transmission Provider must assign an Affected System Queue Position to Affected System Interconnection Customer(s) that require(s) an Affected System Study. Such Affected System Queue Position shall be assigned based upon the date of execution of the Affected System Study Agreement. Relative to [the] Transmission Provider's Interconnection Customers, this Affected System Queue Position shall be higher-queued than any Cluster that has not yet received its Cluster Study Report and shall be lower-queued than any Cluster that has already received its Cluster Study Report. Consistent with Section 9.7 of this LGIP, Transmission Provider shall study the Affected System Interconnection Customer(s) via Clustering, and all Affected System Interconnection Customers studied in the same Cluster under Section 9.7 *of this LGIP* shall be equally queued. For Affected System Interconnection Customers that are equally queued, the Affected System Queue Position shall have no bearing on the assignment of Affected System Network Upgrades identified in the applicable Affected System Study. The costs of the Affected System Network Upgrades shall be allocated among the Affected System Interconnection Customers in accordance with Section 9.9 of this LGIP.

9.4 Affected System Study Agreement/ Multiparty Affected System Study Agreement

Unless otherwise agreed, Transmission Provider shall provide to Affected System Interconnection Customer(s) an Affected System Study Agreement/Multiparty Affected System Study Agreement, in the form of Appendix 9 or Appendix 10 to this LGIP, as applicable, within ten (10) Business Days of Transmission Provider sharing the schedule for the Affected System Study per Section 9.2.*1* of this LGIP.

Upon Affected System Interconnection Customer(s)' receipt of the Affected System Study Report, Affected System Interconnection Customer(s) shall compensate Transmission Provider for the actual cost of the Affected System Study. Any difference between the study deposit and the actual cost of the Affected System Study shall be paid by or refunded to the

Affected System Interconnection Customer(s). Any invoices for the Affected System Study shall include a detailed and itemized accounting of the cost of the study. Affected System Interconnection Customer(s) shall pay any excess costs beyond the already-paid Affected System Study deposit or be reimbursed for any costs collected over the actual cost of the Affected System Study within thirty (30) Calendar Days of receipt of an invoice thereof. If Affected System Interconnection Customer(s) fail to pay such undisputed costs within the time allotted, it shall lose its Affected System Queue Position. Transmission Provider shall notify Affected System Interconnection Customer's host transmission provider of such failure to pay.

9.5 Execution of Affected System Study Agreement/Multiparty Affected System Study Agreement

Affected System Interconnection Customer(s) shall execute the Affected System Study Agreement/Multiparty Affected System Study Agreement, deliver the executed Affected System Study Agreement/Multiparty Affected System Study Agreement to Transmission Provider, and provide the Affected System Study deposit within ten (10) Business Days of receipt. *If Transmission Provider notifies Affected System Interconnection Customer(s) that it will delay the Affected System Study pursuant to Section 9.2.2 of this LGIP, Affected System Interconnection Customer(s) are neither required to execute and return the previously tendered Affected System Study/Multiparty Affected System Study Agreement nor provide the Affected System Study deposit for the previously tendered Affected System Study/Multiparty Affected System Study Agreement.*

If Affected System Interconnection Customer does not provide all required technical data when it delivers the Affected System Study Agreement/Multiparty Affected System Study Agreement, Transmission Provider shall notify the deficient Affected System Interconnection Customer, as well as the host transmission provider with which Affected System Interconnection Customer seeks to interconnect, of the *technical data* deficiency within five (5) Business Days of the receipt of the executed Affected System Study Agreement/Multiparty Affected System Study Agreement and the deficient Affected System Interconnection Customer shall cure the *technical* deficiency within ten (10) Business Days of receipt of the notice: provided, however, that such deficiency does not include failure to deliver the executed Affected System Study Agreement/Multiparty Affected System Study Agreement or deposit for the Affected System Study Agreement/Multiparty Affected System Study Agreement. If Affected System Interconnection Customer does not cure the *technical data* deficiency *within the cure period* or fails to execute the Affected System Study Agreement/Multiparty Affected System Study Agreement or provide the deposit, the Affected System Interconnection Customer shall lose its Affected System Queue Position.

9.6 Scope of Affected System Study

The Affected System Study shall evaluate the impact that any Affected System Interconnection Customer's proposed interconnection to another transmission provider's transmission system will have on the reliability of Transmission Provider's Transmission System. The Affected System Study shall consider the Base Case as well as all Generating Facilities (and with respect to (iii) below, any identified Affected System Network Upgrades associated with such higher-queued Interconnection Request) that, on the date the Affected System Study is commenced: (i) are directly interconnected to Transmission Provider's Transmission System; (ii) are directly interconnected to another transmission provider's transmission system and may have an impact on Affected System Interconnection Customer's interconnection request; (iii) have a pending higher-queued Interconnection Request to interconnect to Transmission Provider's Transmission System; and (iv) have no queue position but have executed an LGIA or requested that an unexecuted LGIA be filed with FERC. Transmission Provider has no obligation to study impacts of Affected System Interconnection Customers of which it is not notified.

The Affected System Study shall consist of a power flow, stability, and short circuit analysis. The Affected System Study *Report* will: state the assumptions upon which it is based; state the results of the analyses; and provide the potential impediments to Affected System Interconnection Customer's receipt if interconnection service on its host transmission provider's transmission system, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. For purposes of determining necessary Affected System Network Upgrades, the Affected System Study shall consider the level of interconnection service requested in megawatts by Affected System Interconnection Customer, unless otherwise required to study the full generating facility capacity due to safety or reliability concerns. The Affected System Study *Report* shall provide a list of facilities that are required as a result of Affected System Interconnection Customer's proposed interconnection to another transmission provider's system, a non-binding good faith estimate of cost responsibility, and a non-binding good faith estimated time to construct. The Affected System Study may consist of a system impact study, a facilities study, or some combination thereof.

9.7 Affected System Study Procedures

Transmission Provider shall use Clustering in conducting the Affected System Study and shall use existing studies to the extent practicable, when multiple Affected System Interconnection Customers that are part of a single Cluster may cause the need for Affected System Network Upgrades. Transmission Provider shall complete the Affected System Study and provide the Affected System Study Report to Affected System Interconnection Customer(s) and the host transmission provider with whom interconnection has been requested within one hundred fifty (150) Calendar Days after the receipt of the Affected System Study Agreement and deposit.

At the request of Affected System Interconnection Customer, Transmission Provider shall notify Affected System Interconnection Customer as to the status of the Affected System Study. If Transmission Provider is unable to complete the Affected System Study within the requisite time period, it shall notify Affected System Interconnection Customer(s), as well as [the] transmission provider with which Affected System Interconnection Customer seeks to interconnect, and shall provide an estimated completion date with an explanation of the reasons why additional time is required. If Transmission Provider does not meet the deadlines in this [s]*S*ection, Transmission Provider shall be subject to the financial penalties as described in Section 3.9 of this LGIP. Upon request, Transmission Provider shall provide Affected System Interconnection Customer(s) with all supporting documentation, workpapers and relevant power flow, short circuit and stability databases for the Affected System Study, subject to confidentiality arrangements consistent with Section 13.1 of this LGIP.

Transmission Provider must study an Affected System Interconnection Customer using the Energy Resource Interconnection Service modeling standard used for Interconnection Requests on its own Transmission System, regardless of the level of interconnection service that Affected System Interconnection Customer is seeking from the host transmission provider with whom it seeks to interconnect.

9.8 Meeting with Transmission Provider

Within ten (10) Business Days of providing the Affected System Study Report to Affected System Interconnection Customer(s), Transmission Provider and Affected System Interconnection Customer(s) shall meet to discuss the results of the Affected System Study.

9.9 Affected System Cost Allocation

Transmission Provider shall allocate Affected System Network Upgrade costs identified during the Affected System Study to Affected System Interconnection Customer(s) using a proportional impact method, consistent with Section 4.2.1(1)(b) of this LGIP.

9.10 Tender of Affected Systems Facilities Construction Agreement/Multiparty Affected System Facilities Construction Agreement

Transmission Provider shall tender to Affected System Interconnection Customer(s) an Affected System Facilities Construction Agreement/Multiparty Affected System Facilities Construction Agreement, as applicable, in the form of Appendix 11 or 12 to this LGIP, within thirty (30) Calendar Days of providing the Affected System Study Report. Within ten (10) Business Days of the receipt of the Affected System Facilities Construction Agreement/Multiparty Affected System Facilities Construction Agreement, the Affected System Interconnection Customer(s) must execute the agreement or

request the agreement to be filed unexecuted with FERC. Transmission Provider shall execute the agreement or file the agreement unexecuted within five (5) Business Days after receiving direction from Affected System Interconnection Customer(s). Affected System Interconnection Customer's failure to execute the Affected System Facilities Construction Agreement/ Multiparty Affected System Facilities Construction Agreement, or failure to request the agreement to be filed unexecuted with FERC, shall result in the loss of its Affected System Queue Position.

9.11 Restudy

If restudy of the Affected System Study is required, Transmission Provider shall notify Affected System Interconnection Customer(s) in writing within thirty (30) Calendar Days of discovery of the need for restudy. Such restudy shall take no longer than sixty (60) Calendar Days from the date of notice. Any cost of restudy shall be borne by the Affected System Interconnection Customer(s) being restudied.

Section 10. Optional Interconnection Study

10.1 Optional Interconnection Study Agreement

On or after the date when Interconnection Customer receives Cluster Study results, Interconnection Customer may request, and Transmission Provider shall perform a reasonable number of Optional *Interconnection* Studies. The request shall describe the assumptions that Interconnection Customer wishes Transmission Provider to study within the scope described in Section 10.2 *of this LGIP*. Within five (5) Business Days after receipt of a request for an Optional Interconnection Study, Transmission Provider shall provide to Interconnection Customer an Optional Interconnection Study Agreement in the form of Appendix 4.

The Optional Interconnection Study Agreement shall: (i) specify the technical data that Interconnection Customer must provide for each phase of the Optional Interconnection Study, (ii) specify Interconnection Customer's assumptions as to which Interconnection Requests with earlier queue priority dates will be excluded from the Optional Interconnection Study case and assumptions as to the type of *I*[i]nterconnection *S*[s]ervice for Interconnection Requests remaining in the Optional Interconnection Study case, and (iii) Transmission Provider's estimate of the cost of the Optional Interconnection Study. To the extent known by Transmission Provider, such estimate shall include any costs expected to be incurred by any Affected System *Operator* whose participation is necessary to complete the Optional Interconnection Study. Notwithstanding the above, Transmission Provider shall not be required as a result of an Optional Interconnection Study request to conduct any additional Interconnection Studies with respect to any other Interconnection Request.

Interconnection Customer shall execute the Optional Interconnection Study Agreement within ten (10) Business Days of receipt and deliver the Optional Interconnection Study Agreement, the technical data and a $10,000 deposit to Transmission Provider.

10.2 Scope of Optional Interconnection Study

The Optional Interconnection Study will consist of a sensitivity analysis based on the assumptions specified by Interconnection Customer in the Optional Interconnection Study Agreement. The Optional Interconnection Study will also identify Transmission Provider's Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or Interconnection Service based upon the results of the Optional Interconnection Study. The Optional Interconnection Study shall be performed solely for informational purposes. Transmission Provider shall use Reasonable Efforts to coordinate the study with any Affected Systems that may be affected by the types of Interconnection Services that are being studied. Transmission Provider shall utilize existing studies to the extent practicable in conducting the Optional Interconnection Study.

10.3 Optional Interconnection Study Procedures

The executed Optional Interconnection Study Agreement, the prepayment, and technical and other data called for therein must be provided to Transmission Provider within ten (10) Business Days of Interconnection Customer receipt of the Optional Interconnection Study Agreement. Transmission Provider shall use Reasonable Efforts to complete the Optional Interconnection Study within a mutually agreed upon time period specified within the Optional Interconnection Study Agreement. If Transmission Provider is unable to complete the Optional Interconnection Study within such time period, it shall notify Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required. Any difference between the study payment and the actual cost of the study shall be paid to Transmission Provider or refunded to Interconnection Customer, as appropriate. Upon request, Transmission Provider shall provide Interconnection Customer supporting documentation and workpapers and databases or data developed in the preparation of the Optional Interconnection Study, subject to confidentiality arrangements consistent with Section 13.1 *of this LGIP.*

Section 11. Standard Large Generator Interconnection Agreement (LGIA)

11.1 Tender

Interconnection Customer shall tender comments on the draft Interconnection Facilities Study Report within thirty (30) Calendar Days of receipt of the report. Within thirty (30) Calendar Days after the comments are submitted or after Interconnection Customer notifies Transmission Provider that it will not provide comments, Transmission Provider shall tender a draft LGIA, together with draft appendices. The draft LGIA shall be in the form of Transmission Provider's FERC-approved standard form LGIA, which is in Appendix 5. Interconnection Customer shall execute and return the LGIA and completed draft appendices within thirty (30) Calendar Days, unless (1) the sixty (60) Calendar Day negotiation period under Section 11.2 of this LGIP has commenced, or (2) LGIA execution, or filing unexecuted, has been delayed to await the Affected System Study Report pursuant to Section 11.2.1 of this LGIP.

11.2 Negotiation

Notwithstanding Section 11.1 *of this LGIP,* at the request of Interconnection Customer, Transmission Provider shall begin negotiations with Interconnection Customer concerning the appendices to the LGIA at any time after Interconnection Customer executes the Interconnection Facilities Study Agreement. Transmission Provider and Interconnection Customer shall negotiate concerning any disputed provisions of the appendices to the draft LGIA for not more than sixty (60) Calendar Days after tender of the final Interconnection Facilities Study Report. If Interconnection Customer determines that negotiations are at an impasse, it may request termination of the negotiations at any time after tender of the draft LGIA pursuant to Section 11.1 *of this LGIP* and request submission of the unexecuted LGIA with FERC or initiate Dispute Resolution procedures pursuant to Section 13.5 *of this LGIP.* If Interconnection Customer requests termination of the negotiations, but within sixty (60) Calendar Days thereafter fails to request either the filing of the unexecuted LGIA or initiate Dispute Resolution, it shall be deemed to have withdrawn its Interconnection Request. Unless otherwise agreed by the Parties, if Interconnection Customer has not executed the LGIA, requested filing of an unexecuted LGIA, or initiated Dispute Resolution procedures pursuant to Section 13.5 *of this LGIP* within sixty (60) Calendar Days of tender of draft LGIA, it shall be deemed to have withdrawn its Interconnection Request. Transmission Provider shall provide to Interconnection Customer a final LGIA within fifteen (15) Business Days after the completion of the negotiation process.

11.2.1 Delay in LGIA Execution, or Filing Unexecuted, To Await Affected System Study Report

If Interconnection Customer has not received its Affected System Study Report from the Affected System Operator prior to the date that it would be required to execute its LGIA (or request that its LGIA be filed unexecuted) pursuant to Section 11.1 of this LGIP, Transmission Provider shall, upon request of Interconnection Customer, extend this deadline to thirty (30) Calendar Days after Interconnection Customer's receipt of the Affected System Study Report. If Interconnection Customer, after delaying LGIA execution, or requesting unexecuted filing, to await Affected System Study [Results]*Report,* decides to proceed to LGIA execution, or request unexecuted filing, without those results, it may notify Transmission Provider of its intent to proceed with LGIA execution (or request that its LGIA be filed unexecuted) pursuant to Section 11.1 of this LGIP. If Transmission Provider determines that further delay to the

LGIA execution date would cause a material impact on the cost or timing of an equal- or lower-queued [i]*I*nterconnection [c]*C*ustomer, Transmission Provider must notify Interconnection Customer of such impacts and set the deadline to execute the LGIA (or request that the LGIA be filed unexecuted) to thirty (30) Calendar Days after such notice is provided.

11.3 Execution and Filing

Simultaneously with submitting the executed LGIA to Transmission Provider, or within ten (10) Business Days after [the] Interconnection Customer requests that [the] Transmission Provider file the LGIA unexecuted at the Commission, Interconnection Customer shall provide Transmission Provider with *the following:* (1) demonstration of continued Site Control pursuant to Section 8.1(2) of this LGIP; and (2) the LGIA Deposit equal to twenty percent (20%) of Interconnection Customer's estimated Network Upgrade costs identified in the draft LGIA minus the total amount of Commercial Readiness Deposits that Interconnection Customer has provided to Transmission Provider for its Interconnection Request. Transmission Provider shall use LGIA Deposit as (or as a portion of) [the] Interconnection Customer's security required under LGIA Article 11.5. Interconnection Customer may not request to suspend its LGIA under LGIA Article 5.16 until Interconnection Customer has provided (1) and (2) to Transmission Provider. If Interconnection Customer fails to provide (1) and (2) to Transmission Provider within the thirty (30) Calendar Days allowed for returning the executed LGIA and appendices under LGIP Section 11.1, or within ten (10) Business Days after Interconnection Customer requests that Transmission Provider file the LGIA unexecuted at the Commission as allowed in this Section 11.3 of this LGIP, the Interconnection Request will be deemed withdrawn pursuant to Section 3.7 of this LGIP.

At the same time, Interconnection Customer also shall provide reasonable evidence that one or more of the following milestones in the development of the Large Generating Facility, at Interconnection Customer election, has been achieved (unless such milestone is inapplicable due to the characteristics of the Generating Facility): (i) the execution of a contract for the supply or transportation of fuel to the Large Generating Facility; (ii) the execution of a contract for the supply of cooling water to the Large Generating Facility; (iii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Large Generating Facility; (iv) execution of a contract (or comparable evidence) for the sale of electric energy or capacity from the Large Generating Facility; or (v) application for an air, water, or land use permit.

Interconnection Customer shall either: (i) execute two originals of the tendered LGIA and return them to Transmission Provider; or (ii) request in writing that Transmission Provider file with FERC an LGIA in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the two executed originals of the tendered LGIA (if it does not conform with a FERC-approved [standard form of interconnection agreement] *Standard Large Generator Interconnection Agreement*) or the request to file an unexecuted LGIA, Transmission Provider shall file the LGIA with FERC, together with its explanation of any matters as to which Interconnection Customer and Transmission Provider disagree and support for the costs that Transmission Provider proposes to charge to Interconnection Customer under the LGIA. An unexecuted LGIA should contain terms and conditions deemed appropriate by Transmission Provider for the Interconnection Request. If the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted LGIA, they may proceed pending FERC action.

11.4 Commencement of Interconnection Activities

If Interconnection Customer executes the final LGIA, Transmission Provider and Interconnection Customer shall perform their respective obligations in accordance with the terms of the LGIA, subject to modification by FERC. Upon submission of an unexecuted LGIA, Interconnection Customer and Transmission Provider shall promptly comply with the unexecuted LGIA, subject to modification by FERC.

Section 12. Construction of Transmission Provider's Interconnection Facilities and Network Upgrades

12.1 Schedule

Transmission Provider and Interconnection Customer shall negotiate in good faith concerning a schedule for the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades.

12.2 Construction Sequencing

12.2.1 General

In general, the In-Service Date of an Interconnection Customer[s] seeking interconnection to the Transmission System will determine the sequence of construction of Network Upgrades.

12.2.2 Advance Construction of Network Upgrades That Are an Obligation of an Entity Other Than Interconnection Customer

An Interconnection Customer with an LGIA, in order to maintain its In-Service Date, may request that Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) were assumed in the Interconnection Studies for such Interconnection Customer, (ii) are necessary to support such In-Service Date, and (iii) would otherwise not be completed, pursuant to a contractual obligation of an entity other than Interconnection Customer that is seeking interconnection to the Transmission System, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that Interconnection Customer commits to pay Transmission Provider: (i) any associated expediting costs and (ii) the cost of such Network Upgrades. Transmission Provider will refund to Interconnection Customer both the expediting costs and the cost of Network Upgrades, in accordance with Article 11.4 of the LGIA. Consequently, the entity with a contractual obligation to construct such Network Upgrades shall be obligated to pay only that portion of the costs of the Network Upgrades that Transmission Provider has not refunded to Interconnection Customer. Payment by that entity shall be due on the date that it would have been due had there been no request for advance construction. Transmission Provider shall forward to Interconnection Customer the amount paid by the entity with a contractual obligation to construct the Network Upgrades as payment in full for the outstanding balance owed to Interconnection Customer. Transmission Provider then shall refund to that entity the amount that it paid for the Network Upgrades, in accordance with Article 11.4 of the LGIA.

12.2.3 Advancing Construction of Network Upgrades That Are Part of an Expansion Plan of [the] Transmission Provider

An Interconnection Customer with an LGIA, in order to maintain its In-Service Date, may request that Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) are necessary to support such In-Service Date and (ii) would otherwise not be completed, pursuant to an expansion plan of Transmission Provider, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that Interconnection Customer commits to pay Transmission Provider any associated expediting costs. Interconnection Customer shall be entitled to transmission credits, if any, for any expediting costs paid.

12.2.4 Amended Interconnection Cluster Study Report

An Interconnection Cluster Study Report will be amended to determine the facilities necessary to support the requested In-Service Date. This amended study report will include those transmission and Large Generating Facilities that are expected to be in service on or before the requested In-Service Date.

Section 13. Miscellaneous

13.1 Confidentiality

Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of an LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in

this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

13.1.1 Scope

Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of the LGIA; or (6) is required, in accordance with Section 13.1.6 *of this LGIP,* Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under the LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

13.1.2 Release of Confidential Information

Neither Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with these procedures, unless such person has first been advised of the confidentiality provisions of this Section 13.1 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Section 13.1.

13.1.3 Rights

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

13.1.4 No Warranties

By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

13.1.5 Standard of Care

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under these procedures or its regulatory requirements.

13.1.6 Order of Disclosure

If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of the LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

13.1.7 Remedies

The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Section 13.1. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Section 13.1, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Section 13.1, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Section 13.1.

13.1.8 Disclosure to FERC, its Staff, or a State

Notwithstanding anything in this Section 13.1 to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to the LGIP, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party to the LGIA when it[s] is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner, consistent with applicable state rules and regulations.

13.1.9

Subject to the exception in Section 13.1.8 of this LGIP, any information that a Party claims is competitively sensitive, commercial or financial information (''Confidential Information'') shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIP or as a transmission service provider or a Balancing Authority Area operator including disclosing the Confidential Information to an RTO or ISO or to a subregional, regional or national reliability organization or planning group. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

13.1.10

This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

13.1.11

Transmission Provider shall, at Interconnection Customer's election, destroy, in a confidential manner, or return the Confidential Information provided at the time of Confidential Information is no longer needed.

13.2 Delegation of Responsibility

Transmission Provider may use the services of subcontractors as it deems appropriate to perform its obligations under this LGIP. Transmission Provider shall remain primarily liable to Interconnection Customer for the performance of such subcontractors and compliance with its obligations of this LGIP. The subcontractor shall keep all information provided confidential and shall use such information solely for the performance of such obligation for which it was provided and no other purpose.

13.3 Obligation for Study Costs

In the event an Interconnection Customer withdraws its Interconnection Request prior to the commencement of the Cluster Study, Interconnection Customer must pay Transmission Provider the actual costs of processing its Interconnection Request. In the event an Interconnection Customer withdraws after the commencement of the Cluster Study, Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Studies. The costs of any interconnection study conducted on a clustered basis shall be allocated among each Interconnection Customer within the cluster as follows: {Transmission Provider shall include in this section a description of how the cost of any clustered interconnection study will be allocated.}

Any difference between the study deposit and the actual cost of the [applicable] Interconnection Stud*ies*[y] shall be paid by or refunded *to,* except as otherwise provided herein, to Interconnection Customers [or offset against the cost of any future Interconnection Studies associated with the applicable Cluster prior to beginning of any such future Interconnection Studies]. Any invoices for Interconnection Studies shall include a detailed and itemized accounting of the cost of each Interconnection Study. Interconnection Customers shall pay any such undisputed costs within thirty (30) Calendar Days of receipt of an invoice therefor. If [an] Interconnection Customer fails to pay such undisputed costs within the time allotted, its Interconnection Request shall be deemed withdrawn from the Cluster Study Process and will be subject to Withdrawal Penalties pursuant to Section 3.7 of this LGIP.

13.4 Third Parties Conducting Studies

If (i) at the time of the signing of an Interconnection Study Agreement there is disagreement as to the estimated time to complete an Interconnection Study, (ii) Interconnection Customer receives notice pursuant to Sections 6.3, 7.4 or 8.3 *of this LGIP* that Transmission Provider will not complete an Interconnection Study within the applicable timeframe for such Interconnection Study, or (iii) Interconnection Customer receives neither the Interconnection Study nor a notice under Sections 6.3, 7.4 or 8.3 *of this LGIP* within the applicable timeframe for such Interconnection Study, then Interconnection Customer may require Transmission Provider to utilize a third party consultant reasonably acceptable to Interconnection Customer and Transmission Provider to perform such Interconnection Study under the direction of Transmission Provider. At other times, Transmission Provider may also utilize a third party consultant to perform such Interconnection Study, either in response to a general request of Interconnection Customer, or on its own volition.

In all cases, use of a third party consultant shall be in accord with Article 26 of the LGIA (Subcontractors) and limited to situations where Transmission Provider determines that doing so will help maintain or accelerate the study process for Interconnection Customer's pending Interconnection Request and not interfere with Transmission Provider's progress on Interconnection Studies for other pending Interconnection Requests. In cases where Interconnection Customer requests use of a third party consultant to perform such Interconnection Study, Interconnection Customer and Transmission Provider shall negotiate all of the pertinent terms and conditions, including reimbursement arrangements and the estimated study completion date and study review deadline. Transmission Provider shall convey all workpapers, data bases, study results and all other supporting documentation prepared to date with respect to the Interconnection Request as soon as soon as practicable upon Interconnection Customer's request subject to the confidentiality provision in Section 13.1 *of this LGIP.* In any case, such third party contract may be entered into with either Interconnection Customer or Transmission Provider at Transmission Provider's discretion. In the case of (iii) Interconnection Customer maintains its right to submit a claim to Dispute Resolution to recover the costs of such third party study. Such third party consultant shall be required to comply with this LGIP, Article 26 of the LGIA (Subcontractors), and the relevant Tariff procedures and protocols as would apply if Transmission Provider were to conduct the Interconnection Study and shall use the information provided to it solely for purposes of performing such services and for no other purposes. Transmission Provider shall cooperate with such third party consultant and Interconnection Customer to complete and issue the Interconnection Study in the shortest reasonable time.

13.5 Disputes

13.5.1 Submission

In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with the LGIA, the LGIP, or their performance, such Party (the ''disputing Party'') shall provide the other Party with written notice of the dispute or claim (''Notice of Dispute''). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

13.5.2 External Arbitration Procedures

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Section 13, the terms of this Section 13 shall prevail.

13.5.3 Arbitration Decisions

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the LGIA and LGIP and shall have no power to modify or change any provision of the LGIA and LGIP in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

13.5.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

13.5.5 Non-Binding Dispute Resolution Procedures

If a Party has submitted a Notice of Dispute pursuant to Section 13.5.1 *of this LGIP,* and

the Parties are unable to resolve the claim or dispute through unassisted or assisted negotiations within the thirty (30) Calendar Days provided in that section, and the Parties cannot reach mutual agreement to pursue the Section 13.5 arbitration process, a Party may request that Transmission Provider engage in Non-binding Dispute Resolution pursuant to this [s]*S*ection by providing written notice to Transmission Provider (''Request for Non-binding Dispute Resolution''). Conversely, either Party may file a Request for Non-binding Dispute Resolution pursuant to this [s]*S*ection without first seeking mutual agreement to pursue the Section 13.5 arbitration process. The process in *this* Section 13.5.5 shall serve as an alternative to, and not a replacement of, the Section 13.5 arbitration process. Pursuant to this process, a Transmission Provider must within *thirty* (30) *Calendar* [d]*D*ays of receipt of the Request for Non-binding Dispute Resolution appoint a neutral decision-maker that is an independent subcontractor that shall not have any current or past substantial business or financial relationships with either Party. Unless otherwise agreed by the Parties, the decision-maker shall render a decision within sixty (60) Calendar Days of appointment and shall notify the Parties in writing of such decision and reasons therefore. This decision-maker shall be authorized only to interpret and apply the provisions of the LGIP and LGIA and shall have no power to modify or change any provision of the LGIP and LGIA in any manner. The result reached in this process is not binding, but, unless otherwise agreed, the Parties may cite the record and decision in the non-binding dispute resolution process in future dispute resolution processes, including in a Section 13.5 arbitration, or in a Federal Power Act section 206 complaint. Each Party shall be responsible for its own costs incurred during the process and the cost of the decision-maker shall be divided equally among each Party to the dispute.

13.6 Local Furnishing Bonds

13.6.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds

This provision is applicable only to a Transmission Provider that has financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code (''local furnishing bonds''). Notwithstanding any other provision of this LGIA and LGIP, Transmission Provider shall not be required to provide Interconnection Service to Interconnection Customer pursuant to this LGIA and LGIP if the provision of such Transmission Service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance Transmission Provider's facilities that would be used in providing such Interconnection Service.

13.6.2 Alternative Procedures for Requesting Interconnection Service

If Transmission Provider determines that the provision of Interconnection Service requested by Interconnection Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such Interconnection Service, it shall advise [the] Interconnection Customer within thirty (30) Calendar Days of receipt of the Interconnection Request.

Interconnection Customer thereafter may renew its request for interconnection using the process specified in [Article]*Section* 5.2(ii) of [the] Transmission Provider's Tariff.

13.7 Engineering & Procurement ('E&P') Agreement

Prior to executing an LGIA, an Interconnection Customer may, in order to advance the implementation of its interconnection, request and Transmission Provider shall offer Interconnection Customer, an E&P Agreement that authorizes Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection. However, Transmission Provider shall not be obligated to offer an E&P Agreement if Interconnection Customer is in Dispute Resolution as a result of an allegation that Interconnection Customer has failed to meet any milestones or comply with any prerequisites specified in other parts of the LGIP. The E&P Agreement is an optional procedure and it will not alter Interconnection Customer's Queue Position or In-Service Date. The E&P Agreement shall provide for Interconnection Customer to pay the cost of all activities authorized by Interconnection Customer and to make advance payments or provide other satisfactory security for such costs.

Interconnection Customer shall pay the cost of such authorized activities and any cancellation costs for equipment that is already ordered for its interconnection, which cannot be mitigated as hereafter described, whether or not such items or equipment later become unnecessary. If Interconnection Customer withdraws its Interconnection Request or either Party terminates the E&P Agreement, to the extent the equipment ordered can be canceled under reasonable terms, Interconnection Customer shall be obligated to pay the associated cancellation costs. To the extent that the equipment cannot be reasonably canceled, Transmission Provider may elect: (i) to take title to the equipment, in which event Transmission Provider shall refund Interconnection Customer any amounts paid by Interconnection Customer for such equipment and shall pay the cost of delivery of such equipment, or (ii) to transfer title to and deliver such equipment to Interconnection Customer, in which event Interconnection Customer shall pay any unpaid balance and cost of delivery of such equipment.

Appendix 1 to LGIP

Interconnection Request for a Large Generating Facility

1. The undersigned Interconnection Customer submits this request to interconnect its Large Generating Facility with Transmission Provider's Transmission System pursuant to a Tariff.

2. This Interconnection Request is for (check one):

____ A proposed new Large Generating Facility.

____ An increase in the generating capacity or a Material Modification of an existing Generating Facility.

3. The type of interconnection service requested (check one):

____ Energy Resource Interconnection Service.

____ Network Resource Interconnection Service.

4. ____ Check here only if Interconnection Customer requesting Network Resource Interconnection Service also seeks to have its Generating Facility studied for Energy Resource Interconnection Service.

5. Interconnection Customer provides the following information:

a. Address or location or the proposed new Large Generating Facility site (to the extent known) or, in the case of an existing Generating Facility, the name and specific location of the existing Generating Facility;

b. Maximum summer at ____ degrees C and winter at ____ degrees C megawatt electrical output of the proposed new Large Generating Facility or the amount of megawatt increase in the generating capacity of an existing Generating Facility;

c. General description of the equipment configuration;

d. Commercial Operation Date (Day, Month, and Year);

e. Name, address, telephone number, and email address of Interconnection Customer's contact person;

f. Approximate location of the proposed Point of Interconnection (optional);

g. Interconnection Customer Data (set forth in Attachment A);

h. Primary frequency response operating range for electric storage resources;

i. Requested capacity (in MW) of Interconnection Service (if lower than the Generating Facility Capacity);

j. If applicable, (1) the requested operating assumptions (*i.e.,* whether the interconnecting Generating Facility will or will not charge at peak load) to be used by Transmission Provider that reflect the proposed charging behavior of a Generating Facility that includes at least one electric storage resource, and (2) a description of any control technologies (software and/or hardware) that will limit the operation of the Generating Facility to its intended operation.

6. Applicable deposit amount as specified in the LGIP.

7. Evidence of Site Control as specified in the LGIP (check one).

____ Is attached to this Interconnection Request.

____ Will be provided at a later date in accordance with this LGIP.

8. This Interconnection Request shall be submitted to the representative indicated below:

{To be completed by Transmission Provider}

9. Representative of Interconnection Customer to contact:

{To be completed by Interconnection Customer}

10. This Interconnection Request is submitted by:

Name of Interconnection Customer: _____

By (signature): _____ Date: _____
Name (type or print): _____
Title: _____

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Attachment A to Appendix 1

Interconnection Request

LARGE GENERATING FACILITY DATA

UNIT RATINGS

kVA _____ °F _____ Voltage _____

Power Factor _____

Speed (RPM) _____ Connection (e.g. Wye) _____

Short Circuit Ratio _____ Frequency, Hertz _____

Stator Amperes at Rated kVA _____ Field Volts _____

Max Turbine MW _____°F _____

Primary frequency response operating range for electric storage resources:

Minimum State of Charge:_____

Maximum State of Charge:_____

COMBINED TURBINE-GENERATOR-EXCITER INERTIA DATA

Inertia Constant, H = _____ kW sec/kVA

Moment-of-Inertia, WR^2 = _____ lb. $ft.^2$

REACTANCE DATA (PER UNIT-RATED KVA)

		DIRECT AXIS		QUADRATURE AXIS	
Synchronous – saturated	X_{dv}	_____	X_{qv}	_____	
Synchronous – unsaturated	X_{di}	_____	X_{qi}	_____	
Transient – saturated		X'_{dv}	_____	X'_{qv}	_____
Transient – unsaturated	X'_{di}	_____	X'_{qi}	_____	
Subtransient – saturated	X''_{dv}	_____	X''_{qv}	_____	
Subtransient – unsaturated	X''_{di}	_____	X''_{qi}	_____	
Negative Sequence – saturated	$X2_v$	_____			
Negative Sequence – unsaturated	$X2_i$	_____			
Zero Sequence – saturated	$X0_v$	_____			
Zero Sequence – unsaturated		$X0_i$	_____		
Leakage Reactance	Xl_m	_____			

FIELD TIME CONSTANT DATA (SEC)

Open Circuit	T'_{do}	_____	T'_{qo}	_____
Three-Phase Short Circuit Transient	T'_{d3}	_____	T'_{q}	_____
Line to Line Short Circuit Transient	T'_{d2}	_____		
Line to Neutral Short Circuit Transient	T'_{d1}	_____		
Short Circuit Subtransient	T''_{d}	_____	T''_{q}	_____
Open Circuit Subtransient	T''_{do}	_____	T''_{qo}	_____

ARMATURE TIME CONSTANT DATA (SEC)

Three Phase Short Circuit	T_{a3}	_____
Line to Line Short Circuit	T_{a2}	_____
Line to Neutral Short Circuit	T_{a1}	_____

NOTE: If requested information is not applicable, indicate by marking “N/A.”

MW CAPABILITY AND PLANT CONFIGURATION

LARGE GENERATING FACILITY DATA

ARMATURE WINDING RESISTANCE DATA (PER UNIT)

Positive	R_1	_____
Negative	R_2	_____
Zero	R_0	_____

Rotor Short Time Thermal Capacity I_2^2t = _____

Field Current at Rated kVA, Armature Voltage and PF = _____ amps

Field Current at Rated kVA and Armature Voltage, 0 PF = _____ amps

Three Phase Armature Winding Capacitance = _____ microfarad

Field Winding Resistance = _____ ohms _____ °C

Armature Winding Resistance (Per Phase) = _____ ohms _____ °C

CURVES

Provide Saturation, Vee, Reactive Capability, Capacity Temperature Correction curves. Designate normal and emergency Hydrogen Pressure operating range for multiple curves.

GENERATOR STEP-UP TRANSFORMER DATA RATINGS

Capacity Self-cooled/

Maximum Nameplate

_____/_____kVA

Voltage Ratio(Generator Side/System side/Tertiary)

_____/_____/_____kV

Winding Connections (Low V/High V/Tertiary V (Delta or Wye))

_____/_____/_____

Fixed Taps Available _____

Present Tap Setting _____

IMPEDANCE

Positive Z_1 (on self-cooled kVA rating)_____ % _____ X/R

Zero Z_0 (on self-cooled kVA rating)_____ % _____ X/R

EXCITATION SYSTEM DATA

Identify appropriate IEEE model block diagram of excitation system and power system stabilizer (PSS) for computer representation in power system stability simulations and the corresponding excitation system and PSS constants for use in the model.

GOVERNOR SYSTEM DATA

Identify appropriate IEEE model block diagram of governor system for computer representation in power system stability simulations and the corresponding governor system constants for use in the model.

WIND GENERATORS

Number of generators to be interconnected pursuant to this Interconnection Request:

_____

Elevation: _____ _____ Single Phase _____ Three Phase

Inverter manufacturer, model name, number, and version:

_____

List of adjustable setpoints for the protective equipment or software:

_____

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Note: A completed General Electric Company Power Systems Load Flow (PSLF) data sheet or other compatible formats, such as IEEE and PTI power flow models, must be

supplied with the Interconnection Request. If other data sheets are more appropriate to the proposed device, then they shall be provided and discussed at Scoping Meeting.

Induction Generators

(*) Field Volts: _____
(*) Field Amperes: _____
(*) Motoring Power (kW): _____
(*) Neutral Grounding Resistor (If Applicable): _____
(*) I_2^2t or K (Heating Time Constant): _____
(*) Rotor Resistance: _____
(*) Stator Resistance: _____
(*) Stator Reactance: _____
(*) Rotor Reactance: _____
(*) Magnetizing Reactance: _____
(*) Short Circuit Reactance: _____
(*) Exciting Current: _____
(*) Temperature Rise: _____
(*) Frame Size: _____
(*) Design Letter: _____
(*) Reactive Power Required In Vars (No Load): _____
(*) Reactive Power Required In Vars (Full Load): _____
(*) Total Rotating Inertia, H: Per Unit on KVA Base _____

Note: Please consult Transmission Provider prior to submitting the Interconnection Request to determine if the information designated by (*) is required.

Models for Non-Synchronous Generators

For a non-synchronous Large Generating Facility, Interconnection Customer shall provide (1) a validated user-defined root mean squared (RMS) positive sequence dynamics model; (2) an appropriately parameterized generic library RMS positive sequence dynamics model, including model block diagram of the inverter control and plant control systems, as defined by the selection in Table 1 or a model otherwise approved by the Western Electricity Coordinating Council, that corresponds to Interconnection Customer's Large Generating Facility; and (3) if applicable, a validated electromagnetic transient model if Transmission Provider performs an electromagnetic transient study as part of the interconnection study process. A user-defined model is a set of programming code created by equipment manufacturers or developers that captures the latest features of controllers that are mainly software based and represents the entities' control strategies but does not necessarily correspond to any generic library model. Interconnection Customer must also demonstrate that the model is validated by providing evidence that the equipment behavior is consistent with the model behavior (*e.g.,* an attestation from Interconnection Customer that the model accurately represents the entire Large Generating Facility; attestations from each equipment manufacturer that the user defined model accurately represents the component of the Large Generating Facility; or test data).

TABLE 1—ACCEPTABLE GENERIC LIBRARY RMS POSITIVE SEQUENCE DYNAMICS MODELS

GE PSLF	Siemens PSS/E*	PowerWorld simulator	Description
pvd1		PVD1	Distributed PV system model.
der_a	DERAU1	DER_A	Distributed energy resource model.
regc_a	REGCAU1, REGCA1	REGC_A	Generator/converter model.
regc_b	REGCBU1	REGC_B	Generator/converter model.
wt1g	WT1G1	WT1G and WT1G1	Wind turbine model for Type-1 wind turbines (conventional directly connected induction generator).
wt2g	WT2G1	WT2G and WT2G1	Generator model for generic Type-2 wind turbines.
wt2e	WT2E1	WT2E and WT2E1	Rotor resistance control model for wound-rotor induction wind-turbine generator wt2g.
reec_a	REECAU1, REECA1	REEC_A	Renewable energy electrical control model.
reec_c	REECCU1	REEC_C	Electrical control model for battery energy storage system.
reec_d	REECDU1	REEC_D	Renewable energy electrical control model.
wt1t	WT12T1	WT1T and WT12T1	Wind turbine model for Type-1 wind turbines (conventional directly connected induction generator).
wt1p_b	wt1p_b	WT12A1U_B	Generic wind turbine pitch controller for WTGs of Types 1 and 2.
wt2t	WT12T1	WT2T	Wind turbine model for Type-2 wind turbines (directly connected induction generator wind turbines with an external rotor resistance).
wtgt_a	WTDTAU1, WTDTA1	WTGT_A	Wind turbine drive train model.
wtga_a	WTARAU1, WTARA1	WTGA_A	Simple aerodynamic model.
wtgp_a	WTPTAU1, WTPTA1	WTGPT_A	Wind Turbine Generator Pitch controller.
wtgq_a	WTTQAU1, WTTQA1	WTGTRQ_A	Wind Turbine Generator Torque controller.
wtgwgo_a	WTGWGOAU	WTGWGO_A	Supplementary control model for Weak Grids.
wtgibffr_a	WTGIBFFRA	WTGIBFFR_A	Inertial-base fast frequency response control.
wtgp_b	WTPTBU1	WTGPT_B	Wind Turbine Generator Pitch controller.
wtgt_b	WTDTBU1	WTGT_B	Drive train model.
repc_a	Type 4: REPCAU1 (v33), REPCA1 (v34). Type 3: REPCTAU1 (v33), REPCTA1 (v34).	REPC_A	Power Plant Controller.
repc_b	PLNTBU1	REPC_B	Power Plant Level Controller for controlling several plants/devices. In regard to Siemens PSS/E*: Names of other models for interface with other devices: REA3XBU1, REAX4BU1—for interface with Type 3 and 4 renewable machines. SWSAXBU1—for interface with SVC (modeled as switched shunt in powerflow). SYNAXBU1—for interface with synchronous condenser. FCTAXBU1—for interface with FACTS device.
repc_c	REPCCU	REPC_C	Power plant controller.

Appendix 2 to LGIP

Cluster Study Agreement

This Agreement is made and entered into this ____day of_____, 20____ by and between _____, a _____ organized and existing under the laws of the State of_____, (''Interconnection Customer,'') and _____a _____ organized and existing under the laws of the State of ____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System; *and*

Whereas, Interconnection Customer has requested Transmission Provider to perform a Cluster Study to assess the impact of interconnecting the Large Generating Facility to the Transmission System, and of any Affected Systems; *and*

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in this LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed a Cluster Study consistent with Section 7.0 of this LGIP in accordance with the Tariff.

3.0 The scope of the Cluster Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Cluster Study will be based upon the technical information provided by Interconnection Customer in the Interconnection Request, subject to any modifications in accordance with Section 4.4 of this LGIP. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Cluster Study.

5.0 The Cluster Study Report shall provide the following information:

—identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

—identification of any thermal overload or voltage limit violations resulting from the interconnection;

—identification of any instability or inadequately damped response to system disturbances resulting from the interconnection and

—description and non-binding, good faith estimated cost of facilities required to interconnect the Large Generating Facility to the Transmission System and to address the identified short circuit, instability, and power flow issues.

6.0 Transmission Provider's good faith estimate for the time of completion of the Cluster Study is {insert date}.

Upon receipt of the Cluster Study Report, Transmission Provider shall charge and Interconnection Customer shall pay its share of the actual costs of the Cluster Study, consistent with Section 13.3 of this LGIP.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Cluster Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, that are consistent with regional practices, Applicable Laws and Regulations and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of this LGIP and *the* LGIA.

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider or Transmission Owner, if applicable}

By: _____
Title: _____
Date: _____
By: _____
Title: _____
Date: _____

{Insert name of Interconnection Customer}

By: _____
Title: _____
Date: _____

Attachment A to Appendix 2

Cluster Study Agreement

Assumptions Used in Conducting the Cluster Study

The Cluster Study will be based upon the technical information provided by [the] Interconnection Customer in the Interconnection Request, subject to any modifications in accordance with Section 4.4 of this LGIP, and the following assumptions:

Designation of Point of Interconnection and configuration to be studied.

Designation of alternative Point(s) of Interconnection and configuration.

{Above assumptions to be completed by Interconnection Customer and other assumptions to be provided by Interconnection Customer and Transmission Provider}

Appendix 3 to LGIP

Interconnection Facilities Study Agreement

This agreement is made and entered into this ____ day of _____, 20____by and between _____, a _____organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____ a _____ *organized and* existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated __ ; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System; *and*

Whereas, Transmission Provider has completed a[n Interconnection] Cluster Study (the ''Cluster Study'') and provided the results of said study to Interconnection Customer; and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Cluster Study in accordance with Good Utility Practice to physically and electrically connect the Large Generating Facility to the Transmission System.

Now, Therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Transmission Provider's FERC-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Interconnection Facilities Study consistent with Section 8.0 of this LGIP to be performed in accordance with the Tariff.

3.0 The scope of the Interconnection Facilities Study shall be subject to the assumptions set forth in Attachment A and the data provided in Attachment B to this Agreement.

4.0 The Interconnection Facilities Study Report (i) shall provide a description, estimated cost of (consistent with Attachment A), schedule for required facilities to interconnect the Large Generating Facility to the Transmission System and (ii) shall address the short circuit, instability, and power flow issues identified in the Cluster Study.

5.0 Interconnection Customer shall provide a Commercial Readiness Deposit per Section 8.1 of this LGIP to enter the Interconnection Facilities Study. The time for completion of the Interconnection Facilities Study is specified in Attachment A.

6.0 Miscellaneous. The Interconnection Facilities Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their

duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider or Transmission Owner, if applicable}

By: _____
Title: _____
Date: _____
By: _____
Title: _____
Date: _____

{Insert name of Interconnection Customer}

By: _____
Title: _____
Date: _____

Attachment A To Appendix 3

Interconnection Facilities Study Agreement

Interconnection Customer Schedule Election for Conducting the Interconnection Facilities Study

Transmission Provider shall complete the study and issue a draft Interconnection Facilities Study Report to Interconnection Customer within the following number of days after receipt of an executed copy of this Interconnection Facilities Study Agreement:

—ninety (90) Calendar Days with no more than a +/− 20 percent cost estimate contained in the report, or

—one hundred eighty (180) Calendar Days with no more than a +/− 10 percent cost estimate contained in the report.

Attachment B to Appendix 3

Interconnection Facilities Study Agreement

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Attachment B to Appendix 3

Interconnection Facilities

Study Agreement

DATA FORM TO BE PROVIDED BY INTERCONNECTION CUSTOMER WITH THE

INTERCONNECTION FACILITIES STUDY AGREEMENT

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections:

On the one-line diagram indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one-line diagram indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

Will an alternate source of auxiliary power be available during CT/PT maintenance?

_____Yes _____ No

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? _____Yes _____No (Please indicate on one line diagram).

What type of control system or PLC will be located at Interconnection Customer's Large Generating Facility?

_____

_____

What protocol does the control system or PLC use?

Please provide a 7.5-minute quadrangle of the site. Sketch the plant, station, transmission line, and property line.

Physical dimensions of the proposed interconnection station:

Bus length from generation to interconnection station:

Line length from interconnection station to Transmission Provider's transmission line.

Tower number observed in the field. (Painted on tower leg)* _____

Number of third party easements required for transmission lines*:

* To be completed in coordination with Transmission Provider.

Is the Large Generating Facility in [the] Transmission Provider's service area?

_____Yes _____No Local provider: _____

Please provide proposed schedule dates:

Begin Construction	Date: _____
Generator step-up transformer receives back feed power	Date: _____
Generation Testing	Date: _____
Commercial Operation	Date: _____

BILLING CODE 6717–01–C

Appendix 4 to LGIP

Optional Interconnection Study Agreement

This agreement is made and entered into this ____ day of _____, 20____ by and between _____, a _____ organized and existing under the laws of the State of ____ ____, (''Interconnection Customer,'') and ____ ____ a _____ *organized and* existing under the laws of the State of ____-____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated _____; *and*

Whereas, Interconnection Customer is proposing to establish an interconnection with the Transmission System; and

Whereas, Interconnection Customer has submitted to Transmission Provider an Interconnection Request; and

Whereas, on or after the date when Interconnection Customer receives the Cluster Study results, Interconnection Customer has further requested that Transmission Provider prepare an Optional Interconnection Study;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Transmission Provider's FERC-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Optional Interconnection Study consistent with Section 10.0 of this LGIP to be performed in accordance with the Tariff.

3.0 The scope of the Optional Interconnection Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Optional Interconnection Study shall be performed solely for informational purposes.

5.0 The Optional Interconnection Study report shall provide a sensitivity analysis based on the assumptions specified by Interconnection Customer in Attachment A to this Agreement. The Optional Interconnection Study will identify Transmission Provider's Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or interconnection service based upon the assumptions specified by Interconnection Customer in Attachment A.

6.0 Interconnection Customer shall provide a deposit of $10,000 for the performance of the Optional Interconnection Study. Transmission Provider's good faith estimate for the time of completion of the Optional Interconnection Study is {insert date}.

Upon receipt of the Optional Interconnection Study, Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Optional Study.

Any difference between the initial payment and the actual cost of the study shall be paid by or refunded to Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Optional Interconnection Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider or Transmission Owner, if applicable}

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

{Insert name of Interconnection Customer}

By: _____

Title: _____

Date: _____

Appendix 5 to LGIP

Large Generator Interconnection Agreement (See LGIA)

Appendix 6 to LGIP

Interconnection Procedures for a Wind Generating Plant

Appendix 6 sets forth procedures specific to a wind generating plant. All other requirements of this LGIP continue to apply to wind generating plant interconnections.

A. Special Procedures Applicable to Wind Generators

The wind plant Interconnection Customer, in completing the Interconnection Request required by Section 3.3 of this LGIP, may provide to [the] Transmission Provider a set of preliminary electrical design specifications depicting the wind plant as a single equivalent generator. Upon satisfying these and other applicable Interconnection Request conditions, the wind plant may enter the queue and receive the base case data as provided for in this LGIP.

No later than six months after submitting an Interconnection Request completed in this manner, the wind plant Interconnection Customer must submit completed detailed electrical design specifications and other data (including collector system layout data) needed to allow [the] Transmission Provider to complete the Cluster Study.

Appendix 7 to LGIP

Transitional Cluster Study Agreement

This agreement is made and entered into this ____ day of _____, 20____ by and between _____, a _____ organized and existing under the laws of the State of ____ ____ (''Interconnection Customer''), and ____ ____, a _____ organized and existing under the laws of the State of _____ (''Transmission Provider''). Interconnection

Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated _____;

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System; and

Whereas, Interconnection Customer has requested Transmission Provider to perform a ''Transitional Cluster Study,'' which combines the Cluster Study and Interconnection Facilities Study, in a single cluster study, followed by any needed restudies, to specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to physically and electrically connect the Large Generating Facility to Transmission Provider's Transmission System; and

Whereas, Interconnection Customer has a valid Queue Position as of the {Transmission Provider to insert *Commission-approved* effective date of compliance filing}.

Now, therefore, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in this LGIP.

2.0 Interconnection Customer elects, and Transmission Provider shall cause to be performed, a Transitional Cluster Study.

3.0 The Transitional Cluster Study shall be based upon the technical information provided by Interconnection Customer in the Interconnection Request. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Transitional Cluster Study and Interconnection Customer shall provide such data as quickly as reasonable.

4.0 Pursuant to Section 5.1.1.2 of this LGIP, the interim Transitional Cluster Study Report shall provide the information below:

—identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

—identification of any thermal overload or voltage limit violations resulting from the interconnection;

—identification of any instability or inadequately damped response to system disturbances resulting from the interconnection; and

—Transmission Provider's Interconnection Facilities and Network Upgrades that are expected to be required as a result of the Interconnection Request(s) and a non-binding, good faith estimate of cost responsibility and a non-binding, good faith estimated time to construct.

5.0 Pursuant to Section 5.1.1.2 of this LGIP, the final Transitional Cluster Study Report shall: (1) provide all the information included in the interim Transitional Cluster Study Report; (2) provide a description of, estimated cost of, and schedule for required facilities to interconnect the Generating Facility to the Transmission System; and (3) address the short circuit, instability, and power flow issues identified in the interim Transitional Cluster Study Report.

6.0 Interconnection Customer has met the requirements described in Section 5.1.1.2 of this LGIP.

7.0 Interconnection Customer previously provided a deposit for the performance of Interconnection Studies. Upon receipt of the final Transitional Cluster Study Report, Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Transitional Cluster Study. Any difference between the study deposit and the actual cost of the study shall be paid by or refunded to Interconnection Customer, in accordance with the provisions of Section 13.3 of this LGIP.

8.0 Miscellaneous. The Transitional Cluster Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of this LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider or Transmission Owner, if applicable}

By: _____

Title: _____

Date: _____

{Insert name of Interconnection Customer}

By: _____

Title: _____

Date: _____

Appendix 8 to LGIP

Transitional Serial Interconnection Facilities Study Agreement

This agreement is made and entered into this ____ day of ____, 20____, by and between _____, a _____ organized and existing under the laws of the State of _____ (''Interconnection Customer'') and _____, a _____ organized and existing under the laws of the State of _____ (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Large Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated ____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System; and

Whereas, Interconnection Customer has requested Transmission Provider to continue processing its Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusions of the final interconnection system impact study (from the previously effective serial study process) in accordance with Good Utility Practice to physically and electrically connect the Large Generating Facility to the Transmission System; and

Whereas, Transmission Provider has provided an Interconnection Facilities Study Agreement to [the] Interconnection Customer on or before {Transmission Provider to insert *Commission-approved* effective date of compliance filing}.

Now, therefore, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in this LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection Facilities Study consistent with Section 8 of this LGIP.

3.0 The scope of the Interconnection Facilities Study shall be subject to the assumptions set forth in Attachment A to this Agreement, which shall be the same assumptions as the previous Interconnection Facilities Study Agreement executed by [the] Interconnection Customer.

4.0 The Interconnection Facilities Study Report shall: (1) provide a description, estimated cost of (consistent with Attachment A), and schedule for required facilities to interconnect the Large Generating Facility to the Transmission System; and (2) address the short circuit, instability, and power flow issues identified in the most recently published Cluster Study Report.

5.0 Interconnection Customer has met the requirements described in Section 5.1.1.1 of this LGIP. The time for completion of the Interconnection Facilities Study is specified in Attachment A, and shall be no later than *one hundred fifty* (150) Calendar Days after {Transmission Provider to insert *Commission-approved* effective date [accepted on]*of* compliance *filing*}.

6.0 Interconnection Customer previously provided a deposit of _____ dollars ($____) for the performance of the Interconnection Facilities Study.

7.0 Upon receipt of the Interconnection Facilities Study results, Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Facilities Study.

8.0 Any difference between the study deposit and the actual cost of the study shall be paid by or refunded to Interconnection Customer, as appropriate.

9.0 Miscellaneous. The Interconnection Facilities Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices,

Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of this LGIP and this LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider or Transmission Owner, if applicable}

By: _____
Title: _____
Date: _____

{Insert name of Interconnection Customer}

By: _____
Title: _____
Date: _____

Attachment A to Appendix 8

Transitional Serial Interconnection Facilities Study Agreement

Assumptions Used in Conducting the Transitional Serial Interconnection Facilities Study

{Assumptions to be completed by Interconnection Customer and Transmission Provider}

Appendix 9 to LGIP

Two-Party Affected System Study Agreement

This agreement is made and entered into this ____ day of _____, 20, by and between _____, a _____ organized and existing under the laws of the State of _____ (Affected System Interconnection Customer) and _____, a organized and existing under the laws of the State of _____ (Transmission Provider). Affected System Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Affected System Interconnection Customer is proposing to develop a {description of generating facility or generating capacity addition to an existing generating facility} consistent with the interconnection request submitted by Affected System Interconnection Customer to {name of host transmission provider}, dated _____, for which {name of host transmission provider} found impacts on Transmission Provider's Transmission System; and

Whereas, Affected System Interconnection Customer desires to interconnect the {generating facility} with {name of host transmission provider}'s transmission system;

Now, therefore, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in this LGIP.

2.0 Transmission Provider shall coordinate with Affected System Interconnection Customer to perform an Affected System Study consistent with Section 9 of this LGIP.

3.0 The scope of the Affected System Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Affected System Study will be based upon the technical information provided by Affected System Interconnection Customer and {name of host transmission provider}. Transmission Provider reserves the right to request additional technical information from Affected System Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Affected System Study.

5.0 The Affected System Study shall provide the following information:

—identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

—identification of any thermal overload or voltage limit violations resulting from the interconnection;

—identification of any instability or inadequately damped response to system disturbances resulting from the interconnection;

—non-binding, good faith estimated cost and time required to construct facilities required on Transmission Provider's Transmission System to accommodate the interconnection of the {generating facility} to the transmission system of the host transmission provider; and

—description of how such facilities will address the identified short circuit, instability, and power flow issues.

6.0 Affected System Interconnection Customer shall provide a deposit of ____ for performance of the Affected System Study. Upon receipt of the results of the Affected System Study by the Affected System Interconnection Customer, Transmission Provider shall charge, and Affected System Interconnection Customer shall pay, the actual cost of the Affected System Study. Any difference between the deposit and the actual cost of the Affected System Study shall be paid by or refunded to Affected System Interconnection Customer, as appropriate, including interest calculated in accordance with section 35.19a(a)(2) of FERC's regulations.

7.0 This Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability, and assignment, which reflect best practices in the electric industry, that are consistent with regional practices, Applicable Laws and Regulations and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP.

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider}

By: _____
Title: _____
Date: _____
By: _____
Title: _____
Date: _____

{Insert name of Affected System Interconnection Customer}

By: _____
Title: _____
Date: _____
Project No. ____

Attachment A to Appendix 9

Two-Party Affected System Study Agreement

Assumptions Used in Conducting the Affected System Study

The Affected System Study will be based upon the following assumptions:

{Assumptions to be completed by Affected System Interconnection Customer and Transmission Provider}

Appendix 10 to LGIP

Multiparty Affected System Study Agreement

This agreement is made and entered into this ____ day of _____, 20 ____, by and among _____, a _____ organized and existing under the laws of the State of ____ ____ (Affected System Interconnection Customer); _____, a _____ organized and existing under the laws of the State of _____ (Affected System Interconnection Customer); and _____, a _____ organized and existing under the laws of the State of _____ (Transmission Provider). Affected System Interconnection Customers and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.'' When it is not important to differentiate among them, Affected System Interconnection Customers each may be referred to as ''Affected System Interconnection Customer'' or collectively as the ''Affected System Interconnection Customers.''

Recitals

Whereas, Affected System Interconnection Customers are proposing to develop {description of generating facilities or generating capacity additions to an existing generating facility}, consistent with the interconnection requests submitted by Affected System Interconnection Customers to {name of host transmission provider}, dated _____, for which {name of host transmission provider} found impacts on Transmission Provider's Transmission System; and

Whereas, Affected System Interconnection Customers desire to interconnect the {generating facilities} with {name of host transmission provider}'s transmission system;

Now, therefore, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in this LGIP.

2.0 Transmission Provider shall coordinate with Affected System Interconnection Customers to perform an Affected System Study consistent with Section 9 of this LGIP.

3.0 The scope of the Affected System Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Affected System Study will be based upon the technical information provided by Affected System Interconnection Customers and {name of host transmission provider}. Transmission Provider reserves the right to request additional technical information from Affected System Interconnection Customers as may reasonably become necessary consistent with Good Utility Practice during the course of the Affected System Study.

5.0 The Affected System Study shall provide the following information:

—identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

—identification of any thermal overload or voltage limit violations resulting from the interconnection;

—identification of any instability or inadequately damped response to system disturbances resulting from the interconnection;

—non-binding, good faith estimated cost and time required to construct facilities required on Transmission Provider's Transmission System to accommodate the interconnection of the {generating facilities} to the transmission system of the host transmission provider; and

—description of how such facilities will address the identified short circuit, instability, and power flow issues.

6.0 Affected System Interconnection Customers shall each provide a deposit of ____ for performance of the Affected System Study. Upon receipt of the results of the Affected System Study by the Affected System Interconnection Customers, Transmission Provider shall charge, and Affected System Interconnection Customers shall pay, the actual cost of the Affected System Study. Any difference between the deposit and the actual cost of the Affected System Study shall be paid by or refunded to Affected System Interconnection Customers, as appropriate, including interest calculated in accordance with section 35.19a(a)(2) of FERC's regulations.

7.0 This Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability, and assignment, which reflect best practices in the electric industry, that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP.

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider}

By: _____
Title: _____
Date: _____
By: _____
Title: _____
Date: _____

{Insert name of Affected System Interconnection Customer}

By: _____
Title: _____
Date: _____
Project No. ____

{Insert name of Affected System Interconnection Customer}

By: _____
Title: _____
Date: _____
Project No. ____

Attachment A to Appendix 10

Multiparty Affected System Study Agreement

Assumptions Used in Conducting the Multiparty Affected System Study

The Affected System Study will be based upon the following assumptions:

{Assumptions to be completed by Affected System Interconnection Customers and Transmission Provider}

Appendix 11 to LGIP

Two-Party Affected System Facilities Construction Agreement

This agreement is made and entered into this ____ day of _____, 20____, by and between _____, organized and existing under the laws of the State of _____ (Affected System Interconnection Customer) and _____, an entity organized *and existing* under the laws of the State of _____ (Transmission Provider). Affected System Interconnection Customer and Transmission Provider each may be referred to as a ''Party'' or collectively as the ''Parties.''

Recitals

Whereas, Affected System Interconnection Customer is proposing to develop a {description of generating facility or generating capacity addition to an existing generating facility} consistent with the interconnection request submitted by Affected System Interconnection Customer to {name of host transmission provider}, dated _____, for which {name of host transmission provider} found impacts on Transmission Provider's Transmission System; and

Whereas, Affected System Interconnection Customer desires to interconnect the {generating facility} to {name of host transmission provider}'s transmission system; and

Whereas, additions, modifications, and upgrade(s) must be made to certain existing facilities of Transmission Provider's Transmission System to accommodate such interconnection; and

Whereas, Affected System Interconnection Customer has requested, and Transmission Provider has agreed, to enter into this Agreement for the purpose of facilitating the construction of necessary Affected System Network Upgrade(s);

Now, therefore, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

Article 1—Definitions

When used in this Agreement, with initial capitalization, the terms specified and not otherwise defined in this Agreement shall have the meanings indicated in this LGIP.

Article 2—Term of Agreement

2.1 Effective Date. This Agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC.

2.2 Term.

2.2.1 General. This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (1) the final repayment, where applicable, by Transmission Provider of the amount funded by Affected System Interconnection Customer for Transmission Provider's design, procurement, construction and installation of the Affected System Network Upgrade(s) provided in Appendix A; (2) the Parties agree to mutually terminate this Agreement; (3) earlier termination is permitted or provided for under Appendix A of this Agreement; or (4) Affected System Interconnection Customer terminates this Agreement after providing Transmission Provider with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Affected System Interconnection Customer has no outstanding contractual obligations to Transmission Provider under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties if (1) the commercial operation date for the {generating facility} is adjusted in accordance with the rules and procedures established by {name of host transmission provider} or (2) the in-service date for the Affected System Network Upgrade(s) is adjusted in accordance with the rules and procedures established by Transmission Provider.

2.2.2 Termination Upon Default. Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 5 of this Agreement where Breach and Breaching Party are defined in Article 5. Defaulting Party shall mean the Party that is in Default. In the event of a Default by a Party, the non-Defaulting Party shall have the termination rights described in Articles 5 and 6; provided, however, Transmission Provider may not terminate this Agreement if Affected System Interconnection Customer is the Defaulting Party and compensates Transmission Provider within thirty (30) Calendar Days for the amount of damages billed to Affected System Interconnection Customer by Transmission Provider for any such damages, including costs and expenses, incurred by Transmission Provider as a result of such Default.

2.2.3 Consequences of Termination. In the event of a termination by either Party, other than a termination by Affected System Interconnection Customer due to a Default by Transmission Provider, Affected System Interconnection Customer shall be responsible for the payment to Transmission

Provider of all amounts then due and payable for construction and installation of the Affected System Network Upgrade(s) (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Provider in connection with the construction and installation of the Affected System Network Upgrade(s), through the date of termination, and, in the event of the termination of the entire Agreement, any actual costs which Transmission Provider reasonably incurs in (1) winding up work and construction demobilization and (2) ensuring the safety of persons and property and the integrity and safe and reliable operation of Transmission Provider's Transmission System. Transmission Provider shall use Reasonable Efforts to minimize such costs.

2.2.4 Reservation of Rights. Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Affected System Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

2.3 Filing. Transmission Provider shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Affected System Interconnection Customer may request that any information so provided be subject to the confidentiality provisions of Article 8. If Affected System Interconnection Customer has executed this Agreement, or any amendment thereto, Affected System Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements.

2.4 Survival. This Agreement shall continue in effect after termination, to the extent necessary, to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this Agreement or other applicable agreements, to disconnect, remove, or salvage its own facilities and equipment.

2.5 Termination Obligations. Upon any termination pursuant to this Agreement, Affected System Interconnection Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date, including previously incurred capital costs, penalties for early termination, and costs of removal and site restoration.

Article 3—Construction of Affected System Network Upgrade(s)

3.1 Construction.

3.1.1 Transmission Provider Obligations. Transmission Provider shall (or shall cause such action to) design, procure, construct, and install, and Affected System Interconnection Customer shall pay, consistent with Article 3.2, the costs of all Affected System Network Upgrade(s) identified in Appendix A. All Affected System Network Upgrade(s) designed, procured, constructed, and installed by Transmission Provider pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations. Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, or any Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Right to Suspend. Affected System Interconnection Customer must provide to Transmission Provider written notice of its request for suspension. Only the milestones described in the Appendices of this Agreement are subject to suspension under this Article 3.1.2. Affected System Network Upgrade(s) will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Affected System Network Upgrade(s) are not needed by any other Interconnection Customer; or (3) Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3), any security paid to Transmission Provider under Article 4.1 of this Agreement shall be released by Transmission Provider upon the determination by Transmission Provider that the Affected System Network Upgrade(s) will no longer be constructed. If suspension occurs, Affected System Interconnection Customer shall be responsible for the costs which Transmission Provider incurs (i) in accordance with this Agreement prior to the suspension; (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of Transmission Provider's Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Provider cannot reasonably avoid; and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Provider shall obtain Affected System Interconnection Customer's authorization. Affected System Interconnection Customer shall be responsible for all costs incurred in connection with Affected System Interconnection Customer's failure to authorize cancellation of such contracts or orders.

Interest on amounts paid by Affected System Interconnection Customer to Transmission Provider for the design, procurement, construction, and installation of the Affected System Network Upgrade(s) shall not accrue during periods in which Affected System Interconnection Customer has suspended construction under this Article 3.1.2.

Transmission Provider shall invoice Affected System Interconnection Customer pursuant to Article 4 and will use Reasonable Efforts to minimize its costs. In the event Affected System Interconnection Customer suspends work by Affected System Transmission Provider required under this Agreement pursuant to this Article 3.1.2.1, and has not requested Affected System Transmission Provider to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Affected System Transmission Provider, whichever is earlier, if no effective date of suspension is specified.

[3.1.2.2 Recommencing of Work. If Affected System Interconnection Customer requests that Transmission Provider recommence construction of Affected System Network Upgrade(s), Transmission Provider shall have no obligation to afford such work the priority it would have had but for the prior actions of Affected System Interconnection Customer to suspend the work. In such event, Affected System Interconnection Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the interconnection agreed to by the Parties. Transmission Provider has the right to conduct a restudy of the Affected System Study if conditions have materially changed subsequent to the request to suspend. Affected System Interconnection Customer shall be responsible for the costs of any studies or restudies required.**]**

[3.1.2.3 Right to Suspend Due to Default. Transmission Provider reserves the right, upon written notice to Affected System Interconnection Customer, to suspend, at any time, work by Transmission Provider due to Default by Affected System Interconnection Customer. Affected System Interconnection Customer shall be responsible for any additional expenses incurred by Transmission Provider associated with the construction and installation of the Affected System Network Upgrade(s) (as set forth in Article 2.2.3) upon the occurrence of either a Breach that Affected System Interconnection Customer is unable to cure-

pursuant to Article 5 or a Default pursuant to Article 5. Any form of suspension by Transmission Provider shall not be barred by Articles 2.2.2, 2.2.3, or 5.2.2, nor shall it affect Transmission Provider's right to terminate the work or this Agreement pursuant to Article 6.**]**

3.1.3 Construction Status. Transmission Provider shall keep Affected System Interconnection Customer advised periodically as to the progress of its design, procurement and construction efforts, as described in Appendix A. Affected System Interconnection Customer may, at any time and reasonably, request a progress report from Transmission Provider. If, at any time, Affected System Interconnection Customer determines that the completion of the Affected System Network Upgrade(s) will not be required until after the specified in-service date, Affected System Interconnection Customer will provide written notice to Transmission Provider of such later date upon which the completion of the Affected System Network Upgrade(s) would be required. Transmission Provider may delay the in-service date of the Affected System Network Upgrade(s) accordingly.

3.1.4 Timely Completion. Transmission Provider shall use Reasonable Efforts to design, procure, construct, install, and test the Affected System Network Upgrade(s) in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time or ability to complete the Affected System Network Upgrade(s), Transmission Provider shall promptly notify Affected System Interconnection Customer. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a meeting with Affected System Interconnection Customer to evaluate the alternatives available to Affected System Interconnection Customer. Transmission Provider shall also make available to Affected System Interconnection Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider that is reasonably needed by Affected System Interconnection Customer to evaluate alternatives, subject to confidentiality arrangements consistent with Article 8. Transmission Provider shall, at Affected System Interconnection Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that (1) Affected System Interconnection Customer authorizes such actions, such authorization to be withheld, conditioned, or delayed by Affected System Interconnection Customer only if it can demonstrate that the acceleration would have a material adverse effect on it; and (2) the Affected System Interconnection Customer funds costs associated therewith in advance.

3.2 Interconnection Costs.

3.2.1 Costs. Affected System Interconnection Customer shall pay to Transmission Provider costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Affected System Network Upgrade(s), as identified in Appendix A, in accordance with the cost recovery method provided herein. Unless Transmission Provider elects to fund the Affected System Network Upgrade(s), they shall be initially funded by Affected System Interconnection Customer.

3.2.1.1 Lands of Other Property Owners. If any part of the Affected System Network Upgrade(s) is to be installed on property owned by persons other than Affected System Interconnection Customer or Transmission Provider, Transmission Provider shall, at Affected System Interconnection Customer's expense, use efforts similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights-of-way, and easements that are necessary to construct, operate, maintain, test, inspect, replace, or remove the Affected System Network Upgrade(s) upon such property.

3.2.2 Repayment.

3.2.2.1 Repayment. Consistent with Articles 11.4.1 and 11.4.2 of [the] Transmission Provider's pro forma LGIA, Affected System Interconnection Customer shall be entitled to a cash repayment by Transmission Provider of the amount paid to Transmission Provider, if any, for the Affected System Network Upgrade(s), including any tax gross-up or other tax-related payments associated with the Affected System Network Upgrade(s), and not refunded to Affected System Interconnection Customer pursuant to Article 3.3.1 or otherwise. The Parties may mutually agree to a repayment schedule, to be outlined in Appendix A, not to exceed twenty (20) years from the commercial operation date, for the complete repayment for all applicable costs associated with the Affected System Network Upgrade(s). Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19 a(a)(2)(iii) from the date of any payment for Affected System Network Upgrade(s) through the date on which Affected System Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Affected System Interconnection Customer has suspended construction pursuant to Article 3.1.2. Affected System Interconnection Customer may assign such repayment rights to any person.

3.2.2.2 Impact of Failure to Achieve Commercial Operation. If the Affected System Interconnection Customer's generating facility fails to achieve commercial operation, but it or another generating facility is later constructed and makes use of the Affected System Network Upgrade(s), Transmission Provider shall at that time reimburse Affected System Interconnection Customer for the amounts advanced for the Affected System Network Upgrade(s). Before any such reimbursement can occur, Affected System Interconnection Customer (or the entity that ultimately constructs the generating facility, if different), is responsible for identifying the entity to which the reimbursement must be made.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. With regard only to payments made by Affected System Interconnection Customer to Transmission Provider for the installation of the Affected System Network Upgrade(s), Transmission Provider shall not include a gross-up for income taxes in the amounts it charges Affected System Interconnection Customer for the installation of the Affected System Network Upgrade(s) unless (1) Transmission Provider has determined, in good faith, that the payments or property transfers made by Affected System Interconnection Customer to Transmission Provider should be reported as income subject to taxation, or (2) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation. Affected System Interconnection Customer shall reimburse Transmission Provider for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration Of the ten (10)-year testing period and the applicable statute of limitation, as it may be extended by Transmission Provider upon request of the Internal Revenue Service, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Provider is determined by any Governmental Authority to constitute income by Transmission Provider subject to taxation, Affected System Interconnection Customer shall protect, indemnify, and hold harmless Transmission Provider and its Affiliates, from all claims by any such Governmental Authority for any tax, interest, and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Provider shall provide Affected System Interconnection Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Provider, upon the timely written request by Affected System Interconnection Customer and at Affected System Interconnection Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement, or other contest, including the compromise or settlement of the claim; provided that Transmission Provider shall

cooperate and consult in good faith with Affected System Interconnection Customer regarding the conduct of such contest. Affected System Interconnection Customer shall not be required to pay Transmission Provider for the tax, interest, and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Provider (1) is required to pay the tax, interest, and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement, or other contest; (2) is required to pay the tax, interest, and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (3) is required to pay the tax, interest, and/or penalties as a prerequisite to an appeal, protest, abatement, or other contest. In the event such appeal, protest, abatement, or other contest results in a determination that Transmission Provider is not liable for any portion of any tax, interest, and/or penalties for which Affected System Interconnection Customer has already made payment to Transmission Provider, Transmission Provider shall promptly refund to Affected System Interconnection Customer any payment attributable to the amount determined to be non-taxable, plus any interest (calculated in accordance with 18 CFR 35.19a(a)(2)(iii)) or other payments Transmission Provider receives or which Transmission Provider may be entitled with respect to such payment. Affected System Interconnection Customer shall provide Transmission Provider with credit assurances sufficient to meet Affected System Interconnection Customer's estimated liability for reimbursement of Transmission Provider for taxes, interest, and/or penalties under this Article 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Provider is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Provider represents, and the Parties acknowledge, that Transmission Provider is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Affected System Interconnection Customer to Transmission Provider for Affected System Network Upgrade(s) is to be treated as an upfront payment. It is anticipated by the Parties that any amounts paid by Affected System Interconnection Customer to Transmission Provider for Affected System Network Upgrade(s) will be reimbursed to Affected System Interconnection Customer in accordance with the terms of this Agreement, provided Affected System Interconnection Customer fulfills its obligations under this Agreement.

3.3.2 Private Letter Ruling. At Affected System Interconnection Customer's request and expense, Transmission Provider shall file with the Internal Revenue Service a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Affected System Interconnection Customer to Transmission Provider under this Agreement are subject to federal income taxation. Affected System Interconnection Customer will prepare the initial draft of the request for a private letter ruling and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Affected System Interconnection Customer's knowledge. Transmission Provider and Affected System Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

3.3.3 Other Taxes. Upon the timely request by Affected System Interconnection Customer, and at Affected System Interconnection Customer's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Affected System Interconnection Customer may be required to reimburse Transmission Provider under the terms of this Agreement. Affected System Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Affected System Interconnection Customer and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Affected System Interconnection Customer to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Affected System Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider. Each Party shall cooperate with the other Party to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds, as described in section 142(f) of the Internal Revenue Code.

Article 4—Security, Billing, and Payments

4.1 Provision of Security. By the earlier of (1) thirty (30) Calendar Days prior to the due date for Affected System Interconnection Customer's first payment under the payment schedule specified in Appendix A, or (2) the first date specified in Appendix A for the ordering of equipment by Transmission Provider for installing the Affected System Network Upgrade(s), Affected System Interconnection Customer shall provide Transmission Provider, at Affected System Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring, and installing the applicable portion of Affected System Network Upgrade(s) and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider for these purposes.

The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider and contain terms and conditions that guarantee payment of any amount that may be due from Affected System Interconnection Customer, up to an agreed-to maximum amount. The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date. The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

4.2 Invoice. Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

4.3 Payment. Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.

4.4 Final Invoice. Within six (6) months after completion of the construction of the Affected System Network Upgrade(s), Transmission Provider shall provide an invoice of the final cost of the construction of the Affected System Network Upgrade(s) and shall set forth such costs in sufficient detail to enable Affected System Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund, with interest (calculated in accordance with 18 CFR 35.19a(a)(2)(iii)), to Affected System Interconnection Customer any amount by which the actual payment by Affected System Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

4.5 Interest. Interest on any unpaid amounts shall be calculated in accordance with 18 CFR 35.19a(a)(2)(iii).

4.6 Payment During Dispute. In the event of a billing dispute among the Parties, Transmission Provider shall continue to construct the Affected System Network Upgrade(s) under this Agreement as long as Affected System Interconnection Customer: (1) continues to make all payments not in dispute; and (2) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Affected System Interconnection Customer

fails to meet these two requirements, then Transmission Provider may provide notice to Affected System Interconnection Customer of a Default pursuant to Article 5. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accordance with the methodology set forth in 18 CFR 35.19a(a)(2)(iii).

Article 5—Breach, Cure and Default

5.1 Events of Breach. A Breach of this Agreement shall include the:

(a) Failure to pay any amount when due;

(b) Failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty, or covenant made in this Agreement;

(c) Failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement; or

(d) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

5.2 Definition. Breaching Party shall mean the Party that is in Breach.

5.3 Notice of Breach, Cure, and Default. Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

5.3.1 Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (hereinafter referred to as the ''Cure Period'') which shall be sixty (60) Calendar Days.

5.3.2 In the event the Breaching Party fails to cure within the Cure Period, the Breaching Party will be in Default of this Agreement, and the non-Defaulting Party may terminate this Agreement in accordance with Article 6.2 of this Agreement or take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

5.4 Rights in the Event of Default. Notwithstanding the foregoing, upon the occurrence of a Default, the non-Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

Article 6—Termination of Agreement

6.1 Expiration of Term. Except as otherwise specified in this Article 6, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

6.2 Termination. In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of the other Party in accordance with Article 5.2.2 of this Agreement. Subject to the limitations set forth in Article 6.3, in the event of a Default, the termination of this Agreement by the non-Defaulting Party shall require a filing at FERC of a notice of termination, which filing must be accepted for filing by FERC.

6.3 Disposition of Facilities Upon Termination of Agreement.

6.3.1 Transmission Provider Obligations. Upon termination of this Agreement, unless otherwise agreed to by the Parties in writing, Transmission Provider:

(a) shall, prior to the construction and installation of any portion of the Affected System Network Upgrade(s) and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Affected System Network Upgrade(s);

(b) may keep in place any portion of the Affected System Network Upgrade(s) already constructed and installed; and,

(c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of Transmission Provider's Transmission System (*e.g.,* construction demobilization to return the system to its original state, wind-up work).

6.3.2 Affected System Interconnection Customer Obligations. Upon billing by Transmission Provider, Affected System Interconnection Customer shall reimburse Transmission Provider for any costs incurred by Transmission Provider in performance of the actions required or permitted by Article 6.3.1 and for the cost of any Affected System Network Upgrade(s) described in Appendix A. Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Affected System Interconnection Customer shall pay these costs pursuant to Article 4.3 of this Agreement.

6.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Affected System Network Upgrade(s), Transmission Provider may, at its option, retain any portion of such Affected System Network Upgrade(s) not cancelled or returned in accordance with Article 6.3.1(a), in which case Transmission Provider shall be responsible for all costs associated with procuring such Affected System Network Upgrade(s). To the extent that Affected System Interconnection Customer has already paid Transmission Provider for any or all of such costs, Transmission Provider shall refund Affected System Interconnection Customer for those payments. If Transmission Provider elects to not retain any portion of such facilities, Transmission Provider shall convey and make available to Affected System Interconnection Customer such facilities as soon as practicable after Affected System Interconnection Customer's payment for such facilities.

6.4 Survival of Rights. Termination or expiration of this Agreement shall not relieve either Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (1) final billings, billing adjustments, and other billing procedures set forth in this Agreement; (2) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (3) the confidentiality provisions set forth in Article 8.

Article 7—Subcontractors

7.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

7.1.1 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

7.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

7.1.3 No Limitation by Insurance. The obligations under this Article 7 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

Article 8—Confidentiality

8.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied to the other Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 CFR 388.113(c).

Such confidentiality will be maintained in accordance with this Article 8. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for

asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

8.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 8 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with FERC policies and regulations.

8.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 8.1.6 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

8.1.3 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties that may be or are considering providing financing to or equity participation with Affected System Interconnection Customer, or to potential purchasers or assignees of Affected System Interconnection Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 8 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 8.

8.1.4 Rights. Each Party shall retain all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

8.1.5 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication, or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its regulatory requirements.

8.1.6 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

8.1.7 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Business Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 8 shall survive such termination.

8.1.8 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 8. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 8, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 8, but it shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. Neither Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 8.

8.1.9 Disclosure to FERC, its Staff, or a State Regulatory Body. Notwithstanding anything in this Article 8 to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

8.1.10 Subject to the exception in Article 8.1.9, any information that a disclosing Party claims is competitively sensitive, commercial, or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (1) required by law; (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (3) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (4) necessary to fulfill its obligations under this Agreement or as [the] Transmission Provider or a balancing authority, including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party that received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order, or other reasonable measures.

Article 9—Information Access and Audit Rights

9.1 Information Access. Each Party shall make available to the other Party information

necessary to verify the costs incurred by the other Party for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 9.1 and to enforce their rights under this Agreement.

9.2 Audit Rights. Subject to the requirements of confidentiality under Article 8 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Affected System Network Upgrade(s) shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following Transmission Provider's issuance of a final invoice in accordance with Article 4.4. Affected System Interconnection Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to Transmission Provider, to audit such accounts and records. Any audit authorized by this Article 9.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

Article 10—Notices

10.1—General. Any notice, demand, or request required or permitted to be given by a Party to the other Party, and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party, may be so given, tendered, or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:
To Affected System Interconnection Customer:

10.2 Billings and Payments. Billings and payments shall be sent to the addresses shown in Article 10.1 unless otherwise agreed to by the Parties.

10.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to the other Party and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:
To Affected System Interconnection Customer:

10.4 Execution and Filing. Affected System Interconnection Customer shall either: (i) execute two originals of this tendered Agreement and return them to Transmission Provider; or (ii) request in writing that Transmission Provider file with FERC this Agreement in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the two executed originals of this tendered Agreement (if it does not conform with a FERC-approved standard form of this Agreement) or the request to file this Agreement unexecuted, Transmission Provider shall file this Agreement with FERC, together with its explanation of any matters as to which Affected System Interconnection Customer and Transmission Provider disagree and support for the costs that Transmission Provider proposes to charge to Affected System Interconnection Customer under this Agreement. An unexecuted version of this Agreement should contain terms and conditions deemed appropriate by Transmission Provider for the Affected System Interconnection Customer's generating facility. If the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted version of this Agreement, they may proceed pending FERC action.

Article 11—Miscellaneous

11.1 This Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, which reflect best practices in the electric industry, that are consistent with regional practices, Applicable Laws and Regulations and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of this LGIP.

{Signature Page to Follow}

In witness whereof, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Transmission Provider
{Transmission Provider}

By: _____
Name: _____
Title: _____

Affected System Interconnection Customer
{Affected System Interconnection Customer}

By: _____
Name: _____
Title: _____

Project No. ____

Attachment A to Appendix 11

Two-Party Affected System Facilities Construction Agreement

Affected System Network Upgrade(s), Cost Estimates and Responsibility, Construction Schedule and Monthly Payment Schedule

This Appendix A is a part of the Affected System Facilities Construction Agreement between Affected System Interconnection Customer and Transmission Provider.

1.1 Affected System Network Upgrade(s) to be installed by Transmission Provider.

{description}

1.2 First Equipment Order (including permitting).

{description}

1.2.1. Permitting and Land Rights—Transmission Provider Affected System Network Upgrade(s)

{description}

1.3 Construction Schedule. Where applicable, construction of the Affected System Network Upgrade(s) is scheduled as follows and will be periodically updated as necessary:

TABLE 1—TRANSMISSION PROVIDER CONSTRUCTION ACTIVITIES

Milestone No.	Description	Start date	End date

Note: Construction schedule assumes that Transmission Provider has obtained final authorizations and security from Affected System Interconnection Customer and all necessary permits from Governmental Authorities as necessary prerequisites to commence construction of any of the Affected System Network Upgrade(s).

1.4 Payment Schedule.

1.4.1 Timing of and Adjustments to Affected System Interconnection Customer's Payments and Security.

{description}

1.4.2 Monthly Payment Schedule. Affected System Interconnection Customer's payment schedule is as follows.

{description}

TABLE 2—AFFECTED SYSTEM INTERCONNECTION CUSTOMER'S PAYMENT/SECURITY OBLIGATIONS FOR AFFECTED SYSTEM NETWORK UPGRADE(S)

Milestone No.	Description	Date

Note: Affected System Interconnection Customer's payment or provision of security as provided in this Agreement operates as a condition precedent to Transmission Provider's obligations to construct any Affected System Network Upgrade(s), and failure to meet this schedule will constitute a Breach pursuant to Article 5.1 of this Agreement.

1.5 Permits, Licenses, and Authorizations.

{description}

Attachment B to Appendix 11

Two-Party Affected System Facilities Construction Agreement

Notification of Completed Construction

This Appendix B is a part of the Affected Systems Facilities Construction Agreement between Affected System Interconnection Customer and Transmission Provider. Where applicable, when Transmission Provider has completed construction of the Affected System Network Upgrade(s), Transmission Provider shall send notice to Affected System Interconnection Customer in substantially the form following:

{Date}

{Affected System Interconnection Customer Address}

Re: Completion of Affected System Network Upgrade(s)

Dear {Name or Title}:

This letter is sent pursuant to the Affected System Facilities Construction Agreement between {Transmission Provider} and {Affected System Interconnection Customer}, dated _____, 20____.

On {Date}, Transmission Provider completed to its satisfaction all work on the Affected System Network Upgrade(s) required to facilitate the safe and reliable interconnection and operation of Affected System Interconnection Customer's {description of generating facility}. Transmission Provider confirms that the Affected System Network Upgrade(s) are in place.

Thank you.

{Signature}

{Transmission Provider Representative}

Attachment C to Appendix 11

Two-Party Affected System Facilities Construction Agreement

Exhibits

This Appendix C is a part of the Affected System Facilities Construction Agreement [among] *between* Affected System Interconnection Customer and Transmission Provider.

Exhibit A1—Transmission Provider Site Map

Exhibit A2—Site Plan

Exhibit A3—Affected System Network Upgrade(s) Plan & Profile

Exhibit A4—Estimated Cost of Affected System Network Upgrade(s)

Location	Facilities to be constructed by transmission provider	Estimate in dollars
	Total	

Appendix 12 to LGIP

Multiparty Affected System Facilities Construction Agreement

This Agreement is made and entered into this ____ day of _____, 20____, by and among _____, organized and existing under the laws of the State of _____ (Affected System Interconnection Customer); _____, a _____ organized and existing under the laws of the State of _____ (Affected System Interconnection Customer); and _____, an entity organized *and existing* under the laws of the State of _____ (Transmission Provider). Affected System Interconnection Customers and Transmission Provider each may be referred to as a ''Party'' or collectively as the ''Parties.'' When it is not important to differentiate among them, Affected System Interconnection Customers each may be referred to as ''Affected System Interconnection Customer'' or collectively as ''Affected System Interconnection Customers.''

Recitals

Whereas, Affected System Interconnection Customers are proposing to develop {description of generating facilities or generating capacity additions to an existing generating facility}, consistent with the interconnection requests submitted by Affected System Interconnection Customers to {name of host transmission provider}, dated _____, for which {name of host transmission provider} found impacts on Transmission Provider's Transmission System; and

Whereas, Affected System Interconnection Customers desire to interconnect the {generating facilities} to {name of host transmission provider}'s transmission system; and

Whereas, additions, modifications, and upgrade(s) must be made to certain existing facilities of Transmission Provider's Transmission System to accommodate such interconnection; and

Whereas, Affected System Interconnection Customers have requested, and Transmission Provider has agreed, to enter into this Agreement for the purpose of facilitating the construction of necessary Affected System Network Upgrade(s);

Now, Therefore, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

Article 1—Definitions

When used in this Agreement, with initial capitalization, the terms specified and not otherwise defined in this Agreement shall have the meanings indicated in this LGIP.

Article 2—Term of Agreement

2.1 Effective Date. This Agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC.

2.2 Term.

2.2.1 General. This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (1) the final repayment, where applicable, by Transmission Provider of the amount funded by Affected System Interconnection Customers for Transmission Provider's design, procurement, construction, and installation of the Affected System Network Upgrade(s) provided in Appendix A; (2) the Parties agree to mutually terminate this Agreement; (3) earlier termination is permitted or provided for under Appendix A of this Agreement; or (4) Affected System Interconnection Customers terminate this Agreement after providing Transmission Provider with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Affected System Interconnection Customers have no outstanding contractual obligations to Transmission Provider under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties if the commercial operation date(s) for the {generating facilities} is adjusted in accordance with the rules and procedures established by {name of host transmission provider} or the in-service date for the Affected System Network Upgrade(s) is adjusted in accordance with the rules and procedures established by Transmission Provider.

2.2.2 Termination Upon Default. Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 5 of this Agreement where Breach and Breaching Party are defined in Article 5. Defaulting Party shall mean the Party that is in Default. In the event of a Default by a Party, each non-Defaulting Party shall have the termination rights described in Articles 5 and 6; provided, however, Transmission Provider may not terminate this Agreement if an Affected System Interconnection Customer is the Defaulting Party and compensates Transmission Provider within thirty (30) Calendar Days for the amount of damages billed to Affected System Interconnection Customer(s) by Transmission Provider for any such damages, including costs and expenses incurred by Transmission Provider as a result of such Default. Notwithstanding the foregoing, Default by one or more Affected System Interconnection Customers shall not provide the other Affected System Interconnection Customer(s), either individually or in concert, with the right to terminate the entire Agreement. The non-Defaulting Party/Parties may, individually or in concert, initiate the removal of an Affected System Interconnection Customer that is a Defaulting Party from this Agreement. Transmission Provider shall not terminate this Agreement or the participation of any Affected System Interconnection Customer without provision being made for Transmission Provider to be fully reimbursed for all of its costs incurred under this Agreement.

2.2.3 Consequences of Termination. In the event of a termination by a Party, other than a termination by Affected System Interconnection Customer(s) due to a Default by Transmission Provider, each Affected System Interconnection Customer whose participation in this Agreement is terminated shall be responsible for the payment to Transmission Provider of all amounts then due and payable for construction and installation of the Affected System Network Upgrade(s) (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Provider in connection with the construction and installation of the Affected System Network Upgrade(s), through the date of termination, and, in the event of the termination of the entire Agreement, any actual costs which Transmission Provider reasonably incurs in (1) winding up work and construction demobilization and (2) ensuring the safety of persons and property and the integrity and safe and reliable operation of Transmission Provider's Transmission System. Transmission Provider shall use Reasonable Efforts to minimize such costs. The cost responsibility of other Affected System Interconnection Customers shall be adjusted, as necessary, based on the payments by an Affected System Interconnection Customer that is terminated from the Agreement.

2.2.4 Reservation of Rights. Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Affected System Interconnection Customers shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

2.3 Filing. Transmission Provider shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority, if required. Affected System Interconnection Customers may request that any information so provided be subject to the confidentiality provisions of Article 8. Each Affected System Interconnection Customer that has executed this Agreement, or any amendment thereto, shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements.

2.4 Survival. This Agreement shall continue in effect after termination, to the extent necessary, to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this Agreement or other applicable agreements, to disconnect, remove, or salvage its own facilities and equipment.

2.5 Termination Obligations. Upon any termination pursuant to this Agreement or termination of the participation in this Agreement of an Affected System Interconnection Customer, each Affected System Interconnection Customer shall be responsible for the payment of its proportionate share of all costs or other contractual obligations incurred prior to the termination date, including previously incurred capital costs, penalties for early termination, and costs of removal and site restoration. The cost responsibility of the other Affected System Interconnection Customers shall be adjusted as necessary.

Article 3—Construction of Affected System Network Upgrade(s)

3.1 Construction.

3.1.1 Transmission Provider Obligations. Transmission Provider shall (or shall cause such action to) design, procure, construct, and install, and Affected System Interconnection Customers shall pay, consistent with Article 3.2, the costs of all Affected System Network Upgrade(s) identified in Appendix A. All Affected System Network Upgrade(s) designed, procured, constructed, and installed by Transmission Provider pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations. Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, or any Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Right to Suspend. Affected System Interconnection Customers must jointly provide to Transmission Provider written notice of their request for suspension. Only the milestones described in the Appendices of this Agreement are subject to suspension under this Article 3.1.2. Affected System Network Upgrade(s) will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Affected System Network Upgrade(s) are not needed by any other Interconnection Customer; or (3) Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3), any security paid to Transmission Provider under Article 4.1 of this Agreement shall be released by Transmission Provider upon the determination by Transmission Provider that the Affected System Network Upgrade(s) will no longer be constructed. If suspension occurs, Affected System Interconnection Customers shall be responsible for the costs which Transmission Provider incurs (i) in accordance with this Agreement prior to the suspension; (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of Transmission Provider's Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Provider cannot reasonably avoid; and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Provider shall obtain Affected System Interconnection Customers' authorization. Affected System Interconnection Customers shall be responsible for all costs incurred in connection with Affected System Interconnection Customers' failure to authorize cancellation of such contracts or orders.

Interest on amounts paid by Affected System Interconnection Customers to Transmission Provider for the design, procurement, construction, and installation of the Affected System Network Upgrade(s) shall not accrue during periods in which Affected System Interconnection Customers have suspended construction under this Article 3.1.2.

Transmission Provider shall invoice Affected System Interconnection Customers

pursuant to Article 4 and will use Reasonable Efforts to minimize its costs. In the event Affected System Interconnection Customers suspend work by Affected System Transmission Provider required under this Agreement pursuant to this Article 3.1.2.1, and have not requested Affected System Transmission Provider to recommence the work required under this Agreement on or before the expiration of three (3) years following commencement of such suspension, this Agreement shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Affected System Transmission Provider, whichever is earlier, if no effective date of suspension is specified.

[3.1.2.2 Recommencing of Work. If Affected System Interconnection Customers request that Transmission Provider recommence construction of Affected System Network Upgrade(s), Transmission Provider shall have no obligation to afford such work the priority it would have had but for the prior actions of Affected System Interconnection Customers to suspend the work. In such event, Affected System Interconnection Customers shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the interconnection agreed to by the Parties. Transmission Provider has the right to conduct a restudy of the Affected System Study if conditions have materially changed subsequent to the request to suspend. Affected System Interconnection Customers shall be responsible for the costs of any studies or restudies required.**]**

[3.1.2.3 Right to Suspend Due to Default. Transmission Provider reserves the right, upon written notice to Affected System Interconnection Customers, to suspend, at any time, work by Transmission Provider due to a Default by Affected System Interconnection Customer(s). Defaulting-Affected System Interconnection Customer(s) shall be responsible for any additional expenses incurred by Transmission Provider associated with the construction and installation of the Affected System Network Upgrade(s) (as set forth in Article 2.2.3) upon the occurrence of a Default pursuant to Article 5. Any form of suspension by Transmission Provider shall not be barred by Articles 2.2.2, 2.2.3, or 5.2.2, nor shall it affect Transmission Provider's right to terminate the work or this Agreement pursuant to Article 6.**]**

3.1.3 Construction Status. Transmission Provider shall keep Affected System Interconnection Customers advised periodically as to the progress of its design, procurement, and construction efforts, as described in Appendix A. An Affected System Interconnection Customer may, at any time and reasonably, request a progress report from Transmission Provider. If, at any time, an Affected System Interconnection Customer determines that the completion of the Affected System Network Upgrade(s) will not be required until after the specified in-service date, such Affected System Interconnection Customer will provide written notice to all other Parties of such later date for which the completion of the Affected System Network Upgrade(s) would be required. Transmission Provider may delay the in-service date of the Affected System Network Upgrade(s) accordingly, but only if agreed to by all other Affected System Interconnection Customers.

3.1.4 Timely Completion. Transmission Provider shall use Reasonable Efforts to design, procure, construct, install, and test the Affected System Network Upgrade(s) in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time or ability to complete the Affected System Network Upgrade(s), Transmission Provider shall promptly notify all other Parties. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a meeting with Affected System Interconnection Customers to evaluate the alternatives available to Affected System Interconnection Customers. Transmission Provider shall also make available to Affected System Interconnection Customers all studies and work papers related to the event and corresponding delay, including all information that is in the possession of transmission Provider that is reasonably needed by Affected System Interconnection Customers to evaluate alternatives, subject to confidentiality arrangements consistent with Article 8. Transmission Provider shall, at any Affected System Interconnection Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that (1) Affected System Interconnection Customers jointly authorize such actions, such authorizations to be withheld, conditioned, or delayed by a given Affected System Interconnection Customer only if it can demonstrate that the acceleration would have a material adverse effect on it; and (2) the requesting Affected System Interconnection Customer(s) funds the costs associated therewith in advance, or all Affected System Interconnection Customers agree in advance to fund such costs based on such other allocation method as they may adopt.

3.2 Interconnection Costs.

3.2.1 Costs. Affected System Interconnection Customers shall pay to Transmission Provider costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Affected System Network Upgrade(s), as identified in Appendix A, in accordance with the cost recovery method provided herein. Except as expressly otherwise agreed, Affected System Interconnection Customers shall be collectively responsible for these costs, based on their proportionate share of cost responsibility, as provided in Appendix A. Unless Transmission Provider elects to fund the Affected System Network Upgrade(s), they shall be initially funded by the applicable Affected System Interconnection Customer.

3.2.1.1 Lands of Other Property Owners. If any part of the Affected System Network Upgrade(s) is to be installed on property owned by persons other than Affected System Interconnection Customers or Transmission Provider, Transmission Provider shall, at Affected System Interconnection Customers' expense, use efforts similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights-of-way, and easements that are necessary to construct, operate, maintain, test, inspect, replace, or remove the Affected System Network Upgrade(s) upon such property.

3.2.2 Repayment.

3.2.2.1 Repayment. Consistent with articles 11.4.1 and 11.4.2 of [the] Transmission Provider's pro forma LGIA, each Affected System Interconnection Customer shall be entitled to a cash repayment by Transmission Provider of the amount each Affected System Interconnection Customer paid to Transmission Provider, if any, for the Affected System Network Upgrade(s), including any tax gross-up or other tax-related payments associated with the Affected System Network Upgrade(s), and not refunded to Affected System Interconnection Customer pursuant to Article 3.3.1 or otherwise. The Parties may mutually agree to a repayment schedule, to be outlined in Appendix A, not to exceed twenty (20) years from the commercial operation date, for the complete repayment for all applicable costs associated with the Affected System Network Upgrade(s). Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19 a(a)(2)(iii) from the date of any payment for Affected System Network Upgrade(s) through the date on which Affected System Interconnection Customers receive a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Affected System Interconnection Customers have suspended construction pursuant to Article 3.1.2.1. Affected System Interconnection Customers may assign such repayment rights to any person.

3.2.2.2 Impact of Failure to Achieve Commercial Operation. If an Affected System Interconnection Customer's generating facility fails to achieve commercial operation, but it or another generating facility is later constructed and makes use of the Affected System Network Upgrade(s), Transmission Provider shall at that time reimburse such Affected System Interconnection Customers for the portion of the Affected System Network Upgrade(s) it funded. Before any such reimbursement can occur, Affected System Interconnection Customer (or the entity that ultimately constructs the generating facility, if different), is responsible for identifying the entity to which the reimbursement must be made.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. With regard only to

payments made by Affected System Interconnection Customers to Transmission Provider for the installation of the Affected System Network Upgrade(s), Transmission Provider shall not include a gross-up for income taxes in the amounts it charges Affected System Interconnection Customers for the installation of the Affected System Network Upgrade(s) unless (1) Transmission Provider has determined, in good faith, that the payments or property transfers made by Affected System Interconnection Customers to Transmission Provider should be reported as income subject to taxation, or (2) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation. Affected System Interconnection Customers shall reimburse Transmission Provider for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten (10)-year testing period and the applicable statute of limitation, as it may be extended by Transmission Provider upon request of the Internal Revenue Service, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Provider is determined by any Governmental Authority to constitute income by Transmission Provider subject to taxation, Affected System Interconnection Customers shall protect, indemnify, and hold harmless Transmission Provider and its Affiliates, from all claims by any such Governmental Authority for any tax, interest, and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Provider shall provide Affected System Interconnection Customers with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Provider, upon the timely written request by any one or more Affected System Interconnection Customer(s) and at the expense of such Affected System Interconnection Customer(s), shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Provider shall cooperate and consult in good faith with the requesting Affected System Interconnection Customer(s) regarding the conduct of such contest. Affected System Interconnection Customer(s) shall not be required to pay Transmission Provider for the tax, interest, and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Provider (1) is required to pay the tax, interest, and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement, or other contest; (2) is required to pay the tax, interest, and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (3) is required to pay the tax, interest, and/or penalties as a prerequisite to an appeal, protest, abatement, or other contest. In the event such appeal, protest, abatement, or other contest results in a determination that Transmission Provider is not liable for any portion of any tax, interest, and/or penalties for which any Affected System Interconnection Customer(s) has already made payment to Transmission Provider, Transmission Provider shall promptly refund to such Affected System Interconnection Customer(s) any payment attributable to the amount determined to be non-taxable, plus any interest (calculated in accordance with 18 CFR 35.19a(a)(2)(iii)) or other payments Transmission Provider receives or to which Transmission Provider may be entitled with respect to such payment. Each Affected System Interconnection Customer shall provide Transmission Provider with credit assurances sufficient to meet each Affected System Interconnection Customer's estimated liability for reimbursement of Transmission Provider for taxes, interest, and/or penalties under this Article 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Provider is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Provider represents, and the Parties acknowledge, that Transmission Provider is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Affected System Interconnection Customers to Transmission Provider for Affected System Network Upgrade(s) is to be treated as an upfront payment. It is anticipated by the Parties that any amounts paid by each Affected System Interconnection Customer to Transmission Provider for Affected System Network Upgrade(s) will be reimbursed to such Affected System Interconnection Customer in accordance with the terms of this Agreement, provided such Affected System Interconnection Customer fulfills its obligations under this Agreement.

3.3.2 Private Letter Ruling. At the request and expense of any Affected System Interconnection Customer(s), Transmission Provider shall file with the Internal Revenue Service a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by such Affected System Interconnection Customer(s) to Transmission Provider under this Agreement are subject to federal income taxation. Each Affected System Interconnection Customer desiring such a request will prepare the initial draft of the request for a private letter ruling and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of such Affected System Interconnection Customer's knowledge. Transmission Provider and such Affected System Interconnection Customer(s) shall cooperate in good faith with respect to the submission of such request.

3.3.3 Other Taxes. Upon the timely request by any one or more Affected System Interconnection Customer(s), and at such Affected System Interconnection Customer(s)' sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which such Affected System Interconnection Customer(s) may be required to reimburse Transmission Provider under the terms of this Agreement. Affected System Interconnection Customer(s) who requested the action shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. The requesting Affected System Interconnection Customer(s) and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Affected System Interconnection Customer(s) to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Affected System Interconnection Customer(s) will be responsible for all taxes, interest, and penalties, other than penalties attributable to any delay caused by Transmission Provider. Each Party shall cooperate with the other Party to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds, as described in section 142(f) of the Internal Revenue Code.

Article 4

Security, Billing, and Payments

4.1 Provision of Security. By the earlier of (1) thirty (30) Calendar Days prior to the due date for each Affected System Interconnection Customer's first payment under the payment schedule specified in Appendix A, or (2) the first date specified in Appendix A for the ordering of equipment by Transmission Provider for installing the Affected System Network Upgrade(s), each Affected System Interconnection Customer shall provide Transmission Provider, at each Affected System Interconnection Customer's option, a guarantee, a surety bond, letter of credit, or other form of security that is reasonably acceptable to Transmission Provider. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring, and installing the applicable portion of Affected System Network Upgrade(s) and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider for these purposes.

The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider and contain terms and conditions that guarantee payment of

any amount that may be due from such Affected System Interconnection Customer, up to an agreed-to maximum amount. The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date. The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

4.2 Invoice. Each Party shall submit to the other Parties, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to another Party under this Agreement, including interest payments, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

4.3 Payment. Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.

4.4 Final Invoice. Within six (6) months after completion of the construction of the Affected System Network Upgrade(s) Transmission Provider shall provide an invoice of the final cost of the construction of the Affected System Network Upgrade(s) and shall set forth such costs in sufficient detail to enable each Affected System Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund, with interest (calculated in accordance with 18 CFR 35.19a(a)(2)(iii)), to each Affected System Interconnection Customer any amount by which the actual payment by Affected System Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

4.5 Interest. Interest on any unpaid amounts shall be calculated in accordance with 18 CFR 35.19a(a)(2)(iii).

4.6 Payment During Dispute. In the event of a billing dispute among the Parties, Transmission Provider shall continue to construct the Affected System Network Upgrade(s) under this Agreement as long as each Affected System Interconnection Customer: (1) continues to make all payments not in dispute; and (2) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If any Affected System Interconnection Customer fails to meet these two requirements, then Transmission Provider may provide notice to such Affected System Interconnection Customer of a Default pursuant to Article 5. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accordance with the methodology set forth in 18 CFR 35.19a(a)(2)(iii).

Article 5

Breach, Cure, and Default

5.1 Events of Breach. A Breach of this Agreement shall include the:

(a) Failure to pay any amount when due;

(b) Failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty, or covenant made in this Agreement;

(c) Failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement; or

(d) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

5.2 Definition. Breaching Party shall mean the Party that is in Breach.

5.3 Notice of Breach, Cure, and Default. Upon the occurrence of an event of Breach, any Party aggrieved by the Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

5.2.1 Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (hereinafter referred to as the ''Cure Period'') which shall be sixty (60) Calendar Days. If an Affected System Interconnection Customer is the Breaching Party and the Breach results from a failure to provide payments or security under Article 4.1 of this Agreement, the other Affected System Interconnection Customers, either individually or in concert, may cure the Breach by paying the amounts owed or by providing adequate security, without waiver of contribution rights against the breaching Affected System Interconnection Customer. Such cure for the Breach of an Affected System Interconnection Customer is subject to the reasonable consent of Transmission Provider. Transmission Provider may also cure such Breach by funding the proportionate share of the Affected System Network Upgrade costs related to the Breach of Affected System Interconnection Customer. Transmission Provider must notify all Parties that it will exercise this option within thirty (30) Calendar Days of notification that an Affected System Interconnection Customer has failed to provide payments or security under Article 4.1.

5.2.2 In the event the Breach is not cured within the Cure Period, the Breaching Party will be in Default of this Agreement, and the non-Defaulting Parties may (1) act in concert to amend the Agreement to remove an Affected System Interconnection Customer that is in Default from this Agreement for cause and to make other changes as necessary, or (2) either in concert or individually take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

5.3 Rights in the Event of Default. Notwithstanding the foregoing, upon the occurrence of Default, the non-Defaulting Parties shall be entitled to exercise all rights and remedies it may have in equity or at law.

Article 6

Termination of Agreement

6.1 Expiration of Term. Except as otherwise specified in this Article 6, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

6.2 Termination and Removal. Subject to the limitations set forth in Article 6.3, in the event of a Default, termination of this Agreement, as to a given Affected System Interconnection Customer or in its entirety, shall require a filing at FERC of a notice of termination, which filing must be accepted for filing by FERC.

6.3 Disposition of Facilities Upon Termination of Agreement.

6.3.1 Transmission Provider Obligations. Upon termination of this Agreement, unless otherwise agreed to by the Parties in writing, Transmission Provider:

(a) shall, prior to the construction and installation of any portion of the Affected System Network Upgrade(s) and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Affected System Network Upgrade(s);

(b) may keep in place any portion of the Affected System Network Upgrade(s) already constructed and installed; and,

(c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of Transmission Provider's Transmission System (*e.g.,* construction demobilization to return the system to its original state, wind-up work).

6.3.2 Affected System Interconnection Customer Obligations. Upon billing by Transmission Provider, each Affected System Interconnection Customer shall reimburse Transmission Provider for its share of any costs incurred by Transmission Provider in performance of the actions required or permitted by Article 6.3.1 and for its share of the cost of any Affected System Network Upgrade(s) described in Appendix A. Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Each Affected System Interconnection Customer shall pay these costs pursuant to Article 4.3 of this Agreement.

6.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Affected System Network Upgrade(s), Transmission Provider may, at its

option, retain any portion of such Affected System Network Upgrade(s) not cancelled or returned in accordance with Article 6.3.1(a), in which case Transmission Provider shall be responsible for all costs associated with procuring such Affected System Network Upgrade(s). To the extent that an Affected System Interconnection Customer has already paid Transmission Provider for any or all of such costs, Transmission Provider shall refund Affected System Interconnection Customer for those payments. If Transmission Provider elects to not retain any portion of such facilities, and one or more of Affected System Interconnection Customers wish to purchase such facilities, Transmission Provider shall convey and make available to the applicable Affected System Interconnection Customer(s) such facilities as soon as practicable after Affected System Interconnection Customer(s)' payment for such facilities.

6.4 Survival of Rights. Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof, to the extent necessary to provide for (1) final billings, billing adjustments, and other billing procedures set forth in this Agreement; (2) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (3) the confidentiality provisions set forth in Article 8.

Article 7

Subcontractors

7.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

7.1.1 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

7.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

7.1.3 No Limitation by Insurance. The obligations under this Article 7 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

Article 8

Confidentiality

8.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied to the other Parties prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 CFR 388.113(c).

Such confidentiality will be maintained in accordance with this Article 8. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

8.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 8 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with FERC policies and regulations.

8.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 8.1.6 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

8.1.3 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties that may be or are considering providing financing to or equity participation with Affected System Interconnection Customer(s), or to potential purchasers or assignees of Affected System Interconnection Customer(s), on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 8 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 8.

8.1.4 Rights. Each Party shall retain all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

8.1.5 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication, or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its regulatory requirements.

8.1.6 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

8.1.7 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Business Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each

Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 8 shall survive such termination.

8.1.8 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 8. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 8, which equitable relief shall be granted without bond or proof of damages, and the Breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 8, but it shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 8.

8.1.9 Disclosure to FERC, its Staff, or a State Regulatory Body. Notwithstanding anything in this Article 8 to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

8.1.10 Subject to the exception in Article 8.1.9, any information that a disclosing Party claims is competitively sensitive, commercial, or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (1) required by law; (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (3) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (4) necessary to fulfill its obligations under this Agreement or as Transmission Provider or a balancing authority, including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party that received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order, or other reasonable measures.

Article 9

Information Access and Audit Rights

9.1 Information Access. Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 9.1 and to enforce their rights under this Agreement.

9.2 Audit Rights. Subject to the requirements of confidentiality under Article 8 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Affected System Network Upgrade(s) shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following Transmission Provider's issuance of a final invoice in accordance with Article 4.4. Affected System Interconnection Customers may, jointly or individually, at the expense of the requesting Party(ies), during normal business hours, and upon prior reasonable notice to Transmission Provider, audit such accounts and records. Any audit authorized by this Article 9.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

Article 10

Notices

10.1 General. Any notice, demand, or request required or permitted to be given by a Party to the other Parties, and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party, may be so given, tendered, or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:
To Affected System Interconnection Customers:

10.2 Billings and Payments. Billings and payments shall be sent to the addresses shown in Article 10.1 unless otherwise agreed to by the Parties.

10.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to the other Parties and not required by this Agreement to be given in writing may be so given by telephone, facsimile, or email to the telephone numbers and email addresses set out below:

To Transmission Provider:
To Affected System Interconnection Customers:

10.4 Execution and Filing. Affected System Interconnection Customers shall either: (i) execute two originals of this tendered Agreement and return them to Transmission Provider; or (ii) request in writing that Transmission Provider file with FERC this Agreement in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the two executed originals of this tendered Agreement (if it does not conform with a FERC-approved standard form of this Agreement) or the request to file this Agreement unexecuted, Transmission Provider shall file this Agreement with FERC, together with its explanation of any matters as to which Affected System Interconnection Customers and Transmission Provider disagree and support for the costs that Transmission Provider proposes to charge to Affected System Interconnection Customers under this Agreement. An unexecuted version of this Agreement should contain terms and conditions deemed appropriate by Transmission Provider for the Affected System Interconnection Customers' generating facilities. If the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted version of this Agreement, they may proceed pending FERC action.

Article 11

Miscellaneous

11.1 This Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability, and assignment, which reflect best practices in the electric industry, that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of this LGIP.

{Signature Page to Follow}

In witness whereof, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Transmission Provider
{Transmission Provider}

By: _____

Name: _____

Title: _____

Affected System Interconnection Customer
{Affected System Interconnection Customer}

By: _____
Name: _____
Title: _____

Project No. _____

Affected System Interconnection Customer
{Affected System Interconnection Customer}

By: _____
Name: _____
Title: _____

Project No. _____

Attachment A to Appendix 12

Multiparty Affected System Facilities Construction Agreement

Affected System Network Upgrade(s), Cost Estimates and Responsibility, Construction Schedule, and Monthly Payment Schedule

This Appendix A is a part of the Multiparty Affected System Facilities Construction Agreement [between] *among* Affected System Interconnection Customers and Transmission Provider.

1.1 Affected System Network Upgrade(s) to be installed by Transmission Provider.

{description}

1.2 First Equipment Order (including permitting).

{description}

1.2.1. Permitting and Land Rights—Transmission Provider Affected System Network Upgrade(s)

{description}

1.3 Construction Schedule. Where applicable, construction of the Affected System Network Upgrade(s) is scheduled as follows and will be periodically updated as necessary:

TABLE 3—TRANSMISSION PROVIDER CONSTRUCTION ACTIVITIES

Milestone No.	Description	Start Date	End Date

Note: Construction schedule assumes that Transmission Provider has obtained final authorizations and security from Affected System Interconnection Customers and all necessary permits from Governmental Authorities as necessary prerequisites to commence construction of any of the Affected System Network Upgrade(s).

1.4 Payment Schedule.

1.4.1 Timing of and Adjustments to Affected System Interconnection Customers' Payments and Security.

{description}

1.4.2 Monthly Payment Schedule. Affected System Interconnection Customers' payment schedule is as follows.

{description}

TABLE 4—AFFECTED SYSTEM INTERCONNECTION CUSTOMERS' PAYMENT/SECURITY OBLIGATIONS FOR AFFECTED SYSTEM NETWORK UPGRADE(S)

Milestone No.	Description	Date

* Affected System Interconnection Customers' proportionate responsibility for each payment is as follows:

Affected System Interconnection Customer 1 ____.__%
Affected System Interconnection Customer 2 ____.__%
Affected System Interconnection Customer N ____.__%

Note: Affected System Interconnection Customers' payment or provision of security as provided in this Agreement operates as a condition precedent to Transmission Provider's obligations to construct any Affected System Network Upgrade(s), and failure to meet this schedule will constitute a Breach pursuant to Article 5.1 of this Agreement.

1.5 Permits, Licenses, and Authorizations.

{description}

Attachment B to Appendix 12

Multiparty Affected System Facilities Construction Agreement

Notification of Completed Construction

This Appendix B is a part of the Multiparty Affected System Facilities Construction Agreement among Affected System Interconnection Customers and Transmission Provider. Where applicable, when Transmission Provider has completed construction of the Affected System Network Upgrade(s), Transmission Provider shall send notice to Affected System Interconnection Customers in substantially the form following:

{Date}
{Affected System Interconnection Customers Addresses}
Re: Completion of Affected System Network Upgrade(s)
Dear {Name or Title}:

This letter is sent pursuant to the Multiparty Affected System Facilities Construction Agreement among {Transmission Provider} and {Affected System Interconnection Customers}, dated , 20.

On {Date}, Transmission Provider completed to its satisfaction all work on the Affected System Network Upgrade(s) required to facilitate the safe and reliable interconnection and operation of Affected System Interconnection Customer's generating facilities. Transmission Provider confirms that the Affected System Network Upgrade(s) are in place.

Thank you.

{Signature}
{Transmission Provider Representative}

Attachment C to Appendix 12

Multiparty Affected System Facilities Construction Agreement

EXHIBITS

This Appendix C is a part of the Multiparty Affected System Facilities Construction Agreement among Affected System Interconnection Customers and Transmission Provider.

Exhibit A1—Transmission Provider Site Map

Exhibit A2—Site Plan

Exhibit A3—Affected System Network Upgrade(s) Plan & Profile

Exhibit A4—Estimated Cost of Affected System Network Upgrade(s)

	Location	Facilities to be constructed by transmission provider	Estimate in dollars
		Total:	

Appendix D: Changes to *pro forma* LGIA

Appendix 5 to the Standard Large Generator Interconnection Procedures

Standard Large Generator Interconnection Agreement (LGIA)

Table of Contents

Standard Large Generator Interconnection Agreement

This Standard Large Generator Interconnection Agreement (''Agreement'') is made and entered into this ____ day of _____ 20____, by and between _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ (''Interconnection Customer'' with a Large Generating Facility), and _____ , a _____ organized and existing under the laws of the State/Commonwealth of _____ (''Transmission Provider and/or Transmission Owner''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party'' or collectively as the ''Parties.''

Recitals

Whereas, Transmission Provider operates the Transmission System; and

Whereas, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and

Whereas, Interconnection Customer and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the Transmission System;

Now, Therefore, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this Standard Large Generator Interconnection Agreement, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used or the Open Access Transmission Tariff (Tariff).

Article 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than [the] Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of [the] Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Standards shall mean the requirements and guidelines of the Electric Reliability Organization and the Balancing Authority Area of the Transmission System to which the Generating Facility is directly interconnected.

Balancing Authority shall mean an entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

Balancing Authority Area shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Cluster shall mean a group of one or more Interconnection Requests that are studied together for the purpose of conducting a Cluster Study.

Cluster Restudy shall mean a restudy of a Cluster Study conducted pursuant to Section 7.5 of the LGIP.

Cluster Study shall mean the evaluation of one or more Interconnection Requests within a Cluster as described in Section 7 of the LGIP.

Clustering shall mean the process whereby one or more Interconnection Requests are studied together, instead of serially, as described in Section 7 of the LGIP.

Commercial Operation shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

Commercial Operation Date of a unit shall mean the date on which the Generating Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to the Standard Large Generator Interconnection Agreement.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Contingent Facilities shall mean those unbuilt Interconnection Facilities and Network Upgrades upon which the Interconnection Request's costs, timing, and study findings are dependent, and if delayed or not built, could cause a need for restudies of the Interconnection Request or a reassessment of the Interconnection Facilities and/or Network Upgrades and/or costs and timing.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean [the] Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to [the] Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC.

Electric Reliability Organization shall mean the North American Electric Reliability Corporation *(NERC)* or its successor organization.

Emergency Condition shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which [the] Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service shall mean an Interconnection Service that allows [the] Interconnection Customer to connect its Generating Facility to [the] Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of [the] Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes [the] Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Generating Facility shall mean Interconnection Customer's devices for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility or the aggregate net capacity of the Generating Facility where it includes more than one device for the production and/or storage for later injection of electricity.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of ''hazardous substances,'' ''hazardous wastes,'' ''hazardous materials,'' ''hazardous constituents,'' ''restricted hazardous materials,'' ''extremely hazardous substances,'' ''toxic substances,'' ''radioactive substances,'' ''contaminants,'' ''pollutants,'' ''toxic pollutants'' or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which [the] Interconnection Customer reasonably expects it will be ready to begin use of [the] Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including [the] Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with [the] Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to [the] Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean Transmission Provider's Interconnection Facilities and Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by Transmission Provider or a third party consultant for Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Cluster Study), the cost of those facilities, and the time required to interconnect the Generating Facility with Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the LGIP.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the LGIP, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with [the] Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by [the] Transmission Provider associated with interconnecting [the] Interconnection Customer's Generating Facility to [the] Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, [the] Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: the Cluster Study, the Cluster Restudy, the Surplus Interconnection Service [System Impact] Study, [and] the Interconnection Facilities Study, *the Affected System Study, Optional Interconnection Study, and Material Modification assessment,* described in the LGIP.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and [the]

Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

LGIA Deposit shall mean the deposit Interconnection Customer submits when returning the executed LGIA, or within *ten* (10) Business Days of requesting that the LGIA be filed unexecuted at the Commission, in accordance with Section 11.3 of the LGIP.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with an equal or later Queue Position.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Generator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

Network Resource shall mean any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

Network Resource Interconnection Service shall mean an Interconnection Service that allows [the] Interconnection Customer to integrate its Large Generating Facility with [the] Transmission Provider's Transmission System (1) in a manner comparable to that in which [the] Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to [the] Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to [the] Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to [the] Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by [the] Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 4 of the LGIP for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where [the] Interconnection Customer's Interconnection Facilities connect to [the] Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to [the] Transmission Provider's Transmission System.

Proportional Impact Method shall mean a technical analysis conducted by Transmission Provider to determine the degree to which each Generating Facility in the Cluster Study contributes to the need for a specific System Network Upgrade.

Provisional Interconnection Service shall mean Interconnection Service provided by Transmission Provider associated with interconnecting [the] Interconnection Customer's Generating Facility to Transmission Provider's Transmission System and enabling that Transmission System to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Provisional Large Generator Interconnection Agreement and, if applicable, the Tariff.

Provisional Large Generator Interconnection Agreement shall mean the interconnection agreement for Provisional Interconnection Service established between Transmission Provider and/or the Transmission Owner and [the] Interconnection Customer. This agreement shall take the form of the *Standard* Large Generator Interconnection Agreement, modified for provisional purposes.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, established pursuant to Section 4.1 of this LGIP.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of Interconnection Customer(s) and Transmission Provider conducted for the purpose of discussing the proposed Interconnection Request and any alternative interconnection options, exchanging information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, refining information and models provided by Interconnection Customer(s), discussing the Cluster Study materials posted to OASIS pursuant to Section 3.5 of the LGIP, and analyzing such information.

Site Control shall mean the exclusive land right to develop, construct, operate, and maintain the Generating Facility over the term of expected operation of the Generating Facility. Site Control may be demonstrated by documentation establishing: (1) ownership of, a leasehold interest in, or a right to develop a site of sufficient size to construct and operate the Generating Facility; (2) an option to purchase or acquire a leasehold site of sufficient size to construct and operate the Generating Facility for such purpose; or (3) any other documentation that clearly demonstrates the right of Interconnection Customer to exclusively occupy a site of sufficient size to construct and operate the Generating Facility. Transmission Provider will maintain acreage requirements for each Generating Facility type on its OASIS or public website.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that are not part of an Affected System that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction [and the following conditions are met: (1) a Substation Network Upgrade must only be required for a single Interconnection Customer in the Cluster and no other Interconnection Customer in that Cluster is required to interconnect to the same Substation Network Upgrades, and (2) a System Network Upgrade must only be required for a single Interconnection Customer in the Cluster, as indicated under Transmission Provider's Proportional Impact Method]. Both Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement. If Transmission Provider and Interconnection Customer disagree about whether a particular Network Upgrade is a Stand Alone Network Upgrade, Transmission Provider must provide Interconnection Customer a written technical explanation outlining why Transmission Provider does not consider the Network Upgrade to be a Stand Alone Network Upgrade within *fifteen (*15*) Business* [d]*D*ays of its determination.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility that is included in [the] Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in [the] Transmission Provider's Tariff.

Substation Network Upgrades shall mean Network Upgrades that are required at the

substation located at the Point of Interconnection.

Surplus Interconnection Service shall mean any unneeded portion of Interconnection Service established in a *Standard* Large Generator Interconnection Agreement, such that if Surplus Interconnection Service is utilized the total amount of Interconnection Service at the Point of Interconnection would remain the same.

System Network Upgrades shall mean Network Upgrades that are required beyond the substation located at the Point of Interconnection.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) [the] Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on [the] Transmission Provider's Transmission System or on other delivery systems or other generating systems to which [the] Transmission Provider's Transmission System is directly connected.

Tariff shall mean [the] Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from [the] Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by [the] Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to Commercial Operation.

Variable Energy Resource shall mean a device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator.

Withdrawal Penalty shall mean the penalty assessed by Transmission Provider to an Interconnection Customer that chooses to withdraw or is deemed withdrawn from Transmission Provider's interconnection queue or whose Generating Facility does not otherwise reach Commercial Operation. The calculation of the Withdrawal Penalty is set forth in Section 3.7.1 of the LGIP.

Article 2. Effective Date, Term, and Termination

2.1 Effective Date. This LGIA shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this LGIA with FERC upon execution in accordance with Article 3.1, if required.

2.2 Term of Agreement. Subject to the provisions of Article 2.3, this LGIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as Interconnection Customer may request (Term to be specified in individual agreements) and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination Procedures.

2.3.1 Written Notice. This LGIA may be terminated by Interconnection Customer after giving Transmission Provider ninety (90) Calendar Days advance written notice, or by Transmission Provider notifying FERC after the Generating Facility permanently ceases Commercial Operation.

2.3.2 Default. Either Party may terminate this LGIA in accordance with Article 17.

2.3.3 Notwithstanding Articles 2.3.1 and 2.3.2, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA, which notice has been accepted for filing by FERC.

2.4 Termination Costs. If a Party elects to terminate this Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Terminating Party under this LGIA. In the event of termination by a Party, the Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this LGIA, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of Transmission Provider's Interconnection Facilities that have not yet been constructed or installed, Transmission Provider shall to the extent possible and with Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Interconnection Customer, Transmission Provider shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

If an Interconnection Customer terminates this LGIA, it shall be responsible for all costs incurred in association with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and other expenses including any Network Upgrades for which Transmission Provider has incurred expenses and has not been reimbursed by Interconnection Customer.

2.4.2 Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this LGIA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 Disconnection. Upon termination of this LGIA, the Parties will take all appropriate steps to disconnect the Large Generating Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this LGIA or such non-terminating Party otherwise is responsible for these costs under this LGIA.

2.6 Survival. This LGIA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this LGIA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this LGIA was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this LGIA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

Article 3. Regulatory Filings

3.1 Filing. Transmission Provider shall file this LGIA (and any amendment hereto) with the appropriate Governmental Authority, if required. Interconnection Customer may request that any information so provided be subject to the confidentiality provisions of Article 22. If Interconnection Customer has executed this LGIA, or any amendment thereto, Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements.

Article 4. Scope of Service

4.1 Interconnection Product Options. Interconnection Customer has selected the following (checked) type of Interconnection Service:

4.1.1 Energy Resource Interconnection Service.

4.1.1.1 The Product. Energy Resource Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an ''as available'' basis. To the extent Interconnection Customer wants to receive Energy Resource Interconnection Service, Transmission Provider shall construct facilities identified in Attachment A.

4.1.1.2 Transmission Delivery Service Implications.

Under Energy Resource Interconnection Service, Interconnection Customer will be eligible to inject power from the Large Generating Facility into and deliver power across the interconnecting Transmission Provider's Transmission System on an ''as available'' basis up to the amount of MWs identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for Energy Resource Interconnection Service have been constructed. Where eligible to do so (*e.g.,* PJM, ISO–NE, NYISO), Interconnection Customer may place a bid to sell into the market up to the maximum identified Large Generating Facility output, subject to any conditions specified in the interconnection service approval, and the Large Generating Facility will be dispatched to the extent Interconnection Customer's bid clears. In all other instances, no transmission delivery service from the Large Generating Facility is assured, but Interconnection Customer may obtain Point-to-Point Transmission Service, Network Integration Transmission Service, or be used for secondary network transmission service, pursuant to Transmission Provider's Tariff, up to the maximum output identified in the stability and steady state studies. In those instances, in order for Interconnection Customer to obtain the right to deliver or inject energy beyond the Large Generating Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of Transmission Provider's Tariff. [The] Interconnection Customer's ability to inject its Large Generating Facility output beyond the Point of Interconnection, therefore, will depend on the existing capacity of Transmission Provider's Transmission System at such time as a transmission service request is made that would accommodate such delivery. The provision of firm Point-to-Point Transmission Service or Network Integration Transmission Service may require the construction of additional Network Upgrades.

4.1.2 Network Resource Interconnection Service.

4.1.2.1 The Product. Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all Network Resources. To the extent Interconnection Customer wants to receive Network Resource Interconnection Service, Transmission Provider shall construct the facilities identified in Attachment A to this LGIA.

4.1.2.2 Transmission Delivery Service Implications. Network Resource Interconnection Service allows Interconnection Customer's Large Generating Facility to be designated by any Network Customer under the Tariff on Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's full output, on the same basis as existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Although Network Resource Interconnection Service does not convey a reservation of transmission service, any Network Customer under the Tariff can utilize its network service under the Tariff to obtain delivery of energy from the interconnected Interconnection Customer's Large Generating Facility in the same manner as it accesses Network Resources. A Large Generating Facility receiving Network Resource Interconnection Service may also be used to provide Ancillary Services after technical studies and/or periodic analyses are performed with respect to the Large Generating Facility's ability to provide any applicable Ancillary Services, provided that such studies and analyses have been or would be required in connection with the provision of such Ancillary Services by any existing Network Resource. However, if an Interconnection Customer's Large Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all generating facilities that are similarly situated. The provision of Network Integration Transmission Service or firm Point-to-Point Transmission Service may require additional studies and the construction of additional upgrades. Because such studies and upgrades would be associated with a request for delivery service under the Tariff, cost responsibility for the studies and upgrades would be in accordance with FERC's policy for pricing transmission delivery services.

Network Resource Interconnection Service does not necessarily provide Interconnection Customer with the capability to physically deliver the output of its Large Generating Facility to any particular load on Transmission Provider's Transmission System without incurring congestion costs. In the event of transmission constraints on Transmission Provider's Transmission System, Interconnection Customer's Large Generating Facility shall be subject to the applicable congestion management procedures in Transmission Provider's Transmission System in the same manner as Network Resources.

There is no requirement either at the time of study or interconnection, or at any point in the future, that Interconnection Customer's Large Generating Facility be designated as a Network Resource by a Network Service Customer under the Tariff or that Interconnection Customer identify a specific buyer (or sink). To the extent a Network Customer does designate the Large Generating Facility as a Network Resource, it must do so pursuant to Transmission Provider's Tariff.

Once an Interconnection Customer satisfies the requirements for obtaining Network Resource Interconnection Service, any future transmission service request for delivery from the Large Generating Facility within Transmission Provider's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Large Generating Facility be undertaken, regardless of whether or not such Large Generating Facility is ever designated by a Network Customer as a Network Resource and regardless of changes in ownership of the Large Generating Facility. However, the reduction or elimination of congestion or redispatch costs may require additional studies and the construction of additional upgrades.

To the extent Interconnection Customer enters into an arrangement for long term transmission service for deliveries from the Large Generating Facility outside Transmission Provider's Transmission System, such request may require additional studies and upgrades in order for Transmission Provider to grant such request.

4.2 Provision of Service. Transmission Provider shall provide Interconnection Service for the Large Generating Facility at the Point of Interconnection.

4.3 Performance Standards. Each Party shall perform all of its obligations under this LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LGIA for its compliance therewith. If such Party is a Transmission Provider or Transmission Owner, then that Party shall amend the LGIA and submit the amendment to FERC for approval.

4.4 No Transmission Delivery Service. The execution of this LGIA does not constitute a request for, nor the provision of, any transmission delivery service under Transmission Provider's Tariff, and does not convey any right to deliver electricity to any specific customer or Point of Delivery.

4.5 Interconnection Customer Provided Services. The services provided by Interconnection Customer under this LGIA are set forth in Article 9.6 and Article 13.5.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 Options. Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either the Standard Option or Alternate Option set forth below, and such dates and selected option shall be set forth in Appendix B, Milestones. At the same time, Interconnection Customer shall indicate whether it elects to exercise the Option to Build set forth in Article 5.1.3 below. If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days. Upon receipt of the notification that Interconnection Customer's designated dates are not acceptable to Transmission Provider, [the] Interconnection Customer shall notify Transmission Provider within thirty (30) Calendar Days whether it elects to exercise the Option to Build if it has not already elected to exercise the Option to Build.

5.1.1 Standard Option. Transmission Provider shall design, procure, and construct Transmission Provider's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event Transmission Provider reasonably expects that it will not be able to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the specified dates, Transmission Provider shall promptly provide written notice to Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Alternate Option. If the dates designated by Interconnection Customer are acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities by the designated dates.

If Transmission Provider subsequently fails to complete Transmission Provider's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Provider shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Interconnection Customer shall be extended day for day for each day that the applicable RTO or ISO refuses to grant clearances to install equipment.

5.1.3 Option to Build. *Individual or Multiple* Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades on the dates specified in Article 5.1.2, *if the requirements of this Article 5.1.3 are met. When multiple Interconnection Customers exercise this option, multiple Interconnection Customers may agree to exercise this option provided (1) all Transmission Provider's Interconnection Facilities and Stand Alone Network upgrades constructed under this option are only required for Interconnection Customers in a single Cluster and (2) all impacted Interconnection Customers execute and provide to Transmission Provider an agreement regarding responsibilities and payment for the construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades planned to be built under this option.* Transmission Provider and *the individual Interconnection Customer or each of the multiple* Interconnection Customers must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A. Except for Stand Alone Network Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

5.1.4 Negotiated Option. If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives, or the procurement and construction of all facilities other than Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades if [the] Interconnection Customer elects to exercise the Option to Build under Article 5.1.3). If the Parties are unable to reach agreement on such terms and conditions, then pursuant to Article 5.1.1 (Standard Option), Transmission Provider shall assume responsibility for the design, procurement and construction of all facilities other than Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades if [the] Interconnection Customer elects to exercise the Option to Build.

5.2 General Conditions Applicable to Option to Build. If Interconnection Customer assumes responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades,

(1) Interconnection Customer shall engineer, procure equipment, and construct Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by Transmission Provider;

(2) Interconnection Customer's engineering, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law to which Transmission Provider would be subject in the engineering, procurement or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(3) Transmission Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(4) prior to commencement of construction, Interconnection Customer shall provide to Transmission Provider a schedule for construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from Transmission Provider;

(5) at any time during construction, Transmission Provider shall have the right to gain unrestricted access to Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;

(6) at any time during construction, should any phase of the engineering, equipment procurement, or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Provider, Interconnection Customer shall be obligated to remedy deficiencies in that portion of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(7) Interconnection Customer shall indemnify Transmission Provider for claims arising from Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;

(8) Interconnection Customer shall transfer control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to Transmission Provider;

(9) Unless Parties otherwise agree, Interconnection Customer shall transfer ownership of Transmission Provider's Interconnection Facilities and Stand-Alone Network Upgrades to Transmission Provider;

(10) Transmission Provider shall approve and accept for operation and maintenance

Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2; and

(11) Interconnection Customer shall deliver to Transmission Provider ''as-built'' drawings, information, and any other documents that are reasonably required by Transmission Provider to assure that the Interconnection Facilities and Stand-Alone Network Upgrades are built to the standards and specifications required by Transmission Provider.

(12) If Interconnection Customer exercises the Option to Build pursuant to Article 5.1.3, Interconnection Customer shall pay Transmission Provider the agreed upon amount of {$ PLACEHOLDER} for Transmission Provider to execute the responsibilities enumerated to Transmission Provider under Article 5.2. Transmission Provider shall invoice Interconnection Customer for this total amount to be divided on a monthly basis pursuant to Article 12.

5.3 Liquidated Damages. The actual damages to Interconnection Customer, in the event Transmission Provider's Interconnection Facilities or Network Upgrades are not completed by the dates designated by Interconnection Customer and accepted by Transmission Provider pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by Transmission Provider to Interconnection Customer in the event that Transmission Provider does not complete any portion of Transmission Provider's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to ½ of 1 percent per day of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Provider has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades for which Transmission Provider has assumed responsibility to design, procure, and construct. The foregoing payments will be made by Transmission Provider to Interconnection Customer as just compensation for the damages caused to Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this LGIA. Liquidated damages, when the Parties agree to them, are the exclusive remedy for [the] Transmission Provider's failure to meet its schedule.

No liquidated damages shall be paid to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for the Large Generating Facility's Trial Operation or to export power from the Large Generating Facility on the specified dates, unless Interconnection Customer would have been able to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for Large Generating Facility's Trial Operation or to export power from the Large Generating Facility, but for Transmission Provider's delay; (2) Transmission Provider's failure to meet the specified dates is the result of the action or inaction of Interconnection Customer or any other Interconnection Customer who has entered into an LGIA with Transmission Provider or any cause beyond Transmission Provider's reasonable control or reasonable ability to cure; (3) [the] Interconnection Customer has assumed responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

5.4 Power System Stabilizers. Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with the guidelines and procedures established by the Electric Reliability Organization. Transmission Provider reserves the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative. The requirements of this paragraph shall not apply to wind generators.

5.5 Equipment Procurement. If responsibility for construction of Transmission Provider's Interconnection Facilities or Network Upgrades is to be borne by Transmission Provider, then Transmission Provider shall commence design of Transmission Provider's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.5.1 Transmission Provider has completed the *Interconnection* Facilities Study pursuant to the *Interconnection* Facilities Study Agreement;

5.5.2 Transmission Provider has received written authorization to proceed with design and procurement from Interconnection Customer by the date specified in Appendix B, Milestones; and

5.5.3 Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.6 Construction Commencement. Transmission Provider shall commence construction of Transmission Provider's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.6.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.6.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of Transmission Provider's Interconnection Facilities and Network Upgrades;

5.6.3 Transmission Provider has received written authorization to proceed with construction from Interconnection Customer by the date specified in Appendix B, Milestones; and

5.6.4 Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.7 Work Progress. The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, Interconnection Customer determines that the completion of Transmission Provider's Interconnection Facilities will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Provider of such later date upon which the completion of Transmission Provider's Interconnection Facilities will be required.

5.8 Information Exchange. As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.9 Other Interconnection Options.

5.9.1 Limited Operation. If any of Transmission Provider's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Large Generating Facility, Transmission Provider shall, upon the request and at the expense of Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Large Generating Facility and Interconnection Customer's Interconnection Facilities may operate prior to the completion of Transmission Provider's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this LGIA. Transmission Provider shall permit Interconnection Customer to operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with the results of such studies.

5.9.2 Provisional Interconnection Service. Upon the request of Interconnection Customer, and prior to completion of requisite Interconnection Facilities, Network Upgrades, Distribution Upgrades, or System Protection Facilities Transmission Provider may execute a Provisional Large Generator Interconnection Agreement or

Interconnection Customer may request the filing of an unexecuted Provisional Large Generator Interconnection Agreement with [the] Interconnection Customer for limited Interconnection Service at the discretion of Transmission Provider based upon an evaluation that will consider the results of available studies. Transmission Provider shall determine, through available studies or additional studies as necessary, whether stability, short circuit, thermal, and/or voltage issues would arise if Interconnection Customer interconnects without modifications to the Generating Facility or Transmission System. Transmission Provider shall determine whether any Interconnection Facilities, Network Upgrades, Distribution Upgrades, or System Protection Facilities that are necessary to meet the requirements of the Electric Reliability Organization, or any applicable Regional Entity for the interconnection of a new, modified and/or expanded Generating Facility are in place prior to the commencement of Interconnection Service from the Generating Facility. Where available studies indicate that such, Interconnection Facilities, Network Upgrades, Distribution Upgrades, and/or System Protection Facilities that are required for the interconnection of a new, modified and/or expanded Generating Facility are not currently in place, Transmission Provider will perform a study, at [the] Interconnection Customer's expense, to confirm the facilities that are required for Provisional Interconnection Service. The maximum permissible output of the Generating Facility in the Provisional Large Generator Interconnection Agreement shall be studied and updated {on a frequency determined by Transmission Provider and at [the] Interconnection Customer's expense}. Interconnection Customer assumes all risk and liabilities with respect to changes between the Provisional Large Generator Interconnection Agreement and the Large Generator Interconnection Agreement, including changes in output limits and Interconnection Facilities, Network Upgrades, Distribution Upgrades, and/or System Protection Facilities cost responsibilities.

5.10 Interconnection Customer's Interconnection Facilities ('ICIF'). Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICIF, as set forth in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.10.1 Interconnection Customer's Interconnection Facility Specifications. Interconnection Customer shall submit initial specifications for the ICIF, including System Protection Facilities, to Transmission Provider at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission Provider and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.

5.10.2 Transmission Provider's Review. Transmission Provider's review of Interconnection Customer's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the ICIF. Interconnection Customer shall make such changes to the ICIF as may reasonably be required by Transmission Provider, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission Provider.

5.10.3 ICIF Construction. The ICIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Interconnection Customer shall deliver to Transmission Provider ''as-built'' drawings, information and documents for the ICIF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the ICIF, plan and elevation drawings showing the layout of the ICIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with Interconnection Customer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the ICIF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facility. [The] Interconnection Customer shall provide Transmission Provider specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable.

5.11 Transmission Provider's Interconnection Facilities Construction. Transmission Provider's Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Transmission Provider shall deliver to Interconnection Customer the following ''as-built'' drawings, information and documents for Transmission Provider's Interconnection Facilities {include appropriate drawings and relay diagrams}.

Transmission Provider will obtain control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities.

5.12 Access Rights. Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party (''Granting Party'') shall furnish at no cost to the other Party (''Access Party'') any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with the Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

5.13 Lands of Other Property Owners. If any part of Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Provider or Transmission Owner, Transmission Provider or Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property.

5.14 Permits. Transmission Provider or Transmission Owner and Interconnection Customer shall cooperate with each other in good faith in obtaining all permits, licenses, and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Transmission Provider or Transmission Owner shall provide permitting assistance to Interconnection Customer comparable to that provided to Transmission Provider's own, or an Affiliate's generation.

5.15 Early Construction of Base Case Facilities. Interconnection Customer may request Transmission Provider to construct, and Transmission Provider shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades required for Interconnection Customer to be interconnected to the Transmission System which are included in the Base Case of the *Interconnection* Facilities Study for Interconnection Customer, and which also are required to be constructed for another Interconnection Customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's In-Service Date.

5.16 Suspension. Interconnection Customer reserves the right, upon written

notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider's Interconnection Facilities and/or Network Upgrades required under this LGIA with the condition that Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Provider's safety and reliability criteria. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this LGIA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Interconnection Customer's authorization to do so.

Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work by Transmission Provider required under this LGIA pursuant to this Article 5.16, and has not requested Transmission Provider to recommence the work required under this LGIA on or before the expiration of three (3) years following commencement of such suspension, this LGIA shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Transmission Provider, if no effective date is specified.

5.17 Taxes.

5.17.1 Interconnection Customer Payments Not Taxable. The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Provider for the installation of Transmission Provider's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.17.2 Representations and Covenants. In accordance with IRS Notice 2001–82 and IRS Notice 88–129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to Transmission Provider for Transmission Provider's Interconnection Facilities will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of Transmission Provider's Interconnection Facilities that is a ''dual-use intertie,'' within the meaning of IRS Notice 88–129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, ''de minimis amount'' means no more than 5 percent of the total power flows in both directions, calculated in accordance with the ''5 percent test'' set forth in IRS Notice 88–129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Provider's request, Interconnection Customer shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of Transmission Provider's Interconnection Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon [the] Transmission Provider. Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Provider from the cost consequences of any current tax liability imposed against Transmission Provider as the result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA for Interconnection Facilities, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider.

Transmission Provider shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customer under this LGIA unless (i) Transmission Provider has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation; *provided, however,* that Transmission Provider may require Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Interconnection Customer shall reimburse Transmission Provider for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by Transmission Provider upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 Tax Gross-Up Amount. Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider (''Current Taxes'') on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA (without regard to any payments under this Article 5.17) (the ''Gross Income Amount'') over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the ''Present Value Depreciation Amount''), plus (2) an additional amount sufficient to permit Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Provider's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the ''Current Tax Rate''), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Provider's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: (Current Tax Rate x (Gross Income Amount—Present Value of Tax Depreciation))/(1-Current Tax Rate). Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.17.5 Private Letter Ruling or Change or Clarification of Law. At Interconnection Customer's request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Provider under this LGIA are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Provider and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Provider shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

5.17.6 Subsequent Taxable Events. If, within 10 years from the date on which the relevant Transmission Provider's Interconnection Facilities are placed in service, (i) Interconnection Customer Breaches the covenants contained in Article 5.17.2, (ii) a ''disqualification event'' occurs within the meaning of IRS Notice 88–129, or (iii) this LGIA terminates and Transmission Provider retains ownership of the Interconnection Facilities and Network Upgrades, Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Provider, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90–60.

5.17.7 Contests. In the event any Governmental Authority determines that Transmission Provider's receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Provider may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Provider may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Interconnection Customer's consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

5.17.8 Refund. In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Provider pursuant to this LGIA, Transmission Provider shall promptly refund to Interconnection Customer the following:

(i) any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) interest on any amounts paid by Interconnection Customer to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(iii) from the date payment was made by Interconnection Customer to the date Transmission Provider refunds such payment to Interconnection Customer, and

(iii) with respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); *provided, however,* that Transmission Provider will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Transmission Provider's Interconnection Facilities.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 Taxes Other Than Income Taxes. Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Interconnection Customer may be required to reimburse Transmission Provider under the terms of this LGIA. Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

5.17.10 Transmission Owners Who Are Not Transmission Providers. If Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.17 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this LGIA shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the duties and obligations of Transmission Provider under this Article 5.17 of this LGIA.

5.18 Tax Status. Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this LGIA is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

5.19 Modification.

5.19.1 General. Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so

that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Interconnection Customer to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider's Interconnection Facilities or Network Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof.

5.19.2 Standards. Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this LGIA and Good Utility Practice.

5.19.3 Modification Costs. Interconnection Customer shall not be directly assigned for the costs of any additions, modifications, or replacements that Transmission Provider makes to Transmission Provider's Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to Transmission Provider's Interconnection Facilities or the Transmission System, or to provide transmission service to a third party under Transmission Provider's Tariff. Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to Interconnection Customer's Interconnection Facilities that may be necessary to maintain or upgrade such Interconnection Customer's Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

Article 6. Testing and Inspection

6.1 Pre-Commercial Operation Date Testing and Modifications. Prior to the Commercial Operation Date, Transmission Provider shall test Transmission Provider's Interconnection Facilities and Network Upgrades and Interconnection Customer shall test the Large Generating Facility and Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall generate test energy at the Large Generating Facility only if it has arranged for the delivery of such test energy.

6.2 Post-Commercial Operation Date Testing and Modifications. Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Large Generating Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

6.3 Right to Observe Testing. Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.

6.4 Right to Inspect. Each Party shall have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be Confidential Information and treated pursuant to Article 22 of this LGIA.

Article 7. Metering

7.1 General. Each Party shall comply with the Electric Reliability Organization requirements. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Large Generating Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Interconnection Customer upon request. Interconnection Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

7.2 Check Meters. Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this LGIA, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof shall be performed entirely by Interconnection Customer in accordance with Good Utility Practice.

7.3 Standards. Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards.

7.4 Testing of Metering Equipment. Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Interconnection Customer, Transmission Provider shall, at Interconnection Customer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Interconnection Customer may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Interconnection Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Provider's failure to maintain, then Transmission Provider shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.5 Metering Data. At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Interconnection Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

Article 8. Communications

8.1 Interconnection Customer Obligations. Interconnection Customer shall maintain satisfactory operating communications with Transmission Provider's Transmission System dispatcher or representative designated by Transmission Provider. Interconnection Customer shall

provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Transmission Provider as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

8.2 Remote Terminal Unit. Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Interconnection Customer, or by Transmission Provider at Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 No Annexation. Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

8.4 Provision of Data from a Variable Energy Resource. [The] Interconnection Customer whose Generating Facility contains at least one Variable Energy Resource shall provide meteorological and forced outage data to [the] Transmission Provider to the extent necessary for [the] Transmission Provider's development and deployment of power production forecasts for that class of Variable Energy Resources. [The] Interconnection Customer with a Variable Energy Resource having wind as the energy source, at a minimum, will be required to provide [the] Transmission Provider with site-specific meteorological data including: temperature, wind speed, wind direction, and atmospheric pressure. [The] Interconnection Customer with a Variable Energy Resource having solar as the energy source, at a minimum, will be required to provide [the] Transmission Provider with site-specific meteorological data including: temperature, atmospheric pressure, and irradiance. [The] Transmission Provider and Interconnection Customer whose Generating Facility contains a Variable Energy Resource shall mutually agree to any additional meteorological data that are required for the development and deployment of a power production forecast. [The] Interconnection Customer whose Generating Facility contains a Variable Energy Resource also shall submit data to [the] Transmission Provider regarding all forced outages to the extent necessary for [the] Transmission Provider's development and deployment of power production forecasts for that class of Variable Energy Resources. The exact specifications of the meteorological and forced outage data to be provided by [the] Interconnection Customer to [the] Transmission Provider, including the frequency and timing of data submittals, shall be made taking into account the size and configuration of the Variable Energy Resource, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area. All requirements for meteorological and forced outage data must be commensurate with the power production forecasting employed by [the] Transmission Provider. Such requirements for meteorological and forced outage data are set forth in Appendix C, Interconnection Details, of this LGIA, as they may change from time to time.

Article 9. Operations

9.1 General. Each Party shall comply with the Electric Reliability Organization requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 Balancing Authority Area Notification. At least three months before Initial Synchronization Date, Interconnection Customer shall notify Transmission Provider in writing of the Balancing Authority Area in which the Large Generating Facility will be located. If Interconnection Customer elects to locate the Large Generating Facility in a Balancing Authority Area other than the Balancing Authority Area in which the Large Generating Facility is physically located, and if permitted to do so by the relevant transmission tariffs, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this LGIA, and remote Balancing Authority Area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Large Generating Facility in the other Balancing Authority Area.

9.3 Transmission Provider Obligations. Transmission Provider shall cause the Transmission System and Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA. Transmission Provider may provide operating instructions to Interconnection Customer consistent with this LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

9.4 Interconnection Customer Obligations. Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA. Interconnection Customer shall operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with all applicable requirements of the Balancing Authority Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this LGIA.

9.5 Start-Up and Synchronization. Consistent with the Parties' mutually acceptable procedures, Interconnection Customer is responsible for the proper synchronization of the Large Generating Facility to Transmission Provider's Transmission System.

9.6 Reactive Power and Primary Frequency Response.

9.6.1 Power Factor Design Criteria.

9.6.1.1 Synchronous Generation. Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to all synchronous generators in the Balancing Authority Area on a comparable basis.

9.6.1.2 Non-Synchronous Generation. Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the high-side of the generator substation at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established a different power factor range that applies to all non-synchronous generators in the Balancing Authority Area on a comparable basis. This power factor range standard shall be dynamic and can be met using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors, or a combination of the two. This requirement shall only apply to newly interconnecting non-synchronous generators that have not yet executed a Facilities Study Agreement as of the effective date of the Final Rule establishing this requirement (Order No. 827).

9.6.2 Voltage Schedules. Once Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Transmission Provider shall require Interconnection Customer to operate the Large Generating Facility to produce or absorb reactive power within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). Transmission Provider's voltage schedules shall treat all sources of reactive power in the Balancing Authority Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Interconnection Customer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). If Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify the System Operator.

9.6.2.1 Voltage Regulators. Whenever the Large Generating Facility is operated in parallel with the Transmission System and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its voltage regulators in automatic operation. If the Large Generating Facility's voltage regulators are not capable of such automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Balancing Authority Area on a comparable basis.

9.6.3 Payment for Reactive Power. Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility when Transmission Provider requests Interconnection Customer to operate its Large Generating Facility outside the range specified in Article 9.6.1, provided that if Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay Interconnection Customer. Payments shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed.

9.6.4 Primary Frequency Response. Interconnection Customer shall ensure the primary frequency response capability of its Large Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term ''functioning governor or equivalent controls'' as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Large Generating Facility's real power output in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Interconnection Customer is required to install a governor or equivalent controls with the capability of operating: (1) with a maximum 5 percent droop and ±0.036 Hz deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained response settings from an approved Electric Reliability Organization reliability standard providing for equivalent or more stringent parameters. The droop characteristic shall be: (1) based on the nameplate capacity of the Large Generating Facility, and shall be linear in the range of frequencies between 59 to 61 Hz that are outside of the deadband parameter; or (2) based an approved Electric Reliability Organization reliability standard providing for an equivalent or more stringent parameter. The deadband parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Large Generating Facility's real power output in response to frequency deviations. The deadband shall be implemented: (1) without a step to the droop curve, that is, once the frequency deviation exceeds the deadband parameter, the expected change in the Large Generating Facility's real power output in response to frequency deviations shall start from zero and then increase (for under-frequency deviations) or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the frequency deviation; or (2) in accordance with an approved Electric Reliability Organization reliability standard providing for an equivalent or more stringent parameter. Interconnection Customer shall notify Transmission Provider that the primary frequency response capability of the Large Generating Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Large Generating Facility with the Transmission system, Interconnection Customer shall operate the Large Generating Facility consistent with the provisions specified in [Sections] *articles* 9.6.4.1 and 9.6.4.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Large Generating Facilities.

9.6.4.1 Governor or Equivalent Controls. Whenever the Large Generating Facility is operated in parallel with the Transmission System, Interconnection Customer shall operate the Large Generating Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall: (1) in coordination with Transmission Provider and/or the relevant balancing authority, set the deadband parameter to: (1) a maximum of ±0.036 Hz and set the droop parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings from an approved Electric Reliability Organization reliability standard that provides for equivalent or more stringent parameters. Interconnection Customer shall be required to provide the status and settings of the governor or equivalent controls to Transmission Provider and/or the relevant balancing authority upon request. If Interconnection Customer needs to operate the Large Generating Facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify Transmission Provider and the relevant balancing authority, and provide both with the following information: (1) the operating status of the governor or equivalent controls (*i.e.,* whether it is currently out of service or when it will be taken out of service); (2) the reasons for removing the governor or equivalent controls from service; and (3) a reasonable estimate of when the governor or equivalent controls will be returned to service. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable. Interconnection Customer shall make Reasonable Efforts to keep outages of the Large Generating Facility's governor or equivalent controls to a minimum whenever the Large Generating Facility is operated in parallel with the Transmission System.

9.6.4.2 Timely and Sustained Response. Interconnection Customer shall ensure that the Large Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, and to the extent the Large Generating Facility has operating capability in the direction needed to correct the frequency deviation. Interconnection Customer shall not block or otherwise inhibit the ability of the governor or equivalent controls to respond and shall ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, physical energy limitations, outages of mechanical equipment, or regulatory requirements. The Large Generating Facility shall sustain the real power response at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. A Commission-approved reliability standard with equivalent or more stringent requirements shall supersede the above requirements.

9.6.4.3 Exemptions. Large Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from [Sections]*articles* 9.6.4, 9.6.4.1, and 9.6.4.2 of this Agreement. Large Generating Facilities that are behind the meter generation that is sized-to-load (*i.e.,* the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or

mechanical output necessary for the operating requirements of its host facility) shall be required to install primary frequency response capability in accordance with the droop and deadband capability requirements specified in [Section]*article* 9.6.4, but shall be otherwise exempt from the operating requirements in [Sections]*articles* 9.6.4, 9.6.4.1, 9.6.4.2, and 9.6.4.4 of this Agreement.

9.6.4.4[.] Electric Storage Resources. Interconnection Customer interconnecting a Generating Facility that contains an electric storage resource shall establish an operating range in Appendix C of its LGIA that specifies a minimum state of charge and a maximum state of charge between which the electric storage resource will be required to provide primary frequency response consistent with the conditions set forth in [Sections] *articles* 9.6.4, 9.6.4.1, 9.6.4.2 and 9.6.4.3 of this Agreement. Appendix C shall specify whether the operating range is static or dynamic, and shall consider (1) the expected magnitude of frequency deviations in the interconnection; (2) the expected duration that system frequency will remain outside of the deadband parameter in the interconnection; (3) the expected incidence of frequency deviations outside of the deadband parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5) operational limitations of the electric storage resource due to manufacturer specifications; and (6) any other relevant factors agreed to by Transmission Provider and Interconnection Customer, and in consultation with the relevant transmission owner or balancing authority as appropriate. If the operating range is dynamic, then Appendix C must establish how frequently the operating range will be reevaluated and the factors that may be considered during its reevaluation.

Interconnection Customer's electric storage resource is required to provide timely and sustained primary frequency response consistent with [Section]*article* 9.6.4.2 of this Agreement when it is online and dispatched to inject electricity to the Transmission System and/or receive electricity from the Transmission System. This excludes circumstances when the electric storage resource is not dispatched to inject electricity to the Transmission System and/or dispatched to receive electricity from the Transmission System. If Interconnection Customer's electric storage resource is charging at the time of a frequency deviation outside of its deadband parameter, it is to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which it is charging in accordance with its droop parameter. Interconnection Customer's electric storage resource is not required to change from charging to discharging, or vice versa, unless the response necessitated by the droop and deadband settings requires it to do so and it is technically capable of making such a transition.

9.7 Outages and Interruptions.

9.7.1 Outages.

9.7.1.1 Outage Authority and Coordination. Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to the Parties. In all circumstances, any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.7.1.2 Outage Schedules. Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Large Generating Facility to Transmission Provider for a minimum of a rolling twenty-four month period. Interconnection Customer shall update its planned maintenance schedules as necessary. Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Interconnection Customer for any additional direct costs that Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost Interconnection Customer would have incurred absent Transmission Provider's request to reschedule maintenance. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, Interconnection Customer had modified its schedule of maintenance activities.

9.7.1.3 Outage Restoration. If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects the other Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Party, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

9.7.2 Interruption of Service. If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

9.7.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.7.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the Transmission System;

9.7.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.7.2.4 Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to Interconnection Customer and Transmission Provider;

9.7.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Interconnection Facilities, and the Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

9.7.3 Ride Through Capability and Performance. The Transmission System is designed to automatically activate a load-shed program as required by the Electric Reliability Organization in the event of an under-frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the Electric Reliability Organization to ensure frequency ''ride through'' capability of the Transmission System. Large Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with Transmission Provider in accordance with Good Utility Practice. Interconnection Customer shall also implement under-voltage and over-voltage relay set points, or equivalent electronic controls, as required by the Electric Reliability Organization to ensure voltage ''ride through'' capability of the Transmission System. The term ''ride through'' as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under-frequency, over-frequency, under-voltage, and over-voltage conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other Generating Facilities in the Balancing Authority Area on a comparable basis. For abnormal frequency conditions and

voltage conditions within the ''no trip zone'' defined by Reliability Standard PRC–024–3 or successor mandatory ride through reliability standards, the non-synchronous Large Generating Facility must ensure that, within any physical limitations of the Large Generating Facility, its control and protection settings are configured or set to (1) continue active power production during disturbance and post disturbance periods at pre-disturbance levels, *unless reactive power priority mode is enabled or* unless providing primary frequency response or fast frequency response; (2) minimize reductions in active power and remain within dynamic voltage and current limits, if reactive power priority mode is enabled, unless providing primary frequency response or fast frequency response; (3) not artificially limit dynamic reactive power capability during disturbances; and (4) return to pre-disturbance active power levels without artificial ramp rate limits if active power is reduced, unless providing primary frequency response or fast frequency response.

9.7.4 System Protection and Other Control Requirements.

9.7.4.1 System Protection Facilities. Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider shall install at Interconnection Customer's expense any System Protection Facilities that may be required on Transmission Provider's Interconnection Facilities or the Transmission System as a result of the interconnection of the Large Generating Facility and Interconnection Customer's Interconnection Facilities.

9.7.4.2 Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.

9.7.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.

9.7.4.4 Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of Interconnection Customer's units.

9.7.4.5 Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.

9.7.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.7.5 Requirements for Protection. In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be responsible for protection of the Large Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Large Generating Facility.

9.7.6 Power Quality. Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1–1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1–1989, or any applicable superseding electric industry standard, ANSI Standard C84.1–1989, or the applicable superseding electric industry standard, shall control.

9.8 Switching and Tagging Rules. Each Party shall provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.9 Use of Interconnection Facilities by Third Parties.

9.9.1 Purpose of Interconnection Facilities. Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the Transmission System and shall be used for no other purpose.

9.9.2 Third Party Users. If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use Transmission Provider's Interconnection Facilities, or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Interconnection Customer and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

9.10 Disturbance Analysis Data Exchange. The Parties will cooperate with one another in the analysis of disturbances to either the Large Generating Facility or Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

Article 10. Maintenance

10.1 Transmission Provider Obligations. Transmission Provider shall maintain the Transmission System and Transmission Provider's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.2 Interconnection Customer Obligations. Interconnection Customer shall maintain the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.3 Coordination. The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Interconnection Facilities.

10.4 Secondary Systems. Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 Operating and Maintenance Expenses. Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made

for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities.

Article 11. Performance Obligation

11.1 Interconnection Customer Interconnection Facilities. Interconnection Customer shall design, procure, construct, install, own and/or control Interconnection Customer Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at its sole expense.

11.2 Transmission Provider's Interconnection Facilities. Transmission Provider or Transmission Owner shall design, procure, construct, install, own and/or control [the] Transmission Provider's Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at the sole expense of [the] Interconnection Customer.

11.3 Network Upgrades and Distribution Upgrades. Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades. Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. Unless Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by Interconnection Customer.

11.4 Transmission Credits.

11.4.1 Repayment of Amounts Advanced for Network Upgrades. Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-related payments associated with Network Upgrades, and not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which [the] Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. Interconnection Customer may assign such repayment rights to any person.

Notwithstanding the foregoing, Interconnection Customer, Transmission Provider, and Affected System Operator may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Provider and Affected System Operator take one of the following actions no later than five years from the Commercial Operation Date: (1) return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Provider or Affected System Operator will continue to provide payments to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.

If the Large Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Provider and Affected System Operator shall at that time reimburse Interconnection Customer for the amounts advanced for the Network Upgrades. Before any such reimbursement can occur, [the] Interconnection Customer, or the entity that ultimately constructs the Generating Facility, if different, is responsible for identifying the entity to which reimbursement must be made.

11.4.2 Special Provisions for Affected Systems. Unless Transmission Provider provides, under the LGIA, for the repayment of amounts advanced to Affected System Operator for Network Upgrades, Interconnection Customer and Affected System Operator shall enter into an agreement that provides for such repayment. The agreement shall specify the terms governing payments to be made by Interconnection Customer to the Affected System Operator as well as the repayment by the Affected System Operator.

11.4.3 Notwithstanding any other provision of this LGIA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the Large Generating Facility.

11.5 Provision of Security. At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment, as specified in Appendix B of this LGIA, shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider for these purposes. Transmission Provider must use the LGIA Deposit required in Section 11.3 of the LGIP before requiring Interconnection Customer to submit security in addition to that LGIA Deposit. Transmission Provider must specify, in Appendix B of this LGIA, the dates for which Interconnection Customer must provide additional security for construction of each discrete portion of Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and Interconnection Customer must provide such additional security.

In addition:

11.5.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

11.5.2 The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.5.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.6 Interconnection Customer Compensation. If Transmission Provider requests or directs Interconnection Customer to provide a service pursuant to Articles 9.6.3 (Payment for Reactive Power), or 13.5.1 of this LGIA, Transmission Provider shall compensate Interconnection Customer in accordance with Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to an RTO or ISO FERC-approved rate schedule. Interconnection Customer shall serve Transmission Provider or RTO or ISO with any filing of a proposed rate schedule at the time of such filing with FERC. To the extent that no rate schedule is in effect at the time [the] Interconnection Customer is required to provide or absorb any Reactive Power under this LGIA, Transmission Provider agrees to compensate Interconnection Customer in such amount as would have been due Interconnection Customer had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.

11.6.1 Interconnection Customer Compensation for Actions During Emergency Condition. Transmission Provider or RTO or ISO shall compensate Interconnection Customer for its provision of real and reactive power and other Emergency Condition services that Interconnection Customer provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

Article 12. Invoice

12.1 General. Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this LGIA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

12.2 Final Invoice. Within six months after completion of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

12.3 Payment. Invoices shall be rendered to the paying Party at the address specified in Appendix F. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by either Party will not constitute a waiver of any rights or claims either Party may have under this LGIA.

12.4 Disputes. In the event of a billing dispute between Transmission Provider and Interconnection Customer, Transmission Provider shall continue to provide Interconnection Service under this LGIA as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(iii).

Article 13. Emergencies

13.1 Definition. ''Emergency Condition'' shall mean a condition or situation: (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Large Generating Facility or Interconnection Customer's Interconnection Facilities' System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by this LGIA to possess black start capability.

13.2 Obligations. Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, the Electric Reliability Organization, Applicable Laws and Regulations, and any emergency procedures agreed to by the Joint Operating Committee.

13.3 Notice. Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects Transmission Provider's Interconnection Facilities or the Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Large Generating Facility or Interconnection Customer's Interconnection Facilities that may reasonably be expected to affect the Transmission System or Transmission Provider's Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Interconnection Customer's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

13.4 Immediate Action. Unless, in Interconnection Customer's reasonable judgment, immediate action is required, Interconnection Customer shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or Interconnection Customer's Interconnection Facilities in response to an Emergency Condition either declared by Transmission Provider or otherwise regarding the Transmission System.

13.5 Transmission Provider Authority.

13.5.1 General. Transmission Provider may take whatever actions or inactions with regard to the Transmission System or Transmission Provider's Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or Transmission Provider's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.5.2; directing Interconnection Customer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and Interconnection Customer's Interconnection Facilities. Interconnection Customer shall comply with all of Transmission Provider's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.5.2 Reduction and Disconnection. Transmission Provider may reduce Interconnection Service or disconnect the Large Generating Facility or Interconnection Customer's Interconnection Facilities, when such, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of Transmission Provider pursuant to Transmission Provider's Tariff. When Transmission Provider can schedule the reduction or disconnection in advance, Transmission Provider shall notify Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to Interconnection Customer and Transmission Provider. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.6 Interconnection Customer Authority. Consistent with Good Utility Practice and the LGIA and the LGIP, Interconnection Customer may take actions or inactions with regard to the Large Generating Facility or Interconnection Customer's Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or Interconnection Customer's Interconnection Facilities, (iii)

limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and Transmission Provider's Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Interconnection Customer in such actions.

13.7 Limited Liability. Except as otherwise provided in Article 11.6.1 of this LGIA, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

Article 14. Regulatory Requirements and Governing Law

14.1 Regulatory Requirements. Each Party's obligations under this LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LGIA shall require Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act, the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978.

14.2 Governing Law.

14.2.1 The validity, interpretation and performance of this LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.

14.2.2 This LGIA is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

Article 15. Notices

15.1 General. Unless otherwise provided in this LGIA, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings.

Either Party may change the notice information in this LGIA by giving five (5) Business Days written notice prior to the effective date of the change.

15.2 Billings and Payments. Billings and payments shall be sent to the addresses set out in Appendix F.

15.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix F.

15.4 Operations and Maintenance Notice. Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

Article 16. Force Majeure

16.1 Force Majeure.

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 Neither Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

Article 17. Default

17.1 Default

17.1.1 General. No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this LGIA or the result of an act of omission of the other Party. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party. Except as provided in Article 17.1.2, the breaching Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

17.1.2 Right to Terminate. If a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the non-breaching Party shall have the right to declare a Default and terminate this LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this LGIA, to recover from the breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this LGIA.

17.2 Violation of Operating Assumptions for Generating Facilities. If Transmission Provider requires Interconnection Customer to memorialize the operating assumptions for the charging behavior of a Generating Facility that includes at least one electric storage resource in Appendix H of this LGIA, Transmission Provider may consider Interconnection Customer to be in Breach of the LGIA if Interconnection Customer fails to operate the Generating Facility in accordance with those operating assumptions for charging behavior. However, if Interconnection Customer operates contrary to the operating assumptions for charging behavior specified in Appendix H of this LGIA at the direction of Transmission Provider, Transmission Provider shall not consider Interconnection Customer in Breach of this LGIA.

Article 18. Indemnity, Consequential Damages and Insurance

18.1 Indemnity. The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this LGIA on behalf of the Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

18.1.1 Indemnified Person. If an Indemnified Person is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such Indemnified Person may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

18.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 18, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

18.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with

counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

18.2 Consequential Damages. Other than the Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

18.3 Insurance. Each party shall, at its own expense, maintain in force throughout the period of this LGIA, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Point of Interconnection is located:

18.3.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Interconnection is located.

18.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars ($1,000,000) per occurrence/ One Million Dollars ($1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

18.3.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage.

18.3.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($20,000,000) aggregate.

18.3.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees (''Other Party Group'') as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this LGIA against the Other Party Group and provide thirty (30) Calendar Days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

18.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

18.3.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this LGIA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

18.3.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this LGIA.

18.3.9 Within ten (10) *Business* [d]*D*ays following execution of this LGIA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) *Calendar* [d]*D*ays thereafter, each Party shall provide certification of all insurance required in this LGIA, executed by each insurer or by an authorized representative of each insurer.

18.3.10 Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade or better by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.2 through 18.3.8. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.2 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this article, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 18.3.9.

18.3.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this LGIA.

Article 19. Assignment

19.1 Assignment. This LGIA may be assigned by either Party only with the written consent of the other; provided that either Party may assign this LGIA without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this LGIA; and provided further that Interconnection Customer shall have the right to assign this LGIA, without the consent of Transmission Provider, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that Interconnection Customer will promptly notify Transmission Provider of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s), including providing [the] Transmission Provider with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this article is void and ineffective. Any assignment under this LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part,

by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

Article 20. Severability

20.1 Severability. If any provision in this LGIA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this LGIA; provided that if Interconnection Customer (or any third party, but only if such third party is not acting at the direction of Transmission Provider) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

Article 21. Comparability

21.1 Comparability. The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

Article 22. Confidentiality

22.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article 22 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

22.1.1 Term. During the term of this LGIA, and for a period of three (3) years after the expiration or termination of this LGIA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this LGIA; or (6) is required, in accordance with Article 22.1.7 of the LGIA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

22.1.3 Release of Confidential Information. Neither Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this LGIA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

22.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.1.5 No Warranties. By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

22.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this LGIA or its regulatory requirements.

22.1.7 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

22.1.8 Termination of Agreement. Upon termination of this LGIA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

22.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 Disclosure to FERC, its Staff, or a State. Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this LGIA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this LGIA prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party to the LGIA when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a

confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

22.1.11 Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this LGIA (''Confidential Information'') shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIA or as a transmission service provider or a Balancing Authority Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

Article 23. Environmental Releases

23.1 Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

Article 24. Information Requirements

24.1 Information Acquisition. Transmission Provider and Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.

24.2 Information Submission by Transmission Provider. The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include Transmission System information necessary to allow Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise agreed to by the Parties. On a monthly basis Transmission Provider shall provide Interconnection Customer a status report on the construction and installation of Transmission Provider's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 Updated Information Submission by Interconnection Customer. The updated information submission by Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Interconnection Customer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the LGIP. It shall also include any additional information provided to Transmission Provider for the Cluster Study and Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If Interconnection Customer's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Interconnection Customer, then Transmission Provider will conduct appropriate studies to determine the impact on Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. Interconnection Customer shall not begin Trial Operation until such studies are completed.

24.4 Information Supplementation. Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all ''as-built'' Large Generating Facility information or ''as-tested'' performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. [The] Interconnection Customer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit ''step voltage'' test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to Transmission Provider for each individual generating unit in a station.

Subsequent to the Operation Date, Interconnection Customer shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall provide Interconnection Customer any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect Interconnection Customer's Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

Article 25. Information Access and Audit Rights

25.1 Information Access. Each Party (the ''disclosing Party'') shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this LGIA; and

(ii) carry out its obligations and responsibilities under this LGIA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this LGIA.

25.2 Reporting of Non-Force Majeure Events. Each Party (the ''notifying Party'') shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this LGIA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this LGIA.

25.3 Audit Rights. Subject to the requirements of confidentiality under Article 22 of this LGIA, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this LGIA. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, Transmission Provider's efforts to allocate responsibility for the provision of

reactive support to the Transmission System, Transmission Provider's efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this LGIA. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

25.4 Audit Rights Periods.

25.4.1 Audit Rights Period for Construction-Related Accounts and Records. Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider's Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Provider's issuance of a final invoice in accordance with Article 12.2.

25.4.2 Audit Rights Period for All Other Accounts and Records. Accounts and records related to either Party's performance or satisfaction of all obligations under this LGIA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

25.5 Audit Results. If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

Article 26. Subcontractors

26.1 General. Nothing in this LGIA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this LGIA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this LGIA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

26.2 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this LGIA. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall Transmission Provider be liable for the actions or inactions of Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customer under Article 5 of this LGIA. Any applicable obligation imposed by this LGIA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 No Limitation by Insurance. The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

Article 27. Disputes

27.1 Submission. In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this LGIA or its performance, such Party (the ''disputing Party'') shall provide the other Party with written notice of the dispute or claim (''Notice of Dispute''). Such disp ute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

27.2 External Arbitration Procedures. Any arbitration initiated under this LGIA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (''Arbitration Rules'') and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.3 Arbitration Decisions. Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this LGIA and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

27.4 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Article 28. Representations, Warranties, and Covenants

28.1 General. Each Party makes the following representations, warranties and covenants:

28.1.1 Good Standing. Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this LGIA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this LGIA.

28.1.2 Authority. Such Party has the right, power and authority to enter into this LGIA, to become a Party hereto and to perform its obligations hereunder. This LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 No Conflict. The execution, delivery and performance of this LGIA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 Consent and Approval. Such Party has sought or obtained, or, in accordance with this LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this LGIA, and it will provide to any Governmental Authority notice of any actions under this LGIA that are required by Applicable Laws and Regulations.

Article 29. Joint Operating Committee

29.1 Joint Operating Committee. Except in the case of ISOs and RTOs, Transmission Provider shall constitute a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service. At least six (6) months prior to the expected Initial Synchronization Date, Interconnection Customer and Transmission Provider shall each appoint one representative and one alternate to the Joint Operating Committee. Each Interconnection Customer shall notify Transmission Provider of its appointment in writing. Such appointments may be changed at any time by similar notice. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Joint Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Joint Operating Committee shall perform all of its duties consistent with the provisions of this LGIA. Each Party shall cooperate in providing to the Joint Operating Committee all information required in the performance of the Joint Operating Committee's duties. All decisions and agreements, if any, made by the Joint Operating Committee, shall be evidenced in writing. The duties of the Joint Operating Committee shall include the following:

29.1.1 Establish data requirements and operating record requirements.

29.1.2 Review the requirements, standards, and procedures for data acquisition equipment, protective equipment, and any other equipment or software.

29.1.3 Annually review the one (1) year forecast of maintenance and planned outage schedules of Transmission Provider's and Interconnection Customer's facilities at the Point of Interconnection.

29.1.4 Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Large Generating Facility and other facilities that impact the normal operation of the interconnection of the Large Generating Facility to the Transmission System.

29.1.5 Ensure that information is being provided by each Party regarding equipment availability.

29.1.6 Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

Article 30. Miscellaneous

30.1 Binding Effect. This LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

30.2 Conflicts. In the event of a conflict between the body of this LGIA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this LGIA shall prevail and be deemed the final intent of the Parties.

30.3 Rules of Interpretation. This LGIA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this LGIA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this LGIA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this LGIA or such Appendix to this LGIA, or such Section to the LGIP or such Appendix to the LGIP, as the case may be; (6) ''hereunder'', ''hereof'', ''herein'', ''hereto'' and words of similar import shall be deemed references to this LGIA as a whole and not to any particular Article or other provision hereof or thereof; (7) ''including'' (and with correlative meaning ''include'') means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, ''from'' means ''from and including,'' ''to'' means ''to but excluding'' and ''through'' means ''through and including.''

30.4 Entire Agreement. This LGIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this LGIA. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this LGIA.

30.5 No Third Party Beneficiaries. This LGIA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

30.6 Waiver. The failure of a Party to this LGIA to insist, on any occasion, upon strict performance of any provision of this LGIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this LGIA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this LGIA. Termination or Default of this LGIA for any reason by Interconnection Customer shall not constitute a waiver of Interconnection Customer's legal rights to obtain an interconnection from Transmission Provider. Any waiver of this LGIA shall, if requested, be provided in writing.

30.7 Headings. The descriptive headings of the various Articles of this LGIA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this LGIA.

30.8 Multiple Counterparts. This LGIA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

30.9 Amendment. The Parties may by mutual agreement amend this LGIA by a written instrument duly executed by the Parties.

30.10 Modification by the Parties. The Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.

30.11 Reservation of Rights. Transmission Provider shall have the right to make a unilateral filing with FERC to modify this LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

30.12 No Partnership. This LGIA shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

In witness whereof, the Parties have executed this LGIA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

{Insert name of Transmission Provider or Transmission Owner, if applicable}

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

{Insert name of Interconnection Customer}

By: _____

Title: _____

Date: _____

Appendix A to LGIA

Interconnection Facilities, Network Upgrades and Distribution Upgrades

1. Interconnection Facilities:
(a) {insert Interconnection Customer's Interconnection Facilities}:
(b) {insert Transmission Provider's Interconnection Facilities}:
2. Network Upgrades:
(a) {insert Stand Alone Network Upgrades}:
(b) {insert Substation Network Upgrades}:
(c) {insert System Network Upgrades}:
3. Distribution Upgrades:

Appendix B to LGIA

Milestones

Site Control

Check box if applicable { }
Interconnection Customer with qualifying regulatory limitations must demonstrate 100% Site Control by {Transmission Provider to insert date *one hundred eighty (*180*) Calendar* [d]*D*ays from the effective date of this LGIA} or the LGIA may be terminated per Article 17 (Default) of this LGIA and [the] Interconnection Customer may be subject to Withdrawal Penalties per Section 3.7.1.1 of [the] Transmission Provider's LGIP (Calculation of the Withdrawal Penalty).

Appendix C to LGIA

Interconnection Details

Appendix D to LGIA

Security Arrangements Details

Infrastructure security of Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day Transmission System reliability and operational security. FERC will expect all Transmission Providers, market participants, and Interconnection Customers interconnected to the Transmission System to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

Appendix E to LGIA

Commercial Operation Date

This Appendix E is a part of the LGIA between Transmission Provider and Interconnection Customer.
{Date}
{Transmission Provider Address}
Re: _____ Large Generating Facility
Dear _____:
On {Date} {Interconnection Customer} has completed Trial Operation of Unit No. ____. This letter confirms that {Interconnection Customer} commenced Commercial Operation of Unit No. ____ at the Large Generating Facility, effective as of {Date plus one day}.
Thank you.
{Signature}
{Interconnection Customer Representative}

Appendix F to LGIA

Addresses for Delivery of Notices and Billings

Notices:[.]
Transmission Provider:
{To be supplied.}
Interconnection Customer:
{To be supplied.}
Billings and Payments:
Transmission Provider:
{To be supplied.}
Interconnection Customer:
{To be supplied.}
Alternative Forms of Delivery of Notices (telephone, facsimile or email):
Transmission Provider:
{To be supplied.}
Interconnection Customer:
{To be supplied.}

Appendix G

Interconnection Requirements for a Wind Generating Plant

Appendix G sets forth requirements and provisions specific to a wind generating plant *or a Generating Facility that contains a wind generating plant.* All other requirements of this LGIA continue to apply to wind generating plant interconnections.

A. Technical Standards Applicable to a Wind Generating Plant

i. Low Voltage Ride-Through (LVRT) Capability

A wind generating plant shall be able to remain online during voltage disturbances up to the time periods and associated voltage levels set forth in the standard below. The LVRT standard provides for a transition period standard and a post-transition period standard.

Transition Period LVRT Standard

The transition period standard applies to wind generating plants subject to FERC Order 661 that have either: (i) interconnection agreements signed and filed with the Commission, filed with the Commission in unexecuted form, or filed with the Commission as non-conforming agreements between January 1, 2006 and December 31, 2006, with a scheduled in-service date no later than December 31, 2007, or (ii) wind generating turbines subject to a wind turbine procurement contract executed prior to December 31, 2005, for delivery through 2007.

1. Wind generating plants are required to remain in-service during three-phase faults with normal clearing (which is a time period of approximately 4–9 cycles) and single line to ground faults with delayed clearing, and subsequent post-fault voltage recovery to prefault voltage unless clearing the fault effectively disconnects the generator from the system. The clearing time requirement for a three-phase fault will be specific to the wind generating plant substation location, as determined by and documented by [the] transmission provider. The maximum clearing time the wind generating plant shall be required to withstand for a three-phase fault shall be 9 cycles at a voltage as low as 0.15 p.u., as measured at the high side of the wind generating plant step-up transformer (*i.e.* the transformer that steps the voltage up to the transmission interconnection voltage or ''GSU''), after which, if the fault remains following the location-specific normal clearing time for three-phase faults, the wind generating plant may disconnect from the transmission system.

2. This requirement does not apply to faults that would occur between the wind generator terminals and the high side of the GSU or to faults that would result in a voltage lower than 0.15 per unit on the high side of the GSU serving the facility.

3. Wind generating plants may be tripped after the fault period if this action is intended as part of a special protection system.

4. Wind generating plants may meet the LVRT requirements of this standard by the performance of the generators or by installing additional equipment (*e.g.,* Static VAr Compensator, etc.) within the wind generating plant or by a combination of generator performance and additional equipment.

5. Existing individual generator units that are, or have been, interconnected to the network at the same location at the effective date of the Appendix G LVRT

Standard are exempt from meeting the Appendix G LVRT Standard for the remaining life of the existing generation equipment. Existing individual generator units that are replaced are required to meet the Appendix G LVRT Standard.

Post-Transition Period LVRT Standard

All wind generating plants subject to FERC Order No. 661 and not covered by the transition period described above must meet the following requirements:

1. Wind generating plants are required to remain in-service during three-phase faults with normal clearing (which is a time period of approximately 4–9 cycles) and single line to ground faults with delayed clearing, and subsequent post-fault voltage recovery to prefault voltage unless clearing the fault effectively disconnects the generator from the system. The clearing time requirement for a three-phase fault will be specific to the wind generating plant substation location, as determined by and documented by [the] transmission provider. The maximum clearing time the wind generating plant shall be required to withstand for a three-phase fault shall be 9 cycles after which, if the fault remains following the location-specific normal clearing time for three-phase faults, the wind generating plant may disconnect from the transmission system. A wind generating plant shall remain interconnected during such a fault on the transmission system for a voltage level as low as zero volts, as measured at the high voltage side of the wind GSU.

2. This requirement does not apply to faults that would occur between the wind generator terminals and the high side of the GSU.

3. Wind generating plants may be tripped after the fault period if this action is intended as part of a special protection system.

4. Wind generating plants may meet the LVRT requirements of this standard by the performance of the generators or by installing

additional equipment (*e.g.,* Static VAR Compensator) within the wind generating plant or by a combination of generator performance and additional equipment.

Existing individual generator units that are, or have been, interconnected to the network at the same location at the effective date of the Appendix G LVRT Standard are exempt from meeting the Appendix G LVRT Standard for the remaining life of the existing generation equipment. Existing individual generator units that are replaced are required to meet the Appendix G LVRT Standard.

ii. Power Factor Design Criteria (Reactive Power)

The following reactive power requirements apply only to a newly interconnecting wind generating plant that has executed a Facilities Study Agreement as of the effective date of the Final Rule establishing the reactive power requirements for non-synchronous generators in [Section]*article* 9.6.1 of this LGIA (Order No. 827). A wind generating plant to which this provision applies shall maintain a power factor within the range of 0.95 leading to 0.95 lagging, measured at the Point of Interconnection as defined in this LGIA, if [the] Transmission Provider's Cluster Study shows that such a requirement is necessary to ensure safety or reliability. The power factor range standard can be met by using, for example, power electronics designed to supply this level of reactive capability [606] (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors if agreed to by [the] Transmission Provider, or a combination of the two. [The] Interconnection Customer shall not disable power factor equipment while the wind plant is in operation. Wind plants shall also be able to provide sufficient dynamic voltage support in lieu of the power system stabilizer and automatic voltage regulation at the generator excitation system if the [System Impact] *Cluster* Study shows this to be required for system safety or reliability.

iii. Supervisory Control and Data Acquisition (SCADA) Capability

The wind plant shall provide SCADA capability to transmit data and receive instructions from [the] Transmission Provider to protect system reliability. [The] Transmission Provider and the wind plant Interconnection Customer shall determine what SCADA information is essential for the proposed wind plant, taking into account the size of the plant and its characteristics, location, and importance in maintaining generation resource adequacy and transmission system reliability in its area.

Appendix H to LGIA

Operating Assumptions for Generating Facility

Check box if applicable { }

Operating Assumptions:

{insert operating assumptions that reflect the charging behavior of the Generating Facility that includes at least one electric storage resource}

Appendix E: Changes to *Pro Forma* SGIP

Small Generator Interconnection Procedures (SGIP)

(For Generating Facilities No Larger Than 20 MW)

Table of Contents

Section 1. Application

1.1 Applicability

1.1.1 A request to interconnect a certified Small Generating Facility (See Attachments 3 and 4 for description of certification criteria) to [the] Transmission Provider's Distribution System shall be evaluated under the section 2 Fast Track Process if the eligibility requirements of section 2.1 are met. A request to interconnect a certified inverter-based Small Generating Facility no larger than 10 kilowatts (kW) shall be evaluated under the Attachment 5 10 kW Inverter Process. A request to interconnect a Small Generating Facility no larger than 20 megawatts (MW) that does not meet the eligibility requirements of section 2.1, or does not pass the Fast Track Process or the 10 kW Inverter Process, shall be evaluated under the section 3 Study Process. If [the] Interconnection Customer wishes to interconnect its Small Generating Facility using Network Resource Interconnection Service, it must do so under the Standard Large Generator Interconnection Procedures and execute the Standard Large Generator Interconnection Agreement.

1.1.2 Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of these procedures.

1.1.3 Neither these procedures nor the requirements included hereunder apply to Small Generating Facilities interconnected or approved for interconnection prior to *sixty (*60*)* Business Days after the effective date of these procedures.

1.1.4 Prior to submitting its Interconnection Request (Attachment 2), [the] Interconnection Customer may ask [the] Transmission Provider's interconnection contact employee or office whether the proposed interconnection is subject to these procedures. [The] Transmission Provider shall respond within *fifteen (*15*)* Business Days.

1.1.5 Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. The Federal Energy Regulatory Commission expects all Transmission Providers, market participants, and Interconnection Customers interconnected with electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

1.1.6 References in these procedures to interconnection agreement are to the Small Generator Interconnection Agreement (SGIA).

1.2 Pre-Application

1.2.1 [The] Transmission Provider shall designate an employee or office from which information on the application process and on an Affected System can be obtained through informal requests from [the] Interconnection Customer presenting a proposed project for a specific site. The name, telephone number, and email address of such contact employee or office shall be made available on [the] Transmission Provider's internet website. Electric system information provided to [the] Interconnection Customer should include relevant system studies, interconnection studies, and other materials useful to an understanding of an interconnection at a particular point on [the] Transmission Provider's Transmission System, to the extent such provision does not violate confidentiality provisions of prior agreements or critical infrastructure requirements. [The] Transmission Provider shall comply with reasonable requests for such information.

1.2.2 In addition to the information described in section 1.2.1, which may be

provided in response to an informal request, an Interconnection Customer may submit a formal written request form along with a non-refundable fee of $300 for a pre-application report on a proposed project at a specific site. [The] Transmission Provider shall provide the pre-application data described in section 1.2.3 to [the] Interconnection Customer within *twenty (*20*)* Business Days of receipt of the completed request form and payment of the $300 fee. The pre-application report produced by [the] Transmission Provider is non-binding, does not confer any rights, and [the] Interconnection Customer must still successfully apply to interconnect to [the] Transmission Provider's system. The written pre-application report request form shall include the information in sections 1.2.2.1 through 1.2.2.8 below to clearly and sufficiently identify the location of the proposed Point of Interconnection.

1.2.2.1 Project contact information, including name, address, phone number, and email address.

1.2.2.2 Project location (street address with nearby cross streets and town)

1.2.2.3 Meter number, pole number, or other equivalent information identifying proposed Point of Interconnection, if available.

1.2.2.4 Generator Type (*e.g.,* solar, wind, combined heat and power, etc.)

1.2.2.5 Size (alternating current kW)

1.2.2.6 Single or three phase generator configuration

1.2.2.7 Stand-alone generator (no onsite load, not including station service—Yes or No?)

1.2.2.8 Is new service requested? Yes or No? If there is existing service, include the customer account number, site minimum and maximum current or proposed electric loads in kW (if available) and specify if the load is expected to change.

1.2.3 Using the information provided in the pre-application report request form in section 1.2.2, [the] Transmission Provider will identify the substation/area bus, bank or circuit likely to serve the proposed Point of Interconnection. This selection by [the] Transmission Provider does not necessarily indicate, after application of the screens and/or study, that this would be the circuit the project ultimately connects to. [The] Interconnection Customer must request additional pre-application reports if information about multiple Points of Interconnection is requested. Subject to section 1.2.4, the pre-application report will include the following information:

1.2.3.1 Total capacity (in MW) of substation/area bus, bank or circuit based on normal or operating ratings likely to serve the proposed Point of Interconnection.

1.2.3.2 Existing aggregate generation capacity (in MW) interconnected to a substation/area bus, bank or circuit (*i.e.,* amount of generation online) likely to serve the proposed Point of Interconnection.

1.2.3.3 Aggregate queued generation capacity (in MW) for a substation/area bus, bank or circuit (*i.e.,* amount of generation in the queue) likely to serve the proposed Point of Interconnection.

1.2.3.4 Available capacity (in MW) of substation/area bus or bank and circuit likely to serve the proposed Point of Interconnection (*i.e.,* total capacity less the sum of existing aggregate generation capacity and aggregate queued generation capacity).

1.2.3.5 Substation nominal distribution voltage and/or transmission nominal voltage if applicable.

1.2.3.6 Nominal distribution circuit voltage at the proposed Point of Interconnection.

1.2.3.7 Approximate circuit distance between the proposed Point of Interconnection and the substation.

1.2.3.8 Relevant line section(s) actual or estimated peak load and minimum load data, including daytime minimum load as described in section 2.4.4.1.1 below and absolute minimum load, when available.

1.2.3.9 Number and rating of protective devices and number and type (standard, bi-directional) of voltage regulating devices between the proposed Point of Interconnection and the substation/area. Identify whether the substation has a load tap changer.

1.2.3.10 Number of phases available at the proposed Point of Interconnection. If a single phase, distance from the three-phase circuit.

1.2.3.11 Limiting conductor ratings from the proposed Point of Interconnection to the distribution substation.

1.2.3.12 Whether the Point of Interconnection is located on a spot network, grid network, or radial supply.

1.2.3.13 Based on the proposed Point of Interconnection, existing or known constraints such as, but not limited to, electrical dependencies at that location, short circuit interrupting capacity issues, power quality or stability issues on the circuit, capacity constraints, or secondary networks.

1.2.4 The pre-application report need only include existing data. A pre-application report request does not obligate [the] Transmission Provider to conduct a study or other analysis of the proposed generator in the event that data is not readily available. If [the] Transmission Provider cannot complete all or some of a pre-application report due to lack of available data, the Transmission Provider shall provide [the] Interconnection Customer with a pre-application report that includes the data that is available. The provision of information on ''available capacity'' pursuant to section 1.2.3.4 does not imply that an interconnection up to this level may be completed without impacts since there are many variables studied as part of the interconnection review process, and data provided in the pre-application report may become outdated at the time of the submission of the complete Interconnection Request. Notwithstanding any of the provisions of this section, [the] Transmission Provider shall, in good faith, include data in the pre-application report that represents the best available information at the time of reporting.

1.3 Interconnection Request

[The] Interconnection Customer shall submit its Interconnection Request to [the] Transmission Provider, together with the processing fee or deposit specified in the Interconnection Request. The Interconnection Request shall be date- and time-stamped upon receipt. The original date- and time-stamp applied to the Interconnection Request at the time of its original submission shall be accepted as the qualifying date- and time-stamp for the purposes of any timetable in these procedures. [The] Interconnection Customer shall be notified of receipt by [the] Transmission Provider within three *(3)* Business Days of receiving the Interconnection Request. [The] Transmission Provider shall notify [the] Interconnection Customer within ten *(10)* Business Days of the receipt of the Interconnection Request as to whether the Interconnection Request is complete or incomplete. If the Interconnection Request is incomplete, [the] Transmission Provider shall provide along with the notice that the Interconnection Request is incomplete, a written list detailing all information that must be provided to complete the Interconnection Request. [The] Interconnection Customer will have ten *(10)* Business Days after receipt of the notice to submit the listed information or to request an extension of time to provide such information. If [the] Interconnection Customer does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request will be deemed withdrawn. An Interconnection Request will be deemed complete upon submission of the listed information to [the] Transmission Provider.

1.4 Modification of the Interconnection Request

Any modification to machine data or equipment configuration or to the interconnection site of the Small Generating Facility not agreed to in writing by [the] Transmission Provider and [the] Interconnection Customer may be deemed a withdrawal of the Interconnection Request and may require submission of a new Interconnection Request, unless proper notification of each Party by the other and a reasonable time to cure the problems created by the changes are undertaken. Any such modification of the Interconnection Request must be accompanied by any resulting updates to the models described in Attachment 2 of this SGIP.

1.5 Site Control

Documentation of site control must be submitted with the Interconnection Request. Site control may be demonstrated through:

1.5.1 Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Small Generating Facility;

1.5.2 An option to purchase or acquire a leasehold site for such purpose; or

1.5.3 An exclusivity or other business relationship between [the] Interconnection Customer and the entity having the right to sell, lease, or grant [the] Interconnection Customer the right to possess or occupy a site for such purpose.

1.6 Queue Position

[The] Transmission Provider shall assign a Queue Position based upon the date- and time-stamp of the Interconnection Request. The Queue Position of each Interconnection Request will be used to determine the cost responsibility for the Upgrades necessary to accommodate the interconnection. [The]

Transmission Provider shall maintain a single queue per geographic region. At [the] Transmission Provider's option, Interconnection Requests may be studied serially or in clusters for the purpose of the system impact study.

1.7 Interconnection Requests Submitted Prior to the Effective Date of the SGIP

Nothing in this SGIP affects an Interconnection Customer's Queue Position assigned before the effective date of this SGIP. The Parties agree to complete work on any interconnection study agreement executed prior the effective date of this SGIP in accordance with the terms and conditions of that interconnection study agreement. Any new studies or other additional work will be completed pursuant to this SGIP.

Section 2. Fast Track Process

2.1 Applicability

The Fast Track Process is available to an Interconnection Customer proposing to interconnect its Small Generating Facility with [the] Transmission Provider's Distribution System if the Small Generating Facility's capacity does not exceed the size limits identified in the table below. Small Generating Facilities below these limits are eligible for Fast Track review. However, Fast Track eligibility is distinct from the Fast Track Process itself, and eligibility does not imply or indicate that a Small Generating Facility will pass the Fast Track screens in section 2.2.1 below or the Supplemental Review screens in section 2.4.4 below.

Fast Track eligibility is determined based upon the generator type, the size of the generator, voltage of the line and the location of and the type of line at the Point of Interconnection. All Small Generating Facilities connecting to lines greater than 69 kilovolt (kV) are ineligible for the Fast Track Process regardless of size. All synchronous and induction machines must be no larger than 2 MW to be eligible for the Fast Track Process, regardless of location. For certified inverter-based systems, the size limit varies according to the voltage of the line at the proposed Point of Interconnection. Certified inverter-based Small Generating Facilities located within 2.5 electrical circuit miles of a substation and on a mainline (as defined in the table below) are eligible for the Fast Track Process under the higher thresholds according to the table below. In addition to the size threshold, [the] Interconnection Customer's proposed Small Generating Facility must meet the codes, standards, and certification requirements of Attachments 3 and 4 of these procedures, or [the] Transmission Provider has to have reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate.

FAST TRACK ELIGIBILITY FOR INVERTER-BASED SYSTEMS

Line voltage	Fast track eligibility regardless of location	Fast track eligibility on a mainline [1] and ≤2.5 electrical circuit miles from substation [2]
<5 kV	≤500 kW	≤500 kW
≥5 kV and <15 kV	≤2 MW	≤3 MW
≥15 kV and <30 kV	≤3 MW	≤4 MW
≥30 kV and ≤69 kV	≤4 MW	≤5 MW

2.2 Initial Review

Within *fifteen (15)* Business Days after [the] Transmission Provider notifies [the] Interconnection Customer it has received a complete Interconnection Request, [the] Transmission Provider shall perform an initial review using the screens set forth below, shall notify [the] Interconnection Customer of the results, and include with the notification copies of the analysis and data underlying [the] Transmission Provider's determinations under the screens.

2.2.1 Screens

2.2.1.1 The proposed Small Generating Facility's Point of Interconnection must be on a portion of [the] Transmission Provider's Distribution System that is subject to the Tariff.

2.2.1.2 For interconnection of a proposed Small Generating Facility to a radial distribution circuit, the aggregated generation, including the proposed Small Generating Facility, on the circuit shall not exceed 15% of the line section annual peak load as most recently measured at the substation. A line section is that portion of a Transmission Provider's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

2.2.1.3 For interconnection of a proposed Small Generating Facility to the load side of spot network protectors, the proposed Small Generating Facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 5% of a spot network's maximum load or 50 kW.[3]

2.2.1.4 The proposed Small Generating Facility, in aggregation with other generation on the distribution circuit, shall not contribute more than 10% to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of change of ownership.

2.2.1.5 The proposed Small Generating Facility, in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or Interconnection Customer equipment on the system to exceed 87.5% of the short circuit interrupting capability; nor shall the interconnection be proposed for a circuit that already exceeds 87.5% of the short circuit interrupting capability.

2.2.1.6 Using the table below, determine the type of interconnection to a primary distribution line. This screen includes a review of the type of electrical service provided to the Interconnecting Customer, including line configuration and the transformer connection to limit the potential for creating over-voltages on [the] Transmission Provider's electric power system due to a loss of ground during the operating time of any anti-islanding function.

Primary distribution line type	Type of interconnection to primary distribution line	Result/criteria
Three-phase, three wire	3-phase or single phase, phase-to-phase	Pass screen.
Three-phase, four wire	Effectively-grounded 3 phase or Single-phase, line-to-neutral	Pass screen.

[1] For purposes of this table, a mainline is the three-phase backbone of a circuit. It will typically constitute lines with wire sizes of 4/0 American wire gauge, 336.4 kcmil, 397.5 kcmil, 477 kcmil and 795 kcmil.

[2] An Interconnection Customer can determine this information about its proposed interconnection location in advance by requesting a pre-application report pursuant to section 1.2.

[3] A spot network is a type of distribution system found within modern commercial buildings to provide high reliability of service to a single customer. (Standard Handbook for Electrical Engineers, 11th edition, Donald Fink, McGraw Hill Book Company).

2.2.1.7 If the proposed Small Generating Facility is to be interconnected on single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed Small Generating Facility, shall not exceed 20 kW.

2.2.1.8 If the proposed Small Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.

2.2.1.9 The Small Generating Facility, in aggregate with other generation interconnected to the transmission side of a substation transformer feeding the circuit where the Small Generating Facility proposes to interconnect shall not exceed 10 MW in an area where there are known, or posted, transient stability limitations to generating units located in the general electrical vicinity (*e.g.,* three or four transmission busses from the point of interconnection).

2.2.1.10 No construction of facilities by [the] Transmission Provider on its own system shall be required to accommodate the Small Generating Facility.

2.2.2 If the proposed interconnection passes the screens, the Interconnection Request shall be approved and [the] Transmission Provider will provide [the] Interconnection Customer an executable interconnection agreement within five *(5)* Business Days after the determination.

2.2.3 If the proposed interconnection fails the screens, but [the] Transmission Provider determines that the Small Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, [the] Transmission Provider shall provide [the] Interconnection Customer an executable interconnection agreement within five *(5)* Business Days after the determination.

2.2.4 If the proposed interconnection fails the screens, and [the] Transmission Provider does not or cannot determine from the initial review that the Small Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards unless [the] Interconnection Customer is willing to consider minor modifications or further study, [the] Transmission Provider shall provide [the] Interconnection Customer with the opportunity to attend a customer options meeting.

2.3 Customer Options Meeting

If [the] Transmission Provider determines the Interconnection Request cannot be approved without (1) minor modifications at minimal cost, (2) a supplemental study or other additional studies or actions, or (3) incurring significant cost to address safety, reliability, or power quality problems, [the] Transmission Provider shall notify [the] Interconnection Customer of that determination within five *(5)* Business Days after the determination and provide copies of all data and analyses underlying its conclusion. Within ten *(10)* Business Days of [the] Transmission Provider's determination, [the] Transmission Provider shall offer to convene a customer options meeting with [the] Transmission Provider to review possible Interconnection Customer facility modifications or the screen analysis and related results, to determine what further steps are needed to permit the Small Generating Facility to be connected safely and reliably. At the time of notification of [the] Transmission Provider's determination, or at the customer options meeting, [the] Transmission Provider shall:

2.3.1 Offer to perform facility modifications or minor modifications to [the] Transmission Provider's electric system (*e.g.,* changing meters, fuses, relay settings) and provide a non-binding good faith estimate of the limited cost to make such modifications to [the] Transmission Provider's electric system. If [the] Interconnection Customer agrees to pay for the modifications to the Transmission Provider's electric system, [the] Transmission Provider will provide [the] Interconnection Customer with an executable interconnection agreement within ten *(10)* Business Days of the customer options meeting; or

2.3.2 Offer to perform a supplemental review in accordance with section 2.4 and provide a non-binding good faith estimate of the costs of such review; or

2.3.3 Obtain [the] Interconnection Customer's agreement to continue evaluating the Interconnection Request under the section 3 Study Process.

2.4 Supplemental Review

2.4.1 To accept the offer of a supplemental review, [the] Interconnection Customer shall agree in writing and submit a deposit for the estimated costs of the supplemental review in the amount of [the] Transmission Provider's good faith estimate of the costs of such review, both within *fifteen (*15*)* Business Days of the offer. If the written agreement and deposit have not been received by [the] Transmission Provider within that timeframe, the Interconnection Request shall continue to be evaluated under the section 3 Study Process unless it is withdrawn by [the] Interconnection Customer.

2.4.2 [The] Interconnection Customer may specify the order in which [the] Transmission Provider will complete the screens in section 2.4.4.

2.4.3 [The] Interconnection Customer shall be responsible for [the] Transmission Provider's actual costs for conducting the supplemental review. [The] Interconnection Customer must pay any review costs that exceed the deposit within *twenty (*20*)* Business Days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced costs, [the] Transmission Provider will return such excess within *twenty (*20*)* Business Days of the invoice without interest.

2.4.4 Within *thirty (*30*)* Business Days following receipt of the deposit for a supplemental review, [the] Transmission Provider shall (1) perform a supplemental review using the screens set forth below; (2) notify in writing [the] Interconnection Customer of the results; and (3) include with the notification copies of the analysis and data underlying [the] Transmission Provider's determinations under the screens. Unless [the] Interconnection Customer provided instructions for how to respond to the failure of any of the supplemental review screens below at the time [the] Interconnection Customer accepted the offer of supplemental review, [the] Transmission Provider shall notify [the] Interconnection Customer following the failure of any of the screens, or if it is unable to perform the screen in section 2.4.4.1, within two *(2)* Business Days of making such determination to obtain [the] Interconnection Customer's permission to: (1) continue evaluating the proposed interconnection under this section 2.4.4; (2) terminate the supplemental review and continue evaluating the Small Generating Facility under section 3; or (3) terminate the supplemental review upon withdrawal of the Interconnection Request by [the] Interconnection Customer.

2.4.4.1 Minimum Load Screen: Where 12 months of line section minimum load data (including onsite load but not station service load served by the proposed Small Generating Facility) are available, can be calculated, can be estimated from existing data, or determined from a power flow model, the aggregate Generating Facility capacity on the line section is less than 100% of the minimum load for all line sections bounded by automatic sectionalizing devices upstream of the proposed Small Generating Facility. If minimum load data is not available, or cannot be calculated, estimated or determined, [the] Transmission Provider shall include the reason(s) that it is unable to calculate, estimate or determine minimum load in its supplemental review results notification under section 2.4.4.

2.4.4.1.1 The type of generation used by the proposed Small Generating Facility will be taken into account when calculating, estimating, or determining circuit or line section minimum load relevant for the application of screen 2.4.4.1. Solar photovoltaic (PV) generation systems with no battery storage use daytime minimum load (*i.e.,* 10 a.m. to 4 p.m. for fixed panel systems and 8 a.m. to 6 p.m. for PV systems utilizing tracking systems), while all other generation uses absolute minimum load.

2.4. 4.1.2 When this screen is being applied to a Small Generating Facility that serves some station service load, only the net injection into [the] Transmission Provider's electric system will be considered as part of the aggregate generation.

2.4. 4.1.3 Transmission Provider will not consider as part of the aggregate generation for purposes of this screen generating facility capacity known to be already reflected in the minimum load data.

2.4.4.2 Voltage and Power Quality Screen: In aggregate with existing generation on the line section: (1) the voltage regulation on the line section can be maintained in compliance with relevant requirements under all system conditions; (2) the voltage fluctuation is within acceptable limits as defined by Institute of Electrical and Electronics Engineers (IEEE) Standard 1453, or utility practice similar to IEEE Standard 1453; and (3) the harmonic levels meet IEEE Standard 519 limits.

2.4.4.3 Safety and Reliability Screen: The location of the proposed Small Generating Facility and the aggregate generation capacity on the line section do not create impacts to

safety or reliability that cannot be adequately addressed without application of the Study Process. [The] Transmission Provider shall give due consideration to the following and other factors in determining potential impacts to safety and reliability in applying this screen.

2.4.4.3.1 Whether the line section has significant minimum loading levels dominated by a small number of customers (*e.g.,* several large commercial customers).

2.4.4.3.2 Whether the loading along the line section is uniform or even.

2.4.4.3.3 Whether the proposed Small Generating Facility is located in close proximity to the substation (*i.e.,* less than 2.5 electrical circuit miles), and whether the line section from the substation to the Point of Interconnection is a Mainline rated for normal and emergency ampacity.

2.4.4.3.4 Whether the proposed Small Generating Facility incorporates a time delay function to prevent reconnection of the generator to the system until system voltage and frequency are within normal limits for a prescribed time.

2.4.4.3.5 Whether operational flexibility is reduced by the proposed Small Generating Facility, such that transfer of the line section(s) of the Small Generating Facility to a neighboring distribution circuit/substation may trigger overloads or voltage issues.

2.4.4.3.6 Whether the proposed Small Generating Facility employs equipment or systems certified by a recognized standards organization to address technical issues such as, but not limited to, islanding, reverse power flow, or voltage quality.

2.4.5 If the proposed interconnection passes the supplemental screens in sections 2.4.4.1, 2.4.4.2, and 2.4.4.3 above, the Interconnection Request shall be approved and [the] Transmission Provider will provide [the] Interconnection Customer with an executable interconnection agreement within the timeframes established in sections 2.4.5.1 and 2.4.5.2 below. If the proposed interconnection fails any of the supplemental review screens and [the] Interconnection Customer does not withdraw its Interconnection Request, it shall continue to be evaluated under the section 3 Study Process consistent with section 2.4.5.3 below.

2.4.5.1 If the proposed interconnection passes the supplemental screens in sections 2.4.4.1, 2.4.4.2, and 2.4.4.3 above and does not require construction of facilities by [the] Transmission Provider on its own system, the interconnection agreement shall be provided within ten *(10)* Business Days after the notification of the supplemental review results.

2.4.5.2 If interconnection facilities or minor modifications to [the] Transmission Provider's system are required for the proposed interconnection to pass the supplemental screens in sections 2.4.4.1, 2.4.4.2, and 2.4.4.3 above, and [the] Interconnection Customer agrees to pay for the modifications to [the] Transmission Provider's electric system, the interconnection agreement, along with a non-binding good faith estimate for the interconnection facilities and/or minor modifications, shall be provided to [the] Interconnection Customer within *fifteen (*15*)* Business Days after receiving written notification of the supplemental review results.

2.4.5.3 If the proposed interconnection would require more than interconnection facilities or minor modifications to [the] Transmission Provider's system to pass the supplemental screens in sections 2.4.4.1, 2.4.4.2, and 2.4.4.3 above, [the] Transmission Provider shall notify [the] Interconnection Customer, at the same time it notifies [the] Interconnection Customer with the supplemental review results, that the Interconnection Request shall be evaluated under the section 3 Study Process unless [the] Interconnection Customer withdraws its Small Generating Facility.

Section 3. Study Process

3.1 Applicability

The Study Process shall be used by an Interconnection Customer proposing to interconnect its Small Generating Facility with [the] Transmission Provider's Transmission System or Distribution System if the Small Generating Facility (1) is larger than 2 MW but no larger than 20 MW, (2) is not certified, or (3) is certified but did not pass the Fast Track Process or the 10 kW Inverter Process.

3.2 Scoping Meeting

3.2.1 A scoping meeting will be held within ten *(10)* Business Days after the Interconnection Request is deemed complete, or as otherwise mutually agreed to by the Parties. [The] Transmission Provider and [the] Interconnection Customer will bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

3.2.2 The purpose of the scoping meeting is to discuss the Interconnection Request and review existing studies relevant to the Interconnection Request. The Parties shall further discuss whether [the] Transmission Provider should perform a feasibility study or proceed directly to a system impact study, or a facilities study, or an interconnection agreement. If the Parties agree that a feasibility study should be performed, [the] Transmission Provider shall provide [the] Interconnection Customer, as soon as possible, but not later than five *(5)* Business Days after the scoping meeting, a feasibility study agreement (Attachment 6) including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

3.2.3 The scoping meeting may be omitted by mutual agreement. In order to remain in consideration for interconnection, an Interconnection Customer who has requested a feasibility study must return the executed feasibility study agreement within *fifteen (*15*)* Business Days. If the Parties agree not to perform a feasibility study, [the] Transmission Provider shall provide [the] Interconnection Customer, no later than five *(5)* Business Days after the scoping meeting, a system impact study agreement (Attachment 7) including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

3.3 Feasibility Study

3.3.1 The feasibility study shall identify any potential adverse system impacts that would result from the interconnection of the Small Generating Facility.

3.3.2 A deposit of the lesser of 50 percent of the good faith estimated feasibility study costs or earnest money of $1,000 may be required from [the] Interconnection Customer.

3.3.3 The scope of and cost responsibilities for the feasibility study are described in the attached feasibility study agreement (Attachment 6).

3.3.4 If the feasibility study shows no potential for adverse system impacts, [the] Transmission Provider shall send [the] Interconnection Customer a facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study. If no additional facilities are required, [the] Transmission Provider shall send [the] Interconnection Customer an executable interconnection agreement within five *(5)* Business Days.

3.3.5 If the feasibility study shows the potential for adverse system impacts, the review process shall proceed to the appropriate system impact study(s).

3.3.6 The feasibility study shall evaluate static synchronous compensators, static VAR compensators, advanced power flow control devices, transmission switching, synchronous condensers, voltage source converters, advanced conductors, and tower lifting. Transmission Provider shall evaluate each identified alternative transmission technology and determine whether it should be used, consistent with Good Utility Practice, *Applicable Reliability Standards,* and *Applicable Laws and Regulations* [other applicable regulatory requirements]. Transmission Provider shall include an explanation of the results of Transmission Provider's evaluation for each technology in the feasibility study report.

3.4 System Impact Study

3.4.1 A system impact study shall identify and detail the electric system impacts that would result if the proposed Small Generating Facility were interconnected without project modifications or electric system modifications, focusing on the adverse system impacts identified in the feasibility study, or to study potential impacts, including but not limited to those identified in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

3.4.2 If no transmission system impact study is required, but potential electric power Distribution System adverse system impacts are identified in the scoping meeting or shown in the feasibility study, a distribution system impact study must be performed. [The] Transmission Provider shall send [the] Interconnection Customer a distribution system impact study agreement within *fifteen (*15*)* Business Days of transmittal of the feasibility study report, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, or following the scoping meeting if no feasibility study is to be performed.

3.4.3 In instances where the feasibility study or the distribution system impact study shows potential for transmission system adverse system impacts, within five *(5)* Business Days following transmittal of the feasibility study report, [the] Transmission Provider shall send [the] Interconnection Customer a transmission system impact study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, if such a study is required.

3.4.4 If a transmission system impact study is not required, but electric power Distribution System adverse system impacts are shown by the feasibility study to be possible and no distribution system impact study has been conducted, Transmission Provider shall send Interconnection Customer a distribution system impact study agreement.

3.4.5 If the feasibility study shows no potential for transmission system or Distribution System adverse system impacts, [the] Transmission Provider shall send [the] Interconnection Customer either a facilities study agreement (Attachment 8), including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, or an executable interconnection agreement, as applicable.

3.4.6 In order to remain under consideration for interconnection, [the] Interconnection Customer must return executed system impact study agreements, if applicable, within *thirty (*30*)* Business Days.

3.4.7 A deposit of the good faith estimated costs for each system impact study may be required from [the] Interconnection Customer.

3.4.8 The scope of and cost responsibilities for a system impact study are described in the attached system impact study agreement.

3.4.9 Where transmission systems and Distribution Systems have separate owners, such as is the case with transmission-dependent utilities (''TDUs'')—whether investor-owned or not—[the] Interconnection Customer may apply to the nearest Transmission Provider (Transmission Owner, Regional Transmission Operator, or Independent Transmission Provider) providing transmission service to the TDU to request project coordination. Affected Systems shall participate in the study and provide all information necessary to prepare the study.

3.4.10 The system impact study shall evaluate static synchronous compensators, static VAR compensators, advanced power flow control devices, transmission switching, synchronous condensers, voltage source converters, advanced conductors, and tower lifting. Transmission Provider shall evaluate each identified alternative transmission technology and determine whether it should be used, consistent with Good Utility Practice, *Applicable Reliability Standards,* and *Applicable Laws and Regulations* [other applicable regulatory requirements]. Transmission Provider shall include an explanation of the results of Transmission Provider's evaluation for each technology in the system impact study report.

3.5 Facilities Study

3.5.1 Once the required system impact study(s) is completed, a system impact study report shall be prepared and transmitted to [the] Interconnection Customer along with a facilities study agreement within five *(5)* Business Days, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the facilities study. In the case where one or both impact studies are determined to be unnecessary, a notice of the fact shall be transmitted to [the] Interconnection Customer within the same timeframe.

3.5.2 In order to remain under consideration for interconnection, or, as appropriate, in [the] Transmission Provider's interconnection queue, [the] Interconnection Customer must return the executed facilities study agreement or a request for an extension of time within *thirty (*30*)* Business Days.

3.5.3 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study(s).

3.5.4 Design for any required Interconnection Facilities and/or Upgrades shall be performed under the facilities study agreement. [The] Transmission Provider may contract with consultants to perform activities required under the facilities study agreement. [The] Interconnection Customer and [the] Transmission Provider may agree to allow [the] Interconnection Customer to separately arrange for the design of some of the Interconnection Facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by [the] Transmission Provider, under the provisions of the facilities study agreement. If the Parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, [the] Transmission Provider shall make sufficient information available to [the] Interconnection Customer in accordance with confidentiality and critical infrastructure requirements to permit [the] Interconnection Customer to obtain an independent design and cost estimate for any necessary facilities.

3.5.5 A deposit of the good faith estimated costs for the facilities study may be required from [the] Interconnection Customer.

3.5.6 The scope of and cost responsibilities for the facilities study are described in the attached facilities study agreement.

3.5.7 Upon completion of the facilities study, and with the agreement of [the] Interconnection Customer to pay for Interconnection Facilities and Upgrades identified in the facilities study, [the] Transmission Provider shall provide [the] Interconnection Customer an executable interconnection agreement within five *(5)* Business Days.

Section 4. Provisions That Apply to All Interconnection Requests

4.1 Reasonable Efforts

[The] Transmission Provider shall make reasonable efforts to meet all time frames provided in these procedures unless [the] Transmission Provider and [the] Interconnection Customer agree to a different schedule. If [the] Transmission Provider cannot meet a deadline provided herein, it shall notify [the] Interconnection Customer, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

4.2 Disputes

4.2.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

4.2.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute.

4.2.3 If the dispute has not been resolved within two *(2)* Business Days after receipt of the Notice, either Party may contact FERC's Dispute Resolution Service (DRS) for assistance in resolving the dispute.

4.2.4 The DRS will assist the Parties in either resolving their dispute or in selecting an appropriate dispute resolution venue (*e.g.,* mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. DRS can be reached at 1–877–337–2237 or via the internet at *http://www.ferc.gov/legal/adr.asp.*

4.2.5 Each Party agrees to conduct all negotiations in good faith and will be responsible for one-half of any costs paid to neutral third-parties.

4.2.6 If neither Party elects to seek assistance from the DRS, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of these procedures.

4.3 Interconnection Metering

Any metering necessitated by the use of the Small Generating Facility shall be installed at [the] Interconnection Customer's expense in accordance with Federal Energy Regulatory Commission, state, or local regulatory requirements or [the] Transmission Provider's specifications.

4.4 Commissioning

Commissioning tests of [the] Interconnection Customer's installed equipment shall be performed pursuant to applicable codes and standards. [The] Transmission Provider must be given at least five *(5)* Business Days written notice, or as otherwise mutually agreed to by the Parties, of the tests and may be present to witness the commissioning tests.

4.5. Confidentiality

4.5.1 Confidential information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated ''Confidential.'' For purposes of these procedures all design, operating specifications, and metering data provided by [the] Interconnection Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

4.5.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication

or release), or necessary to be divulged in an action to enforce these procedures. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under these procedures, or to fulfill legal or regulatory requirements.

4.5.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.

4.5.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

4.5.3 Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR 1b.20, if FERC, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to these procedures, the Party shall provide the requested information to FERC, within the time provided for in the request for information. In providing the information to FERC, the Party may, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to FERC. The Party shall notify the other Party when it is notified by FERC that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

4.6 Comparability

[The] Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely manner as set forth in this document. [The] Transmission Provider shall use the same reasonable efforts in processing and analyzing Interconnection Requests from all Interconnection Customers, whether the Small Generating Facility is owned or operated by [the] Transmission Provider, its subsidiaries or affiliates, or others.

4.7 Record Retention

[The] Transmission Provider shall maintain for three years records, subject to audit, of all Interconnection Requests received under these procedures, the times required to complete Interconnection Request approvals and disapprovals, and justification for the actions taken on the Interconnection Requests.

4.8 Interconnection Agreement

After receiving an interconnection agreement from [the] Transmission Provider, [the] Interconnection Customer shall have *thirty (*30*)* Business Days or another mutually agreeable timeframe to sign and return the interconnection agreement or request that [the] Transmission Provider file an unexecuted interconnection agreement with the Federal Energy Regulatory Commission. If [the] Interconnection Customer does not sign the interconnection agreement, or ask that it be filed unexecuted by [the] Transmission Provider within *thirty (*30*)* Business Days, the Interconnection Request shall be deemed withdrawn. After the interconnection agreement is signed by the Parties, the interconnection of the Small Generating Facility shall proceed under the provisions of the interconnection agreement.

4.9 Coordination with Affected Systems

[The] Transmission Provider shall coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System operators and, if possible, include those results (if available) in its applicable interconnection study within the time frame specified in these procedures. [The] Transmission Provider will include such Affected System operators in all meetings held with [the] Interconnection Customer as required by these procedures. [The] Interconnection Customer will cooperate with [the] Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A Transmission Provider which may be an Affected System shall cooperate with [the] Transmission Provider with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

4.10 Capacity of the Small Generating Facility

4.10.1 If the Interconnection Request is for an increase in capacity for an existing Small Generating Facility, the Interconnection Request shall be evaluated on the basis of the new total capacity of the Small Generating Facility.

4.10.2 If the Interconnection Request is for a Small Generating Facility that includes multiple energy production devices at a site for which [the] Interconnection Customer seeks a single Point of Interconnection, the Interconnection Request shall be evaluated on the basis of the aggregate capacity of the multiple devices.

4.10.3 The Interconnection Request shall be evaluated using the maximum capacity that the Small Generating Facility is capable of injecting into [the] Transmission Provider's electric system. However, if the maximum capacity that the Small Generating Facility is capable of injecting into [the] Transmission Provider's electric system is limited (*e.g.,* through use of a control system, power relay(s), or other similar device settings or adjustments), then [the] Interconnection Customer must obtain [the] Transmission Provider's agreement, with such agreement not to be unreasonably withheld, that the manner in which [the] Interconnection Customer proposes to implement such a limit will not adversely affect the safety and reliability of [the] Transmission Provider's system. If [the] Transmission Provider does not so agree, then the Interconnection Request must be withdrawn or revised to specify the maximum capacity that the Small Generating Facility is capable of injecting into [the] Transmission Provider's electric system without such limitations. Furthermore, nothing in this section shall prevent a Transmission Provider from considering an output higher than the limited output, if appropriate, when evaluating system protection impacts.

Attachment 1

Glossary of Terms

10 kW Inverter Process—The procedure for evaluating an Interconnection Request for a certified inverter-based Small Generating Facility no larger than 10 kW that uses the section 2 screens. The application process uses an all-in-one document that includes a simplified Interconnection Request, simplified procedures, and a brief set of terms and conditions. See SGIP Attachment 5.

Affected System—An electric system other than [the] Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Applicable Reliability Standards—The requirements and guidelines of the Electric Reliability Organization and the Balancing Authority Area of the Transmission System to which the Generating Facility is directly interconnected.

Applicable Laws and Regulations—All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Business Day—Monday through Friday, excluding Federal Holidays.

Distribution System—[The] Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades—The additions, modifications, and upgrades to [the] Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Small Generating Facility and render the transmission service necessary to effect [the] Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Fast Track Process—The procedure for evaluating an Interconnection Request for a certified Small Generating Facility that meets the eligibility requirements of section 2.1 and includes the section 2 screens, customer options meeting, and optional supplemental review.

Good Utility Practice—Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and act which, in the exercise of reasonable

judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Interconnection Customer—Any entity, including [the] Transmission Provider, the Transmission Owner or any of the affiliates or subsidiaries of either, that proposes to interconnect its Small Generating Facility with [the] Transmission Provider's Transmission System.

Interconnection Facilities—[The] Transmission Provider's Interconnection Facilities and [the] Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to [the] Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Request—[The] Interconnection Customer's request, in accordance with the Tariff, to interconnect a new Small Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with [the] Transmission Provider's Transmission System.

Material Modification—A modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Network Resource—Any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

Network Resource Interconnection Service—An Interconnection Service that allows [the] Interconnection Customer to integrate its Generating Facility with [the] Transmission Provider's System (1) in a manner comparable to that in which [the] Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades—Additions, modifications, and upgrades to [the] Transmission Provider's Transmission System required at or beyond the point at which the Small Generating Facility interconnects with [the] Transmission Provider's Transmission System to accommodate the interconnection with the Small Generating Facility to [the] Transmission Provider's Transmission System. Network Upgrades do not include Distribution Upgrades.

Party or Parties—[The] Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Interconnection—The point where the Interconnection Facilities connect with [the] Transmission Provider's Transmission System.

Queue Position—The order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by [the] Transmission Provider.

Small Generating Facility—[The] Interconnection Customer's device for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include [the] Interconnection Customer's Interconnection Facilities.

Study Process—The procedure for evaluating an Interconnection Request that includes the section 3 scoping meeting, feasibility study, system impact study, and facilities study.

Transmission Owner—The entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider—The public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from [the] Transmission Provider.

Transmission System—The facilities owned, controlled or operated by [the] Transmission Provider or the Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades—The required additions and modifications to [the] Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

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Attachment 2

SMALL GENERATOR INTERCONNECTION REQUEST

(Application Form)

Transmission Provider: _____

Designated Contact Person: _____

Address: _____

Telephone Number: _____

Fax: _____

E-Mail Address: _____

An Interconnection Request is considered complete when it provides all applicable and correct information required below. Per SGIP section 1.5, documentation of site control must be submitted with the Interconnection Request.

Preamble and Instructions

An Interconnection Customer who requests a Federal Energy Regulatory Commission jurisdictional interconnection must submit this Interconnection Request by hand delivery, mail, e-mail, or fax to [the] Transmission Provider.

Processing Fee or Deposit:

If the Interconnection Request is submitted under the Fast Track Process, the non-refundable processing fee is $500.

If the Interconnection Request is submitted under the Study Process, whether a new submission or an Interconnection Request that did not pass the Fast Track Process, [the] Interconnection Customer shall submit to [the] Transmission Provider a deposit not to exceed $1,000 towards the cost of the feasibility study.

Interconnection Customer Information

Legal Name of [the] Interconnection Customer (or, if an individual, individual's name)

Name: _____

Contact Person: _____

Mailing Address:

_____

City: _____ State:_____ Zip:_____

Facility Location (if different from above):

_____

_____

Telephone (Day): _____ Telephone (Evening): _____

Fax:_____ E-Mail Address: _____

Alternative Contact Information (if different from [the] Interconnection Customer)

Contact Name: _____

Title: _____

Address:_____

_____

Telephone (Day): _____ Telephone (Evening):_____

Fax: _____ E-Mail Address: _____

Application is for: _____New Small Generating Facility

_____Capacity addition to Existing Small Generating Facility

If capacity addition to existing facility, please describe: _____

_____

Will the Small Generating Facility be used for any of the following?

Net Metering? Yes ___ No ___

To Supply Power to [the] Interconnection Customer? Yes ___No ___

To Supply Power to Others? Yes ____ No ____

For installations at locations with existing electric service to which the proposed Small Generating Facility will interconnect, provide:

_____ _____

(Local Electric Service Provider*) (Existing Account Number*)

{*To be provided by [the] Interconnection Customer if the local electric service provider is different from [the] Transmission Provider}

Contact Name:

_____

Title:

_____

Address:

_____

_____

Telephone (Day): _____ Telephone (Evening):

_____

Fax: _____ E-Mail Address:

_____

Requested Point of Interconnection:

_____

_____

Interconnection Customer's Requested In-Service Date:

_____

Small Generating Facility Information

Data apply only to the Small Generating Facility, not the Interconnection Facilities.

Energy Source: ___Solar ___Wind ___Hydro ___ Hydro Type (e.g. Run-of-River):_____ __Diesel __ Natural Gas __ Fuel Oil Other (state type)

_____

Prime Mover: __Fuel Cell __Recip Engine __Gas Turb __Steam Turb

__Microturbine __PV __Other

Type of Generator: ____Synchronous ____Induction ____ Inverter

Generator Nameplate Rating: _____kW (Typical) Generator Nameplate kVAR:

_____

Interconnection Customer or Customer-Site Load: _____kW (if none, so state)

Typical Reactive Load (if known): _____

Maximum Physical Export Capability Requested: _____ kW

List components of the Small Generating Facility equipment package that are currently certified:

	Equipment Type	Certifying Entity
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

Is the prime mover compatible with the certified protective relay package? ____Yes ____No

Generator (or solar collector) Manufacturer, Model Name & Number:

_____

Version Number: _____

Nameplate Output Power Rating in kW: (Summer) _____ (Winter)

_____

Nameplate Output Power Rating in kVA: (Summer) _____ (Winter)

_____

Individual Generator Power Factor

Rated Power Factor: Leading: _____Lagging: _____

Total Number of Generators in wind farm to be interconnected pursuant to this

Interconnection Request: _____ Elevation:_____ ___Single phase ___Three phase

Inverter Manufacturer, Model Name & Number (if used):_____

List of adjustable set points for the protective equipment or software:

_____

Note: A completed Power Systems Load Flow data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for inverter-based machines)

Max design fault contribution current: _____ Instantaneous or RMS_____?

Harmonics Characteristics:

_____

Start-up requirements:

_____

Small Generating Facility Characteristic Data (for rotating machines)

RPM Frequency: _____

(*) Neutral Grounding Resistor (If Applicable): _____

Synchronous Generators:

Direct Axis Synchronous Reactance, X_d: _____ P.U.

Direct Axis Transient Reactance, X'_d: _____P.U.

Direct Axis Subtransient Reactance, X''_d: _____P.U.

Negative Sequence Reactance, X_2: _____ P.U.

Zero Sequence Reactance, X_0: _____ P.U.

KVA Base: _____

Field Volts: _____

Field Amperes: _____

Induction Generators:

Motoring Power (kW): _____

I22t or K (Heating Time Constant): _____

Rotor Resistance, Rr: _____

Stator Resistance, Rs: _____

Stator Reactance, Xs: _____

Rotor Reactance, Xr: _____

Magnetizing Reactance, Xm: _____

Short Circuit Reactance, Xd": _____

Exciting Current: _____

Temperature Rise: _____

Frame Size: _____

Design Letter: _____

Reactive Power Required In Vars (No Load): _____

Reactive Power Required In Vars (Full Load): _____

Total Rotating Inertia, H: _____ Per Unit on kVA Base

Note: Please contact [the] Transmission Provider prior to submitting the Interconnection Request to determine if the specified information above is required.

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Excitation and Governor System Data for Synchronous Generators Only

Provide appropriate IEEE model block diagram of excitation system, governor system and power system stabilizer (PSS) in accordance with the regional reliability council criteria. A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

Models for Non-Synchronous Small Generating Facilities

For a non-synchronous Small Generating Facility, Interconnection Customer shall provide (1) a validated user-defined root mean squared (RMS) positive sequence dynamics model; (2) an appropriately parameterized generic library RMS positive sequence dynamics model, including model block diagram of the inverter control and plant control systems, as defined by the selection in Table 1 or a model otherwise approved by the Western Electricity Coordinating Council, that corresponds to Interconnection Customer's Small Generating Facility; and (3) if applicable, a validated electromagnetic transient model if Transmission Provider performs an electromagnetic transient study as part of the interconnection study process. A user-defined model is a set of programming code created by equipment manufacturers or developers that captures the latest features of controllers that are mainly software based and represents the entities' control strategies but does not necessarily correspond to any generic library model. Interconnection Customer must also demonstrate that the model is validated by providing evidence that the equipment behavior is consistent with the model behavior (*e.g.,* an attestation from Interconnection Customer that the model accurately represents the entire Small Generating Facility; attestations from each equipment manufacturer that the user defined model accurately represents the component of the Small Generating Facility; or test data).

TABLE 1—ACCEPTABLE GENERIC LIBRARY RMS POSITIVE SEQUENCE DYNAMICS MODELS

GE PSLF	Siemens PSS/E*	PowerWorld simulator	Description
pvd1		PVD1	Distributed PV system model.
der_a	DERAU1	DER_A	Distributed energy resource model.
regc_a	REGCAU1, REGCA1	REGC_A	Generator/converter model.
regc_b	REGCBU1	REGC_B	Generator/converter model.
wt1g	WT1G1	WT1G and WT1G1	Wind turbine model for Type-1 wind turbines (conventional directly connected induction generator).
wt2g	WT2G1	WT2G and WT2G1	Generator model for generic Type-2 wind turbines.
wt2e	WT2E1	WT2E and WT2E1	Rotor resistance control model for wound-rotor induction wind-turbine generator wt2g.
reec_a	REECAU1, REECA1	REEC_A	Renewable energy electrical control model.
reec_c	REECCU1	REEC_C	Electrical control model for battery energy storage system.
reec_d	REECDU1	REEC_D	Renewable energy electrical control model.
wt1t	WT12T1	WT1T and WT12T1	Wind turbine model for Type-1 wind turbines (conventional directly connected induction generator).
wt1p_b	wt1p_b	WT12A1U_B	Generic wind turbine pitch controller for WTGs of Types 1 and 2.

TABLE 1—ACCEPTABLE GENERIC LIBRARY RMS POSITIVE SEQUENCE DYNAMICS MODELS—Continued

GE PSLF	Siemens PSS/E*	PowerWorld simulator	Description
wt2t	WT12T1	WT2T	Wind turbine model for Type-2 wind turbines (directly connected induction generator wind turbines with an external rotor resistance).
wtgt_a	WTDTAU1, WTDTA1	WTGT_A	Wind turbine drive train model.
wtga_a	WTARAU1, WTARA1	WTGA_A	Simple aerodynamic model.
wtgp_a	WTPTAU1, WTPTA1	WTGPT_A	Wind Turbine Generator Pitch controller.
wtgq_a	WTTQAU1, WTTQA1	WTGTRQ_A	Wind Turbine Generator Torque controller.
wtgwgo_a	WTGWGOAU	WTGWGO_A	Supplementary control model for Weak Grids.
wtgibffr_a	WTGIBFFRA	WTGIBFFR_A	Inertial-base fast frequency response control.
wtgp_b	WTPTBU1	WTGPT_B	Wind Turbine Generator Pitch controller.
wtgt_b	WTDTBU1	WTGT_B	Drive train model.
repc_a	Type 4: REPCAU1 (v33), REPCA1 (v34) Type 3: REPCTAU1 (v33), REPCTA1 (v34).	REPC_A	Power Plant Controller.
repc_b	PLNTBU1	REPC_B	Power Plant Level Controller for controlling several plants/devices In regard to Siemens PSS/E*: Names of other models for interface with other devices: REA3XBU1, REAX4BU1—for interface with Type 3 and 4 renewable machines SWSAXBU1—for interface with SVC (modeled as switched shunt in powerflow) SYNAXBU1—for interface with synchronous condenser FCTAXBU1—for interface with FACTS device.
repc_c	REPCCU	REPC_C	Power plant controller.

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Interconnection Facilities Information

Will a transformer be used between the generator and the point of common coupling?

__Yes __No

Will the transformer be provided by [the] Interconnection Customer? ____Yes ____No

Transformer Data (If Applicable, for Interconnection Customer-Owned Transformer):

Is the transformer: ____single phase _____three phase? Size: _____kVA

Transformer Impedance: _____% on _____kVA Base

If Three Phase:

Transformer Primary: _____ Volts _____ Delta _____Wye _____ Wye Grounded

Transformer Secondary: _____ Volts _____ Delta _____Wye _____ Wye Grounded

Transformer Tertiary: _____ Volts _____ Delta _____Wye _____ Wye Grounded

Transformer Fuse Data (If Applicable, for Interconnection Customer-Owned Fuse):

(Attach copy of fuse manufacturer's Minimum Melt and Total Clearing Time-Current Curves)

Manufacturer: _____ Type: _____ Size: _____ Speed: _____

Interconnecting Circuit Breaker (if applicable):

Manufacturer: _____ Type: _____

Load Rating (Amps): _____ Interrupting Rating (Amps): _____ Trip Speed (Cycles): _____

Interconnection Protective Relays (If Applicable):

If Microprocessor-Controlled:

List of Functions and Adjustable Setpoints for the protective equipment or software:

	Setpoint Function	Minimum	Maximum
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

If Discrete Components:

(Enclose Copy of any Proposed Time-Overcurrent Coordination Curves)

Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____
Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____
Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____
Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____
Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____

Current Transformer Data (If Applicable):

(Enclose Copy of Manufacturer's Excitation and Ratio Correction Curves)

Manufacturer:

_____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection:

_____

Manufacturer:

_____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection:

_____

Potential Transformer Data (If Applicable):

Manufacturer:

_____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection:

_____

Manufacturer:

_____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection:

_____

General Information

Enclose copy of site electrical one-line diagram showing the configuration of all Small Generating Facility equipment, current and potential circuits, and protection and control schemes. This one-line diagram must be signed and stamped by a licensed Professional Engineer if the Small Generating Facility is larger than 50 kW. Is One-Line Diagram Enclosed? ____Yes ____No

Enclose copy of any site documentation that indicates the precise physical location of the proposed Small Generating Facility (e.g., USGS topographic map or other diagram or documentation).

Proposed location of protective interface equipment on property (include address if different from [the] Interconnection Customer's address)_____

Enclose copy of any site documentation that describes and details the operation of the protection and control schemes. Is Available Documentation Enclosed? ___Yes ____No

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).

Are Schematic Drawings Enclosed? ___Yes ____No

Applicant Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.

For Interconnection Customer: _____ Date: _____

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Attachment 3

Certification Codes and Standards

IEEE1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1 testing protocols to establish conformity)
UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems
IEEE Std 929–2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems
NFPA 70 (2002), National Electrical Code
IEEE Std C37.90.1–1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems
IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers
IEEE Std C37.108–1989 (R2002), IEEE Guide for the Protection of Network Transformers
IEEE Std C57.12.44–2000, IEEE Standard Requirements for Secondary Network Protectors
IEEE Std C62.41.2–2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits
IEEE Std C62.45–1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits
ANSI C84.1–1995 Electric Power Systems and Equipment—Voltage Ratings (60 Hertz)
IEEE Std 100–2000, IEEE Standard Dictionary of Electrical and Electronic Terms
NEMA MG 1–1998, Motors and Small Resources, Revision 3
IEEE Std 519–1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems
NEMA MG 1–2003 (Rev 2004), Motors and Generators, Revision 1

Attachment 4

Certification of Small Generator Equipment Packages

1.0 Small Generating Facility equipment proposed for use separately or packaged with other equipment in an interconnection system shall be considered certified for interconnected operation if (1) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards referenced below by any Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards listed in SGIP Attachment 3, (2) it has been labeled and is publicly listed by such NRTL at the time of the interconnection application, and (3) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its website and by encouraging such information to be included in the manufacturer's literature accompanying the equipment.

2.0 [The] Interconnection Customer must verify that the intended use of the equipment falls within the use or uses for which the equipment was tested, labeled, and listed by the NRTL.

3.0 Certified equipment shall not require further type-test review, testing, or additional equipment to meet the requirements of this interconnection procedure; however, nothing herein shall preclude the need for an on-site commissioning test by the parties to the interconnection nor follow-up production testing by the NRTL.

4.0 If the certified equipment package includes only interface components (switchgear, inverters, or other interface devices), then an Interconnection Customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and is consistent with the testing and listing specified for this type of interconnection equipment.

5.0 Provided the generator or electric source, when combined with the equipment package, is within the range of capabilities for which it was tested by the NRTL, and does not violate the interface components' labeling and listing performed by the NRTL, no further design review, testing or additional equipment on the customer side of the point of common coupling shall be required to meet the requirements of this interconnection procedure.

6.0 An equipment package does not include equipment provided by the utility.

7.0 Any equipment package approved and listed in a state by that state's regulatory body for interconnected operation in that state prior to the effective date of these small generator interconnection procedures shall be considered certified under these procedures for use in that state.

Attachment 5

Application, Procedures, and Terms and Conditions for Interconnecting a Certified Inverter-Based Small Generating Facility No Larger Than 10 kW (''10 kW Inverter Process'')

1.0 [The] Interconnection Customer (''Customer'') completes the Interconnection Request (''Application'') and submits it to [the] Transmission Provider (''Company'').

2.0 The Company acknowledges to the Customer receipt of the Application within three *(3)* Business Days of receipt.

3.0 The Company evaluates the Application for completeness and notifies the Customer within ten *(10)* Business Days of receipt that the Application is or is not complete and, if not, advises what material is missing.

4.0 The Company verifies that the Small Generating Facility can be interconnected safely and reliably using the screens contained in the Fast Track Process in the Small Generator Interconnection Procedures (SGIP). The Company has *fifteen (*15*)* Business Days to complete this process. Unless the Company determines and demonstrates that the Small Generating Facility cannot be interconnected safely and reliably, the Company approves the Application and returns it to the Customer. Note to Customer: Please check with the Company before submitting the Application if disconnection equipment is required.

5.0 After installation, the Customer returns the Certificate of Completion to the Company. Prior to parallel operation, the Company may inspect the Small Generating Facility for compliance with standards which may include a witness test, and may schedule appropriate metering replacement, if necessary.

6.0 The Company notifies the Customer in writing that interconnection of the Small Generating Facility is authorized. If the witness test is not satisfactory, the Company has the right to disconnect the Small Generating Facility. The Customer has no right to operate in parallel until a witness test has been performed, or previously waived on the Application. The Company is obligated to complete this witness test within ten *(10)* Business Days of the receipt of the Certificate of Completion. If the Company does not inspect within ten *(10)* Business Days or by mutual agreement of the Parties, the witness test is deemed waived.

7.0 Contact Information—The Customer must provide the contact information for the legal applicant (*i.e.,* [the] Interconnection Customer). If another entity is responsible for interfacing with the Company, that contact information must be provided on the Application.

8.0 Ownership Information—Enter the legal names of the owner(s) of the Small Generating Facility. Include the percentage ownership (if any) by any utility or public utility holding company, or by any entity owned by either.

9.0 UL1741 Listed—This standard (''Inverters, Converters, and Controllers for Use in Independent Power Systems'') addresses the electrical interconnection design of various forms of generating equipment. Many manufacturers submit their equipment to a Nationally Recognized Testing Laboratory (NRTL) that verifies compliance with UL1741. This ''listing'' is then marked on the equipment and supporting documentation.

BILLING CODE 6717–01–P

Application for Interconnecting a Certified Inverter-Based Small Generating Facility No Larger than 10kW

This Application is considered complete when it provides all applicable and correct information required below. Per SGIP section 1.5, documentation of site control must be submitted with the Interconnection Request. Additional information to evaluate the Application may be required.

Processing Fee

A non-refundable processing fee of $100 must accompany this Application.

Interconnection Customer

Name:

_____

Contact Person:

_____

Address:

_____

City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Contact (if different from Interconnection Customer)

Name:

_____

Contact Person:

_____

Address:

_____

City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Owner of the facility (include % ownership by any electric utility):

_____

_____Small Generating Facility Information

Location (if different from above):

_____

Electric Service Company:

_____

Account Number:

_____

Inverter Manufacturer: _____ Model: _____ Nameplate Rating:_____(kW) _____(kVA) _____(AC Volts)

Single Phase ____ Three Phase____

System Design Capacity: _____ (kW) _____ (kVA)

Prime Mover: ___Photovoltaic ___Reciprocating Engine ___Fuel Cell ___Turbine ___Other (describe)_____

Energy Source: ___Solar ___Wind ___Hydro ___Diesel ___Natural Gas ___Fuel Oil ___Other (describe) _____

Is the equipment UL1741 Listed? ___Yes ___No

If Yes, attach manufacturer's cut-sheet showing UL1741 listing

Estimated Installation Date: _____ Estimated In-Service Date: _____

The 10 kW Inverter Process is available only for inverter-based Small Generating Facilities no larger than 10 kW that meet the codes, standards, and certification requirements of Attachments 3 and 4 of the Small Generator Interconnection Procedures (SGIP), or [the] Transmission Provider has reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate.

List components of the Small Generating Facility equipment package that are currently certified:

	Equipment Type	Certifying Entity
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

Interconnection Customer Signature

I hereby certify that, to the best of my knowledge, the information provided in this Application is true. I agree to abide by the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return the Certificate of Completion when the Small Generating Facility has been installed.

Signed:

_____

Title: _____ Date:

_____

……

Contingent Approval to Interconnect the Small Generating Facility

(For Company use only)

Interconnection of the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return of the Certificate of Completion.

Company Signature:

_____

Title: _____ Date:

_____

Application ID number: _____

Company waives inspection/witness test? Yes___No___

Small Generating Facility Certificate of Completion

Is the Small Generating Facility owner-installed? Yes_____ No _____

Interconnection Customer:

_____

Contact Person:

_____

Address:

_____

Location of the Small Generating Facility (if different from above):

_____

_____

_____ City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Electrician:

Name:

_____

Address:

_____

Location of the Small Generating Facility (if different from above):

_____

_____

_____ City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

License number: _____

Date Approval to Install Facility granted by the Company: _____

Application ID number: _____

Inspection:

The Small Generating Facility has been installed and inspected in compliance with the local

building/electrical code of:

_____

Signed (Local electrical wiring inspector, or attach signed electrical inspection):

_____

Print Name: _____

Date: _____

As a condition of interconnection, you are required to send/fax a copy of this form along with a copy of the signed electrical permit to (insert Company information below):

Name: _____

Company: _____

Address:_____

_____

City, State ZIP: _____

Fax: _____

……

Approval to Energize the Small Generating Facility (For Company use only)

Energizing the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW

Company Signature: _____

Title: _____ Date: _____

BILLING CODE 6717–01–C

Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger Than 10kW

1.0 Construction of the Facility

[The] Interconnection Customer (the ''Customer'') may proceed to construct (including operational testing not to exceed two hours) the Small Generating Facility when [the] Transmission Provider (the ''Company'') approves the Interconnection Request (the ''Application'') and returns it to the Customer.

2.0 Interconnection and Operation

The Customer may operate Small Generating Facility and interconnect with the Company's electric system once all of the following have occurred:

2.1 Upon completing construction, the Customer will cause the Small Generating Facility to be inspected or otherwise certified by the appropriate local electrical wiring inspector with jurisdiction, and

2.2 The Customer returns the Certificate of Completion to the Company, and

2.3 The Company has either:

2.3.1 Completed its inspection of the Small Generating Facility to ensure that all equipment has been appropriately installed and that all electrical connections have been made in accordance with applicable codes. All inspections must be conducted by the Company, at its own expense, within ten *(10)* Business Days after receipt of the Certificate of Completion and shall take place at a time agreeable to the Parties. The Company shall provide a written statement that the Small Generating Facility has passed inspection or shall notify the Customer of what steps it must take to pass inspection as soon as practicable after the inspection takes place; or

2.3.2 If the Company does not schedule an inspection of the Small Generating Facility within ten *(10)* [b]*B*usiness [d]*D*ays after receiving the Certificate of Completion, the witness test is deemed waived (unless the Parties agree otherwise); or

2.3.3 The Company waives the right to inspect the Small Generating Facility.

2.4 The Company has the right to disconnect the Small Generating Facility in the event of improper installation or failure to return the Certificate of Completion.

2.5 Revenue quality metering equipment must be installed and tested in accordance with applicable ANSI standards.

3.0 Safe Operations and Maintenance

The Customer shall be fully responsible to operate, maintain, and repair the Small Generating Facility as required to ensure that it complies at all times with the interconnection standards to which it has been certified.

4.0 Access

The Company shall have access to the disconnect switch (if the disconnect switch is required) and metering equipment of the Small Generating Facility at all times. The Company shall provide reasonable notice to the Customer when possible prior to using its right of access.

5.0 Disconnection

The Company may temporarily disconnect the Small Generating Facility upon the following conditions:

5.1 For scheduled outages upon reasonable notice.

5.2 For unscheduled outages or emergency conditions.

5.3 If the Small Generating Facility does not operate in the manner consistent with these Terms and Conditions.

5.4 The Company shall inform the Customer in advance of any scheduled disconnection, or as is reasonable after an unscheduled disconnection.

6.0 Indemnification

The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.0 Insurance

The Parties agree to follow all applicable insurance requirements imposed by the state in which the Point of Interconnection is located. All insurance policies must be maintained with insurers authorized to do business in that state.

8.0 Limitation of Liability

Each party's liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either party be liable to the other party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever, except as allowed under paragraph 6.0.

9.0 Termination

The agreement to operate in parallel may be terminated under the following conditions:

9.1 By the Customer

By providing written notice to the Company.

9.2 By the Company

If the Small Generating Facility fails to operate for any consecutive 12 month period or the Customer fails to remedy a violation of these Terms and Conditions.

9.3 Permanent Disconnection

In the event this Agreement is terminated, the Company shall have the right to disconnect its facilities or direct the Customer to disconnect its Small Generating Facility.

9.4 Survival Rights

This Agreement shall continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

10.0 Assignment/Transfer of Ownership of the Facility

This Agreement shall survive the transfer of ownership of the Small Generating Facility to a new owner when the new owner agrees in writing to comply with the terms of this Agreement and so notifies the Company.

Attachment 6

Feasibility Study Agreement

This Agreement is made and entered into this____ day of _____ 20____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____, a _____ *organized and* existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on _____; and

Whereas, Interconnection Customer desires to interconnect the Small Generating Facility with [the] Transmission Provider's Transmission System; and

Whereas, Interconnection Customer has requested [the] Transmission Provider to perform a feasibility study to assess the feasibility of interconnecting the proposed Small Generating Facility with [the] Transmission Provider's Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 [The] Interconnection Customer elects and [the] Transmission Provider shall cause to be performed an interconnection feasibility study consistent the standard Small Generator Interconnection Procedures in accordance with the Open Access Transmission Tariff.

3.0 The scope of the feasibility study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The feasibility study shall be based on the technical information provided by [the] Interconnection Customer in the Interconnection Request, as may be modified as the result of the scoping meeting. [The] Transmission Provider reserves the right to request additional technical information from [the] Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard Small Generator Interconnection Procedures. If [the] Interconnection Customer modifies its Interconnection Request, the time to complete the feasibility study may be extended by agreement of the Parties.

5.0 In performing the study, [the] Transmission Provider shall rely, to the extent reasonably practicable, on existing studies of recent vintage. [The] Interconnection Customer shall not be charged for such existing studies; however, [the] Interconnection Customer shall be

responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

6.0 The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the Small Generating Facility as proposed:

6.1 Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

6.2 Initial identification of any thermal overload or voltage limit violations resulting from the interconnection;

6.3 Initial review of grounding requirements and electric system protection; and

6.4 Description and non-binding estimated cost of facilities required to interconnect the proposed Small Generating Facility and to address the identified short circuit and power flow issues.

7.0 The feasibility study shall model the impact of the Small Generating Facility regardless of purpose in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if [the] Interconnection Customer later changes the purpose for which the Small Generating Facility is being installed.

8.0 The study shall include the feasibility of any interconnection at a proposed project site where there could be multiple potential Points of Interconnection, as requested by [the] Interconnection Customer and at [the] Interconnection Customer's cost.

9.0 A deposit of the lesser of 50 percent of good faith estimated feasibility study costs or earnest money of $1,000 may be required from [the] Interconnection Customer.

10.0 Once the feasibility study is completed, a feasibility study report shall be prepared and transmitted to [the] Interconnection Customer. Barring unusual circumstances, the feasibility study must be completed and the feasibility study report transmitted within *thirty (*30*)* Business Days of [the] Interconnection Customer's agreement to conduct a feasibility study.

11.0 Any study fees shall be based on [the] Transmission Provider's actual costs and will be invoiced to [the] Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 [The] Interconnection Customer must pay any study costs that exceed the deposit without interest within *thirty (*30*)* [c]*C*alendar [d]*D*ays on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, [the] Transmission Provider shall refund such excess within *thirty (*30*)* [c]*C*alendar [d]*D*ays of the invoice without interest.

13.0 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____(where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

14.0 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 Waiver

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of [the] Interconnection Customer's legal rights to obtain an interconnection from [the] Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

18.0 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.0 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

20.0 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

20.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall [the] Transmission Provider be liable for the actions or inactions of [the] Interconnection Customer or its subcontractors with respect to obligations of [the] Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

21.0 Reservation of Rights

[The] Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and [the] Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the Parties otherwise agree as provided herein.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider}

_____

Signed: _____

Name (Printed): _____

_____

Title: _____

{Insert name of Interconnection Customer}

_____

Signed: _____

Name (Printed): _____

_____

Title: _____

Attachment A to

Feasibility Study Agreement

Assumptions Used in Conducting the Feasibility Study

The feasibility study will be based upon the information set forth in the Interconnection Request and agreed upon in the scoping meeting held on _____:

(1) Designation of Point of Interconnection and configuration to be studied.

(2) Designation of alternative Points of Interconnection and configuration.

(1) and (2) are to be completed by the Interconnection Customer. Other assumptions (listed below) are to be provided by [the] Interconnection Customer and [the] Transmission Provider.

Attachment 7

System Impact Study Agreement

This agreement is made and entered into this ____ day of_____ 20____ by and between_____, a_____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____, a _____ *organized and* existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, [the] Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by [the] Interconnection Customer on _____; and

Whereas, [the] Interconnection Customer desires to interconnect the Small Generating Facility with [the] Transmission Provider's Transmission System;

Whereas, [the] Transmission Provider has completed a feasibility study and provided the results of said study to [the] Interconnection Customer (This recital to be omitted if the Parties have agreed to forego the feasibility study.); and

Whereas, [the] Interconnection Customer has requested [the] Transmission Provider to perform a system impact study(s) to assess the impact of interconnecting the Small Generating Facility with [the] Transmission Provider's Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 [The] Interconnection Customer elects and [the] Transmission Provider shall cause to be performed a system impact study(s) consistent with the standard Small Generator Interconnection Procedures in accordance with the Open Access Transmission Tariff.

3.0 The scope of a system impact study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 A system impact study will be based upon the results of the feasibility study and the technical information provided by Interconnection Customer in the Interconnection Request. [The] Transmission Provider reserves the right to request additional technical information from [the] Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If [the] Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the system impact study may be extended.

5.0 A system impact study shall consist of a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities that are required as a result of the Interconnection Request and non-binding good faith estimates of cost responsibility and time to construct.

6.0 A distribution system impact study shall incorporate a distribution load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, grounding reviews, and the impact on electric system operation, as necessary.

7.0 Affected Systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All Affected Systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and [the] Transmission Provider has *twenty (*20*)* additional Business Days to complete a system impact study requiring review by Affected Systems.

8.0 If [the] Transmission Provider uses a queuing procedure for sorting or prioritizing projects and their associated cost responsibilities for any required Network Upgrades, the system impact study shall consider all generating facilities (and with respect to paragraph 8.3 below, any identified Upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced—

8.1 Are directly interconnected with [the] Transmission Provider's electric system; or

8.2 Are interconnected with Affected Systems and may have an impact on the proposed interconnection; and

8.3 Have a pending higher queued Interconnection Request to interconnect with [the] Transmission Provider's electric system.

9.0 A distribution system impact study, if required, shall be completed and the results transmitted to [the] Interconnection Customer within *thirty (*30*)* Business Days after this Agreement is signed by the Parties. A transmission system impact study, if required, shall be completed and the results transmitted to [the] Interconnection Customer within *forty-five (*45*)* Business Days after this Agreement is signed by the Parties, or in accordance with [the] Transmission Provider's queuing procedures.

10.0 A deposit of the equivalent of the good faith estimated cost of a distribution system impact study and the one half the good faith estimated cost of a transmission system impact study may be required from [the] Interconnection Customer.

11.0 Any study fees shall be based on [the] Transmission Provider's actual costs and will be invoiced to [the] Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 [The] Interconnection Customer must pay any study costs that exceed the deposit without interest within *thirty (*30*)* [c]*C*alendar [d]*D*ays on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, [the] Transmission Provider shall refund such excess within *thirty (*30*)* [c]*C*alendar [d]*D*ays of the invoice without interest.

13.0 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____ (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

14.0 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 Waiver

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of [the] Interconnection Customer's legal rights to obtain an interconnection from [the] Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

18.0 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability

upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.0 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

20.0 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

20.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall [the] Transmission Provider be liable for the actions or inactions of [the] Interconnection Customer or its subcontractors with respect to obligations of [the] Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

21.0 Reservation of Rights

[The] Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and [the] Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the Parties otherwise agree as provided herein.

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider}

Signed: _____

Name (Printed): _____

Title: _____

{Insert name of Interconnection Customer}

Signed: _____

Name (Printed): _____

Title: _____

Attachment A to System

Impact Study Agreement Assumptions Used in Conducting the System Impact Study

The system impact study shall be based upon the results of the feasibility study, subject to any modifications in accordance with the standard Small Generator Interconnection Procedures, and the following assumptions:

(1) Designation of Point of Interconnection and configuration to be studied.

(2) Designation of alternative Points of Interconnection and configuration.

(1) and (2) are to be completed by [the] Interconnection Customer. Other assumptions (listed below) are to be provided by [the] Interconnection Customer and [the] Transmission Provider.

Attachment 8

Facilities Study Agreement

This agreement is made and entered into this ____ day of _____ 20____ by and between _____, a _____ organized and existing under the laws of the State of _____, (''Interconnection Customer,'') and _____, a _____ *organized and* existing under the laws of the State of _____, (''Transmission Provider''). Interconnection Customer and Transmission Provider each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals

Whereas, [the] Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by [the] Interconnection Customer on _____; and

Whereas, [the] Interconnection Customer desires to interconnect the Small Generating Facility with [the] Transmission Provider's Transmission System;

Whereas, [the] Transmission Provider has completed a system impact study and provided the results of said study to [the] Interconnection Customer; and

Whereas, [the] Interconnection Customer has requested [the] Transmission Provider to perform a facilities study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the system impact study in accordance with Good Utility Practice to physically and electrically connect the Small Generating Facility with [the] Transmission Provider's Transmission System.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 [The] Interconnection Customer elects and [the] Transmission Provider shall cause a facilities study consistent with the standard Small Generator Interconnection Procedures to be performed in accordance with the Open Access Transmission Tariff.

3.0 The scope of the facilities study shall be subject to data provided in Attachment A to this Agreement.

4.0 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study(s). The facilities study shall also identify (1) the electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (2) the nature and estimated cost of [the] Transmission Provider's Interconnection Facilities and Upgrades necessary to accomplish the interconnection, and (3) an estimate of the time required to complete the construction and installation of such facilities.

5.0 [The] Transmission Provider may propose to group facilities required for more than one Interconnection Customer in order to minimize facilities costs through economies of scale, but any Interconnection Customer may require the installation of facilities required for its own Small Generating Facility if it is willing to pay the costs of those facilities.

6.0 A deposit of the good faith estimated facilities study costs may be required from [the] Interconnection Customer.

7.0 In cases where Upgrades are required, the facilities study must be completed within *forty-five (*45*)* Business Days of the receipt of this Agreement. In cases where no Upgrades are necessary, and the required facilities are limited to Interconnection Facilities, the facilities study must be completed within *thirty (*30*)* Business Days.

8.0 Once the facilities study is completed, a ''*draft*'' facilities study report shall be prepared and transmitted to [the] Interconnection Customer. Barring unusual circumstances, the facilities study must be completed and the ''*draft*'' facilities study report transmitted within *thirty (*30*)* Business Days of [the] Interconnection Customer's agreement to conduct a facilities study.

9.0 Interconnection Customer may, within *thirty (*30*)* Calendar Days after receipt of the draft report, provide written comments to Transmission Provider, which Transmission Provider shall include in the final report. Transmission Provider shall issue the final Interconnection Facilities Study report within *fifteen (*15*)* Business Days of receiving Interconnection Customer's comments or promptly upon receiving Interconnection Customer's statement that it

will not provide comments. Transmission Provider may reasonably extend such fifteen-day period upon notice to Interconnection Customer if Interconnection Customer's comments require Transmission Provider to perform additional analyses or make other significant modifications prior to the issuance of the final Interconnection Facilities Report. Upon request, Transmission Provider shall provide Interconnection Customer supporting documentation, workpapers, and databases or data developed in the preparation of the Interconnection Facilities Study, subject to confidentiality arrangements consistent with Section 4.5 of the standard Small Generator Interconnection Procedures.

10.0 Within ten *(10)* Business Days of providing a draft Interconnection Facilities Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Facilities Study.

11.0 Any study fees shall be based on [the] Transmission Provider's actual costs and will be invoiced to [the] Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 [The] Interconnection Customer must pay any study costs that exceed the deposit without interest within *thirty (*30*)* [c]*C*alendar [d]*D*ays on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, [the] Transmission Provider shall refund such excess within *thirty (*30*)* [c]*C*alendar [d]*D*ays of the invoice without interest.

13.0 *Governing Law, Regulatory Authority, and Rules*

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____ (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

14.0 *Amendment*

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 *No Third-Party Beneficiaries*

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 Waiver

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of [the] Interconnection Customer's legal rights to obtain an interconnection from [the] Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

18.0 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.0 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

20.0 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

20.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall [the] Transmission Provider be liable for the actions or inactions of [the] Interconnection Customer or its subcontractors with respect to obligations of [the] Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

21.0 Reservation of Rights

[The] Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and [the] Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the Parties otherwise agree as provided herein.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

{Insert name of Transmission Provider}

_____

Signed _____

Name (Printed): _____

_____

Title _____

{Insert name of Interconnection Customer}

_____

Signed _____

Name (Printed): _____

_____

Title _____

BILLING CODE 6717–01–P

Attachment A to

Facilities Study Agreement

Data to Be Provided by [the] Interconnection Customer

with the Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.

On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections:

_____

Will an alternate source of auxiliary power be available during CT/PT maintenance?

Yes ____ No ____

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? Yes ____ No ____

(Please indicate on the one-line diagram).

What type of control system or PLC will be located at the Small Generating Facility?

_____

_____

_____

_____

What protocol does the control system or PLC use?

_____

_____

_____

_____

Please provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

Physical dimensions of the proposed interconnection station:

_____

_____Bus length from generation to interconnection station:

_____

_____Line length from interconnection station to Transmission Provider's Transmission System.

_____

_____Tower number observed in the field. (Painted on tower leg)*:

_____

_____Number of third party easements required for transmission lines*:

_____

_____ * To be completed in coordination with Transmission Provider.

Is the Small Generating Facility located in Transmission Provider's service area?

Yes _____ No _____ If No, please provide name of local provider:

_____

_____

Please provide the following proposed schedule dates:

Begin Construction Date: _____

Generator step-up transformers receive back feed power Date: _____

Generation Testing Date: _____

Commercial Operation Date: _____

BILLING CODE 6717–01–C

Appendix F: Changes to Pro Forma SGIA

Small Generator Interconnection Agreement (SGIA)

(For Generating Facilities No Larger Than 20 MW)

Table of Contents

This Interconnection Agreement (''Agreement'') is made and entered into this ____ day of _____, 20____, by _____ (''Transmission Provider''), and _____ (''Interconnection Customer'') each hereinafter sometimes referred to individually as ''Party'' or both referred to collectively as the ''Parties.''

Transmission Provider Information

Transmission Provider: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____

Interconnection Customer Information

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____

Interconnection Customer Application No: _____

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 *Applicability*

This Agreement shall be used for all Interconnection Requests submitted under the Small Generator Interconnection Procedures (SGIP) except for those submitted under the 10 kW Inverter Process contained in SGIP Attachment 5.

1.2 *Purpose*

This Agreement governs the terms and conditions under which [the] Interconnection Customer's Small Generating Facility will interconnect with, and operate in parallel with, [the] Transmission Provider's Transmission System.

1.3 *No Agreement to Purchase or Deliver Power*

This Agreement does not constitute an agreement to purchase or deliver [the] Interconnection Customer's power. The purchase or delivery of power and other services that [the] Interconnection Customer may require will be covered under separate agreements, if any. [The] Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Transmission Provider.

1.4 *Limitations*

Nothing in this Agreement is intended to affect any other agreement between [the] Transmission Provider and [the] Interconnection Customer.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

1.5.2 [The] Interconnection Customer shall construct, interconnect, operate and maintain its Small Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.

1.5.3 [The] Transmission Provider shall construct, operate, and maintain its Transmission System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.

1.5.4 [The] Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. [The] Interconnection Customer agrees to design, install, maintain, and operate its Small Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of [the] Transmission Provider and any Affected Systems.

1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. [The] Transmission Provider and [the] Interconnection Customer, as appropriate, shall provide Interconnection Facilities that

adequately protect [the] Transmission Provider's Transmission System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Attachments to this Agreement.

1.5.6 [The] Transmission Provider shall coordinate with all Affected Systems to support the interconnection.

1.5.7 [The] Interconnection Customer shall ensure ''frequency ride through'' capability and ''voltage ride through'' capability of its Small Generating Facility. [The] Interconnection Customer shall enable these capabilities such that its Small Generating Facility shall not disconnect automatically or instantaneously from the system or equipment of [the] Transmission Provider and any Affected Systems for a defined under-frequency or over-frequency condition, or an under-voltage or over-voltage condition, as tested pursuant to Section 2.1 of this agreement. The defined conditions shall be in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority Area on a comparable basis. The Small Generating Facility's protective equipment settings shall comply with [the] Transmission Provider's automatic load-shed program. [The] Transmission Provider shall review the protective equipment settings to confirm compliance with the automatic load-shed program. The term ''ride through'' as used herein shall mean the ability of a Small Generating Facility to stay connected to and synchronized with the system or equipment of [the] Transmission Provider and any Affected Systems during system disturbances within a range of conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority *Area* on a comparable basis. The term ''frequency ride through'' as used herein shall mean the ability of a Small Generating Facility to stay connected to and synchronized with the system or equipment of [the] Transmission Provider and any Affected Systems during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority Area on a comparable basis. The term ''voltage ride through'' as used herein shall mean the ability of a Small Generating Facility to stay connected to and synchronized with the system or equipment of [the] Transmission Provider and any Affected Systems during system disturbances within a range of under-voltage and over-voltage conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority Area on a comparable basis. For abnormal frequency conditions and voltage conditions within the ''no trip zone'' defined by Reliability Standard PRC–024–3 or successor mandatory ride through Applicable Reliability Standards, the non-synchronous Small Generating Facility must ensure that, within any physical limitations of the Small Generating Facility, its control and protection settings are configured or set to (1) continue active power production during disturbance and post disturbance periods at pre-disturbance levels *unless reactive power priority mode is enabled or* unless providing primary frequency response or fast frequency response; (2) minimize reductions in active power and remain within dynamic voltage and current limits, if reactive power priority mode is enabled, unless providing primary frequency response or fast frequency response; (3) not artificially limit dynamic reactive power capability during disturbances; and (4) return to pre-disturbance active power levels without artificial ramp rate limits if active power is reduced, unless providing primary frequency response or fast frequency response.

1.6 Parallel Operation Obligations

Once the Small Generating Facility has been authorized to commence parallel operation, [the] Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Small Generating Facility in the applicable Balancing Authority Area, including, but not limited to; (1) the rules and procedures concerning the operation of generation set forth in the Tariff or by the applicable system operator(s) for [the] Transmission Provider's Transmission System and; (2) the Operating Requirements set forth in Attachment 5 of this Agreement.

1.7 Metering

[The] Interconnection Customer shall be responsible for [the] Transmission Provider's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. [The] Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

1.8 Reactive Power and Primary Frequency Response

1.8.1 Power Factor Design Criteria

1.8.1.1 Synchronous Generation. [The] Interconnection Customer shall design its Small Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless [the] Transmission Provider has established different requirements that apply to all similarly situated synchronous generators in the Balancing Authority Area on a comparable basis.

1.8.1.2 Non-Synchronous Generation. [The] Interconnection Customer shall design its Small Generating Facility to maintain a composite power delivery at continuous rated power output at the high-side of the generator substation at a power factor within the range of 0.95 leading to 0.95 lagging, unless [the] Transmission Provider has established a different power factor range that applies to all similarly situated non-synchronous generators in the Balancing Authority Area on a comparable basis. This power factor range standard shall be dynamic and can be met using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors, or a combination of the two. This requirement shall only apply to newly interconnecting non-synchronous generators that have not yet executed a Facilities Study Agreement as of the effective date of the Final Rule establishing this requirement (Order No. 827).

1.8.2 [The] Transmission Provider is required to pay [the] Interconnection Customer for reactive power that [the] Interconnection Customer provides or absorbs from the Small Generating Facility when [the] Transmission Provider requests [the] Interconnection Customer to operate its Small Generating Facility outside the range specified in Article 1.8.1. In addition, if [the] Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay [the] Interconnection Customer.

1.8.3 Payments shall be in accordance with [the] Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transmission organization or independent system operator FERC-approved rate schedule. To the extent that no rate schedule is in effect at the time [the] Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of the Commission's prior notice requirement in order to compensate [the] Interconnection Customer from the time service commenced.

1.8.4 Primary Frequency Response. Interconnection Customer shall ensure the primary frequency response capability of its Small Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term ''functioning governor or equivalent controls'' as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Small Generating Facility's real power output in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Interconnection Customer is required to install a governor or equivalent controls with the capability of operating: (1) with a maximum 5 percent droop and ±0.036 Hz deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained response settings from an approved Electric Reliability Organization reliability standard providing for equivalent or more stringent parameters. The droop characteristic shall be: (1) based on the nameplate capacity of the Small Generating Facility, and shall be linear in the range of frequencies between 59 to 61 Hz that are outside of the deadband parameter; or (2) based *on* an approved Electric Reliability Organization reliability standard providing for an equivalent or more stringent parameter. The deadband parameter shall be:

the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Small Generating Facility's real power output in response to frequency deviations. The deadband shall be implemented: (1) without a step to the droop curve, that is, once the frequency deviation exceeds the deadband parameter, the expected change in the Small Generating Facility's real power output in response to frequency deviations shall start from zero and then increase (for under-frequency deviations) or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the frequency deviation; or (2) in accordance with an approved Electric Reliability Organization reliability standard providing for an equivalent or more stringent parameter. Interconnection Customer shall notify Transmission Provider that the primary frequency response capability of the Small Generating Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Small Generating Facility with the Transmission System, Interconnection Customer shall operate the Small Generating Facility consistent with the provisions specified in Sections 1.8.4.1 and 1.8.4.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Small Generating Facilities.

1.8.4.1 Governor or Equivalent Controls. Whenever the Small Generating Facility is operated in parallel with the Transmission System, Interconnection Customer shall operate the Small Generating Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall: (1) in coordination with Transmission Provider and/or the relevant Balancing Authority, set the deadband parameter to: (1) a maximum of ±0.036 Hz and set the droop parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings from an approved Electric Reliability Organization reliability standard that provides for equivalent or more stringent parameters. Interconnection Customer shall be required to provide the status and settings of the governor or equivalent controls to Transmission Provider and/or the relevant Balancing Authority upon request. If Interconnection Customer needs to operate the Small Generating Facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify Transmission Provider and the relevant Balancing Authority, and provide both with the following information: (1) the operating status of the governor or equivalent controls (*i.e.,* whether it is currently out of service or when it will be taken out of service); (2) the reasons for removing the governor or equivalent controls from service; and (3) a reasonable estimate of when the governor or equivalent controls will be returned to service. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable. Interconnection Customer shall make Reasonable Efforts to keep outages of the Small Generating Facility's governor or equivalent controls to a minimum whenever the Small Generating Facility is operated in parallel with the Transmission System.

1.8.4.2 Timely and Sustained Response. Interconnection Customer shall ensure that the Small Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, and to the extent the Small Generating Facility has operating capability in the direction needed to correct the frequency deviation. Interconnection Customer shall not block or otherwise inhibit the ability of the governor or equivalent controls to respond and shall ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, physical energy limitations, outages of mechanical equipment, or regulatory requirements. The Small Generating Facility shall sustain the real power response at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. A Commission-approved Reliability Standard with equivalent or more stringent requirements shall supersede the above requirements.

1.8.4.3 Exemptions. Small Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Sections 1.8.4, 1.8.4.1, and 1.8.4.2 of this Agreement. Small Generating Facilities that are behind the meter generation that is sized-to-load (*i.e.,* the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host facility) shall be required to install primary frequency response capability in accordance with the droop and deadband capability requirements specified in Section 1.8.4, but shall be otherwise exempt from the operating requirements in Sections 1.8.4, 1.8.4.1, 1.8.4.2, and 1.8.4.4 of this Agreement.

1.8.4.4 Electric Storage Resources. Interconnection Customer interconnecting an electric storage resource shall establish an operating range in Attachment 5 of its SGIA that specifies a minimum state of charge and a maximum state of charge between which the electric storage resource will be required to provide primary frequency response consistent with the conditions set forth in Sections 1.8.4, 1.8.4.1, 1.8.4.2 and 1.8.4.3 of this Agreement. Attachment 5 shall specify whether the operating range is static or dynamic, and shall consider: (1) the expected magnitude of frequency deviations in the interconnection; (2) the expected duration that system frequency will remain outside of the deadband parameter in the interconnection; (3) the expected incidence of frequency deviations outside of the deadband parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5) operational limitations of the electric storage resource due to manufacturer specifications; and (6) any other relevant factors agreed to by Transmission Provider and Interconnection Customer, and in consultation with the relevant transmission owner or Balancing Authority as appropriate. If the operating range is dynamic, then Attachment 5 must establish how frequently the operating range will be reevaluated and the factors that may be considered during its reevaluation.

Interconnection Customer's electric storage resource is required to provide timely and sustained primary frequency response consistent with Section 1.8.4.2 of this Agreement when it is online and dispatched to inject electricity to the Transmission System and/or receive electricity from the Transmission System. This excludes circumstances when the electric storage resource is not dispatched to inject electricity to the Transmission System and/or dispatched to receive electricity from the Transmission System. If Interconnection Customer's electric storage resource is charging at the time of a frequency deviation outside of its deadband parameter, it is to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which it is charging in accordance with its droop parameter. Interconnection Customer's electric storage resource is not required to change from charging to discharging, or vice versa, unless the response necessitated by the droop and deadband settings requires it to do so and it is technically capable of making such a transition.

1.9 Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment Testing and Inspection

2.1.1 [The] Interconnection Customer shall test and inspect its Small Generating Facility and Interconnection Facilities prior to interconnection. [The] Interconnection Customer shall notify [the] Transmission Provider of such activities no fewer than five *(5)* Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day. [The] Transmission Provider may, at its own expense, send qualified personnel to the Small Generating Facility site to inspect the interconnection and observe the testing. [The] Interconnection Customer shall provide [the] Transmission Provider a written test report when such testing and inspection is completed.

2.1.2 [The] Transmission Provider shall provide [the] Interconnection Customer written acknowledgment that it has received [the] Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by [the] Transmission Provider of the safety, durability, suitability, or reliability of the Small Generating Facility or any associated control, protective, and safety devices owned or controlled by [the] Interconnection Customer or the quality of power produced by the Small Generating Facility.

2.2 Authorization Required Prior to Parallel Operation

2.2.1 [The] Transmission Provider shall use Reasonable Efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, [the] Transmission Provider shall notify [the] Interconnection Customer of any changes to these requirements as soon as they are known. [The] Transmission Provider shall make Reasonable Efforts to cooperate with [the] Interconnection Customer in meeting requirements necessary for [the] Interconnection Customer to commence parallel operations by the in-service date.

2.2.2 [The] Interconnection Customer shall not operate its Small Generating Facility in parallel with [the] Transmission Provider's Transmission System without prior written authorization of [the] Transmission Provider. [The] Transmission Provider will provide such authorization once [the] Transmission Provider receives notification that [the] Interconnection Customer has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of Access

2.3.1 Upon reasonable notice, [the] Transmission Provider may send a qualified person to the premises of [the] Interconnection Customer at or immediately before the time the Small Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Small Generating Facility (including any required testing), startup, and operation for a period of up to three *(3)* Business Days after initial start-up of the unit. In addition, [the] Interconnection Customer shall notify [the] Transmission Provider at least five *(5)* Business Days prior to conducting any on-site verification testing of the Small Generating Facility.

2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, [the] Transmission Provider shall have access to [the] Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.3 Each Party shall be responsible for its own costs associated with following this article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by the FERC. [The] Transmission Provider shall promptly file this Agreement with the FERC upon execution, if required.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten years from the Effective Date or such other longer period as [the] Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement (if required), which notice has been accepted for filing by FERC.

3.3.1 [The] Interconnection Customer may terminate this Agreement at any time by giving [the] Transmission Provider *twenty (*20*)* Business Days written notice.

3.3.2 Either Party may terminate this Agreement after Default pursuant to article 7.6.

3.3.3 Upon termination of this Agreement, the Small Generating Facility will be disconnected from [the] Transmission Provider's Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this SGIA or such non-terminating Party otherwise is responsible for these costs under this SGIA.

3.3.4 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

3.3.5 The provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 Emergency Conditions—''Emergency Condition'' shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of [the] Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, [the] Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (3) that, in the case of [the] Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Small Generating Facility or [the] Interconnection Customer's Interconnection Facilities. Under Emergency Conditions, [the] Transmission Provider may immediately suspend interconnection service and temporarily disconnect the Small Generating Facility. [The] Transmission Provider shall notify [the] Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect [the] Interconnection Customer's operation of the Small Generating Facility. [The] Interconnection Customer shall notify [the] Transmission Provider promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect [the] Transmission Provider's Transmission System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

[The] Transmission Provider may interrupt interconnection service or curtail the output of the Small Generating Facility and temporarily disconnect the Small Generating Facility from [the] Transmission Provider's Transmission System when necessary for routine maintenance, construction, and repairs on [the] Transmission Provider's Transmission System. [The] Transmission Provider shall provide [the] Interconnection Customer with five *(5)* Business Days notice prior to such interruption. [The] Transmission Provider shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with [the] Interconnection Customer.

3.4.3 Forced Outages

During any forced outage, [the] Transmission Provider may suspend interconnection service to effect immediate repairs on [the] Transmission Provider's Transmission System. [The] Transmission Provider shall use Reasonable Efforts to provide [the] Interconnection Customer with prior notice. If prior notice is not given, [the] Transmission Provider shall, upon request, provide [the] Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse Operating Effects

[The] Transmission Provider shall notify [the] Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Small Generating Facility may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Small Generating Facility could cause damage to [the] Transmission Provider's Transmission System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to [the] Interconnection Customer upon request. If, after notice, [the] Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, [the] Transmission Provider may disconnect the Small Generating Facility. [The] Transmission Provider shall provide [the] Interconnection Customer with five Business Day notice of such disconnection, unless the provisions of article 3.4.1 apply.

3.4.5 Modification of the Small Generating Facility

[The] Interconnection Customer must receive written authorization from [the] Transmission Provider before making any change to the Small Generating Facility that may have a material impact on the safety or reliability of the Transmission System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If [the] Interconnection Customer makes such

modification without [the] Transmission Provider's prior written authorization, the latter shall have the right to temporarily disconnect the Small Generating Facility.

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Small Generating Facility, Interconnection Facilities, and [the] Transmission Provider's Transmission System to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

4.1.1 [The] Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Attachment 2 of this Agreement. [The] Transmission Provider shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of [the] Interconnection Customer, such other entities, and [the] Transmission Provider.

4.1.2 [The] Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing [the] Transmission Provider's Interconnection Facilities.

4.2 Distribution Upgrades

[The] Transmission Provider shall design, procure, construct, install, and own the Distribution Upgrades described in Attachment 6 of this Agreement. If [the] Transmission Provider and [the] Interconnection Customer agree, [the] Interconnection Customer may construct Distribution Upgrades that are located on land owned by [the] Interconnection Customer. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to [the] Interconnection Customer.

Article 5. Cost Responsibility for Network Upgrades

5.1 Applicability

No portion of this article 5 shall apply unless the interconnection of the Small Generating Facility requires Network Upgrades.

5.2 Network Upgrades

[The] Transmission Provider or the Transmission Owner shall design, procure, construct, install, and own the Network Upgrades described in Attachment 6 of this Agreement. If [the] Transmission Provider and [the] Interconnection Customer agree, [the] Interconnection Customer may construct Network Upgrades that are located on land owned by [the] Interconnection Customer. Unless [the] Transmission Provider elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, shall be borne initially by [the] Interconnection Customer.

5.2.1 Repayment of Amounts Advanced for Network Upgrades

[The] Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to [the] Transmission Provider and Affected System operator, if any, for Network Upgrades, including any tax gross-up or other tax-related payments associated with the Network Upgrades, and not otherwise refunded to [the] Interconnection Customer, to be paid to [the] Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under [the] Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Small Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which [the] Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. [The] Interconnection Customer may assign such repayment rights to any person.

5.2.1.1 Notwithstanding the foregoing, [the] Interconnection Customer, [the] Transmission Provider, and any applicable Affected System operators may adopt any alternative payment schedule that is mutually agreeable so long as [the] Transmission Provider and said Affected System operators take one of the following actions no later than five years from the Commercial Operation Date: (1) return to [the] Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that [the] Transmission Provider or any applicable Affected System operators will continue to provide payments to [the] Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the commercial operation date.

5.2.1.2 If the Small Generating Facility fails to achieve commercial operation, but it or another generating facility is later constructed and requires use of the Network Upgrades, [the] Transmission Provider and Affected System operator shall at that time reimburse [the] Interconnection Customer for the amounts advanced for the Network Upgrades. Before any such reimbursement can occur, [the] Interconnection Customer, or the entity that ultimately constructs the generating facility, if different, is responsible for identifying the entity to which reimbursement must be made.

5.3 Special Provisions for Affected Systems

Unless [the] Transmission Provider provides, under this Agreement, for the repayment of amounts advanced to any applicable Affected System operators for Network Upgrades, [the] Interconnection Customer and Affected System operator shall enter into an agreement that provides for such repayment. The agreement shall specify the terms governing payments to be made by [the] Interconnection Customer to Affected System operator as well as the repayment by Affected System operator.

5.4 Rights Under Other Agreements

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that [the] Interconnection Customer shall be entitled to, now or in the future, under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the Small Generating Facility.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and Payment Procedures and Final Accounting

6.1.1 [The] Transmission Provider shall bill [the] Interconnection Customer for the design, engineering, construction, and procurement costs of Interconnection Facilities and Upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by the Parties. [The] Interconnection Customer shall pay each bill within *thirty (*30*)* [c]*C*alendar [d]*D*ays of receipt, or as otherwise agreed to by the Parties.

6.1.2 Within three months of completing the construction and installation of [the] Transmission Provider's Interconnection Facilities and/or Upgrades described in the Attachments to this Agreement, [the] Transmission Provider shall provide [the] Interconnection Customer with a final accounting report of any difference between (1) [the] Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) [the] Interconnection Customer's previous aggregate payments to [the] Transmission Provider for such facilities or Upgrades. If [the] Interconnection Customer's cost responsibility exceeds its previous aggregate payments, [the] Transmission Provider shall invoice [the] Interconnection Customer for the amount due and [the] Interconnection Customer shall make payment to [the] Transmission Provider within *thirty (*30*)* [c]*C*alendar [d]*D*ays. If [the] Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, [the] Transmission Provider shall refund to [the] Interconnection Customer an amount equal to the difference within *thirty (*30*)* [c]*C*alendar [d]*D*ays of the final accounting report.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Attachment 4 of this Agreement. A Party's obligations under this provision may be extended by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event,

it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) requesting appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless it will suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial Security Arrangements

At least *twenty (*20*)* Business Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of [the] Transmission Provider's Interconnection Facilities and Upgrades, [the] Interconnection Customer shall provide [the] Transmission Provider, at [the] Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to [the] Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction where the Point of Interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of [the] Transmission Provider's Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to [the] Transmission Provider under this Agreement during its term. In addition:

6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of [the] Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from [the] Interconnection Customer, up to an agreed-to maximum amount.

6.3.2 The letter of credit or surety bond must be issued by a financial institution or insurer reasonably acceptable to [the] Transmission Provider and must specify a reasonable expiration date.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

This Agreement may be assigned by either Party upon *fifteen (*15*)* Business Days prior written notice and opportunity to object by the other Party; provided that:

7.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement, provided that [the] Interconnection Customer promptly notifies [the] Transmission Provider of any such assignment;

7.1.2 [The] Interconnection Customer shall have the right to assign this Agreement, without the consent of [the] Transmission Provider, for collateral security purposes to aid in providing financing for the Small Generating Facility, provided that [the] Interconnection Customer will promptly notify [the] Transmission Provider of any such assignment.

7.1.3 Any attempted assignment that violates this article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as [the] Interconnection Customer. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified person is entitled to indemnification under this article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying party is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this article may apply, the indemnified person shall notify the indemnifying party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure Event shall mean ''any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.''

7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in article 7.6.2, the defaulting Party shall have *sixty (*60*)* [c]*C*alendar [d]*D*ays from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within *sixty (*60*)* [c]*C*alendar [d]*D*ays, the defaulting Party shall commence such cure within *twenty (*20*)* [c]*C*alendar [d]*D*ays after notice and continuously and diligently complete such cure within six months from

receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

7.6.2 If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

8.1 [The] Interconnection Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. [The] Interconnection Customer shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Such insurance shall be obtained from an insurance provider authorized to do business in the State where the interconnection is located. Certification that such insurance is in effect shall be provided upon request of [the] Transmission Provider, except that [the] Interconnection Customer shall show proof of insurance to [the] Transmission Provider no later than ten *(10)* Business Days prior to the anticipated commercial operation date. An Interconnection Customer of sufficient credit-worthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

8.2 [The] Transmission Provider agrees to maintain general liability insurance or self-insurance consistent with [the] Transmission Provider's commercial practice. Such insurance or self-insurance shall not exclude coverage for [the] Transmission Provider's liabilities undertaken pursuant to this Agreement.

8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated ''Confidential.'' For purposes of this Agreement all design, operating specifications, and metering data provided by [the] Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.

9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.

9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.

9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

9.3 Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR 1b.20, if FERC, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC, within the time provided for in the request for information. In providing the information to FERC, the Party may, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this Agreement prior to the release of the Confidential Information to FERC. The Party shall notify the other Party to this Agreement when it is notified by FERC that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

Article 10. Disputes

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

10.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute.

10.3 If the dispute has not been resolved within two *(2)* Business Days after receipt of the Notice, either Party may contact FERC's Dispute Resolution Service (DRS) for assistance in resolving the dispute.

10.4 The DRS will assist the Parties in either resolving their dispute or in selecting an appropriate dispute resolution venue (*e.g.,* mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. DRS can be reached at 1–877–337–2237 or via the internet at *http://www.ferc.gov/legal/adr.asp.*

10.5 Each Party agrees to conduct all negotiations in good faith and will be responsible for one-half of any costs paid to neutral third-parties.

10.6 If neither Party elects to seek assistance from the DRS, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

Article 11. Taxes

11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with FERC policy and Internal Revenue Service requirements.

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect [the] Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____ (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties, or under article 12.12 of this Agreement.

12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of [the] Interconnection Customer's legal rights to obtain an interconnection from [the] Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. FERC expects all Transmission Providers, market participants, and Interconnection Customers interconnected to electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Small Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall [the] Transmission Provider be liable for the actions or inactions of [the] Interconnection Customer or its subcontractors with respect to obligations of [the] Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.12 Reservation of Rights

[The] Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and [the] Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the Parties otherwise agree as provided herein.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (''Notice'') shall be deemed properly given if delivered in person, delivered by recognized national currier service, or sent by first class mail, postage prepaid, to the person specified below:

If to [the] Interconnection Customer:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____

If to [the] Transmission Provider:

Transmission Provider: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____

Transmission Provider: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

If to [the] Interconnection Customer:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____

If to [the] Transmission Provider:

Transmission Provider: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____

Transmission Provider's Operating Representative:

Transmission Provider: _____
Attention: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____

13.5 Changes to the Notice Information

Either Party may change this information by giving five *(5)* Business Days written notice prior to the effective date of the change.

Article 14. Signatures

In witness whereof, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For [the] Transmission Provider

Name: _____
Title: _____
Date: _____

For [the] Interconnection Customer

Name: _____
Title: _____
Date: _____

Attachment 1

Glossary of Terms

Affected System—An electric system other than [the] Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Applicable Laws and Regulations—All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Standards—The requirements and guidelines of the Electric Reliability Organization and the Balancing Authority Area of the Transmission System to which the Generating Facility is directly interconnected.

Balancing Authority [shall mean]—[a]*A*n entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

Balancing Authority Area [shall mean]—[t]*T*he collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

Business Day—Monday through Friday, excluding Federal Holidays.

Default—The failure of a breaching Party to cure its breach under the Small Generator Interconnection Agreement.

Distribution System—[The] Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades—The additions, modifications, and upgrades to [the] Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Small Generating Facility and render the transmission service necessary to effect [the] Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Good Utility Practice—Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority—Any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include [the] Interconnection Customer, the Interconnection Provider, or any Affiliate thereof.

Interconnection Customer—Any entity, including [the] Transmission Provider, the Transmission Owner or any of the affiliates or subsidiaries of either, that proposes to interconnect its Small Generating Facility with [the] Transmission Provider's Transmission System.

Interconnection Facilities—[The] Transmission Provider's Interconnection Facilities and [the] Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to [the] Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Request—[The] Interconnection Customer's request, in accordance with the Tariff, to interconnect a new Small Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with [the] Transmission Provider's Transmission System.

Material Modification—A modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Network Upgrades—Additions, modifications, and upgrades to [the] Transmission Provider's Transmission System required at or beyond the point at which the Small Generating Facility interconnects with [the] Transmission Provider's Transmission System to accommodate the interconnection of the Small Generating Facility with [the] Transmission Provider's Transmission System. Network Upgrades do not include Distribution Upgrades.

Operating Requirements—Any operating and technical requirements that may be applicable due to Regional Transmission Organization, Independent System Operator, Balancing Authority Area, or Transmission Provider's requirements, including those set forth in the Small Generator Interconnection Agreement.

Party or Parties—[The] Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Interconnection—The point where the Interconnection Facilities connect with [the] Transmission Provider's Transmission System.

Reasonable Efforts—With respect to an action required to be attempted or taken by a Party under the Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Small Generating Facility—[The] Interconnection Customer's device for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include [the] Interconnection Customer's Interconnection Facilities.

Tariff—[The] Transmission Provider or Affected System's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the FERC, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner—The entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider—The public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from [the] Transmission Provider.

Transmission System—The facilities owned, controlled or operated by [the] Transmission Provider or the Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades—The required additions and modifications to [the] Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may

be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

Attachment 2

Description and Costs of the Small Generating Facility, Interconnection Facilities, and Metering Equipment

Equipment, including the Small Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by [the] Interconnection Customer, [the] Transmission Provider, or the Transmission Owner. [The] Transmission Provider will provide a best estimate itemized cost, including overheads, of its Interconnection Facilities and metering equipment, and a best estimate itemized cost of the annual operation and maintenance expenses associated with its Interconnection Facilities and metering equipment.

Attachment 3

One-Line Diagram Depicting the Small Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades

Attachment 4

Milestones

In-Service Date: _____

Critical milestones and responsibility as agreed to by the Parties:

Milestone/date	Responsible party
(1) _____	_____
(2) _____	_____
(3) _____	_____
(4) _____	_____
(5) _____	_____
(6) ____	____
(7) _____	_____
(8) _____	_____
(9) _____	_____
(10) _____	_____

Agreed to by:

For [the] Transmission Provider _____

Date _____

For [the] Transmission Owner (If Applicable) _____

Date _____

For [the] Interconnection Customer _____

Date _____

Attachment 5

Additional Operating Requirements for [the] Transmission Provider's Transmission System and Affected Systems Needed To Support [the] Interconnection Customer's Needs

[The] Transmission Provider shall also provide requirements that must be met by [the] Interconnection Customer prior to initiating parallel operation with [the] Transmission Provider's Transmission System.

Attachment 6

Transmission Provider's Description of Its Upgrades and Best Estimate of Upgrade Costs

[The] Transmission Provider shall describe Upgrades and provide an itemized best estimate of the cost, including overheads, of the Upgrades and annual operation and maintenance expenses associated with such Upgrades. [The] Transmission Provider shall functionalize Upgrade costs and annual expenses as either transmission or distribution related.

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Improvements to Generator Interconnection Procedures and Agreements

Docket No. RM22–14–001

(Issued March 21, 2024)

CHRISTIE, Commissioner, *concurring:*

1. I concur with Order No. 2023–A,[1] which largely sustains the findings and determinations of its predecessor, Order No. 2023. I write separately to highlight two issues in the order, which I previously discussed in my concurrence to Order No. 2023.[2]

I. Enumerated Alternative Transmission Technologies (Section II.E.2.a.iii)

2. Order No. 2023–A sustains the determination in Order No. 2023 that transmission providers have the sole discretion in determining whether to use an alternative transmission technology, or grid-enhancing technology (GET), in the interconnection process. As I explained in my concurrence to Order No. 2023:

A GET may hold the potential of squeezing more juice—literally—out of the existing transmission grid. By increasing the capacity of the existing grid, a GET could reduce or even eliminate the need for the future construction of new transmission assets. So the potential for cost-savings from the use of GETs is too important to ignore.[3]

I emphasized, however, that GETs are *operational* applications, which should be deployed *when and where their efficacy can be proven,* and should not be mandated as planning assumptions or as potential substitutes for network upgrades caused by interconnection requests.[4] I also noted the different financial incentives at play: transmission owners will typically favor the construction of costly new transmission assets over deploying GETs, whereas companies who sell GETs and generation developers—particularly those in RTOs/ISOs that use participant funding to pay for the costs of network upgrades caused by the interconnecting customers—want GETs to be mandated.[5] Therefore, it was crucial to strike the right balance in the order.[6]

3. And Order No. 2023 did just that. Order No. 2023 required the evaluation of certain listed GETs in the interconnection studies process but did not require that a GET must be deployed as an alternative to a necessary network upgrade.[7] Further, and most importantly, Order No. 2023 made clear that the determination in each case was to be made at the *sole* discretion of the transmission provider (*i.e.,* RTO/ISOs or non-RTO transmission providers).[8] This is crucial because transmission providers are responsible for resolving the reliability issues caused by a particular interconnection, and there is a risk that a GET could fail, prompting a later, potentially more costly, network upgrade.[9] And, of course, for that subsequent reliability upgrade, consumers would likely get stuck with the bill, not the generation developer.

4. Order No. 2023–A rightly sustains the discretion that Order No. 2023 affords transmission providers in determining whether to use a GET. This level of discretion continues to be justified because:

(1) the transmission provider is responsible for determining whether using any of the enumerated alternative transmission technologies is an appropriate and reliable network upgrade that allows the interconnection customer to flow the output of its generating facility onto the transmission provider's transmission system

[1] *Improvements to Generator Interconnection Procedures and Agreements,* Order No. 2023–A, 186 FERC ¶ 61,199 (2024).

[2] *Improvements to Generator Interconnection Procedures and Agreements,* Order No. 2023, 88 FR 61014 (Sept. 6, 2023), 184 FERC ¶ 61,054 (2023) (Christie, Comm'r, concurring at P 1) (Order No. 2023 Concurrence), *https://www.ferc.gov/news-events/news/e-1-commissioner-christie-concurrence-order-no-2023-interconnection-final-rule.*

[3] *Id.* P 2.

[4] *Id.* P 5 (footnote omitted).

[5] *Id.* PP 6–7.

[6] *Id.* P 8.

[7] *Id.* P 9.

[8] *Id.* P 10.

[9] *Id.* P 11.

in a safe and reliable manner; (2) the requirement to make such a determination before allowing for the use of the enumerated alternative transmission technologies addresses concerns that their use may impinge on reliability, delay network upgrades instead of reducing the need for them or obviating the need for them altogether, or fail to address all transmission system issues that a traditional network upgrade would address; and (3) there is a need to avoid time-consuming delays and costly disputes or litigation over interconnection costs that could arise as a result of this reform.[10]

Order No. 2023–A also clarifies that transmission providers must explain their evaluation of GETs for feasibility, cost, and time savings as an alternative to a traditional network upgrade in their applicable study report(s), and their use determinations must be consistent with good utility practice, applicable reliability standards, and applicable laws and regulations.[11] Thus, as I observed, Order No. 2023 ''strikes the appropriate balance between requiring the evaluation of GETs, but not mandating the use of a GET in specific cases unless the transmission provider—and *only the transmission provider*—determines it would work from a real-world applicability standpoint.'' [12] And Order No. 2023–A preserves that balance.

II. Inappropriate Allocation of Certain Costs to Consumers

5. I remain concerned that study delay penalties on RTOs/ISOs and the costs of transmission provider heatmaps used as a tool for interconnection customers will be inappropriately allocated to consumers even though they both appear to provide much more of a benefit to generation developers than consumers.[13] I address each in turn.

A. Study Delay Penalties on RTO/ISOs (Section II.D.1.c.iii)

6. Order No. 2023–A sustains the imposition of penalties on transmission providers who miss study deadlines. As I expressed in my Order No. 2023 Concurrence, I have concerns about assessing study penalties on RTOs/ISOs, which are not-for-profit entities with no stockholders.[14]

7. Order No. 2023 left open the question of how RTOs/ISOs will recover those study delay penalties that are not automatically imposed on a transmission-owning member by explaining that RTOs/ISOs may submit an FPA section 205 filing to propose a cost recovery scheme for these penalties.[15] Unfortunately, Order No. 2023–A continues to punt this question, stating that it will address any future RTO/ISO section 205 proposal to recover the costs of study delay penalties on case-by-case basis.[16] I urge that any such RTO/ISO filing make protections to consumers paramount. In any scenario, the costs of penalties should not be imposed on retail customers, for the obvious reason they are not the cause of the penalties. I would add that the fact that Order No. 2023–A still fails to answer the fundamental question of ''who pays?'' illustrates the legal and policy flaws in the penalty scheme as applied to RTOs/ISOs. No doubt we will continue to hear more about this issue.

B. Cost of Heatmap (Section II.C.1.c)

8. In addition, although I support the heatmap requirement, I remain concerned over its potential funding through transmission rates.[17] Order No. 2023–A sustains the determination that transmission providers must bear the costs associated with their heatmaps or recover them through transmission rates to the extent they are recoverable consistent with Commission accounting and ratemaking policy, finding that interconnection customers are not the sole or primary beneficiaries of the heatmap requirement.[18]

9. I agree with this rationale only with respect to those regions in which transmission providers which do not use participant funding—*i.e.,* in those regions where the transmission provider's load ultimately reimburses (or more accurately, subsidizes) interconnection customers for their interconnection costs. As heatmaps serve to identify viable points of interconnection and improve queue efficiency, they help to reduce interconnection costs. Thus, *ceteris paribus,* heatmaps will indirectly reduce the magnitude of the reimbursements of interconnection costs paid by load to interconnection customers.

10. On the other hand, in regions in which the transmission provider uses participant funding—such as in PJM and MISO—I fail to see how interconnection customers are not the sole or primary beneficiaries of the heatmap requirement. In those regions, as interconnection customers are ultimately responsible for interconnection costs—with the exception of MISO's (questionable, in my opinion) assignment to load of 10% of the cost of network upgrades 345 kV and above—the savings that heatmaps provide would inure to generation developers. I question, therefore, whether the recovery of the cost of heatmaps from load in those regions would be just and reasonable. As I stated in my Order No. 2023 Concurrence:

Commission policy may dictate that interconnection queue efficiency benefits transmission customers; however, that should not result in the costs of a requirement that best benefits interconnection customers, and really *prospective* interconnection customers that may ultimately not seek to interconnect, being recovered from *consumers* through transmission rates *carte blanche.*[19]

For these reasons, I concur.

Mark C. Christie
Commissioner.

[FR Doc. 2024–06563 Filed 4–15–24; 8:45 am]

BILLING CODE 6717–01–P

[10] Order No. 2023–A, 186 FERC ¶ 61,199 at P 618 (citations omitted).

[11] *Id.* P 619 (citation omitted); *see also id.* PP 626–627.

[12] Order No. 2023 Concurrence at P 12 (emphasis added).

[13] *Id.* P 17.

[14] *Id.* P 18.

[15] *Id.* P 20.

[16] Order No. 2023–A, 186 FERC ¶ 61,199 at P 465 (citation omitted).

[17] Order No. 2023 Concurrence at PP 21–22.

[18] Order No. 2023–A, 186 FERC ¶ 61,199 at P 106.

[19] Order No. 2023 Concurrence at P 22 (emphasis in original).

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Part III

Consumer Product Safety Commission

16 CFR Parts 1112 and 1218

Safety Standard for Bassinets and Cradles; Proposed Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1218

[CPSC Docket No. CPSC–2010–0028]

Safety Standard for Bassinets and Cradles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In 2013, the United States Consumer Product Safety Commission (Commission or CPSC) published a safety standard for bassinets and cradles (bassinets/cradles). By statute, after promulgating a mandatory rule, the Commission must periodically review and revise rules for durable infant or toddler products to ensure that they provide the highest level of safety for such products that is feasible. Accordingly, this proposed rule (NPR) would revise the existing rule for bassinets/cradles to ensure that it addresses identified hazards and that these sleep products for young infants provide the highest level of safety feasible.

DATES: Submit comments by June 17, 2024.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements of the NPR should be directed to the Office of Information and Regulatory Affairs, the Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to: *oira_submission@omb.eop.gov.*

Submit all other comments, identified by Docket No. CPSC–2010–0028, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by email, except through *www.regulations.gov.* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to *https://www.regulations.gov.* Do not submit through this website: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2010–0028, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Celestine T. Kish, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; 301–987–2547; *ckish@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), 15 U.S.C. 2056a(b), requires the Commission to promulgate standards for durable infant or toddler products that are ''substantially the same as'' any applicable voluntary standards, or more stringent than the voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. 15 U.S.C. 2056a(b)(1)(B). Pursuant to section 104(b)(1) of the CPSIA, the Commission promulgated the current mandatory standard for bassinets and cradles (bassinets/cradles) in October 2013, *Safety Standard for Bassinets and Cradles,* codified at 16 CFR part 1218 (part 1218). 78 FR 63019 (Oct. 23, 2013).

The current bassinet/cradle rule found in part 1218 incorporates by reference the 2013 version of the bassinets/cradles voluntary standard, ASTM F2194–13, *Standard Consumer Safety Specification for Bassinets and Cradles* (ASTM F2194–13), with modifications to make the standard more stringent, to further reduce the risk of injury associated with bassinets/cradles.[1] Part 1218 modifies ASTM F2194–13 by: clarifying the scope of rule, exempting from the flatness requirement bassinets with seams less than 15 inches long, requiring a more stringent stability test, and requiring a smaller CAMI dummy [2] for testing. After issuing the mandatory standard in 2013, ASTM International (ASTM) published several revisions to ASTM F2194, including ASTM F2194–2013a, –2016, and –2016$^{\varepsilon 1}$. ASTM did not notify CPSC of these revisions, so the mandatory rule has not been updated since 2013. However, ASTM F2194–2016$^{\varepsilon 1}$ is substantially the same as the existing mandatory rule for bassinets/cradles codified in part 1218. 86 FR 33022, 33034–35 (June 3, 2021).

In June 2021, also pursuant to section 104 of the CPSIA, the Commission promulgated a *Safety Standard for Infant Sleep Products* (ISP Rule), codified at 16 CFR part 1236. 86 FR 33022 (June 23, 2021). The ISP Rule applies to products that are marketed or intended to provide a sleeping accommodation for infants up to five months of age that do not already meet the requirements of one of the following CPSC sleep standards: full-size cribs, non-full-size cribs, play yards, bedside sleepers, or bassinets/cradles. The ISP Rule requires that such infant sleep products, at a minimum, have a head-to-toe sleep surface angle of 10 degrees or less from horizontal, and meet the mandatory rule for bassinets/cradles, including the definition of a bassinet/cradle, which means that products must have a stand. Because of the ISP Rule, the bassinets/cradles rule provides a safe sleep baseline for infant sleep products.[3] The intent of the ISP Rule was to ensure that infants are placed to sleep on a firm, flat sleep surface and that caregivers are discouraged from

[1] Bassinets/cradles are durable infant or toddler products that, since 2013, require product registration cards and certificates based on testing by a CPSC-accepted third party laboratory. Section 104(f)(2)(L) of the CPSIA specifically identifies bassinets/cradles as durable infant or toddler products. The NPR proposes to add testing and labeling requirements that will not change the existing requirements for product registration cards and third party testing and certification. Additionally, although ASTM F2194–22$^{\varepsilon 1}$ is copyrighted, by permission of ASTM the voluntary standard can be viewed as a read-only document during the comment period at: *http://www.astm.org/cpsc.htm.*

[2] Designated ASTM testing device. CAMI (Civil Aeromedical Institute) dummies are based on child anthropometric data and come in multiple sizes. The CPSC mandatory safety standard for bassinets and cradles specifies the newborn size CAMI.

[3] After challenge, the United States Court of Appeals for the District of Columbia Circuit held that CPSC did not exceed its authority in promulgating the ISP Rule. *Finnbin, LLC* v. *CPSC,* 45 F.4th 127 (D.C. Cir. Aug. 2, 2022).

placing infant sleep products, including those bassinets that were lightweight and low to the ground, on unsafe surfaces, such as beds, couches, tables, and countertops.

In 2022, ASTM approved and published another revised voluntary standard for bassinets/cradles—ASTM F2194–22ε1—and notified CPSC of the revision on July 18, 2022. Revised ASTM F2194–22ε1 added a new product category—compact bassinets/cradles—and new requirements for these products, including stability requirements and marking and labeling requirements. Among its other provisions, ASTM F2194–22ε1 eliminated stands for compact bassinets/cradles, but also included new requirements for battery compartments, warnings, and instructional literature. CPSC issued a notice of availability (NOA) requesting comment on the revised ASTM standard. 87 FR 45303 (July 28, 2022).

Pursuant to the procedure outlined for revised voluntary standards in section 104(b)(4) of the CPSIA, 15 U.S.C. 2056a(b)(4), CPSC had 90 days from receiving notice of ASTM's 2022 revision to either allow the revised ASTM F2194 to become the new mandatory standard for bassinets/cradles, or to notify ASTM that the Commission determined that the revised ASTM standard did not improve the safety of bassinets/cradles and that CPSC was retaining the existing mandatory standard. On September 14, 2022, CPSC staff provided to the Commission a Staff Briefing Package: ASTM's Notice of a Revised Voluntary Standard for Bassinets and Cradles (2022 Bassinet Rejection Staff Briefing Package) which reviewed the comments from the NOA and assessed ASTM F2194–2ε1. Staff recommended that the Commission reject ASTM F2194–22ε1.[4]

In the 2022 Bassinet Rejection Staff Briefing Package, staff advised that the requirements for compact bassinets/cradles in ASTM F2194–22ε1 were less stringent than the requirements for traditional bassinets/cradles in the existing bassinets/cradles rule (part 1218), in part because ASTM F2194–22ε1 did not require that compact bassinets/cradles have a stand. Moreover, because the ISP Rule, part 1236, makes the bassinet rule, part 1218, the baseline for safe sleep requirements, amending part 1218 to allow compact bassinets that are low to the ground, as specified in ASTM F2194–22ε1, would also allow infant sleep products that were less stable and could be placed on unsafe surfaces, such as elevated and soft surfaces. Staff explained in the 2022 Bassinet Rejection Staff Briefing Package that consumers are likely to place smaller, lighter, and more portable compact bassinets in unsafe locations, such as elevated and soft surfaces (tables, counters, couches, and beds), and that CPSC's data demonstrate that infants have suffered serious head injuries and death when using these products in unsafe locations.[5] Additionally, staff advised that ASTM F2194–22ε1 added a new stability test that applies only to compact bassinets/cradles, and that this new stability test is less stringent than the stability test for regular-sized bassinets/cradles. Staff advised that infant sleep products without a stand present a risk of injury from falls that may lead to suffocation, head injuries, and/or death.

On September 23, 2022, the Commission voted 5–0 to determine that ASTM F2194–22ε1 did not improve the safety of bassinets and cradles or infant sleep products.[6] Staff notified ASTM of the Commission's rejection of ASTM F2194–22ε1 by letter on October 6, 2022.[7] Subsequent to the Commission's rejection of ASTM F2194–22ε1, staff continued to work with the ASTM F15.18 Bassinets and Cradles Subcommittee and the ASTM F15.18 Bassinet Elevated Surface and Data Task Group to revise the performance requirements for bassinets/cradles to set acceptable baseline safe sleep requirements for bassinets/cradles and for infant sleep products.

The Commission is now proposing to revise the existing rule for bassinets/cradles to address the hazards identified in this NPR and ensure that the mandatory bassinet/cradle regulation in part 1218 provides the highest level of safety feasible.[8] The Commission is authorized to issue this NPR pursuant section 104(b)(2) of the CPSIA, 15 U.S.C. 2056a(b)(2), which requires that after the Commission issues mandatory safety standards for durable infant or toddler products, the Commission shall periodically review and revise the standards to ensure that such standards provide the highest level of safety for such products that is feasible. Building on staff's continued work with ASTM on safe sleep requirements, the Commission is issuing this NPR to adopt ASTM F2194–22ε1 with modifications. The proposed modifications remove the compact bassinet category and address five hazard patterns associated with young infants placed in or on:

- Non-level bassinets/cradles (suffocation hazard);
- Bassinets/cradles on elevated and soft surfaces such as beds, couches, tables, and countertops (falls, suffocation, skull fractures, and asphyxia hazards);
- Mattresses that are non-flat, too thick, too soft, ill-fitting, or unattached to the bassinet/cradle (suffocation hazard);
- Bassinets/cradles with design issues, such as low to the ground or unstable, or with loose sidewalls and/or non-mesh sidewalls (containment, tipping, gap entrapment, and suffocation hazards); and
- Products with electrical problems such as smoke, shock, and battery leakage (shock and burn).

The Commission is also proposing to align the rule's warnings with ASTM F2194–22ε1 but not to include warnings related solely to compact bassinets. The NPR proposes to require warnings on all bassinets within the scope of the rule.

Staff provided a February 28, 2024, Memorandum, Staff's Draft Proposed Rule to Revise the Safety Standard for Bassinets and Cradles in support of the NPR, which is available at: *https://www.cpsc.gov/s3fs-public/Briefing-Package-Draft-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Bassinets-and-Cradles.pdf?VersionId=l37iJVSjn32WnUTBDV27L6c37uJC4Iis.* This NPR contains an overview of staff's assessment and analysis, and the Commission's basis for issuing this NPR, which is also based on the 2022 Bassinet Rejection Staff Briefing Package. Based on the information and analysis in this NPR and the above staff packages, the Commission preliminarily determines that the proposed requirements are more stringent than the requirements in ASTM F2194–22ε1, would further reduce the risk of injury associated with products within the scope of the NPR, and would provide the highest level of safety that is feasible for such products. The Commission specifically seeks

[4] Available at: *https://www.cpsc.gov/s3fs-public/ASTMs-Notice-of-a-Revised-Voluntary-Standard-for-Bassinets-and-Cradles.pdf?VersionId=x73F5OmeW4AJujWJEq8.kBZ28aTFLb2x.*

[5] Tab A of the 2022 Bassinet Rejection Staff Briefing Package discusses consumer behavior with portable, compact products.

[6] *See* Record of Commission Action at: *https://www.cpsc.gov/s3fs-public/RCA-ASTMs-Notice-of-a-Revised-Voluntary-Standards-for-Bassinets-and-Cradles.pdf?VersionId=cfj.qZe5KlTS2AY3G69UwltalltP4LRk.*

[7] October 6, 2022 letter to K. Morgan, available at: *https://www.cpsc.gov/s3fs-public/Bassinet_Rule_Update_letter_to_ASTM_2022-10-06%2010-7-2022.pdf?VersionId=PpvmrIEhQT.z3P57h8lhtc1UTvQITpSR.*

[8] On March 20, 2024, the Commission voted (4–0) to publish this NPR, available at: *https://www.cpsc.gov/s3fs-public/Commission-Meeting-Minutes-NPR-Safety-Standard-for-Bassinets-and-Cradles.pdf?VersionId=GwpmKZ4S9sRrEiBmDFaEWn1fBre6eZ2r.*

comment on the feasibility of each proposed requirement, including technical feasibility.

II. The Product

A. Definition of Bassinet/Cradle

The existing mandatory standard defines a ''bassinet/cradle'' based on the incorporated section 3.1.1 of ASTM F2194–13, as a ''small bed designed primarily to provide sleeping accommodations for infants, supported by free standing legs, a stationary frame/stand, a wheeled base, a rocking base, or which can swing relative to a stationary base.'' The definition also requires that while a bassinet/cradle is in a resting, non-rocking, or swinging position, ''a bassinet/cradle is intended to have a sleep surface less than or equal to 10° from horizontal.''

ASTM F2194–22$^{\varepsilon 1}$ introduced a new ''compact bassinet'' product category, defined as ''a bassinet/cradle having a distance of less than 6.0 inches (152.4 mm) between the lowest point of the underside of the sleep surface support and the product support surface (floor).'' In the 2022 Bassinet Rejection Staff Briefing Package, staff assessed the compact bassinet category and advised the Commission that including compact bassinets/cradles within the scope of the voluntary standard, which contain product characteristics that the Commission specifically stated in the ISP Rule were not safe for infant sleep, and allowing a less-stringent stability test for these products, contradicts the Commission's safe sleep goals in part 1218 and in the ISP Rule.

The Commission now proposes to amend part 1218 to incorporate ASTM F2194–22$^{\varepsilon 1}$ by reference, but with modifications that exclude from the mandatory rule ''compact bassinets'' and associated requirements. As described in section V of this preamble, the modifications in the NPR further clarify the products within the scope of the rule and seek to enhance the safety requirements in part 1218, and thus also the minimum safe sleep requirements in the ISP Rule.

B. Scope of Products Within the NPR

The NPR would apply to: (1) bassinets and cradles; (2) combination products in bassinet or cradle mode, including play yards, bedside sleepers, strollers, and cradle swings that have a bassinet or cradle mode; (3) play yard and stroller bassinet accessories, when used separately from the play yard or stroller; (4) small bassinets, sometimes marketed as ''travel bassinets'' or ''floor bassinets,'' including both items with rigid frames and with soft sides; (5) Moses baskets, sold with or without a stand; (6) travel bassinets, outdoor bassinets, and ''play pens'' that do not meet the side height requirements of the mandatory play yard standard and are marketed for sleep; and (7) after-market bassinet mattresses.[9]

Commonly, bassinets have multiple-use modes and therefore fall within the scope of multiple CPSC regulations, particularly the standard for hand-held infant carriers in 16 CFR part 1225, and/or the standard for infant sleep products in 16 CFR part 1236. Combination products must meet the bassinet standard when in the bassinet mode. All multi-mode products, as sold, including stroller bassinets, play yard bassinets, and Moses baskets, would need to meet the requirements of a revised rule, regardless of whether the product is sold with or without a stand. This means that stroller and play yard bassinets marketed for use without the stand, or that can be foreseeably used without the stand, would need to meet the requirements of a final rule.

Part 1218 requires bassinets to be sold with a mattress and includes requirements for these mattresses and original equipment manufacturer (OEM) replacements that are equivalent in dimensions and specifications to the mattress provided with the original product. This NPR proposes also to include after-market bassinet mattresses within the scope of the rule. After-market bassinet mattresses are sold separately from the bassinet and are typically small oval or rectangular mattresses marketed to fit a bassinet, including products marketed to fit a bassinet accessory product to a play yard or stroller. OEM replacement mattresses are, and have always been, included in part 1218 and are not considered after-market mattresses. The NPR also includes products marketed as ''mattress toppers'' as a type of after-market bassinet mattress.

[9] Several related products are out of scope of this NPR. A few products marketed as ''bassinets'' have relatively high side rails, rigid sides, and a distance between the top rail and the sleep surface of at least 22 inches. Some of these products are marketed as compliant with the mandatory safety standard for non-full-size cribs and play yards. These products may be within the scope of the mandatory standard for non-full-size cribs and play yards specified in 16 CFR part 1220, rather than this rule, but the performance requirements of the two standards are very similar. Moreover, hospital bassinets are medical devices regulated by the Food and Drug Administration (FDA) and are not within the scope of this rule. See 21 CFR 880.5145 ''Medical bassinet.'' Finally, thin mattress protectors and covers, such as waterproof mattress covers, that cannot be used as a standalone mattress, are not within the scope of this proposed rule.

C. Market Description

As discussed in section VIII of this preamble, staff estimates the annual sales of new bassinets/cradles, including items with a bassinet mode or attachment, to be approximately 3.1 million units per year in the United States. Staff estimates the annual U.S. sales of used bassinets/cradles to be 500,000 units per year, and the annual sales of new after-market bassinet mattresses to be 680,000 units per year.

Prices for traditional bassinets range from under $50 to more than $1,500, with most products in the $50 to $125 range. Prices for cradles range from $100 to more than $1,000, with most products in the $100 to $200 range. Solid hardwood cradles are available for more than $1,000. Combination bedside sleeper/bassinets typically sell for $75 to more than $600, with most products in the $125 to $200 range. Bassinet attachments to play yards are usually not priced or sold separately. Some stroller bassinet attachments are sold separately, with most such products in the $100 to $200 range. Play yard and stroller bassinet attachments are designed to attach to a specific model or set of models from one manufacturer, and/or to a stand sold separately by that manufacturer. The stands typically sell for $125 to $175. Prices for after-market bassinet mattresses range from $20 to $180, with most products in the $30 to $40 range.

Bassinets do not have a single, best-selling size, price range, or set of features. The wide range of prices and features reflect that parents and other caregivers buy bassinets for different purposes, including but not limited to as primary sleep space or for occasional use, and as a permanent piece of nursery furniture or an easily portable sleep space. With approximately 3.1 million new bassinets sold per year, including items such as bedside sleepers, play yards, and strollers with a bassinet mode, at an average price of approximately $100 per unit, the total U.S. bassinet market is approximately $310 million dollars in sales per year. This total does not include the market for used items. At an estimated used price of $40, based on observed prices of used bassinets on Ebay and Mercari as a percentage of original retail prices, the used market represents approximately $20 million dollars in sales per year. Staff estimates annual unit sales of new after-market bassinet mattresses to be 680,000 units, with a market of $23.8 million per year.

Many manufacturers and importers, as well as foreign direct shippers, supply bassinets and cradles to the U.S. market. In March 2023, CPSC staff identified more than 120 suppliers, including suppliers that sell play yards or strollers with bassinet attachments. The Juvenile Product Manufacturers Association (JPMA) currently has 22 member companies that are certified for bassinets/cradles. Bassinets and cradles are available from online general retail sites, online baby product sites, and brick and mortar general retail stores, including ''big box'' stores. Additionally, hundreds of suppliers, including importers and U.S. based hand crafters, supply after-market bassinet mattresses, which are sold almost exclusively online.

III. Incident Data and Hazard Patterns

Staff searched two CPSC-maintained databases to identify incidents and hazard patterns addressed in this NPR that are associated with bassinets and cradles: the Consumer Product Safety Risk Management System (CPSRMS) [10] [11] and the National Electronic Injury Surveillance System (NEISS).[12] From these sources, for this NPR staff identified seven fatalities and 13 injuries related to bassinets/cradles from January 1, 2017, through December 31, 2022. CPSC staff is also aware of 182 non-injury incidents from January 1, 2021, through December 31, 2022. Staff identified the following hazard patterns from this data.

A. Products Not Sitting Level

Two deaths, three non-emergency department (ED)-treated injury, and 95 of the 182 non-injury product-related incident reports describe a bassinet or cradle not sitting level. The narratives describe the products as non-level, leaning forward or to one side, and having legs or sides with uneven heights. A bassinet not sitting level creates a hazardous situation where an infant is more likely to roll into a compromising position as described below, whether the infant is developmentally capable of rolling or not, thereby posing a risk of asphyxia/suffocation. The fatal incidents involve infants rolling to the side, often into the mesh/siding of the bassinet:

- In CPSC In-Depth Investigation (IDI) [13] 200211HCC3248, a 2-month-old male was found unresponsive in his bassinet after moving into a compromising position where his nose was positioned adjacent to a crease on the right side of the bassinet. The bassinet was not level, and the edge of an adult bed was protruding into the mesh right sidewall of the bassinet.
- In IDI 190610CCC3431, a 1-month-old male was found unresponsive in his bassinet after a non-level sleep surface allowed the victim to roll into a compromising position in the presence of excess bedding.

According to the American Academy of Pediatrics (AAP), infants should be placed to sleep in a supine position (on their back) on a firm, flat, level surface without soft bedding in the sleep setting.[14] [15] Positional asphyxia is a type of asphyxia associated with abnormal body position, where the position of the subject compromises adequate breathing.[16] [17] [18] Infants under 12 months of age are considered at risk of positional asphyxia, but infants 2 to 6 months of age, premature infants, and infants who are born as a set of multiples are particularly vulnerable and at highest risk because they may be developmentally capable of moving around in the sleep environment and moving into a vulnerable situation but do not yet have the physical capability to extricate themselves from a hazardous situation.[19] [20] [21] [22] [23] [24]

An infant can suffocate/asphyxiate against anything that partially or fully obstructs the nose and mouth and prevents breathing.[25] Once an infant's airflow is compromised, decreased levels of oxygen in the blood can further impair the infant's ability to respond to the situation. If an infant cannot respond, a feedback loop of decreased heart and respiration rate develops that can eventually lead to cessation of

[10] CPSRMS includes data primarily from three groups of sources: incident reports, death certificates, and in-depth follow-up investigation reports. A large portion of CPSRMS consists of incident reports from consumer complaints, media reports, medical examiner or coroner reports, retailer or manufacturer reports (incident reports received from a retailer or manufacturer involving a product they sell or make), safety advocacy groups, law firms, and Federal, State, or local authorities, among others. It also contains death certificates that CPSC purchases from all 50 states, based on selected external cause of death codes (ICD–10). The third major component of CPSRMS is the collection of in-depth follow-up investigation reports. Based on the incident reports, death certificates, or National Electronic Injury Surveillance System (NEISS) injury reports, CPSC Field staff conduct in-depth investigations (on-site, telephone, or online) of incidents, deaths, and injuries, which are then stored in CPSRMS.

[11] Staff searched all data coded under product code 1537 (Bassinets or Cradles). In addition, staff extracted data coded under 1513 (Playpens and Play Yards), 1529 (Portable Cribs), 1542 (Baby Mattresses or Pads), 1505/1522 (Baby Carriages/Strollers), 1519/1548 (Car Seats/Baby Carriers), 1502 (Baby Changing Tables), 1558 (Baby Bouncer Seats), and 1553 (Portable Baby Swings). Staff further screened data searched from this wide range of products using keywords to identify the potentially in-scope bassinet accessories or multi-mode products that may have been used as a bassinet at the time of the incident. Staff extracted data on January 13, 2023, and restricted age to 12 months and younger. Upon careful joint review with CPSC's Directorates for Engineering Sciences, Health Sciences, and Economics, staff considered many cases out-of-scope for the purposes of this NPR. For example, staff excluded from this analysis cases with Sudden Unexpected Infant Death (SUID) or other pre-existing medical conditions as official cause of death and no additional circumstantial information available.

[12] NEISS is the source of the injury estimates; it is a statistically valid injury surveillance system. NEISS injury data are gathered from EDs of about 100 hospitals, with 24-hour EDs and at least six beds, selected as a probability sample of all U.S. hospitals. The surveillance data gathered from the sample hospitals enable staff to make timely national estimates of the number of injuries associated with specific consumer products.

[13] IDIs are CPSC-generated investigation summaries of events surrounding product-related injuries or incidents. Based on victim/witness interviews, the reports provide details about incident sequence, human behavior, and product involvement.

[14] Moon RY, Carlin RF, Hand I. The Task Force on Sudden Infant Death Syndrome and the Committee on Fetus and Newborn; Evidence Base for 2022 Updated Recommendations for a Safe Infant Sleeping Environment to Reduce the Risk of Sleep-Related Infant Deaths. Pediatrics July 2022; 150 (1): e2022057991. 10.1542/peds.2022–057991.

[15] Task Force on Infant Positioning and SIDS. Positioning and infant death syndrome (SIDS): update Arch Pediatr Adolesc Med. 1996;150:834–837.

[16] Chmieliauskas S, Mundinas E, Fomin D, Andriuskeviciute G, Laima S, Jurolaic E, Stasiuniene J, Jasulaitis A. Sudden deaths from positional asphyxia: A case report. Medicine (Baltimore). 2018 Jun;97(24):e11041. doi: 10.1097/MD.0000000000011041. PMID: 29901602; PMCID: PMC6023692.

[17] Gordon I, Shapiro HA. Deaths usually initiated by hypoxia or anoxic anoxia. In: Gordon I, Shapiro HA, editors. Forensic medicine: 2nd ed. Edinburgh, UK: Churchill Livingstone, 1982; 95–129.

[18] Gordon I. The medicolegal aspects of rapid deaths initiated by hypoxia and anoxia. Leg Med Annu. 1975:29–47. PMID: 768671.

[19] Dwyer T, Ponsonby A–L, Blizzard L, Newman NM, Cochane JA. The contribution of changes in prevalence of prone sleeping position to the decline in sudden infant death syndrome in Tasmania. JAMA. 1995;273:783–789.

[20] Byard RW, Beal S and Bourne AJ. Potentially dangerous sleeping environment and accidental asphyxia in infancy and early childhood. Arch Dis Child 1994; 71: 497–500.

[21] Fleming PJ, Blair PS, Bacon C, et al. Environment of infants during sleep and risk of the sudden infant death syndrome: results of 1993–5 case-control study for confidential inquiry into stillbirths and deaths in infancy. BMJ. 1996;313:191–195.

[22] Hauck FR, Herman SM, Donovan M, et al. ''Sleep Environment and the Risk of Sudden Infant Death Syndrome in an Urban Population: The Chicago Infant Mortality Study.'' Pediatrics 2003; (111): 1207–1214.

[23] Ponsonby AL, Dwyer T, Gibbons LE, Cochrane JA, Wang Y–G. Factors potentiating the risk of sudden infant death syndrome associated with prone position. N Engl J Med. 1993;329:377–382.

[24] Smialek, JE, Smialek, PZ and Spitz, WU. Accidental bed deaths in infants due to unsafe sleeping situations. Clinical Pediatrics 1977; 15 (11):1031–1035.

[25] Wanna-Nakamura S. White Paper—Unsafe Sleep Settings: Hazards associated with the infant sleep environment and unsafe practices used by caregivers: a CPSC staff perspective. Bethesda, MD: Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 2010.

breathing and may become fatal if uninterrupted.[26] [27] [28] [29] [30] The prognosis for hypoxic (experiencing a state of low levels of oxygen in body tissues) victims due to smothering depends primarily on the extent of oxygen deprivation, the duration of unconsciousness, and the speed at which cardiopulmonary resuscitation (CPR) is attempted relative to the timing of cardiac arrest. Rapid reversal of the hypoxic state is essential to prevent or limit the development of pulmonary and cerebral edema that can lead to serious injury or death. Thus, victims who are oxygen deprived for short durations or quickly receive cardiopulmonary resuscitation to reestablish air flow have the most favorable clinical outcomes.

Because the brain is the organ in the body most sensitive to oxygen deprivation, a period of oxygen deprivation of as short as three minutes can lead to a wide range of serious injuries. The severity of oxygen deprivation ultimately governs the infant's chance for survival and the degree of neurological damage. The extent of injury is directly related to the duration and magnitude of hypoxia. Inadequate supply of oxygen to the brain can lead to loss of consciousness, cardiac arrest, and death. Victims who are rescued from oxygen deprivation of less than four minutes can still suffer a wide range of serious injuries and lasting neurological issues, including delays to reach milestones, paralysis, sensory disturbances, seizures, cognitive and memory deficits, and neuropsychological problems.[31] [32] [33]

[26] Rosen CL et al., Two siblings and recurrent cardiorespiratory arrest; Munchausen syndrome by proxy or child abuse Paediatrics 1983; 71:715–720.

[27] Medalia AA, Merriam AE, Ehrenreich JH. The neuropsychological sequelae of attempted hanging. J Neurol Neurosurg Psychiatry. 1991; 54:546–8.

[28] Jongewaard WR, Cogbill TH, Landercasper J. Neurologic consequences of traumatic asphyxia. J Trauma. 1992 Jan;32(1):28–31. doi: 10.1097/00005373–199201000–00006. PMID: 1732570.

[29] Polson CJ. Hanging In: Polson CJ and Gee DJ (eds.) Essentials of forensic medicine Oxford England, 1973 371–404.

[30] Spitz WU. Asphyxia. In: Spitz WU, Spitz DJ, editors. Spitz and Fisher's medico-legal investigation of death: guidelines for the application of pathology to crime investigation, 4th edn.

[31] Dzikienė R, Lukoševičius S, Laurynaitienė J, Marmienė V, Nedzelskienė I, Tamelienė R, Rimdeikienė I, Kudrevičienė A. Long-Term Outcomes of Perinatal Hypoxia and Asphyxia at an Early School Age. Medicina (Kaunas). 2021 Sep 18;57(9):988. doi: 10.3390/medicina57090988. PMID: 34577911; PMCID: PMC8466311.

[32] Jongewaard WR, Cogbill TH, Landercasper J. Neurologic consequences of traumatic asphyxia. J Trauma. 1992 Jan;32(1):28–31. doi: 10.1097/00005373–199201000–00006. PMID: 1732570.

[33] van Handel, M., Swaab, H., de Vries, L.S. *et al.* Long-term cognitive and behavioral consequences of neonatal encephalopathy following perinatal asphyxia: a review. *Eur J Pediatr* 166, 645–654 (2007). *https://doi.org/10.1007/s00431-007-0437-8.*

Patients who survive cardiac arrest can remain in a coma for various periods and some may remain in a persistent vegetative state. Patients who survive prolonged anoxic episodes require a multidisciplinary rehabilitation that may include speech therapy, physical therapy, and/or prolonged specialized care inside or outside of the home, with the level of care dependent on the severity of the injury.

B. Bassinet Mattresses and Mattress Supports

Mattresses that are not flat (*e.g.,* bent, warped, sagging, with bumps, bulges, or dips) or not well-fitting, or mattress boards that are bent, warped, pop out of place, or provide little or no support, or that have bars (that support the mattress boards) that are broken or not staying in place, can lead to an uneven sleep surface, putting the infant at risk of asphyxia/suffocation. Staff illustratively identified two deaths, one ED visit, one non-ED injury, and 75 of the 182 non-injury product-related incidents that demonstrate this hazard. These non-injury incidents could have resulted in asphyxiation/suffocation if someone had not intervened to rescue the occupant. One death associated with a bassinet mattress involved a depression in the middle of the mattress, while the other death involved poor fit of the mattress, which allowed enough space for the infant to get wedged between the mattress and the sidewall of the bassinet.

- In IDI 220804HCC1109, a 3-month-old male was found unresponsive in a concave depression in the center of a bassinet.
- In IDI 210824HCC1792, a 3-month-old female was found prone wedged in a gap between the bassinet mattress and bassinet frame under a pillow.

Any object that obstructs an infant's airway, including an overly soft mattress, can lead to serious injury or death. This category includes a bassinet that was subject to a CPSC safety recall because the mattress support was disengaging, posing fall and entrapment hazards.[34]

C. Structural Integrity/Quality

Products with insufficient structural robustness (including components of the bassinet/cradle that reportedly break or crack; hardware coming loose; and stitching coming undone) can also increase the potential for infants to get into a compromising position, increasing the risk of asphyxiation/suffocation. Staff identified one reported hospitalization (laceration injury), one reported ED visit (broken metal piece injured infant), and seven of the 182 non-injury product-related incidents that demonstrate this hazard pattern.

[34] DaVinci Recalls Bassinets Due to Fall and Entrapment Hazards (Recall Alert) | *CPSC.gov*.

D. Product Design

Product design can lead to safety concerns, including products being unstable (increasing risk of rolling into a compromising position and suffocating), products sitting too low to the ground (allowing easier access by older siblings and creating suffocation hazards), and products having non-mesh sidewalls that create a suffocation hazard. Staff identified two deaths, one non-ED injury, and three of the 182 non-injury product-related incident reports that demonstrate this hazard. One product reportedly was unstable, while another reported that the non-mesh sidewall was a suffocation hazard. The two deaths involved play yard accessories that were reportedly very low to the ground, allowing access by older siblings.

- In IDI 210929HCC1229, a 1-month-old female was found unresponsive in a bassinet placed on the floor with her 2-year-old sibling partially resting on top of her.
- In IDI 200713HCC2638, a 5-month-old female was found unresponsive in a bassinet placed on the floor with her 15-month-old sibling asleep on top of the victim.

E. Electrical Problems

Some bassinets contain battery-operated or plug-in powered features including sounds, lights, vibrations, and motorized rocking movements. Electrical problems with bassinets can result in smoke, shock, or battery leakage. Staff identified one hospitalization, one non-ED-treated injury, and two of the 182 non-injury product-related incident reports demonstrating this hazard pattern.

F. Falls From Elevated Heights

In the 2022 Bassinet Rejection Staff Briefing Package, staff of CPSC's Division of Human Factors, Directorate for Engineering Sciences (HF staff), examined the revisions made to ASTM F2194—22$^{\varepsilon 1}$ and expressed concern regarding the inclusion of ''compact bassinets/cradles'' and products with a ''compact bassinet/cradle mode'' within the scope of the voluntary standard. Specifically, HF staff concluded that products covered by the definition of a ''compact bassinets/cradle'' are significantly more likely to be placed onto a soft and/or elevated surface, such

as a table, sofa, countertop, or bed, and that the less stringent stability requirements for compact products make them more prone to tipping over.

In the same briefing package, staff identified one fatality and three injuries related to infants falling out of compact bassinets, where the product was placed on an elevated or soft surface, such as an adult bed, countertop, and couch. Of these three incidents, one incident (IDI 200940506) involved placement on a countertop, one (IDI 201234191) involved placement on a couch, and one (IDI 210246657) involved placement on a chair. The incidents involving placement on a countertop and couch resulted in head injuries. Staff is also aware of several additional incidents in which bassinets were placed on soft/elevated surfaces resulting in one fatal incident (IDI 2101050001), when a bassinet was placed on top of an adult bed, leaning against a nearby wall. Staff is also aware of an incident (IDI 211207687) in which an infant climbed out of a bassinet placed on an adult bed and fell off the bed. Further, customer reviews of various compact bassinets indicate use in/on mattresses, sofas, tables, and countertops.

G. National Estimates From NEISS

Based on NEISS data, staff estimates 3,500 injuries (sample size=160, coefficient of variation=0.23) related to bassinets and cradles were treated in U.S. hospital emergency departments over a five-year period from 2017 through 2021. Of the 160 sample cases, four incidents were fatal. About 59 percent of the injuries involved infants 5 months of age or younger and about 89 percent involved infants 8 months or younger. Forty-one percent of the injured infants were male, while 59 percent were female. The most commonly occurring ED-treated injuries related to bassinets and cradles were falls and interaction with other children.

- Falls (52 percent): the majority of reports did not specify the manner or cause of the fall. An additional 5 percent indicated that the infant had been dropped, and another 2 percent indicated that the infant had climbed out of the bassinet/cradle and fallen.
- Interaction with other children (24 percent): many of the reports involved siblings or other young children pulling/tipping the bassinet over, tripping on the bassinet and tipping it over, attempting to pull/lift an infant out of the bassinet, or climbing into the bassinet to be with the infant. These incidents are usually associated with infants falling out of the product. A few scenarios described infants sustaining contusions/lacerations from older children striking/biting them.

Sixty-nine percent of reported injuries were to the infant's head, while 9 percent were to the infant's face. Seven percent of reported injuries did not state the injury location. Injury types include internal organs (58 percent) and fractures (10 percent), among others. Regarding patient disposition, 82 percent were treated and released, 14 percent were admitted to the hospital or transferred to another hospital, and 2 percent died from their injuries.

H. Availability of Incident Data

Upon publication of this NPR in the **Federal Register,** CPSC will make available for review and comment the CPSRMS and NEISS incident reports relied upon and discussed in this NPR, to the extent allowed by applicable law, along with the associated IDIs. The data will be made available by submitting a request at: *https://forms.office.com/g/Pvn3yPePPf.* You will then receive a website link to access the data at the email address you provided.

I. Bassinet/Cradle Recalls

From June 2012 through March 2023, the Office of Compliance and Field Operations conducted 10 recalls of bassinets, cradles, and related products as described in Table 1, including recalls of bassinets, cradles, and multi-modal products where the recall involved the bassinet mode. This summary includes recalls of Infant Sleep Products with flat sleep surfaces that must, pursuant to the ISP Rule, comply with 16 CFR part 1218, Safety Standard for Bassinets and Cradles, because such products are not subject to another mandatory safety standard for a sleep product. Not included in this recall summary are recalls of inclined infant sleep products and multi-modal products where the recall did not involve the bassinet mode, or after-market bassinet mattresses. The recalls involved products with risks of suffocation, entrapment, fall, and choking hazards and involved one reported death, two reported injuries, and 132 reported other incidents. Recalls affected approximately 396,500 units.

TABLE 1—SUMMARY OF BASSINET AND CRADLE RECALLS

Press release date	Firm	Hazard	Approximate number of recalled units/ product type [35]	Number of incidents (injuries & deaths) reported [35]	Press release No.
October 23, 2012	Dorel Juvenile Group	Suffocation	97,000 Bassinet	17 incidents (2 injuries, 0 deaths).	[36] 13–017
November 16, 2012	KidCo, Inc	Suffocation and Entrapment	220,000 Baby tent	6 incidents (0 injuries, 1 death).	[37] 13–043
January 15, 2013	Bugaboo Americas	Fall and choking	46,300 Carriage/stroller with removable carrycot bassinet.	58 incidents (0 injuries, 0 deaths).	[38] 13–092
March 27, 2013	Bugaboo Americas	Fall	9,200 Carriage/stroller with removable carrycot bassinet.	16 incidents (0 injuries, 0 deaths).	[39] 13–153
November 13, 2013	Dream on Me Inc	Fall	700 Cradle	2 incidents (0 injuries, 0 deaths).	[40] 14–019
March 3, 2015	Dream on Me Inc	Fall	13,000 Bassinet	1 incident (0 injuries, 0 deaths).	[41] 15–088
September 2, 2015	Sleeping Partners International Inc.	Fall	5,500 baskets and 800 stands Hand-held infant carrier and Bassinet.	0 incidents (0 injuries, 0 deaths).	[42] 15–230
January 18, 2018	Multipro Limited	Fall and Entrapment	1,000 Cradle	0 incidents (0 injuries, 0 deaths).	[43] 18–716
December 5, 2019	Bexco Enterprises, D/B/A DaVinci.	Fall	3,000 Bassinet	19 incidents (0 injuries, 0 deaths).	[44] 20–711
July 9, 2020	Bexco Enterprises, D/B/A DaVinci.	Fall and Entrapment	3,000 Bassinet	13 incidents (0 injuries, 0 deaths).	[45] 20–762

TABLE 1—SUMMARY OF BASSINET AND CRADLE RECALLS—Continued

Press release date	Firm	Hazard	Approximate number of recalled units/ product type [35]	Number of incidents (injuries & deaths) reported [35]	Press release No.
Total			[46] 396,500	132 incidents (2 injuries, 1 death).	10

[35] When the recall press release delineates the approximate number of recalled units, number of incidents, or number of injuries by country, this summary only includes the reported United States values.
[36] *https://www.cpsc.gov/Recalls/2013/Dorel-Juvenile-Group-Recalls-Eddie-Bauer-Rocking-Wood-Bassinets-Due-to-Infant-Suffocation-Hazard.*
[37] *https://www.cpsc.gov/Recalls/2013/Suffocation-Entrapment-Risks-Prompt-Recall-of-PeaPod-Travel-Tents-by-KidCo.*
[38] *https://www.cpsc.gov/Recalls/2013/bugaboo-recalls-strollers-due-to-fall-and-choking-hazards.*
[39] *https://www.cpsc.gov/Recalls/2013/Bugaboo-Recalls-Cameleon3-Strollers.*
[40] *https://www.cpsc.gov/Recalls/2014/Dream-On-Me-Recalls-Cradle-Gliders.*
[41] *https://www.cpsc.gov/Recalls/2015/Dream-on-Me-Recalls-2-in-1-Bassinet-to-Cradle.*
[42] *https://www.cpsc.gov/Recalls/2015/Tadpoles-Baby-and-Kids-Recalls-Moses-Basket-and-Stand.*
[43] *https://www.cpsc.gov/Recalls/2018/Bassinets-Recalled-Due-to-Violation-of-Bassinet-Cradle-Standard-Made-By-Multipro-Recall-Alert.*
[44] *https://www.cpsc.gov/Recalls/2020/DaVinci-Recalls-Bassinets-Due-to-Fall-Hazard-Recall-Alert.*
[45] *https://www.cpsc.gov/Recalls/2020/DaVinci-Recalls-Bassinets-Due-to-Fall-and-Entrapment-Hazards-Recall-Alert.*
[46] The Bexco Enterprises D/B/A DaVinci December 5, 2019 and July 9, 2020 recalls involve different hazards with the same products, and so the approximate number of recalled units are not counted twice in the total.

IV. Voluntary Standard Development

A. Description and Assessment of ASTM F2194–22ε1

ASTM F2194–22ε1 is the voluntary standard for bassinets/cradles, which includes the general requirements present in most durable infant or toddler product standards, such as restrictions related to lead in paint, small parts, hazardous sharp edges and points, wood parts, scissoring, shearing, or pinching, as well as performance and labeling requirements specific to bassinets/cradles, such as performance tests for static load and segmented mattresses. Compared to previous versions of the F2194 standard, ASTM F2194–22ε1 contains revisions to the scope, terminology, performance requirements, test methods, marking and labeling requirements, and instructional literature requirements for bassinets/cradles. Many of these changes relate to the introduction of compact bassinets/cradles. Tabs A and C of the 2022 Bassinet Rejection Staff Briefing Package provide staff's full description of ASTM F2194–22ε1 and detailed human factors and engineering assessments of the revised voluntary standard.

Based on staff's recommendation in the 2022 Bassinet Rejection Staff Briefing Package that elements of the revised standard decreased safety, the Commission voted to reject ASTM F2194–22ε1 and retain the existing mandatory standard in part 1218. The primary reason the Commission stated for rejecting ASTM F2194–22ε1 involved the addition of compact bassinets/cradles with legs shorter than six inches,[47] because caregivers are likely to place smaller and more portable compact bassinets in unsafe locations, such as elevated and soft surfaces (tables, counters, couches, and beds). CPSC's data demonstrate that infants have suffered serious head injuries and death when using small, portable products in unsafe locations. Moreover, ASTM F2194–22ε1 added a new stability test that applied only to compact bassinets/cradles that is less stringent than the stability test for regular bassinets/cradles. The Commission determined that, taken together, these additions decrease the safety of bassinets/cradles, as well as other infant sleep products subject to the bassinet standard.

B. Voluntary Standards Development Since September 2022

The ASTM subcommittee formed the F15.18 Bassinets Elevated Surface and Data Task Group (Task Group) to work with CPSC staff to develop performance requirements to address the hazards of consumers placing bassinets/cradles on elevated and/or soft surfaces. The Task Group met three times between November 2022 and February 2023 [48] [49] [50] to develop a proposal that all bassinets/cradles must meet either one of the following requirements:

1. The bassinet/cradle only fully supports infants and functions when the top rail is 16 inches or greater above the external floor with a minimum internal side height of 7.5 inches. Examples of ways to meet this requirement include:

(a) Bassinet collapses/fails when removed from the stand, so that it cannot be used when removed from the stand.

(b) Bassinet does not have a removable stand.

2. The smallest lateral dimension shall be equal to or greater than 24 inches, with a minimum internal side height of 7.5 inches.

CPSC staff assessed these proposed requirements developed by the ASTM task group, as follows:

Minimum 16-inch external side height requirement: CPSC staff assesses that a 16-inch external product side height is likely to be too low to the ground and to require the caregiver to squat or bend significantly to attend to the infant (Figure 1, first two images on the top left). For a variety of reasons, including to improve their posture while interacting with the baby, caregivers may choose to move the bassinet onto an elevated surface as shown in Figure 1, such as a countertop, dining table, coffee table, sofa, chair, or adult bed, despite this putting the infant at risk.

Figure 1 demonstrates a 16-inch-tall bassinet positioned on elevated surfaces. Even a 50th percentile female (height 64 inches [51]) would have to bend over considerably to access the child on the ground and thus staff assesses that caregivers are likely to use the bassinet in combination with a raised surface. Because of this likelihood, staff assesses that the minimum height of 16 inches may not be sufficient to discourage caregivers from using the bassinet on elevated surfaces.

[47] RCA-ASTMs-Notice-of-a-Revised-Voluntary-Standards-for-Bassinets-and-Cradles.pdf (*cpsc.gov*).

[48] Meeting Log for November 16, 2022 task group: *https://www.cpsc.gov/s3fs-public/ASTM-F15-18-Data-and-Compact-Bassinet-TG.pdf?VersionId=iMqK1Fy3s2xLSxuhFAbBVY5FJxIQNAgo.*

[49] Meeting Log for December 14, 2022 task group: *https://www.cpsc.gov/s3fs-public/F15-18-Bassinets-Elevated-Surface-and-Data-Task-Group-Meeting.pdf?VersionId=4sDOc.36I7O1.pSw8OLJM7bYmGzTOoTZ.*

[50] Meeting Log for February 28, 2023 task group: *https://www.cpsc.gov/s3fs-public/ASTM-F15-18-Bassinet-Elevated-Hazard-Task-Group-Meeting-Log.pdf?VersionId=xi2Cs5BZSnJWSbBEnBr7jF2gaqoflYbT.*

[51] PeopleSize Pro v 2.02, US Female 18–64.

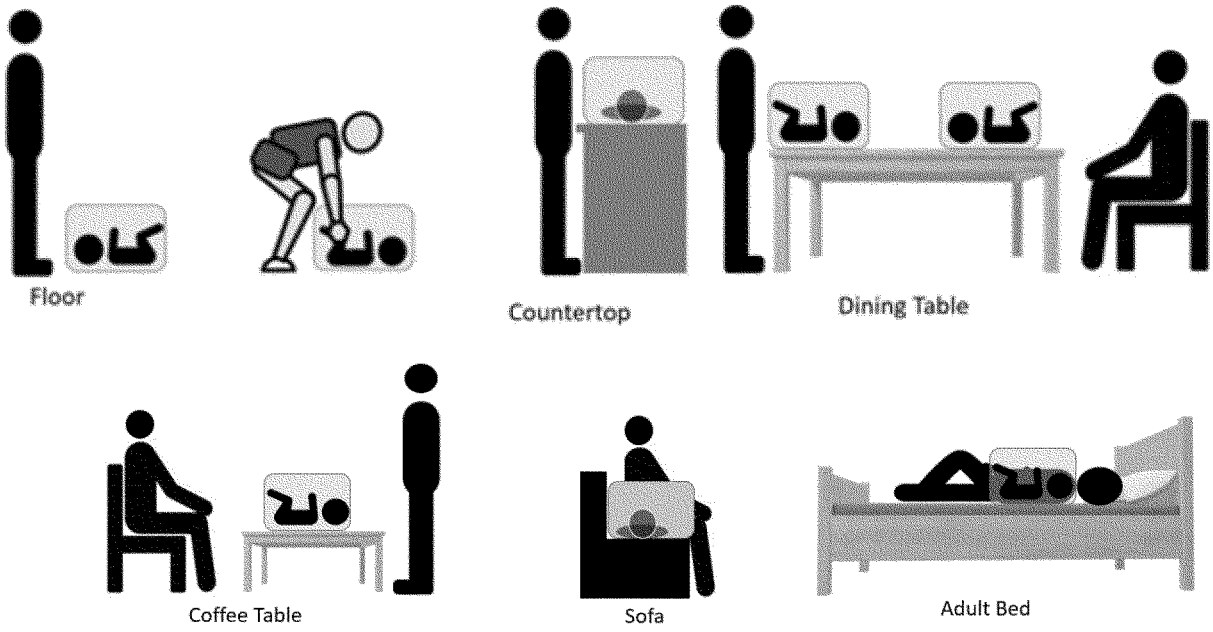


Figure 1: A 50th percentile female in relation to a 16-inch-tall bassinet on various surfaces.

Minimum 24-inch lateral dimension requirement: CPSC staff and the ASTM Bassinets Subcommittee also discussed a 24-inch lateral dimension as a means of deterring use of bassinets on soft and/or elevated surfaces. This dimension represents the upper end of typical sofa seat depth range (*i.e.,* distance from a typical couch seat bight to edge).[52] Based on discussions with the ASTM Bassinets Subcommittee, CPSC staff assesses that ''wide footprint'' bassinets/cradles are likely to somewhat visually discourage caregivers from placing bassinets/cradles on soft/elevated surfaces. Specifically, the ''wide footprint'' requirement (*i.e.,* all lateral dimensions greater than 24 inches) could reduce consumers' ability and likelihood to place products onto soft and/or elevated surfaces to a limited degree, as those products will be less portable and will either no longer fit onto soft/elevated surfaces or will take up enough space that caregivers may not wish to place the product onto said surfaces.

Figure 2 shows three bassinets of varying lateral dimensions on a sofa with a seat depth of approximately 20.25 inches. Staff assesses that the two bassinets with a lateral dimension greater than or equal to 24 inches (bottom two photos) are less likely to be placed on a narrow sofa because they hang partially off of the edge of the sofa, whereas the bassinet with a smaller lateral dimension (top photo) is more likely to be placed on a sofa, as it fits entirely on the sofa. However, sofas with a larger seat depth, such as ''deep-seated'' sofa depths which can extend to 36 inches, can accommodate placement of a wide bassinet.[53]

[52] The typical sofa seat depth is 21 inches to 24 inches. *https://blog.roomstogo.com/what-do-i-need-to-know-about-couch-depth/#:~:text=Outside%20depth%20ranges%20from%2031,sit%20with%20an%20upright%20posture.*

[53] *https://www.thesofareview.com/guides/the-best-deep-seated-sofas* and *https://blog.roomstogo.com/what-do-i-need-to-know-about-couch-depth/#:~:text=Outside%20depth%20ranges%20from%2031,sit%20with%20an%20upright%20posture.*

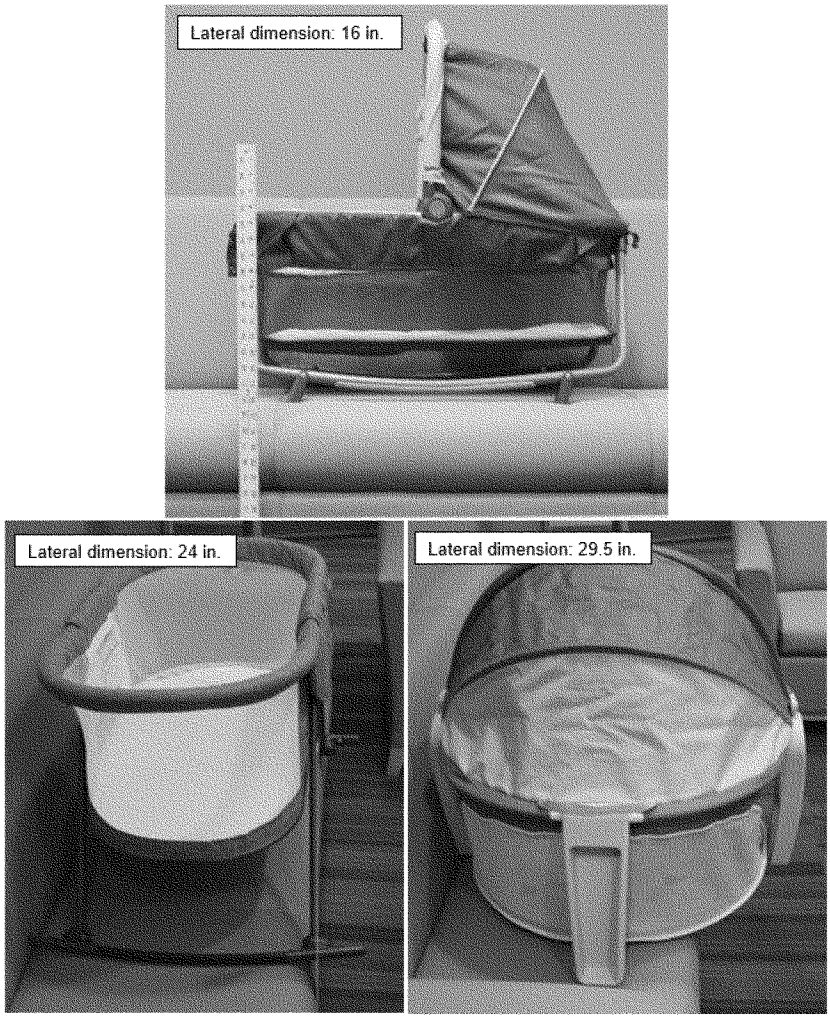


Figure 2: Comparison of overhang for three bassinets with different lateral dimensions on a sofa with a seat depth of approximately 20.25 inches Note that sofa depths can range to 26 inches.

Staff also analyzed the ability to place a wide footprint bassinet on traditional mattress sizes. Staff assesses that a full size mattress, a queen size mattress, and a king size mattress can accommodate a single adult caregiver and a 24-inch-wide bassinet. For two-caregiver households, a 24-inch footprint would take up too much space to allow for two adult occupants in a full size bed. For queen size beds, the bassinet would take up a significant amount of space but would still allow for two adult occupants. For king size beds, two parents can comfortably fit a 24-inch bassinet on the bed. Overall, staff assesses that a bassinet with a 24-inch-wide footprint is still likely to be used on full, queen, and king size adult beds with one or two caregivers (Figure 3). For this reason, staff assesses that the 24-inch footprint does not adequately address the hazard of bassinets being used on adult beds. Additionally, based on typical countertop, dining table, and coffee table dimensions, staff assesses that the 24-inch footprint alone does not deter consumers from placing bassinets on these elevated surfaces, because a bassinet with a 24-inch-wide footprint will likely fit onto many of these surfaces, and consumers would easily be able to reach into the product to place/retrieve the infant.[54]

[54] Standard countertop depth is 25.5 inches. Dining tables are generally 36″ wide at minimum. Coffee tables often exceed 24″ in length and width.

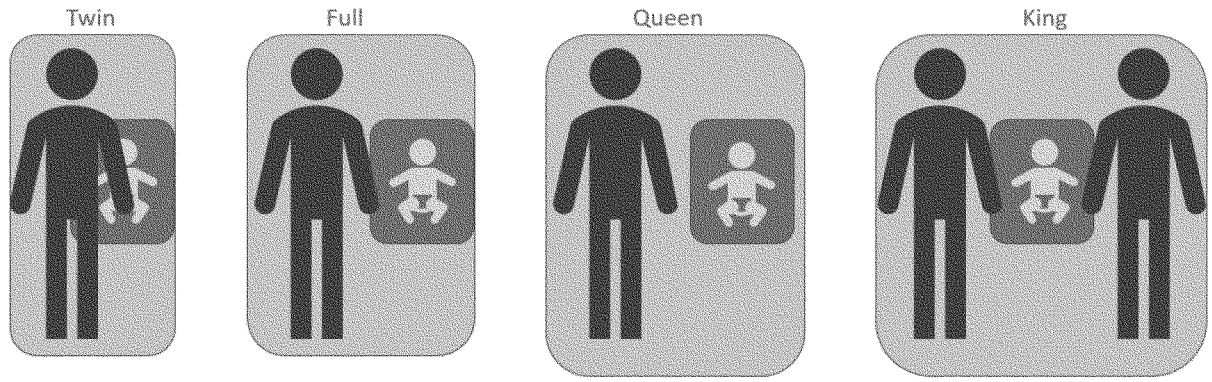


Figure 3: Scaled illustrations of a 24-inch-wide bassinet and a 50th percentile adult male (stature & shoulder breadth) on a twin (38"x75"), full (53"x75"), queen (60"x80"), and king (76"x80") size mattress.[55]

V. NPR Description and Explanation

A. ASTM Approaches Not Requiring Modification

The Commission preliminarily determines that three particular aspects of the current part 1218 rule, which are not proposed for revision in ASTM F2194–22$^{\varepsilon 1}$, remain adequate to address associated hazards and do not require modification: locking/latching mechanism (section 5.6 of ASTM F2194–22$^{\varepsilon 1}$, product finish-related requirements (sections 5.2 and 5.4 of ASTM F2194–22$^{\varepsilon 1}$), and the static load requirement to address mattress support issues (section 7.3 of ASTM F2194–22$^{\varepsilon 1}$).

ASTM developed locking/latching requirements for bassinets/cradles to address incidents associated with collapse of the product. After reviewing the reported incidents potentially implicating these requirements, none of which included evidence of injury, staff advises that the existing requirements address the hazard of the product collapsing or folding. Therefore, the Commission preliminarily concludes that the existing performance requirements address the hazard and do not require modification.

Currently, no provisions in part 1218 address rough product surfaces. Incidents regarding product finish, such as rough mesh surfaces and labels with sharp edges (addressed in Sections 5.2 and 5.4 of ASTM F2194—22$^{\varepsilon 1}$) were not widespread in the incident data; all but one infant in this type of reported incident received only non-medical treatment. The Commission will continue to monitor these incidents and, in particular, invites comment on how to address the rough mesh surface hazard.

Finally, the static load requirement in the existing part 1218, requiring the product to support up to three times the heaviest intended infant, adequately verifies that the bassinet/cradle sleep area is designed to hold and not break or create a hazardous condition when subject to the weight of a child. The NPR does not modify this test and proposes to apply it to all bassinets within the scope of the standard.

B. Mechanical and Electrical Hazards Addressed in the NPR

Based on incident data (described in section III of this preamble) and staff's engineering and human factors assessments, the NPR proposes revisions and additions to some of the performance and labeling requirements in ASTM F2194–22$^{\varepsilon 1}$ that would better address known hazards and provide the highest level of safety feasible for bassinets/cradles.

1. Requirements To Discourage Product Use on Unsafe Surfaces

To reduce the likelihood of consumers placing bassinets/cradles onto elevated and/or soft surfaces, the NPR proposes both of the following performance requirements and test methods.

a. The bassinet/cradle only fully supports infants and functions when the lowest portion of the top side/rail is 27 inches or greater above the product support surface (*i.e.,* floor) with a minimum internal side height of 7.5 inches. Examples that would meet this requirement include:

(1) Products with a removeable stand that collapses or fails when removed.

(2) Products that do not have a removeable stand.

b. The occupant support surface (*i.e.,* mattress) shall be at least 15 inches from the product support surface (*i.e.,* floor).

As shown in Figure 4, with these modifications caregivers can comfortably reach and attend to the infant in a 27-inch-tall bassinet located on the floor and will not need to elevate the bassinet. In fact, elevating a 27-inch-tall bassinet into a hazardous position makes it more difficult and inconvenient to reach the baby. Figure 4 demonstrates a 50th percentile female in relation to a bassinet with the proposed requirements on various elevated surfaces. These elevated surfaces are unlikely to be utilized due to caregivers' difficulty to reach the baby compared to their reach when the bassinet is located on the floor (Figure 4, first two images on the top left).

[55] The 50th percentile adult male (18–64) height is 69.64 inches and shoulder breadth is 19 inches (PeopleSize, Pro v 2.02)

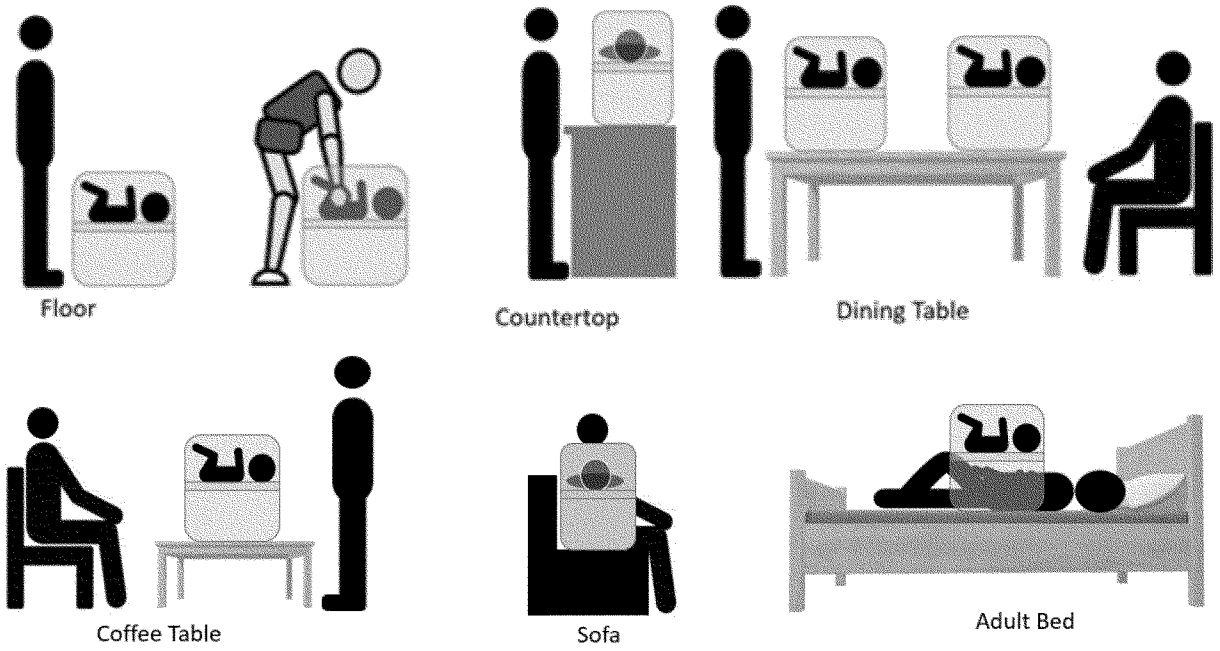


Figure 4: A 50th percentile female in relation to a bassinet with the proposed requirements on various surfaces.

While caregivers can easily reach into a 27-inch-tall bassinet when it is on the floor, they may have difficulty reaching their infant if the mattress is positioned too low to the ground (Figure 5); therefore, the combination of the two proposed dimensions would improve the safety of the bassinet by discouraging its use on elevated surfaces while making it more comfortable and convenient to use on the floor.

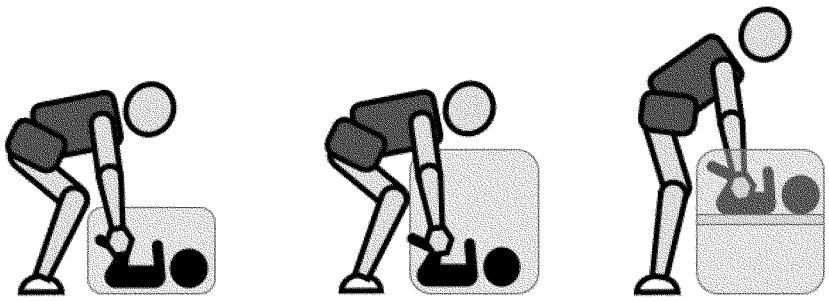


Figure 5: A 50th percentile female's reach to an infant positioned (a) 16-inch bassinet on the floor, (b) 27-inch bassinet on the floor, (c) 27-inch bassinet on the floor with a sleep surface 15-inch off the floor.

In the 2022 Bassinet Rejection Staff Briefing Package, staff expressed concern about ASTM's removal from the voluntary standard of the requirement for a bassinet to have a stand or base and the Commission rejected the revised standard that included ''compact bassinets.'' The requirements proposed in this NPR address CPSC's concerns regarding bedsharing and unsafe placement by requiring specific occupant sleep surface and side rail height requirements, while still subjecting products to the same stability requirements as bassinets with a traditional stand.

CPSC staff reviewed a variety of products (see Figure 6 for two examples) and determined that some products available to consumers already meet the 27-inch top rail height and 15-inch mattress height requirement. Therefore, implementation of this NPR requirement is feasible.

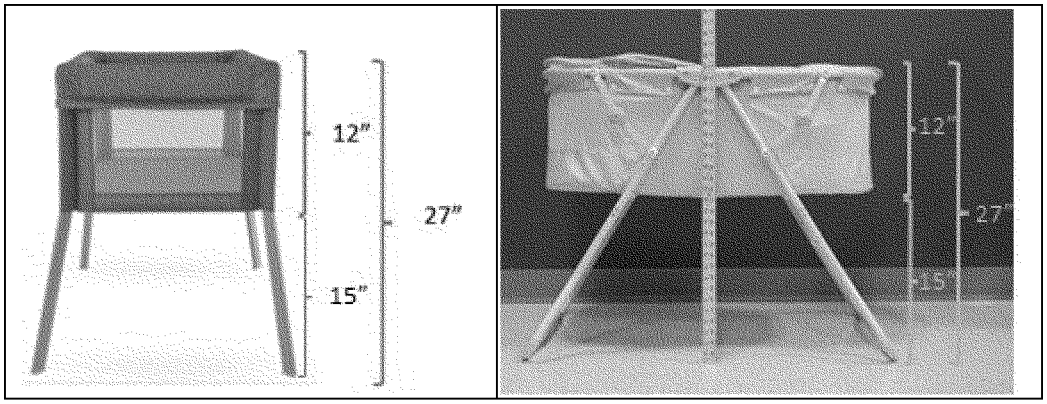


Figure 6. Example of bassinets that meet the proposed requirements

Regarding hazards associated with other children attempting to climb into the bassinet, staff advises that given children's propensity for climbing (*see* Staff Briefing Package for Clothing Storage Units [56]), a 27-inch side height is unlikely to dissuade children from attempting to climb into the product. However, setting a minimum side height taller than 27 inches would likely result in products being significantly less stable in the event of a child climbing them, and would not prevent children from climbing.[57] [58] [59] [60] [61] Incidents demonstrate toddlers' ability to climb on raised surfaces including cribs, showing that increasing the bassinet exterior side height to more than 27 inches would not effectively address sibling's access to the product.

Caregivers depend on infant sleep products to be safe places in which to leave an infant for sleep; accordingly, these products must be safe for infant sleep as sold. While these modifications, as written, would not necessarily require bassinets/cradles to have a stand, they would ensure that bassinets and cradles, including small portable products, are raised off the ground to discourage caregivers from placing them on elevated and soft surfaces such as beds and couches. The proposed requirements would thus work toward achieving the highest level of safety feasible for sleeping infants left to sleep unattended while in the product.

2. Requirements for Sidewall Rigidity

The current mandatory rule in part 1218 does not have a sidewall rigidity requirement. Many bassinets/cradles on the market have sidewalls constructed of fabric, foam, fiberfill, mesh, or cardboard, which can deflect downward, inward, and/or outward when subjected to a load. CPSC is concerned that bassinets with non-rigid sidewalls may permanently deform or collapse and not contain the infant if an external force is applied to the sidewall, such as when a sibling pulls on the sidewall of an occupied bassinet.

CPSC engineering staff considered whether the existing bassinet stability test, which simulates a 2-year-old pulling on the bassinet sidewall, could also be used to test adequate sidewall rigidity to contain an infant. To test this concept, staff conducted the stability test in ASTM F2194–13 on three non-rigid sided bassinets as shown in Figures 7–9.[62] Staff applied a 23-pound downward force and a five-pound outward force on the bassinets as specified in the stability test. The cardboard box bassinets bowed outward 3–5 inches (Figure 7b, 8b) during stability testing. The soft sided compact bassinet was not able to support the 23-pound load and collapsed more than 8 inches outward (Figure 9b). These tests demonstrate that bassinets with non-rigid sidewalls may permanently deform or collapse and not contain the infant if an external force is applied to the sidewall of an occupied bassinet, for instance by a sibling pulling on it.

[56] *https://www.cpsc.gov/s3fs-public/Final-Rule-Safety-Standrd-for-Clothing-Storage-Units.pdf?VersionId=X2prG3G0cqqngUwZh3rk01mkmFB40Gjf.*

[57] The incident data reported in section III of this preamble contains two climbing-associated deaths: an older sibling (15 months and two years old) climbed into the bassinet and laid on top of the infant inside, suffocating them. Older 1-year-olds are known to be capable of climbing on and off furniture without assistance.[57] Gross motor play and the use of climbers are dominant, starting at about 1½ years of age.[58] Two-year-old children especially enjoy climbing, and can climb steps, short ladders, and jungle gyms.[59] [60] Moreover, incident data reported to CPSC include numerous cases involving children climbing on furniture as well as cribs. For example, in an incident reported through NEISS (IDI 210108288), a two-year-old male climbed up on a nightstand and was climbing into baby crib. In another NEISS incident (IDI 200740286), a 22-month-old female climbed into her brother's crib. In another NEISS incident (IDI 200130999), the two-year-old girl climbed into a portable play yard or crib and bit her 15-month-old sister. In a fatal incident (IDI X19C0292A), a one-year-old male was put down for a nap in a room with his toddler brother. The toddler climbed into the crib with him with a pillow and a blanket.

[58] Therrell, J.A., Brown, P., Sutterby, J.A., Thornton, C.D., (2002). Age Determination Guidelines: Relating Children's Ages to Toy Characteristics and Play Behavior. T. P. Smith (Ed.), Bethesda, MD: U.S. Consumer Product Safety Commission.

[59] Frost, J.L., Wortham, S., & Reifel, S. (2001). Play and Child Development. Upper Saddle River, NJ: Prentice-Hall.

[60] Therrell, Brown, Sutterby, & Thornton, 2002.

[61] Hughes, F.P. (1991). *Children, Play, and Development.* Boston: Allyn & Bacon.

[62] The laser line used to determine deflection is enhanced for visibility.

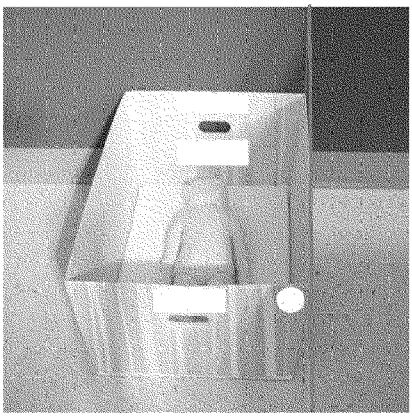
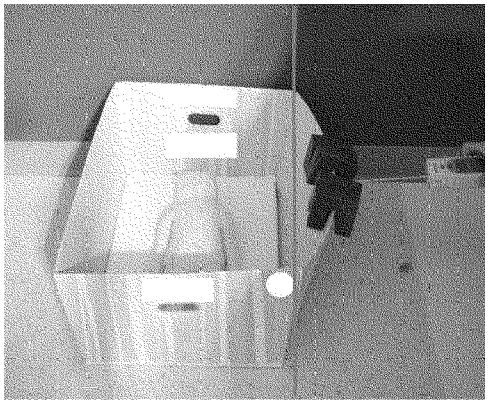


Figure 7a. **Cardboard compact bassinet unloaded**



Deflection ~ 5 inches

Figure 7b. **Cardboard compact bassinet with 23 lb. downward load and 5 lb. horizontal force**

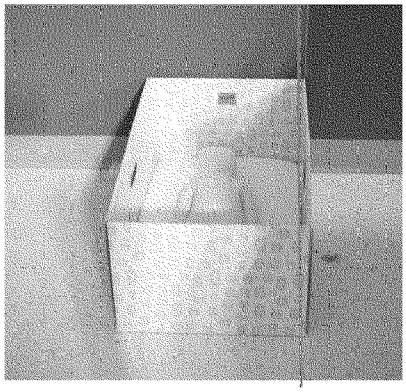
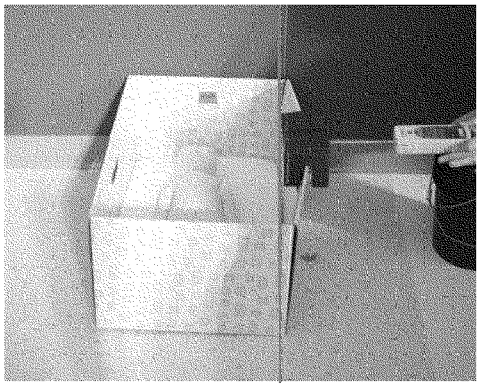


Figure 8a. **Cardboard compact bassinet unloaded**



Deflection ~ 3 inches

Figure 8b. **Cardboard compact bassinet with 23 lb. downward load and 5 lb. horizontal force**

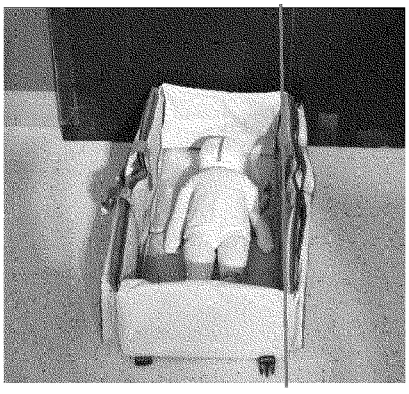
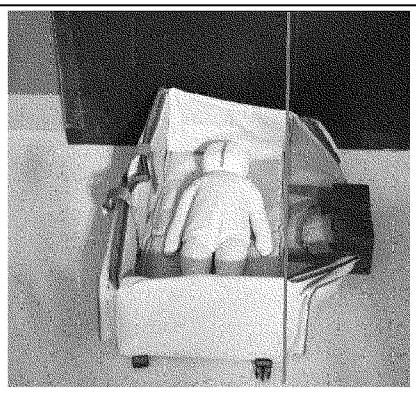


Figure 9a. **Soft sided compact bassinet unloaded**



Deflection > 8 inches

Figure 9b. **Soft sided compact bassinet with 23 lb. on the sidewall.**

Staff next conducted this same stability test on rigid-sided bassinets, which did not deflect or deform during testing. Staff advises that 0.5 inch of deflection in any direction during the stability test allows for reasonable movement of rigid sidewalls to account for minor movements in fasteners in the construction of the product. Based on this testing, the NPR proposes two requirements. First, unlike ASTM F2194–22$^{\varepsilon 1}$, the NPR proposes to subject all bassinets/cradles to the stability requirement.[63] Second, the NPR proposes that during this stability test, sidewall deflection can also be measured, requiring that the sidewall shall not deflect in any direction more than 0.5 inches. These proposed modifications ensure bassinet/cradle stability and containment of the infant.

3. Requirements for Mattresses and Mattress Supports

a. Requirements for Sleep Surface Deflection/Firmness

The NPR proposes mattress firmness requirements consistent with the mandatory crib mattress requirements in 16 CFR part 1241 to address incidents of infant's face/head conforming to the sleep surface. The mandatory crib mattress rule requires a firmness test intended to prevent the hazard of positional asphyxia involving infants suffocating when face down in a soft mattress that can conform to an infant's face. The firmness test involves placing a test fixture, as shown below in Figure 10, level on the sleep surface of the mattress. The mattress must be sufficiently firm and flat to support the weight of the test fixture (approximately 11.5 lb.) so that the feeler arm does not make any contact with the surface of the mattress.

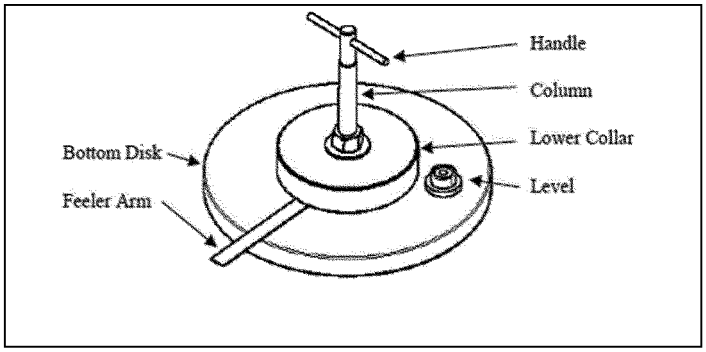
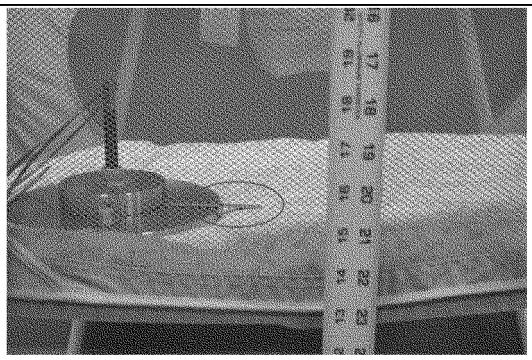


Figure 10. Mattress Firmness Test Fixture. Disc diameter = 203+/-1mm, thickness = 15+/-0.2 mm. Total weight of test fixture = 5200+/-20 g.

Staff tested two samples using the mattress firmness test fixture. Figure 11 shows the mattress firmness test fixture feeler arm touching the surface of the mattress, indicating that the mattress is too soft and fails the draft firmness requirement. Test results showed that some products failed the firmness test (feeler arm contacting the surface of the mattress) because the mattress was too soft (Figure 11).



FAILS

Figure 11. Firmness test on a soft mattress (FAIL)

[63] As explained in section I of this preamble, the ASTM F2194–22$^{\varepsilon 1}$ that the Commission has rejected created a new category of ''compact bassinets'' and subjected this category to a new, less stringent, stability test.

Accordingly, to verify that the bassinet sleep surface (mattress and/or support) is not too soft and does not form a concavity that can pose a positional asphyxia hazard to infants, the NPR proposes to include in part 1218 the same mattress firmness test as is found in the crib mattress rule.

b. Requirements for Structural Integrity of Bassinet Mattresses and Mattress Supports

Part 1218 currently specifies a static load requirement for the sleep enclosure of the product. Section 6.3 of ASTM F2194–13, Static Load, specifies that the product shall support the static load without causing any hazardous conditions as identified within Section 5 (General Requirements). The static load test (Section 7.3) consists of placing a 54-pound load or three times the manufacturer's recommended weight (whichever is greater) within 5 seconds on an aluminum block and maintain for 60 seconds. For play yard bassinets, the test is conducted in all four corners of the product.

The static load test verifies that the bassinet/cradle sleep area is designed to hold and not break or create a hazardous condition upon the weight of a child by requiring the product to support up to three times the heaviest intended occupant (95th percentile 5-month-old male (19.8 lb.)). Although staff advises that the static load requirement is adequate to address some of the mattress and/or support issues, the mattress firmness test (discussed in section V.B of this preamble) is an added verification of the flatness of the sleep surface (mattress and/or support), to further address these mattress/supports issues.

c. Requirements for After-Market Mattresses for Bassinets/Cradles

The crib mattress rule (part 1241) includes performance requirements for after-market mattresses but does not specifically identify bassinet/cradle mattresses as being included in the regulation. Instead, part 1218 establishes requirements for mattresses sold with bassinets/cradles (generally known as OEM mattresses.) CPSC is aware, however, of incidents that have arisen from consumer use of ill-fitting after-market mattresses. Based on the prominent availability and use of after-market bassinet/cradle mattresses, and the use of bassinets/cradles for infant sleep, the NPR proposes performance requirements for after-market bassinet mattresses to ensure the same level of safety as OEM bassinet/cradles mattresses and after-market mattresses for other infant sleep products.

Crib mattresses and bassinet/cradle mattresses, including after-market bassinet/cradle mattresses, share common hazard patterns associated with poorly fitting and overly soft mattresses. The mandatory crib mattress rule in part 1241 addresses similar hazards found in after-market play yard mattresses and non-full-size crib mattresses. Part 1241 requires such mattresses to meet the same performance requirements as the OEM mattress sold with the product, when tested with the product for which the after-market mattress is intended. In particular, these mattresses must have a minimum level of firmness (section V.B.3 of this preamble). Part 1241 already requires after-market mattresses intended for use in the bassinet attachment of a play yard to meet the provisions in the existing bassinet rule, part 1218, when tested with each bassinet/cradle brand and model in which the mattress is intended to be used. 16 CFR 1241.2(b)(5)(iv). Additionally, the crib mattress rule requires that after-market mattresses must be at least the same size as the OEM mattress or larger and must lay flat, must include a floor support structure that is at least as thick as the OEM mattress, and must include equivalent storage accommodations (such as a pouch for the product instruction manual). 16 CFR 1241.2(b)(4).

To reduce the risk of injury caused by poorly fitting and overly soft mattresses associated with after-market mattresses for bassinets/cradles, the NPR proposes to adopt the after-market requirements from the crib mattress rule into the bassinet/cradle mandatory standard.

4. Requirements for Bassinet Sleep Surface Angles

Minimum safe sleep requirements for young infants, particularly those 5 months old and younger, require that infants be placed to sleep on their backs on a firm, flat, sleep surface. As described in section III of the preamble, this avoids the hazard created by bassinets that are non-level—for example leaning forward or to one side, or with legs or sides with uneven heights—which could cause the infants to roll to the side, often into the mesh/siding of the bassinet/cradle before the infant is developmentally capable of rolling.

a. Requirement for Head-To-Toe Incline Angle

The definition of bassinet in part 1218 (based on ASTM F2194–13) states that ''[w]hile in a rest (non-rocking or swinging) position, a bassinet/cradle is intended to have a sleep surface less than or equal to 10° from horizontal.'' 16 CFR 1218.2(b)(1)(i) citing section 1.3 of ASTM F2194–13. The angle limitation in the definition is intended to ensure that the bassinet provides a safe, flat sleep surface. However, neither ASTM F2194—13 nor the revised ASTM F2194–22$^{\varepsilon 1}$ contain a test to measure the sleep surface incline to ensure that the sleep surface does not exceed 10 degrees from horizontal. The Commission's ISP Rule in part 1236 contains a test to measure the head-to-toe sleep surface angle. This test consists of placing a Hinged Weight Gauge–Infant (17.5 lb.) on the product and measuring the lengthwise incline angle along the upper torso/head area. This 10-degree head-to-toe safe sleep angle is supported in a report by Erin M. Mannen, Ph.D., the Biomechanical Analysis of Inclined Sleep Products—Final Report September 18, 2019.[64] Dr. Mannen's testing showed that angles greater than 20 degrees present a hazard that infants may move into a compromising position in the product from which they cannot self-rescue. Based on the results of Dr. Mannen's biomechanical study, ''fewer differences in muscle activity or lying posture were revealed at a 10-degree mattress incline compared to the zero-incline surface. Ten degrees is likely a safe incline for sleep on a crib mattress type of surface.'' The NPR proposes to remove the head-to-toe sleep surface angle statement from the definition of a bassinet, and instead to add a performance and test requirement for the 10-degree head-to-toe sleep surface angle limit, using the same incline test from the ISP Rule. This is an improvement to safety because it will ensure consistent and repeatable testing across test labs for all bassinets/cradles.

b. Side-to-Side Tilt Angle

Part 1218 specifies a side-to-side tilt angle of no more than 7 degrees for rocking bassinets/cradles when they are at rest (section 6.9.2 of ASTM F2194–13), but does not specify side-to-side tilt requirements for bassinets/cradles without a rocking function. On December 7, 2021, CPSC staff sent a letter[65] to the ASTM subcommittee

[64] The 10 degree incline angle requirement in the Infant Sleep Product Final Rule, available at: *https://www.cpsc.gov/s3fs-public/Final-Rule-Safety-Standard-for-Infant-Sleep-Products.pdf*, is based on findings in the 2019, Biomechanical Analysis of Inclined Sleep Products—Final Report 09.18.2019 by Erin M Mannen Ph.D., available at: *https://www.cpsc.gov/s3fs-public/Dr-Mannen-Study-FINAL-Report-09-18-2019_Redacted.corrected_0.pdf?g.Jao0IN_zU.TjiX4FeSUM3SPc3Zt_25.*

[65] Staff letter to Mr. Lewis, chair of ASTM F15.18 on Bassinets and Cradles, dated December 7, 2021. *https://www.cpsc.gov/s3fs-public/*

chair for bassinets/cradles regarding four fatal incidents (occurring from 2019 through 2021) involving bassinets with a cantilever design in which infants reportedly rolled into the side of the bassinet, or into a prone position. The cantilever design supports the bassinet by a leg/frame on one side of the product so that the suspended side without a support can be positioned over an adult bed. In the December 7, 2021 letter, CPSC staff stated concern with the then-current ASTM F2194–16$^{\varepsilon 1}$ allowance of a side-to-side 7-degree maximum tilt angle, because minimum safe sleep guidance requires infants be placed to sleep on a firm, flat surface.[66]

However, on February 14, 2023, ASTM proposed side-to-side tilt requirements in the voluntary standard for non-rocking bassinets/cradles stating that the bassinet sleep surface shall not exceed a side-to-side tilt angle of 7 degrees. This angle limit is based on the existing rocking bassinet/cradle rest angle requirement in section 6.9.2 of ASTM F2194–13. The test consists of two parts: simulating a five-month-old infant located against each side of the sleep surface, and then simulating a low weight newborn infant located against each side and the center of the sleep surface. The current side-to-side tilt angle for at rest rocking bassinets/cradles cannot exceed 7 degrees in either test. Based on this, ASTM's proposed modified test requirements for non-rocking bassinets/cradles provides the following:

(i) *Five-month-old infant.*—The Hinged Weight Gauge-Infant (17.4 lb.) is placed parallel to and contacting one of the lateral sidewalls of the bassinet/cradle, equidistant between both head and toe ends of the sleep surface. The side-to-side angle is measured on top of the Hinged Weight Gauge-Infant. The angle measurement is taken three times and then averaged. The test then is repeated on the other side of the sleep surface.

(ii) *Newborn infant.*—A 6 by 4 by 0.5-inch nominal thickness steel block weighing 3.3 lb. is placed parallel to and contacting one of the lateral sidewalls of the bassinet/cradle, equidistant between both head and toe ends of the sleep surface. The side-to-side angle is measured on top of the steel block. The angle measurement is taken three times and then averaged. The test then is repeated on the other side and in the geometrical center of the sleep surface.

CPSC staff has assessed ASTM's proposal. Based on incident data, cantilevered designed bassinets that have 7 degree or less side-to-side tilt angle[67] can still facilitate infants rolling before they are developmentally capable of rolling and present the potential for a suffocation hazard. CPSC staff conducted testing on 10 products with cantilevered designs (see Table 2 below), using the NPR proposed test. Four products, A, B, D, H, were associated with incidents that involved the infant rolling over into a compromising position. Fortunately, the caregiver was able to intervene in these cases before suffocation ensued. However, in one case, Product B, involved a fatality incident (IDI 200211HCC3248). Product H had the largest tilt angle (7.1 degrees) and product D had the smallest tilt angle (1.2 degrees) of models associated with incidents.

TABLE 2—BASSINET TILT TESTING RESULTS

Product ID	Height setting (note 1)	Max side-to-side tilt angle [degrees]
A (Note 2)	Lowest (mattress upper position)	5.6
	Highest (mattress upper position)	6.3
	Lowest (mattress lower position)	6.1
	Highest (mattress lower position)	5.7
B	Lowest	3.3
	Highest	1.8
C	Lowest	3.9
	Highest	4.4
D	Lowest	1.8
	Highest	1.2
E	Lowest	2.2
	Highest	2.5
F	Lowest	3.9
	Highest	3.5
G	Lowest	2.7
	Highest	2.7
H	Lowest	6.0
	Highest	7.1
I	Lowest	1.4
	Highest	1.0
J	Lowest	2.5
	Highest	3.0

Notes:
(1) All products had several height settings. Staff tested each sample on the highest and lowest height setting.
(2) Product A has several height settings as well as two mattress positioning settings. Staff tested on the highest and lowest height setting for each of the two mattress positioning settings.

BassinetwcantileverltrAttachedSpreadsheet-120821.pdf?VersionId=fyFz2Ac9HFDyp0yWa83WphujK.KJHEVS.

[66] After staff's further review of bassinet-related data, the tilt hazard pattern is evidenced in the 2 deaths, 3 injuries, and 95 non-injury incidents summarized in section III of this preamble.

[67] CPSC proposes that bassinets/cradles have two different tilt angle requirements for head-to-toe and side-to-side, based on how the suffocation hazard manifests. The hazard associated with a head-to-toe tilt greater than 10 degrees occurs when an infant unexpectedly rolls (either side-to-side or into a chin-to-chest position) and the infant cannot self-rescue when on an incline and can suffocate. However, when a bassinet/cradle has a side-to-side tilt, even if the tilt is less than 7 degrees, incident data and sample analysis suggest that this tilt can facilitate rolling before an infant is developmentally capable of rolling and cannot self-rescue. A suffocation hazard presents when the infant's nose and mouth become occluded in the side or mattress.

Based on review of incidents and testing, staff determined that the current ASTM side-to-side tilt restriction of 7 degrees does not adequately address the rolling and suffocation hazard. Staff testing showed that cantilevered bassinets with tilt angles of 1.2–7.1 degrees were associated with rollover incidents. Accordingly, to address the potential for infants to roll into unsafe sleep positions and to provide the highest level of safety that is feasible, the NPR proposes to add the side-to-side tilt angle test requirements from ASTM's February 14, 2023, proposal, with two modifications: (1) decrease the allowed tilt angle to 0 ±1 degree, which means a maximum angle not to exceed one degree from horizontal, and (2) apply this requirement to both rocking bassinets at rest and non-rocking bassinets. The NPR also proposes that for bassinets with adjustable heights, the side-to-side tilt test be performed on both the highest and lowest height settings. The Commission requests comment on a side-to-side tilt angle limit (including the proposed 0-degree angle) and an appropriate manufacturing tolerance (including the proposed 1-degree maximum variation) that is as consistently close to flat as is feasible.

5. Requirements for Electrical Systems

Section III of the preamble describes hazards associated with electrical systems, including smoke, shock, and battery leakage. While part 1218 does not address electrical hazards, other Commission rules for durable infant or toddler products, such as the infant swings rule, 16 CFR part 1223, incorporating ASTM F2088–22, *Standard Consumer Safety Specification for Infant and Cradle Swings,* include adequate requirements to address electrical hazards, such as the conditions that can lead to battery leakage. To address bassinet/cradle incidents associated with defective electrical systems, the NPR proposes to include the battery compartment requirements from part 1223 in part 1218.

6. Requirements for Multi-Use Products

Regarding multi-use products, section 5.14 of ASTM F2194–22$^{\varepsilon 1}$ states that if ''converted into another product for which a consumer safety specification exits, the product shall comply with the applicable requirements of that standard when in that use mode.'' Because the Commission's mandatory standard and ASTM's ''consumer safety specifications'' can diverge and are not always the same, the NPR proposes that multi-use products comply with the applicable mandatory CPSC consumer product safety standard when in each use mode, rather than the applicable voluntary standard. This modification clarifies CPSC's expectation and creates certainty for test labs.

C. Revised Requirements for Marking, Warning, Labeling, and Instructional Literature

Tab A of Staff's 2022 Bassinet Rejection Staff Briefing Package provides a detailed description of the marking and warning requirements in ASTM F2194–22$^{\varepsilon 1}$ and an analysis of whether the revised labeling requirements improve the safety of bassinets and cradles. Modifications in ASTM F2194–22 $^{\varepsilon 1}$ include additional language or changes addressing battery-related hazards, product warnings, compact bassinets and compact bassinets made of cardboard, and the warning language currently incorporated by reference in part 1218.

After considering literature, incident data, and consumer feedback, the Commission preliminarily finds that the marking, warning, labeling, and instructional literature requirements specified in ASTM F2194–22 $^{\varepsilon 1}$ are largely adequate but require several modifications to provide the highest level of safety feasible.

Battery Compartment Warnings—ASTM revised section 8 of ASTM F2194–22$^{\varepsilon 1}$ to include specific marking requirements for battery-operated products (Section 8.4–Battery-Operated Product Marking). The ASTM standard now requires that, for battery-operated products, the product's battery compartment, battery compartment door/cover, or area immediately adjacent to the battery compartment must be marked or labeled permanently and legibly to show the correct battery polarity, size, and voltage. ASTM F2194–22$^{\varepsilon 1}$ exempts products using one or more non-replaceable batteries, except when they are accessible with the use of a coin, screwdriver, or other common household tool, in which case they must be marked or labeled permanently and legibly with a statement that the batteries are not replaceable. If marking or labeling the product is not practicable, then this statement shall be included in the instructions. The bassinet subcommittee adopted these marking/labeling requirements from ASTM's Ad Hoc Language Task Group [68] and the requirements are consistent with other juvenile product standards.

Staff advises that these requirements are adequate and necessary to address hazards associated with battery-operated products that are not currently addressed in part 1218. Accordingly, the NPR proposes to incorporate Section 8.4 of ASTM F2194—22$^{\varepsilon 1}$ without modification.

Alignment with Ad Hoc Warnings—Section 8 of ASTM F2194–$^{\varepsilon}$22^{1} also contains multiple revisions intended to align with current recommendations from ASTM's Ad Hoc Language Task Group. ASTM F2194–22$^{\varepsilon 1}$ now specifies that warnings shall be in English at minimum, states that any additional markings or labels shall not contradict or confuse the required information or mislead the consumer, and sets formatting requirements for warnings (*e.g.,* font size, text alignment, safety alert symbol, bullet points for cautionary statements).

Per Ad Hoc Recommendations, the standard uses ANSI Z535.4–2011, *Product Safety Signs and Labels,* as a reference for its warning formatting requirements. ANSI Z535.4 is the primary United States voluntary consensus standard for product safety signs and labels. For example, CPSC staff consistently uses this standard when developing or assessing the adequacy of warning labels. Literature on the design and evaluation of on-product warnings frequently cites ANSI Z535.4 as the minimum set of requirements governing products sold in the United States containing such labels, and human factors experts generally consider the ANSI Z535 series of requirements the benchmark and state of the art standards against which warning labels should be evaluated for adequacy. The NPR proposes to adopt all warnings that align with ANSI Z535.4 formatting requirements.

Suffocation Hazard Warnings—Section 8 of ASTM F2194–22$^{\varepsilon 1}$ also contains multiple revisions to the warning statements incorporated in part 1218, specifically to the language for suffocation hazards. ASTM F2194–22$^{\varepsilon 1}$ specifies that the statement ''Failure to follow these warnings and the instructions could result in death or serious injury'' shall be the first warning to appear in a message panel, followed immediately by a suffocation hazard warning addressing the following:

[68] ASTM Ad Hoc Language Task Group (Ad Hoc TG) consists of members of various durable nursery product voluntary standards committees, including CPSC staff. The Ad Hoc TG's purpose is to harmonize the wording of common sections (*e.g.,* introduction, scope, protective components) and warning label requirements across durable infant and toddler product voluntary standards.

SUFFOCATION HAZARD
Babies have suffocated:
• on pillows, comforters, and extra padding
• in gaps between a wrong-size mattress, or extra padding and product sides
• **NEVER** add soft bedding or padding.
• Use **ONLY** mattress provided by manufacturer.

ASTM F2194–22$^{\varepsilon 1}$ also requires that warnings address the following statement:

Always place baby on back to sleep to reduce the risk of SIDS and suffocation.

ASTM F2194–22$^{\varepsilon 1}$ requires compact bassinets to address the following:

Product can roll over on soft surfaces and suffocate child. NEVER place product on beds, sofas or other soft surfaces.

The Commission rejected the inclusion of compact bassinets into the mandatory standard for bassinets and cradles in 2022. However, staff advises that this warning language addresses hazards associated with all bassinets/cradles and recommends that this language be required for all products within the scope of the standard. Accordingly, the NPR proposes to require this warning for all bassinets/cradles within the scope of the rule.

Fall Hazard Warnings—ASTM F2194–22$^{\varepsilon 1}$ does not change the existing warning language related to fall hazards. However, in the voluntary standard, fall hazard statements are now required to appear after the suffocation hazard warning statements. Additionally, the warning language, ''FALL HAZARD,'' required for products where the bassinet bed is removeable from the base/stand without the use of tools and contains a lock/latch mechanism that secures the bassinet bed to the base/stand, is no longer required, as the message is instead required to be located in the fall hazard section of the warning, making the inclusion of a second ''FALL HAZARD'' statement redundant. However, ASTM F2194–22$^{\varepsilon 1}$ requires that compact products address the following statements in the ''FALL HAZARD'' section:

(1) Always use product on the floor. Never use on an unintended elevated surface.
(2) Do not carry baby in the [*manufacturer to insert type of product*]. [Exception: A product that is intended to carry a baby is exempt from this requirement].
(3) Compact bassinet/cradles constructed of cardboard shall also address: Do not reuse [*manufacturer to insert type of product*] for second child.

Like the suffocation warnings for compact bassinets, staff advises that these fall hazard warnings will address fall hazards that are associated with all bassinets/cradles, not just compact bassinets. Accordingly, the NPR proposes that these fall hazard warnings be required for all products within the scope of the standard with two modifications. Specifically, the NPR proposes that the phrase ''an unintended elevated surface'' in warnings statement (1) be changed to ''any elevated surface,'' as any elevated surface presents a potential fall hazard. Additionally, for warning statement (3), the NPR proposes that the reference to ''compact'' bassinets be removed consistent with the Commission's rejection of this product category.

The fall hazard warning language in ASTM F2194–22$^{\varepsilon 1}$; also contains requirements for products where the bassinet bed uses a lock/latch mechanism to secure the bassinet bed to the base/stand, so that the bassinet bed is removable without the use of tools. ASTM F2194–22$^{\varepsilon 1}$; requires the following warning language for these products:

Always check that the bassinet is securely locked on the base/stand by pulling upwards on the bassinet bed.

Lastly, ASTM added three example warnings to the standard: one for bassinet/cradle products, one for compact bassinet/cradles, and one for compact bassinet/cradles made of cardboard. Shown below is an example warning that complies with part 1218 (Figure 12), as well as the example warnings shown in ASTM F2194–22$^{\varepsilon 1}$ (Figures 13–14). While the warnings shown in Figure 14 are intended for compact products, and the NPR proposes to remove references to ''compact'' bassinets from the mandatory standard, the text included in the warnings meets proposed NPR requirements and does not make a specific reference to ''compact'' bassinets, other than the title of the figures. The warnings in Figure 14 contain a statement warning against use on ''unintended'' elevated surfaces. Fall hazards, however, can occur with non-compact products and on *any* elevated surface. Additionally, the warning in Figure 13, which is intended for ''standard' bassinets/cradles, does not contain language warning consumers against using the product on soft or hard elevated surfaces or carrying infants in the product. Therefore, this NPR proposes that the warning shown in Figure 13 (Fig. 29 in ASTM F2194–22$^{\varepsilon 1}$) be removed, and that the warnings shown in Figure 14 (Fig. 30–31 in ASTM F2194–22$^{\varepsilon 1}$;) be renumbered and renamed to remove the reference to ''compact'' products and revised so that the statement warning against use on ''an unintended elevated surface'' instead warns against use on ''any elevated surface.''

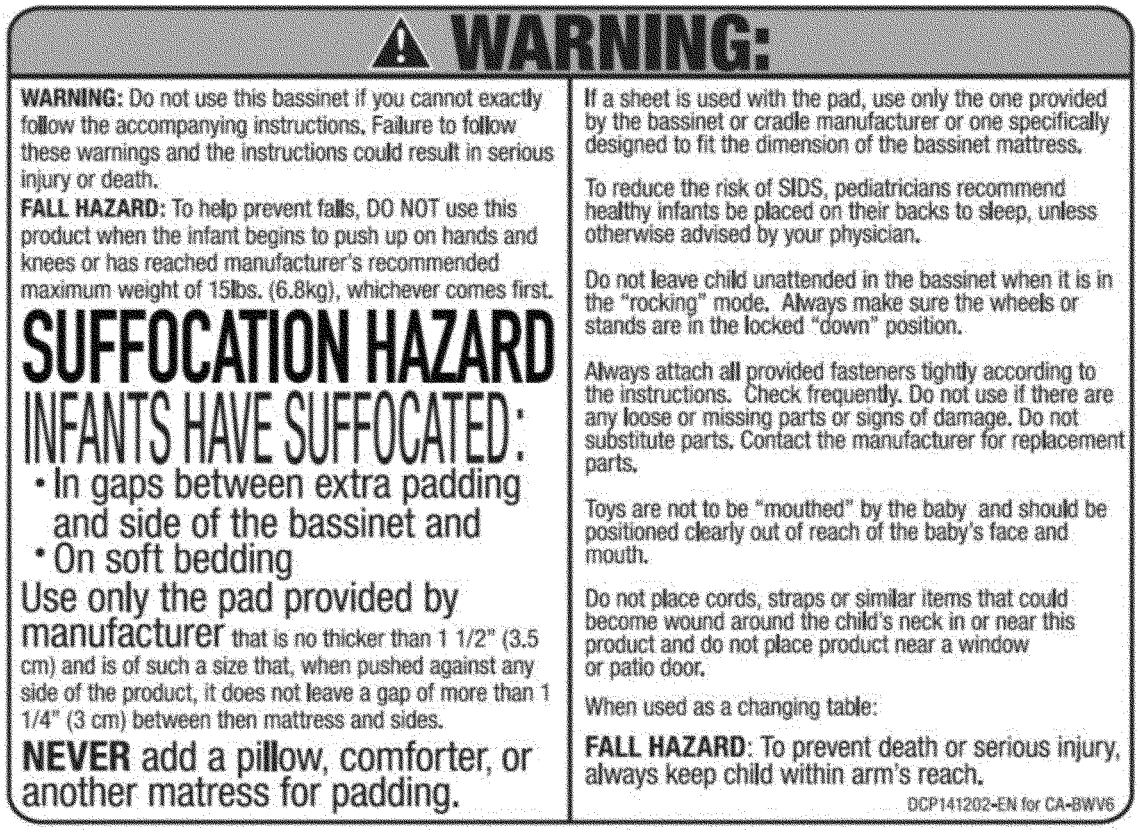


Figure 12: Example of a warning label compliant with part 1218

Figure 13: ASTM F2194 – 22$^{\varepsilon 1}$ warning label for Bassinets/Cradles*[69]

Figure 14: ASTM F2194 – 22$^{\varepsilon 1}$ warning label for Compact Bassinets/Cradles* (left) and ASTM F2194 – 22$^{\varepsilon 1}$ warning label for Cardboard Compact Bassinets/Cradles* (right)

After-Market Bassinet/Cradle Mattresses Warnings—Included in this final rule are warning requirements for after-market mattresses. As discussed above in section V.B.3.c of this preamble, the safety standard for crib mattresses (part 1241) includes performance requirements for after-market mattresses but does not specifically identify bassinet/cradle mattresses as being included in the regulation. However, given the existence of after-market bassinet/cradle mattresses, as well as the similar manners of sleep use between bassinets/cradles, cribs, and play yards, staff advises that similar warning requirements for after-market bassinet/cradle mattresses are appropriate and necessary. Accordingly, the NPR proposes that the warning shown in Figure 15, which is identical to the warning used in part 1241 for after-market mattresses, be required for after-market bassinet/cradle mattresses.

Additionally, the NPR proposes that the statement ''Use ONLY mattress provided by manufacturer,'' appearing in the warnings for bassinets/cradles in part 1218 and in ASTM F2194–22$^{\varepsilon 1}$, be replaced with the statement ''USE ONLY one mattress at a time.'' This revision communicates to consumers to only use a single mattress in the bassinet/cradle; when combined with other warning statements, the revision signals that the use of after-market bassinet/cradle mattresses is acceptable when the mattress has the appropriate fit for the bassinet/cradle; and will ensure that the warnings on bassinets/cradles are consistent with the warnings on after-market mattresses. This also addresses the potential hazard presented by after-market mattresses marketed as ''mattress toppers.''

[69] All figures with ''*'' denotation are reprinted, with permission, from ASTM F2194–22$^{\varepsilon 1}$ Standard Consumer Safety Specification for Bassinets and Cradles, copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. A copy of the complete standard may be obtained from ASTM International, *www.astm.org.*

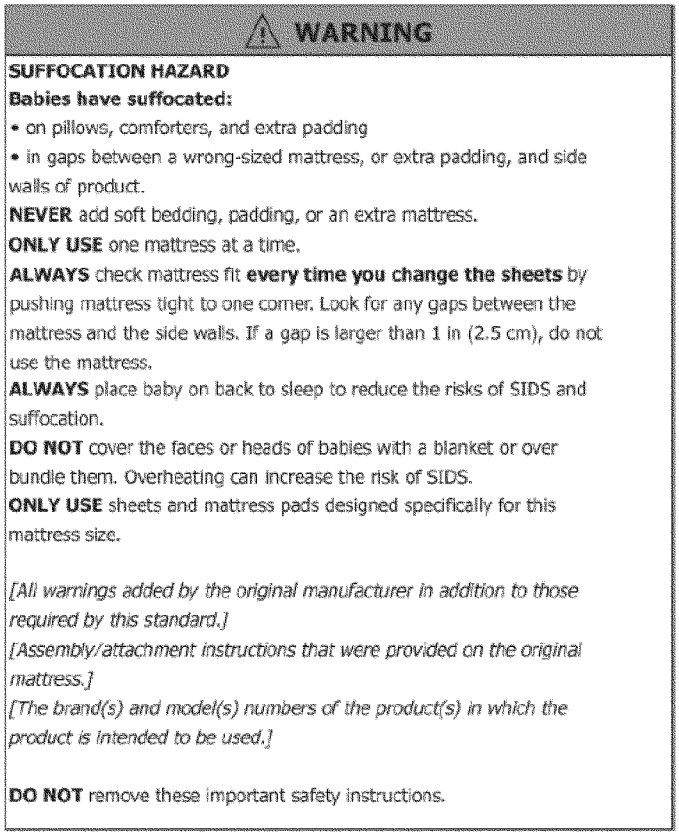


Figure 15: Warning label for After-Market Bassinet/Cradle Mattresses

Instructional Literature Warnings—The instructional literature requirements in ASTM F2194–22$^{\varepsilon 1}$ contain multiple revisions. Many revisions are intended to ensure consistency with on-product markings and warnings and current recommendations from ASTM's Ad Hoc Language Task Group. ASTM F2194–22$^{\varepsilon 1}$ now specifies that instructions shall be in English at minimum, state that any additional instructions shall not contradict or confuse the required information or mislead the consumer, and sets formatting requirements for warnings (*e.g.,* font size, text alignment, safety alert symbol, bullet points for cautionary statements). Per the Ad Hoc Language Task Group's recommendations, the ASTM F2194–22$^{\varepsilon 1}$ standard uses ANSI Z535.4–2011 as reference for its warning formatting requirements.

Additionally, ASTM F2194–22$^{\varepsilon 1}$ requires that instructions for battery-operated products address the following:

⚠ CAUTION
To prevent battery leaks, which can burn skin and eyes:
• Remove batteries when storing product for a long time.
• Dispose of used batteries immediately.

ASTM F2194–22$^{\varepsilon 1}$ provides that instructions for products that use more than one battery in any one circuit shall also address the following under the same CAUTION header:

- Always replace the entire set of batteries at one time.
- Never mix old and new batteries, or batteries of different brands or types.

Additionally, ASTM F2194–22$^{\varepsilon 1}$ states that instructions are now required to address the following statements:

Do not use if any part of the (manufacturer to insert type of product) is broken, torn, or missing.

Additionally, ASTM F2194–22$^{\varepsilon 1}$ requires that the instructions for products constructed of cardboard must now address the following statements:

Use only on a flat, dry floor.

Do not place the (manufacturer to insert type of product) near a space heater, open fire or other source of strong heat.

Lastly, ASTM F2194–22$^{\varepsilon 1}$ contains two example instructional literature warnings, one for bassinet/cradle products, and one for battery-powered bassinets. Figure 16 provides these two example warnings:

Figure 16: Example Instruction Warnings; ASTM F2194 – 22$^{\varepsilon 1}$ warning label for Bassinets/Cradles* (left) and ASTM F2194 – 22$^{\varepsilon 1}$ warning label for Bassinets/Cradles with Batteries* (right)

The Commission preliminarily determines that the instructional literature requirements in ASTM F2194–22$^{\varepsilon 1}$ are adequate and proposes to adopt these warnings provisions into the mandatory standard.

VI. Incorporation by Reference

The Commission proposes incorporating ASTM F2194–22$^{\varepsilon 1}$ by reference into the mandatory standard for bassinets/cradles codified in part 1218, with modifications to reduce the risk of injury associated with these products and to ensure the standard provides the highest level of safety that is feasible. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. For a proposed rule, agencies must discuss in the preamble of the NPR ways that the materials that the agency proposes to incorporate by reference are reasonably available to interested persons, and how interested parties can obtain the materials. Additionally, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section IV.A of this preamble summarizes the provisions of ASTM F2194–22$^{\varepsilon 1}$ that the Commission proposes to incorporate by reference. ASTM F2194–22$^{\varepsilon 1}$ is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period on this NPR, at *http://www.astm.org/cpsc.htm.* To download or print the standard, interested persons may purchase a copy of ASTM F2194–22$^{\varepsilon 1}$ from ASTM through its website (*http://www.astm.org*), or by mail from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428. Alternatively, interested parties may inspect a copy of the standard at CPSC's Office of the Secretary by contacting Alberta E. Mills, Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

VII. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposes a 180-day effective date for this rule. The rule would apply to all bassinets/cradles and after-market bassinet mattresses manufactured after the effective date. 15 U.S.C. 2058(g)(1). This amount of time is typical for durable infant or toddler rules promulgated under section 104 of the CPSIA.[70] Six months is also the period that the JPMA typically allows for products in their certification program to shift to a new standard once a new standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new standards within this timeframe.

Moreover, although the NPR proposes to add requirements, the test methods and test equipment are not unique, in that other CPSC rules also use the same methods and equipment. For example, 41 third party laboratories are CPSC-accepted to test to part 1218. Eleven of 12 laboratories accepted to test to the crib mattress rule are also accredited for testing to the bassinet standard. Accordingly, the CPSC expects that these laboratories are competent to conduct the required testing and can have their International Organization for Standardization (ISO) accreditation and CPSC-acceptance updated in the normal course. The Commission invites comments, particularly from small businesses, regarding the proposed additional testing and the amount of time needed to come into compliance with a final rule.

VIII. Regulatory Flexibility Act (RFA)

The RFA requires that agencies review a proposed rule for the rule's potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies prepare an initial regulatory flexibility analysis (IRFA)

[70] *See, e.g.,* Safety Standard for Infant Swings, 77 FR 66713 (Nov. 7, 2012); Safety Standard for Crib Mattresses, 87 FR 8640 (Feb. 15, 2022).

and make the analysis available to the public for comment when the agency publishes an NPR. 5 U.S.C. 603. The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities.

This proposed rule would have a significant economic impact on a substantial number of small U.S. entities, primarily from redesign costs in the first year that the final rule would be effective. A significant impact would occur for small companies whose products do not meet the proposed revised requirements, particularly suppliers of small bassinets and bassinet accessory products for strollers and play yards, as well as suppliers of cantilever style bassinets and after-market bassinet mattresses. Third party testing costs should not be a new significant cost for most small firms, given that bassinet suppliers should already be testing to the current mandatory standard in part 1218. However, for after-market bassinet mattress suppliers, the third party testing costs to comply with the final rule would be new, although these firms already incur costs for testing to establish compliance with other relevant CPSC regulations, including those for lead and phthalate content.

A. Reason for Agency Action, NPR Objectives, Product Description, and Market Description

Section I of this preamble explains why CPSC proposes to update the mandatory rule for bassinets/cradles and provides a statement of the objectives of, and legal basis for, the proposed rule. Section II of this preamble describes the types of products within the scope of the NPR, the market for bassinets/cradles, and the use of bassinets/cradles in the U.S. The requirements in the NPR are more stringent than the ASTM voluntary standard for bassinets/cradles, as described in sections IV and V of this preamble. The NPR addresses known hazards, discussed in section III of this preamble, that the current rule does not adequately address, as well as products on the market that were not common when the current rule was promulgated, such as products that resemble short play yards with canopies marketed for outdoor infant sleep.

The scope of this proposed rule also includes after-market bassinet mattresses, which are not in scope of the current regulation in part 1218 or the crib mattress regulation in 16 CFR part 1241. Accordingly, the registration card already required for bassinets/cradles under section 14 of the CPSA (15 U.S.C. 2056a(d)) will now be required for after-market mattresses as well. Registration cards are exempt from PRA or RFA analysis, per section 104(d)(1) of the CPSIA. 15 U.S.C. 2056a(d)(1).

B. Small Entities to Which the NPR Would Apply

Section II of this preamble describes the products within the scope of the rule and an overview of the markets for bassinets/cradles and for after-market bassinet mattresses. This section XIII.B of the preamble provides additional detail on the market for products within the scope of the rule.

Annual Units Sold: CPSC estimates the annual U.S. sales of new bassinets, including items with a bassinet mode or attachment, to be—rounded for the purposes of further analysis—3.1 million units per year. CPSC made this estimate using Centers for Disease Control (CDC) data on the number of newborns,[71] State Department data on adoptions from foreign countries,[72] and a survey by Statista [73] in 2017 on the estimated ownership of bassinets, play yards, and strollers, also taking into account the market for used items.

Specifically, CPSC estimates the total sales of new bassinets in the U.S. as the total of the sales of traditional bassinets and cradles, plus play yard bassinets, plus stroller bassinets, plus bedside sleepers with a bassinet mode, which is 3,080,942, rounded for the purposes of analysis to 3.1 million (see Table 3). While this may seem high (corresponding to roughly 80 percent of the number of newborns in the U.S. each year), it is consistent with the prevalence of multi-mode products with a bassinet mode or attachment.

CPSC estimates the annual sales of used bassinets and products with bassinet mode to be 500,000 units per year, rounded for the purpose of analysis. Table 3 below displays the calculations, providing the sources in footnotes, for CPSC's estimation of sales for new and used bassinets and cradles.

TABLE 3—ESTIMATED SALES FOR NEW AND USED BASSINETS/CRADLES

Product [74]	Number of newborns	Families/caregivers who own this item [75] (percent)	. . . and bought it new or received it new as a gift [76] [77]	Percentage of these items that include a bassinet (percent)	Estimated annual unit new sales in scope of this rule	Estimated annual unit used sales in scope of this rule
	(a)	(b)	(c)	(d)	(e) = (a) × (b) × (c) × (d)	(f) = (a) × (b) × (1 − c) × (d)
Bassinet/cradle	3,666,077	38	86 percent	100	1,198,074	195,035
Play yard		66		[78] 35	728,303	118,561
Stroller		96		[79] 17	514,541	83,763
Bedside sleeper/bassinet		29		[80] 70	640,024	104,190
Total					3,080,942	501,549

[71] *https://www.cdc.gov/nchs/nvss/births.htm.*

[72] *https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/AnnualReports.html.*

[73] *https://www.statista.com/forecasts/987681/ownership-of-baby-furniture-in-the-us.* This data from 2017 is consistent with the Durable Nursery Products Exposure Survey that a contractor conducted for CPSC in 2013, which found that about 30% of families with children under age 6 owned a bassinet, cradle, or infant hammock.

[74] The number of newborns is from CDC data on births and State Department data on adoptions from other countries; the data on product ownership is from the Statista survey.

[75] *https://www.statista.com/study/49911/baby-products-in-the-us/?locale=en.* A survey by Statista in 2017 of parents with children under the age of 4.

[76] *https://www.statista.com/forecasts/987072/ownership-of-a-rocking-crib-amongst-parents-in-the-us.*

[77] A Statista report from the same survey group in 2017 found that 14 percent of parents bought a ''rocking crib'' second hand. CPSC assumes that the secondary market is similar for bassinets. If 14 percent of bassinet or cradle owners are used, then 86 percent are bought new.

[78] Based on internet search in January 2023, seven of the top 20 best-selling play yards came with a bassinet attachment. Thus, approximately 35 percent.

[79] The Statista survey also found that 17 percent of parents reported that their stroller had a ''removable carrycot'' feature (''bassinet'' feature was not a survey item).

[80] Based on a popular online general retail site in March 2023, fourteen of the top 20 best-selling beside sleepers came with a bassinet mode. Thus, approximately 70 percent.

Some families might have more than one newborn, some parents with a newborn might have separate residences, and non-parent caregivers also buy these items, so sales could be higher. However, because the expected product life and warranty for these items is typically several years, while the recommended use per infant is only five months, parents may use the same bassinet for subsequent children or obtain a used one through gift or purchase.

CPSC estimates the size of the used market for all bassinet products, including products with bassinet attachments, at 501,549 units, rounded to 500,000 for the purposes of the cost analysis. CPSC assumes that at least a majority of consumers in the secondary market would choose to dispose of the used mattress and purchase a new after-market mattress. For this analysis, CPSC conservatively assumes that 75 percent of parents purchasing a used bassinet will buy a new after-market mattress. CPSC also assumes that roughly 10 percent of parents who buy a bassinet or product with bassinet attachment new will also purchase a new after-market mattress for use by a subsequent sibling, or for the same infant due to heavy soiling. Therefore, CPSC estimates the total annual market for after-market mattresses at 75 percent of the used sales (75% × 501,549 = 376,162) plus 10 percent of new sales (10% × 3,080,942 = 308,094), for a total of 684,256 units, rounded to 680,00 for the purpose of the cost analysis.

The availability of hundreds of after-market bassinet mattresses online confirms that there is substantial demand for after-market mattresses, as well as a substantial volume of sales. The top seller by volume on Amazon currently sells more than 1,800 after-market bassinet mattresses per month. The Commission requests comments from the public on the estimated annual sales volume, including any information that would validate a different estimate on the rate of after-market mattress sales (number of units sold per year).

While other possible outlets for bassinet and after-market bassinet mattress sales exist that are not included in this estimate (specifically, sales to hotels, daycares, and hospitals), they are likely to be minimal. Hotels generally provide a sleep space that can accommodate larger children, typically cribs or play yards without a bassinet. Similarly, daycare centers typically purchase cribs and play yards rather than traditional bassinets; and major daycare and hospitality child furniture suppliers do not sell bassinets or cradles, although daycares may use consumer grade play yards with bassinet attachments. Hospital ownership of bassinets is small, reported as only 55,085 units in 2019,[81] and hospital bassinets are medical devices regulated by the Food and Drug Administration (FDA), and thus out of scope of this NPR.

Prices and Features: Prices for traditional bassinets range from under $50 to more than $1,500, with most products in the $50 to $125 range. The least expensive products tend to be under 30 inches high and come with legs rather than a stand or base. The more expensive products tend to be larger and come with features that include canopies, motorized sounds or vibrations, attached toy bars, and pouches or shelves for storing diapers and bottles. Prices for cradles range from $100 to more than $1,000, with most products in the $100 to $200 range. Solid hardwood cradles are available for more than $1,000. Some products advertised as ''rocking bassinets'' are physically identical to cradles, with a curved rocker base. Combination bedside sleeper/bassinets typically sell from $75 to more than $600, with most products in the $125 to $200 range. Attachments to play yards are usually not priced or sold separately. Some stroller bassinet attachments are sold separately, with most such products in the $100 to $200 range. Play yard and stroller bassinet attachments are designed to attach to a specific model or set of models from one manufacturer, and/or to a stand sold separately by that manufacturer. The stands typically sell for $125 to $175.

The wide range of prices and features reflect that parents and other caregivers buy bassinets for different purposes. Some people buy a large bassinet with a non-folding stand as a primary sleep space for the nursery, while others buy small portable items for travel, napping, or occasional care by a non-parent. No one best-selling size, price range, or set of features exists for bassinets. For example, the ten best-selling bassinets on Amazon in February 2023 ranged in price from $42 to $200 and included two small traditional bassinets that fold for transport, five bassinet/bedside sleeper combination products, two large cantilever bassinets, and an ''infant lounger'' with a rigid frame. Prices and features on Walmart.com had a similar variety, with prices of the ten best-selling bassinets ranging from $50 to $150. The best-selling products there included small portable bassinets, traditional bassinets on a stand that do not fold for transport, a combination bassinet/play yard, and several combination bassinet/bedside sleepers.

With approximately 3.1 million new bassinets sold per year, including items with a bassinet mode, at an average price of approximately $100 per unit, CPSC estimates the total U.S. bassinet market is approximately $310 million in sales per year. This total does not include the market for used items. Based on this IRFA's estimate of approximately 500,000 used units per year (see previous section), and an estimated used price of $40 based on observed prices of used bassinets on Ebay and Mercari as a percentage of original retail prices, the used market would represent approximately $20 million dollars in sales per year.

Prices for after-market bassinet mattresses range from $20 to $180, with most products in the $30 to $40 range, which is also the price range for replacement mattresses from the original bassinet supplier. The high end of the price range for after-market mattresses are hand-crafted items with a specialty fill and/or cover, such as natural rubber or organic fiber. Most after-market mattresses are sold online by small importers and foreign direct shippers. Several hundred U.S.-based crafters sell after-market mattresses that appear to have been hand-cut from upholstery foam. With a typical price of $35 and annual sales of 680,000 units per year, the after-market bassinet mattress market is approximately $23.8 million per year.

Bassinet and Bassinet Mattress Suppliers: Many manufacturers and importers, as well as foreign direct shippers, supply bassinets and cradles. CPSC identified more than 120 suppliers in March of 2023, including suppliers that sell play yards or strollers with bassinet attachments. Most companies that supply bassinets also supply a variety of other infant and children's products; bassinets are typically not their only or main product line. JPMA currently has 22 member companies that are certified for bassinet/cradles,[82] including companies that manufacture or import stroller bassinets and play yard bassinet attachments, although one of the 22 does not appear to currently have any products on the U.S. market.

Bassinets and cradles are available from online general retail sites, online baby product sites, and brick and mortar general retail stores, including ''big box''

[81] *https://www.statista.com/statistics/824751/total-hospital-bassinet-numbers-in-the-us/.*

[82] JPMA runs a certification program for members, which includes third party testing to current ASTM and CPSC standards. See *https://www.jpma.org/page/certification.*

stores. Two brick and mortar specialty chain stores for infants and children sell bassinets. Multiple online furniture stores associated with religious communities sell traditional solid hardwood cradles made in the U.S. A few woodworkers from foreign countries sell carved wooden cradles on a prominent online site for hand-crafted items.

Hundreds of suppliers, including importers and U.S.-based hand crafters, supply after-market bassinet mattresses. These products are sold almost exclusively online, although a few are available to pick up in local big box stores after ordering online. While replacement mattresses from the original supplier are also sold primarily online, a few are similarly available for pick up in a big box or children's specialty store after ordering online.

Small Entities to Which the Proposed Rule Would Apply: Currently, over 120 firms supply more than 250 models of bassinets to the U.S. market. Large U.S. business and foreign businesses of all sizes constitute the majority of the suppliers of the available models. Most of the U.S.-based manufacturers and importers are small companies based on Small Business Administration (SBA) size standards. Of the identified 50 U.S-based suppliers to the U.S. market, 43 are small importers or small manufacturers, five are large U.S. manufacturers, and two are large U.S. importers. The rest of the market is foreign direct shippers [83] and foreign manufacturers. Eight foreign manufacturers have U.S. distribution/warehouse operations that would meet the SBA size standard for a small importer if considered separately.[84]

The total number of suppliers estimated here is approximate because online third party sellers (primarily small importers and foreign direct shippers) sell a wide variety of products, and can enter and exit the market quickly. In addition, as noted, multiple online furniture stores associated with religious communities sell wooden bassinets and cradles manufactured in the U.S.; CPSC was unable to estimate how many individual small manufacturers each of these furniture distributors might represent. The SBA size standards for small entities are based on the number of employees or the annual revenue of the firm, and there is a specific size standard for each 6-digit North American Industry Classification Series (NAICS) category.[85] The U.S. Census Bureau conducts an annual survey of small businesses in the U.S. and counts how many large and small businesses are in each NAICS category.[86]

A NAICS category specifically for bassinet manufacturing or importing does not exist. Companies that manufacture bassinets may be categorized as furniture, textile product, toy and game, or apparel manufacturers. Importers are generally considered a type of merchant wholesaler, as are furniture wholesale distributors. Other NAICS categories may apply to companies that manufacture or import bassinets, but for whom bassinets are not their main product line. As seen in the table below of applicable NAICS categories, the SBA small entity threshold for manufacturers is generally 500 to 1000 employees, while it is generally 100 to 150 employees for importers and wholesalers.

Companies that manufacture or import bassinets would fit into the NAICS categories shown in Table 4. As shown in Table 4, the majority of the U.S. businesses in the applicable categories for manufacturing and importing bassinets are small businesses, and there are thousands of such small businesses.

TABLE 4—NAICS CATEGORIES FOR MANUFACTURERS AND IMPORTERS OF BASSINETS/CRADLES

NAICS series No.	NAICS series description	SBA size standard for small business (employees)	Number of businesses in series	Number of small businesses in series	Percentage of businesses that are small (%)
314999 ..	All Other Miscellaneous Textile Product Mills	500	2,415	2,396	99
315240 ..	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	750	888	888	100
337122 ..	Non-upholstered Wood Household Furniture Manufacturing	750	1,992	1,982	99
337124 ..	Metal Household Furniture Manufacturing	750	258	252	98
337125 ..	Household Furniture (except Wood and Metal) Manufacturing	750	151	151	100
337910 ..	Mattress Manufacturing	1,000	324	315	97
339930 ..	Doll, Toy, and Game Manufacturing	500	507	503	99
423220 ..	Home Furnishing Merchant Wholesalers	100	5,784	5,511	95
423920 ..	Toy and Hobby Goods and Supplies Merchant Wholesalers	150	1904	1859	98
424330 ..	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	100	6,669	6,458	97
Total			20,892	20,315	97

The applicable NAICS category for after-market mattress manufacturers is 337910 ''Mattress manufacturing,'' for which the SBA size standard for a small business is 1,000 employees. For after-market mattress importers, the applicable NAICS category is 423210 ''Furniture Merchant Wholesalers,'' for which the SBA size standard for a small business is 100 employees. In the 2019 Census data, 324 businesses manufactured mattresses and 4,824 businesses were furniture merchant wholesalers. More than 95 percent of

[83] CPSC uses this term to refer to sellers who ship directly to the consumer from an address in a foreign country.

[84] The SBA regulations in 13 CFR 121.105 specify that a U.S. small business for the purposes of SBA program eligibility is ''a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' Consistent with this definition, CPSC considered a company to be a U.S. manufacturer if they have a headquarters and design products in the U.S., and market products with their own brand name, although production may take place overseas. Similarly, we considered a U.S. company affiliated with a foreign company, such as a licensed distributor, to be a U.S. importer if they ship from a U.S. address, because shipping from a U.S. address would require ''use of American products, materials or labor.''

[85] The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. For more information, see *https://www.census.gov/naics/.* Some programs use 6-digit NAICS codes, which provide more specific information than programs that use more general 3- or 4-digit NAICS codes.

[86] *https://www.census.gov/programs-surveys/susb/data/tables.html.*

these suppliers were small businesses using the SBA size standards.

The proposed rule would not impose any requirements or direct impacts on retailers of any size, unless they themselves manufacture or import bassinets or after-market mattresses, because the rule would not prevent the sale of products manufactured or imported before the effective date. Indirect impacts could occur if the rule were to reduce consumer demand for bassinets or after-market mattresses, but it is unlikely that impact would be significant (more than one percent of annual revenue) for any retailer.

C. Compliance, Reporting, Paperwork, and Recordkeeping Requirements of the Proposed Rule

The proposed rule would require suppliers (manufacturers and importers) of bassinets to meet performance, warning label, and user instruction requirements, and to conduct third party testing to demonstrate compliance. This section discusses the reporting and paperwork requirements; compliance costs are analyzed in detail in section VIII.E of this preamble.

Suppliers must demonstrate that they have met the performance requirements of the rule by providing a children's product certificate. As specified in 16 CFR part 1109, suppliers who are not the original manufacturer, such as importers, may rely on the testing or certification suppliers provide, as long as the requirements in part 1109 are met. Manufacturers and importers are required to furnish certificates to retailers and distributors (section 14(g)(3) of the CPSA); retailers are not required to third party test the children's products that they sell unless they are also the manufacturer or importer. Suppliers must also provide product registration cards. The recordkeeping and compliance documentation does not require specialized expertise, nor does it include new requirements. CPSC's public website provides instructions and examples for how to develop the children's product certificates and product registration cards.[87]

The proposed reporting and recordkeeping requirements are the same as those in the current mandatory bassinet standard. The proposed rule does not require additional packaging or instructions beyond what the current standard requires. While the proposed rule revises the warning label to match the current ASTM standard, with modifications, the cost to implement the requirement should be the same as under the existing part 1218 requirement. All children's products under OMB Control Number 3041–0159 require Certificates of Conformance. However, CPSC is seeking a new OMB control number for bassinets/cradles and after-market bassinet mattresses. When the Children's Product Testing and Certification OMB Control Number 3041–0159 is next updated, the Information Collection burden estimates for the products within the scope of this rule will be updated to reflect current estimates of the number of suppliers and to add the requirement for warning labels on after-market bassinet mattresses. Registration cards are exempt from PRA burden analysis under section 104(d)(1) of the CPSIA.

D. Federal and State Rules That May Overlap With This NPR

CPSC has not identified any other Federal rules that duplicate, overlap, or conflict with the proposed rule. Some products marketed as ''bassinets'' may be within the scope of CPSC's mandatory standards for infant sleep products, hand-held infant carriers, or non-full-size cribs. The FDA regulates medical bassinets, so those products are not within scope of this rule and thus there is no overlap with FDA regulations. Combination products, such as bedside sleepers with a bassinet mode, must meet the requirements of both standards. Also, the rules for after-market bassinet mattresses and crib mattresses do not overlap, as after-market bassinet mattresses are not within scope of the Safety Standard for Crib Mattresses, codified at 16 CFR part 1241.

If finalized, the proposed rule will impact infant sleep product suppliers that are compliant with the current ISP Rule but do not meet the requirements of this NPR because the ISP Rule references part 1218. Therefore, all infant sleep products within the scope of the ISP Rule must comply with the updated bassinet performance requirements.

E. Potential Impact on Small Entities

Some products currently on the market would likely meet the proposed requirements without physical modifications, particularly larger traditional bassinets and cradles, many combination bedside sleeper/bassinets, and mesh attachments to play yards that meet the current standard. However, small bassinets, floor bassinets, in-bed sleepers, Moses baskets, and stroller and play yard bassinets that are shorter than 27 inches at the top side/rail, or do not have a sleep surface 15 inches above the floor, would need to be modified to meet the standard or taken off the market. Bassinets and cradles that are not flat may not meet the new, more stringent requirement for resting angle. Products with soft mattresses or other types of non-rigid floors may not meet the new mattress firmness requirement. Products with soft sides may not meet the new side rigidity requirement. Some multi-mode products with adjustable heights have settings lower than 15 inches, which will require modification to achieve compliance. After-market mattresses that are thicker than the required maximum thickness, do not meet the firmness requirements, or have a larger than allowable gap between the mattress and the side of the intended product would require modification. All after-market mattresses will require warning labels and registration cards.

Based on staff's review of products currently on the market, the majority of the bassinet products that appear to be too short to meet the proposed height requirements are sold by foreign companies, including foreign direct shippers. However, at least 19 small U.S. manufacturers and nine small U.S. importers may be significantly impacted by this proposed rule because they would have to modify or discontinue some or all of their products. This represents slightly more than half of the 43 small U.S. firms identified as bassinet manufacturers or importers. CPSC considers a cost impact of greater than or equal to one percent of annual revenue to be a ''significant'' economic impact, consistent with other Federal Government agencies.

1. Products That Would Require Modification, Cost of Modifying Product

Products on the market that would need to be redesigned to meet the new standard, particularly the side/rail height requirement, include:

- Small rigid-framed conventional bassinets, sometimes marketed as portable, travel, or compact bassinets, with a top side/rail height of less than 27 inches, and short feet or legs.[88]
- Small soft-sided bassinets, sometimes marketed as in-bed sleepers or compact bassinets, with a top rail

[87] See, for example: *https://www.cpsc.gov/Testing-Certification/Childrens-Product-Certificate-CPC* and *https://www.cpsc.gov/Business--Manufacturing/Business-Education/Durable-Infant-or-Toddler-Products/FAQs-Durable-Infant-or-Toddler-Product-Consumer-Registration.*

[88] Small bassinets under 27 inches high with short feet or legs may be compliant with the current bassinet standard, and the ISP standard, in part because they have feet or legs. But they will not meet the requirements of this NPR if they are under 27 inches high at the side/rail or have less than 15 inches of ''ground clearance'' between the sleep surface and the floor.

height of less than 27 inches, and short feet or legs.

- Bassinets of any size or type that do not meet the requirements for sidewall structural integrity or mattress firmness.
- Rocking bassinets or cradles, cantilever products, and any other bassinet that does not meet the new, more stringent requirement for resting angle.
- Moses baskets sold without a stand.
- Travel and outdoor bassinets, sometimes marketed as ''play pens,'' that are shorter than 27 inches high at the top side/rail and have very short or no legs.
- Combination bedside sleeper/bassinets with adjustable heights where at least some of the height settings have the sleep surface less than 15 inches from the floor.
- Play yard and stroller attachments that are sold separately, and are below 27 inches in height at the top side/rail and have short or no legs.
- Play yard and stroller attachments sold with the play yard or stroller that are below 27 inches in height, have short or no legs, and can be used as a bassinet separately from the play yard or stroller.
- After-market mattresses that are marketed for use with unspecified brands/models of bassinet, cradle, or bassinet accessory, because it would not be possible to verify that such mattress meets the gap requirement.
- After-market mattresses that do not meet the thickness, firmness, or gap requirements in the rule.

Bassinets and Cradles: Some manufacturers would need to redesign their bassinet products, at a cost of approximately $80,000 per model (calculation explained in the next paragraph) or remove the products from the market. The cost of modifying the product to meet the standard could be significant for small entities whose products do not meet the performance requirements in the NPR.

Based on level of effort, CPSC estimates a one-time redesign at 400 hours of professional staff time per model, including in-house testing of the prototypes.[89] Using Bureau of Labor Statistics (BLS) Employer Costs of Employee Compensation,[90] the estimated cost per supplier for labor, at a current cost for professional labor of $62.65 per hour, is $25,060 (which can be rounded to $25,000 for the purpose of this cost estimate). Given that many bassinets have metal or molded plastic parts, new molds or metal templates may be required. These materials costs for prototyping are estimated to be up to $10,000, with up to $100,000 for new molds or templates for the eventual final design if those are required. Therefore, CPSC estimates the total cost of redesign is approximately $35,000 to $125,000 per model, with a midpoint estimate of $80,000.

In many cases, the redesign cost would not be significant. For example, redesigning mesh sides or making a mattress firmer would not require significant expenses or new templates or molds. Also, changing a resting side angle tilt from 7 degrees to 1 degree may be a minor redesign for models without motorized movements. Making a short rigid bassinet that otherwise meets all the stability and structural requirements a few inches taller may also not require a significant redesign. Modifying a bedside sleeper/bassinet combination product to remove the lowest height settings below 15 inches would not require a significant redesign. Some companies may offer a wide selection of fabric coverings and attachments such as canopies and toy bars on structurally similar models where the cost of redesign per model could be less for structurally similar models from the same supplier. In some cases, the redesign of a stroller bassinet or Moses basket to achieve compliance could involve requiring it to be sold only with the stroller or stand, which might require redesigning the packaging. Many bassinet designs are physically similar, so it is possible that smaller manufacturers will be able to learn from innovative redesign solutions by other manufacturers. Redesigning a mattress to be a compliant thickness and shape to fit a specific bassinet product should not require iterative prototyping or changes in production inputs. If a thick mattress is redesigned in a way that uses less material, the cost of production might be less in the long term. In most cases, redesigning an after-market mattress will also require redesigning the marketing and packaging to specify which bassinet product it fits with the required maximum ''gap.''

Many manufacturers have outsourced production to Asia, but design their products in North America, thus reflecting U.S. labor and materials costs for prototype designs. Manufacturers with a range of physically similar products may be able to reduce the design cost per model. However, smaller manufacturers would be less likely to be able to benefit from such economies of scale. For example, a large manufacturer may have several dozen play yard models with bassinet inserts or attachments, while a smaller manufacturer may have only one or two such models. While importers would not directly pay for the cost of redesign, the cost of redesign by others would almost certainly be reflected in the wholesale price. Small importers are less likely than large importers to have the market power to negotiate wholesale prices.

CPSC considers one percent of revenue to be a ''significant'' economic impact, consistent with other federal government agencies. Eighty thousand dollars would be one percent of revenue for a firm with $8 million in revenue, which would represent sales of about 80,000 units at a retail price of $100. Given that there are more than 250 models in this market, with annual sales for the whole industry estimated at 3.1 million units per year, the average number of sales per model is estimated at less than 12,500 units. Thus, the cost could be significant for small U.S. firms with limited sales volume whose products are not compliant with the new requirements. However, no small firms appear to have bassinets as their only product, so the cost of bassinet redesign could be less significant when the revenues from other products are considered. CPSC estimates that 19 small U.S. manufacturers and nine U.S. importers supplying about 70 different models may need to redesign some or all of their products or remove them from the market. CPSC also estimates that the cost could be significant for some of those small firms, depending on their revenue from other products and on how much redesign is required.

With an estimated 70 bassinet models from 28 small U.S. businesses that need to be redesigned, at $80,000 per model, the total cost for all small U.S. entities is estimated at about $5.6 million for redesign only in the first year after that the proposed rule would be published. While cosmetic redesigns each year are typical in this industry, the structural redesigns required by this proposed rule would not have occurred in the status quo. Therefore, they should properly be considered a cost of the rule, and not routine costs. The ongoing cost of compliance after the first year that the final rule is in effect is expected to be minimal for materials and labor, as the redesigned products would likely use the same types of materials and production methods as current products. There may be additional,

[89] This reflects an estimate of 10 weeks of professional engineering, design, and testing staff time per model. While a redesign of one product could take less effort, this estimate reflects that an iterative process with multiple attempts to meet the NPR requirements may be required. This estimate also reflects time to design the molds or templates to scale up for commercial production.

[90] *https://www.bls.gov/news.release/archives/ecec_03172023.pdf.* These costs reflect the employers' cost for salaries, wages, and benefits for civilian workers in December 2022.

indirect costs as a result of this proposed rule, such as redesigning packaging to accommodate different physical designs, or increased shipping costs for larger products. As noted earlier, there may be additional costs for suppliers of infant sleep products that are compliant with the current ISP rule but will require modification to comply with the final rule that will follow this NPR. CPSC analysis indicates that there will likely not be a substantial number of impacted small ISP suppliers, as many short, small products in scope of the ISP regulation (that are not bassinets) have been recalled or voluntarily removed from the market since the ISP rule was published.

In addition to these estimates of the cost to small businesses, the estimated total cost to the bassinet industry for compliance with the proposed rule in the first year is approximately $10.25 million. This estimate is based on $80,000 in redesign costs per model, times 125 models (about half the existing models), which is $10 million, plus another $1000 per model for testing, times 250 models, which is $250,000. This amount is the *incremental* cost for bassinets/cradles to comply with the proposed rule, above the cost of complying with the current rule. Therefore, this estimate does not include packaging, shipping, labeling, or marketing costs, because those would be costs suppliers would already be incurring to comply with the existing part 1218.

After-Market Bassinet Mattresses: The majority of after-market bassinet mattress on the market appear to be not compliant with this rule because the mattress is thicker than specified in this NPR, and/or the mattress is not marketed to be used with a specific product for which the fit has been verified. No after-market mattresses currently on the market have the required warning label. There are hundreds of suppliers, many of which appear to be small U.S.-based importers and handcrafters. The cost of modifying an after-market mattress design is expected to take 200 hours of time at an estimated hourly rate of $62.65 according to BLS Employer Costs of Compensation for professional labor, which equates to approximately $12,500 per model. For crafters, the redesign may be as simple as purchasing different filling and cutting to the appropriate size, and adding a warning label, in which case the cost of redesign could be less than $12,500. If a thick mattress is redesigned in a way that uses less material, the cost of production might decrease in the long term.

For after-market mattresses suppliers, $12,500 would be one percent of revenue for a firm with $1.25 million in revenue, which would represent sales of about 41,667 units. Given that there are hundreds of models in this market, with annual sales for the whole industry estimated at 680,000 units per year, the average number of sales per model is far less than 41,667 units. Thus, the cost for a one-time redesign could be significant for small U.S. manufacturing firms, particularly hand crafters, with limited sales of after-market mattresses. However, if crafters can make their product compliant by simply using thinner foam, their cost of redesign might be less than $12,500. Small mattress manufacturers would likely not have bassinet mattresses as their only product, so the cost of redesign could be less than one percent of their total revenue from all products combined. For importers, foreign manufacturers will likely spread the redesign cost across a large number of units so that the impact on importers is not significant. In addition, most importers do not have bassinet mattresses as their only product.

For after-market mattress suppliers, the cost to U.S.-based importers could be minimal, if their foreign suppliers spread the cost of redesign across many units. For example, if a foreign manufacturer redesigns a model at a cost of $12,500, and sells 10,000 units to U.S. importers, the cost per model of the redesign is $1.25. It would not be a significant cost for the importer if their supplier raises the price by just over one dollar on an item that retails for $35. It is also likely that importer would be able to raise the retail price by $1.25 without reducing demand for the product. Similarly, if crafters can source a thinner foam material easily, their cost of redesign may be minimal. As noted earlier, the cost of a warning label is expected to be less than $1 per unit. Assuming that 50 small manufacturers have to redesign their product at a cost of $12,500, the total cost to U.S. small manufacturers for redesign would be about $625,000 in the first year that the rule is effective. This cost may not be significant for some small manufacturers, particularly if they manufacture and/or import other products, which is common, and therefore they can cover at least some of the cost of redesign with revenue from other products.

In addition to these estimates of the cost to small businesses, the estimated total cost to the after-market bassinet mattress industry for compliance with the proposed rule in the first year is approximately $4.05 million, comprised of $12,500 per model in redesign costs, times 300 models (nearly all the existing models), which is $3.75 million, plus another $1000 per model for testing, times 300 models, which is $300,000. This amount is the *total* cost for after-market to comply with the proposed rule, above the cost of complying with any other applicable CPSC regulations such as those for lead and phthalate content.

2. Products That May Be Removed From the Market, Cost of Discontinuing Products

The cost estimate in the previous sections assumes that all non-compliant products supplied by small U.S. entities would be redesigned. A similarly significant impact could occur for small firms if products are instead removed from the market, causing small companies to lose sales revenue from those products. For in-bed sleepers, the performance requirements are intended to discourage use on an elevated or soft surface, and it is likely that all in-bed sleepers would be removed from the market rather than redesigned. Two small U.S. manufacturers and two U.S. importers (included in the count above of 28 impacted U.S. small businesses) currently sell such products that are less than 27 inches tall, as well as more than a dozen foreign direct shippers.

Stroller bassinets could be redesigned to meet the requirements of the standard, because some soft-sided stroller bassinets already collapse/fold so they cannot be used off the stroller as a bassinet. Some are already sold only with the stroller, so that the stroller itself provides the compliant side/rail height, or so they could be re-packaged to be sold only with the stroller. However, some non-compliant rigid stroller bassinets may be removed from the market rather than redesigned to be 27 inches tall, sold only with the stroller, or designed to collapse/fold when not on the stroller. Three small U.S. manufacturers and five small importers currently sell such products, as well as more than a dozen foreign direct shippers and foreign companies with U.S. distributors.

Outdoor bassinets or ''play pens'' that are too short to meet the play yard mandatory standard and have short legs or no legs could be redesigned to meet the requirements of either this standard or the play yard standard. However, they may be removed from the market instead, as redesigning them to meet either standard would involve making them 10 to 16 inches taller. Two small U.S. manufacturers currently sell such product, as well as multiple large and foreign companies.

Compliant after-market mattresses will serve the same consumer need as non-compliant mattresses. Therefore, it is unlikely that they will be removed from the market rather than redesigned, except for a few handcrafter firms for which the redesign cost could be significant. Even a very small manufacturer with limited sales may be able to raise the retail price to partially cover the one-time cost of redesign. However, after-market mattresses suppliers will no longer be able to market their products for use with a generic bassinet because of the gap requirement (which requires a close fit between the bassinet and mattress). The demand for mattresses of a specific bassinet product may be lower than the demand for mattresses for generic/universal fit, therefore the rule could contribute to an overall decrease in demand for after-market mattresses and result in some firms exiting the market.

3. Third Party Testing Costs

This NPR would require manufacturers and importers of bassinets to comply with its performance requirements and demonstrate that compliance through third party testing. As specified in 16 CFR part 1109, entities that are not manufacturers of children's products, such as importers, may rely on the certificate of compliance provided by others. Manufacturers and importers of after-market bassinet mattresses would also be required to demonstrate compliance through third party testing.

While this proposed rule would require all manufacturers and importers of bassinets to arrange and pay for third party testing, this should not be a new cost for any supplier because they are already required to conduct third party testing on their products to comply with the current version of the CPSC mandatory safety standard as specified in part 1218. In addition, 22 of the suppliers are members of the JPMA certification testing program, which provides discounted third party testing to CPSC and ASTM standards. JPMA currently has 22 member companies that are certified specifically for bassinet/cradles, including companies that manufacture or import stroller bassinets and play yard bassinet attachments. JPMA's program requires annual testing, as well as more frequent testing when the product design has been updated or the underlying standard has been revised.

Third party testing will be a new requirement for suppliers of after-market mattresses. Based on testing costs for other consumer products, testing could be $500 to $1000 per model, for the relatively simple tests to confirm thickness and fit. Given that mattresses may already require testing for compliance with other CPSC requirements for lead and phthalates content, the incremental cost of testing to this rule may be less as part of a bundled testing price.

The NPR would require new tests for sidewall integrity, mattress firmness, side-to-side tilt, and sleep surface incline for bassinets, and would require the use of new equipment during testing, including a metal plate to measure side tilt and a tool to test mattress firmness. The NPR proposes an effective date 180 days after publication of the final rule, giving suppliers limited time to test to the new standard. Annual testing costs for bassinets may rise by $100 to $200 per model, to pay for one to two hours of additional laboratory personnel time to test and document the testing results per model. Given the 180-day proposed effective date of the rule, it is possible that companies would be able to replace their annual testing for the current standard with the testing required for this standard without having to conduct an extra testing cycle.

F. Efforts To Minimize Impact, Alternatives Considered

The RFA specifies that the IRFA should describe alternatives to the proposed rule which accomplish the rule's objective but minimize the economic impact to small entities. Exempting small entities from this rule or parts of this rule would not be consistent with the applicable statutes, because this is a safety rule for durable infant or toddler products. 15 U.S.C. 2063(d)(4)(C). The statute allows CPSC to provide ''small batch'' exemptions to testing requirements or alternative requirements for small providers of certain products, but not durable infant or toddler products. The proposed rule does not have design requirements, so CPSC has already provided performance requirements rather than a design standard. CPSC considered several alternatives to this rule to minimize the impact on small entities, including:

- Not revising the mandatory standard;
- Incorporating the ASTM 2022$^{\varepsilon 1}$ standard by reference without modifications; and
- A later effective date.

Not revising the mandatory standard: Part 1218 currently incorporates the 2013 version of the ASTM standard by reference, with some additional requirements. Section 104(b)(2) of the CPSIA requires CPSC to ''periodically review and revise the standards set forth under this subsection to ensure that such standards provide the highest level of safety for such products that is feasible.'' Given CPSC's statutory mandate, and continuing incidents associated with bassinets/cradles as described in section III of this preamble, the Commission has decided to prioritize the safety of infant sleep products ensuring that infant sleep products provide a firm, flat, sleep surface and that caregivers are discouraged from using bassinets/cradles on unsafe elevated and soft surfaces.

The current bassinet standard only specifies that a product must have legs, a base, or a stand, without specifying any specific height for the bassinet, which has led to a proliferation of ''compact'' or ''floor'' bassinets that can foreseeably be misused on elevated and soft surfaces. In addition, this means some in-bed sleepers and ''travel beds'' with very short legs and soft sides may be compliant with the current bassinet standard and the ISP rule. If CPSC does not revise the mandatory bassinet standard, suppliers could offer in-bed sleepers with one inch tall ''feet'' and meet the standard with a product shorter than 10 inches at the top rail. In addition, the current regulation does not include after-market bassinet mattresses in scope, nor are those products included in the scope of the crib mattress regulation. Therefore, if CPSC did not revise the mandatory standard, suppliers could continue to offer thick, soft after-market mattresses marketed to fit an unspecified (generic) bassinet or cradle, with an unknown gap between the mattress and the sidewall.

While not revising the mandatory standard would have no impact on U.S. small businesses, it would not address the known hazards. Most of the small bassinets and in-bed sleepers currently on the market are not supplied by small U.S. businesses, but rather by foreign businesses and particularly foreign direct shippers, so the impact of this rule on small U.S. businesses is limited.

Incorporating the ASTM 2022$^{\varepsilon 1}$ standard by reference without modifications, or waiting for ASTM to make additional modifications: The Commission considered incorporating the ASTM 2022$^{\varepsilon 1}$ standard by reference, and unanimously voted against doing so. The Commission reached this decision after considering staff's analysis that the requirements for ''compact bassinets'' in the 2022 version of the standard are less stringent and less safe than the current standard. Since the Commission's decision, ASTM has continued to meet to consider additional revisions to the standard to address the Commission's

concerns. However, to date, ASTM has not issued a ballot to revise the voluntary standard. CPSC is unsure whether such a ballot would include revisions consistent with this NPR. Based on this uncertainty, the Commission is choosing to move forward with rulemaking. While waiting for ASTM would delay the impact on small businesses, it would not necessarily reduce the impact, depending on the stringency of ASTM's revisions.

A later effective date: The recommended effective date for the final rule is 180 days after publication in the **Federal Register**. This is consistent with other CPSIA section 104 rules, and with JPMA's certification program, which generally allows manufacturers 180 days to comply with a newly published standard. A longer effective date period of one year after publication would reduce the burden on entities of all sizes by allowing more time to redesign and test products. Several hundred products from more than 100 companies would need to test to this standard, and there are currently 41 test labs accredited to the current bassinet standard. In addition, test labs will need to become accredited to the new standard before any product can be tested to this standard. Smaller companies are less likely to have the resources to quickly redesign products than larger ones, and some of the small U.S. companies that have products in scope of this proposed rule have multiple products that do not appear to meet the new performance requirements. However, given that many products already meet the proposed requirements, many labs are already accepted to test the existing bassinet standard and after-market mattresses, and providing a longer effective date would allow the hazards of current bassinets/cradles to continue for a longer period of time, the Commission proposes a 180-day effective date for the final rule.

G. Impact on Testing Labs

In accordance with section 14 of the CPSA, all children's products that are subject to a children's product safety rule must be tested for compliance by a third-party conformity assessment body that has been accredited by CPSC. Testing laboratories that conduct this testing must meet the Notice of Requirements (NOR) for third party conformity testing. CPSC has codified NORs in 16 CFR part 1112.

If finalized, the rule should not have an adverse impact on testing laboratories. CPSC is not proposing to amend part 1112 because bassinets/cradles are already part of that rule. Also, third party labs will not require new testing equipment for the modifications described in the NPR, other than a mattress firmness testing device and a metal plate to measure resting side tilt. The instrument for measuring mattress firmness is the same one specified in the regulation for crib mattresses. No laboratory is required to provide testing services. The only laboratories that would be expected to provide such services are laboratories that anticipate receiving sufficient revenue from the mandated testing to justify procuring the testing equipment and obtaining accreditation. However, CPSC expects that most of the existing 41 labs accredited to test bassinets would request updated accreditation because they are already accredited and have met the NOR for the current standard. Also, most laboratories are not small U.S. businesses; more than 30 of those labs are in Asia or Europe.

IX. Environmental Consideration

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have ''little or no potential for affecting the human environment,'' and therefore do not require an environmental assessment or an environmental impact statement. Safety standards providing performance and labeling requirements for consumer products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The NPR falls within the categorical exclusion.

X. Paperwork Reduction Act

This proposed rule for bassinets and cradles contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth a:

- Title for the collection of information;
- Summary of the collection of information;
- Brief description of the need for the information and the proposed use of the information;
- Description of the likely respondents and proposed frequency of response to the collection of information;
- Estimate of the burden that shall result from the collection of information; and
- Notice that comments may be submitted to the OMB.

Title: Safety Standard for Bassinets and Cradles

Description: As described in section V.C of this preamble, the proposed rule would update the existing labeling and instruction requirements for bassinets and cradles, which has an OMB control number (3041–0159). This NPR would also add after-market bassinet mattresses to the scope of the rule and require new labeling. CPSC will seek a new OMB control number for this update and then move the revised estimate into control number 3041–0159 in the next PRA update for Children's Products. The NPR proposes that bassinets and cradles meet the requirements of ASTM F2194—22^{e1}, *Standard Consumer Safety Specification for Bassinets and Cradles,* with the proposed additional requirements and modifications summarized in section V of this preamble. Sections 8 and 9 of ASTM F2194—22^{e1} contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import bassinets, cradles, and after-market mattresses for bassinets/cradles. Over 120 firms supply more than 250 models of bassinets to the U.S. market. Based on an evaluation of suppliers, most of the U.S.-based manufacturers and importers are small companies, using SBA size standards. In addition, hundreds of firms supply after-market bassinet mattresses to the U.S. market, including many small importers and hand-crafters in the U.S., as well as foreign direct shippers.

Estimated Burden: The estimated burden of this collection of information is as follows:

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
Labeling and instructions	220	2	440	2	880

This estimate is based on the following: CPSC estimates there are 220 suppliers that would respond to this collection annually, and that the majority of these entities would be considered small businesses. CPSC assumes that on average each firm that reports annually would respond twice, as product models for bassinets and cradles are brought to market and new labeling and instruction materials are created, for a total of 440 responses annually (220 respondents × 2 responses per year). CPSC assumes that on average it will take one hour for each respondent to create the required label and one hour for them to create the required instructions, for an average response burden of two hours per response. Therefore, the total burden hours for the collection is estimated to be 880 hours annually (440 responses × 2 hours per response = 880 total burden hours).

CPSC uses $37.87 [91] from BLS as the hourly compensation for the time required to create and update labeling and instructions. Therefore, the estimated annual cost of the burden requirements is $33,326 ($37.87 per hour x 880 hours = $33,325.60). No operating, maintenance, or capital costs are associated with the collection. Based on this analysis, the proposed revisions to the standard would impose a burden to industry of 880 hours at a cost of $33,326 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by June 17, 2024, to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this proposed rule).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- The accuracy of the CPSC's estimate of the burden of the proposed collection of information, 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 reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- The estimated burden hours associated with label modification, including any alternative estimates.

XI. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), states that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the Federal standard. Section 104(b) of the CPSIA refers to the rules to be issued as ''consumer product safety rules.'' Therefore, the preemption provision of section 26(a) of the CPSA would apply to a revised rule for bassinets and cradles.

XII. Certification and Notice of Requirements

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Section 14(a)(2) of the CPSA requires that certification of children's products subject to a children's product safety rule be based on testing conducted by a CPSC-accepted third party conformity assessment body. Section 14(a)(3) of the CPSA requires the Commission to publish an NOR for the accreditation of third-party conformity assessment bodies (or laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The Commission already issued an NOR for bassinets/cradles in 2013 when the existing rule was promulgated.

Test laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the revised standard for bassinets/cradles would be required to meet the third-party conformity assessment body accreditation requirements in part 1112. Testing laboratories should not be adversely impacted as a result of this rule. Approximately 41 third party testing laboratories are CPSC-accepted to test compliance with part 1218. Staff expects that these labs will become accredited and CPSC-accepted to test to a revised bassinet standard in the normal course of business. No new testing equipment is required for the modifications described in the NPR, other than a mattress firmness testing device, and a metal plate to measure resting side tilt. The instrument for measuring mattress firmness is the same as specified in the regulation for crib mattresses; 11 of 12 laboratories that are CPSC-accepted to conduct crib mattress testing are also accredited to test requirements for bassinets/cradles. CPSC expects that these laboratories will be able to test to a new rule in a short time period. Furthermore, no laboratory is required to provide testing services. The only laboratories that are expected to provide such services are those that anticipate receiving sufficient revenue from the mandated testing to justify procuring the testing equipment and obtaining accreditation.

XIII. Request for Comments

[91] U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2023, Table 4, total compensation for all sales and office workers in goods-producing private industries: *https://www.bls.gov/news.release/archives/ecec_12152023.pdf.*

This proposed rule is part of a rulemaking proceeding under section 104(b)(2) of the CPSIA to revise the consumer product safety standard for bassinets and cradles to ensure that this standard provides the highest level of safety that is feasible. The Commission requests comments on the proposal to incorporate by reference ASTM F2194–22$^{\varepsilon 1}$, with the modifications discussed in sections IV and V of this preamble. The Commission also requests comments on the proposed effective date, and any aspect of this proposal. During the comment period, ASTM F2194–22$^{\varepsilon 1}$ is available as a read-only document at: *http://www.astm.org/cpsc.htm*. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this document.

Specifically, CPSC requests comment on the following topics:

A. Proposed Side Height Requirements

1. Is the proposed requirement for a minimum 27-inch external side/rail height feasible? Please provide any rationale, data, tests, and/or scientific studies to support your comment.

2. Will the 27-inch proposed external side/rail height requirement address the hazard of using the bassinet on an elevated surface such as a bed or sofa? Is there a different height that can better address the same hazard?

3. Does the 27-inch proposed external side/rail height requirement cause a reduced utility, such as reduced portability, and would this impact safety in a negative manner?

4. Will the 27-inch proposed external side/rail height requirement impact bedside sleepers that are designed to fit lower to the ground adult beds?

5. Should an exemption to the 27-inch proposed external side/rail height requirement be included for bedside sleepers because they are designed to be used next to the adult bed and not on top of the adult bed?

6. Are there studies, surveys or anecdotal consumer feedback that show the 16-inch external side/rail height set by ASTM F2194–22 $^{\varepsilon 1}$ will discourage use on elevated surfaces including an adult bed?

7. Are there other potential requirements, such as leg designs, to address the hazard of using the bassinet on an elevated surface?

8. Should a defined ''stand'' be required to discourage use on an elevated surface?

B. Proposed Requirements For a Minimum 15-Inch Occupant Sleep Surface Height

1. Will the proposed minimum 15-inch occupant sleep surface height requirement address the hazard of using the bassinet on an elevated surface such as a bed or sofa? If not, is there a more adequate occupant sleep surface height and why?

2. Are there any other performance requirements needed for bassinets that have a 27-inch external side/rail height and 15-inch occupant sleep surface height?

C. Proposed Side Wall Rigidity Requirements

1. Are the proposed side wall rigidity requirements adequate to address the risks of suffocation and falls from products?

2. Are there any other performance requirements CPSC should consider to address the risks of suffocation and falls?

D. Proposed Mattress Firmness Requirements

1. Are the proposed mattress firmness requirements adequate to address the risk of suffocation?

2. Are there any other performance requirements CPSC should consider to address the risk of suffocation?

E. Firmness Requirements for Soft Sided Bassinets

1. Should CPSC propose side firmness requirements to address infants rolling their face into the side of a bassinet?

2. If side firmness testing is necessary, what test method would adequately evaluate side firmness?

F. Proposed Tilt and Incline Limitation Requirements

1. Is a 0-degree limitation on the side-to-side tilt of a bassinet, with a maximum tilt angle limit not to exceed one degree (a tolerance limit) for each direction independently ($0 \pm 1°$) feasible? If not, what angle/tolerance is feasible, please provide data.

2. Is the maximum 10-degree head to toe angle limitation adequate to address chin to chest incidents and any other hazard patterns?

3. The proposed test method would require that the side-to-side tilt test be conducted on all sides of the bassinet, if the unit is circular, square, or has no obvious lateral sides. Would it improve safety to require that bassinets wide enough to allow an infant to sleep sideways be tested for side-to-side tilt in each position that a baby could be placed? If so, what would be the appropriate width for such a consideration?

G. Inclusion of After-Market Bassinet/Cradle Mattresses Within the Scope of the NPR

1. Is the proposed warning label for after-market bassinet mattresses appropriate?

2. Is the estimated annual sales volume in the IRFA (section VIII of this preamble) accurate? If not, please provide any information that would validate a different estimate on the rate of after-market mattress sales (number of units sold per year).

H. Proposed Warning Label Requirements for Bassinets/Cradles

1. Are the proposed warnings adequate to address the hazards associated with bassinets/cradles and after-market bassinet mattresses? Should CPSC consider additional warnings?

2. Section 8.6.2.6 of ASTM F2194–22$^{\varepsilon 1}$ requires a specific statement warning consumers not to carry infants in bassinets/cradles constructed of cardboard; should all bassinets have this statement except those that meet 16 CFR part 1225, Safety Standard for Hand-Held Infant Carriers?

I. Initial Regulatory Flexibility Analysis and Other Topics

1. *Significant impact.* Is CPSC's estimated cost of redesign to achieve compliance accurate? If not, please provide additional information and support for your proposed correction. Also, do the estimated costs represent more than one percent of annual revenue for individual small U.S. manufacturers and importers?

2. *Testing costs.* Will third party testing costs for bassinets increase as a result of the requirements in this NPR, and if so, by how much?

3. *Testing costs.* Is CPSC's estimated third party testing costs for after-market mattresses accurate? If not, please provide supporting data, and the extent to which this cost will impact small businesses.

4. *Effective date of 6 months.* How much time is required to come into compliance with a final rule (including product compliance and third party testing)? Please provide supporting data with your comment, particularly from small businesses.

5. *Alternatives to reduce the impact on small businesses.* Are there any alternatives to the rule that could reduce the impact on small businesses without reducing safety? Please provide supporting data with your comment, particularly addressing small businesses.

J. Feasibility

1. Are the proposed requirements in this NPR feasible, both technically and economically?

2. What would be the total cost to industry of implementing this rule? Please be specific about labor and/or materials costs to redesign products, and costs of third party testing.

3. Will complying with this rule increase the costs of production or the retail price of bassinets? Why? By how much?

4. Will complying with this rule permanently increase the costs of production or the retail price of after-market bassinet mattresses? Why? By how much?

List of Subjects in 16 CFR Part 1218

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Toys.

For the reasons discussed in the preamble, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

PART 1218—SAFETY STANDARD FOR BASSINETS AND CRADLES

■ 1. Revise the authority citation for part 1218 to read as follows:

Authority: 15 U.S.C. 2056a.

■ 2. Revise § 1218.2 to read as follows:

§ 1218.2 Requirements for bassinets and cradles.

(a) Except as provided in paragraph (b) of this section, each bassinet and cradle must comply with all applicable provisions of ASTM F2194–22$^{\varepsilon 1}$, *Standard Consumer Safety Specification for Bassinets and Cradles* (approved on July 15, 2022). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* A free, read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* You may also obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; *www.astm.org.*

(b) Comply with the ASTM F2194–22F2194—22$^{\varepsilon 1}$ standard with the following additions or exclusions:

(1) Instead of complying with section 1.3.1 through 1.3.1.5 of ASTM F2194–22$^{\varepsilon 1}$, comply with the following:

(i) 1.3.1 Examples of Products under the Scope.

(ii) 1.3.1.1 Bassinets, cradles, and after-market mattresses for bassinets and cradles.

(iii) 1.3.1.2 Cradle swings with an incline less than or equal to 10° from horizontal while in the rest (non-rocking) position.

(iv) 1.3.1.3 Multi-use products when they are in the bassinet/cradle use mode as defined in 3.1.1.

(v) 1.3.1.4 Bassinet/cradle accessories to products when removed from the product and used in the bassinet/cradle mode. See 3.1.2 for an example.

(vi) 1.3.1.5 Bassinet/cradle features for carriage/stroller when removed from the carriage/stroller and used in the bassinet/cradle mode.

(2) Do not comply with sections 1.3.2 through 1.3.2.3 of ASTM F2194–22$^{\varepsilon 1}$.

(3) Renumber sections 3.1.1, 3.1.1.1, 3.1.1.2, 3.1.1.3, and 3.1.1.4 of ASTM F2194–22$^{\varepsilon 1}$ to sections 3.1.2, 3.1.2.1, 3.1.2.2, 3.1.2.3, and 3.1.2.4.

(4) Insert a new section 3.1.1 and 3.1.1.1 of ASTM F2194–22$^{\varepsilon 1}$:

(i) 3.1.1 After-market mattress, n—a mattress sold or distributed for a bassinet or cradle.

(ii) 3.1.1.1 Discussion—This does not include a replacement mattress provided or sold by an original equipment manufacturer (OEM) if, and only if, it is equivalent with respect to dimensions, and specifications to the mattress that was provided with the original product.

(5) Instead of complying with the newly designated section 3.1.2 of ASTM F2194–22$^{\varepsilon 1}$, comply with the following:

(i) 3.1.2 bassinet/cradle, n—small bed that provides sleeping accommodations for infants, supported by free standing legs, a stationary base/stand/frame, a wheeled base, a rocking base, or a base which can swing relative to a stationary base.

(ii) Note to paragraph (b)(5)(i) of this section—Rationale—the definition was modified to clarify that bassinets can have a variety of bases. The 10-degree sleep surface was moved into the performance requirement section.

(6) Instead of complying with section 3.1.3 and 3.1.3.1 of ASTM F2194–22$^{\varepsilon 1}$, comply with the following:

(i) 3.1.3 bassinet/cradle accessory, n—a supported sleep surface that attaches to a crib or play yard designed to convert the product into a bassinet/cradle.

(ii) [Reserved]

(7) Instead of complying with section 5.14 of ASTM F2194–22$^{\varepsilon 1}$, comply with the following:

(i) 5.14 If the bassinet/cradle product can be converted into another product for which a mandatory consumer product safety standard exists, the product shall comply with the applicable requirements of the consumer product safety standard when in that use mode.

(ii) [Reserved]

(8) Instead of complying with section 6.4.1 of ASTM F2194–22$^{\varepsilon 1}$, comply with the following:

(i) 6.4.1 Stability—Bassinet/cradle—A product in all manufacturer's recommended use positions, including positions where the locks are engaged for preventing rocking/swinging motion of the sleeping surface, shall not tip over and shall retain the CAMI dummy when tested in accordance with 7.4.1.

(ii) [Reserved]

(9) Remove section 6.4.2 of ASTM F2194–22$^{\varepsilon 1}$.

(10) Instead of complying with section 6.10.2 of ASTM F2194–22$^{\varepsilon 1}$, comply with the following:

(i) 6.10.2 The arithmetic mean of the rest angle measurements shall not exceed 1 degree when calculated for each rock/swing direction independently, when tested in accordance with 7.10.

(ii) [Reserved]

(11) Add section 6.12 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 6.12 Product and Bassinet/Mattress Support Height.

(ii) 6.12.1 The lowest top side/rail shall be at minimum 27 inches from the floor.

(iii) 6.12.2 The mattress support height shall be at least 15 inches from the floor to the bottom of the mattress support surface.

(iv) 6.12.3 *Removable Bassinet Beds* can only fully support infant and function when top rail is 27 inches or greater above the external floor with a minimum internal side height of 7.5 inches. (Example: Bassinet collapses/fails or is otherwise unusable when removed from the stand.)

(12) Add section 6.13 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 6.13 Sidewall Rigidity.

(ii) 6.13.1 Sidewall being tested during the stability test (section 7.4) shall not deflect in any direction more than 0.5 in.

(13) Add section 6.14 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 6.14 Sleep Surface Deflection/Firmness.

(ii) 6.14.1 All products within the scope of this standard, when tested in accordance with 7.13, shall not allow the feeler arm of the test fixture to contact the sleep surface of the product.

(14) Add section 6.15 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 6.15 Maximum Sleep Surface Head-to-Toe Angle.

(ii) 6.15.1 The angle of the sleep surface along the occupant's head-to-toe axis relative to the horizontal shall not exceed 10 degrees when tested in accordance with 7.14.

(15) Add section 6.16 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 6.16 Maximum Side-to-Side Tilt Angle for Non-Rocking Bassinets.

(ii) 6.16.1 The unit shall meet 6.16.1.1 and 6.16.1.2.

(iii) 6.16.1.1 The lateral angles of the weighted occupant sleep surface shall not be greater than 1 degree for each direction independently when tested in accordance with 7.15.1.

(iv) 6.16.1.2 The lateral angles low-weight occupant sleep surface shall not be greater than 1 degree for each direction independently when tested in accordance with 7.15.2.

(16) Add section 6.17 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 6.17 *Electrically Powered Bassinets/Cradles (remote control devices are exempt from the requirements in 6.17).*

(ii) 6.17.1 Each battery compartment shall provide a means to contain the electrolytic material in the event of a battery leakage. This containment means shall not be accessible to the occupant.

(iii) 6.17.2 Positive protection from the possibility of charging any primary (non-rechargeable) battery shall be achieved either through physical design of the battery compartment or through the use of appropriate electrical circuit design. This applies to situations in which a battery may be installed incorrectly (reversed), and in which a battery charger may be applied to a product containing primary batteries. This section does not apply to a circuit having one or two batteries as the only source of power.

(iv) 6.17.3 The surfaces of any accessible electrical component, including batteries, shall not achieve temperatures exceeding 160 °F (71 °C) when tested in accordance with 7.16. At the conclusion of the test, there shall be no battery leakage, explosion, or fire, to any electrical component. This test shall be performed prior to conducting any other testing within the performance requirements section.

(v) 6.17.4 AC adapters supplied with the product must denote compliance with the appropriate current national safety standard for AC adapters from a Nationally Recognized Testing Laboratory (NRTL). AC adapters must have a nominal output voltage less than 30 VDC (42.4 VAC (peak)) and must not be capable of delivering more than 8 amps into a variable resistive load for one minute.

(17) Add section 6.18 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 6.18 *After-market Mattress.*

(ii) 6.18.1 After-market mattresses shall meet the requirements of 6.5.2, 6.5.3, 6.6, 6.8, and 6.14 when tested with each brand and model for which it is intended to be used.

(iii) 6.18.2 The after-market mattress must be at least the same size as the original equipment mattress or larger and lay flat on the floor of the product, in contact with the mattress support structure or floor.

(iv) 6.18.3 If the original equipment mattress includes a floor support structure, the after-market mattress must include a floor support structure that is at least as thick as the original equipment mattress floor support structure.

(v) 6.18.4 If the original equipment mattress includes storage accommodations for the product instruction manual, the after-market mattress shall provide equivalent storage accommodations for the product instruction manual.

(18) In section 7.4 of ASTM F2194–22$^{\varepsilon 1}$, replace the word ''Stability'' with the words ''Stability and Sidewall Rigidity.''

(19) Renumber sections 7.4.1.3, 7.4.1.4, and 7.4.1.5 of ASTM F2194–22$^{\varepsilon 1}$ to sections 7.4.1.4, 7.4.1.5, and 7.4.1.6.

(20) In the newly designated section 7.4.1.4, replace ''7.4.1.4'' in the last sentence with ''7.4.1.5.''

(21) Add a new section 7.4.1.3 to ASTM F2194–22$^{\varepsilon 1}$ as follows:

(i) 7.4.1.3 Establish a reference line along the length of the upper side rail/wall being tested.

(ii) [Reserved]

(22) Add new sections 7.4.1.7, 7.4.1.8, and 7.4.1.9 to ASTM F2194–22$^{\varepsilon 1}$ as follows:

(i) 7.4.1.7 Measure the displacement of the upper side rail/wall being tested from the reference line to the new position.

(ii) 7.4.1.8 If necessary, hold the unit to prevent it from tipping over while taking the displacement measurement. Release the product to continue with the stability test.

(iii) 7.4.1.9 Test the unit in all manufacturer's recommended use positions.

(23) Do not comply with sections 7.4.2 through 7.4.2.6 of ASTM F2194–22$^{\varepsilon 1}$.

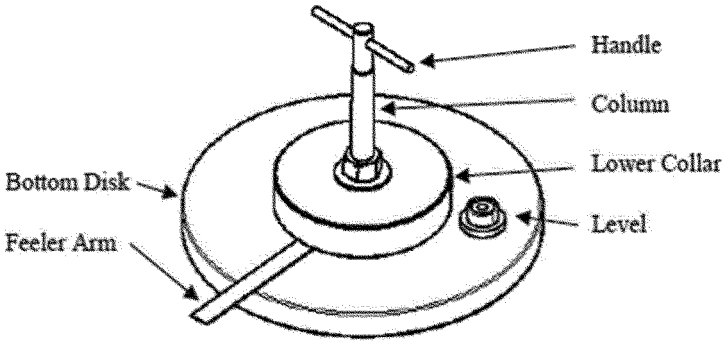
(24) Add section 7.13 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 7.13 *Sleep Surface Deflection/Firmness Test.*

(ii) 7.13.1 Test Fixture.

(iii) 7.13.1.1 The fixture, as shown in figure 1 to this paragraph (b)(24)(iii), shall be a rigid, robust object with a round footprint of diameter 7.99 in. ± 0.039 in. (203 mm ± 1 mm), and an overall mass of 11.46 lb. ± 0.045 lb. (5200 g ± 20 g). The lower edge of the fixture shall have a radius not larger than 0.039 in. (1 mm.) Overhanging the footprint by 1.57 in. ± 0.079 (40 mm ± 2 mm) shall be a flexible, flat bar of width 0.47 in. ± 0.008 (12 mm ± 0.2 mm) with square-cut ends. This bar may be fashioned from a shortened hacksaw blade. The bar shall rest parallel to the bottom surface of the fixture and shall be positioned at a height of 0.59 in. ± 0.008 in. (15 mm ± 0.2 mm) above the bottom surface of the fixture. The bar shall lay directly over a radial axis of the footprint (*i.e.,* such that a longitudinal centerline of the bar would pass over the center of the footprint).

Figure 1 to Paragraph (b)(24)(iii)—Mattress Firmness Test Fixture



(iv) 7.13.1.2 Included on the fixture, but not overhanging the footprint, shall be a linear level that is positioned on a plane parallel to the bar, and in a direction parallel to the bar.

(v) 7.13.1.3 Other parts of the fixture, including any handle arrangement and any clamping arrangement for the bar, shall not comprise more that 30 percent of the total mass of the fixture, and shall be mounted as concentric and as low as possible.

(vi) 7.13.2 Test Method.

(vii) 7.13.2.1 Assemble bassinet/cradle in accordance with manufacturer's instructions.

(viii) 7.13.2.2 Shake and/or agitate the mattress in order to fully aerate and distribute all internal components evenly.

(ix) 7.13.2.3 Place the mattress inside the product in the manufacturer's recommended used position and let the mattress rest for at least 5 minutes.

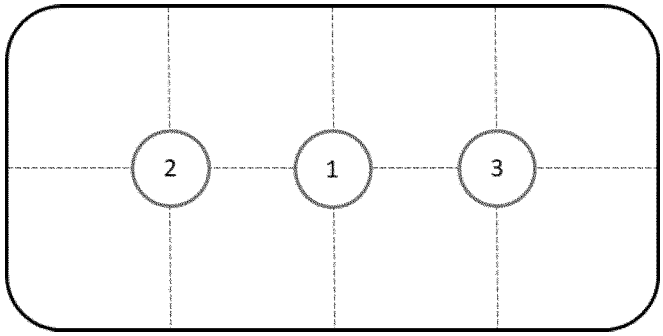
(x) 7.13.2.3.1 Where a user of a mattress could possibly position either side face up, even if not an intended use, then both sides of the mattress shall be tested.

(xi) 7.13.2.4 Place the bassinet/cradle on the floor.

(xii) 7.13.2.5 Test the unit in all manufacturer's recommended use positions that could affect the sleeping surface's deflection/firmness.

(xiii) 7.13.2.6 Mark a longitudinal centerline on the mattress surface and divide this line in half. This point will be the first test location. Then further divide the two lines on either side of the first test location into halves as shown in figure 2 to this paragraph (b)(24)(xiii). These will be the second and third test locations.

Figure 2 to Paragraph (b)(24)(xiii)—Mattress Firmness Test Points



(xiv) 7.13.2.7 Position the test fixture on each of the test locations, with the footprint of the fixture centered on the location, with the bar extending over the centerline and always pointing at the same end of the mattress sleep surface.

(xv) 7.13.2.7.1 At each test location in turn, rotate the bar to point in the required direction, and gently set the fixture down on the mattress sleep surface, ensuring that the footprint of the fixture does not extend beyond the edge of the mattress. The fixture shall be placed as horizontal as possible, using the level to verify. If the bar makes contact with the top of the mattress sleep surface, even slightly, the mattress is considered to have failed the test.

(xvi) 7.13.2.7.2 Repeat Step 7.13.2.7.1 at the remaining locations identified in 7.13.2.6.

(xvii) 7.13.2.7.3 Repeat Step 7.13.2.7.1 at a location away from the centerline most likely to fail (*e.g.,* a very soft spot on the sleep surface or at a raised portion of the sleep surface). In the case of testing a raised portion of a sleep surface, position center of the fixture such that the bar is over the raised portion, to simulate the position of an infant's nose.

(xviii) 7.13.2.7.4 In the event that the fixture is not resting in a nearly horizontal orientation, repeat the test procedure at that location by beginning again from Step 7.13.2.7.1. However, if the test produces a failure even with the device tilted back away from the bar so as to raise it, then a failure can be recorded.

(25) Add section 7.14 to ASTM F2194–22$^{\varepsilon 1}$:

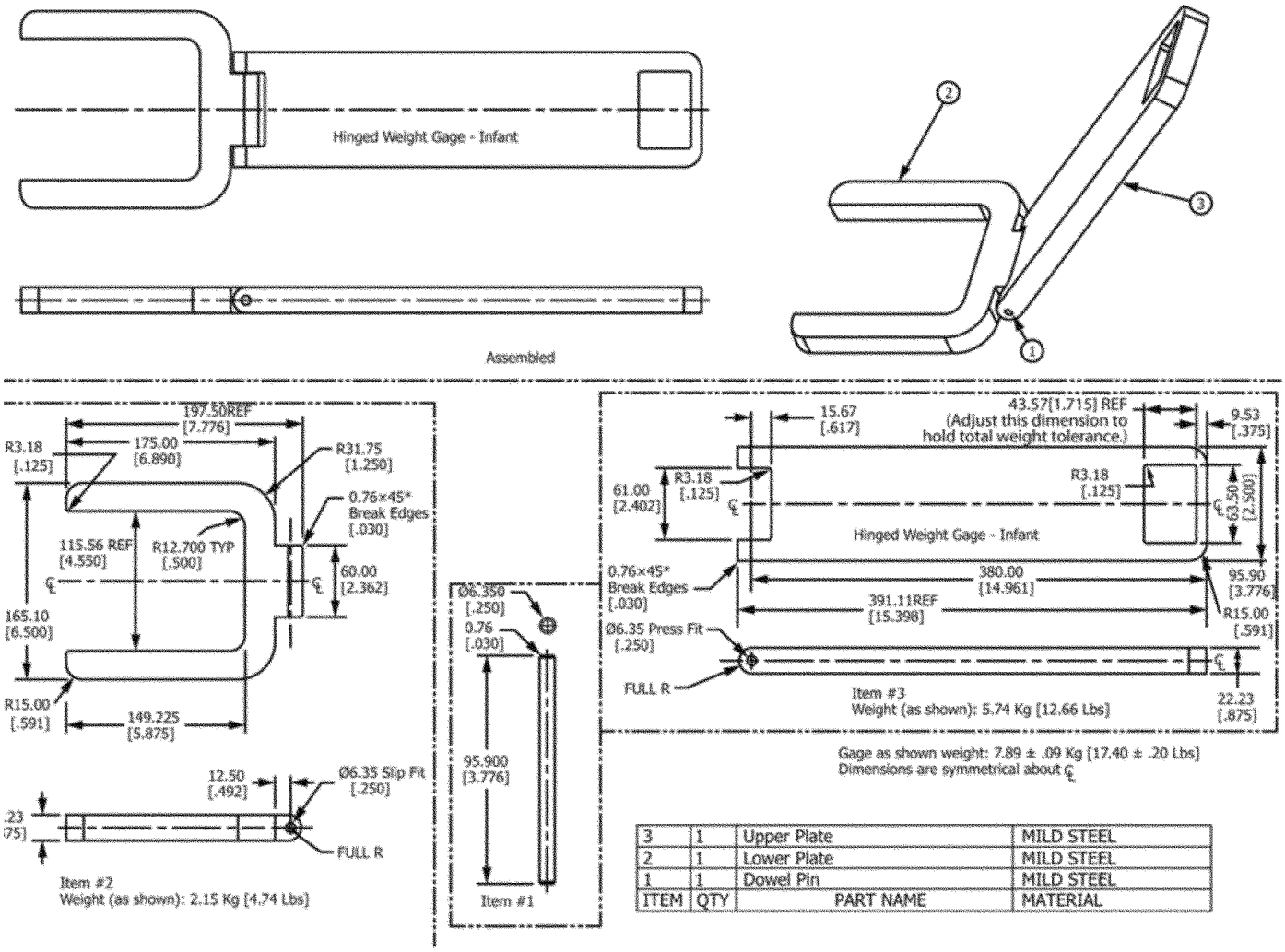
(i) 7.14 *Maximum Sleep Surface Head-to-Toe Angle Test.*

(ii) 7.14.1 Equipment.

(iii) 7.14.1.1 Digital Protractor.

(iv) 7.14.1.2 Hinged Weight Gauge–Infant (figure 3 to this paragraph (b)(25)(iv)).

Figure 3 to Paragraph (b)(25)(iv)—Hinged Weight Gauge–Infant [1]



ITEM	QTY	PART NAME	MATERIAL
3	1	Upper Plate	MILD STEEL
2	1	Lower Plate	MILD STEEL
1	1	Dowel Pin	MILD STEEL

(v) 7.14.2 Test Method.

(vi) 7.14.2.1 Assemble bassinet/cradle in accordance with manufacturer's instructions.

(vii) 7.14.2.2 Place the unit and the inclinometer on a flat level horizontal plane (0 ± 0.5°) to establish a test plane. Zero the inclinometer.

(viii) 7.14.2.3 Place the Hinged Weight Gauge–Infant (figure 3 to paragraph (b)(25)(iv) of this section) in the product equidistant between both head and toe ends and in the geometrical lateral center of the sleep surface. If the unit is circular, square or has no obvious lateral sides, test four perpendicular sides.

(ix) 7.14.2.4 Place a digital protractor on the upper torso/head area lengthwise.

(26) Add section 7.15 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 7.15 *Maximum Side-to-Side Tilt Angle.*

(ii) 7.15.1 Determination of the weighted, lateral angle.

(iii) 7.15.1.1 Assemble the unit in accordance with manufacturer's instructions. If applicable, the unit shall be in the lowest height setting with the mattress pad in place.

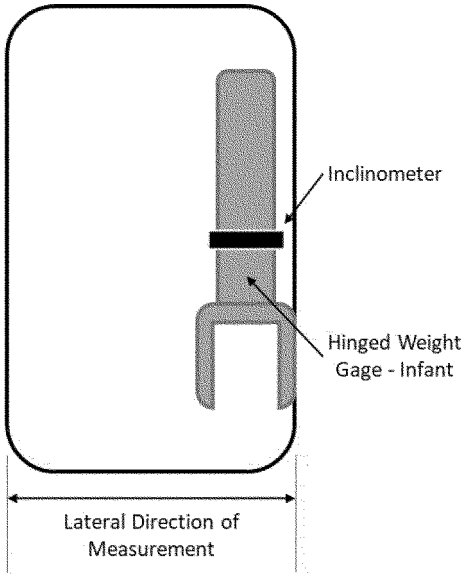
(iv) 7.15.1.2 Place the unit and the inclinometer on a flat level horizontal plane (0 ± 0.5°) to establish a test plane. Zero the inclinometer.

(v) 7.15.1.3 Place the Hinged Weight Gauge—Infant (figure 3 to paragraph (b)(25)(iv) of this section) on the occupant sleep surface with the left side of the gauge parallel to and contacting one lateral, sidewall of the unit and equidistant between both ends of the sleep surface.

(vi) 7.15.1.4 Place the inclinometer on the center of the Upper Plate of the Infant Hinged Weight Gauge and record the lateral angle (figure 4 to this paragraph (b)(26)(vi)).

[1] Reprinted, with permission, from ASTM F3118–17a Standard Consumer Safety Specification for Infant Inclined Sleep Products (withdrawn 2022), copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. A copy of the complete standard may be obtained from ASTM International, *www.astm.org.*

Figure 4 to Paragraph (b)(26)(vi)—Weighted, Lateral Angle Measurement



(vii) 7.15.1.5 Remove the Hinged Weight Gauge—Infant (figure 3 to paragraph (b)(25)(iv) of this section). Remove, agitate and replace the mattress (if applicable) to normalize the occupant sleep surface.

(viii) 7.15.1.6 Repeat 7.15.1.3—7.15.1.5 twice for a total of three measurements. Average the measurements to establish a weighted, lateral angle.

(ix) 7.15.1.7 Repeat the steps in 7.15.1.3–7.15.1.6 except place the Hinged Weight Gauge—Infant (figure 3 to paragraph (b)(25)(iv) of this section) so that its right side is touching the opposite sidewall in the bassinet/cradle. If the unit is circular, square or has no obvious lateral sides, test four perpendicular sides.

(x) 7.15.1.8 Repeat the steps 7.15.1.1–7.15.1.7 at the highest height setting, if applicable.

(xi) 7.15.2 Determination of the low-weight, lateral angle.

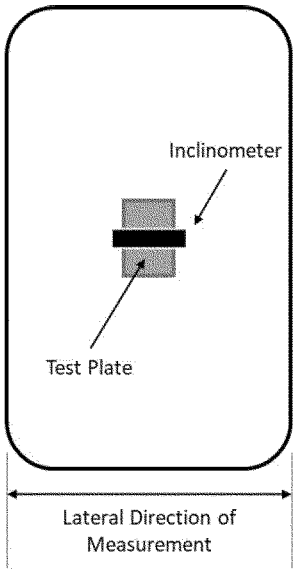
(xii) 7.15.2.1 Assemble the unit in accordance with manufacturer's instructions. If applicable, the unit shall be in the lowest height setting with the mattress pad in place.

(xiii) 7.15.2.2 Place the unit and the inclinometer on a flat level horizontal plane (0 ± 0.5 degrees) to establish a test plane. Zero the inclinometer.

(xiv) 7.15.2.3 Place a test plate [6 by 4 by 0.5 in. (152 by 101.6 by 12.7 mm) nominal thickness steel block weighing 3.3 ± 0.2 lb.] on the center of the unit's occupant sleep surface with the long sides parallel to the long sides of the unit. If the unit is circular, square or has no obvious lateral sides, determine the most onerous orientation of the test plate.

(xv) 7.15.2.4 Place the inclinometer on the center of the test plate and record the lateral angle (*see* figure 5 to this paragraph (b)(26)(xv)).

Figure 5 to Paragraph (b)(26)(xv)—Low-Weight, Lateral Angle Measurement



(xvi) 7.15.2.5 Remove the test plate. Remove, agitate and replace the mattress (if applicable) to normalize the occupant sleep surface.

(xvii) 7.15.2.6 Repeat 7.15.2.3–7.15.2.5 twice for a total of three measurements. Average the measurements to establish the center, lateral angle.

(xviii) 7.15.2.7 Repeat the steps in 7.15.2.3–7.15.2.6 with the test plate on the occupant sleep surface with the left side of the plate parallel to and contacting one lateral, sidewall of the unit and equidistant between both ends of the sleep surface.

(xix) 7.15.2.8 Repeat the steps in 7.15.2.3–7.15.2.6 with the test plate on the occupant sleep surface with the right side of the plate parallel to and contacting one lateral, sidewall of the unit and equidistant between both ends of the sleep surface.

(xx) 7.15.2.9 Repeat the steps 7.15.2.1–7.15.2.7 at the highest height setting, if applicable.

(27) Add section 7.16 to ASTM F2194–22$^{\varepsilon 1}$:

(i) 7.16 The bassinet/cradle shall be tested using fresh alkaline batteries or an AC power source. If the bassinet/cradle can be operated using both, then both batteries and AC power must be tested separately. If another battery chemistry is specifically recommended for use in the bassinet/cradle by the manufacturer, repeat the test using the batteries specified by the manufacturer. If the bassinet/cradle will not operate using alkaline batteries, then test with the type of battery recommended by the manufacturer at the specified voltage. The test is to be carried out in a draft-free location, at an ambient temperature of 68 °F ± 9 °F (20 °C ± 5 °C).

(ii) 7.16.1 Secure the bassinet/cradle so that the sleep surface cannot move during the test. Operate the bassinet/cradle at the maximum speed. Do not disable any mechanical or electrical protective device, such as clutches or fuses. Operate the bassinet/cradle continuously, and record peak temperature. The test shall be discontinued 60 min after the peak temperature is recorded. If the bassinet/cradle shuts off automatically or must be kept ''on'' by hand or foot, monitor temperatures for 30 seconds, resetting the bassinet/cradle as many times as necessary to complete the 30 seconds of operation. If the bassinet/cradle shuts off automatically after an operating time of greater than 30 seconds, continue the test until the bassinet/cradle shuts off.

(28) Instead of complying with section 8.6.2.3, 8.6.2.6, 8.6.5, and 8.6.6 of ASTM F2194–22$^{\varepsilon 1}$, comply with the following:

(i) 8.6.2.3 Product can roll over on soft surfaces and suffocate child. NEVER place product on beds, sofas or other soft surfaces.

(ii) 8.6.2.6 Products shall also address the following:

(A) Always use product on the floor. Never use on any elevated surface.

(B) Do not carry baby in the [*manufacturer to insert type of product*]. [Exception: A product that is intended to carry a baby is exempt from this requirement].

(C) Bassinets/cradles constructed of cardboard shall also address:

(*1*) Do not reuse [*manufacturer to insert type of product*] for second child.

(*2*) [Reserved]

(iii) 8.6.4 See figure 6 to this paragraph (b)(28)(iii) for example warnings for bassinets/cradles.

Figure 6 to Paragraph (b)(28)(iii)—Example Product Warning for Bassinet/Cradle Products

(iv) 8.6.5 See figure 7 to this paragraph (b)(28)(iv) for example warnings for bassinets/cradles made of cardboard.

Figure 7 to Paragraph (b)(28)(iv)—Example Product Warning for Bassinet/Cradle Products Made of Cardboard

⚠ WARNING

Failure to follow these warnings and the instructions could result in death or serious injury.

SUFFOCATION HAZARD

Babies have suffocated:

- on pillows, comforters, and extra padding
- in gaps between a wrong-size mattress, or extra padding and product sides
- **NEVER** add soft bedding or padding.
- Use **ONLY** one mattress at a time.
- Always place baby on back to sleep to reduce the risk of SIDS and suffocation.
- Product can roll over on soft surfaces and suffocate child. NEVER place product on beds, sofas or other soft surfaces.

FALL HAZARD - To help prevent falls:

- Do not use this product when the infant begins to push up on hands and knees or has reached [insert manufacturer's recommended maximum weight], whichever comes first.
- Always use product on the floor. Never use on any elevated surface.
- Do not carry baby in the [manufacturer to insert type of product].
- Do not reuse [manufacturer to insert type of product] for second child.

(v) 9.7 See figure 8 to this paragraph (b)(28)(v) for example of instruction warnings for bassinet/cradle products.

Figure 8 to Paragraph (b)(28)(v)—Example Product Instruction Warnings for Bassinet/Cradle Products

⚠WARNING

Failure to follow these warnings and the instructions could result in death or serious injury.

SUFFOCATION HAZARD

Babies have suffocated:

- on pillows, comforters, and extra padding
- in gaps between a wrong-size mattress, or extra padding and product sides
- **NEVER** add soft bedding or padding.
- Use **ONLY** one mattress at a time.
- Always place baby on back to sleep to reduce the risk of SIDS and suffocation.
- Product can roll over on soft surfaces and suffocate child. NEVER place product on beds, sofas or other soft surfaces.

FALL HAZARD - To help prevent falls:

- Do not use this product when the infant begins to push up on hands and knees or has reached [insert manufacturer's recommended maximum weight], whichever comes first.
- Always use product on the floor. Never use on any elevated surface.
- Do not carry baby in the [manufacturer to insert type of product].
- Strings can cause strangulation! Do not place items with a string around a child's neck, such as hood strings or pacifier cords. Do not suspend strings over a product or attach strings to toys.
- Do not use if any part of the (manufacturer to insert type of product) is broken, torn, or missing.

(vi) 9.8 See figure 9 to this paragraph (b)(28)(vi) for example of instruction warnings for bassinet/cradle products with batteries.

Figure 9 to Paragraph (b)(28)(vi)—Example Product Instruction Warnings for Bassinet/Cradle Products With Batteries

⚠WARNING

Failure to follow these warnings and the instructions could result in death or serious injury.

SUFFOCATION HAZARD

Babies have suffocated:

- on pillows, comforters, and extra padding
- in gaps between a wrong-size mattress, or extra padding and product sides
- **NEVER** add soft bedding or padding.
- Use **ONLY** one mattress at a time.
- Always place baby on back to sleep to reduce the risk of SIDS and suffocation.
- Product can roll over on soft surfaces and suffocate child. NEVER place product on beds, sofas or other soft surfaces.

FALL HAZARD - To help prevent falls:

- Do not use this product when the infant begins to push up on hands and knees or has reached [insert manufacturer's recommended maximum weight], whichever comes first.
- Always use product on the floor. Never use on any elevated surface.
- Do not carry baby in the [manufacturer to insert type of product].
- Strings can cause strangulation! Do not place items with a string around a child's neck, such as hood strings or pacifier cords. Do not suspend strings over a product or attach strings to toys.
- Do not use if any part of the (manufacturer to insert type of product) is broken, torn, or missing.

⚠ CAUTION

To prevent battery leaks, which can burn skin and eyes:

- Remove batteries when storing product for a long time.
- Dispose of used batteries immediately.
- Always replace the entire set of batteries at one time.
- Never mix old and new batteries, or batteries of different brands or types.

(29) Do not comply with section X1.3 from the Appendix X1 RATIONALE of ASTM F2194–22$^{\varepsilon 1}$.

(30) Add sections X1.5, X1.6, and X1.7 to the Appendix X1 RATIONALE of ASTM F2194–22$^{\varepsilon 1}$:

(i) X1.5 *Rationale for 6.12.1* A 27-inch height will likely discourage bed sharing because the baby is not accessible to the caregiver sleeping next to the bassinet. Use on table is unlikely because the bassinet in front of the sitting caregiver is cumbersome.

(ii) X1.6 *Rationale for 6.12.2* A 15-inch mattress support height places the baby at a comfortable height for a 50-percentile female to lean over and pick up the baby. The height should promote use of the bassinet on the floor rather than placing it on an elevated surface.

(iii) X1.7 *Rationale for 6.12.3* A *removable bassinet bed* must not function as a bassinet absent of the stand. This requirement is intended to prevent use of the bassinet bed on an unsafe elevated surface or soft surface such as an adult bed.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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Part IV

Environmental Protection Agency

40 CFR Part 136
Clean Water Act Methods Update Rule for the Analysis of Effluent; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[EPA–HQ–OW–2022–0901; FRL 9346–02–OW]

RIN 2040–AG25

Clean Water Act Methods Update Rule for the Analysis of Effluent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing changes to its test procedures required to be used by industries and municipalities when analyzing the chemical, physical, and biological properties of wastewater and other samples for reporting under the EPA's National Pollutant Discharge Elimination System permit program. The Clean Water Act requires the EPA to promulgate these test procedures (analytical methods) for analysis of pollutants. The EPA anticipates that these changes will provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. In addition, this update to the CWA methods will incorporate technological advances in analytical technology and make a series of minor changes and corrections to existing approved methods. As such, the EPA expects that these changes will not result in any negative economic impacts.

DATES: This final rule is effective on June 17, 2024. The incorporation by reference of certain material listed in this rule and is approved by the Director of the Federal Register as of June 17, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–OW–HQ–2022–0901. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

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SUPPLEMENTARY INFORMATION:

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I. General Information

This preamble describes the abbreviations and acronyms; reasons for the rule; and a summary of the changes and clarifications; the legal authority for the rule; methods incorporated by reference; and a summary of the changes and clarifications.

A. Does this action apply to me?

Entities potentially affected by the requirements of this action include:

Category	Examples of potentially affected entities
State, Territorial, and Indian Tribal Governments.	States authorized to administer the National Pollutant Discharge Elimination System permitting program; states, territories, and Tribes providing certification under CWA section 401; state, territorial, and Tribal-owned facilities that must conduct monitoring to comply with NPDES permits.
Industry	Facilities that must conduct monitoring to comply with NPDES permits; the environmental monitoring industry.
Municipalities	Publicly Owned Treatment Works or other municipality-owned facilities that must conduct monitoring to comply with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists types of entities that the EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability language at 40 CFR 122.1 (NPDES purpose and scope), 40 CFR 136.1 (NPDES permits and CWA) and 40 CFR 403.1 (pretreatment standards purpose and applicability). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

Periodically, the EPA updates the approved methods in 40 CFR part 136. In general, the changes in this action fall into four categories. The first category is updated versions of EPA methods currently approved in 40 CFR part 136. The second category is new or revised methods published by a voluntary consensus standard body that are similar to methods previously adopted as EPA-approved methods in 40 CFR part 136. The third category is methods the EPA has reviewed under the agency's national Alternate Test Procedure program and preliminarily concluded are appropriate for nationwide use. The fourth category is corrections or amendments to the text and tables of 40 CFR part 136. The EPA is finalizing these revisions to improve data quality, update methods to keep current with technology advances, and provide the regulated community with greater flexibility. The following paragraphs provide details on the revisions.

C. What is the Agency's authority for taking this action?

The EPA is promulgating this regulation under the authorities of sections 301(a), 304(h), and 501(a) of the CWA; 33 U.S.C. 1251, 1311(a), 1314(h) and 1361(a). Section 301(a) of the CWA prohibits the discharge of any pollutant into navigable waters unless the discharge complies with, among other provisions, an NPDES permit issued under section 402 of the CWA. Section 304(h) of the CWA requires the EPA Administrator to ''. . . promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to [section 401 of the CWA] or permit application pursuant to [section 402 of the CWA].'' Section 501(a) of the CWA authorizes the Administrator to ''. . . prescribe such regulations as are necessary to carry out this function under [the CWA].'' The EPA generally

has codified its test procedure regulations (including analysis and sampling requirements) for CWA programs at 40 CFR part 136, though some requirements are codified in other parts (*e.g.,* 40 CFR Chapter I, Subchapters N and O).

II. Background

Abbreviations and Acronyms Used in the Preamble

ASTM: ASTM International [1]
ATP: Alternate Test Procedure
BHI: Brain heart infusion
CATC: Cyanide Amenable to Chlorination
CFR: Code of Federal Regulations
CNCl: Cyanogen Chloride
CWA: Clean Water Act
EC–MUG: EC broth with 4-methylumbelliferyl-β-D-glucuronide
EDTA: Ethylenediaminetetraacetic acid
EPA: the U.S. Environmental Protection Agency
DO: Dissolved Oxygen
GC: Gas Chromatography
GC/MS/MS: Gas Chromatography-Tandem Mass Spectrometry
GC/HRMS: Gas Chromatography-High Resolution Mass Spectrometry
IBR: Incorporation by Reference
ICP/AES: Inductively Coupled Plasma-Atomic Emission Spectroscopy
NED: *N*-(1-naphthyl)-ethylenediamine dihydrochloride
NPDES: National Pollutant Discharge Elimination System
m/z: Mass to Charge Ratio
MF: Membrane Filtration
MPN: Most Probable Number
nm: Nanometer
NTTAA: National Technology Transfer and Advancement Act
POTW: Publicly Owned Treatment Works
QC: Quality Control
TKN: Total Kjeldahl Nitrogen
USGS: United States Geological Survey
VCSB: Voluntary Consensus Standards Body

NPDES permits must include conditions designed to ensure compliance with the technology-based and water quality-based requirements of the CWA, including in many cases, restrictions on the quantity of specific pollutants that can be discharged as well as pollutant measurement and reporting requirements. Often, entities have a choice in deciding which approved test procedure they will use for a specific pollutant because the EPA has approved the use of more than one method.[2]

The procedures for the analysis of pollutants required by CWA section 304(h) are a central element of the NPDES permit program. Examples of where these EPA-approved analytical methods must be used include the following: (1) applications for NPDES permits, (2) sampling or other reports required under NPDES permits, (3) other requests for quantitative or qualitative effluent data under the NPDES regulations, (4) state CWA 401 certifications, and (5) sampling and analysis required under the EPA's General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR 136.1 and 40 CFR 403.12(b)(5)(v).

On February 21, 2023, the EPA proposed to update the approved methods in 40 CFR part 136. The EPA received 20 comments on the proposed rulemaking (February 21, 2023, 88 FR 10724) from laboratory associations, state environmental agencies, trade associations and citizens. All commenters supported finalizing this rule and approving each proposed method.

There were some specific comments that are outside the scope of this rulemaking. As stated in the proposed rule (88 FR 10725, February 21, 2023,), the EPA only considered new or revised methods that were submitted to the EPA. Method withdrawals, methods for new parameters, methods based on new technologies (except methods approved through the alternate test procedure program) and VCSB methods not submitted from VCSBs were not considered for this routine update. Commenters requesting changes to VCSB, or vender methods should work through the method owner to revise the method and submit any supporting data to the EPA for consideration.

Commenters noted that there was a format error in the proposed rulemaking language on Table IC, footnotes 15, 16 and 17, (88 FR 10763, February 21, 2023). The new footnote 16 was inadvertently added to the end of footnote 15. The information in the new footnotes is correctly described in the preamble (88 FR 10738, February 21, 2023). This typographical error of the order and numbering of the footnotes has been corrected in the final rule. In addition, the following parameters were missing from the preamble discussions of the revision of Standard Methods method 6410B–2020: 2,2′-oxybis(1-chloropropane) (also referred to as bis[2-Chloro-1-methylethyl] ether); hexachloroethane; and N-nitrosodimethylamine. The revised 6410B–2020 discussion in Section IV.C.35 of this preamble is correct.

III. Corrections or Amendments to the Text and Tables of 40 CFR Part 136

In addition to the method revision incorporated by reference as discussed in Section IV of this preamble, Standard Methods has revised a few of their general quality control sections (2020, 3020, 4020 and 5020). The EPA is updating the year of the current references to these sections in 136.3 Table IB footnote 85. The EPA is also adding a reference to an additional Standard Methods Quality Control section: Part 6000 Individual Organic Compounds, 6020. These Quality Control Standards are available for download at *www.standardmethods.org* at no charge. The EPA is correcting several minor errors or inconsistencies in the tables of approved methods. The EPA is making the following changes to 40 CFR 136.3, Tables IA, IB, IC, ID or IH:

1. Table IA. Removing the units of ''number per 100 mL'' under parameter 1. Coliform (fecal), because parameter 1 is specifically for biosolids that are reported as ''number per gram dry weight''.

2. Table IA. Moving United States Geologic Survey Method ''B–0050–85'' from parameter 1. Coliform (fecal) number per gram dry weight to parameter 2. Coliform (fecal) number per 100 mL, to address an error from the previous rulemaking when Parameter 1 Coliform (fecal) was split into two parameters to eliminate confusion as to which methods were approved for biosolids.

3. Table IA parameter 3 and IH parameter 2. Moving the phrase ''two-step'' in the ''Method'' column from the second to the third line which returns the phrase to the proper line after having been inadvertently moved.

4. Table IB. Revising footnote 85 to remove bullet formatting.

5. Table IB. Adding footnote 86 to Method 419D. Method 419D is listed as an approved method for of determination nitrate using Colorimetric (Brucine sulfate) methodology. This addition corrects a long-standing typographical error regarding the appropriate footnote for this method in Table IB.

6. Table IB. Correcting an inadvertent error to footnote 57. The reference number was incorrectly changed to 335.4–1. The correct number is 335.4.

7. Tables IC and ID. Adding footnote 15 to the Standard Methods column header and adding footnote 15 to refer to Quality Control Section: Part 6000 Individual Organic Compounds, 6020 (2019).

8. Table IC. Changing parameter 39, dichlorodifluoromethane, to refer to Method 6200 B rather than 6200 C for the GC/MS method.

9. Table IC. Adding footnote 10 to parameters 66–72, 95, 96 and 97 which

[1] Formerly known as the American Society for Testing and Materials (ASTM).

[2] NPDES permit regulations also specify that the approved method needs to be sufficiently sensitive. See 40 CFR 122.21(e)(3).

were inadvertently dropped in an earlier rulemaking. Footnote 10 to table IC applies to all of the 17 dioxin and furan congeners.

10. Table IH parameter 2. Moving method B–0025–85 down one row because it was inadvertently moved in an earlier rulemaking. This method is a single step membrane filtration method rather than a most probable number method.

11. Table II. Revising footnote 5 for the preservation and holding time requirements for cyanide to add the year (2015) of the ASTM method D7365–09a (15).

The recommended sampling and preservation procedures in the ASTM method have not changed since 2009, but the change to footnote 5 simplifies identification of the current method that is available from ASTM International. The 2015 reapproval date was already updated in footnote 6 to Table II in the 2021 methods update rule; however, adding the reapproval date was overlooked in the incorporated by reference section and in footnote 5 to Table II.

IV. Incorporation by Reference

Currently, hundreds of methods and ATPs are incorporated by reference within 40 CFR part 136. In most cases, 40 CFR part 136 contains multiple approved methods for a single parameter (or pollutant) and regulated entities often have a choice in selecting a method. The rule contains revisions to VCSB methods that are currently incorporated by reference, (see Sections IV.B, IV.C, and IV.E of this preamble). Two VCSBs have made such revisions: Standard Methods and ASTM. The VCSB methods are consistent with the requirements of the National Technology Transfer and Advancement Act, under which Federal agencies use technical standards developed or adopted by the VCSBs if compliance would not be inconsistent with applicable law or otherwise impracticable. This rule also includes two vendor ATPs (see Section IV.D of this preamble) and four revised EPA methods (see Section IV.A of this preamble) which the EPA is incorporating by reference.

The rule incorporates by reference the methods added in an earlier Methods Update Rule (86 FR 27226, May 19, 2021). The EPA inadvertently failed to complete the incorporation by reference review process for that final rule. The EPA proposed 68 methods for incorporation by reference into 40 CFR 136.3 (84 FR 56590, October 22, 2019). Other than ASTM D7365–09a (Reapproved 2015) and the EPA Method 1623.1, the methods are described in the 2019 proposal as well as the 2021 final rule. ASTM D7365–09a (Reapproved 2015) and Method 1623.1 are summarized in this preamble.

The EPA is also incorporating by reference an errata sheet in Table IA, footnotes 25, 26, 27. The U.S. EPA Whole Effluent Toxicity (WET) Methods Errata Sheet, EPA 821–R–02–012–ES, corrects and clarifies the WET methods referenced in those footnotes. The errata sheet was described and promulgated as part of the 2017 Clean Water Act Methods Update Rule for the Analysis of Effluent (see 82 FR 40841, August 28, 2017; docket number EPA–HQ–OW–2014–0797). The EPA inadvertently failed to incorporate by reference the errata sheet in the 2017 final rule.

The following paragraphs provide details on the methods incorporated by reference.

A. Changes to 40 CFR 136.3 To Include New Versions of Previously Approved EPA Methods

The EPA is adding revised versions of the EPA membrane filtration methods 1103.2, 1106.2, 1600.1, and 1603.1 found in Tables IA and IH. These methods were approved from 2002 to 2014. The EPA is also summarizing method 1623.1 that was added in the earlier rule (86 FR 27226, May 19, 2021) but not summarized. The revisions include standardizing language between the related methods, updating to reflect current lab practices and clarifying edits.

These methods each describe a membrane filter procedure for the detection and enumeration of either enterococci or *Escherichia coli* bacteria by their growth after incubation on selective media. These methods provide a direct count of bacteria in water samples based on the development of colonies on the surface of the membrane filter.

1. *E. coli.* Method 1103.2 describes a MF procedure for the detection and enumeration of *Escherichia coli* bacteria in ambient (fresh) water and is currently approved in Table IH. This is a two-step method which requires transferring the membrane filter after incubation on membrane-Thermotolerant Escherichia coli Agar (mTEC) to a pad saturated with urea substrate.

2. Enterococci. Method 1106.2 describes a MF procedure for the detection and enumeration of enterococci bacteria in ambient water and is currently approved in Table IH. This is a two-step method which requires transferring the membrane filter after incubation on membrane-Enterococcus (mE) agar to Esculin Iron Agar (EIA) medium.

3. Enterococci. Method 1600.1 describes a MF procedure for the detection and enumeration of enterococci bacteria in ambient (fresh and marine) water and wastewater and is currently approved in Tables IA and IH. This is a single-step method that is a modification of EPA Method 1106.1 (mE–EIA). The membrane filter containing the bacterial cells is placed on membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI).

4. *E. coli.* Method 1603.1 describes a MF procedure for the detection and enumeration of thermotolerant *Escherichia coli* bacteria in ambient (fresh) waters and wastewaters using Modified membrane-Thermotolerant Escherichia coli Agar (modified mTEC) and is currently approved in Table IA and IH.

5. *Cryptosporidium and Giardia.* Method 1623.1 describes a method for the detection of *Cryptosporidium* and *Giardia* in ambient water by concentration immunomagnetic separation (IMS), and immunofluorescence assay (FA) microscopy. A water sample is filtered and the oocysts, cysts, and extraneous materials are retained on the filter. EPA Method 1623.1 includes updated acceptance criteria for IPR, OPR, and MS/MSD, and clarifications and revisions based on the use of EPA Method.

The EPA methods are available free of charge on our websites (*epa.gov/cwa-methods/approved-cwa-microbiological-test-methods*), therefore the EPA methods incorporated by reference are reasonably available.

B. Changes to 40 CFR 136.3 To Include New Versions of Approved ASTM Methods

The EPA is adding new versions of ASTM methods previously approved in 40 CFR part 136. These changes to currently approved ASTM methods in 40 CFR part 136 include minor clarifications and editorial changes. As an example, ASTM added text to the appropriate method scope sections to indicate that the method was developed in accordance with the ''Decision on Principles for the Development of International Standards, Guides and Recommendations'' issued by the World Trade Organization Technical Barriers to Trade (TBT) Committee. None of these changes will affect the performance of the method. The following describes the changes to current ASTM methods that the EPA is including in 40 CFR part 136. Each entry contains (in the following order):

the parameter, the ASTM method number (the last two digits in the method number represent the year ASTM published the method), a brief description of the analytical technique, and a brief description of any minor procedural changes (if there are any) in this revision from the last approved version of the method. Method revisions that are only formatting in nature will have no description of the changes. The methods listed below are organized according to the table at 40 CFR part 136 in the order in which they appear.

ASTM methods can be purchased from *astm.org.* The price of ASTM standards is not fixed. The price generally ranges between $50 and $100 per method. ASTM also offers memberships or subscriptions that allow unlimited access to their methods. The ASTM methods incorporated by reference are reasonably available.

The EPA is adding the following ASTM methods found in Table IB, and Table II at 40 CFR part 136:

1. Dissolved Oxygen. D888–18 (A, B, C), Dissolved Oxygen, Winkler, Electrode, Luminescent-based Sensor. Standard D888–18A measures dissolved oxygen using the Winkler iodometric titration procedure. The volume of titrant used is proportional to the concentration of DO in the sample. Standard D888–18B measures DO in the sample with an electrochemical probe that produces an electrical potential which is logarithmically proportional to the concentration of DO in the sample. Standard D888–18C measures DO with a luminescence-based sensor probe that employs frequency domain lifetime-based luminescence quenching and signal processing.

2. Hydrogen Ion (pH). In D1293–18 (A, B), pH, Electrometric. The activity of hydrogen ion (H+) in the sample is determined electrometrically with an ion-selective electrode in comparison to at least two standard reference buffers and pH is reported as the negative log of that activity.

3. Metals Series. In D1976–20, Elements in Water by Inductively-Coupled Plasma Atomic Emission Spectroscopy for determination of aluminum, antimony, arsenic, beryllium, boron, cadmium, chromium, cobalt, copper, iron, lead, magnesium, manganese, molybdenum, nickel, selenium, silver, thallium, vanadium, and zinc. The sample is acid digested and analyzed by ICP/AES for the simultaneous or sequential determination of 29 elements. The changes include changing the initial instrument calibration from using four standards as the first option to using only one standard and a calibration blank.

4. Surfactants. In D2330–20, Methylene Blue Active Substances, the sample is mixed with an acidic aqueous solution of methylene blue reagent, which forms a blue-colored ion pair with any anionic surfactants which is subsequently extracted with chloroform and washed with an acidic solution to remove interferences. The intensity of the blue color is measured using a photometer at 650 nanometers. The concentration of methylene blue active substances is determined in comparison to a standard curve.

5. Residue, filterable and nonfilterable. In D5907–18 (A and B), Filterable Matter (Total Dissolved Solids) and Nonfilterable Matter (Total Suspended Solids) under Test Method A, an aliquot of the sample is filtered through a glass fiber filter and the solids trapped on the filter are dried at 105 °C and weighed to determine the nonfilterable material (total suspended solids) by difference. Under Test Method B, the filtrate from Test Method A, or a separate filtrate, is evaporated to dryness at 180 °C and the residue weighed to determine the total dissolved solids.

6. Cyanide—Free. In D7237–18, Free Cyanide, Flow Injection, followed by Gas Diffusion Amperometry an aliquot of the sample is introduced into a flow injection analysis instrument, where it mixes with a phosphate buffer to release hydrogen cyanide which diffuses through a hydrophobic gas diffusion membrane into an alkaline solution and is detected amperometrically with a silver electrode. This version also added new information about sulfide interferences and potential mitigation strategies that the EPA anticipates will improve data quality. There are no other procedural changes.

7. Cyanide—Total. In D7284–20, Total Cyanide, Manual Distillation with $MgCl_2$ followed by Flow Injection, Gas Diffusion Amperometry, the sample is distilled with acid and a magnesium chloride catalyst to release cyanide to a sodium hydroxide solution. An aliquot of the sodium hydroxide solution is introduced into a flow injection analysis instrument, where it is acidified, and the hydrogen cyanide diffuses through a hydrophobic gas diffusion membrane into an alkaline solution and is detected amperometrically with a silver electrode.

8. Cyanide. D7365–09a (Reapproved 2015) is applicable for the collection and preservation of water samples for the analysis of cyanide. Samples are collected in appropriate containers and mitigated for known interferences either in the field during sample collection or in the laboratory prior to analysis. The sampling, preservation and mitigation of interference procedures described in this practice are recommended for the analysis of total cyanide, available cyanide, weak acid dissociable cyanide, and free cyanide by ASTM Methods D2036, D4282, D4374, D6888, D6994, D7237, D7284, and D7511.

9. Organic Carbon. In D7573–18a^{e1}, Total Organic Carbon, Combustion, the sample is sparged with an inert gas to remove dissolved inorganic carbon, acidified, and then combusted at high temperature to convert organic carbon to carbon dioxide. The carbon dioxide is measured with an infra-red detector. This version also adds data from an interlaboratory method validation study and new method detection limit values, but there are no procedural changes.

C. Changes to 40 CFR 136.3 To Include New Versions of Approved ''Standard Methods'' Methods

The EPA is approving new versions of methods developed by the Standard Methods Committee that were previously approved in 40 CFR part 136. Standard Methods has reviewed many of their methods in preparation for releasing the next edition of ''Standard Methods for the Examination of Water & Wastewater.'' The newer versions provide clarifications and make editorial corrections. These edits include removal of referents to specific brand names and trademarks, incorporation of footnotes into the text, a reformatting of figures, tables and reference lists, removal of bibliographical references that are no longer available, small editorial changes based on current style guides and changes to scientific publishing standards, and minor clarifications to procedures based on input from users. For example, the revisions replace distilled water with reagent water in all methods.

Each entry contains the Standard Method number and date, the parameter, and a brief description of the analytical method. The EPA lists only one version of a method. The date indicates the specific version approved for use under the CWA. The methods listed below are organized according to the table at 40 CFR part 136 in the order in which they appear.

Methods approved under Standard Methods can be purchased from *standardmethods.org.* The price generally ranges between from $60 to $80 per method. Standard Methods also offers memberships or subscriptions that allow unlimited access to their

methods. The methods incorporated by reference are reasonably available.

The EPA is adding the following methods to Tables IB, IC, and ID at 40 CFR part 136 for the following parameters:

1. Color. 2120 B–2021, Visual Comparison Method, is a platinum-cobalt method of measuring color, the unit of color being that produced by one mg platinum per liter in the form of the chloroplatinate ion. The 1:2 ratio of cobalt to platinum resulting from the preparation of the standard platinum-cobalt solution matches the color of natural waters.

2120 F–2021, American Dye Manufacturers Institute (ADMI) Weighted-Ordinate Spectrophotometric Method. This method calculates single-number color difference values (*i.e.,* uniform color differences) in accordance with the Adams-Nickerson chromatic value formula. Values are independent of chroma and hue. Transmittance of light is measured spectrophotometrically at multiple wavelengths and converted to a set of abstract numbers, which then are converted to a single number that indicates color value. This number is expressed on a scale used by the ADMI.

2. Turbidity. 2130 B–2020, Nephelometric Method is based on a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity. Formazin polymer is used as the primary standard reference suspension.

3. Acidity. 2310 B–2020, Titration Method measures the hydrogen ions present in a sample as a result of dissociation or hydrolysis of solutes that react with additions of standard alkali. Acidity thus depends on the endpoint pH or indicator used. The construction of a titration curve by recording a sample's pH after successive small, measured additions of titrant permits identification of inflection points and buffering capacity, if any, and allows the acidity to be determined with respect to any pH of interest. Samples of industrial wastes, acid mine drainage, or other solutions that contain appreciable amounts of hydrolyzable metal ions such as iron, aluminum, or manganese are treated with hydrogen peroxide to ensure the oxidation of any reduced forms of polyvalent cations and are boiled to hasten hydrolysis. Acidity results may be highly variable if this procedure is not followed exactly.

4. Alkalinity. 2320 B–2021 Titration Method, measures the hydroxyl ions present in a sample resulting from dissociation or hydrolysis of solutes that react with additions of standard acid. Alkalinity thus depends on the endpoint pH used. For samples of low alkalinity (less than 20 mg/L $CaCO_3$) an extrapolation technique based on the near proportionality of concentration of hydrogen ions to excess of titrant beyond the equivalence point is used. The amount of standard acid required to reduce the pH exactly 0.30 pH unit is measured carefully. Because this change in pH corresponds to an exact doubling of the hydrogen ion concentration, a simple extrapolation can be made to the equivalence point.

5. Hardness.

a. In 2340 B–2021, Hardness by Calculation is the preferred method for determining hardness by calculating it from the results of separate determinations of calcium and magnesium by any approved method provided that the sum of the lowest point of quantitation for Ca and Mg is below the NPDES permit requirement for hardness.

b. In 2340 C–2021, Ethylenediaminetetraacetic acid Titrimetric Method, EDTA forms a chelated soluble complex when added to a solution of certain metal cations. If a small amount of a dye such as eriochrome black T or calmagite is added to an aqueous solution containing calcium and magnesium ions at a pH of 10.0 ± 0.1, the color of the solution becomes wine red. If EDTA is added as a titrant, the calcium and magnesium will be complexed, and when all of the magnesium and calcium has been complexed, the solution turns from wine red to blue, marking the endpoint of the titration. The volume of titrant used is proportional to hardness in the sample. Magnesium ion must be present to yield a satisfactory endpoint. To ensure this, a small amount of complexometrically neutral magnesium salt of EDTA is added to the buffer; this automatically introduces sufficient magnesium and obviates the need for a blank correction.

6. Specific Conductance. 2510 B–2021 measures conductance (or resistance) in the laboratory using a standard potassium chloride solution and from the corresponding conductivity, a cell constant is calculated. Most conductivity meters do not display the actual solution conductance, or resistance, rather, they generally have a dial that permits the user to adjust the internal cell constant to match the conductivity of a standard. Once the cell constant has been determined, or set, the conductivity of an unknown solution is displayed by the meter.

7. Residue-Total.

a. In 2540 B–2020 an aliquot of a well-mixed sample is evaporated in a pre-weighed evaporating dish at 103–105 °C to constant weight in a 103 to 105 °C oven. The increase compared to the empty pre-weighed dish weight represents total solids.

b. In 2540 C–2020, Total Dissolved Solids Dried at 180 °C (Residue—filterable in Table IB) a measured volume of a well-mixed sample is filtered through a glass fiber filter with applied vacuum. The entire exposed surface of the filter is washed with at least three successive volumes of reagent-grade water with continued suction until all traces of water are removed. The total filtrate (with washings) is then transferred to a pre-weighed dish and evaporated to dryness. Successive volumes of sample are added to the same dish after evaporation if necessary to yield between 2.5 and 200 mg of dried residue. The evaporated residue is then dried for one hour or more in an oven at 180 °C, cooled in a desiccator to ambient temperature, and weighed until the weight change is less than 0.5 mg.

c. In 2540 D–2020, Total Suspended Solids Dried from 103 to 105 °C (Residue—non-filterable total suspended solids (TSS) in Table IB) a well-mixed sample is filtered through a pre-weighed standard glass-fiber filter. The filter and the retained residue are then dried to a constant weight in a 103 to 105 °C oven. The increase in filter weight represents TSS.

d. In 2540 E–2020, Fixed and Volatile Solids Ignited at 550 °C (Residue—volatile in Table IB) the residue obtained from the determination of total (Method 2540 B), filterable (Method 2540 C), or non-filterable residue (Method 2540 D) is ignited at 550 ± 50 °C in a muffle furnace, cooled in a desiccator to ambient temperature and weighed. Repeated successive cycles of drying, cooling, desiccating, and weighing are performed until the weight change is less than 0.5 mg. The remaining solids are fixed total, dissolved, or suspended solids, while those lost to ignition are volatile total, dissolved, or suspended solids.

e. In 2540 F–2020, Settleable Solids (aka, Residue—settleable in Table IB), a well-mixed sample is used to fill an Imhoff cone or graduated cylinder to the one liter mark. The sample is allowed to settle for 45 minutes, then gently agitated near the sides of the cone (or graduated cylinder) with a rod or by spinning. The sample is then allowed to settle for another 15 minutes and the volume of settleable solids in the cone (or graduated cylinder) is recorded as

mL/L. When applicable, the recorded volume is corrected for interference from pockets of liquid volume.

8. Multiple metals by flame atomic absorption spectrometry.

a. 3111 B–2019, Direct Air-Acetylene Flame Method. The method is approved in Table IB for determination of antimony, cadmium, calcium, chromium, cobalt, copper, gold, iridium, iron, lead, magnesium, manganese, nickel, palladium, platinum, potassium, rhodium, ruthenium, silver, sodium, thallium, tin, and zinc. A sample is aspirated into a flame and the metals are atomized. A light beam is directed through the flame, into a monochromator, and onto a detector that measures the amount of light absorbed by the atomized metal in the flame. Because each metal has its own characteristic absorption wavelength, a source lamp composed of that element is used. The amount of energy at the characteristic wavelength absorbed in the flame is proportional to the concentration of the element in the sample over a limited concentration range.

b. 3111 C–2019, Extraction and Air-Acetylene Flame Method consists of chelation with ammonium pyrrolidine dithiocarbamate (APDC) and extraction into methyl isobutyl ketone (MIBK), followed by aspiration into an air-acetylene flame and is suitable for the determination of low concentrations of cadmium, chromium, cobalt, copper, iron, lead, manganese, nickel, silver, and zinc. The method is approved in Table IB for determination of cadmium, chromium, cobalt, copper, iron, lead, nickel, silver, and zinc. The EPA is also approving method 3111 C for manganese. This parameter was inadvertently left off in an earlier rulemaking approving method 3111 C.

c. 3111 D–2019, Direct Nitrous Oxide-Acetylene Flame Method. A sample is aspirated into a flame produced using a mixture of nitrous oxide and acetylene and the metals are atomized. A light beam is directed through the flame, into a monochromator, and onto a detector that measures the amount of light absorbed by the atomized metal in the flame. The method is approved in Table IB for determination of aluminum, barium, beryllium, molybdenum, osmium, titanium, and vanadium. In addition, the EPA is approving method 3111 D for calcium. This parameter was inadvertently left off in an earlier rulemaking approving method 3111 D.

d. 3111 E–2019, Extraction and Nitrous Oxide-Acetylene Flame Method. The method consists of chelation with 8-hydroxyquinoline, extraction with MIBK, and aspiration into a nitrous oxide-acetylene flame and is suitable for the determination of aluminum at concentrations less than 900 µg/L and beryllium at concentrations less than 30 µg/L. The method is approved in Table IB for determination of aluminum, and beryllium.

9. Mercury—Total. 3112 B–2020, Metals by Cold-Vapor Atomic Absorption Spectrometric Method is a flameless AA procedure based on the absorption of radiation at 253.7 nm by mercury vapor. The mercury in a sample is reduced to the elemental state and aerated from solution in a closed system. The mercury vapor passes through a cell positioned in the light path of an atomic absorption spectrophotometer. Absorbance is measured as a function of mercury concentration. The method is approved in Table IB for determination of mercury.

10. Metals by AA Furnace. In 3113 B–2020, Electrothermal Atomic Absorption Spectrometric Method, a discrete sample volume is dispensed into the graphite sample tube (or cup). Typically, determinations are made by heating the sample in three or more stages. First, a low current heats the tube to dry the sample. The second, or charring, stage destroys organic matter and volatilizes other matrix components at an intermediate temperature. Finally, a high current heats the tube to incandescence and, in an inert atmosphere, atomizes the element being determined. Additional stages frequently are added to aid in drying and charring, and to clean and cool the tube between samples. The resultant ground-state atomic vapor absorbs monochromatic radiation from the source. A photoelectric detector measures the intensity of transmitted radiation. The inverse of the transmittance is related logarithmically to the absorbance, which is directly proportional to the number density of vaporized ground-state atoms (the Beer-Lambert law) over a limited concentration range. The method is approved in Table IB for determination of aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, iron, lead, manganese, molybdenum, nickel, selenium, silver, and tin. Although not specifically listed as target analytes in 3113 B, the 2010 version of the method is also approved in Table IB for determination of gold, thallium, and vanadium, as these elements may also be determined using the method.

11. Arsenic and Selenium by AA Gaseous Hydride.

a. 3114 B–2020, Manual Hydride Generation/Atomic Absorption Spectrometric Method is a manual hydride generation method that is applicable to the determination of arsenic and selenium by conversion to their hydrides by sodium borohydride reagent and transport into an atomic absorption atomizer. The method is approved in Table IB for determination of arsenic and selenium.

b. 3114 C–2020, Continuous Hydride Generation/Atomic Absorption Spectrometric Method is a continuous-flow hydride generation method that is applicable to the determination of arsenic and selenium by conversion to their hydrides by sodium borohydride reagent and transport into an atomic absorption atomizer. The continuous hydride generator offers the advantages of simplicity in operation, excellent reproducibility, low detection limits, and high sample volume throughput for selenium analysis following preparations as described in 3500-Se B or 3114 B.4c and d. The method is approved in Table IB for determination of arsenic and selenium.

12. Multiple Metals by ICP/AES (Plasma Emission Spectroscopy). In 3120 B–2020, an Inductively Coupled Plasma source consists of a flowing stream of argon gas ionized by an applied radio frequency field typically oscillating at 27.1 MHz. This field is inductively coupled to the ionized gas by a water-cooled coil surrounding a quartz torch that supports and confines the plasma. A sample aerosol is generated in an appropriate nebulizer and spray chamber and is carried into the plasma through an injector tube located within the torch. The sample aerosol is injected directly into the ICP, subjecting the constituent atoms to temperatures of about 6000 to 8000 °K. Because this results in almost complete dissociation of molecules, significant reduction in chemical interferences is achieved. The high temperature of the plasma excites atomic emission efficiently. Ionization of a high percentage of atoms produces ionic emission spectra. The ICP provides an optically thin source that is not subject to self-absorption except at very high concentrations. Total metals are determined after appropriate digestion. The method is approved in Table IB for determination of aluminum, antimony, arsenic, barium, beryllium, boron, cadmium, calcium, chromium, cobalt, copper, iron, lead, magnesium, manganese, molybdenum, nickel, potassium, selenium, silica, silver, sodium, thallium, vanadium, and zinc. Although not specifically listed as a target analyte in method 3120 B, the 2011 version of the method is also approved in Table IB for determination

of phosphorus because this element may also be determined using the method.

13. Multiple Metals by Inductively Coupled Plasma-Mass Spectrometry. In this method, 3125 B–2020, Inductively Coupled Plasma-Mass Spectrometry-Method, a sample is introduced into an argon-based, high-temperature radio-frequency plasma, usually via pneumatic nebulization. As energy transfers from the plasma to the sample stream, the target element undergoes desolvation, atomization, and ionization. The resulting ions are extracted from the plasma through a differential vacuum interface and separated based on their mass-to-charge (m/z) ratio by a mass spectrometer. Typically, either a quadrupole (with or without collision cell technology or dynamic reaction cell) or magnetic sector (high-resolution) mass spectrometer is used. An electron multiplier detector counts the separated ions, and a computer-based data-management system processes the resulting information. The method is approved in Table IB for determination of aluminum, antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, molybdenum, nickel, potassium, selenium, silver, thallium, vanadium, and zinc. Although not specifically listed as a target analyte in method 3125 B, the 2011 version of the method is also approved in Table IB for determination of boron, calcium, gold, iridium, iron, magnesium, palladium, platinum, potassium, rhodium, ruthenium, silica, sodium, tin, and titanium as these elements may also be determined using the method.

14. 3500 Colorimetric Series for Multiple Metals.

a. Aluminum. In 3500-Al B–2020, Eriochrome Cyanine R Method with Eriochrome cyanine R dye, dilute aluminum solutions buffered to a pH of 6.0 produce a red to pink complex that exhibits maximum absorption at 535 nm. The intensity of the developed color is influenced by the aluminum concentration, reaction time, temperature, pH, alkalinity, and concentration of other ions in the sample. To compensate for color and turbidity, the aluminum in one portion of a sample is complexed with EDTA to provide a blank. The interference of iron and manganese, two elements commonly found in water when aluminum is present, is eliminated by adding ascorbic acid. The method is approved in Table IB for determination of aluminum.

b. Arsenic. In 3500-As B–2020, Silver Diethyldithiocarbamate Method, arsenite, containing trivalent arsenic, is reduced selectively by aqueous sodium borohydride solution to arsine, AsH_3, in an aqueous medium of pH 6. Arsenate, methylarsonic acid, and dimethylarsinic acid are not reduced under these conditions. The generated arsine is swept by a stream of oxygen-free nitrogen from the reduction vessel through a scrubber containing glass wool or cotton impregnated with lead acetate solution into an absorber tube containing silver diethyldithiocarbamate and morpholine dissolved in chloroform. The intensity of the red color that develops is measured at 520 nm. The method is approved in Table IB for determination of arsenic.

c. Calcium. In 3500-Ca B–2020, EDTA Titrimetric Method, EDTA is added to water containing both calcium and magnesium, where it combines first with the calcium. Calcium can be determined directly, with EDTA, when the pH is made sufficiently high that the magnesium is largely precipitated as the hydroxide and an indicator is used that combines with calcium only. Several indicators give a color change when all the calcium has been complexed by the EDTA at a pH of 12 to 13. The method is approved in Table IB for determination of calcium.

d. Chromium. 3500-Cr B–2020, Colorimetric Method measures total chromium and dissolved hexavalent chromium, (chromium VI). For total chromium, an unfiltered sample must first be digested using an approved digestion procedure (see Table IB, footnote 4). For dissolved hexavalent chromium, a sample is filtered, and the hexavalent chromium is determined colorimetrically by reaction with diphenylcarbazide in acid solution. A red-violet colored complex of unknown composition is produced. The method is approved in Table IB for determination of total chromium after digestion of the sample, and for dissolved hexavalent chromium (chromium VI).

In 3500-Cr C–2020, Ion Chromatographic Method. This method is applicable to determination of dissolved hexavalent chromium in drinking water, groundwater, and industrial wastewater effluents. An aqueous sample is filtered, and its pH adjusted to between 9 and 9.5 with a concentrated buffer. This pH adjustment reduces the solubility of trivalent chromium and preserves the hexavalent chromium oxidation state. The sample is introduced into the instrument's eluent stream of ammonium sulfate and ammonium hydroxide. Trivalent chromium in solution is separated from the hexavalent chromium by the column. After separation, hexavalent chromium reacts with an azide dye to produce a chromogen that is measured at 530 or 540 nm. Hexavalent chromium is identified based on retention time. The method is approved in Table IB for determination of dissolved hexavalent chromium (chromium VI).

e. Copper Colorimetric. In 3500-Cu B–2020, Neocuproine Method, the sample is treated with hydroxylamine hydrochloride to reduce any cupric ions (Cu2+) to cuprous ions (Cu+). Sodium citrate is used to complex metallic ions that might precipitate when the pH is raised. The pH is adjusted to between 4 and 6 with ammonium hydroxide (NH_4OH), a solution of neocuproine (2,9-dimethyl-1,10-phenanthroline) in methanol is added, and the resultant complex is extracted into chloroform ($CHCl_3$). After dilution of the $CHCl_3$ to an exact volume with methanol (CH_3OH), the absorbance of the solution is measured at 457 nm. The method is approved in Table IB for determination of copper.

In 3500-Cu C–2020, Bathocuproine Method, cuprous ion forms a water-soluble orange-colored chelate with disodium bathocuproine disulfonate (sodium 4,4′-(2,9-dimethyl-1,10-phenanthroline-4,7-diyl)dibenzenesulfonate). While the color forms over the pH range 3.5 to 11.0, the recommended pH range is between 4 and 5. The sample is buffered at a pH of about 4.3 and reduced with hydroxylamine hydrochloride. The absorbance is measured at 484 nm. The 2011 editorial revision currently is approved in Table IB for determination of copper.

f. Potassium. In 3500-K B–2020, Flame Photometric Method, trace amounts of potassium can be determined in either a direct-reading or internal-standard type of flame photometer at a wavelength of 766.5 nm. The method is approved in Table IB for determination of potassium.

In 3500-K C–2020, Potassium-Selective Electrode Method, potassium ions are measured potentiometrically by using a potassium ion-selective electrode and a double-junction, sleeve-type reference electrode. The analysis is performed with either a pH meter having an expanded millivolt scale capable of being read to the nearest 0.1 mV or a specific-ion meter having a direct concentration scale for potassium. Before measurement, an ionic strength adjustor reagent is added to both standards and samples to maintain a constant ionic strength. The electrode response is measured in standard solutions with potassium concentrations spanning the range of interest using a calibration line derived either by the

instrument meter or manually. The electrode response in sample solutions is measured following the same procedure and potassium concentration determined from the calibration line or instrument direct readout. The 2011 editorial revision currently is approved in Table IB for determination of potassium.

g. Manganese. In 3500-Mn B–2020, Persulfate Method, persulfate oxidation of soluble manganous compounds to form permanganate is carried out in the presence of silver nitrate. The resulting color is stable for at least 24 hours if excess persulfate is present and organic matter is absent. The method is approved in Table IB for determination of manganese.

h. Sodium. In 3500-Na B–2020, Flame Emission Photometric Method, a sample is nebulized into a gas flame under carefully controlled, reproducible excitation conditions. The sodium resonant spectral line at 589 nm is isolated by interference filters or by light-dispersing devices such as prisms or gratings. Emission light intensity is measured by a phototube, photomultiplier, or photodiode. The light intensity at 589 nm is approximately proportional to the sodium concentration. The method is approved in Table IB for determination of sodium.

i. Lead. In 3500-Pb B–2020, Dithizone Method, an acidified sample containing microgram quantities of lead is mixed with ammoniacal citrate-cyanide reducing solution and extracted with dithizone in chloroform ($CHCl_3$) to form a cherry-red lead dithizonate. The color of the mixed color solution is measured photometrically. The method is approved in Table IB for determination of lead.

j. Zinc. 3500-Zn B–2020, Zincon Method. Zinc forms a blue complex with zincon (2-carboxy-2′-hydroxy-5′-sulfoformazyl benzene) in a solution buffered to pH 9.0. Other heavy metals likewise form colored complexes with zincon. Cyanide is added to complex zinc and heavy metals. Cyclohexanone is added to selectively free zinc from its cyanide complex so that it can be complexed with zincon to form a blue color which is measured spectrophotometrically at 620 nm. Sodium ascorbate reduces manganese interference. The developed color is stable except in the presence of copper. The method is approved in Table IB for determination of zinc.

15. 4110 Series, Ion Chromatography.

a. In 4110 B–2020, Ion Chromatography with Chemical Suppression of Eluent Conductivity, a water sample is injected into a stream of eluent and passed through a series of ion exchangers. The anions of interest are separated based on their relative affinities for a low-capacity, strongly basic anion exchanger (guard and analytical columns). The separated anions are directed through a suppressor device that provides continuous suppression of eluent conductivity and enhances analyte response. In the suppressor, the separated anions are converted to their highly conductive acid forms while the conductivity of the eluent is greatly decreased. The separated anions in their acid forms are measured by conductivity. They are identified based on retention time as compared to standards. Quantitation is by measurement of peak area or peak height. The method is approved in Table IB for determination of bromide, chloride, fluoride, nitrate, combined nitrate-nitrite, nitrite, orthophosphate, and sulfate.

b. 4110 C–2020, Single-Column Ion Chromatography with Direct Conductivity Detection. An aqueous sample is injected into an ion chromatograph consisting of an injector port, analytical column, and conductivity detector. The sample merges with the eluent stream and is pumped through the analytical column where the anions are separated based on their affinity for the active sites of the column packing material. Concentrations are determined by direct conductivity detection without chemical suppression. The method is approved in Table IB for determination of bromide, chloride, fluoride, nitrate, combined nitrate-nitrite, nitrite, orthophosphate, and sulfate.

c. 4110 D–2020, Ion Chromatographic Determination of Oxyhalides and Bromide. The sample is analyzed in a manner similar to that in 4110 B–2020. However, bromate has been shown to be subject to positive interferences in some matrices. The interference is noticeable usually as a flattened peak. It often can be eliminated by passing the sample through an H+ off-line solid-phase extraction (SPE) cartridge, by selection of a different column-eluent combination, or by diluting the eluent, which will increase retention times and spread the chromatogram. Additionally, chloride or a nontarget analyte present in unusually high concentration may overlap with a target analyte sufficiently to cause problems in quantitation or may cause retention-time shifts. Dilution of the sample may resolve this problem. The method is approved in Table IB for determination of bromide.

16. Inorganic Anions by CIE/UV (Capillary Ion Electrophoresis). In 4140 B–2020, Capillary Ion Electrophoresis with Indirect UV Detection, the sample is introduced at the cathodic end of the capillary and anions are separated based on their differences in mobility in the electric field as they migrate through the capillary. Cations migrate in the opposite direction and are not detected. Water and neutral organics are not attracted toward the anode. They migrate after the anions and thus do not interfere with anion analysis. Anions are detected as they displace charge-for-charge the UV-absorbing electrolyte anion (chromate), causing a net decrease in UV absorbance in the analyte anion zone compared to the background electrolyte. Detector polarity is reversed to provide positive millivolt response to the data system. As in chromatography, the analytes are identified by their migration time and quantitated by using time-corrected peak area relative to standards. The method is approved in Table IB for determination of bromide, chloride, fluoride, nitrate, combined nitrate-nitrite, nitrite, orthophosphate, and sulfate.

17. 4500 Series, Chloride.

a. 4500-Cl^- B–2021, Titrimetric Method. In a neutral or slightly alkaline solution, potassium chromate can indicate the endpoint of the silver nitrate titration of chloride. Silver chloride is precipitated quantitatively before red silver chromate is formed. In this version of the method approved by the Standard Methods Committee in 2021, additional information regarding removal of interferences caused by sulfide, thiosulfate, and sulfite ions by digestion of the sample with hydrogen peroxide prior to titration has been added to the sample preparation procedures. A tighter pH range of 8 to 10, as opposed to 7 to 10, is specified for adjustment of the pH of the sample prior to titration. A reference has been added for the 2021 Standard Methods Joint Task Group validation report titled: ''Interlaboratory validation study for the use of H_2O_2 with boiling for determining Cl^-.'' The method is approved in Table IB for determination of chloride.

b. 4500-Cl^- C–2021, Mercuric Nitrate Method. Chloride can be titrated with mercuric nitrate, $Hg(NO_3)_2$, because of the formation of soluble, slightly dissociated mercuric chloride. In the pH range 2.3 to 2.8, diphenylcarbazone indicates the titration endpoint by formation of a purple complex with the excess mercuric ions. Xylene cyanol FF serves as a pH indicator and endpoint enhancer. Increasing the strength of the titrant and modifying the indicator mixtures extends the range of measurable chloride concentrations.

The method is approved in Table IB for determination of chloride.

c. 4500-Cl^- D–2021, Potentiometric Method. Chloride is determined by potentiometric titration with silver nitrate solution with a glass and silver-silver chloride electrode system. During titration, an electronic voltmeter is used to detect the change in potential between the two electrodes. The endpoint of the titration is that instrument reading at which the greatest change in voltage has occurred for a small and constant increment of silver nitrate added. The method is approved in Table IB for determination of chloride.

d. 4500-Cl^- E–2021, Automated Ferricyanide Method. Thiocyanate ion is liberated from mercuric thiocyanate by the formation of soluble mercuric chloride. In the presence of ferric ion, free thiocyanate ion forms a highly colored ferric thiocyanate, of which the intensity is proportional to the chloride concentration. The is approved in Table IB for determination of chloride.

18. 4500 Series Cyanide Total or Available.

a. 4500–CN^- B–2021, Manual Distillation (as Preliminary Treatment of Samples). Total cyanides are measured after preliminary treatment of samples for preservation and to remove interferences. The preliminary treatment required depends on which interfering substances the samples contain. Distillation removes many interfering substances, but other pretreatment procedures will be needed for samples containing sulfides, fatty acids, oxidizing agents, nitrites, and nitrates. The method is approved in Table IB for preliminary treatment of samples to be used for determination of cyanide.

b. 4500–CN^- C–2021, Total Cyanide after Distillation. Hydrogen cyanide (HCN) is liberated from an acidified sample by distillation and purging with air, with the HCN gas collected in a NaOH scrubbing solution. The cyanide concentration in the scrubbing solution is determined via titrimetric, colorimetric, or potentiometric procedures. The method is approved in Table IB for preliminary treatment of samples to be used for determination of cyanide.

c. 4500–CN^- D–2021, Titrimetric Method. CN^- in the alkaline distillate from the preliminary treatment procedures (4500–CN^- B and C) is titrated with standard silver nitrate ($AgNO_3$) to form the soluble cyanide complex $Ag(CN)^{2-}$. As soon as all CN^- has been complexed and a small excess of Ag^+ has been added, the silver-sensitive indicator, p-dimethylaminobenzalrhodanine, detects the excess Ag^+ and immediately changes color from yellow to salmon. The method is approved in Table IB for determination of cyanide.

d. 4500–CN^- E–2021, Spectrophotometric Method. Total CN^- in the alkaline distillate from the preliminary treatment procedures (4500–CN^- B and C) is converted to cyanogen chloride (CNCl) by reaction with chloramine-T at pH less than 8 without hydrolyzing to cyanate (CNO^-). After the reaction is complete, adding a pyridine-barbituric acid reagent turns CNCl a red-blue color. Maximum color absorbance in aqueous solution is between 575 and 582 nm. The method is approved in Table IB for determination of cyanide.

e. 4500–CN^- F–2021, Ion Selective Electrode Method. Total CN^- in the alkaline distillate from the preliminary treatment procedures (4500-CN^- B and C) is determined potentiometrically by using a CN^--ion selective electrode. The 2016 version of the method currently is approved in Table IB for determination of cyanide.

f. 4500–CN^- G–2021, Cyanides Amenable to Chlorination after Distillation. Available cyanide, or cyanide amenable to chlorination (CATC), can be determined when a portion of the sample is chlorinated at high pH and cyanide levels in the chlorinated sample are determined after manual distillation followed by titrimetric or spectrophotometric measurement. CATC is calculated by the difference between the results for cyanide in the unchlorinated sample and the results for the chlorinated sample. The method is approved in Table IB for preliminary treatment of samples to be used for determination of available cyanide.

g. 4500–CN^- N–2021, Total Cyanide after Distillation by Flow Injection Analysis. Total cyanides are digested and steam-distilled from the sample (4500–CN^- C). The cyanide in this distillate is converted to CNCl by reaction with chloramine-T at pH less than 8. The CNCl then forms a red-blue dye by reacting with pyridine-barbituric acid reagent. The absorbance of this red dye is measured at 570 nm and is proportional to the total or weak acid dissociable cyanide in the sample. The method is approved in Table IB for determination of cyanide.

19. 4500 Total Fluoride Series.

a. 4500–F^- B–2021, Preliminary Distillation Step. Fluoride is separated from other nonvolatile constituents in water by conversion to hydrofluoric or fluosilicic acid and subsequent distillation. The conversion is accomplished by using a strong, high-boiling acid. To protect against glassware etching, hydrofluoric acid is converted to fluosilicic acid by using soft glass beads. Quantitative fluoride recovery is accomplished by using a relatively large sample. Acid and sulfate carryover are minimized by distilling over a controlled temperature range. The method is approved in Table IB for preliminary treatment of samples to be used for determination of fluoride.

b. 4500–F^- C–2021, Ion-Selective Electrode Method. The fluoride electrode is an ion-selective sensor that measures the ion activity of fluoride in solution rather than concentration. The key element in the fluoride electrode is the laser-type doped lanthanum fluoride crystal across which a potential is established by fluoride solutions of different concentrations. The crystal contacts the sample solution at one face and an internal reference solution at the other. Fluoride ion activity depends on the solution total ionic strength and pH, and on fluoride complexing species. Adding an appropriate buffer provides a nearly uniform ionic strength background, adjusts pH, and breaks up complexes. In effect, the electrode measures concentration. The method is approved in Table IB for determination of fluoride.

c. 4500–F^- D–2021, SPADNS Method. The SPADNS colorimetric method is based on the reaction between fluoride and a ''lake'' of zirconium-dye. Fluoride reacts with the dye lake, dissociating a portion of it into a colorless complex anion (ZrF_6^{2-}) and the dye. As the amount of fluoride increases, the color produced becomes progressively lighter and absorbance is measured colorimetrically at 570 nm. The method is approved in Table IB for determination of fluoride.

d. 4500–F^- E–2021, Complexone Method. The sample is distilled in the automated system, and the distillate is reacted with alizarin fluorine blue-lanthanum reagent to form a blue complex that is measured colorimetrically at 620 nm. method is approved in Table IB for determination of fluoride.

20. 4500 Hydrogen ion (pH). In 4500–H^+ B–2021, Electrometric Method, the basic principle of electrometric pH measurement is determination of the activity of the hydrogen ions by potentiometric measurement using a standard hydrogen electrode and a reference electrode. The hydrogen electrode consists of a platinum electrode across which hydrogen gas is bubbled at a pressure of 101 kilopascal. Because of difficulty in its use and the potential for poisoning the hydrogen electrode, the glass electrode commonly

is used. The electromotive force produced in the glass electrode system varies linearly with pH. This linear relationship is described by plotting the measured emf against the pH of different buffers. A sample's pH is determined by extrapolation. This version of the method adds information to Section 2—Apparatus, regarding equipment that may be used for manual or automatic temperature compensation. The 2011 editorial revision currently is approved in Table IB for determination of pH.

21. 4500 Kjeldahl Nitrogen Total (TKN) Series.

a. 4500–N_{org} B–2021, Macro-Kjeldahl Method. In the presence of sulfuric acid (H_2SO_4), potassium sulfate (K_2SO_4), and a cupric sulfate ($CuSO_4$) catalyst, amino nitrogen of many organic materials is converted to ammonium. Free ammonia also is converted to ammonium. After the addition of base, the ammonia is distilled from an alkaline medium and absorbed in boric or sulfuric acid. The ammonia may be determined colorimetrically, by ammonia-selective electrode, or by titration with a standard mineral acid. The method is approved in Table IB for preliminary treatment of samples to be used for determination of total Kjeldahl nitrogen (TKN).

b. 4500–N_{org} C–2021, Semi-Micro-Kjeldahl Method. This is a reduced-volume version of 4500 N_{org} B that specifies use of Kjeldahl flasks with a capacity of 100 mL in a semi-micro-Kjeldahl digestion apparatus equipped with heating elements to accommodate Kjeldahl flasks and a suction outlet to vent fumes. The method is approved in Table IB for preliminary treatment of samples to be used for determination of total Kjeldahl nitrogen (TKN).

c. 4500–N_{org} D–2021, Block Digestion and Flow Injection Analysis. Samples are digested in a block digestor with sulfuric acid and copper sulfate as a catalyst. The digested sample is injected onto the FIA manifold, where its pH is controlled by raising it to a known, basic pH by neutralization with a concentrated buffer. This in-line neutralization converts the ammonium cation to ammonia, and also prevents undue influence of the sulfuric acid matrix on the pH-sensitive color reaction that follows. The ammonia thus produced is heated with salicylate and hypochlorite to produce a blue color that is proportional to the ammonia concentration. The color is intensified by adding sodium nitroprusside. The presence of EDTA in the buffer prevents the precipitation of calcium and magnesium. The resulting peak's absorbance is measured at 660 nm. The peak area is proportional to the concentration of TKN in the original sample. The method is approved in Table IB for determination of TKN.

22. 4500–NH_3 Nitrogen (Ammonia as nitrogen) Series.

a. 4500–NH_3 B–2021, Preliminary Manual Distillation Step. The sample is buffered at pH 9.5 with a borate buffer to decrease hydrolysis of cyanates and organic nitrogen compounds. It is distilled into a solution of boric acid when titration is to be used, or into H_2SO_4, when the phenate method is used as the determinative step. The ammonia in the distillate can be determined either colorimetrically by the phenate method or titrimetrically with standard H_2SO_4 and a mixed indicator or a pH meter. Ammonia in the distillate also can be determined by the ammonia-selective electrode method, using 0.04 N H_2SO_4 to trap the ammonia. This revision replaces instructions for storage of ammonia-free water with instructions for preparation of ammonia-free water using an ion exchange resin and simply says that if high blank values are produced, the analyst should prepare fresh ammonia-free water. The method is approved in Table IB for preliminary treatment of samples to be used for determination of ammonia.

b. 4500–NH_3 C–2021, Titration Method. The titrimetric method is used only on samples that have been carried through preliminary distillation. Ammonia is titrated with a standardized sulfuric acid titrant using a mixed indicator of methyl red and methylene blue. The method is approved in Table IB for determination of ammonia as well as for determination of TKN after appropriate digestion/distillation of the sample.

c. 4500–NH_3 D–2021, Electrode Method. The ammonia-selective electrode uses a hydrophobic gas-permeable membrane to separate the sample solution from an electrode internal solution of ammonium chloride. Dissolved ammonia ($NH_{3(aq)}$ and NH_4^+) is converted to $NH_{3(aq)}$ by raising the pH to above 11 with a strong base. $NH_{3(aq)}$ diffuses through the membrane and changes the internal solution pH that is sensed by a pH electrode. The fixed level of chloride in the internal solution is sensed by a chloride ion-selective electrode that serves as the reference electrode of the sample. Potentiometric measurements are made with a pH meter having an expanded millivolt scale or with a specific ion meter. The method is approved in Table IB for determination of ammonia, as well as for determination of TKN after appropriate digestion/distillation of the sample.

d. 4500–NH_3 E–2021, Electrode Method. Ammonia is determined using an ammonia-selective electrode. When a linear relationship exists between concentration and response, known addition is convenient for measuring occasional samples because no calibration is needed. Because an accurate measurement requires that the concentration at least double as a result of the addition, sample concentration must be known within a factor of three. The total concentration of ammonia can be measured in the absence of complexing agents down to 0.8 mg/L NH_3-N or in the presence of a large excess (50 to 100 times) of complexing agent. The method is approved in Table IB for determination of ammonia, as well as for determination of TKN after appropriate digestion/distillation of the sample.

e. 4500–NH_3 F–2021, Phenate Method. An intensely blue compound, indophenol, is formed by the reaction of ammonia, hypochlorite, and phenol catalyzed by sodium nitroprusside. The color is measured spectrophotometrically at 640 nm. The method is approved in Table IB for determination of ammonia, as well as for determination of TKN after appropriate digestion/distillation of the sample.

f. 4500–NH_3 G–2021, Semi-Automated Phenate Method. Alkaline phenol and hypochlorite react with ammonia to form indophenol blue that is proportional to the ammonia concentration. The blue color formed is intensified with sodium nitroprusside. The color is measured spectrophotometrically at 630 to 660 nm. The method is approved in Table IB for determination of ammonia, as well as for determination of TKN after appropriate digestion/distillation of the sample.

g. 4500–NH_3 H–2021, Semi-Automated Phenate Method. A water sample containing ammonia or ammonium cation is injected into an FIA carrier stream to which a complexing buffer (alkaline phenol) and hypochlorite are added. This reaction, the Berthelot reaction, produces the blue indophenol dye. The blue color is intensified by the addition of nitroferricyanide. The resulting peak's absorbance is measured at 630 nm. The peak area is proportional to the concentration of ammonia in the original sample. The method is approved in Table IB for determination of ammonia, as well as for determination of TKN after appropriate digestion/distillation of the sample.

23. 4500–NO_2^- Nitrite as Nitrogen. 4500–NO_2^- B–2021,

Spectrophotometric Method. Nitrite ($NO2^-$) in a sample is determined through formation of a reddish-purple azo dye produced at pH 2.0 to 2.5 by coupling diazotized sulfanilamide with N-(1-naphthyl)-ethylenediamine dihydrochloride (NED) and absorbance is measured spectrophotometrically at 543 nm. The method is approved in Table IB for determination of nitrite.

24. 4500–$NO3^-$ Nitrogen (Nitrite/Nitrate as Nitrogen Series).

a. 4500–$NO3^-$ D–2019, Nitrate Electrode Method. Nitrate is measured using an ion-selective electrode that develops a potential across a thin, inert membrane holding in place a water-immiscible liquid ion exchanger. The method is approved in Table IB for determination of nitrate.

b. 4500–NO_3^- E–2019, Cadmium Reduction Method. Nitrate (NO_3^-) is reduced almost quantitatively to nitrite (NO_2^-) in the presence of cadmium (Cd). This method uses commercially available Cd granules treated with copper sulfate ($CuSO_4$) and packed in a glass column. The NO_2^- is then diazotized with sulfanilamide and coupled with NED to form a highly colored azo dye that is measured spectrophotometrically. To correct for any NO_2^- present in the sample before NO_3^- reduction, samples also must be analyzed without the reduction step. The method is approved in Table IB for determination of nitrate (by subtraction), as well as for determination of combined nitrate + nitrite, and for determination of nitrite singly when bypassing the reduction step.

c. 4500–NO_3^- F–2019, Automated Cadmium Reduction Method. This is an automated version of the cadmium reduction method 4500 $NO3^-$ E. Nitrate in a sample is reduced to nitrite using cadmium reduction and then diazotized with sulfanilamide and coupled with NED to form a highly colored azo dye that is measured spectrophotometrically. To correct for any NO_2^- present in the sample before NO_3^- reduction, samples also must be analyzed without the reduction step. The method is approved in Table IB for determination of nitrate (by subtraction), as well as for determination of combined nitrate + nitrite, and for determination of nitrite singly when bypassing the reduction step.

d. 4500–NO_3^- H–2019, Automated Hydrazine Reduction Method. Nitrate in a sample is reduced to nitrite using hydrazine sulfate then diazotized with sulfanilamide and coupled with NED to form a highly colored azo dye that is measured spectrophotometrically. The method is approved in Table IB for determination of combined nitrate and nitrite.

e. 4500–NO_3^- I–2019, Cadmium Reduction Flow Injection Method. A sample is passed through a copperized cadmium column to quantitatively reduce its nitrate content to nitrite. The nitrite is diazotized with sulfanilamide and coupled with NED to yield a water-soluble dye with a magenta color whose absorbance at 540 nm is proportional to the nitrate + nitrite in the sample. Nitrite concentrations may be determined by bypassing the cadmium column and nitrate concentration may be calculated by subtraction of the result for the nitrite concentration from the result for the combined nitrate + nitrite concentration. The method is approved in Table IB for determination of nitrate, as well as for determination of combined nitrate + nitrite, and for determination of nitrite singly by bypassing the reduction step.

25. 4500–O Oxygen (Dissolved) Series.

a. 4500–O B–2021, Iodometric Methods. A divalent manganese solution is added and then a strong alkali is added to a sample in a glass-stoppered bottle and dissolved oxygen (DO) rapidly oxidizes an equivalent amount of the dispersed divalent manganous hydroxide precipitate into higher-valency hydroxides. Oxidized manganese reverts to the divalent state in the presence of iodide ions in an acidic solution, liberating an amount of iodine equivalent to the original DO content. The iodine is then titrated with a standard thiosulfate solution. The method is approved in Table IB for determination of DO.

b. 4500–O C–2021, Azide Modification. The sample is treated with manganous sulfate, potassium hydroxide, and potassium iodide (the latter two reagents combined in one solution) and finally sulfuric acid. The initial precipitate of manganous hydroxide, $Mn(OH)_2$, combines with the DO in the sample to form a brown precipitate, manganic hydroxide, $MnO(OH)_2$. Upon acidification, the manganic hydroxide forms manganic sulfate, which acts as an oxidizing agent to release free iodine from the potassium iodide. The iodine, which is stoichiometrically equivalent to the DO in the sample, is then titrated with sodium thiosulfate or phenylarsine oxide (PAO). The azide modification effectively removes nitrite interference, which is the most common interference in biologically treated effluents and incubated biochemical oxygen demand (BOD) samples. The method is approved in Table IB for determination of DO.

c. 4500–O D–2021, Permanganate Modification. The permanganate modification is used only on samples containing Fe(II) (*e.g.,* acid mine water). Concentrated sulfuric acid, potassium permanganate in solution and potassium fluoride in solution are added to the sample. Enough $KMnO_4$ solution is added to obtain a violet tinge that persists for 5 minutes. 0.5 to 1.0 mL potassium oxalate solution is then added only until permanganate color is removed completely. From this point, the procedure closely parallels that in 4500–O C. The method is approved in Table IB for determination of DO.

d. 4500–O E–2021, Alum Flocculation Modification. Samples high in suspended solids may consume appreciable quantities of iodine in acid solution. The interference due to solids may be removed by alum flocculation. Concentrated ammonium hydroxide and aluminum potassium sulfate solution are added to a sample. The sample is allowed to settle for about 10 min and the clear supernatant is siphoned into a 250- to 300-mL DO bottle until it overflows. From this point, the procedure closely parallels that in 4500–O C. The method is approved in Table IB for determination of DO.

e. 4500–O F–2021, Copper Sulfate-Sulfamic Acid Flocculation Modification. This modification is used for biological flocs (*e.g.,* activated sludge mixtures), which have high oxygen utilization rates. A copper sulfate-sulfamic acid inhibitor solution is added to the sample. The suspended solids are allowed to settle, and the relatively clear supernatant liquor is siphoned into a 250- to 300-mL DO bottle. From this point, the procedure closely parallels that in 4500–O C. The method is approved in Table IB for determination of DO.

f. 4500–O G–2021, Electrode Method. Oxygen-sensitive polarographic or galvanic membrane electrodes are composed of two solid metal electrodes in contact with supporting electrolyte separated from the test solution by a selective membrane. Polyethylene and fluorocarbon membranes are commonly used because they are permeable to molecular oxygen and are relatively rugged. The diffusion current is linearly proportional to the molecular-oxygen concentration. The measured current can be converted easily to concentration units (*e.g.,* mg/L) by a number of calibration procedures. The method is approved in Table IB for determination of DO.

g. 4500–O H–2021, Luminescence-based Method. The optical probe uses luminescence-based oxygen sensors to measure the light-emission

characteristics of a luminescent reaction; oxygen quantitatively quenches the luminescence. The change in the luminescence signal's lifetime correlates to the DO concentration. The method is approved in Table IB for determination of DO.

26. 4500–P Phosphorus Total and Ortho Phosphorus Series.

a. 4500–P B–2021, Digestion Sample Preparation. Because phosphorus may occur in combination with organic matter, a digestion method to determine total phosphorus must be able to oxidize organic matter effectively to release phosphorus as orthophosphate. Three digestion methods are given in 4500–P B.3, 4, and 5. The perchloric acid method in B.5 is the most vigorous and time-consuming method, and is recommended for particularly difficult samples, such as sediments. The nitric acid-sulfuric acid method is recommended for most samples. The simplest digestion method that may be used for determination of total phosphorus is the persulfate oxidation technique in which 50 mL of an unfiltered sample is boiled with sulfuric acid and either ammonium persulfate or potassium persulfate for approximately 30–40 minutes or until a final volume of about 10 mL is reached. The method is approved in Table IB for preliminary treatment of samples to be used for determination of total phosphorus as orthophosphorus using manual or automated versions of the ascorbic acid reduction, colorimetric methods.

b. 4500–P E–2021, Manual Method. Ammonium molybdate and antimony potassium tartrate react in an acid medium with orthophosphate to form phosphomolybdic acid, a heteropoly acid that is reduced to intensely colored molybdenum blue by ascorbic acid and is measured spectrophotometrically. This revision adds that possible interference from silicate should be evaluated when reporting concentrations less than 10 µg/L. The method is approved in Table IB for determination of total phosphorus after digestion of the sample, as well as for determination of orthophosphorus in a filtered, undigested sample.

c. 4500–P F–2021, Automated Ascorbic Acid Reduction Method. Ammonium molybdate and antimony potassium tartrate react with orthophosphate in an acid medium to form an antimony-phosphomolybdate complex, which on reduction with ascorbic acid yields an intense blue color suitable for photometric measurement using continuous flow analytical equipment. The method is approved in Table IB for determination of total phosphorus after digestion of the sample, as well as for determination of orthophosphorus in a filtered, undigested sample.

d. 4500–P G–2021, Automated. Ammonium molybdate and antimony potassium tartrate react with orthophosphate in an acid medium to form an antimony-phosphomolybdate complex, which on reduction with ascorbic acid yields an intense blue color suitable for photometric measurement using flow injection analysis. The method is approved in Table IB for determination of total phosphorus after digestion of the sample, as well as for determination of orthophosphorus in a filtered, undigested sample.

e. 4500–P H–2021, Automated Total Phosphorus. Samples are manually digested using the approved procedure for preliminary treatment of samples to be used for determination of total phosphorus. When the resulting solution is injected onto the manifold, the orthophosphate ion reacts with ammonium molybdate and antimony potassium tartrate under acidic conditions to form a complex. This complex is reduced with ascorbic acid to form a blue complex suitable for photometric measurement using flow injection analysis. The method is approved in Table IB for determination of total phosphorus.

27. 4500–S_2^- Sulfide Series.

a. 4500–S_2^- B–2021, Sample Pretreatment. Dissolved sulfide is measured by first removing insoluble matter. This is done by adding sodium hydroxide and aluminum chloride solutions producing an aluminum hydroxide floc that is settled, leaving a clear supernatant for analysis. The method is approved in Table IB for preliminary treatment of samples to be used for determination of sulfide.

b. 4500–S_2^- C–2021, Sample Pretreatment. Interferences due to sulfite, thiosulfate, iodide, and many other soluble substances, but not ferrocyanide, are eliminated by first precipitating zinc sulfide (ZnS) by addition of sodium hydroxide and zinc acetate solutions, removing the supernatant, and replacing it with reagent water. The same procedure is used even when not needed for removal of interferences, to concentrate sulfide prior to analysis. The method is approved in Table IB for preliminary treatment of samples to be used for determination of sulfide.

c. 4500–S_2^- D–2021, Colorimetric Method. The methylene blue method is based on the reaction of sulfide, ferric chloride, and dimethyl-p-phenylenediamine to produce methylene blue. Ammonium phosphate is added after color development to remove ferric chloride color, which is measured photometrically. The procedure is applicable at sulfide concentrations between 0.1 and 20.0 mg/L. The method is approved in Table IB for determination of sulfide.

d. 4500–S_2^- F–2021, Titrimetric. Iodine oxidizes sulfide in acid solution. A titration based on this reaction is an accurate method for determining sulfide at concentrations above one mg/L if interferences are absent and if loss of H_2S is avoided. The method is approved in Table IB for determination of sulfide.

e. 4500–S_2^- G–2021, Ion-Selective Electrode Method. The potential of a sulfide ion-selective electrode (ISE) is related to the sulfide ion activity. An alkaline antioxidant reagent (AAR) is added to samples and standards to inhibit oxidation of sulfide by oxygen and to provide a constant ionic strength and pH. Use of the AAR allows calibration in terms of total dissolved sulfide concentration. All samples and standards must be at the same temperature. Sulfide concentrations between 0.032 mg/L and 100 mg/L can be measured without preconcentration. For lower concentrations, preconcentration is necessary. The method is approved in Table IB for determination of sulfide.

28. 4500–SiO_2 Silica Series.

a. 4500–SiO_2 C–2021, Colorimetric Method. Ammonium molybdate at pH approximately 1.2 reacts with silica and any phosphate present to produce heteropoly acids. Oxalic acid is added to destroy the molybdophosphoric acid, but not the molybdosilicic acid. Even if phosphate is known to be absent, the addition of oxalic acid is highly desirable and is a mandatory step. The intensity of the yellow color produced is proportional to the concentration of molybdate-reactive silica and is measured photometrically. The method is approved in Table IB for determination of silica.

b. 4500–SiO_2 E–2021, Automated Method for Molybdate-Reactive Silica. Ammonium molybdate at pH approximately 1.2 reacts with silica and any phosphate present to produce heteropoly acids. Oxalic acid is added to destroy the molybdophosphoric acid, but not the molybdosilicic acid. The yellow molybdosilicic acid is reduced by means of amino naphthol sulfonic acid to heteropoly blue. The blue color is more intense than the yellow color of 4500–SiO_2 C and provides increased sensitivity. The method is approved in Table IB for determination of silica.

c. 4500–SiO_2 F–2021, Automated Method for Molybdate-Reactive Silicate. Silicate reacts with molybdate under

acidic conditions to form yellow beta-molybdosilicic acid. This acid is subsequently reduced with stannous chloride to form a heteropoly blue complex that is measured photometrically. Oxalic acid is added to reduce the interference from phosphate. The method is approved in Table IB for determination of silica.

29. 4500–SO_4^{2-} Sulfate Series.

a. 4500–SO_4^{2-} C–2021, Gravimetric Method with Ignition of Residue. Sulfate is precipitated in a hydrochloric acid (HCl) solution as barium sulfate ($BaSO_4$) by the addition of barium chloride ($BaCl_2$). The precipitation is carried out near the boiling temperature, and after a period of digestion, the precipitate is filtered, washed with water until free of Cl^-, ignited at 800 °C for an hour and weighed as $BaSO_4$. The method is approved in Table IB for determination of sulfate.

b. 4500–SO_4^{2-} D–2021, Gravimetric Method with Drying of Residue. Sulfate is precipitated in a hydrochloric acid (HCl) solution as barium sulfate ($BaSO_4$) by the addition of barium chloride ($BaCl_2$). The precipitation is carried out near the boiling temperature, and after a period of digestion the precipitate is filtered, washed with water until free of Cl^-, dried to a constant weight in an oven at 105 °C or higher, and weighed as $BaSO_4$. The method is approved in Table IB for determination of sulfate.

c. 4500–SO_4^{2-} E–2021, Turbidimetric Method. Sulfate ion (SO_4^{2-}) is precipitated in an acetic acid medium with barium chloride ($BaCl_2$) to form barium sulfate ($BaSO_4$) crystals of uniform size. Light absorbance of the $BaSO_4$ suspension is measured by a photometer and the SO_4^{2-} concentration is determined by comparison of the reading with a standard curve. The method is approved in Table IB for determination of sulfate.

d. 4500–SO_4^{2-} F–2021, Automated Colorimetric Method. Barium sulfate is formed by the reaction of the SO_4^{2-} with barium chloride ($BaCl_2$) at a low pH. At high pH, excess barium reacts with methylthymol blue (MTB) to produce a blue chelate. The uncomplexed methylthymol blue is gray. The intensity of gray (uncomplexed methylthymol blue) is measured photometrically and is proportional to concentration of sulfate. The method is approved in Table IB for determination of sulfate.

e. 4500–SO_4^{2-} G–2021, Automated Colorimetric Method. At pH 13.0, barium forms a blue complex with methylthymol blue (MTB). The sample is injected into a low, but known, concentration of sulfate. The sulfate from the sample then reacts with the ethanolic barium-MTB solution and displaces the MTB from the barium to give barium sulfate and uncomplexed MTB. Uncomplexed MTB has a grayish color. The pH is raised with NaOH and the gray color of the uncomplexed MTB is measured photometrically. The intensity of the gray color is proportional to the sulfate concentration. The method is approved in Table IB for determination of sulfate.

30. Sulfite 4500–SO_3^{2-} B–2021, Titrimetric Iodometric Method. An acidified sample containing sulfite (SO_3^{2-}) is titrated with a standardized potassium iodide–iodate titrant. Free iodine, liberated by the iodide–iodate reagent, reacts with SO_3^{2-}. The titration endpoint is signaled by the blue color resulting from the first excess of iodine reacting with a starch indicator. The method is approved in Table IB for determination of sulfite.

31. 5520 Oil and Grease Series.

a. 5520 B–2021, Liquid-Liquid, Partition-Gravimetric Method. Dissolved or emulsified oil and grease is extracted from water by intimate contact with an extracting solvent (n-hexane). The extract is dried over sodium sulfate. The solvent is then distilled from the extract and the hexane extractable material is desiccated and weighed. Some extractables, especially unsaturated fats and fatty acids, oxidize readily; hence, special precautions regarding temperature and solvent vapor displacement are included to minimize this effect. Organic solvents shaken with some samples may form an emulsion that is very difficult to break. This method includes a means for handling such emulsions. Recovery of solvents is discussed. Solvent recovery can reduce both vapor emissions to the atmosphere and costs. The method is approved in Table IB for determination of oil and grease (hexane extractable material or HEM).

b. 5520 F–2021, Hydrocarbons. The oil and grease extracted by 5520 B is used for this test. When only hydrocarbons are of interest, this procedure is introduced before final measurement. When hydrocarbons are to be determined after total oil and grease has been measured, redissolve the extracted oil and grease in n-hexane. Silica gel has the ability to adsorb polar materials. The solution of extracted hydrocarbons and fatty materials in n-hexane is mixed with silica gel, and the fatty acids are removed selectively from solution. The solution is filtered to remove the silica gel, the solvent is distilled, and the silica gel treated hexane extractable material (SGT–HEM) is weighed. The materials not eliminated by silica gel adsorption are designated hydrocarbons by this test. The method is approved in Table IB for determination of oil and grease (hexane extractable material or HEM).

32. 5530 Phenols Series.

a. 5530 B–2021, Manual Distillation. Phenols, defined as hydroxy derivatives of benzene and its condensed nuclei, may occur in domestic and industrial wastewaters, natural waters, and potable water supplies. Phenols are distilled from nonvolatile impurities. Because the volatilization of phenols is gradual, the distillate volume must ultimately equal that of the original sample. The method is approved in Table IB for preliminary treatment of samples to be used for determination of phenols.

b. 5530 D–2021, Colorimetric Method. Steam-distillable phenolic compounds react with 4-aminoantipyrine at pH 7.9 ± 0.1 in the presence of potassium ferricyanide to form a colored antipyrine dye. This dye is kept in aqueous solution and the absorbance is measured photometrically at 500 nm. The method is approved in Table IB for determination of phenol. Note that for regulatory compliance monitoring required under the Clean Water Act, the colorimetric reaction must be performed at a pH of 10.0 ± 0.2 as stated in 40 CFR 136.3, Table IB, footnote 27.

33. 5540 Surfactants. In 5540 C–2021 this colorimetric method comprises three successive extractions from an acid aqueous medium containing excess methylene blue into chloroform ($CHCl_3$), followed by an aqueous backwash and measurement of the blue color in the $CHCl_3$ by spectrophotometry at 652 nm. The method is applicable to methylene blue active substances at concentrations down to about 0.025 mg/L. The method is approved in Table IB for determination of surfactants.

34. 6200 Volatile Organic Compounds Series.

a. 6200 B–2020, Purge and Trap Capillary-Column Gas Chromatographic/Mass Spectrometric (GC/MS) Method. Volatile organic compounds are transferred efficiently from the aqueous to the gaseous phase by bubbling an inert gas (*e.g.,* helium) through a water sample contained in a specially designed purging chamber at ambient temperature. The vapor is swept through a sorbent trap that adsorbs the analytes of interest. After purging is complete, the trap is heated and backflushed with the same inert gas to desorb the compounds onto a gas chromatographic column. The gas chromatograph is temperature-programmed to separate the compounds. The detector is a mass spectrometer. The method is approved in Table IC for determination of

benzene, bromodichloromethane, bromoform, bromomethane, carbon tetrachloride, chlorobenzene, chloroethane, chloroform, chloromethane, dibromochloromethane, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, dichlorodifluoromethane, 1,1-dichloroethane, 1,2-dichloroethane, 1,1-dichloroethene, trans-1,2-dichloroethene, 1,2-dichloropropane, cis-1,3-dichloropropene, trans-1,3-dichloropropene, ethylbenzene, methylene chloride, 1,1,2,2-tetrachloroethane, tetrachloroethene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethene, trichlorofluoromethane, and vinyl chloride.

b. 6200 C–2020, Purge and Trap Capillary-Column Gas Chromatographic (GC) Method. Volatile organic compounds are transferred efficiently from the aqueous to the gaseous phase by bubbling an inert gas (*e.g.,* helium) through a water sample contained in a specially designed purging chamber at ambient temperature. The vapor is swept through a sorbent trap that adsorbs the analytes of interest. After purging is complete, the trap is heated and backflushed with the same inert gas to desorb the compounds onto a gas chromatographic column. The gas chromatograph is temperature-programmed to separate the compounds and detected using a photoionization detection and an electrolytic conductivity detection in series. The method is approved in Table IC for determination of benzene, bromodichloromethane, bromoform, bromomethane, carbon tetrachloride, chlorobenzene, chloroethane, chloroform, chloromethane, dibromochloromethane, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 1,1-dichloroethane, 1,2-dichloroethane, 1,1-dichloroethene, trans-1,2-dichloroethene, 1,2-dichloropropane, cis-1,3-dichloropropene, trans-1,3-dichloropropene, ethylbenzene, methylene chloride, 1,1,2,2-tetrachloroethane, tetrachloroethene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethene, trichlorofluoromethane, and vinyl chloride.

35. 6410 Extractable Base/Neutrals and Acids 6410 B–2020, Liquid–Liquid Extraction Gas Chromatographic/Mass Spectrometric Method. This method is applicable to the determination of organic compounds that are partitioned into an organic solvent and are amenable to gas chromatography in municipal and industrial discharges. A measured volume of sample is extracted serially with methylene chloride at a pH of approximately 2 and again at pH 11. The extract is dried, concentrated, and analyzed by GC/MS. Qualitative compound identification is based on retention time and relative abundance of three characteristic masses (m/z). Quantitative analysis uses internal-standard techniques with a single characteristic m/z. This revision adds a note that although the method was validated extracting base-neutrals first and then acids, performance may be improved by extracting acids first and then base-neutrals. In addition, the EPA is approving method 6410–B for endrin aldehyde in Table ID. This parameter was inadvertently left off the 2007 MUR rulemaking (72 FR 11200, March 12, 2007). The method is approved in Table IC for determination of acenaphthene, acenaphthylene, anthracene, benzidine, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, butyl benzyl phthalate, bis(2-chloroethoxy) methane, bis(2-chloroethyl) ether, bis(2-ethylhexyl) phthalate, bromodichloromethane, 4-bromophenyl phenyl ether, 4-chloro-3-methyl phenol, 2-chloronaphthalene, 2-chlorophenol, 4-chlorophenyl phenyl ether, chrysene, dibenzo(a,h)anthracene, 3,3′-dichlorobenzidine, 2,4-dichlorophenol, diethyl phthalate, 2,4-dimethylphenol, dimethyl phthalate, di-n-butyl phthalate, di-n-octyl phthalate, 2, 4-dinitrophenol, 2,4-dinitrotoluene, 2,6-dinitrotoluene, fluoranthene, fluorene, hexachlorobenzene, hexachlorobutadiene, hexachlorocyclopentadiene, hexachloroethane, indeno(1,2,3-c,d) pyrene, isophorone, 2-methyl-4,6-dinitrophenol, naphthalene, nitrobenzene, 2-nitrophenol, 4-nitrophenol, N-nitrosodimethylamine, n-nitrosodi-n-propylamine, n-nitrosodiphenylamine, 2,2′-oxybis(1-chloropropane), PCB–1016, PCB–1221, PCB–1232, PCB–1242, PCB–1248, PCB–1254, PCB–1260, pentachlorophenol, phenanthrene, phenol, pyrene, 1,2,4-trichlorobenzene, and 2,4,6-trichlorophenol and in Table ID for determination of aldrin, α-BHC, β-BHC, δ-BHC, γ-BHC (lindane), chlordane, 4,4′-DDD, 4,4′-DDE, 4,4′-DDT, dieldrin, endosulfan I, endosulfan II, endosulfan sulfate, endrin, heptachlor, heptachlor epoxide, and toxaphene.

36. 6420 Phenols. 6420 B–2020, Liquid–Liquid Extraction Gas Chromatographic Method. A measured volume of sample is acidified and extracted with methylene chloride. The extract is dried and exchanged to 2-propanol during concentration. Target analytes in the extract are separated by gas chromatography and are identified by retention time and measured with a flame ionization detector, or derivatized and measured with an electron capture detector. This revision of the method replaces distilled, deionized water with reagent water, adds that the packed columns used for validation of the method are no longer available or recommended, and includes information on alternative capillary columns that may be used. The method is approved in Table IC for determination of 4-chloro-3-methylphenol, 2-chlorophenol, 2,4-dichlorophenol, 2,4-dimethylphenol, 2,4-dinitrophenol, 2-methyl-4,6-dinitrophenol, 2-nitrophenol, 4-nitrophenol, pentachlorophenol, phenol, and 2,4,6-trichlorophenol.

37. 6440 Polynuclear Aromatic Hydrocarbons. 6440 B–2021, Liquid–Liquid Extraction Chromatographic Method. A measured volume of sample is extracted with methylene chloride. The extract is dried, concentrated, and separated by the high-performance liquid chromatographic (HPLC) or gas chromatographic (GC) method. Ultraviolet (UV) and fluorescence detectors are used with HPLC to identify and measure the polynuclear aromatic hydrocarbons. A flame ionization detector is used with GC. The method is approved in Table IC for determination of acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-c,d)pyrene, naphthalene, phenanthrene, and pyrene.

38. 6630 Organochlorine Pesticides Series.

a. 6630 B–2021, Liquid–Liquid Extraction Gas Chromatographic Method I. In this procedure, the pesticides are extracted with a mixed solvent, diethyl ether–hexane or methylene chloride–hexane, by either liquid–liquid extraction using a separatory funnel or by continuous liquid–liquid extraction. The extract is concentrated by evaporation and, if necessary, is cleaned up by column adsorption chromatography. The individual pesticides then are separated by gas chromatography and the compounds are measured with an electron capture detector (ECD). This revision of the method adds information regarding alternative capillary columns that may be used in place of the packed columns that were used for validation of the method, removes information

regarding preparation of packed columns, replaces information regarding the manual injection technique with use of an autosampler and states that gas chromatography/mass spectrometry (GC/MS) may be used for confirmatory analyses in place of a second column and ECD detection. There are no other procedural changes. The method is approved in Table ID for determination of aldrin, α-BHC, β-BHC, δ-BHC, γ-BHC (lindane), captan, carbophenothion, chlordane, 4,4′-DDD, 4,4′-DDE, 4,4′-DDT, dichloran, dieldrin, endosulfan I, endosulfan II, endrin, heptachlor, heptachlor epoxide, isodrin, malathion, methoxychlor, mirex, parathion methyl, parathion ethyl, PCNB, strobane, toxaphene, and trifluralin.

b. In 6630 C–2021, Liquid–Liquid Extraction Gas Chromatographic Method II. In this procedure, a measured volume of sample is extracted with methylene chloride either by liquid–liquid extraction using separatory funnels or by continuous liquid–liquid extraction. The extract is dried and exchanged to hexane during concentration. The target analytes are separated by gas chromatography and the compounds are measured with an electron capture detector (ECD). This revision of the method adds information regarding alternative capillary columns that may be used in place of the packed columns that were used for validation of the method, and states that gas chromatography/mass spectrometry (GC/MS) may be used for confirmatory analyses in place of a second column and ECD detection. There are no other procedural changes. The method is approved in Table ID for determination of aldrin, α-BHC, β-BHC, δ-BHC, γ-BHC (lindane), chlordane, 4,4´-DDD, 4,4´-DDE, 4,4´-DDT, dieldrin, endosulfan I, endosulfan II, endosulfan sulfate, endrin, endrin aldehyde, heptachlor, heptachlor epoxide, isodrin, methoxychlor, mirex, PCNB, strobane, and toxaphene.

39. 6640 Acidic Herbicide Compounds. 6640 B-2021, Micro Liquid–Liquid Extraction Gas Chromatographic Method. A 40-mL sample is adjusted to pH ≥12 with 4 N sodium hydroxide and is kept for 1 hour at room temperature to hydrolyze derivatives. Because the chlorophenoxy acid herbicides are formulated as a variety of esters and salts, the hydrolysis step is required and may not be skipped. The aqueous sample then is acidified with sulfuric acid to pH ≤1 and extracted with 4 mL of methyl tert-butyl ether (MtBE) that contains the internal standard. The chlorinated acids, which have been partitioned into the MtBE, then are converted to methyl esters by derivatization with diazomethane. The target esters are separated and detected by capillary column gas chromatography using an electron capture detector (GC/ECD). Analytes are quantified using an internal-standard-based calibration curve. The method is approved in Table IC for determination of 2,4–D, 2,4,5–T, and 2,4,5–TP (Silvex).

D. Changes to 40 CFR 136.3 To Include Alternate Test Procedures in Table IC

To promote method innovation, the EPA maintains a program that allows method developers to apply for the EPA review and potential approval of an alternative method to an existing approved method. This alternate test procedure (ATP) program is described for CWA applications at 40 CFR 136.4 and 136.5. The EPA is approving two ATPs for nationwide use. Based on EPA's review, the performance of these ATPs is equally effective as other methods already approved for measurement of 2,3,7,8-substituted tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans (PCDDs/PCDFs) in wastewater. The ATP applicants supplied the EPA with study reports that contain the data from their validation studies. These study reports, the final methods, and the letters documenting EPA's review are included as supporting documents in the docket for this rule.

These new methods are: SGS AXYS Method 16130, ''Determination of 2,3,7,8-Substituted Tetra- through Octa-Chlorinated Dibenzo-p-Dioxins and Dibenzofurans (CDDs/CDFs) Using Waters and Agilent Gas Chromatography- Mass Spectrometry (GC–MS/MS), Revision 1.0'' and Pace Analytical Method PAM–16130–SSI, ''Determination of 2,3,7,8-Substituted Tetra- through Octa-Chlorinated Dibenzo-p-Dioxins and Dibenzofurans (CDDs/CDFs) Using Shimadzu Gas Chromatography Mass Spectrometry (GC–MS/MS), Revision 1.1.'' These ATPs are the results of separate collaborative efforts between SGS AXYS Analytical Services Ltd, and the instrument manufacturers Waters Corporation and Agilent Technologies, and between Pace Analytical Services LLC and the instrument manufacturer Shimadzu Scientific Instruments, Inc. These final methods are heavily adapted from EPA Method 1613B. Neither ATP makes changes to the extraction or cleanup procedures specified in Method 1613B. All required quality control tests (or analogous tests) and associated QC acceptance criteria have been included in both SGS AXYS 16130 and PAM–16130–SSI.

To minimize costs to both the applicants and the Agency where possible, SGS AXYS, Pace Analytical, and the instrument manufacturers who collaborated on these methods worked closely with EPA's CWA ATP Coordinator to design single-laboratory validation studies for these methods. The goal of these validation studies was to demonstrate that all of the performance criteria specified in Method 1613B could be met and that comparable performance could be achieved when using GC–MS/MS instrumentation for determination of PCDDs/PCDFs in extracts from real-world samples.

The ATP methods are available free of charge on their respective websites (sgsaxys.com or pacelabs.com), therefore the ATP methods incorporated by reference are reasonably available.

In these two methods, referred to in the rule as SGS AXYS 16130 and PAM 16130–SSI, each sample is spiked with the same suite of carbon-13 labeled standards prior to extraction and those standards are used for isotope dilution quantitation in the same way as is done in EPA Method 1613B. All of the relevant QC acceptance criteria are the same in the methods as well. The difference between these methods and the approved EPA method (1613B) is the use of an MS/MS detector system that uses Multiple Reaction Monitoring (MRM) in place of a high-resolution mass spectrometer (HRMS) detector system. The GC portions of the methods did not change.

E. Changes to 40 CFR 136.3 To Include New Standard Methods Committee Methods Based on Previously Approved Technologies

The EPA is adding five new methods in furtherance of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, that provides that Federal agencies and departments shall use technical standards developed or adopted by the VCSBs if compliance would not be inconsistent with applicable law or otherwise impracticable. These methods were submitted by Standard Methods and are consistent with other already approved methods. As discussed in Section IV. B and C of this preamble, these methods are reasonably available.

The EPA is adding 4500–CN^- P–2021, 4500–CN^- Q–2021, 4500 CN^- R–2021, and 4500–F^- G–2021 to Table IB for cyanide and fluoride and is adding 5520 G–2021 to Table IB for oil and grease, based on the following reasons:

1. Cyanide. Although method 4500–CN^- P–2021, Total Cyanide by Segmented Flow Injection, UV-

Irradiation with Gas Diffusion, and Amperometric Measurement is new to Standard Methods for the Examination of Water and Wastewater, it is based on ASTM D7511–12(17), which is approved in Table IB for determination of total cyanide and relies on the same underlying chemistry and determinative technique to determine total cyanide. Total cyanide consists of dissolved HCN, sodium cyanide (NaCN), and various metal-cyanide complexes, which a continuous flow analyzer converts to aqueous HCN by mixing it with sulfuric acid, irradiating with UV light, and precipitating potentially interfering sulfides with bismuth ion. The aqueous HCN is captured in a donor stream that is passed across a hydrophobic gas-permeable membrane, which selectively diffuses the gaseous HCN into a parallel acceptor stream of dilute sodium hydroxide forming dissolved CN^-. The cyanide ion in this acceptor stream is measured using an amperometric detector, where the cyanide ion dissolves the silver electrode, resulting in a proportional current.

2. 4500–CN^- Q–2021, Weak and Dissociable Cyanide by Flow Injection, Gas Diffusion, and Amperometric Measurement. Weak and dissociable cyanide consists of dissolved HCN, NaCN, and various metal-cyanide complexes and includes the same forms of cyanide as those measured using other methods approved in Table IB for determination of available cyanide. Analysts pretreat for weak and dissociable cyanide by mixing a sample with ligand reagents. They then inject the sample into a sulfuric acid and bismuth nitrate solution to produce a donor stream containing aqueous dissolved HCN and precipitated sulfide, if sulfide is present. The donor stream is passed across a hydrophobic gas-permeable membrane, which selectively diffuses gaseous HCN into a parallel acceptor stream of dilute sodium hydroxide, forming dissolved CN^-. The cyanide ion in this acceptor stream is measured using an amperometric detector, where the cyanide ion dissolves the silver electrode, resulting in a proportional current. Although this method is new to Standard Methods for the Examination of Water and Wastewater, it is based on ASTM D6888–16, which is approved in Table IB for determination of available cyanide and relies on the same underlying chemistry and determinative technique to determine available cyanide.

3. 4500–CN^- R–2021, Free Cyanide by Flow Injection, Gas Diffusion, and Amperometric Measurement. Free cyanide (FCN) consists of dissolved HCN, NaCN, and the soluble fraction of various metal-cyanide complexes. To determine FCN, analysts pretreat a sample by mixing it with a buffered solution in the pH range of 6 to 8 that simulates the receiving water resulting in a donor stream containing aqueous dissolved HCN in equilibrium with the cyanide anion. The donor stream is passed across a hydrophobic gas-permeable membrane, which selectively diffuses gaseous HCN into a parallel acceptor stream that consists of dilute sodium hydroxide, forming dissolved CN^-. The cyanide ions in this acceptor stream are measured when it is passed through an amperometric detector, where the cyanide ion dissolves the silver electrode, resulting in a proportional current. Although this method is new to Standard Methods for the Examination of Water and Wastewater, it is based on ASTM D7237–15, which is approved in Table IB for determination of free cyanide and relies on the same underlying chemistry and determinative technique to determine free cyanide.

4. Fluoride. 4500–F^- G–2021, Ion-Selective Electrode Flow Injection Analysis is an automated version of method 4500–F^- C and relies on the same underlying chemistry and determinative technique as USGS Method I–4237–85, which currently is approved in Table IB for determination of fluoride. Fluoride is determined potentiometrically by using a combination fluoride ion selective electrode (ISE) in a flow cell. The fluoride electrode consists of a lanthanum fluoride crystal across which a potential is developed by fluoride ions.

5. Oil and Grease. In 5520 G–2021, Solid-Phase, Partition-Gravimetric Method, dissolved or emulsified oil and grease is extracted from water by passing a sample through a solid-phase extraction (SPE) disk where the oil and grease are adsorbed by the disk and subsequently eluted with n-hexane. SPE is a modification allowed under EPA Methods 1664 A and B and relies on the same underlying chemistry and determinative technique as Methods 1664 A and B. Some extractables, especially unsaturated fats and fatty acids, oxidize readily; hence, special precautions regarding temperature and solvent vapor displacement are provided. This method is not applicable to materials that volatilize at temperatures below 85 °C, or crude and heavy fuel oils containing a significant percentage of material not soluble in n-hexane. This method may be a satisfactory alternative to liquid-liquid extraction techniques, especially for samples that tend to form difficult emulsions during the extraction step.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the Paperwork Reduction Act. This rule does not impose any information collection, reporting, or recordkeeping requirements. This rule merely revises or adds alternate CWA test procedures.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action would approve new alternate and revised versions of CWA testing procedures. Generally, these changes would have a positive impact on small entities by increasing method flexibility, thereby allowing entities to reduce costs by choosing more cost-effective methods. In general, the EPA expects the revisions would lead to few, if any, increased costs. The changes clarify or improve the instructions in the method, update the technology used in the method, improve the QC instructions, make editorial corrections, or reflect the most recent approval year of an already approved method. In some cases, the rule adds alternatives to currently approved methods for a particular analyte (*e.g.,* ASTM Method D7511). Because these methods would be alternatives rather than requirements, there are no direct costs associated with the methods approved by the EPA and incorporated by reference. If a permittee elected to use these methods, they could incur a small cost associated with obtaining these methods from the listed sources. See Sections IV. A through D of this preamble.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no

enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule would merely approve new alternate and revised versions of test procedures. The EPA has concluded that the final rule would not lead to any costs to any tribal governments, and if incurred, the EPA projects they would be minimal. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

This action involves technical standards. The EPA is approving the use of technical standards developed and recommended by the Standard Methods Committee and ASTM International for use in compliance monitoring where the EPA determined that those standards meet the needs of CWA programs. As described above, this final rule is consistent with the NTTAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action has no effect on communities because this action will approve new alternate and revised versions of CWA testing procedures. These changes would provide increased flexibility for the regulated community in meeting monitoring requirements while improving data quality. In addition, this update to the CWA methods will incorporate technological advances in analytical technology. Although this action does not concern human health or environmental conditions, the EPA identifies and addresses environmental justice concerns by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

K. Congressional Review Act

This action is subject to the Congressional Review Act and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Test procedures, Water pollution control.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 136 as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

■ 1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307 and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

■ 2. Amend § 136.3 by:

■ a. In paragraph (a), revising tables IA, IB, IC, ID, and IH;

■ b. Revising paragraph (b) introductory text;

■ c. Revising and republishing paragraphs (b)(8), (10), (15), (19), (26), and (27);

■ d. Redesignating paragraphs (b)(33) through (39) as paragraphs (b)(35) through (41);

■ e. Adding new paragraphs (b)(33) and (34);

■ f. Revising the newly redesignated paragraphs (b)(40) introductory text, (b)(40)(ii), (ix), and (xiv); and

■ g. In paragraph (e), table II, revising Footnote ''5''.

The revisions and additions read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE IA—LIST OF APPROVED BIOLOGICAL METHODS FOR WASTEWATER AND SEWAGE SLUDGE

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
Bacteria					
1. Coliform (fecal), number per gram dry weight.	Most Probable Number (MPN), 5 tube, 3 dilution, or.	p. 132,[3] 1680,[11 15] 1681[11 20]	9221 E–2014.		
	Membrane filter (MF),[2 5] single step	p. 124[3]	9222 D–2015.[29]		
2. Coliform (fecal), number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 132[3]	9221 E–2014, 9221 F–2014.[33]		
	Multiple tube/multiple well, or				Colilert-18®.[13 18 28]
	MF,[2 5] single step[5]	p. 124[3]	9222 D–2015[29]	B–0050–85.[4]	
3. Coliform (total), number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 114[3]	9221 B–2014.		
	MF,[2 5] single step or	p. 108[3]	9222 B–2015[30]	B–0025–85.[4]	
	MF,[2 5] two step with enrichment	p. 111[3]	9222 B–2015.[30]		

TABLE IA—LIST OF APPROVED BIOLOGICAL METHODS FOR WASTEWATER AND SEWAGE SLUDGE—Continued

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
4. *E. coli,* number per 100 mL	MPN [6 8 16] multiple tube, or		9221 B2014/9221 F–2014.[12 14 33]		
	multiple tube/multiple well, or		9223 B–2016 [13]	991.15 [10]	Colilert®.[13 18] Colilert-18®.[13 17 18]
	MF,[2 5 6 7 8] two step, or		9222 B–2015/9222 I–2015.[31]		
	Single step	1603.1 [21]			m-ColiBlue24®.[19]
5. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 139 [3]	9230 B–2013.		
	MF,[2] or	p. 136 [3]	9230 C–2013 [32]	B–0055–85.[4]	
	Plate count	p. 143.[3]			
6. Enterococci, number per 100 mL	MPN, 5 tube, 3 dilution, or	p. 139 [3]	9230 B–2013.		
	MPN,[6 8] multiple tube/multiple well, or.		9230 D–2013	D6503–99 [9]	Enterolert®.[13 23]
	MF [2 5 6 7 8] single step or	1600.1 [24]	9230 C–2013.[32]		
	Plate count	p. 143.[3]			
7. *Salmonella*, number per gram dry weight [11].	MPN multiple tube	1682.[22]			
Aquatic Toxicity					
8. Toxicity, acute, fresh water organisms, LC_{50}, percent effluent.	Water flea, *Cladoceran, Ceriodaphnia dubia* acute.	2002.0.[25]			
	Water flea, *Cladocerans, Daphnia pulex* and *Daphnia magna* acute.	2021.0.[25]			
	Fish, Fathead minnow, *Pimephales promelas,* and Bannerfin shiner, *Cyprinella leedsi,* acute.	2000.0.[25]			
	Fish, Rainbow trout, *Oncorhynchus mykiss,* and brook trout, *Salvelinus fontinalis,* acute.	2019.0.[25]			
9. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC_{50}, percent effluent.	Mysid, *Mysidopsis bahia,* acute	2007.0.[25]			
	Fish, Sheepshead minnow, *Cyprinodon variegatus,* acute.	2004.0.[25]			
	Fish, Silverside, *Menidia beryllina, Menidia menidia,* and *Menidia peninsulae,* acute.	2006.0.[25]			
10. Toxicity, chronic, fresh water organisms, NOEC or IC_{25}, percent effluent.	Fish, Fathead minnow, *Pimephales promelas,* larval survival and growth.	1000.0.[26]			
	Fish, Fathead minnow, *Pimephales promelas,* embryo-larval survival and teratogenicity.	1001.0.[26]			
	Water flea, Cladoceran, *Ceriodaphnia dubia,* survival and reproduction.	1002.0.[26]			
	Green alga, *Selenastrum capricornutum,* growth.	1003.0.[26]			
11. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC_{25}, percent effluent.	Fish, Sheepshead minnow, *Cyprinodon variegatus,* larval survival and growth..	1004.0.[27]			
	Fish, Sheepshead minnow, *Cyprinodon variegatus,* embryo-larval survival and teratogenicity.	1005.0.[27]			
	Fish, Inland silverside, *Menidia beryllina,* larval survival and growth.	1006.0.[27]			
	Mysid, *Mysidopsis bahia,* survival, growth, and fecundity.	1007.0.[27]			
	Sea urchin, *Arbacia punctulata,* fertilization.	1008.0.[27]			

Table IA notes:

[1] The method must be specified when results are reported.

[2] A 0.45-μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] Microbiological Methods for Monitoring the Environment, Water and Wastes, EPA/600/8–78/017. 1978. US EPA.

[4] U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples. 1989. USGS.

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[6] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[7] When the MF method has been used previously to test waters with high turbidity, large numbers of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[8] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current *Standard Methods for the Examination of Water and Wastewater* or EPA alternate test procedure (ATP) guidelines.

[9] Annual Book of ASTM Standards—Water and Environmental Technology, Section 11.02. 2000, 1999, 1996. ASTM International.
[10] Official Methods of Analysis of AOAC International. 16th Edition, 4th Revision, 1998. AOAC International.
[11] Recommended for enumeration of target organism in sewage sludge.
[12] The multiple-tube fermentation test is used in 9221B.2–2014. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.
[13] These tests are collectively known as defined enzyme substrate tests.
[14] After prior enrichment in a presumptive medium for total coliform using 9221B.2–2014, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F–2014. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 µg/mL of MUG may be used.
[15] Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation Using Lauryl-Tryptose Broth (LTB) and EC Medium, EPA–821–R–14–009. September 2014. U.S. EPA.
[16] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray®/2000 and the MPN calculated from the table provided by the manufacturer.
[17] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35°C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.
[18] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories, Inc.
[19] A description of the mColiBlue24® test is available from Hach Company.
[20] Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation Using A–1 Medium, EPA–821–R–06–013. July 2006. U.S. EPA.
[21] Method 1603.1: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC), EPA–821–R–23–008. September 2023. U.S. EPA.
[22] Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium, EPA–821–R–14–012. September 2014. U.S. EPA.
[23] A description of the Enterolert® test may be obtained from IDEXX Laboratories Inc.
[24] Method 1600.1: Enterococci in Water by Membrane Filtration Using Membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (mEI), EPA–821–R–23–006. September 2023. U.S. EPA.
[25] Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA–821–R–02–012. Fifth Edition, October 2002. U.S. EPA; and U.S. EPA Whole Effluent Toxicity Methods Errata Sheet, EPA 821–R–02–012–ES. December 2016.
[26] Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA–821–R–02–013. Fourth Edition, October 2002. U.S. EPA; and U.S. EPA Whole Effluent Toxicity Methods Errata Sheet, EPA 821–R–02–012–ES. December 2016.
[27] Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, EPA–821–R–02–014. Third Edition, October 2002. U.S. EPA; and U.S. EPA Whole Effluent Toxicity Methods Errata Sheet, EPA 821–R–02–012–ES. December 2016.
[28] To use Colilert-18® to assay for fecal coliforms, the incubation temperature is 44.5 ± 0.2 °C, and a water bath incubator is used.
[29] On a monthly basis, at least ten blue colonies from positive samples must be verified using Lauryl Tryptose Broth and EC broth, followed by count adjustment based on these results; and representative non-blue colonies should be verified using Lauryl Tryptose Broth. Where possible, verifications should be done from randomized sample sources.
[30] On a monthly basis, at least ten sheen colonies from positive samples must be verified using lauryl tryptose broth and brilliant green lactose bile broth, followed by count adjustment based on these results; and representative non-sheen colonies should be verified using lauryl tryptose broth. Where possible, verifications should be done from randomized sample sources.
[31] Subject coliform positive samples determined by 9222 B–2015 or other membrane filter procedure to 9222 I–2015 using NA–MUG media.
[32] Verification of colonies by incubation of BHI agar at 10 ± 0.5 °C for 48 ± 3 h is optional. As per the Errata to the 23rd Edition of *Standard Methods for the Examination of Water and Wastewater* ''Growth on a BHI agar plate incubated at 10 ± 0.5 °C for 48 ± 3 h is further verification that the colony belongs to the genus *Enterococcus*.''
[33] 9221F. 2–2014 allows for simultaneous detection of *E. coli* and thermotolerant fecal coliforms by adding inverted vials to EC–MUG; the inverted vials collect gas produced by thermotolerant fecal coliforms.

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
1. Acidity (as $CaCO_3$), mg/L.	Electrometric endpoint or phenolphthalein endpoint.	.....	2310 B–2020	D1067–16	I–1020–85.[2]
2. Alkalinity (as $CaCO_3$), mg/L.	Electrometric or Colorimetric titration to pH 4.5, Manual.	.....	2320 B–2021	D1067–16	973.43,[3] I–1030–85.[2]
	Automatic	310.2 (Rev. 1974) [1] ..	.....	.....	I–2030–85.[2]
3. Aluminum—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]	.....	3111 D–2019 or 3111 E–2019.	.....	I–3051–85.[2]
	AA furnace	.....	3113 B–2020.		
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97,[81]
	Direct Current Plasma (DCP) [36]	.....	.....	D4190–15	See footnote.[34]
	Colorimetric (Eriochrome cyanine R)	.....	3500–Al B–2020.		
4. Ammonia (as N), mg/L.	Manual distillation [6] or gas diffusion (pH > 11), followed by any of the following:	350.1 Rev. 2.0 (1993).	4500–NH_3 B–2021 ...	.....	973.49.[3]
	Nesslerization	.....	.....	D1426–15 (A)	973.49,[3] I–3520–85.[2]
	Titration	.....	4500–NH_3 C–2021.		
	Electrode	.....	4500–NH_3 D–2021 or E–2021.	D1426–15 (B)	
	Manual phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods.	.....	4500–NH_3 F–2021 ...	.....	See footnote.[60]
	Automated phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods.	350.1,[30] Rev. 2.0 (1993).	4500–NH_3 G–2021, 4500–NH_3 H–2021.	.....	I–4523–85,[2] I–2522–90.[80]
	Automated electrode	.....	.....	.....	See footnote.[7]
	Ion Chromatography	.....	.....	D6919–17.	
	Automated gas diffusion, followed by conductivity cell analysis.	.....	.....	.....	Timberline Ammonia-001.[74]
	Automated gas diffusion followed by fluorescence detector analysis.	.....	.....	.....	FIAlab100.[82]
5. Antimony—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
	AA direct aspiration [36]		3111 B–2019.		
	AA furnace		3113 B–2020.		
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97.[81]
6. Arsenic—Total,[4] mg/L.	Digestion,[4] followed by any of the following:	206.5 (Issued 1978).[1]			
	AA gaseous hydride		3114 B–2020 or 3114 C–2020.	D2972–15 (B)	I–3062–85.[2]
	AA furnace		3113 B–2020	D2972–15 (C)	I–4063–98.[49]
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4020–05.[70]
	Colorimetric (SDDC)		3500–As B–2020	D2972–15 (A)	I–3060–85.[2]
7. Barium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 D–2019		I–3084–85.[2]
	AA furnace		3113 B–2020	D4382–18.	
	ICP/AES [36]	200.5, Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020		I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97.[81]
	DCP [36]				See footnote.[34]
8. Beryllium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 D–2019 or 3111 E–2019.	D3645–15 (A)	I–3095–85.[2]
	AA furnace		3113 B–2020	D3645–15 (B).	
	STGFAA	200.9, Rev. 2.2 (1994).			
	ICP/AES	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97.[81]
	DCP			D4190–15	See footnote.[34]
	Colorimetric (aluminon)		See footnote [61]		
9. Biochemical oxygen demand (BOD_5), mg/L.	Dissolved Oxygen Depletion		5210 B–2016 [85]		973.44 [3] p. 17,[9] I–1578–78,[8] see footnote.[10 63]
10. Boron—Total,[37] mg/L.	Colorimetric (curcumin)		4500–B B–2011		I–3112–85.[2]
	ICP/AES	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
	DCP			D4190–15	See footnote.[34]
11. Bromide, mg/L	Electrode			D1246–16	I–1125–85.[2]
	Ion Chromatography	300.0 Rev 2.1 (1993), and 300.1 Rev 1.0 (1997).	4110 B–2020, C–2020 or D–2020.	D4327–17	993.30,[3] I–2057–85.[79]
	CIE/UV		4140 B–2020	D6508–15	D6508 Rev. 2.[54]
12. Cadmium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 B–2019 or 3111 C–2019.	D3557–17 (A or B)	974.27 [3] p. 37,[9] I–3135–85 [2] or I–3136–85.[2]
	AA furnace		3113 B–2020	D3557–17 (D)	I–4138–89.[51]
	STGFAA	200.9 Rev. 2.2 (1994)..			
	ICP/AES [36]	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–1472–85 [2] or I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Voltammetry [11]			D3557–17 (C).	
	Colorimetric (Dithizone)		3500–Cd D–1990.		
13. Calcium—Total,[4] mg/L.	Digestion [4] followed by any of the following:				

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
	AA direct aspiration		3111 B–2019 or 3111 D–2019.	D511–14 (B)	I–3152–85.[2]
	ICP/AES	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020		I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
	DCP				See footnote.[34]
	Titrimetric (EDTA)		3500-Ca B–2020	D511–14 (A).	
	Ion Chromatography			D6919–17.	
14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L[12].	Dissolved Oxygen Depletion with nitrification inhibitor.		5210 B–2016 [85]		See footnotes.[35 63]
15. Chemical oxygen demand (COD), mg/L.	Titrimetric	410.3 (Rev. 1978) [1]	5220 B–2011 or C–2011.	D1252–06(12) (A)	973.46[3] p. 17,[9] I–3560–85.[2]
	Spectrophotometric, manual or automatic	410.4 Rev. 2.0 (1993).	5220 D–2011	D1252–06(12) (B)	See footnotes,[13 14 83] I–3561–85.[2]
16. Chloride, mg/L	Titrimetric: (silver nitrate)		4500-Cl^- B–2021	D512–12 (B)	I–1183–85.[2]
	(Mercuric nitrate)		4500-Cl^- C–2021	D512–12 (A)	973.51,[3] I–1184–85.[2]
	Colorimetric: manual				I–1187–85.[2]
	Automated (ferricyanide)		4500-Cl^- E–2021		I–2187–85.[2]
	Potentiometric Titration		4500-Cl^- D–2021.		
	Ion Selective Electrode			D512–12 (C).	
	Ion Chromatography	300.0 Rev 2.1 (1993), and 300.1 Rev 1.0 (1997).	4110 B–2020 or 4110 C–2020.	D4327–17	993.30,[3] I–2057–90.[51]
	CIE/UV		4140 B–2020	D6508–15	D6508, Rev. 2.[54]
17. Chlorine—Total residual, mg/L.	Amperometric direct		4500-Cl D–2011	D1253–14.	
	Amperometric direct (low level)		4500-Cl E–2011.		
	Iodometric direct		4500-Cl B–2011.		
	Back titration ether end-point [15]		4500-Cl C–2011.		
	DPD–FAS		4500-Cl F–2011.		
	Spectrophotometric, DPD		4500-Cl G–2011.		
	Electrode				See footnote.[16]
17A. Chlorine—Free Available, mg/L.	Amperometric direct		4500-Cl D–2011	D1253–14..	
	Amperometric direct (low level)		4500-Cl E–2011.		
	DPD–FAS		4500-Cl F–2011.		
	Spectrophotometric, DPD		4500-Cl G–2011.		
18. Chromium VI dissolved, mg/L.	0.45-micron filtration followed by any of the following:				
	AA chelation-extraction		3111 C–2019		I–1232–85.[2]
	Ion Chromatography	218.6 Rev. 3.3 (1994).	3500-Cr C–2020	D5257–17	993.23.[3]
	Colorimetric (diphenyl-carbazide)		3500-Cr B–2020	D1687–17 (A)	I–1230–85.[2]
19. Chromium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 B–2019	D1687–17 (B)	974.27,[3] I–3236–85.[2]
	AA chelation-extraction		3111 C–2019.		
	AA furnace		3113 B–2020	D1687–17 (C)	I–3233–93.[46]
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20.	
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4020–05[70] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (diphenyl-carbazide)		3500-Cr B–2020.		
20. Cobalt—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 B–2019 or 3111 C–2019.	D3558–15 (A or B)	p. 37,[9] I–323985.[2]
	AA furnace		3113 B–2020	D3558–15 (C)	I–4243–89.[51]
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES	200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4020–05[70] I–4472–97.[81]
	DCP			D4190–15	See footnote.[34]
21. Color, platinum cobalt units or dominant wavelength, hue, luminance purity.	Colorimetric (ADMI)		2120 F–2021.[78]		
	Platinum cobalt visual comparison		2120 B–2021		I–1250–85.[2]
	Spectrophotometric				See footnote.[18]
22. Copper—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
	AA direct aspiration [36]		3111 B–2019 or 3111 C–2019.	D1688–17 (A or B)	974.27,[3] p. 37,[9] I–3270–85 [2] or I–3271–85.[2]
	AA furnace		3113 B–2020	D1688–17 (C)	I–4274–89.[51]
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4020–05,[70] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (Neocuproine)		3500-Cu B–2020.		
	Colorimetric (Bathocuproine)		3500-Cu C–2020		See footnote.[19]
23. Cyanide—Total, mg/L.	Automated UV digestion/distillation and Colorimetry.				Kelada-01.[55]
	Segmented Flow Injection, In-Line Ultraviolet Digestion, followed by gas diffusion amperometry.		4500–CN^- P–2021	D7511–12 (17).	
	Manual distillation with $MgCl_2$, followed by any of the following:	335.4 Rev. 1.0 (1993) [57].	4500–CN^- B–2021 and C–2021.	D2036–09(15)(A), D7284–20.	10–204–00–1–X.[56]
	Flow Injection, gas diffusion amperometry			D2036–09(15)(A) D7284–20.	
	Titrimetric		4500–CN^- D–2021	D2036–09(15)(A)	See footnote [9] p. 22.
	Spectrophotometric, manual		4500–CN^- E–2021	D2036–09(15)(A)	I–3300–85.[2]
	Semi-Automated [20]	335.4 Rev. 1.0 (1993) [57].	4500–CN^- N–2021		10–204–00–1–X,[56] I–4302–85.[2]
	Ion Chromatography			D2036–09(15)(A).	
	Ion Selective Electrode		4500–CN^- F–2021	D2036–09(15)(A).	
24. Cyanide—Available, mg/L.	Cyanide Amenable to Chlorination (CATC); Manual distillation with $MgCl_2$, followed by Titrimetric or Spectrophotometric.		4500–CN^- G–2021	D2036–09(15)(B).	
	Flow injection and ligand exchange, followed by gas diffusion amperometry [59].		4500–CN^- Q–2021	D6888–16	OIA–1677–09.[44]
	Automated Distillation and Colorimetry (no UV digestion).				Kelada–01.[55]
24A. Cyanide—Free, mg/L.	Flow Injection, followed by gas diffusion amperometry.		4500–CN^- R–2021	D7237–18 (A)	OIA–1677–09.[44]
	Manual micro-diffusion and colorimetry			D4282–15.	
25. Fluoride—Total, mg/L.	Manual distillation,[6] followed by any of the following:.		4500–F^- B–2021	D1179–16 (A).	
	Electrode, manual		4500–F^- C–2021	D1179–16 (B).	
	Electrode, automated		4500–F^- G–2021		I–4327–85.[2]
	Colorimetric, (SPADNS)		4500–F^- D–2021.		
	Automated complexone		4500–F^- E–2021.		
	Ion Chromatography	300.0 Rev 2.1 (1993) and 300.1 Rev 1.0 (1997).	4110 B–2020 or C–2020.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2020	D6508–15	D6508, Rev. 2.[54]
26. Gold—Total,[4] mg/L	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 B–2019.		
	AA furnace	231.2 (Issued 1978) [1]	3113 B–2020.		
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
	DCP				See footnote.[34]
27. Hardness—Total (as $CaCO_{(3)}$, mg/L.	Automated colorimetric	130.1 (Issued 1971).[1]			
	Titrimetric (EDTA)		2340 C–2021	D1126–17	973.52B,[3] I–1338–85.[2]
	Ca plus Mg as their carbonates, by any approved method for Ca and Mg (See Parameters 13 and 33), provided that the sum of the lowest point of quantitation for Ca and Mg is below the NPDES permit requirement for Hardness..		2340 B–2021.		
28. Hydrogen ion (pH), pH units.	Electrometric measurement		4500–H^+ B–2021	D1293–18 (A or B)	973.41,[3] I–1586–85.[2]
	Automated electrode	150.2 (Dec. 1982) [1]			See footnote [21] I–2587–85.[2]
29. Iridium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:.				
	AA direct aspiration		3111 B–2019.		
	AA furnace	235.2 (Issued 1978).[1]			
	ICP/MS		3125 B–2020.		
30. Iron—Total,[4] mg/L	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 B–2019 or 3111 C–2019.	D1068–15 (A)	974.27,[3] I–3381–85.[2]
	AA furnace		3113 B–2020	D1068–15 (B).	
	STGFAA	200.9, Rev. 2.2 (1994).			

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
	ICP/AES [36]	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (Phenanthroline)		3500-Fe B–2011	D1068–15 (C)	See footnote.[22]
31. Kjeldahl Nitrogen [5]—Total (as N), mg/L.	Manual digestion [20] and distillation or gas diffusion, followed by any of the following:		4500–N_{org} B–2021 or C–2021 and 4500–NH_3 B–2021.	D3590–17 (A)	I–4515–91.[45]
	Titration		4500–NH_3 C–2021		973.48.[3]
	Nesslerization			D1426–15 (A).	
	Electrode		4500–NH_3 D–2021 or E–2021.	D1426–15 (B).	
	Semi-automated phenate	350.1 Rev. 2.0 (1993).	4500–NH_3 G–2021 or 4500–NH_3 H–2021.		
	Manual phenate, salicylate, or other substituted phenols in Berthelot reaction based methods.		4500–NH_3 F–2021		See footnote.[60]
	Automated gas diffusion, followed by conductivity cell analysis.				Timberline Ammonia-001.[74]
	Automated gas diffusion followed by fluorescence detector analysis.				FIAlab 100.[82]
	Automated Methods for TKN that do not require manual distillation..				
	Automated phenate, salicylate, or other substituted phenols in Berthelot reaction-based methods colorimetric (auto digestion and distillation)	351.1 (Rev. 1978) [1]			I–4551–78.[8]
	Semi-automated block digestor colorimetric (distillation not required).	351.2 Rev. 2.0 (1993).	4500–N_{org} D–2021	D3590–17 (B)	I–4515–91.[45]
	Block digester, followed by Auto distillation and Titration.				See footnote.[39]
	Block digester, followed by Auto distillation and Nesslerization.				See footnote.[40]
	Block Digester, followed by Flow injection gas diffusion (distillation not required).				See footnote.[41]
	Digestion with peroxdisulfate, followed by Spectrophotometric (2,6-dimethyl phenol).				Hach 10242.[76]
	Digestion with persulfate, followed by Colorimetric.				NCASI TNTP W10900.[77]
32. Lead—Total,[4] mg/L	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 B–2019 or 3111 C–2019.	D3559–15 (A or B)	974.27,[3] I–3399–85.[2]
	AA furnace		3113 B–2020	D3559–15 (D)	I–4403–89.[51]
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Voltammetry [11]			D3559–15 (C).	
	Colorimetric (Dithizone)		3500-Pb B–2020.		
33. Magnesium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 B–2019	D511–14 (B)	974.27,[3] I–3447–85.[2]
	ICP/AES	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
	DCP				See footnote.[34]
	Ion Chromatography			D6919–17.	
34. Manganese—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 B–2019 or 3111 C–2019.	D858–17 (A or B)	974.27,[3] I–3454–85.[2]
	AA furnace		3113 B–2020	D858–17 (C).	
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5, Rev. 4.2 (2003); [68] 200.7, Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (Persulfate)		3500-Mn B–2020		920.203.[3]
	Colorimetric (Periodate)				See footnote.[23]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
35. Mercury—Total, mg/L.	Cold vapor, Manual	245.1 Rev. 3.0 (1994).	3112 B–2020	D3223–17	977.22,[3] I–3462–85.[2]
	Cold vapor, Automated	245.2 (Issued 1974).[1]			
	Cold vapor atomic fluorescence spectrometry (CVAFS).	245.7 Rev. 2.0 (2005) [17].			I–4464–01.[71]
	Purge and Trap CVAFS	1631E.[43]			
36. Molybdenum—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 D–2019		I–3490–85.[2]
	AA furnace		3113 B–2020		I–3492–96.[47]
	ICP/AES	200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97.[81]
	DCP				See footnote.[34]
37. Nickel—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 B–2019 or 3111 C–2019.	D1886–14 (A or B)	I–3499–85.[2]
	AA furnace		3113 B–2020	D1886–14 (C)	I–4503–89.[51]
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4020–05,[70] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
38. Nitrate (as N), mg/L	Ion Chromatography	300.0 Rev. 2.1 (1993) and 300.1 Rev. 1.0 (1997).	4110 B–2020 or C–2020.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2020	D6508–15	D6508, Rev. 2.[54]
	Ion Selective Electrode		4500–NO_3^- D–2019..		
	Colorimetric (Brucine sulfate)	352.1 (Issued 1971) [1]			973.50,[3] 419D,[86] p. 28.[9]
	Spectrophotometric (2,6-dimethylphenol)				Hach 10206.[75]
	Nitrate-nitrite N minus Nitrite N (see parameters 39 and 40).				
39. Nitrate-nitrite (as N), mg/L.	Cadmium reduction, Manual		4500–NO_3^- E–2019	D3867–16 (B).	
	Cadmium reduction, Automated	353.2 Rev. 2.0 (1993).	4500–NO_3^- F–2019 or 4500–NO_3^- I–2019.	D3867–16 (A)	I–2545–90.[51]
	Automated hydrazine		4500–NO_3^- H–2019.		
	Reduction/Colorimetric				See footnote.[62]
	Ion Chromatography	300.0 Rev. 2.1 (1993) and 300.1 Rev. 1.0 (1997).	4110 B–2020 or C–2020.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2020	D6508–15	D6508, Rev. 2.[54]
	Enzymatic reduction, followed by automated colorimetric determination.			D7781–14	I–2547–11,[72] I–2548–11,[72] N07–0003.[73]
	Enzymatic reduction, followed by manual colorimetric determination.		4500–NO_3^- J–2018.		
	Spectrophotometric (2,6-dimethylphenol)				Hach 10206.[75]
40. Nitrite (as N), mg/L	Spectrophotometric: Manual		4500–NO_2^- B–2021		See footnote.[25]
	Automated (Diazotization)				I–4540–85 [2] see footnote,[62] I–2540–90.[80]
	Automated (*bypass cadmium reduction)	353.2 Rev. 2.0 (1993).	4500–NO_3^- F–2019, 4500–NO_3^- I–2019.	D3867–16 (A)	I–4545–85.[2]
	Manual (*bypass cadmium or enzymatic reduction).		4500–NO_3^- E–2019, 4500–NO_3^- J–2018.	D3867–16 (B).	
	Ion Chromatography	300.0 Rev. 2.1 (1993) and 300.1 Rev. 1.0 (1997).	4110 B–2020 or C–2020.	D4327–17	993.30.[3]
	CIE/UV		4140 B–2020	D6508–15	D6508, Rev. 2.[54]
	Automated (*bypass Enzymatic reduction)			D7781–14	I–2547–11,[72] I–2548–11,[72] N07–0003.[73]
41. Oil and grease—Total recoverable, mg/L.	Hexane extractable material (HEM): *n*-Hexane extraction and gravimetry.	1664 Rev. A 1664 Rev. B [42].	5520 B or G–2021.[38].		
	Silica gel treated HEM (SGT–HEM): Silica gel treatment and gravimetry.	1664 Rev. A, 1664 Rev. B [42].	5520 B or G–2021 [38] and 5520 F–2021.[38]		
42. Organic carbon—Total (TOC), mg/L.	Combustion		5310 B–2014	D7573–18a[e1]	973.47,[3] p. 14.[24]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
	Heated persulfate or UV persulfate oxidation.	.....	5310 C–2014, 5310 D–2011.	D4839–03(17)	973.47,[3,] p. 14.[24]
43. Organic nitrogen (as N), mg/L.	Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4).				
44. Ortho-phosphate (as P), mg/L.	Ascorbic acid method:				
	Automated	365.1 Rev. 2.0 (1993).	4500–P F–2021 or G–2021.	.....	973.56,[3] I–4601–85,[2] I–2601–90.[80]
	Manual, single-reagent	.....	4500–P E–2021	D515–88 (A)	973.55.[3]
	Manual, two-reagent	365.3 (Issued 1978).[1]			
	Ion Chromatography	300.0 Rev. 2.1 (1993) and 300.1 Rev. 1.0 (1997).	4110 B–2020 or C–2020.	D4327–17	993.30.[3]
	CIE/UV	.....	4140 B–2020	D6508–15	D6508, Rev. 2.[54]
45. Osmium—Total[4], mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration	.....	3111 D–2019.		
	AA furnace	252.2 (Issued 1978).[1]			
46. Oxygen, dissolved, mg/L.	Winkler (Azide modification)	.....	4500–O (B–F)–2021	D888–18 (A)	973.45B,[3] I–1575–78.[8]
	Electrode	.....	4500–O G–2021	D888–18 (B)	I–1576–78.[8]
	Luminescence-Based Sensor	.....	4500–O H–2021	D888–18 (C)	See footnotes. [63] [64]
47. Palladium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration	.....	3111 B–2019.		
	AA furnace	253.2 (Issued 1978).[1]			
	ICP/MS	.....	3125 B–2020.		
	DCP	.....	.....	.....	See footnote.[34]
48. Phenols, mg/L	Manual distillation,[26] followed by any of the following:.	420.1 (Rev. 1978) [1] ..	5530 B–2021	D1783–01(12).	
	Colorimetric (4AAP) manual	420.1 (Rev. 1978) [1] ..	5530 D–2021 [27]	D1783–01(12) (A or B).	
	Automated colorimetric (4AAP)	420.4 Rev. 1.0 (1993).			
49. Phosphorus (elemental), mg/L.	Gas-liquid chromatography	.....	.....	.....	See footnote.[28]
50. Phosphorus—Total, mg/L.	Digestion,[20] followed by any of the following:.	.....	4500–P B (5)–2021 ..	.....	973.55.[3]
	Manual	365.3 (Issued 1978) [1]	4500–P E–2021	D515–88 (A).	
	Automated ascorbic acid reduction	365.1 Rev. 2.0 (1993).	4500–P (F–H)–2021	.....	973.56,[3] I–4600–85.[2]
	ICP/AES [4] [36]	200.7Rev. 4.4 (1994)	3120 B–2020	.....	I–4471–97.[50]
	Semi-automated block digestor (TKP digestion).	365.4 (Issued 1974) [1]	.....	D515–88 (B)	I–4610–91.[48]
	Digestion with persulfate, followed by Colorimetric.	.....	.....	.....	NCASI TNTP W10900.[77]
51. Platinum—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration	.....	3111 B–2019.		
	AA furnace	255.2 (Issued 1978).[1]			
	ICP/MS	.....	3125 B–2020.		
	DCP	.....	.....	.....	See footnote.[34]
52. Potassium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration	.....	3111 B–2019	.....	973.5,[3] I–3630–85.[2]
	ICP/AES	200.7 Rev. 4.4 (1994).	3120 B–2020.		
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
	Flame photometric	.....	3500–K B–2020.		
	Electrode	.....	3500–K C–2020.		
	Ion Chromatography	.....	.....	D6919–17.	
53. Residue—Total, mg/L.	Gravimetric, 103–105°	.....	2540 B–2020	.....	I–3750–85.[2]
54. Residue—filterable, mg/L.	Gravimetric, 180°	.....	2540 C–2020	D5907–18 (B)	I–1750–85.[2]
55. Residue—non-filterable (TSS), mg/L.	Gravimetric, 103–105° post-washing of residue.	.....	2540 D–2020	D5907–18 (A)	I–3765–85.[2]
56. Residue—settleable, mg/L.	Volumetric (Imhoff cone), or gravimetric	.....	2540 F–2020.		
57. Residue—Volatile, mg/L.	Gravimetric, 550°	160.4 (Issued 1971) [1]	2540 E–2020	.....	I–3753–85.[2]
58. Rhodium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration, or	.....	3111 B–2019.		
	AA furnace	265.2 (Issued 1978).[1]			
	ICP/MS	.....	3125 B–2020.		
59. Ruthenium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration, or	.....	3111 B–2019.		
	AA furnace	267.2.[1]			

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
	ICP/MS		3125 B–2020.		
60. Selenium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA furnace		3113 B–2020	D3859–15 (B)	I–4668–98.[49]
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES [36]	200.5 Rev 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20.	
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4020–05 [70] I–4472–97.[81]
	AA gaseous hydride		3114 B–2020, or 3114 C–2020.	D3859–15 (A)	I–3667–85.[2]
61. Silica—Dissolved,[37] mg/L.	0.45-micron filtration followed by any of the following:				
	Colorimetric, Manual		4500–SiO_2 C–2021	D859–16	I–1700–85.[2]
	Automated (Molybdosilicate)		4500–SiO_2 E–2021 or F–2021.		I–2700–85.[2]
	ICP/AES	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020		I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
62. Silver—Total,[4] [31] mg/L.	Digestion,[4] [29] followed by any of the following:				
	AA direct aspiration		3111 B–2019 or 3111 C–2019.		974.27,[3] p. 37,[9] I–3720–85.[2]
	AA furnace		3113 B–2020		I–4724–89.[51]
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4472–97.[81]
	DCP				See footnote.[34]
63. Sodium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 B–2019		973.54,[3] I–3735–85.[2]
	ICP/AES	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020		I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
	DCP				See footnote.[34]
	Flame photometric		3500-Na B–2020.		
	Ion Chromatography			D6919–17.	
64. Specific conductance, micromhos/cm at 25 °C.	Wheatstone bridge	120.1 (Rev. 1982) [1]	2510 B–2021	D1125–95(99) (A)	973.40,[3] I–2781–85.[2]
65. Sulfate (as SO_4), mg/L.	Automated colorimetric	375.2 Rev. 2.0 (1993).	4500–SO_4^{2-} F–2021 or G–2021.		
	Gravimetric		4500–SO_4^{2-} C–2021 or D–2021.		925.54.[3]
	Turbidimetric		4500–SO_4^{2-} E–2021	D516–16.	
	Ion Chromatography	300.0 Rev. 2.1 (1993) and 300.1 Rev. 1.0 (1997).	4110 B–2020 or C–2020.	D4327–17	993.30,[3] I–4020–05.[70]
	CIE/UV		4140 B–2020	D6508–15	D6508 Rev. 2.[54]
66. Sulfide (as S), mg/L	Sample Pretreatment		4500–S^{2-} B, C–2021.		
	Titrimetric (iodine)		4500–S^{2-} F–2021		I–3840–85.[2]
	Colorimetric (methylene blue)		4500–S^{2-} D–2021.		
	Ion Selective Electrode		4500–S^{2-} G–2021	D4658–15.	
67. Sulfite (as SO_3), mg/L.	Titrimetric (iodine-iodate)		4500–SO_3^{2-} B–2021.		
68. Surfactants, mg/L	Colorimetric (methylene blue)		5540 C–2021	D2330–20.	
69. Temperature, °C	Thermometric		2550 B–2010		See footnote.[32]
70. Thallium-Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 B–2019.		
	AA furnace	279.2 (Issued 1978) [1]	3113 B–2020.		
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES	200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20.	
	ICP/MS	200.8, Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4471–97 [50] I–4472–97.[81]
71. Tin—Total,[4] mg/L	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 B–2019		I–3850–78.[8]

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter	Methodology [58]	EPA [52]	Standard methods [84]	ASTM	USGS/AOAC/Other
	AA furnace		3113 B–2020.		
	STGFAA	200.9 Rev. 2.2 (1994).			
	ICP/AES	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).			
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
72. Titanium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 D–2019.		
	AA furnace	283.2 (Issued 1978).[1]			
	ICP/AES	200.7 Rev. 4.4 (1994).			
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14.[3]
	DCP				See footnote.[34]
73. Turbidity, NTU [53]	Nephelometric	180.1, Rev. 2.0 (1993).	2130 B–2020	D1889–00	I–3860–85,[2] see footnotes.[65 66 67]
74. Vanadium—Total,[4] mg/L.	Digestion,[4] followed by any of the following:				
	AA direct aspiration		3111 D–2019.		
	AA furnace		3113 B–2020	D3373–17.	
	ICP/AES	200.5 Rev. 4.2 (2003),[68] 200.7 Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4020–05.[70]
	DCP			D4190–15	See footnote.[34]
	Colorimetric (Gallic Acid)		3500–V B–2011.		
75. Zinc—Total,[4] mg/L	Digestion,[4] followed by any of the following:				
	AA direct aspiration [36]		3111 B–2019 or 3111 C–2019.	D1691–17 (A or B)	974.27 [3] p. 37,[9] I–3900–85.[2]
	AA furnace	289.2 (Issued 1978).[1]			
	ICP/AES [36]	200.5 Rev. 4.2 (2003),[68] 200.7, Rev. 4.4 (1994).	3120 B–2020	D1976–20	I–4471–97.[50]
	ICP/MS	200.8 Rev. 5.4 (1994).	3125 B–2020	D5673–16	993.14,[3] I–4020–05,[70] I–4472–97.[81]
	DCP [36]			D4190–15	See footnote.[34]
	Colorimetric (Zincon)		3500 Zn B–2020		See footnote.[33]
76. Acid Mine Drainage		1627.[69]			

Table IB Notes:

[1] Methods for Chemical Analysis of Water and Wastes, EPA–600/4–79–020. Revised March 1983 and 1979, where applicable. U.S. EPA.

[2] Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Book 5, Chapter A1., unless otherwise stated. 1989. USGS.

[3] Official Methods of Analysis of the Association of Official Analytical Chemists, Methods Manual, Sixteenth Edition, 4th Revision, 1998. AOAC International.

[4] For the determination of total metals (which are equivalent to total recoverable metals) the sample is not filtered before processing. A digestion procedure is required to solubilize analytes in suspended material and to break down organic-metal complexes (to convert the analyte to a detectable form for colorimetric analysis). For non-platform graphite furnace atomic absorption determinations, a digestion using nitric acid (as specified in Section 4.1.3 of Methods for Chemical Analysis of Water and Wastes) is required prior to analysis. The procedure used should subject the sample to gentle acid refluxing, and at no time should the sample be taken to dryness. For direct aspiration flame atomic absorption (FLAA) determinations, a combination acid (nitric and hydrochloric acids) digestion is preferred, prior to analysis. The approved total recoverable digestion is described as Method 200.2 in Supplement I of ''Methods for the Determination of Metals in Environmental Samples'' EPA/600R–94/111, May 1994, and is reproduced in EPA Methods 200.7, 200.8, and 200.9 from the same Supplement. However, when using the gaseous hydride technique or for the determination of certain elements such as antimony, arsenic, selenium, silver, and tin by non-EPA graphite furnace atomic absorption methods, mercury by cold vapor atomic absorption, the noble metals and titanium by FLAA, a specific or modified sample digestion procedure may be required, and, in all cases the referenced method write-up should be consulted for specific instruction and/or cautions. For analyses using inductively coupled plasma-atomic emission spectrometry (ICP–AES), the direct current plasma (DCP) technique or EPA spectrochemical techniques (platform furnace AA, ICP–AES, and ICP–MS), use EPA Method 200.2 or an approved alternate procedure (*e.g.,* CEM microwave digestion, which may be used with certain analytes as indicated in this table IB); the total recoverable digestion procedures in EPA Methods 200.7, 200.8, and 200.9 may be used for those respective methods. Regardless of the digestion procedure, the results of the analysis after digestion procedure are reported as ''total'' metals.

[5] Copper sulfate or other catalysts that have been found suitable may be used in place of mercuric sulfate.

[6] Manual distillation is not required if comparability data on representative effluent samples are on file to show that this preliminary distillation step is not necessary; however, manual distillation will be required to resolve any controversies. In general, the analytical method should be consulted regarding the need for distillation. If the method is not clear, the laboratory may compare a minimum of 9 different sample matrices to evaluate the need for distillation. For each matrix, a matrix spike and matrix spike duplicate are analyzed both with and without the distillation step (for a total of 36 samples, assuming 9 matrices). If results are comparable, the laboratory may dispense with the distillation step for future analysis. Comparable is defined as <20% RPD for all tested matrices). Alternatively, the two populations of spike recovery percentages may be compared using a recognized statistical test.

[7] Industrial Method Number 379–75 WE Ammonia, Automated Electrode Method, Technicon Auto Analyzer II. February 19, 1976. Bran & Luebbe Analyzing Technologies Inc.

[8] The approved method is that cited in Methods for Determination of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A1. 1979. USGS.

[9] American National Standard on Photographic Processing Effluents. April 2, 1975. American National Standards Institute.

[10] In-Situ Method 1003–8–2009, Biochemical Oxygen Demand (BOD) Measurement by Optical Probe. 2009. In-Situ Incorporated.

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test method which measures ''total 5-day BOD.'' The addition of the nitrification inhibitor is not a procedural option but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using a nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method. 1978. Oceanography International Corporation.

[14] Method 8000, Chemical Oxygen Demand, Hach Handbook of Water Analysis, 1979. Hach Company.

[15] The back-titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70. 1977. Orion Research Incorporated. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] Method 245.7, Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry, EPA–821–R–05–001. Revision 2.0, February 2005. US EPA.
[18] National Council of the Paper Industry for Air and Stream Improvement (NCASI) Technical Bulletin 253 (1971) and Technical Bulletin 803, May 2000.
[19] Method 8506, Bicinchoninate Method for Copper, Hach Handbook of Water Analysis. 1979. Hach Company.
[20] When using a method with block digestion, this treatment is not required.
[21] Industrial Method Number 378–75WA, Hydrogen ion (pH) Automated Electrode Method, Bran & Luebbe (Technicon) Autoanalyzer II. October 1976. Bran & Luebbe Analyzing Technologies.
[22] Method 8008, 1,10-Phenanthroline Method using FerroVer Iron Reagent for Water. 1980. Hach Company.
[23] Method 8034, Periodate Oxidation Method for Manganese, Hach Handbook of Wastewater Analysis. 1979. Hach Company.
[24] Methods for Analysis of Organic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987). 1987. USGS.
[25] Method 8507, Nitrogen, Nitrite-Low Range, Diazotization Method for Water and Wastewater. 1979. Hach Company.
[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.
[27] The colorimetric reaction must be conducted at a pH of 10.0 ± 0.2.
[28] Addison, R.F., and R.G. Ackman. 1970. Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography, *Journal of Chromatography*, 47(3):421–426.
[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.
[30] The use of EDTA decreases method sensitivity. Analysts may omit EDTA or replace with another suitable complexing reagent provided that all method-specified quality control acceptance criteria are met.
[31] For samples known or suspected to contain high levels of silver (*e.g.,* in excess of 4 mg/L), cyanogen iodide should be used to keep the silver in solution for analysis. Prepare a cyanogen iodide solution by adding 4.0 mL of concentrated NH_4OH, 6.5 g of KCN, and 5.0 mL of a 1.0 N solution of I_2 to 50 mL of reagent water in a volumetric flask and dilute to 100.0 mL. After digestion of the sample, adjust the pH of the digestate to <7 to prevent the formation of HCN under acidic conditions. Add 1 mL of the cyanogen iodide solution to the sample digestate and adjust the volume to 100 mL with reagent water (NOT acid). If cyanogen iodide is added to sample digestates, then silver standards must be prepared that contain cyanogen iodide as well. Prepare working standards by diluting a small volume of a silver stock solution with water and adjusting the pH≤7 with NH_4OH. Add 1 mL of the cyanogen iodide solution and let stand 1 hour. Transfer to a 100-mL volumetric flask and dilute to volume with water.
[32] ''Water Temperature-Influential Factors, Field Measurement and Data Presentation,'' Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1. 1975. USGS.
[33] Method 8009, Zincon Method for Zinc, Hach Handbook of Water Analysis, 1979. Hach Company.
[34] Method AES0029, Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes. 1986—Revised 1991. Thermo Jarrell Ash Corporation.
[35] In-Situ Method 1004–8–2009, Carbonaceous Biochemical Oxygen Demand (CBOD) Measurement by Optical Probe. 2009. In-Situ Incorporated.
[36] Microwave-assisted digestion may be employed for this metal, when analyzed by this methodology. Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals. April 16, 1992. CEM Corporation.
[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.
[38] Only use *n*-hexane (*n*-Hexane—85% minimum purity, 99.0% min. saturated C6 isomers, residue less than 1 mg/L) extraction solvent when determining Oil and Grease parameters—Hexane Extractable Material (HEM), or Silica Gel Treated HEM (analogous to EPA Methods 1664 Rev. A and 1664 Rev. B). Use of other extraction solvents is prohibited.
[39] Method PAI–DK01, Nitrogen, Total Kjeldahl, Block Digestion, Steam Distillation, Titrimetric Detection. Revised December 22, 1994. OI Analytical.
[40] Method PAI–DK02, Nitrogen, Total Kjeldahl, Block Digestion, Steam Distillation, Colorimetric Detection. Revised December 22, 1994. OI Analytical.
[41] Method PAI–DK03, Nitrogen, Total Kjeldahl, Block Digestion, Automated FIA Gas Diffusion. Revised December 22, 1994. OI Analytical.
[42] Method 1664 Rev. B is the revised version of EPA Method 1664 Rev. A. U.S. EPA. February 1999, Revision A. Method 1664, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry. EPA–821–R–98–002. U.S. EPA. February 2010, Revision B. Method 1664, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry. EPA–821–R–10–001.
[43] Method 1631, Revision E, Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry, EPA–821–R–02–019. Revision E. August 2002, U.S. EPA. The application of clean techniques described in EPA's Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels*, EPA–821–R–96–011, are recommended to preclude contamination at low-level, trace metal determinations.
[44] Method OIA–1677–09, Available Cyanide by Ligand Exchange and Flow Injection Analysis (FIA). 2010. OI Analytical.
[45] Open File Report 00–170, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonium Plus Organic Nitrogen by a Kjeldahl Digestion Method and an Automated Photometric Finish that Includes Digest Cleanup by Gas Diffusion. 2000. USGS.
[46] Open File Report 93–449, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry. 1993. USGS.
[47] Open File Report 97–198, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry. 1997. USGS.
[48] Open File Report 92–146, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis. 1992. USGS.
[49] Open File Report 98–639, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace-Atomic Absorption Spectrometry. 1999. USGS.
[50] Open File Report 98–165, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry. 1998. USGS.
[51] Open File Report 93–125, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments. 1993. USGS.
[52] Unless otherwise indicated, all EPA methods, excluding EPA Method 300.1, are published in U.S. EPA. May 1994. Methods for the Determination of Metals in Environmental Samples, Supplement I, EPA/600/R–94/111; or U.S. EPA. August 1993. Methods for the Determination of Inorganic Substances in Environmental Samples, EPA/600/R–93/100. EPA Method 300.1 is U.S. EPA. Revision 1.0, 1997, including errata cover sheet April 27, 1999. Determination of Inorganic Ions in Drinking Water by Ion Chromatography.
[53] Styrene divinyl benzene beads (*e.g.,* AMCO–AEPA–1 or equivalent) and stabilized formazin (*e.g.,* Hach StablCal™ or equivalent) are acceptable substitutes for formazin.
[54] Waters Corp. Now included in ASTM D6508–15, Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte. 2015.
[55] Kelada-01, Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate, EPA 821–B–01–009, Revision 1.2, August 2001. US EPA. Note: A 450–W UV lamp may be used in this method instead of the 550–W lamp specified if it provides performance within the quality control (QC) acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the QC acceptance criteria are met.
[56] QuikChem Method 10–204–00–1–X, Digestion and Distillation of Total Cyanide in Drinking and Wastewaters using MICRO DIST and Determination of Cyanide by Flow Injection Analysis. Revision 2.2, March 2005. Lachat Instruments.
[57] When using sulfide removal test procedures described in EPA Method 335.4, reconstitute particulate that is filtered with the sample prior to distillation.
[58] Unless otherwise stated, if the language of this table specifies a sample digestion and/or distillation ''followed by'' analysis with a method, approved digestion and/or distillation are required prior to analysis.
[59] Samples analyzed for available cyanide using OI Analytical method OIA–1677–09 or ASTM method D6888–16 that contain particulate matter may be filtered only after the ligand exchange reagents have been added to the samples, because the ligand exchange process converts complexes containing available cyanide to free cyanide, which is not removed by filtration. Analysts are further cautioned to limit the time between the addition of the ligand exchange reagents and sample filtration to no more than 30 minutes to preclude settling of materials in samples.
[60] Analysts should be aware that pH optima and chromophore absorption maxima might differ when phenol is replaced by a substituted phenol as the color reagent in Berthelot Reaction (''phenol-hypochlorite reaction'') colorimetric ammonium determination methods. For example, when phenol is used as the color reagent, pH optimum and wavelength of maximum absorbance are about 11.5 and 635 nm, respectively—see, Patton, C.J. and S.R. Crouch. March 1977. *Anal. Chem.* 49:464–469. These reaction parameters increase to pH > 12.6 and 665 nm when salicylate is used as the color reagent—see, Krom, M.D. April 1980. *The Analyst* 105:305–316.
[61] If atomic absorption or ICP instrumentation is not available, the aluminon colorimetric method detailed in the 19th Edition of *Standard Methods for the Examination of Water and Wastewater* may be used. This method has poorer precision and bias than the methods of choice.
[62] Easy (1-Reagent) Nitrate Method, Revision November 12, 2011. Craig Chinchilla.
[63] Hach Method 10360, Luminescence Measurement of Dissolved Oxygen in Water and Wastewater and for Use in the Determination of BOD_5 and $CBOD_5$. Revision 1.2, October 2011. Hach Company. This method may be used to measure dissolved oxygen when performing the methods approved in this table IB for measurement of biochemical oxygen demand (BOD) and carbonaceous biochemical oxygen demand (CBOD).
[64] In-Situ Method 1002–8–2009, Dissolved Oxygen (DO) Measurement by Optical Probe. 2009. In-Situ Incorporated.
[65] Mitchell Method M5331, Determination of Turbidity by Nephelometry. Revision 1.0, July 31, 2008. Leck Mitchell.

[66] Mitchell Method M5271, Determination of Turbidity by Nephelometry. Revision 1.0, July 31, 2008. Leck Mitchell.
[67] Orion Method AQ4500, Determination of Turbidity by Nephelometry. Revision 5, March 12, 2009. Thermo Scientific.
[68] EPA Method 200.5, Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA/600/R–06/115. Revision 4.2, October 2003. US EPA.
[69] Method 1627, Kinetic Test Method for the Prediction of Mine Drainage Quality, EPA–821–R–09–002. December 2011. US EPA.
[70] Techniques and Methods Book 5–B1, Determination of Elements in Natural-Water, Biota, Sediment and Soil Samples Using Collision/Reaction Cell Inductively Coupled Plasma-Mass Spectrometry, Chapter 1, Section B, Methods of the National Water Quality Laboratory, Book 5, Laboratory Analysis, 2006. USGS.
[71] Water-Resources Investigations Report 01–4132, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Organic Plus Inorganic Mercury in Filtered and Unfiltered Natural Water with Cold Vapor-Atomic Fluorescence Spectrometry, 2001. USGS.
[72] USGS Techniques and Methods 5–B8, Chapter 8, Section B, Methods of the National Water Quality Laboratory Book 5, Laboratory Analysis, 2011 USGS.
[73] NECi Method N07–0003, ''Nitrate Reductase Nitrate-Nitrogen Analysis,'' Revision 9.0, March 2014, The Nitrate Elimination Co., Inc.
[74] Timberline Instruments, LLC Method Ammonia-001, ''Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Conductivity Cell Analysis,'' June 2011, Timberline Instruments, LLC.
[75] Hach Company Method 10206, ''Spectrophotometric Measurement of Nitrate in Water and Wastewater,'' Revision 2.1, January 2013, Hach Company.
[76] Hach Company Method 10242, ''Simplified Spectrophotometric Measurement of Total Kjeldahl Nitrogen in Water and Wastewater,'' Revision 1.1, January 2013, Hach Company.
[77] National Council for Air and Stream Improvement (NCASI) Method TNTP–W10900, ''Total (Kjeldahl) Nitrogen and Total Phosphorus in Pulp and Paper Biologically Treated Effluent by Alkaline Persulfate Digestion,'' June 2011, National Council for Air and Stream Improvement, Inc.
[78] The pH adjusted sample is to be adjusted to 7.6 for NPDES reporting purposes.
[79] I–2057–85 in U.S. Geological Survey Techniques of Water-Resources Investigations, Book 5, Chap. A1, Methods for Determination of Inorganic Substances in Water and Fluvial Sediments, 1989.
[80] Methods I–2522–90, I–2540–90, and I–2601–90 in U.S. Geological Survey Open-File Report 93–125, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, 1993.
[81] Method I–4472–97 in U.S. Geological Survey Open-File Report 98–165, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, 1998.
[82] FIAlab 100, ''Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Fluorescence Detector Analysis'', April 4, 2018, FIAlab Instruments, Inc.
[83] MACHEREY-NAGEL GmbH and Co. Method 036/038 NANOCOLOR® COD LR/HR, ''Spectrophotometric Measurement of Chemical Oxygen Demand in Water and Wastewater'', Revision 1.5, May 2018, MACHEREY-NAGEL GmbH and Co. KG.
[84] Please refer to the following applicable Quality Control Sections: Part 2000 Methods, Physical and Aggregate Properties 2020 (2021); Part 3000 Methods, Metals, 3020 (2021); Part 4000 Methods, Inorganic Nonmetallic Constituents, 4020 (2022); Part 5000 Methods, and Aggregate Organic Constituents, 5020 (2022). These Quality Control Standards are available for download at *www.standardmethods.org* at no charge.
[85] Each laboratory may establish its own control limits by performing at least 25 glucose-glutamic acid (GGA) checks over several weeks or months and calculating the mean and standard deviation. The laboratory may then use the mean ± 3 standard deviations as the control limit for future GGA checks. However, GGA acceptance criteria can be no wider than 198 ± 30.5 mg/L for BOD_5. GGA acceptance criteria for CBOD must be either 198 ± 30.5 mg/L, or the lab may develop control charts under the following conditions: dissolved oxygen uptake from the seed contribution is between 0.6–1.0 mg/L; control charts are performed on at least 25 GGA checks with three standard deviations from the derived mean; the RSD must not exceed 7.5%; and any single GGA value cannot be less than 150 mg/L or higher than 250 mg/L.
[86] The approved method is that cited in *Standard Methods for the Examination of Water and Wastewater,* 14th Edition, 1976.

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	Method	EPA [2 7]	Standard methods [17]	ASTM	Other
1. Acenaphthene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
2. Acenaphthylene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
3. Acrolein	GC	603.			
	GC/MS	624.1 [4], 1624B.			
4. Acrylonitrile	GC	603.			
	GC/MS	624.1 [4], 1624B			O–4127–96.[13]
5. Anthracene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
6. Benzene	GC	602	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
7. Benzidine	Spectro-photometric.				See footnote [3] p.1.
	GC/MS	625.1 [5], 1625B	6410 B–2020.		
	HPLC	605.			
8. Benzo(a)anthracene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
9. Benzo(a)pyrene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
10. Benzo(b)fluoranthene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
11. Benzo(g,h,i)perylene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
12. Benzo(k)fluoranthene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
13. Benzyl chloride	GC				See footnote [3] p. 130.
	GC/MS				See footnote [6] p. S102.
14. Butyl benzyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
15. bis(2-Chloroethoxy) methane	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
16. bis(2-Chloroethyl) ether	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
17. bis(2-Ethylhexyl) phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
18. Bromodichloromethane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods [17]	ASTM	Other
19. Bromoform	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
20. Bromomethane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
21. 4-Bromophenyl phenyl ether	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
22. Carbon tetrachloride	GC	601	6200 C–2020		See footnote [3] p. 130.
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
23. 4-Chloro-3-methyl phenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
24. Chlorobenzene	GC	601, 602	6200 C–2020		See footnote [3] p. 130.
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13] O–4436–16.[14]
25. Chloroethane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96.[13]
26. 2-Chloroethylvinyl ether	GC	601.			
	GC/MS	624.1, 1624B.			
27. Chloroform	GC	601	6200 C–2020		See footnote [3] p. 130.
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
28. Chloromethane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
29. 2-Chloronaphthalene	GC	612.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
30. 2-Chlorophenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
31. 4-Chlorophenyl phenyl ether	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
32. Chrysene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
33. Dibenzo(a,h)anthracene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
34. Dibromochloromethane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
35. 1,2-Dichlorobenzene	GC	601, 602	6200 C–2020.		
	GC/MS	624.1, 1625B	6200 B–2020		See footnote [9] p. 27, O–4127–96 [13], O–4436–16.[14]
36. 1,3-Dichlorobenzene	GC	601, 602	6200 C–2020.		
	GC/MS	624.1, 1625B	6200 B–2020		See footnote [9] p. 27, O–4127–96.[13]
37. 1,4-Dichlorobenzene	GC	601, 602	6200 C–2020.		
	GC/MS	624.1, 1625B	6200 B–2020		See footnote [9] p. 27, O–4127–96 [13], O–4436–16.[14]
38. 3,3′-Dichlorobenzidine	GC/MS	625.1, 1625B	6410 B–2020.		
	HPLC	605.			
39. Dichlorodifluoromethane	GC	601.			
	GC/MS		6200 B–2020		O–4127–96 [13], O–4436–16.[14]
40. 1,1-Dichloroethane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
41. 1,2-Dichloroethane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
42. 1,1-Dichloroethene	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
43. *trans*-1,2-Dichloroethene	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
44. 2,4-Dichlorophenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
45. 1,2-Dichloropropane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13] O–4436–16.[14]
46. *cis*-1,3-Dichloropropene	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
47. *trans*-1,3-Dichloropropene	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
48. Diethyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
49. 2,4-Dimethylphenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
50. Dimethyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
51. Di-*n*-butyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
52. Di-*n*-octyl phthalate	GC	606.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
53. 2, 4-Dinitrophenol	GC	604	6420 B–2021		See footnote [9] p. 27.
	GC/MS	625.1, 1625B	6410 B–2020.		
54. 2,4-Dinitrotoluene	GC	609.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
55. 2,6-Dinitrotoluene	GC	609.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
56. Epichlorohydrin	GC				See footnote [3] p. 130.
	GC/MS				See footnote [6] p. S102.

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods [17]	ASTM	Other
57. Ethylbenzene	GC	602	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
58. Fluoranthene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98)..	
59. Fluorene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
60. 1,2,3,4,6,7,8-Heptachloro-dibenzofuran.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
61. 1,2,3,4,7,8,9-Heptachloro-dibenzofuran.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
62. 1,2,3,4,6,7,8- Heptachloro-dibenzo-*p*-dioxin.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
63. Hexachlorobenzene	GC	612.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
64. Hexachlorobutadiene	GC	612.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27, O–4127–96.[13]
65. Hexachlorocyclopentadiene	GC	612.			
	GC/MS	625.1 [5], 1625B	6410 B–2020		See footnote [9], p. 27, O–4127–96.[13]
66. 1,2,3,4,7,8-Hexachloro-dibenzofuran.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
67. 1,2,3,6,7,8-Hexachloro-dibenzofuran.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
68. 1,2,3,7,8,9-Hexachloro-dibenzofuran.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
69. 2,3,4,6,7,8-Hexachloro-dibenzofuran.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
70. 1,2,3,4,7,8-Hexachloro-dibenzo-*p*-dioxin.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
71. 1,2,3,6,7,8-Hexachloro-dibenzo-*p*-dioxin.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
72. 1,2,3,7,8,9-Hexachloro-dibenzo-*p*-dioxin.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
73. Hexachloroethane	GC	612.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27, O–4127–96.[13]
74. Indeno(1,2,3-c,d) pyrene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
75. Isophorone	GC	609.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
76. Methylene chloride	GC	601	6200 C–2020		See footnote [3] p. 130.
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
77. 2-Methyl-4,6-dinitrophenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
78. Naphthalene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021.		
79. Nitrobenzene	GC	609.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC			D4657–92 (98).	
80. 2-Nitrophenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
81. 4-Nitrophenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
82. N-Nitrosodimethylamine	GC	607.			
	GC/MS	625.1 [5], 1625B	6410 B–2020		See footnote [9] p. 27.
83. N-Nitrosodi-*n*-propylamine	GC	607.			
	GC/MS	625.1 [5], 1625B	6410 B–2020		See footnote [9] p. 27.
84. N-Nitrosodiphenylamine	GC	607.			
	GC/MS	625.1 [5], 1625B	6410 B–2020		See footnote [9] p. 27.
85. Octachlorodibenzofuran	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
86. Octachlorodibenzo-*p*-dioxin	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
87. 2,2′-oxybis(1-chloropropane) [12] [also known as bis(2-Chloro-1-methylethyl) ether].	GC	611.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
88. PCB–1016	GC	608.3			See footnote [3] p. 43, see footnote.[8]
	GC/MS	625.1	6410 B–2020.		
89. PCB–1221	GC	608.3			See footnote [3] p. 43, see footnote.[8]
	GC/MS	625.1	6410 B–2020.		
90. PCB–1232	GC	608.3			See footnote [3] p. 43, see footnote.[8]
	GC/MS	625.1	6410 B–2020.		
91. PCB–1242	GC	608.3			See footnote [3] p. 43, see footnote.[8]
	GC/MS	625.1	6410 B–2020.		
92. PCB–1248	GC	608.3			See footnote [3] p. 43, see footnote.[8]
	GC/MS	625.1	6410 B–2020.		
93. PCB–1254	GC	608.3			See footnote [3] p. 43, see footnote.[8]

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	Method	EPA [2 7]	Standard methods [17]	ASTM	Other
	GC/MS	625.1	6410 B–2020.		
94. PCB–1260	GC	608.3			See footnote [3] p. 43, see footnote.[8]
	GC/MS	625.1	6410 B–2020.		
95. 1,2,3,7,8-Pentachloro-dibenzofuran.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
96. 2,3,4,7,8-Pentachloro-dibenzofuran.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
97. 1,2,3,7,8-Pentachloro-dibenzo-*p*-dioxin.	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
98. Pentachlorophenol	GC	604	6420 B–2021		See footnote [3] p. 140.
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
99. Phenanthrene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98).	
100. Phenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
101. Pyrene	GC	610.			
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
	HPLC	610	6440 B–2021	D4657–92 (98)..	
102. 2,3,7,8-Tetrachloro-dibenzofuran	GC/MS	1613B [10]			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
103. 2,3,7,8-Tetrachloro-dibenzo-*p*-dioxin.	GC/MS	613, 625.1 [5], 1613B.			SGS AXYS 16130 [15], PAM 16130–SSI.[16]
104. 1,1,2,2-Tetrachloroethane	GC	601	6200 C–2020		See footnote [3] p. 130.
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96.[13]
105. Tetrachloroethene	GC	601	6200 C–2020		See footnote [3] p. 130.
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
106. Toluene	GC	602	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
107. 1,2,4-Trichlorobenzene	GC	612			See footnote [3] p. 130.
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27, O–4127–96 [13], O–4436–16.[14]
108. 1,1,1-Trichloroethane	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
109. 1,1,2-Trichloroethane	GC	601	6200 C–2020		See footnote [3] p. 130.
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
110. Trichloroethene	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
111. Trichlorofluoromethane	GC	601	6200 C–2020.		
	GC/MS	624.1	6200 B–2020		O–4127–96.[13]
112. 2,4,6-Trichlorophenol	GC	604	6420 B–2021.		
	GC/MS	625.1, 1625B	6410 B–2020		See footnote [9] p. 27.
113. Vinyl chloride	GC	601	6200 C–2020.		
	GC/MS	624.1, 1624B	6200 B–2020		O–4127–96 [13], O–4436–16.[14]
114. Nonylphenol	GC/MS			D7065–17.	
115. Bisphenol A (BPA)	GC/MS			D7065–17.	
116. *p-tert*-Octylphenol (OP)	GC/MS			D7065–17.	
117. Nonylphenol Monoethoxylate (NP1EO).	GC/MS			D7065–17.	
118. Nonylphenol Diethoxylate (NP2EO).	GC/MS			D7065–17.	
119. Adsorbable Organic Halides (AOX).	Adsorption and Coulometric Titration.	1650.[11]			
120. Chlorinated Phenolics	In Situ Acetylation and GC/MS.	1653.[11]			

Table IC notes:

[1] All parameters are expressed in micrograms per liter (µg/L) except for Method 1613B, in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601–613, 1613B, 1624B, and 1625B are provided at appendix A, Test Procedures for Analysis of Organic Pollutants. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at appendix B of this part, Definition and Procedure for the Determination of the Method Detection Limit. These methods are available at: *https://www.epa.gov/cwa-methods* as individual PDF files.

[3] Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater. September 1978. U.S. EPA.

[4] Method 624.1 may be used for quantitative determination of acrolein and acrylonitrile, provided that the laboratory has documentation to substantiate the ability to detect and quantify these analytes at levels necessary to comply with any associated regulations. In addition, the use of sample introduction techniques other than simple purge-and-trap may be required. QC acceptance criteria from Method 603 should be used when analyzing samples for acrolein and acrylonitrile in the absence of such criteria in Method 624.1.

[5] Method 625.1 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, N-nitrosodi-*n*-propylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625B, are preferred methods for these compounds. Method 625.1 may be applied to 2,3,7,8-Tetrachloro-dibenzo-*p*-dioxin for screening purposes only.

[6] Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency, Supplement to the 15th Edition of *Standard Methods for the Examination of Water and Wastewater.* 1981. American Public Health Association (APHA).

[7] Each analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 1624B, and 1625B in accordance with procedures in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624.1 and 625.1 and 100% for methods 1624B and 1625B) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the quality control (QC) acceptance criteria in the pertinent method, analytical results for that parameter in the unspiked sample are suspect. The results should be reported but cannot be used to demonstrate regulatory compliance. If the method does not contain QC acceptance criteria, control limits of ±three standard deviations around the mean of a minimum of five replicate measurements must be used. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.

[8] Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk. Revised October 28, 1994. 3M Corporation.

[9] Method O–3116–87 is in Open File Report 93–125, Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments. 1993. USGS.

[10] Analysts may use Fluid Management Systems, Inc. Power-Prep system in place of manual cleanup provided the analyst meets the requirements of Method 1613B (as specified in Section 9 of the method) and permitting authorities. Method 1613, Revision B, Tetra- through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS. Revision B, 1994. U.S. EPA. The full text of this method is provided in appendix A to this part and at *https://www.epa.gov/cwa-methods/approved-cwa-test-methods-organic-compounds.*

[11] Method 1650, Adsorbable Organic Halides by Adsorption and Coulometric Titration. Revision C, 1997 U.S. EPA. Method 1653, Chlorinated Phenolics in Wastewater by In Situ Acetylation and GCMS. Revision A, 1997 U.S. EPA. The full text for both of these methods is provided at appendix A in part 430 of this chapter, The Pulp, Paper, and Paperboard Point Source Category.

[12] The compound was formerly inaccurately labeled as 2,2′-oxybis(2-chloropropane) and bis(2-chloroisopropyl) ether. Some versions of Methods 611, and 1625 inaccurately list the analyte as ''bis(2-chloroisopropyl) ether,'' but use the correct CAS number of 108–60–1.

[13] Method O–4127–96, U.S. Geological Survey Open-File Report 97–829, Methods of analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of 86 volatile organic compounds in water by gas chromatography/mass spectrometry, including detections less than reporting limits,1998, USGS.

[14] Method O–4436–16 U.S. Geological Survey Techniques and Methods, book 5, chap. B12, Determination of heat purgeable and ambient purgeable volatile organic compounds in water by gas chromatography/mass spectrometry, 2016, USGS.

[15] SGS AXYS Method 16130, ''Determination of 2,3,7,8-Substituted Tetra- through Octa-Chlorinated Dibenzo-*p*-Dioxins and Dibenzofurans (CDDs/CDFs) Using Waters and Agilent Gas Chromatography-Tandem-Mass Spectrometry (GC/MS/MS), Revision 1.0'' is available at: *https://www.sgsaxys.com/wp-content/uploads/2022/09/SGS-AXYS-Method-16130-Rev-1.0.pdf.*

[16] Pace Analytical Method PAM–16130–SSI, ''Determination of 2,3,7,8-Substituted Tetra- through Octa-Chlorinated Dibenzo-*p*-Dioxins and Dibenzofurans (CDDs/CDFs) Using Shimadzu Gas Chromatography Mass Spectrometry (GC–MS/MS), Revision 1.1,'' is available at: *pacelabs.com.*

[17] Please refer to the following applicable Quality Control Section: Part 6000 Individual Organic Compounds, 6020 (2019). The Quality Control Standards are available for download at standardmethods.org at no charge.

TABLE ID—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter	Method	EPA [2 7 10]	Standard methods [15]	ASTM	Other
1. Aldrin	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96 (02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020.		
2. Ametryn	GC	507, 619			See footnote [3] p. 83, see footnote [9] O–3106–93, see footnote [6] p. S68.
	GC/MS	525.2, 625.1			See footnote [14] O–1121–91.
3. Aminocarb	TLC				See footnote [3] p. 94, see footnote [6] p. S60.
	HPLC	632.			
4. Atraton	GC	619			See footnote [3] p. 83, see footnote [6] p. S68.
	GC/MS	625.1.			
5. Atrazine	GC	507, 619, 608.3			See footnote [3] p. 83, see footnote [6] p. S68, see footnote [9] O–3106–93.
	HPLC/MS				See footnote [12] O–2060–01.
	GC/MS	525.1, 525.2, 625.1.			See footnote [11] O–1126–95.
6. Azinphos methyl	GC	614, 622, 1657			See footnote [3] p. 25, see footnote [6] p. S51.
	GC–MS	625.1			See footnote [11] O–1126–95.
7. Barban	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
	GC/MS	625.1.			
8. α-BHC	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [8] 3M0222.
	GC/MS	625.1 [5]	6410 B–2020		See footnote [11] O–1126–95.
9. β-BHC	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020.		
10. δ-BHC	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020..		
11. γ-BHC (Lindane)	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4], O–3104–83, see footnote [8] 3M0222.
	GC/MS	625.1 [5]	6410 B–2020		See footnote [11], O–1126–95.
12. Captan	GC	617, 608.3	6630 B–2021	D3086–90, D5812–96(02).	See footnote [3] p. 7.
13. Carbaryl	TLC				See footnote [3] p. 94, see footnote [6] p. S60.
	HPLC	531.1, 632.			
	HPLC/MS	553			See footnote [12] O–2060–01.
	GC/MS	625.1			See footnote [11] O–1126–95.
14. Carbophenothion	GC	617, 608.3	6630 B–2021		See footnote [4] page 27, see footnote [6] p. S73.
	GC/MS	625.1.			
15. Chlordane	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020.		
16. Chloropropham	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
	GC/MS	625.1.			
17. 2,4–D	GC	615	6640 B–2021		See footnote [3] p. 115, see footnote [4] O–3105–83.
	HPLC/MS				See footnote [12] O–2060–01.
18. 4,4′-DDD	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3105–83, see footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020.		
19. 4,4′-DDE	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4], O–3104–83, see footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020		See footnote [11] O–1126–95.

TABLE ID—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2 7 10]	Standard methods [15]	ASTM	Other
20. 4,4′-DDT	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020.		
21. Demeton-O	GC	614, 622			See footnote [3] p. 25, see footnote [6] p. S51.
	GC/MS	625.1			
22. Demeton-S.	GC	614, 622			See footnote [3] p. 25, see footnote [6] p. S51.
	GC/MS	625.1.			
23. Diazinon	GC	507, 614, 622, 1657.			See footnote [3] p. 25, see footnote [4] O–3104–83, see footnote [6] p. S51.
	GC/MS	525.2, 625.1			See footnote [11] O–1126–95.
24. Dicamba	GC	615			See footnote [3] p. 115.
	HPLC/MS				See footnote [12] O–2060–01.
25. Dichlofenthion	GC	622.1			See footnote [4] page 27, see footnote [6] p. S73.
26. Dichloran	GC	608.2, 617, 608.3	6630 B–2021		See footnote [3] p. 7.
27. Dicofol	GC	617, 608.3			See footnote [4] O–3104–83.
28. Dieldrin	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020		See footnote [11] O–1126–95.
29. Dioxathion	GC	614.1, 1657			See footnote [4] page 27, see footnote [6] p. S73.
30. Disulfoton	GC	507, 614, 622, 1657.			See footnote [3] p. 25, see footnote [6] p. S51.
	GC/MS	525.2, 625.1			See footnote [11] O–1126–95.
31. Diuron	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
	HPLC/MS	553			See footnote [12] O–2060–01.
32. Endosulfan I	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [8] 3M0222.
	GC/MS	625.1 [5]	6410 B–2020		See footnote [13] O–2002–01.
33. Endosulfan II	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [8] 3M0222.
	GC/MS	625.1 [5]	6410 B–2020		See footnote [13] O–2002–01.
34. Endosulfan Sulfate	GC	617, 608.3	6630 C–2021		See footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020.		
35. Endrin	GC	505, 508, 617, 1656, 608.3.	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [8] 3M0222.
	GC/MS	525.1, 525.2, 625.1 [5].	6410 B–2020.		
36. Endrin aldehyde	GC	617, 608.3	6630 C–2021		See footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020..		
37. Ethion	GC	614, 614.1, 1657 ..			See footnote [4] page 27, see footnote [6], p. S73.
	GC/MS	625.1			See footnote [13] O–2002–01.
38. Fenuron	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
	HPLC/MS				See footnote [12] O–2060–01.
39. Fenuron-TCA	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
40. Heptachlor	GC	505, 508, 617, 1656, 608.3.	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [8] 3M0222.
	GC/MS	525.1, 525.2, 625.1.	6410 B–2020.		
41. Heptachlor epoxide	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [6] p. S73, see footnote [8] 3M0222.
	GC/MS	625.1	6410 B–2020.		
42. Isodrin	GC	617, 608.3	6630 B–2021 & C–2021.		See footnote [4] O–3104–83, see footnote [6] p. S73.
	GC/MS	625.1.			
43. Linuron	GC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
	HPLC/MS	553			See footnote [12] O–2060–01.
	GC/MS				See footnote [11] O–1126–95.
44. Malathion	GC	614, 1657	6630 B–2021		See footnote [3] p. 25, see footnote [6] p. S51.
	GC/MS	625.1			See footnote [11] O–1126–95.
45. Methiocarb	TLC				See footnote [3] p. 94, see footnote [6] p. S60.
	HPLC	632.			
	HPLC/MS				See footnote [12] O–2060–01.
46. Methoxychlor	GC	505, 508, 608.2, 617, 1656, 608.3.	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83, see footnote [8] 3M0222.
	GC/MS	525.1, 525.2, 625.1.			See footnote [11] O–1126–95.

TABLE ID—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2 7 10]	Standard methods [15]	ASTM	Other
47. Mexacarbate	TLC				See footnote [3] p. 94, see footnote [6] p. S60.
	HPLC	632.			
	GC/MS	625.1.			
48. Mirex	GC	617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [4] O–3104–83.
	GC/MS	625.1.			
49. Monuron	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
50. Monuron-TCA	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
51. Neburon	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
	HPLC/MS				See footnote [12] O–2060–01.
52. Parathion methyl	GC	614, 622, 1657	6630 B–2021		See footnote [4] page 27, see footnote [3] p. 25.
	GC/MS	625.1			See footnote [11] O–1126–95.
53. Parathion ethyl	GC	614	6630 B–2021		See footnote [4] page 27, see footnote [3] p. 25.
	GC/MS				See footnote [11] O–1126–95.
54. PCNB	GC	608.1, 617, 608.3	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7.
55. Perthane	GC	617, 608.3		D3086–90, D5812–96(02).	See footnote [4] O–3104–83.
56. Prometon	GC	507, 619			See footnote [3] p. 83, see footnote [6] p. S68, see footnote [9] O–3106–93.
	GC/MS	525.2, 625.1			See footnote [11] O–1126–95.
57. Prometryn	GC	507, 619			See footnote [3] p. 83, see footnote [6] p. S68, see footnote [9] O–3106–93.
	GC/MS	525.1, 525.2, 625.1.			See footnote [13] O–2002–01.
58. Propazine	GC	507, 619, 1656, 608.3.			See footnote [3] p. 83, see footnote [6] p. S68, see footnote [9] O–3106–93.
	GC/MS	525.1, 525.2, 625.1			
59. Propham	TLC				See footnote [3] p. 10, see footnote [6] p. S64.
	HPLC	632.			
	HPLC/MS				See footnote [12] O–2060–01.
60. Propoxur	TLC				See footnote [3] p. 94, see footnote [6], p. S60.
	HPLC	632.			
61. Secbumeton	TLC				See footnote [3] p. 83, see footnote [6] p. S68.
	GC	619.			
62. Siduron	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
	HPLC/MS				See footnote [12] O–2060–01.
63. Simazine	GC	505, 507, 619, 1656, 608.3.			See footnote [3] p. 83, see footnote [6] p. S68, see footnote [9] O–3106–93.
	GC/MS	525.1, 525.2, 625.1.			See footnote [11] O–1126–95.
64. Strobane	GC	617, 608.3	6630 B–2021 & C–2021.		See footnote [3] p. 7.
65. Swep	TLC				See footnote [3] p. 104, see footnote [6] p. S64.
	HPLC	632.			
66. 2,4,5–T	GC	615	6640 B–2021		See footnote [3] p. 115, see footnote [4] O–3105–83.
67. 2,4,5–TP (Silvex)	GC	615	6640 B–2021		See footnote [3] p. 115, see footnote [4] O–3105–83.
68. Terbuthylazine	GC	619, 1656, 608.3			See footnote [3] p. 83, see footnote [6] p. S68.
	GC/MS				See footnote [13] O–2002–01.
69. Toxaphene	GC	505, 508, 617, 1656, 608.3.	6630 B–2021 & C–2021.	D3086–90, D5812–96(02).	See footnote [3] p. 7, see footnote [8], see footnote [4] O–3105–83.
	GC/MS	525.1, 525.2, 625.1.	6410 B–2020.		
70. Trifluralin	GC	508, 617, 627, 1656, 608.3.	6630 B–2021		See footnote [3] p. 7, see footnote [9] O–3106–93.
	GC/MS	525.2, 625.1			See footnote [11] O–1126–95.

Table ID notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under table IC of this section, where entries are listed by chemical name.

[2] The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at appendix B to this part, Definition and Procedure for the Determination of the Method Detection Limit.

[3] Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater. September 1978. U.S. EPA. This EPA publication includes thin-layer chromatography (TLC) methods.
[4] Methods for the Determination of Organic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3. 1987. USGS.
[5] The method may be extended to include α-BHC, γ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.
[6] Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency, Supplement to the 15th Edition of *Standard Methods for the Examination of Water and Wastewater.*1981. American Public Health Association (APHA).
[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608.3 and 625.1 in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608.3 or 5% of all samples analyzed with Method 625.1 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect. The results should be reported, but cannot be used to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other methods cited.
[8] Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk. Revised October 28, 1994. 3M Corporation.
[9] Method O–3106–93 is in Open File Report 94–37, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-Containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors. 1994. USGS.
[10] EPA Methods 608.1, 608.2, 614, 614.1, 615, 617, 619, 622, 622.1, 627, and 632 are found in Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, EPA 821–R–92–002, April 1992, U.S. EPA. EPA Methods 505, 507, 508, 525.1, 531.1 and 553 are in Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, Volume II, EPA 821–R–93–010B, 1993, U.S. EPA. EPA Method 525.2 is in Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry, Revision 2.0, 1995, U.S. EPA. EPA methods 1656 and 1657 are in Methods for The Determination of Nonconventional Pesticides In Municipal and Industrial Wastewater, Volume I, EPA 821–R–93–010A, 1993, U.S. EPA. Methods 608.3 and 625.1 are available at: cwa-methods/approved-cwa-test-methods-organic-compounds.
[11] Method O–1126–95 is in Open-File Report 95–181, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of pesticides in water by C–18 solid-phase extraction and capillary-column gas chromatography/mass spectrometry with selected-ion monitoring. 1995. USGS.
[12] Method O–2060–01 is in Water-Resources Investigations Report 01–4134, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Pesticides in Water by Graphitized Carbon-Based Solid-Phase Extraction and High-Performance Liquid Chromatography/Mass Spectrometry. 2001. USGS.
[13] Method O–2002–01 is in Water-Resources Investigations Report 01–4098, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of moderate-use pesticides in water by C–18 solid-phase extraction and capillary-column gas chromatography/mass spectrometry. 2001. USGS.
[14] Method O–1121–91 is in Open-File Report 91–519, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of organonitrogen herbicides in water by solid-phase extraction and capillary-column gas chromatography/mass spectrometry with selected-ion monitoring. 1992. USGS.
[15] Please refer to the following applicable Quality Control Section: Part 6000 Methods, Individual Organic Compounds 6020 (2019). These Quality Control Standards are available for download at *www.standardmethods.org* at no charge.

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TABLE IH—LIST OF APPROVED MICROBIOLOGICAL METHODS FOR AMBIENT WATER

Parameter and units	Method [1]	EPA	Standard methods	AOAC, ASTM, USGS	Other
		Bacteria			
1. Coliform (fecal), number per 100 mL.	Most Probable Number (MPN), 5 tube, 3 dilution, or.	p. 132 [3]	9221 E–2014, 9221 F–2014. [32]		
	Membrane filter (MF) [2], single step	p. 124 [3]	9222 D–2015 [26]	B–0050–85. [4]	
2. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221 B–2014.		
	MF [2], single step or	p. 108 [3]	9222 B–2015 [27]	B–0025–85. [4]	
	MF [2], two step with enrichment	p. 111 [3]	9222 B–2015. [27]		
3. *E. coli,* number per 100 mL.	MPN [5 7 13], multiple tube, or		9221 B.3–2014/9221 F–2014. [10 12 32]		
	Multiple tube/multiple well, or		9223 B–2016 [11]	991.15 [9]	Colilert® [11 15], Colilert-18®. [11 14 15]
	MF [2 5 6 7], two step, or	1103.2 [18]	9222 B–2015/9222 I–2015 [17], 9213 D–2007.	D5392–93. [8]	
	Single step	1603.1 [19], 1604 [20]			m-ColiBlue24® [16], KwikCount™ EC. [28 29]
4. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 139 [3]	9230 B–2013.		
	MF [2], or	p. 136 [3]	9230 C–2013 [30]	B–0055–85. [4]	
	Plate count	p. 143. [3]			
5. Enterococci, number per 100 mL.	MPN [5 7], multiple tube/multiple well, or		9230 D–2013	D6503–99 [8]	Enterolert®. [11 21]
	MF [2 5 6 7] two step, or	1106.2 [22]	9230 C–2013 [30]	D5259–92. [8]	
	Single step, or	1600.1 [23]	9230 C–2013. [30]		
	Plate count	p. 143. [3]			
		Protozoa			
6. *Cryptosporidium*	Filtration/IMS/FA	1622 [24], 1623 [25], 1623.1. [25 31]			
7. *Giardia*	Filtration/IMS/FA	1623 [25], 1623.1. [25 31]			

Table 1H notes:
[1] The method must be specified when results are reported.
[2] A 0.45-μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.
[3] Microbiological Methods for Monitoring the Environment, Water and Wastes. EPA/600/8–78/017. 1978. US EPA.
[4] U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples. 1989. USGS.
[5] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.
[6] When the MF method has not been used previously to test waters with high turbidity, large numbers of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.
[7] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current *Standard Methods for the Examination of Water and Wastewater* or EPA alternate test procedure (ATP) guidelines.

[8] Annual Book of ASTM Standards—Water and Environmental Technology. Section 11.02. 2000, 1999, 1996. ASTM International.
[9] Official Methods of Analysis of AOAC International, 16th Edition, Volume I, Chapter 17. 1995. AOAC International.
[10] The multiple-tube fermentation test is used in 9221B.3–2014. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.
[11] These tests are collectively known as defined enzyme substrate tests.
[12] After prior enrichment in a presumptive medium for total coliform using 9221B.3–2014, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F–2014. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 µg/mL of MUG may be used.
[13] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray®/2000, and the MPN calculated from the table provided by the manufacturer.
[14] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35 °C, rather than the 24 h required for the Colilert® test and is recommended for marine water samples.
[15] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray supreg;, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories Inc.
[16] A description of the mColiBlue24® test may be obtained from Hach Company.
[17] Subject coliform positive samples determined by 9222B–2015 or other membrane filter procedure to 9222I–2015 using NA–MUG media.
[18] Method 1103.2: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC), EPA–821–R–23–009. September 2023. US EPA.
[19] Method 1603.1: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC), EPA–821–R–23–008. September 2023 . US EPA.
[20] Method 1604: Total Coliforms and *Escherichia coli* (*E. coli*) in Water by Membrane Filtration by Using a Simultaneous Detection Technique (MI Medium), EPA 821–R–02–024. September 2002. US EPA.
[21] A description of the Enterolert® test may be obtained from IDEXX Laboratories Inc.
[22] Method 1106.2: Enterococci in Water by Membrane Filtration Using membrane-*Enterococcus*-Esculin Iron Agar (mE–EIA), EPA–821–R–23–007. September 2023. US EPA.
[23] Method 1600.1: Enterococci in Water by Membrane Filtration Using membrane-*Enterococcus* Indoxyl-β-D-Glucoside Agar (mEI), EPA–821–R–21–006. September 2023. US EPA.
[24] Method 1622 uses a filtration, concentration, immunomagnetic separation of oocysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the detection of *Cryptosporidium.* Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA, EPA–821–R–05–001. December 2005. US EPA.
[25] Methods 1623 and 1623.1 use a filtration, concentration, immunomagnetic separation of oocysts and cysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the simultaneous detection of *Cryptosporidium* and *Giardia* oocysts and cysts. Method 1623: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. EPA–821–R–05–002. December 2005. US EPA. Method 1623.1: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. EPA 816–R–12–001. January 2012. US EPA.
[26] On a monthly basis, at least ten blue colonies from positive samples must be verified using Lauryl Tryptose Broth and EC broth, followed by count adjustment based on these results; and representative non-blue colonies should be verified using Lauryl Tryptose Broth. Where possible, verifications should be done from randomized sample sources.
[27] On a monthly basis, at least ten sheen colonies from positive samples must be verified using Lauryl Tryptose Broth and brilliant green lactose bile broth, followed by count adjustment based on these results; and representative non-sheen colonies should be verified using Lauryl Tryptose Broth. Where possible, verifications should be done from randomized sample sources.
[28] A description of KwikCount™ EC may be obtained from Roth Bioscience, LLC.
[29] Approved for the analyses of *E. coli* in freshwater only.
[30] Verification of colonies by incubation of BHI agar at 10 ± 0.5 °C for 48 ± 3 h is optional. As per the Errata to the 23rd Edition of *Standard Methods for the Examination of Water and Wastewater* ''Growth on a BHI agar plate incubated at 10 ± 0.5 °C for 48 ± 3 h is further verification that the colony belongs to the genus Enterococcus.''
[31] Method 1623.1 includes updated acceptance criteria for IPR, OPR, and MS/MSD and clarifications and revisions based on the use of Method 1623 for years and technical support questions.
[32] 9221 F.2–2014 allows for simultaneous detection of *E. coli* and thermotolerant fecal coliforms by adding inverted vials to EC–MUG; the inverted vials collect gas produced by thermotolerant fecal coliforms.

(b) The material listed in this paragraph (b) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact the EPA at: EPA's Water Docket, EPA West, 1301 Constitution Avenue NW, Room 3334, Washington, DC 20004; telephone: 202–566–2426; email: *docket-customerservice@epa.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources in this paragraph (b).

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(8) Office of Water, U.S. Environmental Protection Agency (U.S. EPA), mail code 4303T, 1301 Constitution Avenue NW, Washington, DC 20460; website: *www.epa.gov/cwa-methods.*

(i) Method 245.7, Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry. Revision 2.0, February 2005. EPA–821–R–05–001. Table IB, Note 17.

(ii) Method 1103.2: *Escherichia coli (E. coli)* in Water by Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC), EPA–821–R–23–009. September 2023. Table IH, Note 18.

(iii) Method 1106.2: Enterococci in Water by Membrane Filtration Using membrane-*Enterococcus*-Esculin Iron Agar (mE–EIA), EPA–821–R–23–007. September 2023. Table IH, Note 22.

(iv) Method 1600.1: Enterococci in Water by Membrane Filtration Using membrane-*Enterococcus* Indoxyl-β-D-Glucoside Agar (mEI), EPA–821–R–23–006, September 2023. Table 1A, Note 24; Table IH, Note 23.

(v) Method 1603.1: *Escherichia coli (E. coli)* in Water by Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC), EPA–821–R–23–008, September 2023. Table IA, Note 21; Table IH, Note 19.

(vi) Method 1604: Total Coliforms and *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium). September 2002. EPA–821–R–02–024. Table IH, Note 21.

(vii) Whole Effluent Toxicity Methods Errata Sheet, EPA 821–R–02–012–ES. December 2016, Table IA, Notes 25, 26, and 27.

(viii) Method 1623: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. December 2005. EPA–821–R–05–002. Table IH, Note 26.

(ix) Method 1623.1: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA. EPA 816–R–12–001. January 2012. U.S. EPA, Table IH, Notes 25 and 31.

(x) Method 1627, Kinetic Test Method for the Prediction of Mine Drainage Quality. December 2011. EPA–821–R–09–002. Table IB, Note 69.

(xi) Method 1664, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane Extractable Material (SGT–HEM; Nonpolar Material) by Extraction and Gravimetry. Revision A, February 1999. EPA–821–R–98–002. Table IB, Notes 38 and 42.

(xii) Method 1664, *n*-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated *n*-Hexane

Extractable Material (SGT–HEM; Nonpolar Material) by Extraction and Gravimetry, Revision B, February 2010. EPA–821–R–10–001. Table IB, Notes 38 and 42.

(xiii) Method 1669, Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels. July 1996. Table IB, Note 43.

(xiv) Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using Lauryl Tryptose Broth (LTB) and EC Medium. September 2014. EPA–821–R–14–009.Table IA, Note 15.

(xv) Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using A–1 Medium. July 2006. EPA 821–R–06–013. Table IA, Note 20.

(xvi) Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium. September 2014. EPA 821–R–14–012. Table IA, Note 23.

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(10) American Public Health Association, 800 I Street, NW, Washington, DC 20001; phone: (202)777–2742, website: *www.standardmethods.org.*

(i) *Standard Methods for the Examination of Water and Wastewater.* 14th Edition, 1975. Table IB, Notes 27 and 86.

(ii) Standard Methods for the Examination of Water and Wastewater. 15th Edition, 1980, Table IB, Note 30; Table ID.

(iii) Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency, Supplement to the 15th Edition of Standard Methods for the Examination of Water and Wastewater. 1981. Table IC, Note 6; Table ID, Note 6.

(iv) Standard Methods for the Examination of Water and Wastewater. 18th Edition, 1992. Tables IA, IB, IC, ID, IE, and IH.

(v) Standard Methods for the Examination of Water and Wastewater. 19th Edition, 1995. Tables IA, IB, IC, ID, IE, and IH.

(vi) Standard Methods for the Examination of Water and Wastewater. 20th Edition, 1998. Tables IA, IB, IC, ID, IE, and IH.

(vii) Standard Methods for the Examination of Water and Wastewater. 21st Edition, 2005. Table IB, Notes 17 and 27.

(viii) 2120, Color. Revised September 4, 2021. Table IB.

(ix) 2130, Turbidity. Revised 2020. Table IB.

(x) 2310, Acidity. Revised 2020. Table IB.

(xi) 2320, Alkalinity. Revised 2021. Table IB.

(xii) 2340, Hardness. Revised 2021. Table IB.

(xiii) 2510, Conductivity. Revised 2021. Table IB.

(xiv) 2540, Solids. Revised 2020. Table IB.

(xv) 2550, Temperature. 2010. Table IB.

(xvi) 3111, Metals by Flame Atomic Absorption Spectrometry. Revised 2019. Table IB.

(xvii) 3112, Metals by Cold-Vapor Atomic Absorption Spectrometry. Revised 2020. Table IB.

(xviii) 3113, Metals by Electrothermal Atomic Absorption Spectrometry. Revised 2020. Table IB.

(xix) 3114, Arsenic and Selenium by Hydride Generation/Atomic Absorption Spectrometry. Revised 2020, Table IB.

(xx) 3120, Metals by Plasma Emission Spectroscopy. Revised 2020. Table IB.

(xxi) 3125, Metals by Inductively Coupled Plasma-Mass Spectrometry. Revised 2020. Table IB.

(xxii) 3500-Al, Aluminum. Revised 2020. Table IB.

(xxiii) 3500-As, Arsenic. Revised 2020. Table IB.

(xxiv) 3500-Ca, Calcium. Revised 2020. Table IB.

(xxv) 3500-Cr, Chromium. Revised 2020. Table IB.

(xxvi) 3500-Cu, Copper. Revised 2020. Table IB.

(xxvii) 3500-Fe, Iron. 2011. Table IB.

(xxviii) 3500-Pb, Lead. Revised 2020. Table IB.

(xxix) 3500-Mn, Manganese. Revised 2020. Table IB.

(xxx) 3500–K, Potassium. Revised 2020. Table IB.

(xxxi) 3500-Na, Sodium. Revised 2020. Table IB.

(xxxii) 3500–V, Vanadium. 2011. Table IB.

(xxxiii) 3500-Zn, Zinc. Revised 2020. Table IB.

(xxxiv) 4110, Determination of Anions by Ion Chromatography. Revised 2020. Table IB.

(xxxv) 4140, Inorganic Anions by Capillary Ion Electrophoresis. Revised 2020. Table IB.

(xxxvi) 4500–B, Boron. 2011. Table IB.

(xxxvii) 4500 Cl^-, Chloride. Revised 2021. Table IB.

(xxxviii) 4500-Cl, Chlorine (Residual). 2011. Table IB.

(xxxix) 4500–CN^-, Cyanide. Revised 2021. Table IB.

(xl) 4500–F^-, Fluoride. Revised 2021. Table IB.

(xli) 4500–H^+, pH. 2021. Table IB.

(xlii) 4500–NH_3, Nitrogen (Ammonia). Revised 2021. Table IB.

(xliii) 4500–NO_2^-, Nitrogen (Nitrite). Revised 2021. Table IB.

(xliv) 4500–NO_3^-, Nitrogen (Nitrate). Revised 2019. Table IB.

(xlv) 4500–$N_{(org)}$, Nitrogen (Organic). Revised 2021. Table IB.

(xlvi) 4500–O, Oxygen (Dissolved). Revised 2021. Table IB.

(xlvii) 4500–P, Phosphorus. Revised 2021. Table IB.

(xlviii) 4500-SiO_2, Silica. Revised 2021. Table IB.

(xlix) 4500–S^{2-}, Sulfide. Revised 2021. Table IB.

(l) 4500–SO_3^{2-}, Sulfite. Revised 2021. Table IB.

(li) 4500–SO_4^{2-}, Sulfate. Revised 2021. Table IB.

(lii) 5210, Biochemical Oxygen Demand (BOD). Revised 2016. Table IB.

(liii) 5220, Chemical Oxygen Demand (COD). 2011. Table IB.

(liv) 5310, Total Organic Carbon (TOC). Revised 2014. Table IB.

(lv) 5520, Oil and Grease. Revised 2021. Table IB.

(lvi) 5530, Phenols. Revised 2021. Table IB.

(lvii) 5540, Surfactants. Revised 2021. Table IB.

(lviii) 6200, Volatile Organic Compounds. Revised 2020. Table IC.

(lix) 6410, Extractable Base/Neutrals and Acids. Revised 2020. Tables IC and ID.

(lx) 6420, Phenols. Revised 2021. Table IC.

(lxi) 6440, Polynuclear Aromatic Hydrocarbons. Revised 2021. Table IC.

(lxii) 6630, Organochlorine Pesticides. Revised 2021. Table ID.

(lxiii) 6640, Acidic Herbicide Compounds. Revised 2021. Table ID.

(lxiv) 7110, Gross Alpha and Gross Beta Radioactivity (Total, Suspended, and Dissolved). 2000. Table IE.

(lxv) 7500, Radium. 2001. Table IE.

(lxvi) 9213, Recreational Waters. 2007. Table IH.

(lxvii) 9221, Multiple-Tube Fermentation Technique for Members of the Coliform Group. Approved 2014. Table IA, Notes 12, 14; and 33; Table IH, Notes 10, 12, and 32.

(lxviii) 9222, Membrane Filter Technique for Members of the Coliform Group. 2015. Table IA, Note 31; Table IH, Note 17.

(lxix) 9223 Enzyme Substrate Coliform Test. 2016. Table IA; Table IH.

(lxx) 9230 Fecal Enterococcus/ Streptococcus Groups. 2013. Table IA, Note 32; Table IH.

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(15) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (877)909–2786; website: *www.astm.org.*

(i) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02. 1994. Tables IA, IB, IC, ID, IE, and IH.

(ii) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02. 1996. Tables IA, IB, IC, ID, IE, and IH.

(iii) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02. 1999. Tables IA, IB, IC, ID, IE, and IH.

(iv) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02. 2000. Tables IA, IB, IC, ID, IE, and IH.

(v) ASTM D511–14, Standard Test Methods for Calcium and Magnesium in Water. Approved October 1, 2014. Table IB.

(vi) ASTM D512–12, Standard Test Methods for Chloride Ion in Water. Approved June 15, 2012. Table IB.

(vii) ASTM D515–88, Test Methods for Phosphorus in Water, March 1989. Table IB.

(viii) ASTM D516–16, Standard Test Method for Sulfate Ion in Water. Approved June 1, 2016. Table IB.

(ix) ASTM D858–17, Standard Test Methods for Manganese in Water. Approved June 1, 2017. Table IB.

(x) ASTM D859–16, Standard Test Method for Silica in Water. Approved June 15, 2016. Table IB.

(xi) ASTM D888–18, Standard Test Methods for Dissolved Oxygen in Water. Approved May 1, 2018. Table IB.

(xii) ASTM D1067–16, Standard Test Methods for Acidity or Alkalinity of Water. Approved June 15, 2016. Table IB.

(xiii) ASTM D1068–15, Standard Test Methods for Iron in Water. Approved October 1, 2015. Table IB.

(xiv) ASTM D1125–95 (Reapproved 1999), Standard Test Methods for Electrical Conductivity and Resistivity of Water. December 1995. Table IB.

(xv) ASTM D1126–17, Standard Test Method for Hardness in Water. Approved December 1, 2017. Table IB.

(xvi) ASTM D1179–16, Standard Test Methods for Fluoride Ion in Water. Approved June 15, 2016. Table IB.

(xvii) ASTM D1246–16, Standard Test Method for Bromide Ion in Water. June 15, 2016. Table IB.

(xviii) ASTM D1252–06 (Reapproved 2012), Standard Test Methods for Chemical Oxygen Demand (Dichromate Oxygen Demand) of Water. Approved June 15, 2012. Table IB.

(xix) ASTM D1253–14, Standard Test Method for Residual Chlorine in Water. Approved January 15, 2014. Table IB.

(xx) ASTM D1293–18, Standard Test Methods for pH of Water. Approved January 15, 2018. Table IB.

(xxi) ASTM D1426–15, Standard Test Methods for Ammonia Nitrogen in Water. Approved March 15, 2015. Table IB.

(xxii) ASTM D1687–17, Standard Test Methods for Chromium in Water. Approved June 1, 2017. Table IB.

(xxiii) ASTM D1688–17, Standard Test Methods for Copper in Water. Approved June 1, 2017. Table IB.

(xxiv) ASTM D1691–17, Standard Test Methods for Zinc in Water. Approved June 1, 2017. Table IB.

(xxv) ASTM D1783–01 (Reapproved 2012), Standard Test Methods for Phenolic Compounds in Water. Approved June 15, 2012. Table IB.

(xxvi) ASTM D1886–14, Standard Test Methods for Nickel in Water. Approved October 1, 2014. Table IB.

(xxvii) ASTM D1889–00, Standard Test Method for Turbidity of Water. October 2000. Table IB.

(xxviii) ASTM D1890–96, Standard Test Method for Beta Particle Radioactivity of Water. April 1996. Table IE.

(xxix) ASTM D1943–96, Standard Test Method for Alpha Particle Radioactivity of Water. April 1996. Table IE.

(xxx) ASTM D1976–20, Standard Test Method for Elements in Water by Inductively-Coupled Argon Plasma Atomic Emission Spectroscopy. Approved May 1, 2020. Table IB.

(xxxi) ASTM D2036–09 (Reapproved 2015), Standard Test Methods for Cyanides in Water. Approved July 15, 2015. Table IB.

(xxxii) ASTM D2330–20, Standard Test Method for Methylene Blue Active Substances. Approved January 1, 2020. Table 1B.

(xxxiii) ASTM D2460–97, Standard Test Method for Alpha-Particle-Emitting Isotopes of Radium in Water. October 1997. Table IE.

(xxxiv) ASTM D2972–15, Standard Tests Method for Arsenic in Water. Approved February 1, 2015. Table IB.

(xxxv) ASTM D3223–17, Standard Test Method for Total Mercury in Water. Approved June 1, 2017. Table IB.

(xxxvi) ASTM D3371–95, Standard Test Method for Nitriles in Aqueous Solution by Gas-Liquid Chromatography, February 1996. Table IF.

(xxxvii) ASTM D3373–17, Standard Test Method for Vanadium in Water. Approved June 1, 2017. Table IB.

(xxxviii) ASTM D3454–97, Standard Test Method for Radium-226 in Water. February 1998. Table IE.

(xxxix) ASTM D3557–17, Standard Test Method for Cadmium in Water. Approved June 1, 2017. Table IB.

(xl) ASTM D3558–15, Standard Test Method for Cobalt in Water. Approved February 1, 2015. Table IB.

(xli) ASTM D3559–15, Standard Test Methods for Lead in Water. Approved June 1, 2015. Table IB.

(xlii) ASTM D3590–17, Standard Test Methods for Total Kjeldahl Nitrogen in Water. Approved June 1, 2017. Table IB.

(xliii) ASTM D3645–15, Standard Test Methods for Beryllium in Water. Approved February 1, 2015. Table IB.

(xliv) ASTM D3695–95, Standard Test Method for Volatile Alcohols in Water by Direct Aqueous-Injection Gas Chromatography. April 1995. Table IF.

(xlv) ASTM D3859–15, Standard Test Methods for Selenium in Water. Approved March 15, 2015. Table IB.

(xlvi) ASTM D3867–16, Standard Test Method for Nitrite-Nitrate in Water. Approved June 1, 2016. Table IB.

(xlvii) ASTM D4190–15, Standard Test Method for Elements in Water by Direct- Current Plasma Atomic Emission Spectroscopy. Approved February 1, 2015. Table IB.

(xlviii) ASTM D4282–15, Standard Test Method for Determination of Free Cyanide in Water and Wastewater by Microdiffusion. Approved July 15, 2015. Table IB.

(xlix) ASTM D4327–17, Standard Test Method for Anions in Water by Suppressed Ion Chromatography. Approved December 1, 2017. Table IB.

(l) ASTM D4382–18, Standard Test Method for Barium in Water, Atomic Absorption Spectrophotometry, Graphite Furnace. Approved February 1, 2018. Table IB.

(li) ASTM D4657–92 (Reapproved 1998), Standard Test Method for Polynuclear Aromatic Hydrocarbons in Water. January 1993. Table IC.

(lii) ASTM D4658–15, Standard Test Method for Sulfide Ion in Water. Approved March 15, 2015. Table IB.

(liii) ASTM D4763–88 (Reapproved 2001), Standard Practice for Identification of Chemicals in Water by Fluorescence Spectroscopy. September 1988. Table IF.

(liv) ASTM D4839–03 (Reapproved 2017), Standard Test Method for Total Carbon and Organic Carbon in Water by Ultraviolet, or Persulfate Oxidation, or Both, and Infrared Detection. Approved December 15, 2017. Table IB.

(lv) ASTM D5257–17, Standard Test Method for Dissolved Hexavalent Chromium in Water by Ion Chromatography. Approved December 1, 2017. Table IB.

(lvi) ASTM D5259–92, Standard Test Method for Isolation and Enumeration of Enterococci from Water by the Membrane Filter Procedure. October 1992. Table IH, Note 9.

(lvii) ASTM D5392–93, Standard Test Method for Isolation and Enumeration of *Escherichia coli* in Water by the Two-Step Membrane Filter Procedure. September 1993. Table IH, Note 9.

(lviii) ASTM D5673–16, Standard Test Method for Elements in Water by Inductively Coupled Plasma—Mass Spectrometry. Approved February 1, 2016. Table IB.

(lix) ASTM D5907–18, Standard Test Methods for Filterable Matter (Total Dissolved Solids) and Nonfilterable Matter (Total Suspended Solids) in Water. Approved May 1, 2018. Table IB.

(lx) ASTM D6503–99, Standard Test Method for Enterococci in Water Using Enterolert. April 2000. Table IA Note 9, Table IH, Note 9.

(lxi) ASTM. D6508–15, Standard Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte. Approved October 1, 2015. Table IB, Note 54.

(lxii) ASTM. D6888–16, Standard Test Method for Available Cyanides with Ligand Displacement and Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection. Approved February 1, 2016. Table IB, Note 59.

(lxiii) ASTM. D6919–17, Standard Test Method for Determination of Dissolved Alkali and Alkaline Earth Cations and Ammonium in Water and Wastewater by Ion Chromatography. Approved June 1, 2017. Table IB.

(lxiv) ASTM. D7065–17, Standard Test Method for Determination of Nonylphenol, Bisphenol A, *p-tert-*Octylphenol, Nonylphenol Monoethoxylate and Nonylphenol Diethoxylate in Environmental Waters by Gas Chromatography Mass Spectrometry. Approved December 15, 2017. Table IC.

(lxv) ASTM D7237–18, Standard Test Method for Free Cyanide with Flow Injection Analysis (FIA) Utilizing Gas Diffusion Separation and Amperometric Detection. Approved December 1, 2018. Table IB.

(lxvi) ASTM D7284–20, Standard Test Method for Total Cyanide in Water by Micro Distillation followed by Flow Injection Analysis with Gas Diffusion Separation and Amperometric Detection. Approved August 1, 2020. Table IB.

(lxvii) ASTM D7365–09a (Reapproved 2015), Standard Practice for Sampling, Preservation and Mitigating Interferences in Water Samples for Analysis of Cyanide. Approved July 15, 2015. Table II, Notes 5 and 6.

(lxviii) ASTM. D7511–12 (Reapproved 2017)^{e1}, Standard Test Method for Total Cyanide by Segmented Flow Injection Analysis, In-Line Ultraviolet Digestion and Amperometric Detection. Approved July 1, 2017. Table IB.

(lxix) ASTM D7573–18a^{e1}, Standard Test Method for Total Carbon and Organic Carbon in Water by High Temperature Catalytic Combustion and Infrared Detection. Approved December 15, 2018. Table IB.

(lxx) ASTM D7781–14, Standard Test Method for Nitrite-Nitrate in Water by Nitrate Reductase, Approved April 1, 2014. Table IB.

* * * * *

(19) FIAlab Instruments, Inc., 334 2151 N. Northlake Way, Seattle, WA 98103; phone: (425)376–0450; website: *www.flowinjection.com/app-notes/epafialab100.*

(i) FIAlab 100, Determination of Inorganic Ammonia by Continuous Flow Gas Diffusion and Fluorescence Detector Analysis, April 4, 2018. Table IB, Note 82.

(ii) [Reserved]

* * * * *

(26) MACHEREY–NAGEL GmbH and Co., 2850 Emrick Blvd., Bethlehem, PA 18020; Phone: (888)321–6224.

(i) Method 036/038 NANOCOLOR® COD LR/HR, Spectrophotometric Measurement of Chemical Oxygen Demand in Water and Wastewater, Revision 1.5, May 2018. Table IB, Note 83.

(ii) [Reserved]

(27) Micrology Laboratories, LLC (now known as Roth Bioscience, LLC), 1303 Eisenhower Drive, Goshen, IN 46526; phone: (574)533–3351.

(i) KwikCount™ EC Medium E. coli enzyme substrate test, Rapid Detection of E. coli in Beach Water By KwikCount™ EC Membrane Filtration. 2014. Table IH, Notes 28 and 29.

(ii) [Reserved]

* * * * *

(33) Pace Analytical Services, LLC, 1800 Elm Street, SE, Minneapolis, MN 55414; phone: (612)656–2240.

(i) PAM–16130–SSI, Determination of 2,3,7,8-Substituted Tetra- through Octa-Chlorinated Dibenzo-*p*-Dioxins and Dibenzofurans (CDDs/CDFs) Using Shimadzu Gas Chromatography Mass Spectrometry (GC–MS/MS), Revision 1.1, May 20, 2022. Table IC, Note 17.

(ii) [Reserved]

(34) SGS AXYS Analytical Services, Ltd., 2045 Mills Road, Sidney, British Columbia, Canada, V8L 5X2; phone: (888)373–0881.

(i) SGS AXYS Method 16130, Determination of 2,3,7,8-Substituted Tetra- through Octa-Chlorinated Dibenzo-*p*-Dioxins and Dibenzofurans (CDDs/CDFs) Using Waters and Agilent Gas Chromatography-Mass Spectrometry (GC/MS/MS)., Revision 1.0, revised August 2020. Table IC, Note 16.

(ii) [Reserved]

* * * * *

(40) U.S. Geological Survey (USGS), U.S. Department of the Interior, Reston, Virginia. Available from USGS Books and Open-File Reports (OFR) Section, Federal Center, Box 25425, Denver, CO 80225; phone: (703)648–5953; website: *ww.usgs.gov.*

* * * * *

(ii) Techniques and Methods—Book 5, Laboratory Analysis—Section B, Methods of the National Water Quality Laboratory—Chapter 12, Determination of Heat Purgeable and Ambient Purgeable Volatile Organic Compounds in Water by Gas Chromatography/Mass Spectrometry 2016.

* * * * *

(ix) OFR 93–125, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments. 1993. Table IB, Notes 51 and 80; Table IC, Note 9.

* * * * *

(xiv) OFR 97–829, Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of 86 Volatile Organic Compounds in Water by Gas Chromatography/Mass Spectrometry, Including Detections Less Than Reporting Limits. 1998. Table IC, Note 13.

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(e) * * *

Table II—Required Containers, Preservation Techniques, and Holding Times

* * * * *

[5] ASTM D7365–09a (15) specifies treatment options for samples containing oxidants (e.g., chlorine) for cyanide analyses. Also, Section 9060A of *Standard Methods for the Examination of Water and Wastewater* (23rd edition) addresses dechlorination procedures for microbiological analyses.

* * * * *

[FR Doc. 2024–07412 Filed 4–15–24; 8:45 am]

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Part V

Postal Service

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: On April 9, 2024, the Postal Service (USPS®) filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective July 14, 2024. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) that we would adopt to implement the changes coincident with the price adjustments.

DATES: Submit comments on or before May 16, 2024.

ADDRESSES: Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''July 2024 Domestic Mailing Services Proposal.'' Faxed comments are not accepted.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Steven Mills at (202) 268–7433 or Doriane Harley at (202) 268–2537.

SUPPLEMENTARY INFORMATION: All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Proposed prices will be available under Docket No. R2024–2 on the Postal Regulatory Commission's website at *www.prc.gov.*

The Postal Service's proposed rule includes changes to prices, mail classification updates, product simplification efforts, and revisions to the DMM.

Different Additional Ounce Rates for First-Class Mail® Flats

Currently, First-Class Mail® flats incur a first ounce price and a uniform additional ounce price that is applied at each level from the second to the thirteenth ounce.

The Postal Service is proposing a change that will allow the Pricing department to provide a distinct price at each ounce increment.

USPS Marketing Mail Flat-Shaped—Separating Lightweight and Heavyweight Rate Categories

The Postal Service is proposing to divide some USPS Marketing Mail flat-shaped pieces into two distinct pricing categories, lightweight (0 to 4 ounces) and heavyweight (from above 4 ounces up to 16 ounces). Lightweight pieces will continue to have only a piece-price component, with dropship discounts available for different entry points. Heavyweight pieces will have per-piece and per-pound price components, the per-pound components apply to the entire weight of the piece, with per-pound dropship discounts available for different entry points.

Business Reply Mail (BRM) Simplification

The Postal Service is proposing to incentivize Qualified Business Reply Mail (QBRM) customers to enroll in Intelligent Mail Barcode Accounting (IMbA) by waiving annual account maintenance and quarterly fees and by reducing the per-piece fee. Customers who link current QBRM permits to an Enterprise Payment Account (EPA) and successfully complete the onboarding process will have subsequent annual and quarterly fees waived and receive a reduced QBRM IMbA per-piece fee.

Elimination of Simple Samples (Product Samples)

Simple Samples, also referred to as Product Samples, is a type of Marketing Parcel created to allow mailers to distribute sample-size products weighing up to 16 ounces in ''targeted or every door'' areas without the use of outer packaging.

The Postal Service is proposing to eliminate this product offering due to low customer usage. Alternative, economical products are available.

Catalog Price Incentive—Marketing Mail and Bound Printed Matter

The Postal Service is proposing to revise the mailpiece requirements for catalogs and to offer a price incentive to mailers who mail catalogs that meet these revised requirements. The incentive and revisions would apply to all USPS Marketing Mail products except for EDDM-Retail and to Bound Printed Matter flats and parcels.

Enlarge Maximum Size for Plus One

Currently, the maximum size for Plus One mailpieces is 6″x9.5″.

The Postal Service is proposing to increase the maximum size for Plus One mailpieces to 6″x11″.

Adding Optional Preparation Standards to USPS Marketing Mail Carrier Route Automation Letters

The Postal Service is proposing to create an optional tray preparation for High Density and High Density Plus letters. This optional tray preparation would allow mail preparers to combine multiple mail owner's eligible HD and HD+ letters with 5-digit letters in one tray to reduce the volume of residual trays entered in the mailstream.

Matching Nomenclature & Classification Standards to Network Redesign

New Network Future State Nomenclature Mapping—Under Phase 1 of the Postal Service network future state, the Postal Service is revising the DMM to provide site mapping nomenclature for facilities (*e.g.,* NDC/RPDC). Phase 1 will not include site mapping in the Quick Service Guides (QSGs) or revisions to destination entry pricing nomenclature or labeling lists.

In some cases where there is overlapping of nomenclature in the DMM for market dominant and competitive products (*e.g.,* DMM 705.8.0) the site mapping nomenclature will be included in the **Federal Register** Notice for the domestic competitive products price change.

2025 Promotions

The Postal Service has been incenting mailers to integrate mobile technology and use innovative print techniques in commercial mail since 2012. These promotions have become an integral way for industry to try new things and innovate their mail campaigns. A 2025 Promotions Calendar is planned with opportunities for mailers to receive a postage discount by applying treatments or integrating technology in their mail campaigns.

Mail Growth Incentives Continuation in Calendar Year 2025

For calendar year 2024, the Postal Service introduced two new incentives designed to promote the growth of First-Class Mail® (the ''First-Class Mail Growth Incentive'') and USPS Marketing Mail® (the ''Marketing Mail Growth Incentive''). The effective dates of both incentives is January 1, 2024 through December 31, 2024.

The Postal Service is proposing to continue both incentives for calendar year 2025.

These proposed revisions will provide consistency within postal products and add value for customers.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service proposes the following changes to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1):

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

100 Retail Mail Letters, Cards, Flats, and Parcels

* * * * *

140 USPS Marketing Mail Flats Every Door Direct Mail-Retail (EDDM-Retail)

* * * * *

145 Mail Preparation

* * * * *

1.0 Preparation of EDDM-Retail Flats

1.1 General Information

[Revise the text of 1.1 to read as follows:]

All pieces mailed as EDDM-Retail mailings must be bundled under 1.3 and presented directly to the correct delivery Post Office or destination delivery unit (DDU)/Sorting & Delivery Center (SDC), or mailed to the DDU/SDC via Priority Mail under 146.

* * * * *

146 Enter and Deposit

* * * * *

1.0 Basic Options

1.1 Entry at Delivery Post Office

[Revise the text of 1.1 to read as follows:]

All EDDM-Retail mailings must be entered directly at the Post Office (or DDU/SDC) responsible for the Post Office Box or carrier route delivery for which the mailing is prepared, or shipped to that Post Office under 1.2.

* * * * *

200 Commercial Mail Letters, Cards, Flats, and Parcels

201 Physical Standards

* * * * *

4.0 Physical Standards for Flats

4.1 General Definition of Flat Size Mail

[Delete item (d) and renumber item (e) as (d):]

* * * * *

[Delete section 201.4.9 titled ''Catalogs'' in its' entirety]

* * * * *

8.0 Additional Physical Standards by Class of Mail

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8.4 USPS Marketing Mail Parcels

* * * * *

8.4.2 Marketing Parcels

* * * * *

[Delete item (e) in its' entirety]

* * * * *

203 Basic Postage Statement, Documentation, and Preparation Standards

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3.0 Standardized Documentation for First-Class Mail, Periodicals, USPS Marketing Mail, and Flat-Size Bound Printed Matter

* * * * *

3.2 Format and Content

For First-Class Mail, Periodicals, USPS Marketing Mail, and Bound Printed Matter, standardized documentation includes:

* * * * *

d. For bundles on pallets, list these required elements:

* * * * *

[Revise d(4) to read as follows:]

4. Separate columns with the number of pieces for each price reported in the mailing, and a continuous running total of pieces (group information either in ZIP Code order and by sortation level or by sortation level and within each sortation level, by ZIP Code).

Document SCF/LPC, ADC/RPDC, or NDC/RPDC pallets created as a result of bundle reallocation under 705.8.11, 705.8.12, or 705.8.13 by designating the protected pallet with an identifier of ''PSCF'' (for an SCF/LPC pallet), ''PADC'' (for an ADC/RPDC pallet), or ''PBMC'' (for a NDC/RPDC pallet). These identifiers are required to appear only on the USPS Qualification Report; they are not required on pallet labels or on any other documentation.

* * * * *

3.6 Detailed Entry Listing for Periodicals

* * * * *

3.6.3 Entry Abbreviations

Use the price name or the authorized entry abbreviation in the listings in 3.0 and 207.17.4.2:

[Revise the list in 3.6.3 to read as follows:]

Zone abbreviation	Rate equivalent
ICD	In-County, DDU.
IC	In-County, All Others.
DDU/SDC	Outside-County, DDU.
SCF/LPC (letters/flats).	Outside-County, DSCF.
SCF/RPDC (parcels).	Outside-County, DSCF.
ADC/RPDC	Outside-County, DADC.
OC	Outside-County, All Others.

3.7 Bundle and Container Reports for Outside-County Periodicals Mail

* * * * *

3.7.2 Outside-County Container Report

The container report must contain, at a minimum, the following elements:

* * *

[Revise item (d) to read as follows]

d. Container entry level (origin, DDU/SDC, DSCF/LPC (letters/flats), DSCF/RPDC (parcels), DADC/RPDC, or DNDC/RPDC).* * *

* * * * *

4.0 Bundles

* * * * *

4.6 Address Visibility for Flats and Parcels

* * * * *

[Revise item (d) to read as follows:]

d. Bundles of mailpieces at carrier route prices entered at a destination delivery unit (DDU) or Sorting & Delivery Center (SDC).* * *

* * * * *

[Revise the heading of 4.10 to read as follows:]

4.10 Additional Standards for Unsacked/Untrayed Bundles Entered at DDU/SDC Facilities

* * * * *

5.0 Letter and Flat Trays

* * * * *

5.5 Letter Tray Strapping Exception

[Revise the text of 5.5 to read as follows:]

Strapping is not required for any letter tray placed on a 5-digit, 3-digit, or SCF pallet secured with stretchwrap. If the processing and distribution manager gives a written waiver, strapping is not required for any mixed AADC or ADC letter tray of First-Class Mail or for any letter tray that originates and destinates in the same SCF/LPC, ADC, or AADC (mail processing plant) service areas.

5.6 Use of Flat Trays

* * * * *

5.6.2 Preparation for Flats in Flat Trays

All flat tray preparation is subject to these standards: * * *

[Revise 5.6.2(h) to read as follows:]

h. Pieces prepared as automation flats under the tray-based preparation option in 235.8.0 do not have to be grouped by 3-digit ZIP Code prefix in ADC/RPDC trays or by ADC in mixed ADC trays if the mailing is prepared using an MLOCR/barcode sorter and standardized documentation is submitted.

[Revise the first sentence of 5.6.2(i) to read as follows:]

i. When pieces in a Periodicals mailing remain after one or more full trays are prepared for a 5-digit scheme, 5-digit, 3-digit, SCF/LPC, or ADC/RPDC destination, an additional tray to the destination must be prepared if the remaining pieces reach the required volume.* * *

* * * * *

6.0 Sacks

6.1 General Standards

[Revise the introductory text of 6.1 to read as follows:]

Applicable mailings must be prepared in sacks. Containers for Customized MarketMail are specified in 705.1.0. The following additional standards apply: * * *

* * * * *

7.0 Optional Endorsement Lines (OELs)

* * * * *

Exhibit 7.2.5 OEL Labeling Lists

[Revise the text of footnote 2 to read as follows:]

* * * 2. L010 if mail entered by mailer at a destination ASF/RPDC or NDC/RPDC or for mail placed on an ASF/RPDC or NDC/RPDC pallet under 705.8.0.

* * * * *

207 Periodicals

* * * * *

2.0 Price Application and Computation

* * * * *

2.1.4 Applying Pound Price

Apply pound prices to the weight of the pieces in the mailing as follows: * * *

[Revise the text of item (b) to read as follows:]

b. In-County pound prices consist of a DDU/SDC entry price and a non-DDU/SDC entry price for eligible copies delivered to addresses within the county of publication.

* * * * *

2.1.9 Applying Outside-County Container Prices

[Revise the second sentence of 2.1.9 to read as follows:]

* * * The container level is determined by the least-finely presorted bundle that container could contain according to standards (for example, an ''SCF/LPC pallet'' may contain SCF, 3-digit, 5-digit, and carrier route bundles and would always pay the 3-digit/SCF pallet price).* * *

* * * * *

17.0 Documentation

* * * * *

[Revise the title of 17.4 to read as follows:]

17.4 Detailed Entry Listing for Periodicals

17.4.1 Basic Standards

[Revise the first sentence of 17.4.1 to read as follows:]

The publisher must be able to present documentation that supports the number of copies of each edition of an issue, by entry level, at DDU/SDC, DSCF/LPC (letters/flats), DSCF/RPDC (parcels), DADC, All Others, and In-County prices. * * *

17.4.2 Format

Using one of the following formats, report the number of copies mailed to each 3-digit ZIP Code area at entry prices: * * *

[Revise the first sentence of item (b) to read as follows:]

b. Report copies by zone (In-County DDU/SDC, In-County others, Outside-County DDU/SDC, Outside-County DSCF/LPC (letters/flats), Outside-County DSCF/RPDC (parcels), Outside-County DADC and Outside-County All Others) and by 3-digit ZIP Code, in ascending numeric order, for each entry level.* * *

* * * * *

17.4.3 Entry Abbreviations

Use the price name or the authorized entry abbreviation in the listings in 17.3 and 17.4.2.

[Revise the list in 17.4.3 to read as follows:]

Zone abbreviation	Rate equivalent
ICD	In-County, DDU.
IC	In-County, All Others.
DDU/SDC	Outside-County, DDU.
SCF/LPC (letters/flats).	Outside-County, DSCF.
SCF/RPDC (parcels).	Outside-County, DSCF.
ADC	Outside-County, DADC.
OC	Outside-County, All Others.

* * * * *

18.3 Presort Terms

Terms used for presort levels are defined as follows: * * *

[Revise items (o) through (q) to read as follows:]

o. *Origin/entry 3-digit(s):* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC [letters/flats]) or regional processing distribution center (RPDC [parcels]) in whose service area the mail is verified/entered.

p. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC [letters/flats]) or regional processing distribution center (RPDC [parcels]) (see L005).

q. *Origin/entry SCF:* the separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC [letters/flats]) or regional processing distribution center (RPDC [parcels]) (see L002, Column C, or L005) in whose service area the mail is verified/entered.* * *

18.4 Mail Preparation Terms

For purposes of preparing mail: * * *

[Revise items (r) and (s) to read as follows:]

r. An *origin 3-digit* (or *origin 3-digit scheme*) tray/sack contains all mail

(regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF/LPC (letter/flats)/RPDC (parcels) in whose service area the mail is verified. A separate tray/sack may be prepared for each 3-digit ZIP Code (or 3-digit scheme) area.

s. An *origin/entry SCF flat tray or sack* contains all 5-digit and 3-digit bundles (regardless of quantity) for the SCF/LPC (letter/flats)/RPDC (parcels) in whose service area the mail is verified. At the mailer's option, such a flat tray/sack may be prepared for the SCF/LPC/RPDC area of each entry Post Office. This presort level applies only to nonletter-size Periodicals prepared in flat trays/sacks.* * *

[Revise text of item (v) to read as follows:]

v. *Entry [facility]* (or *origin [facility]*) refers to the USPS mail processing facility (for example, ''entry SCF/LPC/RDPC'') that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one serving the mailer's location (such as for plant-verified drop shipment), the Post Office of entry determines the *entry* facility.* * *

[Revise item aa(1) to read as follows]

aa. *Machinable flats* are:

1. Flat-size pieces meeting the standards in 201.6.0 that are sorted into 5-digit, 3-digit, ADC/RPDC, and mixed ADC bundles. These pieces are compatible with processing on the AFSM 100.* * *

* * * * *

20.0 Sacks and Trays

20.1 Basic Standards

20.1.1 General

[Revise 20.1.1 to read as follows:]

Mailings must be prepared in letter trays (letters), flat trays (flats) under 22.7 and 25.5, or sacks (carrier route, 5-digit scheme cr-rt and 5-digit cr-rt flats, nonpalletized residual 5-digit flats entered at a DDU/SDC along with carrier route flats, nonpalletized carrier route flats entered at the DSCF/LPC (origin), nonpalletized 5-digit flats entered at the DSCF/LPC (origin), and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin), and all periodicals parcels). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. Palletized mail is subject to 705.8.0. See 203.5.0 and 203.6.0 for tray and sack standards.

20.1.2 Origin/Entry 3-Digit/Scheme Trays

[Revise 20.1.2 to read as follows:]

For letter-size Periodicals, after all finer sort levels are prepared, an origin/entry 3-digit (or for barcoded letters, 3-digit scheme) tray must be prepared for any remaining mail for each 3-digit (or 3-digit scheme) area serviced by the SCF/LPC serving the origin Post Office, and may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/LPC where mail is entered (if different).

20.1.3 Flats and Irregular Parcels—Origin/Entry SCF Sacks

[Revise 20.1.3 to read as follows:]

For flats and irregular parcels, after all finer sort levels are prepared, an origin/entry SCF sack or flat tray (for flats) must be prepared for any remaining bundles for the 3-digit ZIP Code area(s) serviced by the SCF/LPC (letters/flats)/RPDC (parcels) serving the origin Post Office, and may be prepared for the area served by the SCF/LPC/RPDC/plant where mail is entered (if different).

* * * * *

22.0 Preparing Nonbarcoded (Presorted) Periodicals

* * * * *

22.4 Bundles With Fewer Than Six Pieces

Nonletter-size Periodicals may be prepared in 5-digit and 3-digit bundles containing fewer than six pieces at the publisher's option. Pieces in these low-volume bundles must be claimed at the mixed ADC price (Outside-County) or basic price (In-County). Low-volume bundles are permitted only when sacked or prepared on pallets as follows:

[Revise items (a) and (b) to read as follows:]

a. Place bundles in only 5-digit, 3-digit, and SCF/LPC flat trays that contain at least 24 pieces, or in origin/entry SCF/LPC flat trays, as appropriate.

b. Place bundles on only merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, and SCF/LPC pallets.

* * * * *

22.6 Sack Preparation

[Revise the introductory paragraph of 22.6 to read as follows:]

Sack preparation is allowed only for the following: Parcels; Nonpalletized residual 5-digit flats entered at a DDU/SDC along with carrier route flats; Nonpalletized carrier route flats entered at the DSCF/LPC (origin); Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. For mailing jobs that also contain a barcoded mailing, see 22.1.2. For other mailing jobs, preparation sequence, sack size, and labeling: * * *

[Revise the first sentence of item (c) to read as follows:]

c. *SCF/LPC,* required at 72 pieces, optional at 24 pieces minimum.* * *

[Revise the first sentence of item (d) to read as follows:]

d. Origin/entry SCF/LPC, required for the SCF/LPC of the origin (verification) office, optional for the SCF/LPC of an entry office other than the origin office, (no minimum).* * *

[Revise the first sentence of item (e) to read as follows:]

e. *ADC/RPDC,* required at 72 pieces, optional at 24 pieces minimum.* * *

* * * * *

22.7 Tray Preparation—Flat-Size Nonbarcoded Pieces

[Revise the introductory paragraph of 22.7 to read as follows:]

Mailers must place machinable and nonmachinable (26.0) flat-sized pieces in flat trays (203.5.6) instead of sacks, unless prepared as the following: Direct carrier route; 5-digit scheme carrier route; 5-digit carrier route (23.4.1, 705.9.0 and 705.10.0); Nonpalletized residual 5-digit entered at a DDU/SDC along with carrier-route flats; Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); or nonpalletized 3-digit/SCF entered at the DSCF/LPC (origin). Bundling in flat trays is optional, and any bundles must be trayed and labeled separately from loose flats prepared in flat trays. The trays are subject to a container charge and any bundles are subject to a bundle charge. Tray preparation, sequence, and labeling: * * *

[Revise the first sentence of item (d) to read as follows:]

d. *SCF/LPC,* required at 72 pieces, optional at 24 pieces minimum.* * *

[Revise the first sentence of item (e) to read as follows:]

e. *Origin SCF/LPC* (required) and entry SCF/LPC(s) (optional), no minimum, labeling: * * *

[Revise the first sentence of item (f) to read as follows:]

f. *ADC/RPDC,* required at 72 pieces, optional at 24 pieces minimum.* * *

* * * * *

23.0 Preparing Carrier Route Periodicals

* * * * *

23.4 Preparation—Flat-Size Pieces and Irregular Parcels

* * * * *

23.4.2 Exception to Flat Traying and Sacking

[Revise the first sentence of 23.4.2 to read as follows:]

Sacking or traying is not required for carrier route bundles entered at a DDU/SDC when the mailer unloads bundles under 29.6.5.* * *

* * * * *

23.6 Bundles With Fewer Than Six Pieces

[Revise item 23.6(b) to read as follows:]

b. Place bundles on only merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, 5-digit carrier routes, 3-digit, and SCF/LPC pallets.

* * * * *

25.0 Preparing Flat-Size Barcoded (Automation) Periodicals

25.1 Basic Standards

* * * * *

25.1.7 Exception—Barcoded and Nonbarcoded Flats on Pallets

[Revise the last sentence of 25.1.7(c) to read as follows:]

c. * * * The nonbarcoded price pieces that cannot be placed on ADC/RPDC or finer pallets may be prepared as flats in flat trays and paid for at nonbarcoded prices.

25.1.8 Bundles With Fewer Than Six Pieces

5-digit scheme, 5-digit, 3-digit scheme, and 3-digit bundles may contain fewer than six pieces at the publisher's option. Pieces in these low-volume bundles must be claimed at the applicable mixed ADC price (Outside-County) or basic price (In-County). These low-volume bundles are permitted only when they are sacked or prepared on pallets under these conditions:

[Revise items 25.1.8(a) through (d) to read as follows:]

a. Place 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF/LPC flat trays, as appropriate, that contain at least 24 pieces, or in merged 3-digit flat trays that contain at least one 6-piece carrier route bundle, or in origin/entry SCF/LPC flat trays.

b. Place 5-digit and 3-digit bundles on only merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, and SCF/LPC pallets, as appropriate.

c. Place 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF/LPC flat trays, as appropriate, that contain at least 24 pieces, or in merged 3-digit flat trays that contain at least one 6-piece carrier route bundle, or in origin/entry SCF/LPC flat trays.

d. Place 5-digit scheme and 3-digit scheme bundles on only 3-digit and SCF/LPC pallets, as appropriate.

* * * * *

25.4 Sacking and Labeling

[Revise the introductory paragraph of 25.4 to read as follows:]

Sack preparation is allowed only for nonpalletized residual 5-digit flats entered at a DDU/SDC along with carrier route flats, nonpalletized 5-digit flats entered at the DSCF/LPC (origin), and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. For mailing jobs that also contain a machinable nonbarcoded price mailing, see 25.1.9 and 705.9.0. Other mailing jobs are prepared, sacked, and labeled as follows: * * *

[Revise the first sentence of item (c) to read as follows:]

c. *SCF/LPC,* required at 72 pieces, optional at 24 pieces; fewer pieces not permitted; labeling: * * *

[Revise the first sentence of item (d) to read as follows:]

d. *Origin SCF/LPC* (required) and *entry SCF/LPC(s)* (optional), no minimum; labeling: * * *

[Revise the first sentence of item (e) to read as follows:]

a. *ADC/RPDC,* required at 72 pieces, optional at 24 pieces; fewer pieces not permitted; labeling: * * *

* * * * *

25.5 Tray Preparation—Flat-Size Barcoded Pieces

[Revise the introductory paragraph of 25.5 to read as follows:]

Mailers must place machinable flats (under 201.6.0) in flats trays (see 24.0) instead of sacks, unless prepared as the following: Direct carrier route; 5-digit scheme carrier route; 5-digit carrier route; Nonpalletized residual 5-digit and entered at a DDU/SDC along with carrier route flats; Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); or nonpalletized 3-digit/SCF entered at the DSCF/LPC (origin). Mailers must group together all pieces for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, SCF/LPC, and ADC/RPDC destination. Bundling in flat trays is optional, and any bundles must be trayed and labeled separately from loose flats prepared in flat trays. The trays are subject to a container charge, and any bundles are subject to a bundle charge. Tray preparation, sequence, and labeling: * * *

[Revise the first sentence of item (d) to read as follows:]

d. *SCF/LPC* (required), 72-piece minimum, optional at 24 pieces, fewer pieces not permitted; labeling: * * *

[Revise the first sentence of item (e) to read as follows:]

e. Origin SCF/LPC (required) and entry SCF/LPC(s) (optional), no minimum, labeling: * * *

[Revise the first sentence of item (f) to read as follows:]

f. *ADC/RPDC* (required), 72-piece minimum, optional at 24 pieces, fewer pieces not permitted, no overflow tray allowed; labeling: * * *

* * * * *

28.0 Enter and Deposit

* * * * *

28.3 Exceptional Dispatch

* * * * *

28.3.2 Intended Use

[Revise the first sentence of 28.3.2 to read as follows:]

The provision for exceptional dispatch is intended for local distribution (In-County and DDU/SDC) of publications with total circulation of no more than 25,000 and is not to be used to circumvent additional entry standards.* * *

* * * * *

29.0 Destination Entry

* * * * *

[Revise the heading of 29.2 to read as follows:]

29.2 Destination Network Distribution Center/Regional Processing Distribution Center

29.2.1 Definition

[Revise item 29.2.1 to read as follows:]

For this standard, destination network distribution center (DNDC)/Regional Processing Distribution Center (RPDC) includes the facilities and ZIP Code ranges as noted in L601 and L602, or a USPS-designated facility.

29.2.2 Price Eligibility

DNDC container prices apply as follows: * * *

[Revise items (a) and (b) to read as follows:]

a. Pieces must be prepared in bundles or in sacks or trays on ADC/RPDC or more finely presorted pallets under 705.8.0.

b. Mailers may claim a DNDC container price if the facility ZIP Code (on Line 1 of the container label) is within the service area of the NDC/RPDC or ASF at which the container is deposited, under L601 and L602.

29.3 Destination Area Distribution Center

* * * * *

29.3.2 Price Eligibility

Determine price eligibility as follows:

[Revise items (a) and (b) to read as follows:]

a. Pound Prices. Outside-County pieces are eligible for DADC pound prices when placed on an ADC/RPDC or more finely presorted container, deposited at an ADC/RPDC (or USPS-designated facility), and addressed for delivery to one of the 3-digit ZIP Codes served by the facility where deposited. Automation pieces in AADC trays placed on optional SCF/LPC pallets under 705.8.10.2 are eligible for DADC prices when the 3-digit ZIP Code on the tray label is within that SCF/LPC/RPDC's service area according to L005.

b. Pieces must be prepared in bundles or in sacks or trays on ADC/RPDC or more finely presorted pallets under 705.8.0.

* * * * *

[Revise the heading of 29.4 to read as follows:]

29.4 Destination Sectional Center Facility/Local Processing Center

29.4.1 Definition

[Revise 29.4.1 to read as follows:]

For this standard, destination sectional center facility (DSCF)/local processing center (LPC [letter/flats])/regional processing distribution center (RPDC [parcels]) includes the facilities listed in L005, or a USPS-designated facility.

29.4.2 Price Eligibility

Determine price eligibility as follows:

[Revise items (a) through (c) to read as follows:]

a. Pound Prices. Outside-County pieces are eligible for DSCF pound prices when placed on an SCF or more finely presorted container, deposited at the DSCF/LPC (letter/flats)/RPDC (parcels) or USPS-designated facility (see also 29.4.2b), and addressed for delivery within the DSCF/LPC/RDPC's service area. Nonletter-size pieces are also eligible when the mailer deposits 5-digit bundles at the destination delivery unit (DDU)/sorting & delivery center (SDC) (the facility where the carrier cases mail for delivery to the addresses on the pieces) and the 5-digit bundles are in or on the following types of containers:

1. A merged 5-digit scheme or merged 5-digit sack/flat tray.

2. A merged 5-digit scheme, merged 5-digit, or 5-digit scheme pallet.

b. Container Prices. Mailers may claim the DSCF container price for SCF and more finely presorted containers that are entered at and destined within the service area of the SCF/LPC/RPDC at which the container is deposited.

c. Nonpalletized carrier route, 5-digit scheme carrier route, 5-digit carrier route, 5-digit, or 3-digit flats may be prepared in sacks when entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container.

[Revise the heading of 29.5 to read as follows:]

29.5 Destination Delivery Unit/Sorting & Delivery Center

29.5.1 Definition

[Revise 29.5.1 to read as follows:]

For this standard, the destination delivery unit (DDU)/sorting & delivery center (SDC) is the facility where the carrier cases mail for delivery to the addresses on the pieces in the mailing.

29.5.2 Price Eligibility

Determine price eligibility as follows:

* * *

[Revise items (c) and (d) to read as follows:]

c. Container Prices. Outside-County mailers may claim a DDU container price for 5-digit scheme and more finely presorted containers that are entered at and destined within the service area of the DDU/SDC at which the container is deposited.

d. Nonpalletized residual 5-digit flats remaining after a carrier route sortation may be prepared in sacks and deposited at the DDU/SDC along with a carrier route mailing.

* * * * *

29.5.4 Deposit Schedule

[Revise 29.5.4 to read as follows:]

The mailer may schedule deposit of DDU/SDC mailings at least 24 hours in advance by contacting the DDU/SDC or through FAST, available at *fast.usps.com.* The mailer must follow the scheduled deposit time. The mailer may request standing appointments for renewable 6-month periods by written application to the DDU/SDC. Mixed loads of Periodicals and other classes of mail require advance appointments for deposit. For mail entered under exceptional dispatch, the application for exceptional dispatch required under 28.3 also serves as a request for standing appointments.

* * * * *

235 Mail Preparation

* * * * *

1.0 General Definition of Terms

* * * * *

1.3 Terms for Presort Levels

1.3.1 Letters and Cards

Terms used for presort levels are defined as follows: * * *

[Revise items (f) and (g) to read as follows:]

f. *Origin/optional entry 3-digit(s):* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC) in whose service area the mail is verified/entered. Subject to standard, a separation is required for each such 3-digit area regardless of the volume of mail.

g. *Origin/optional entry SCF:* the separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) (see L002, Column C, or L005) in whose service area the mail is verified/entered. Subject to standard, this separation is required regardless of the volume of mail.* * *

1.3.2 Flats

Terms used for presort levels are defined as follows: * * *

[Revise items (c) through (e) to read as follows:]

c. Origin/optional entry 3-digit(s): the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC) in whose service area the mail is verified/entered. Subject to standard, a separation is required for each such 3-digit area regardless of the volume of mail.

d. ADC: all pieces are addressed for delivery in the service area of the same area distribution center (ADC)/regional processing distribution center (RPDC) (see L004).

e. Mixed ADC: the pieces are for delivery in the service area of more than one ADC/RPDC.

1.4 Preparation Definitions and Instructions

For purposes of preparing mail: * * *

[Revise items (h) and (i) to read as follows:]

h. An *origin 3-digit* (or *origin 3-digit scheme*) tray contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF/LPC in whose service area the mail is verified. If more than one 3-digit (or 3-digit scheme) area is served, as indicated in L005, a separate tray must be prepared for each. A tray may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/LPC/plant where mail is entered (if that is different from the SCF/LPC/plant

serving the Post Office where the mail is verified). In all cases, only one less-than-full tray may be prepared for each 3-digit (or 3-digit scheme) area.

i. An *origin AADC* tray contains all mail (regardless of quantity) for an AADC ZIP Code area processed by the AADC or SCF/LPC in whose service area the mail is verified/entered. Only one less-than-full tray may be prepared for each AADC area.* * *

[Revise item (l) to read as follows:]

l. *Entry [facility]* (or *origin [facility]*) refers to the USPS mail processing facility that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one serving the mailer's location, the Post Office of entry determines the *entry* facility. *Entry SCF/LPC* includes both single-3-digit and multi-3-digit SCFs.

* * * * *

8.0 Preparation of Automation Flats

* * * * *

8.6 First-Class Mail Optional Tray-Based Preparation

Tray size, preparation sequence, and Line 1 labeling: * * *

[Revise item (c) to read as follows:]

c. Origin 3-digit: required for each 3-digit ZIP Code served by the SCF/LPC of the origin (verification) office; no minimum; for Line 1, use L002, Column A for 3-digit destinations.

[Revise the first sentence of item (d) to read as follows:]

d. ADC: required (90-piece minimum); one less-than-full or overflow tray allowed; group pieces by 3-digit ZIP Code prefix; for Line 1, use L004 (ZIP Code prefixes in Column A must be combined and labeled to the corresponding ADC/RPDC destination shown in Column B).* * *

* * * * *

240 Commercial Mail USPS Marketing Mail

243 Prices and Eligibility

Overview

[Delete index listing 8.0 and renumber 9.0 as 8.0]

* * * * *

1.0 Prices and Fees

* * * * *

1.2 USPS Marketing Mail Prices

USPS Marketing Mail prices are applied as follows: * * *

[Add an item (e) to read as follows:]

e. Items qualifying as a catalog under 601.10 are eligible for an incentive discount when appropriately identified on the postage statement and/or the eDoc.

* * * * *

2.0 Content Standards for USPS Marketing Mail

2.1 General

* * * * *

[Add a second sentence to read as follows:]

* * * Mailpieces prepared as catalogs must meet the standards in 601.10.

* * * * *

3.0 Basic Eligibility Standards for USPS Marketing Mail

* * * * *

3.4 IMpb Standards

[Revise the first sentence of 3.4 to read as follows:]

All USPS Marketing Mail parcels must bear an Intelligent Mail package barcode (IMpb) prepared under 204.2.0.* * *

* * * * *

4.0 Price Eligibility for USPS Marketing Mail

4.1 General Information

[Revise the text of 4.1 to read as follows:]

All USPS Marketing Mail prices are presorted prices (including all nonprofit prices). These prices apply to mailings meeting the basic standards in 2.0 through 4.0 and the corresponding standards for Presorted prices, Enhanced Carrier Route prices, and automation prices under 5.0 through 8.0, or Customized MarketMail prices under 243.9.0. Except for Customized MarketMail pieces, destination entry discount prices are available under 246.2.0 through 246.6.0. Nonprofit prices may be used only by organizations authorized by the USPS under 703.1.0. Not all processing categories qualify for every price. Pieces are subject to either a single minimum per piece price or a combined piece/pound price, depending on the weight of the individual pieces in the mailing.

4.2 Minimum Per Piece Prices

The minimum per piece prices (the minimum postage that must be paid for each piece) apply as follows: * * *

[Revise the text of item (c) to read as follows:]

c. Individual prices. There are separate minimum per piece prices for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) and within each subclass for the type of mailing and the level of presort within each mailing. DNDC prices are not available for ZIP Code ranges 006–009, 967–969, and 995–999, as indicated in labeling list L601. Except for Customized MarketMail pieces, discounted per piece prices also may be claimed for destination network distribution center (DNDC), destination sectional center facility (DSCF), and destination delivery unit (DDU)) under 246. DDU prices are available only for mail entered at Enhanced Carrier Route or Nonprofit Enhanced Carrier Route prices. There are also separate prices for Marketing parcels, Nonprofit machinable parcels, and Nonprofit irregular parcels. See 1.0 for individual per piece prices.

* * * * *

4.4 Extra Services for USPS Marketing Mail

* * * * *

4.4.2 Ineligible Matter

Extra services (other than certificate of mailing service) may not be used for any of the following types of USPS Marketing Mail: * * *

[Delete item (d) and renumber item (e) as item (d):]

* * * * *

5.0 Additional Eligibility Standards for Nonautomation USPS Marketing Mail Letters, Flats, and Presorted USPS Marketing Mail Parcels

* * * * *

5.3 Price Application

[Revise the text of 5.3 to read as follows:]

Nonautomation prices for Regular and Nonprofit USPS Marketing Mail apply to mailpieces that meet the eligibility standards in 2.0 through 4.0, and the preparation standards in 245 or 705. Prices for Nonprofit parcels not qualifying as Marketing parcels apply separately to machinable parcels and irregular parcels. When parcels are combined under 245.11.0, 705.6.0, or 705.21.0, all pieces are eligible for the applicable prices when the combined total meets the eligibility standards.

* * * * *

5.4.3 AADC USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 5.4.3 to read as follows:]

The SCF pallet discount applies to AADC-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.5.3 5-Digit USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 5.5.3 to read as follows:]

The SCF pallet discount applies to 5-digit-eligible pieces that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.5.5 3-Digit USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 5.5.5 to read as follows:]

The SCF pallet discount applies to 3-digit-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.5.7 ADC USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 5.5.7 to read as follows:]

The SCF pallet discount applies to ADC-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.6 Nonautomation Price Application—Flats

* * * * *

5.6.2 5-Digit USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 5.6.2 to read as follows:]

The SCF pallet discount applies to 5-digit-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.6.4 3-Digit USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 5.6.4 to read as follows:]

The SCF pallet discount applies to 3-digit-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

5.6.5 ADC Prices for Flats

ADC prices apply to flat-size pieces:

[Revise item 5.6.5(a) to read as follows:]

a. In a 5-digit/scheme, 3-digit/scheme, or ADC bundle of 10 or more pieces properly placed in an ADC/RPDC flat tray (see 245.1.4).

[Revise item 5.6.5(c) to read as follows:]

c. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in an ADC bundle of 10 or more pieces; properly placed on an ADC/RPDC pallet.

5.6.6 ADC USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 5.6.6 to read as follows:]

The SCF pallet discount applies to ADC-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

5.6.7 Mixed ADC Prices for Flats

[Revise 5.6.7 to read as follows:]

Mixed ADC prices apply to flat-size pieces in bundles that do not qualify for 5-digit, 3-digit, or ADC prices; placed in mixed ADC flat trays or on ASF/NDC/RPDC, or mixed NDC pallets under 705.8.0.

5.7 Prices for Machinable Parcels

5.7.1 5-Digit Price

[Revise the introductory paragraph of 5.7.1 to read as follows:]

The 5-digit price applies to qualifying machinable parcels that are dropshipped to a DNDC/RPDC (or ASF when claiming DNDC prices), DSCF/RPDC, or DDU/SDC and presented:

* * *

[Revise item 5.7.1(c) to read as follows:]

c. As one or more parcels that mailers drop ship to a DDU/SDC under 246.5.2.3. * * *

* * * * *

5.7.2 NDC Price

The NDC price applies to qualifying machinable parcels as follows under either of the following conditions:

[Revise items (a) and (b) to read as follows:]

a. When dropshipped to an ASF/NDC/RPDC and presented:

a. In an ASF/NDC/RPDC sack containing at least 10 pounds of parcels, or

b. On an ASF/NDC/RPDC pallet, according to standards in 705.8.10, or

c. In an NDC/ASF/RPDC container prepared under 705.21.0.

b. When presented at the origin acceptance office on an ASF/NDC/RPDC pallet containing at least 200 pounds of pieces.

5.7.3 Mixed NDC Price

[Revise 5.7.3 to read as follows:]

The mixed NDC price applies to machinable parcels that are not eligible for 5-digit or NDC prices. Place machinable parcels at mixed NDC prices in origin NDC/RPDC sacks or on origin NDC/RPDC pallets, then in mixed NDC sacks or on mixed NDC pallets. See 245.11.3 and 705.8.10.

5.8 Prices for Irregular Parcels and Marketing Parcels

5.8.1 5-Digit Price

[Revise the introductory paragraph of 5.8.1 to read as follows:]

5-digit prices apply to irregular parcels and to Marketing parcels that are dropshipped to a DNDC/RPDC (or ASF when claiming DNDC prices), DSCF/RPDC, or DDU/SDC and presented:

* * *

[Revise item 5.8.1(c) to read as follows:]

c. As one or more parcels that mailers drop ship to a DDU/SDC under 246.5.2.2. * * *

* * * * *

5.8.2 SCF Price

[Revise 5.8.2 to read as follows:]

SCF prices apply to irregular parcels and to Marketing parcels that are dropshipped and presented to a DSCF, DNDC, or RPDC:

a. In an SCF/RPDC sack containing at least 10 pounds of parcels.

b. On an SCF/RPDC pallet, according to 705.8.10.

c. In SCF/RPDC containers prepared under 705.21.0.

5.8.3 NDC Price

NDC prices apply to irregular parcels and to Marketing parcels as follows under either of the following conditions:

[Revise items (a) and (b) to read as follows:]

a. When dropshipped to an ASF/NDC/RPDC and presented:

1. In an ASF/NDC/RPDC sack containing at least 10 pounds of parcels, or

2. On an ASF/NDC/RPDC pallet, according to standards in 705.8.10, or

3. In a NDC/ASF/RPDC container prepared under 705.21.0.

b. When presented at the origin acceptance office on an ASF/NDC/RPDC pallet containing at least 200 pounds of pieces.

5.8.4 Mixed NDC Price

[Revise 5.8.4 to read as follows:]

Mixed NDC prices apply to irregular parcels and to Marketing parcels in origin NDC/RPDC or mixed NDC containers that are not eligible for 5-digit, SCF, or NDC prices. Place parcels at mixed NDC prices in origin NDC/RPDC or mixed NDC sacks under 245.11.4.3 or on origin NDC/RPDC or mixed NDC pallets under 705.8.10.

6.0 Additional Eligibility Standards for Enhanced Carrier Route USPS Marketing Mail Letters and Flats

6.1 General Enhanced Carrier Route Standards

* * * * *

6.1.2 Basic Eligibility Standards

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route USPS Marketing Mail mailing must: * * *

[Add an item (j) to read as follows:]

j. Meet the standards in 245.6.10 for High Density and High Density Plus automation letter mailings prepared using the optional 5-digit tray preparation.

* * * * *

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.3 Basic Carrier Route USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 6.3.3 to read as follows:]

The SCF pallet discount applies to Basic Carrier Route-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

6.3.6 Basic Carrier Route USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 6.3.6 to read as follows:]

The SCF pallet discount applies to Basic Carrier Route-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

6.4 High Density and High Density Plus (Enhanced Carrier Route) Standards—Letters

6.4.1 Additional Eligibility Standards for High Density and High Density Plus Prices

[Revise the first sentence of 6.4.1 to read as follows:]

In addition to the general eligibility standards in 6.1, high density and high density plus letter-size mailpieces must be in a full carrier route tray or in a carrier route bundle of 10 or more pieces placed in a 5-digit carrier routes or 3-digit carrier routes tray unless prepared using the standards in 245.6.10. * * *

* * * * *

6.4.3 High Density and High Density Plus USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 6.4.3 to read as follows:]

The SCF pallet discount applies to High Density- and High Density Plus-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

6.5.3 High Density Carrier Route Bundles on a 5-Digit/Direct Container (High Density-CR Bundles/Container Discount Eligibility)—Flats

[Revise 6.5.3 to read as follows:]

The High Density-CR Bundles/Container discount applies to 125 or more High Density-eligible pieces that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 on a 5-digit merged, 5-digit (scheme) merged, 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC/RPDC, DSCF/LPC, or DDU/SDC entry or in a carrier route sack or flat tray under 245.9.7a or 203.5.8 and entered at the DDU/SDC.

6.5.4 High Density Plus Carrier Route Bundles on a 5-Digit/Direct Container (High Density Plus-CR Bundles/Container Discount Eligibility)—Flats

[Revise 6.5.4 to read as follows:]

The High Density Plus-CR Bundles/Container discount applies to 300 or more High Density Plus-eligible pieces that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 a 5-digit merged, 5-digit (scheme) merged, 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC/RPDC, DSCF/LPC, or DDU/SDC entry, or in a carrier route sack or tub under 245.9.7a or 203.5.8 and entered at the DDU/SDC.

6.5.5 High Density USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 6.5.5 to read as follows:]

The SCF pallet discount applies to 125 or more High Density-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

6.5.6 High Density Plus USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 6.5.6 to read as follows:]

The SCF pallet discount applies to 300 or more High Density Plus-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

6.6 Saturation ECR Standards—Letters

* * * * *

6.6.3 Saturation USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 6.6.3 to read as follows:]

The SCF pallet discount applies to at least 90 percent or more of the total number of active residential addresses, or 75 percent or more of the total number of active possible delivery addresses, on each carrier route that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

6.7 Saturation Enhanced Carrier Route Standards—Flats

* * * * *

6.7.3 Saturation—(including EDDM) Carrier Route Bundles on a 5-Digit/Direct Container (Saturation—CR Bundles/Container Discount Eligibility)—Flats

[Revise 6.7.3 to read as follows:]

The Saturation-CR Bundles/Container discount applies to at least 90 percent or more of the total number of active residential addresses or 75 percent or more of the total number of active possible delivery addresses on each carrier route that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 on a 5-digit merged, 5-digit (scheme) merged, 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC/RPDC, DSCF/LPC, or DDU/SDC entry, or in a carrier route sack or tub under 245.9.7a or 203.5.8 and entered at the DDU/SDC.

6.7.4 Saturation USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 6.7.4 to read as follows:]

The SCF pallet discount applies to at least 90 percent or more of the total number of active residential addresses, or 75 percent or more of the total number of active possible delivery addresses, on each carrier route that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.0 Eligibility Standards for Automation USPS Marketing Mail

* * * * *

7.3 Maximum Weight for Automation Letters

* * * * *

7.3.2 5-Digit USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 7.3.2 to read as follows:]

The SCF pallet discount applies to 5-digit-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.3.3 AADC USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 7.3.3 to read as follows:]

The SCF pallet discount applies to AADC-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.4 Price Application for Automation Letters

* * * * *

[Revise 7.4.2 to read as follows:]

7.4.2 5-Digit USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

The SCF pallet discount applies to 5-digit-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.4.3 3-Digit USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 7.4.3 to read as follows:]

The SCF pallet discount applies to 3-digit-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.4.4 ADC USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 7.4.4 to read as follows:]

The SCF pallet discount applies to ADC-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

[Delete section 243.8.0 in its' entirety and renumber 243.9.0 as 8.0, 8.1, 8.2, and 8.3 respectively]

* * * * *

8.0 Customized MarketMail

8.1 Basic Standards

[Revise the last sentence of renumbered 8.1 to read as follows:]

* * * CMM must be entered at a destination delivery unit (DDU)/sorting & delivery center (SDC).

* * * * *

245 Mail Preparation

Overview

[Delete index listing 12.0 and renumber 13.0 as 12.0]

1.0 General Information for Mail Preparation

* * * * *

1.2 Definition of Mailings

Mailings are defined as: * * *

[Delete items b(5) and b(6) and renumber items b(7) through b(10) as b(5) through b(8) respectively:]

1.3 Terms for Presort Levels

1.3.1 Letters

Terms used for presort levels are defined as follows: * * *

[Revise items (f) through (h) to read as follows:]

f. *Origin/entry 3-digit(s):* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC) in whose service area the mail is verified/entered. Separation is optional for each such 3-digit area. Mail may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/LPC/plant where mail is entered (if that is different from the SCF/LPC/plant serving the Post Office where the mail is verified—*e.g.,* a PVDS deposit site). In all cases, only one less-than-full tray may be prepared for each 3-digit (or 3-digit scheme) area.

g. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) (see L005), except that, where required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available. For pallets, the SCF sort may include mail for a single 3-digit ZIP Code area.

h. *Origin/optional entry SCF:* the separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) (see L002, Column C, or L005) in whose service area the mail is verified/entered. Subject to standard, this separation is required regardless of the volume of mail. * * *

[Revise item (j) to read as follows:]

j. *ASF/NDC:* all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF) or network distribution center (NDC)/regional processing distribution center (RPDC) (see L601, L602, or L605). * * *

1.3.2 Flats

Terms used for presort levels are defined as follows: * * *

[Revise items (j) through (o) to read as follows:]

j. *Origin/entry 3-digit(s):* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC) in whose service area the mail is verified/entered. Separation is optional for each such 3-digit area.

k. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) (see L005), *except that,* where required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available. For pallets, the SCF sort may include mail for a single 3-digit ZIP Code area.

l. *Origin/optional entry SCF:* the separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) (see L002, Column C, or L005) in whose service area the mail is verified/entered. Subject to standard, this separation is required regardless of the volume of mail.

m. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in an ADC bundle of 10 or more pieces; properly placed on an ADC/RPDC pallet.

n. *ASF/NDC:* all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF)/network distribution center (NDC)/regional processing distribution center (RPDC) (see L601, L602, or L605).

o. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in an ADC bundle of 10 or more pieces; properly placed on an ADC/RPDC pallet.

* * * * *

1.3.3 Marketing Parcels

Terms used for presort levels are defined as follows:

[Delete item (a) and renumber items (b) through (i) as (a) through (h) respectively:]

[Revise newly renumbered items (d) through (g) to read as follows:]

d. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/regional processing distribution center (RPDC) (see L005), except that, where

required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available. For pallets, the SCF sort may include mail for a single 3-digit ZIP Code area.

e. *ASF/NDC:* all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF)/network distribution center (NDC)/regional processing distribution center (RPDC) (see L601, L602, or L605).

f. *Origin NDC:* this separation includes all pieces addressed for delivery to ZIP Codes within the same NDC/RPDC (see L601) that serves the acceptance office that verifies the mailing. There is no minimum quantity requirement for this separation.

g. *Mixed [NDC, ADC, etc.]:* the pieces are for delivery in the service area of more than one NDC/ADC/RPDC, etc.

* * *

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail: * * *

[Revise items (r) and (s) to read as follows:]

r. An *origin 3-digit (or origin 3-digit scheme)* tray for letters and flats contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF/LPC in whose service area the mail is verified. A separate tray may be prepared for each 3-digit ZIP Code (or 3-digit scheme) area. A tray may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/LPC/plant where mail is entered (if that is different from the SCF/LPC/plant serving the Post Office where the mail is verified). In all cases, only one less-than-full tray may be prepared for each 3-digit (or 3-digit scheme) area.

s. An *origin AADC* tray contains all mail (regardless of quantity) for an AADC ZIP Code area processed by the AADC or SCF/LPC in whose service area the mail is verified/entered. Only one less-than-full tray may be prepared for each AADC area. * * *

[Revise item (v) to read as follows:]

v. *Entry [facility]* (or *origin [facility]*) refers to the USPS mail processing facility (*e.g.,* ''entry NDC/RPDC'') that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one serving the mailer's location (*e.g.,* for plant-verified drop shipment), the Post Office of entry determines the *entry* facility. *Entry SCF/LPC* (letter and flats) and *Entry SCF/RPDC* (parcels) includes both single-3-digit and multi-3-digit SCFs. *Entry NDC/RPDC* includes subordinate ASFs unless otherwise specified. * * *

[Revise the last sentence of item (y) to read as follows:]

y. * * * For pallets, 2,800 pounds of mail may be destined to an SCF/LPC (letters and flats) or SCF/RPDC (parcels) destination, and these would form the ''logical'' SCF pallet, but the mail is placed on two physical SCF pallets each weighing 1,400 pounds because of the 2,200 pound maximum pallet weight requirement. * * *

* * * * *

2.0 Bundles

* * * * *

2.2 Marketing Parcels

2.2.1 Bundling

[Revise the text of 2.2.1 to read as follows:]

Bundling is not permitted.

[Delete item 2.2.2 in its' entirety]

3.0 Letter Trays, Flat Trays, and Sacks

[Revise the text of 3.0 to read as follows:]

Letter mailings must be prepared in letter trays with sleeves. Flat mailings must be prepared in flat trays or sacks (carrier route, 5-digit scheme carrier route and 5-digit carrier route only) except when permitted to be prepared in letter trays under other applicable standards in this section. Parcel mailings must be prepared in sacks. Containers for Customized MarketMail are specified in 245.13.5. See 203.5.0 and 203.6.0 for tray and sack standards.

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

5.3 Machinable Preparation

* * * * *

5.3.2 Traying and Labeling

Instead of preparing overflow AADC trays with fewer than 150 pieces, mailers may include these pieces in mixed AADC trays when a tray of 150 or more pieces can be made. Mailers must note these trays on standardized documentation (see 203.3.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front or back of that tray. Preparation sequence, tray size, and labeling: * * *

[Revise item (c1) to read as follows:]

c. Mixed AADC (required); no minimum; labeling:

1. Line 1: L011, Column B. Use L010, Column B, if entered at an ASF/NDC/RDPC or for mail placed on an ASF/NDC/RPDC, or SCF/LPC pallet under the option in 705.8.10.3. * * *

* * * * *

5.4 Nonmachinable Preparation

* * * * *

5.4.2 Traying and Labeling

When all full trays for a destination have been prepared, mailers may include a group of 10 or more overflow pieces for that destination in a qualified tray at either of the next two tray levels. For example, overflow pieces for a 5-digit destination may be placed into an existing correct 3-digit tray; if a 3-digit tray that includes the 5-digit destination does not exist, the overflow pieces may be placed into the correct existing ADC tray. Bundle the overflow pieces separately with the correct presort bundle label or OEL; the pieces will still qualify for the 5-digit price. Mailers must note these trays on standardized documentation (see 203.3.2). Preparation sequence, tray size, and labeling: * * *

[Revise item (d1) to read as follows:]

d. Mixed ADC (required); no minimum; labeling:

1. Line 1: L011, Column B. Use L010, Column B, if entered at an ASF/NDC/RPDC or for mail placed on an ASF/NDC/RPDC, or SCF/LPC pallet under the option in 705.8.10.3. * * *

* * * * *

6.0 Preparing Enhanced Carrier Route Letters

* * * * *

6.7 Traying and Labeling for Automation-Compatible ECR Letters

[Revise the introductory paragraph of 6.7 to read as follows:]

Mailers must make full carrier route and 5-digit carrier routes trays, when possible, for automation-compatible, delivery-point barcoded ECR letters that weigh up to 3.5 ounces. Except for card-size pieces, pieces must not be bundled. Group pieces together by carrier route in 5-digit and 3-digit carrier routes trays. If pieces for one carrier route do not result in a full tray, mailers must combine pieces from at least two routes to make full 5-digit carrier routes trays, grouping pieces together by carrier route. If pieces for multiple carrier routes do not result in a full 5-digit tray, mailers must combine pieces from at least two 5-digit ZIP Codes to make 3-digit carrier routes trays, grouping pieces together by carrier route. If pieces fill more than one tray but do not fill an additional tray, mailers must place excess pieces in a tray at the next sortation level. (See 6.10 for Optional 5-digit Tray Preparation).

Preparation sequence, tray size, and labeling: * * *

* * * * *

[Add a new section 6.10 to read as follows]

6.10 Optional 5-digit Tray Preparation for High Density and High Density Plus ECR Automation Compatible Letters

6.10.1 Basic Standards

An optional 5-digit tray preparation allows combining multiple mail owners' High Density, High Density Plus, and 5-digit automation compatible letters in a letter tray when meeting the following standards:

a. Each individual mail owner must meet the minimum quantities in 243.6.4.2 for High Density and High Density Plus to claim HD/HD+ prices with a minimum combined 150 pieces of 5-Digit, HD or HD Plus in a 5-Digit tray.

b. The separate requirement of 150 pieces for 5-digit is waived.

c. The minimums must be achieved by a single mail owner defined by their individual MID and/or CRID in the By/For of the eDoc for each carrier route.

d. Walk Sequencing is not required within the letter trays.

e. Bundling and facing slips are not required.

f. Must meet the High Density and High Density Plus marking requirements in 6.2.

g. The Optional Tray Preparation must be used for entire mailing within eDoc.

6.10.2 Traying and Labeling

Mailers must make full 5-digit trays for automation-compatible, delivery-point barcoded letters that weigh up to 3.5 ounces and that meet the standards of 6.10.1. Bundling or facing slips are not required. Preparation sequence, tray size, and labeling:

a. Same Carrier Route to same 5-Digit; full trays only.

1. Line 1: city, state, and 5-digit ZIP Code on mail

2. Line 2: ''STD LTR BC''

b. Multiple Carrier Routes to same 5-Digit; full trays only.

1. Line 1: city, state, and 5-digit ZIP Code on mail

2. STD LTR 5D MXD CR–RTS BC

7.0 Preparing Automation Letters

* * * * *

7.5 Tray Preparation

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in an existing qualified tray of at least 150 or more pieces at the next tray level. (For example, if a mailer has 30 overflow 5-digit pieces for ZIP Code 20260, these pieces may be added to an existing qualified AADC tray for the correct destination and the overflow 5-digit pieces will still qualify for the 5-digit price). Mailers must note these trays on standardized documentation (see 203.3.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front or back of that tray. Mailers may use this option selectively for AADC ZIP Codes. This option does not apply to origin/entry AADC trays. Preparation sequence, tray size, and Line 1 labeling: * * *

[Revise item (c) to read as follows:]

c. Mixed AADC: required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 labeling: use L011, Column B. Use L010, Column B if entered at an ASF/NDC/RPDC or for mail placed on an ASF/NDC/RPDC, or SCF/LPC pallet under the option in 705.8.10.3.

8.0 Preparing Nonautomation Flats

* * * * *

8.6 Traying, Sacking, and Labeling

[Revise the introductory paragraph of 8.6 to read as follows:]

Flat trays are allowed for all sortations. Sack preparation is allowed only for the following: Nonpalletized residual 5-digit flats entered at a DDU/SDC along with carrier route flats; Nonpalletized carrier route flats entered at the DSCF/LPC (origin); Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); and nonpalletized 3-digit flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. All other sortations require flat tray preparation. Preparation sequence and labeling: * * *

* * * * *

10.4 USPS Marketing Mail Bundle and Flat Tray Preparation

* * * * *

10.4.3 Traying, Sacking, and Labeling

[Revise the introductory paragraph of 10.4.3 to read as follows:]

Sack preparation is allowed only for the following: Nonpalletized residual 5-digit flats entered at a DDU/SDC along with carrier route flats; Nonpalletized carrier route flats entered at the DSCF/LPC (origin); Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); and nonpalletized 3-digit flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. All other sortations require flat tray preparation. Preparation sequence and labeling: * * *

11.0 Preparing Presorted Parcels

* * * * *

11.3 Preparing Marketing Parcels (6 Ounces or More) and Machinable Parcels

11.3.1 Sacking

Prepare mailings of Marketing parcels weighing 6 ounces or more and mailings of machinable parcels under 11.3. Prepare 5-digit sacks only for parcels dropshipped to a DNDC/RPDC (or ASF/RPDC when claiming DNDC prices), DSCF/RPDC, or DDU/SDC. Prepare ASF/NDC/RPDC sacks only for parcels dropshipped to a DNDC/RPDC (or ASF when claiming DNDC prices). There is no minimum for parcels in 5-digit/scheme sacks entered at a DDU/SDC. Mailers combining irregular parcels with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 11.3.2a. Mailers combining Marketing parcels weighing 6 ounces or more with machinable parcels placed in ASF/NDC/RPDC, or mixed NDC sacks must prepare the sacks under 11.3.2.

11.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise the introductory text of item (a) to read as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price), see definition in 1.4n.; allowed only for mail deposited at DNDC/RPDC (or ASF when claiming DNDC prices), DSCF/RPDC, or DDU/SDC. Sacks must contain a 10-pound minimum except at DDU/SDC entry which has no minimum; labeling: * * *

[Revise the introductory text of item (b) to read as follows:]

a. ASF (optional), allowed only for mail deposited at an ASF/RPDC to claim DNDC price; 10-pound minimum; labeling: * * *

[Revise the introductory text of item (c) to read as follows:]

c. NDC, allowed only for mail deposited at a DNDC/RPDC to claim the NDC price; 10-pound minimum; labeling: * * *

* * * * *

e. Mixed NDC (required); no minimum; labeling:

[Revise item (e1) to read as follows:]

1. Line 1: ''MXD'' followed by L601, Column B information for NDC/RPDC serving 3-digit ZIP Code prefix of entry Post Office. * * *

11.4 Preparing Marketing Parcels (Less Than 6 Ounces) and Irregular Parcels

11.4.1 Bundling

[Revise the text of 11.4.1 to read as follows:]

Bundling is not permitted.

* * * * *

11.4.2 Sacking

[Revise item 11.4.2 to read as follows:]

Prepare mailings of Marketing parcels weighing less than 6 ounces and mailings of irregular parcels under 11.4. Prepare 5-digit sacks only for parcels dropshipped to a DNDC/RPDC (or ASF/RPDC when claiming DNDC prices), DSCF/RPDC, or DDU/SDC. See 11.4.3 for restrictions on SCF/ASF/NDC/RPDC sacks. Mailers must prepare a sack when the mail for a required presort destination reaches 10 pounds of pieces. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU/SDC. Mailers combining irregular parcels with machinable parcels and Marketing parcels weighing 6 ounces or more in 5-digit/scheme sacks must prepare those sacks under 11.3.2. Mailers may not prepare sacks containing irregular and machinable parcels to other presort levels. Mailers may combine irregular parcels with Marketing parcels weighing less than 6 ounces in sacks under 11.4.3.

11.4.3 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise the introductory text of item (a) to read as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price), see definition in 1.4n; allowed only for mail deposited at DNDC/RPDC (or ASF/RPDC when claiming DNDC prices), DSCF/RPDC, or DDU/SDC. Sacks must contain a 10-pound minimum except at DDU/SDC entry which has no minimum; labeling: * * *

[Revise the introductory text of item (b) to read as follows:]

b. SCF, allowed only for mail deposited at a DSCF/RPDC or a DNDC/RPDC to claim SCF price; 10-pound minimum; labeling: * * *

[Revise the introductory text of item (c) to read as follows:]

c. ASF (optional), allowed only for mail deposited at an ASF/RPDC to claim DNDC price; 10-pound minimum; labeling: * * *

[Revise the introductory text of item (d) to read as follows:]

d. NDC, allowed only for mail deposited at a DNDC/RPDC to claim the NDC price; 10-pound minimum; labeling: * * *

* * * * *

f. Mixed NDC (required); no minimum; labeling:

[Revise item (f1) to read as follows:]

1. Line 1: ''MXD'' followed by L601, Column B information for NDC/RPDC serving 3-digit ZIP Code prefix of entry Post Office. * * *

* * * * *

[Delete section 12.0 in its' entirety and renumber section 13.0 as 12.0, 12.1, 12.2, 12.3, 12.4,12.5 and 12.6 respectively:]

* * * * *

246 Enter and Deposit

* * * * *

2.0 Destination Entry

* * * * *

2.5 Verification

* * * * *

2.5.3 At NDC

[Revise 2.5.3 to read as follows:]

For a mailing verified at a NDC/RPDC, the Post Office where the mailer's account or license is held must be within the service area of that NDC/RPDC. The Post Office must authorize the NDC/RPDC to act as its agent by sending Form 4410 to the NDC/RPDC.

* * * * *

2.5.5 Volume Standards

Except as permitted for a local mailer under 2.6.13, destination entry mailings are subject to these volume standards:

[Revise item (a) to read as follows:]

a. The pieces for which a destination price is claimed must represent more than 50% of the mail (by weight or pieces, whichever is greater) presented by the same mailer within any 24-hour period. For this standard, *mailer* is the party presenting the mail to the USPS. * * *

* * * * *

2.6 Deposit

* * * * *

2.6.3 Appointments

Appointments must be made for destination entry price mail as follows: * * *

[Revise the first sentence of item (c) to read as follows:]

c. For deposit of DDU/SDC mailings, an appointment must be made by contacting the DDU/SDC or through FAST, available at *fast.usps.com,* at least 24 hours in advance. * * *

* * * * *

2.6.4 Advance Scheduling

[Revise the introductory paragraph of 2.6.4 to read as follows:]

Mailers must schedule appointments for deposit of destination entry price mail under 2.6.3 and the conditions below. When making an appointment, or as soon as available, the mailer must provide the DDU/SDC or FAST with the following information: * * *

[Revise the last sentence of item (b) to read as follows:]

b. * * * For DDU/SDC entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

* * * * *

2.6.5 Adherence to Schedule

[Revise the last sentence of 2.6.5 to read as follows:]

* * * Destination facilities may refuse acceptance or deposit of unscheduled mailings or shipments that arrive more than 2 hours after the scheduled appointment at ASFs, NDCs/RPDCs, or SCFs/LPCs or more than 20 minutes at delivery units.

2.6.6 Redirection by USPS

[Revise the text of 2.6.6 to read as follows:]

A mailer may be directed to transport destination entry price mailings to a facility other than the designated DDU/SDC, SCF/LPC (letter/flats), SCF/RPDC (parcels) or NDC/RPDC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

2.6.7 Redirection at Mailer's Request

[Revise the text of 2.6.6 to read as follows:]

A mailer may ask to transport destination SCF/LPC (letters/flats) or SCF/RPDC (parcels) price mail to a facility other than the designated SCF/LPC/RPDC. In very limited circumstances, this exception may be approved only by the manager, Network Integration Support (see 608.8.0 for address). To qualify for the SCF price in this situation, mail deposited at a facility other than the SCF/LPC/RPDC must destinate for processing within that facility and must not require backhauling to the SCF/LPC/RPDC.

* * * * *

2.6.9 Vehicle Unloading

Unloading of destination entry mailings is subject to these conditions:

[Revise the first sentence of item (a) to read as follows:]

a. Properly prepared containerized loads (*e.g.,* pallets) are unloaded by the USPS at NDCs/RPDCs, ASFs, and SCFs/LPCs. * * *

[Revise the first sentence of item (b) to read as follows:]

b. At NDCs/RPDCs, ASFs, and SCFs/LPCs, the driver must unload bedloaded shipments within 8 hours of arrival.

* * *

[Revise the introductory text of item (c) to read as follows:]

c. At destination delivery units (DDUs)/sorting & delivery centers (SDCs), drivers must unload all mail within 1 hour of arrival. Unloading procedures are as follows: * * *

[Revise the text of item (c4) to reads as follows:]

4. At DDUs/SDCs that cannot handle pallets, drivers must unload any mail from pallets and place it into containers as delivery unit employees specify.

* * *

* * * * *

[Revise the title of 3.0 to read as follows:]

3.0 Destination Network Distribution Center (DNDC)/Regional Processing Distribution Center (RPDC) Entry

3.1 Definition

[Revise the text of 3.1 to read as follows:]

For this standard, *destination network distribution center (DNDC)/regional processing distribution center (RPDC)* includes network distribution centers (NDCs), regional processing distribution centers (RPDCs), and auxiliary service facilities (ASFs) with terms and exceptions as shown and described in labeling lists L601 and L602.

3.2 Eligibility

[Revise the text of 3.2 to read as follows:]

Pieces in a mailing that meets the standards in 2.0 and 3.0 are eligible for DNDC prices when they are deposited at an NDC/RPDC or ASF and meet all of the following conditions:

a. The pieces are addressed for delivery to one of the 3-digit ZIP Codes served by the NDC/ASF/RPDC where deposited (see labeling lists L601 and L602).

b. The pieces are properly placed in a tray, sack, or pallet that is labeled to the NDC/ASF/RPDC where deposited, or labeled to a postal facility within the service area of that NDC/ASF/RPDC.

c. Mail addressed to ZIP Codes served by an ASF/RPDC must be entered at the appropriate ASF per L602, and not entered at an NDC/RPDC.

d. If bundles of flats are reallocated from an ASF pallet to an NDC/RPDC pallet under 705.8.14, mail for the ASF ZIP Codes that is on the NDC/RPDC pallet is not eligible for DNDC prices.

e. Except for machinable parcels addressed to ZIP Codes served by the Buffalo NY ASF, mail addressed to ZIP Codes served by an ASF/RPDC must be entered at the appropriate ASF per L602, and not entered at an NDC/RPDC.

3.3 Eligibility for ADC Mailpieces—Letters

[Revise the text of 3.3 to read as follows:]

All pieces in an ADC sack or tray are eligible for the DNDC discount if the ADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the NDC/RPDC or ASF at which the tray is deposited, as described in labeling lists L601 and L602. All pieces in a palletized ADC bundle are eligible for DNDC prices if the ADC facility destination (determined by the ''Label To'' ZIP Code in Column B of labeling list L004) is within the service area of the NDC/RPDC or ASF at which deposited according to L601 and L602.

3.4 Eligibility for Mixed ADC Bundles, Trays, or Mixed AADC Trays—Letters

[Revise the introductory paragraph of 3.4 to read as follows:]

Mailpieces in a mixed ADC or a mixed AADC tray can qualify for DNDC prices when entered at a NDC/RPDC/ASF or SCF/LPC facility responsible for the processing of those trays (see 705.8.10.3e.), if the following standards are met:

[Revise the text of item 3.4(a) to read as follows:]

a. All pieces in the bundle or tray must destinate within the ASF or NDC/RPDC service area as described in labeling lists L601 and L602. * * *

* * * * *

3.5 Eligibility for ADC Mailpieces—Flats

[Revise text of 3.5 to read as follows:]

All pieces in an ADC sack or tray are eligible for the DNDC discount if the ADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the NDC/RPDC or ASF at which the sack or tray is deposited, as described in labeling lists L601 and L602. All pieces in a palletized ADC bundle are eligible for DNDC prices if the ADC facility destination (determined by the ''Label To'' ZIP Code in Column B of labeling list L004) is within the service area of the NDC/RPDC or ASF at which deposited according to L601 and L602.

3.6 Eligibility for Mixed ADC Bundles, Sacks or Trays—Flats

Mailpieces in a mixed ADC bundle, sack, or tray can qualify for DNDC prices if the following standards are met:

[Revise the text of item 3.5(a) to read as follows:]

a. All pieces in the bundle, sack, or tray must destinate within the ASF/NDC/RPDC service area as described in labeling lists L601 and L602.

* * * * *

3.7 Additional Standards for Machinable Parcels

[Revise the first sentence of 3.7 to read as follows:]

For destination NDC/ASF/RPDC containers, except as provided in labeling lists L601 and L602, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DNDC prices.

* * *

3.8 Vehicles

[Revise the text of 3.8 to read as follows:]

Mailings deposited at a DNDC/RPDC must be presented in vehicles compatible with NDC/RPDC dock and yard operations.

3.9 Form 4410

[Revise the text of 3.9 to read as follows:]

Mailings may be deposited at the DNDC/RPDC only if that facility is authorized (by Form 4410) to act as acceptance agent for the entry Post Office (where the meter license, precanceled stamp permit, or permit imprint authorization is held). Form 4410 is not required for plant-verified drop shipments.

[Revise the title of 4.0 to read as follows:]

4.0 Destination Sectional Center Facility (DSCF)/Local Processing Center (LPC) Entry

4.1 Definition

For this standard, *destination sectional center facility (DSCF)/local processing center (LPC)* refers to the facilities listed in L002, Column C.

4.2 Eligibility

4.2.1 Letters

Pieces in a mailing that meet the standards in 2.0 and 4.0 are eligible for DSCF prices under either 4.2.1a. or 4.2.1b. below:

[Revise text of item 4.2.1(a) to read as follows:]

a. When deposited at a DSCF/LPC or USPS-designated facility, and either:

1. Placed in a tray labeled to a destination within the SCF's/LPC's service area, when all pieces in the tray are addressed for delivery within that SCF's/LPC's service area.

2. Placed in an ADC or AADC tray labeled to a destination within the

SCF's/LPC's service area, regardless of whether all pieces in the tray are addressed for delivery within that SCF's/LPC's service area.

[Revise the introductory text of 4.2.1(b) to read as follows:]

b. When entered and deposited at a DDU/SDC, addressed for delivery within that facility's service area, placed in a tray labeled to that DDU/SDC, and either: * * *

[Revise text of item 4.2.1(b2) to read as follows:]

2. The mailer holds a mailing permit at the DDU/SDC entry office and deposits only one mailing of fewer than 2,500 pieces per day.

4.2.2 Flats

Pieces in a mailing that meets the standards in 2.0 and 4.0 are eligible for the DSCF price, as follows:

[Revise text of items (a) through (c) to read as follows:]

a. When deposited at a DSCF/LPC or USPS-designated facility, addressed for delivery within the DSCF's/LPC's service area, and placed in a flat tray, sack (when applicable), or on a pallet labeled to the DSCF/LPC or to a destination within its service area. This includes flat trays labeled to an ADC facility with the same service area as the DSCF/LPC.

b. When prepared in 5-digit bundles and placed in or on a merged 5-digit scheme or merged 5-digit flat tray, sack (when applicable), or pallet that is deposited at the destination delivery unit/sorting & delivery center as defined in 5.1.

c. When prepared as nonpalletized carrier route, 5-digit scheme carrier route, 5-digit carrier route, 5-digit, or 3-digit flats in sacks entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container.

4.2.3 Parcels

Pieces in a mailing that meets the standards in 2.0 and 4.0 are eligible for the DSCF price, as follows:

[Revise the text of items (a) and (b) to read as follows:]

a. When deposited at a DSCF/RPDC or USPS-designated facility, addressed for delivery within the DSCF's/RPDC's service area, and placed in a sack or on a pallet that is labeled to the DSCF/RPDC or to a destination within its service area.

b. When prepared in 5-digit bundles and placed on a 5-digit pallet or in a 5-digit scheme or 5-digit sack that is deposited at the destination delivery unit/sorting & delivery center as defined in 5.1. * * *

* * * * *

4.3 Vehicles

[Revise the text of 4.3 to read as follows:]

Mailings deposited at a DSCF/LPC (letters/flats) or DSCF/RPDC (parcels) must be presented in vehicles that are compatible with SCF/LPC/RPDC dock and yard operations.

[Revise the title of 5.0 to read as follows:]

5.0 Destination Delivery Unit (DDU)/Sorting & Delivery Center (SDC) Entry

5.1 Definition

[Revise the text of 5.1 to read as follows:]

For this standard, *destination delivery unit (DDU)/sorting & delivery center (SDC)* refers to the facility designated by the USPS district drop shipment coordinator (for automation price USPS Marketing Mail) or the facility (Post Office, branch, station, etc.) where the carrier cases mail for delivery to the addresses on pieces in the mailing (for other USPS Marketing Mail).

5.2 Eligibility

5.2.1 Letters

[Revise the last sentence of the introductory paragraph to read as follows:]

* * * Mailers may deposit letter-size pieces that meet the standards in 2.0 and 5.0 at a DDU/SDC when: * * *

* * * * *

5.2.2 Flats

[Revise the text of 5.2.2 to read as follows:]

Properly prepared Enhanced Carrier Route (ECR) flat-size pieces entered according to standards in 2.0 and 5.0 are eligible for the DDU price when deposited at a DDU/SDC and addressed for delivery within that facility's service area. Mailers must unload mail at DDUs/SDCs according to standards in 2.6.9. Only pieces eligible for and claimed at ECR prices are eligible for the DDU discount. No other prices or discounts are available for pieces receiving the DDU discount. When mailings contain pieces claimed at more than one destination entry price, mailers must separate mail according to standards in 2.5.1. Nonpalletized residual 5-digit flats remaining after a carrier route sortation may be prepared in sacks and deposited at the DDU/SDC along with a carrier route mailing.

5.2.3 Parcels

[Revise text of 5.2.3 to read as follows:]

Pieces in a mailing that meets the standards in 2.0 and 5.0 are eligible for the DDU price when deposited at a DDU/SDC, addressed for delivery within that facility's service area, and prepared as one or more parcels in 5-digit containers.

* * * * *

260 Commercial Mail Bound Printed Matter

263 Prices and Eligibility

1.1 Nonpresorted Bound Printed Matter

* * * * *

[Add item 1.1.3 to read as follows:]

1.1.3 Catalog Incentive Discount

Items qualifying as a catalog under 601.10 are eligible for an incentive discount when appropriately identified on the postage statement and/or the eDoc.

1.2 Presorted and Carrier Route Bound Printed Matter

* * * * *

[Add item 1.2.8 to read as follows:]

1.2.8 Catalog Incentive Discount

Items qualifying as a catalog under 601.10 are eligible for an incentive discount when appropriately identified on the postage statement and/or the eDoc.

* * * * *

2.0 Content Standards for Bound Printed Matter

2.1 Basic Content Standards

Bound Printed Matter (BPM) is a subclass of Package Services and must:

* * *

[Add item (g) to read as follows:]

g. Meet the standards in 601.10 if prepared as a catalog.

* * * * *

4.0 Price Eligibility for Bound Printed Matter

* * * * *

4.2 Destination Entry Price Eligibility

[Revise the text of 4.2 to read as follows:]

BPM destination entry prices apply to BPM mailings prepared as specified in 705.8.0, 705.14.0 and 265, and addressed for delivery within the service area of a destination network distribution center/regional processing distribution center, sectional center facility/local processing center, or delivery unit where they are deposited

by the mailer. For this standard, the following destination facility definitions apply:

a. A destination network distribution center (DNDC)/regional processing distribution center (RPDC) includes all network distribution centers (NDCs)/regional processing distribution centers (RPDCs) and auxiliary service facilities (ASFs) under L601 and L602. DNDC prices are not available for ZIP Code ranges 006–009, 967–969, and 995–999, as indicated in labeling list L601.

b. A destination sectional center facility (DSCF)/local processing center (LPC) includes all facilities in L005.

c. A destination delivery unit (DDU)/sorting & delivery center (SDC) is a facility that delivers to the addresses appearing on the deposited pieces in a destination entry Parcel Select mailing. Refer to the Drop Shipment Product maintained by the National Customer Support Center (NCSC) (see 608.8.1 for address) to determine the location of a 5-digit delivery facility.

* * * * *

265 Mail Preparation

* * * * *

1.0 General Information for Mail Preparation

* * * * *

1.4 Terms for Presort Levels

Terms used for presort levels are defined as follows: * * *

[Revise the text of items (h) through (k) to read as follows:]

h. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) [flats]/regional processing distribution center (RPDC) [parcels] (see L005), *except that,* where required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available. For pallets, the SCF sort may include mail for a single 3-digit ZIP Code area.

i. *ADC:* all pieces in the bundle, sack, or tray must destinate within the ASF/NDC/RPDC service area as described in labeling lists L601 and L602.

j. *ASF/NDC:* all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF)/network distribution center (NDC)/regional processing distribution center (RPDC) (see L601, L602, or L605).

k. *Mixed [NDC, ADC, etc.]:* the pieces are for delivery in the service area of more than one NDC/RPDC/ADC, etc.

1.5 Preparation Definitions and Instructions

For purposes of preparing mail: * * *

[Revise the text of item (h) to read as follows:]

h. *An origin 3-digit (or origin 3-digit scheme)* tray/sack for parcels contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF/LPC (flats)/RPDC (parcels) in whose service area the mail is verified. If more than one 3-digit (or 3-digit scheme) area is served, as indicated in L005, a separate tray/sack must be prepared for each.

[Revise the text of item (k) to read as follows:]

k. *Entry [facility]* (or *origin [facility]*) refers to the USPS mail processing facility (*e.g.,* ''entry NDC/RPDC'') that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one serving the mailer's location (*e.g.,* for plant-verified drop shipment), the Post Office of entry determines the *entry* facility. *Entry SCF/LPC (flats)/RPDC (parcels)* includes both single-3-digit and multi-3-digit SCFs. *Entry NDC/RPDC* includes subordinate ASFs unless otherwise specified.

[Revise the last sentence of item (n) to read as follows:]

n. * * * For pallets, 2,800 pounds of mail may be destined to an SCF/LPC (flats)/RPDC (parcels) destination, and these would form the ''logical'' SCF pallet, but the mail is placed on two physical SCF pallets each weighing 1,400 pounds because of the 2,200 pound maximum pallet weight requirement.

* * * * *

2.0 Bundles

* * * * *

2.4 Bundle Sizes for Irregular Parcels

[Revise the introductory paragraph of 2.4 to read as follows:]

Mailers must prepare unsacked, nonpalletized bundles of irregular parcels for DDU/SDC entry according to 203.4.10, and as follows: * * *

* * * * *

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

5.2.1 Required Bundling

[Revise the fourth sentence of 5.2.1 to read as follows:]

* * * Five-digit bundles placed in 5-digit sacks and unsacked 5-digit bundles prepared for DDU/SDC entry may weigh a maximum of 40 pounds. * * *

* * * * *

8.0 Preparing Presorted Parcels

* * * * *

8.2 Preparing Irregular Parcels Weighing Less Than 10 Pounds

* * * * *

8.2.4 Sacking and Labeling

Preparation sequence and labeling: * * *

e. Mixed ADC (required); labeling:

[Revise item (e1) to read as follows:]

1. Line 1: L009, Column B. If placed on an ASF/NDC/RPDC pallet under option in 705.8.10.3, use L010. * * *

* * * * *

8.3 Preparing Irregular Parcels Weighing 10 Pounds or More

* * * * *

8.3.3 Sacking and Labeling

Preparation sequence and labeling: * * *

e. Mixed ADC (required); labeling:

[Revise item (e1) to read as follows:]

1. Line 1: L009, Column B. If placed on an ASF/NDC/RPDC pallet under option in 705.8.10.3, use L010. * * *

* * * * *

8.4 Preparing Machinable Parcels Not Claiming DNDC Prices

* * * * *

8.4.2 Sacking and Labeling

Preparation sequence and labeling: * * *

c. Mixed NDC (required); labeling:

[Revise item (c1) to read as follows:]

1. Line 1: ''MXD'' followed by the L601, Column B, information for the NDC/RPDC serving the 3-digit ZIP Code prefix of entry Post Office. * * *

8.5 Preparing Machinable Parcels Claiming DNDC Prices

* * * * *

8.5.2 Sacking and Labeling

Preparation sequence and labeling: * * *

d. Mixed NDC (required); labeling:

[Revise item (d1) to read as follows:]

1. Line 1: ''MXD'' followed by the L601, Column B information for the NDC/RPDC serving the 3-digit ZIP Code prefix of entry Post Office. * * *

9.0 Preparing Carrier Route Parcels

9.1 Basic Standards

9.1.1 General Standards for Carrier Route Preparation

All mailings of Carrier Route Bound Printed Matter (BPM) are subject to the standards in 9.2 through 9.4 and to these general standards: * * *

[Revise the last sentence of item (b) to read as follows:]

b. * * * Irregular parcels also are pieces that meet the size and weight standards for a machinable parcel but are not individually boxed or packaged to withstand processing on NDC/RPDC parcel sorters under 601.7.0.

* * * * *

266 Enter and Deposit

* * * * *

2.0 Presenting a Mailing

* * * * *

[Revise the title of 2.3 to read as follows:]

2.3 NDC/RPDC Acceptance

[Revise the text of 2.3 to read as follows:]

A mailer may present Bound Printed Matter at a NDC/RPDC for acceptance if:

a. Permit imprint postage is paid through an advance deposit account at the NDC/RPDC parent Post Office or another Post Office in the NDC/RPDC service area, unless otherwise permitted by standard.

b. The NDC/RPDC is authorized by Form 4410 to act as acceptance agent for the entry Post Office.

* * * * *

3.0 Destination Entry

3.1 General

[Revise the first sentence of 3.1 to read as follows:]

Destination entry prices apply to Presorted and carrier route Bound Printed Matter (BPM) that is deposited at a destination network distribution center (DNDC)/regional processing distribution center (RPDC), destination sectional center facility (DSCF)/local processing center (LPC), or destination delivery unit (DDU)/sorting & delivery center (SDC) as specified below. * * *

* * * * *

3.3 Postage Payment and Mailing Fees

Postage payment for Bound Printed Matter destination price mailings is subject to the same standards that apply generally to Bound Printed Matter and to the following:

[Revise the second sentence of item (a) to read as follows:]

a. * * * Except for plant-verified drop shipments (see 705.17.0) and eVS shipments (see 705.2.9); mailers must have a permit imprint authorization at the parent Post Office for mailings deposited for entry at a DNDC/RPDC, ASF/RPDC, DSCF/LPC (flats)/RPDC (parcels), or DDU/SDC. * * *

* * * * *

3.7 Verification

3.7.1 Mail Separation and Presentation

[Revise the second sentence of the introductory paragraph of 3.7.1 to read as follows:]

* * * Mailers may deposit only PVDS and eVS mailings at a destination delivery unit/sorting & delivery center not co-located with a Post Office or other Postal Service facility with a business mail entry unit. * * *

* * * * *

[Revise the title of 3.7.3 to read as follows:]

3.7.3 At NDC/RPDC

[Revise the text of 3.7.3 to read as follows:]

For a mailing to be verified at a NDC/RPDC, the Post Office where the mailer's account or license is held must be within the service area of that NDC/RPDC. The Post Office must authorize the NDC/RPDC to act as its agent by sending Form 4410 to the NDC/RPDC.

* * * * *

3.8 Deposit

3.8.1 Time and Location of Deposit

[Revise the last sentence of 3.8.1 to read as follows:]

* * * Mailings must be presented in vehicles that are compatible with dock, yard, and DDU/SDC operations, as applicable.

* * * * *

3.8.3 Appointments

Appointments must be made for destination entry price mail as follows:

[Revise the first sentence of item (a) to read as follows:]

a. Except as provided under 3.8.3b, or for a local mailer and mailings of perishable commodities under 3.8.12, appointments for deposit of destination entry price mail at NDCs/RPDCs, ASFs, and SCFs/LPCs must be scheduled through the appropriate drop-shipment appointment control center at least one business day in advance. * * *

[Revise the first sentence of item (c) to read as follows:]

c. For deposit of DDU/SDC mailings, an appointment must be made by contacting the DDU/SDC or through FAST, available at *fast.usps.com,* at least 24 hours in advance. * * *

* * * * *

3.8.4 Advance Scheduling

Mailers must schedule appointments for deposit of destination entry price mail under 3.8.3 and the conditions below. When making an appointment, or as soon as available, the mailer must provide the following information:

* * *

[Revise the last sentence of item (b) to read as follows:]

b. * * * For DDU/SDC entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

* * * * *

3.8.5 Adherence to Schedule

[Revise the last sentence of 3.8.5 to read as follows:]

* * * Destination facilities may refuse acceptance or deposit of unscheduled mailings or shipments that arrive more than 2 hours after the scheduled appointment at ASFs, NDCs/RDPCs, or SCFs/LPCs or more than 20 minutes at delivery units.

3.8.6 Redirection by USPS

[Revise the text of 3.8.6 to read as follows:]

A mailer may be directed to transport destination entry price mailings to a facility other than the designated DDU/SDC, SCF/LPC, or NDC/RPDC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

3.8.7 Redirection at Mailer's Request

[Revise the text of 3.8.7 to read as follows:]

A mailer may ask to transport destination SCF price mail to a facility other than the designated SCF/LPC (flats)/RPDC (parcels). In very limited circumstances, this exception may be approved only by the manager, Network Integration Support (see 608.8.0 for address). To qualify for the SCF price in this situation, mail deposited at a facility other than the SCF/LPC/RPDC must destinate for processing within that facility and must not require backhauling to the SCF/LPC/RPDC.

* * * * *

4.0 Destination Network Distribution Center (DNDC) Entry

4.1 Eligibility

[Revise the introductory paragraph of 4.1 to read as follows:]

Pieces in a mailing meeting the standards in 3.0 and 4.0 that are deposited at a NDC/ASF/RPDC are eligible for the DNDC price when they meet all of the following conditions:

* * *

[Revise items (b) through (e) to read as follows:]

b. The pieces are addressed for delivery to one of the 3-digit ZIP Codes served by the NDC/ASF/RPDC where deposited that are listed, and according to the terms described, in labeling lists L601 and L602.

c. The pieces are placed in a sack or on a pallet labeled to the NDC/ASF/RPDC where deposited, or labeled to a postal facility within that NDCs/ASFs/RPDCs service area, as described in L601 and L602.

d. Except for machinable parcels addressed to ZIP Codes served by the Buffalo NY ASF, mail addressed to ZIP Codes served by an ASF/RPDC must be entered at the appropriate ASF per L602, and not entered at an NDC/RPDC.

e. Are entered at designated SCFs/RPDCs under 4.3.

* * * * *

[Revise the title of 4.3 to read as follows:]

4.3 Acceptance at Designated SCF—Mailer Benefit

[Revise the introductory paragraph of 4.3 to read as follows:]

Mailers may deposit machinable parcels otherwise eligible for the DNDC prices at an SCF/RPDC designated by the USPS for destination ZIP Codes listed in labeling list L607. The following standards apply: * * *

[Revise item (e) to read as follows:]

e. All DNDC price parcels must be for delivery within the service area of the SCF/RPDC where they are deposited by the mailer.

* * * * *

4.4 Presorted Machinable Parcels

[Revise the introductory paragraph of 4.4 to read as follows:]

Presorted machinable parcels in sacks or on pallets at all sort levels may claim DNDC prices. Machinable parcels sacked under 265.8.0, or palletized under 705.8.0 may be sorted to destination NDCs/RPDCs under L601 or to destination NDCs/ASFs/RPDCs under L601 and L602. Except as provided in L602, sortation of machinable parcels to ASFs/RPDCs is optional but is required for the ASF mail to be eligible for DNDC prices. Mailers may opt to sort some or all machinable parcels for ASF/RPDC service area ZIP Codes to ASFs/RPDCs only when the mail will be deposited at the respective ASFs/RPDCs where the DNDC prices are claimed, under applicable volume standards, using L602. Mailers also may opt to sort machinable parcels only to destination NDCs/RPDCs under L601. When machinable parcels are sorted under L601, mail for 3-digit ZIP Codes served by an ASF/RPDC is not eligible for DNDC prices, nor are 3-digit ZIP Codes that appear in footnote 2 in L601. Machinable parcels prepared in mixed NDC sacks or on mixed NDC pallets that are sorted to the origin NDC/RPDC under 265.8.0 or 705.8.0, are eligible for the DNDC prices if both of the following conditions are met:

[Revise item 4.4 (a) to read as follows:]

a. The mixed NDC sack or pallet is entered at the origin NDC/RPDC facility to which it is labeled.

* * * * *

4.5 Presorted Irregular Parcels

[Revise the second sentence of 4.5 to read as follows:]

* * * All pieces in an ADC/RPDC sack or in a palletized ADC/RPDC bundle are eligible for the DNDC price if the ADC/RPDC facility ZIP Code (as shown in Line 1 of the corresponding sack label or the ADC/RPDC facility that is the destination of the palletized ADC/RPDC bundle as would be shown on an ADC/RPDC sack label for that facility using L004, Column B) is within the service area of the NDC/RPDC at which the sack is deposited. * * *

* * * * *

[Revise the title of 5.0 to read as follows:]

5.0 Destination Sectional Center Facility (DSCF)/Local Processing Center (LPC) Entry

5.1 Eligibility

Bound Printed Matter pieces in a mailing meeting the standards in 3.0 are eligible for the DSCF price when they meet all of the following additional conditions: * * *

[Revise items (b) and (c) to read as follows:]

b. Are deposited at a DSCF/LPC (flats)/RPDC (parcels) listed in L005 or a USPS-designated facility and are addressed for delivery within the DSCF's/LPC's/RPDC's service area.

c. Are placed in a sack or on a pallet that is labeled to the DSCF/LPC/RPDC or labeled to a destination within its service area. This includes sacks labeled to an ADC/RPDC facility with the exact same service area as the DSCF/LPC/RPDC.

* * * * *

[Revise the title of 6.0 to read as follows:]

6.0 Destination Delivery Unit (DDU)/Sorting & Delivery Center (SDC) Entry

6.1 Eligibility

Pieces in a mailing meeting the standards in 3.0, and 6.0 are eligible for the DDU price when they meet all of the following conditions: * * *

c. Are deposited:

[Revise items (c1) and (c2) to read as follows:]

1. For Carrier Route flats, at the DDU/SDC where the carrier cases the mail, as shown in the Drop Shipment Product.

2. For Presorted flats, the Drop Shipment Product must be used to determine the correct destination entry facility for the 5-digit sorted flats entered at Presorted prices. If the Drop Shipment Product lists multiple facilities for a single 5-digit ZIP Code, then the mailer must inquire about the correct drop site when contacting the DDU/SDC to schedule an appointment.

[Revise the sixth sentence of item (d) to read as follows:]

d. * * * If a mailer transports mail to a DDU/SDC facility that cannot handle pallets, the driver must unload the pallets into containers as specified by the delivery unit.

* * * * *

270 Commercial Mail Media Mail and Library Mail

273 Prices and Eligibility

* * * * *

7.0 Price Eligibility for Media Mail and Library Mail

* * * * *

7.3.2 Parcels

The price categories for parcels are as follows: * * *

[Revise the last sentence of item (b) to read as follows:]

b. * * * Nonmachinable parcels may qualify for the basic price if prepared to preserve sortation by NDC/RDPC as prescribed by the postmaster of the mailing office.

* * * * *

275 Mail Preparation

* * * * *

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows: * * *

[Revise items (f) through (h) to read as follows:]

f. ADC: all pieces are addressed for delivery in the service area of the same area distribution center (ADC)/regional processing distribution center (RPDC) (see L004).

g. ASF/NDC for parcels: all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF)/network distribution center (NDC)/regional processing distribution center (RPDC) (see L601, L602, or L605).

h. Mixed [NDC, ADC, etc.]: the pieces are for delivery in the service area of more than one NDC/ADC/RPDC, etc.

* * * * *

6.0 Preparing Media Mail and Library Mail Parcels

* * * * *

6.2 Preparing Machinable Parcels

* * * * *

6.2.2 Sacking and Labeling

Preparation sequence and labeling:
* * *

c. Mixed NDC: required (no minimum).

[Revise item (c1) to read as follows:]

1. Line 1: ''MXD'' followed by the L601, Column B information for the NDC/RPDC serving the 3-digit ZIP Code of entry Post Office. * * *

* * * * *

6.3 Preparing Irregular Parcels

* * * * *

6.3.4 Sacking and Labeling

Preparation sequence and labeling:
* * *

d. Mixed ADC: required (no minimum).

[Revise item (d1) to read as follows:]

1. Line 1: ''MXD'' followed by city, state, and ZIP Code of ADC/RPDC serving 3-digit ZIP Code prefix of entry Post Office, as shown in L004. If placed on an ASF/NDC/RPDC pallet under option in 705.8.10.5, use L010. * * *

* * * * *

505 Return Services

1.0 Business Reply Mail (BRM)

1.1 BRM Postage and Fees

* * * * *

1.1.3 Basic Qualified BRM (QBRM)

[Add a sentence at the end of 1.1.3 to read as follows:]

* * * Basic QBRM permits that meet the requirements under 1.6.3 are eligible for waived account maintenance fees and a reduced per-piece fee.

1.1.4 High-Volume Qualified BRM

[Add a sentence at the end of 1.1.4 to read as follows:]

* * * High-Volume QBRM permits meeting the requirements under 1.6.3 are eligible for waived annual account maintenance and quarterly fees, and a reduced per-piece fee.

* * * * *

1.6 Additional Standards for Qualified Business Reply Mail (QBRM)

* * * * *

[Add new section 1.6.3 to read as follows:]

1.6.3 Intelligent Mail Barcode Accounting (IMbA)

Intelligent Mail Barcode Accounting (IMbA) is an automated solution for the counting, rating, invoicing and billing processes of QBRM mailpieces. Participation in IMbA requires that QBRM permits be linked to an Enterprise Payment Account (EPA) for automated invoicing. QBRM permits that have completed the onboarding process and consistently meet the requirements of IMbA are eligible for subsequent annual account maintenance and quarterly fee waivers, if applicable. Once enrolled in IMbA, QBRM permits receive a reduced QBRM IMbA per-piece fee. For more information, see PostalPro at *https://postalpro.usps.com/*.

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

Overview

[Add a heading titled ''10.0 Catalogs''.]

* * * * *

[Add a section 601.10 to read as follows:]

10.0 Catalogs

A catalog is a bound *(stapled, stitched, glued or fastened together along one edge)* mailpiece with at least 12 pages, providing an organized listing of products or services offered for sale. A catalog mailpiece may be letter-shaped, flat-shaped or parcel-shaped, and is mailed at USPS Marketing Mail or Bound Printed Matter rates.

The product listing must include images, photographs or illustrations of the products or services, descriptive details, fulfillment information and prices or contain an alternate method for the reader to determine prices. Catalogs must contain enough information to allow an order to be placed, *e.g.,* an order form, a phone number, a web address, or the means to access a web address. Catalogs will also enable fulfillment options for the products or services offered for sale.

602 Addressing

* * * * *

3.0 Use of Alternative Addressing

* * * * *

3.2 Simplified Address

3.2.1 Conditions for General Use

The following conditions must be met when using a simplified address on commercial mailpieces: * * *

[Revise the introductory text of item (b) to read as follows:]

b. USPS Marketing Mail, Periodicals, and Bound Printed Matter flat-size mailpieces (including USPS Marketing Mail pieces allowed as flats under 3.2.1c), and Periodicals irregular parcels for distribution to a city route or to Post Office boxes in offices with city carrier service may bear a simplified address, but only when complete distribution is made under the following conditions:

* * *

* * * * *

4.0 Detached Address Labels (DALs) and Detached Marketing Labels (DMLs)

* * * * *

4.2 Eligible Mail

* * * * *

[Delete item 4.2.2 in its' entirety and renumber 4.2.3 as 4.2.2:]

[Newly renumbered 4.2.2]

4.2.2 Bound Printed Matter

Unaddressed pieces of Bound Printed Matter may be mailed with DALs or DMLs when:

[Revise the second sentence of item (a) to read as follows:]

a. * * * The destination delivery unit (DDU)/sorting & delivery center (SDC) is determined using the Drop Shipment Product under the provisions for the DDU price in 266.3.0 through 266.6.0.

* * *

* * * * *

4.4 Mail Preparation

* * * * *

4.4.2 Basic Standards for DALs and DMLs

[Revise the text of 4.4.2 to read as follows:]

The DALs or DMLs must be presorted, counted, and prepared by 5-digit ZIP Code delivery area. Only DALs or DMLs for the same 5-digit area may be placed in the same carton, sack, or tray. DAL or DML mailings claimed at carrier route basic or walk-sequence prices must be further prepared under the corresponding standards. Mailers must prepare DALs or DMLs as bundles in sacks or in cartons, unless prepared in trays under 4.4.6 when mailed with saturation flats. Different size cartons may be used in the same mailing, but each must be filled with dunnage as necessary to ensure that the DALs or DMLs retain their orientation and presort integrity while in transit. Each carton of DALs or DMLs must bear a label showing the information in 4.4.5 unless a mailing identification number is used (see 4.4.1). Multiple containers of DALs or DMLs must be numbered sequentially (''1 of __,'' ''2 of __,'' etc.).

4.4.3 Basic Standards for Items Distributed With DALs and DMLs

[Revise the text of 4.4.3 to read as follows:]

Except for bundles of saturation flats placed directly on pallets under 4.4.7, the items to be distributed with DALs or DMLs must be placed in cartons or prepared in bundles placed in flat trays/sacks, subject to the standards for the price claimed. A label bearing the content description information in 4.4.5 must be affixed to each carton, trayed/sacked bundle, or pallet unless a mailing identification number is used (see 4.4.1). Cartons of items (including those on pallets) may be of different sizes but must be filled with dunnage as necessary to ensure the integrity of the items while in transit. The gross weight of each carton or flat tray/sack must not be more than 40 pounds.

* * * * *

4.4.6 Optional Tray and Bundle Preparation

[Revise the text of 4.4.6 to read as follows:]

Mailers may prepare DALs or DMLs in letter trays according to 245.9.0 when DALs or DMLs are used in mailings of saturation flats. Bundles of saturation flats to be distributed with DALs or DMLs may be prepared on 5-digit pallets under 4.4.7. Do not use pallets when the Drop Shipment Product indicates the delivery unit that serves the 5-digit pallet destination cannot handle pallets. For such delivery units, mail with DALs or DMLs must be prepared in cartons, flat trays, or sacks. The tray(s) of corresponding DALs or DMLs must be placed on top of the accompanying pallet of flats, and the pallet contents must be secured with stretchwrap to avoid separation in transportation and processing. All containers must be labeled according to 4.4.5.

4.4.7 Optional Container Preparation

[Revise the text of 4.4.7 to read as follows:]

Bundles of flats and cartons, flat trays, or sacks of items may be placed on pallets meeting the standards in 705.8.0. Cartons or trays of DALs or DMLs must be placed on pallets with the corresponding items under 4.4 and 705.8.0. The USPS plant manager at whose facility a DAL or DMLS mailing is deposited may authorize other containers for the portion of the mailing to be delivered in that plant's service area.

* * * * *

4.6 Postage

* * * * *

4.6.2 Postage Computation and Payment

Postage is computed based on the combined weight of the item and the accompanying DAL or DML. If the number of DALs/DMLs and items mailed is not identical, the number of pieces used to determine postage is the greater of the two. No postage refund is allowed in these situations. In addition, these methods of postage payment apply: * * *

[Revise the text of item (c) to read as follows:]

c. A surcharge applies to each DAL or DML used in a USPS Marketing Mail flats mailing.

* * * * *

7.0 Carrier Route Accuracy Standard

7.1 Basic Standards

[Revise the introductory text of 7.1 to read as follows:]

The carrier route accuracy standard is a means of ensuring that the carrier route code correctly matches the delivery address information. For the purposes of this standard, address means a specific address associated with a specific carrier route code. Addresses used on pieces claiming any Periodicals carrier route prices, any USPS Marketing Mail Enhanced Carrier Route prices, or any Bound Printed Matter carrier route prices are subject to the carrier route accuracy standard and must meet the following requirements:

* * *

* * * * *

700 Special Standards

703 Nonprofit USPS Marketing Mail and Other Unique Eligibility

* * * * *

9.0 Mixed Classes

* * * * *

9.9 Postage Payment for Enclosure in Periodicals Publication

* * * * *

9.9.8 Computing Permit Imprint Postage

[Revise the third sentence of 9.9.8 to read as follows:]

* * * For example, a USPS Marketing Mail enclosure is eligible for the SCF entry discount if the publication is deposited at the destinating SCF/LPC.

* * *

* * * * *

11.0 Commercial Plus One Mailpieces

11.1 Definition

The commercial mail Plus One product is a bundled offering, including a host mailpiece and a Plus One card. Both the host mailpiece and the Plus One card must meet the applicable basic standards of a USPS Marketing Mail saturation letter as specified in 245.6.0, be entered at a destination sectional center facility, and meet automation standards with a correct mailing address and Intelligent Mail barcode. The Plus One mailpiece (card) must meet the following additional standards: * * *

[Revise item 11.1(d) to read as follows:]

d. Must not exceed 6 inches long by 11 inches high.

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

5.0 First-Class Mail or USPS Marketing Mail Mailings With Different Payment Methods

* * * * *

5.2 Postage

* * * * *

5.2.6 Single-Piece Price Mail

[Revise the text of 5.2.6 to read as follows:]

With USPS approval, trays of single-piece price mail may be placed on the origin SCF/LPC pallet (First-Class Mail), or the mixed NDC pallet (USPS Marketing Mail), after USPS verification is completed.

* * * * *

8.0 Preparing Pallets

* * * * *

8.10.3 USPS Marketing Mail or Parcel Select Lightweight—Bundles, Sacks, or Trays * * *

* * * * *

Mailers must prepare pallets under 8.0 in the sequence listed below and complete each required level before preparing the next optional or required level. For USPS Marketing Mail High Density and High Density Plus flats price eligibility, only 5-digit pallets under 8.10.3a through 8.10.3c are allowed, and the pallets must be entered under None, DNDC, DSCF, or DDU standards. (Use ''HD/HD+ DIRECT'' for one route and ''HD/HD+ CR–RTS'' for multiple routes on the line 2 contents description.) Unless indicated as optional, all sort levels are required. For parcels, use this preparation only for irregular parcels in sacks. Palletize unbundled or unsacked irregular parcels under 8.10.8. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Mailers also may palletize bundles of

USPS Marketing Mail flats under 10.0, 12.0, or 13.0. Preparation sequence and labeling: * * *

[Revise item c(2) to read as follows:]

2. Line 2: For flats only, ''STD FLTS'' or ''STD MKTG,'' as applicable; followed by ''HD/HD+'' for High Density and High Density Plus flats pricing eligibility; followed by ''CARRIER ROUTES'' (or ''CR–RTS''). For letters, ''STD LTRS''; followed by ''CARRIER ROUTES'' (or ''CR–RTS''); followed by ''BC'' if the pallet contains barcoded letters; followed by ''MACH'' if the pallet contains machinable letters; followed by ''MAN'' if the pallet contains nonmachinable letters. * * *

[Revise introductory text of item (d) to read as follows:]

d. *3-digit, optional,* option not available for parcels or for bundles for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet may contain mail for the same 3-digit ZIP Code or the same 3-digit scheme under L008 (for automation-compatible flats only under 201.3.0. Three-digit scheme bundles are assigned to pallets according to the ''label to'' 3-digit ZIP Code in L008. Labeling: * * *

[Delete the last sentence of item e(2) beginning with ''For Marketing . . .'':]

* * * * *

9.0 Combining Bundles of Automation and Nonautomation Flats in Flat Trays and Sacks

9.1 First-Class Mail

* * * * *

9.1.4 Tray Preparation and Labeling

Presorted price and automation price bundles prepared under 9.1.2 or 9.1.3 must be presorted together into trays (cotrayed) in the sequence listed below. Trays must be labeled using the following information for Lines 1 and 2 and 235.4.0 for other sack label criteria. * * *

[Revise the introductory text of item (c) to read as follows:]

c. *Origin/entry 3-digit,* required for each 3-digit ZIP Code served by the SCF/LPC of the origin (verification) office, optional for each 3-digit ZIP Code served by the SCF/LPC of an entry office other than the origin office, no minimum; labeling: * * *

[Revise the introductory text of item (d) to read as follows:]

d. ADC, required, full trays only (no overflow trays); use L004 to determine ZIP Codes served by each ADC/RPDC; labeling: * * *

9.2 Periodicals

* * * * *

9.2. Bundles With Fewer Than Six Pieces

[Revise the text of 9.2.3 to read as follows:]

5-digit and 3-digit bundles prepared under 207.22.0 and 207.25.0 may contain fewer than six pieces when the publisher determines that such preparation improves service. These low-volume bundles may be placed in 5-digit, 3-digit, and SCF flat trays that contain at least 24 pieces, or on 5-digit, 3-digit, or SCF/LPC pallets. Mailers of pieces in low-volume bundles must claim the applicable mixed ADC price (Outside-County) or basic price (In-County). 207.22.0 and 207.25.0 may contain fewer than six pieces when the publisher determines that such preparation improves service. These low-volume bundles may be placed in 5-digit, 3-digit, and SCF sacks/flat trays that contain at least 24 pieces or on 5-digit, 3-digit, or SCF/LPC pallets. Pieces in low-volume bundles must claim the applicable mixed ADC price (Outside-County) or basic price (In-County).

9.2.4 Optional Sack Preparation and Labeling

[Revise the introductory paragraph of 9.2.4 to read as follows:]

Optional sack preparation and labeling are allowed for nonpalletized residual 5-digit flats entered at the DDU/SDC along with carrier route flats, nonpalletized 5-digit flats entered at the DSCF/LPC (origin) and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. Machinable barcoded price and machinable nonbarcoded price bundles must be presorted together into sacks (cosacked) in the sequence listed below. Sacks must be labeled using the following information for Lines 1 and 2 and 207.21.0 for other sack-label criteria. If, due to the physical size of the mailpieces, the machinable barcoded price pieces are considered flat-size under 201.6.0 and the machinable nonbarcoded price pieces are considered irregular parcels under 201.7.6, the processing category shown on the sack label must show ''FLTS.'' Preparation sequence and labeling: * * *

9.2.5 Flay Tray Preparation—Flat-Size Machinable Pieces

[Revise the introductory paragraph of 9.2.5 to read as follows:]

See 207.20.0 for use of flat trays. For machinable pieces meeting the criteria in 201.6.0, mailers must bundle or group all pieces as specified in 207.25.0 and 207.22.0 for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, SCF/LPC, and ADC destination. Bundling in flat trays is optional, and any bundles must be trayed and labeled separately from loose flats prepared in flat trays. The trays are subject to a container charge, and any bundles are subject to a bundle charge. Tray preparation, sequence, and labeling: * * *

* * * * *

9.3 USPS Marketing Mail

* * * * *

9.3.5 Flat Tray/Sack Preparation and Labeling

[Revise the introductory paragraph of 9.3.5 to read as follows:]

Presorted price and automation price bundles prepared under 9.3.2 and 9.3.3 must be presorted together into flat trays (cotrayed) or sacks (when applicable) in the sequence listed below. Flat trays/sacks must be labeled using the following information for Lines 1 and 2, and 245.4.0 for other flat-tray label criteria. Sacks are only allowed for nonpalletized residual 5-digit flats entered at the DDU/SDC along with carrier route flats, nonpalletized 5-digit flats entered at the DSCF/LPC (origin), and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. * * *

[Revise the introductory text of item (c) to read as follows:]

c. *Origin/entry 3-digit,* required for each 3-digit ZIP Code served by the SCF/LPC of the origin (verification) office, optional for each 3-digit ZIP Code served by the SCF/LPC of an entry office other than the origin office, no minimum; labeling: * * *

[Revise the introductory text of item (d) to read as follows:]

d. ADC, required, full tray/125-piece/15-pound minimum; use L004 to determine ZIP Codes served by each ADC/RPDC; labeling: * * *

* * * * *

10.0 Merging Bundles of Flats Using the City State Product

10.1 Periodicals

* * * * *

10.1.3 Bundles With Fewer Than Six Pieces

Carrier route, 5-digit scheme, 5-digit, 3-digit scheme, and 3-digit bundles may contain fewer than six pieces when the publisher determines that such preparation improves service. Pieces in these low-volume bundles must be

claimed at the applicable mixed ADC price (Outside-County) or basic price (In-County). Low-volume bundles are permitted only when they are sacked (as applicable), trayed, or prepared on pallets as follows:

a. Place low-volume carrier route, 5-digit, 3-digit scheme, and 3-digit bundles in only the following containers: * * *

[Revise items (a3) and (a4) to read as follows:]

3. Origin/entry SCF/LPC flat trays.

4. On merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, merged 5-digit, 5-digit carrier routes, 5-digit, 3-digit, or SCF/LPC pallets, as appropriate.

[Revise item (b) to read as follows:]

b. Place low-volume 5-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF flat trays that contain at least 24 pieces, or in origin/entry SCF/LPC flat trays, or on 3-digit or SCF/LPC pallets, as appropriate.

* * * * *

10.1.5 Pallet Preparation and Labeling

* * * Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.

* * * * *

[Revise item (g) to read as follows:]

g. *SCF/LPC through mixed ADC,* use 8.10.2h through 8.10.2k, as applicable, to prepare and label SCF/LPC, ADC/RPDC, Origin Mixed ADC (OMX) and mixed ADC pallet levels.

* * * * *

10.2 USPS Marketing Mail

* * * * *

10.2.5 Pallet Preparation and Labeling

* * * Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.

* * * * *

[Revise the introductory text of item (g) to read as follows:]

g. *SCF/LPC,* required, may contain carrier route price, automation price, and Presorted price bundles. Labeling: * * *

[Revise the introductory text of item (h) to read as follows:]

h. ASF, required, except that an ASF sort may not be required if using bundle reallocation under 8.13.3. May contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L010. All optional mixed ADC bundles on ASF/RPDC pallets must contain only pieces destinating within the ASF/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling: * * *

[Revise the introductory text of item (i) to read as follows:]

i. *NDC/RPDC,* required, may contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L010. All optional mixed ADC bundles on NDC/RPDC pallets must contain only pieces destinating within the NDC/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling: * * *

11.0 Combining Automation Price and Nonautomation Price Flats in Bundles

* * * * *

11.2 Periodicals

* * * * *

11.2.3 Bundles With Fewer Than Six Pieces

* * * Low-volume bundles are permitted only when they are trayed or prepared on pallets as follows:

a. Place low-volume 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF flat trays that contain at least 24 pieces; or in origin/entry SCF/LPC flat trays; or on the following pallets, as appropriate:

* * * * *

[Revise item (a6) to read as follows:]

6. SCF/LPC

[Revise item (b) to read as follows:]

b. Place low-volume 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF flat trays that contain at least 24 pieces, or in origin/entry SCF/LPC flat trays, or on 3-digit or SCF/LPC pallets, as appropriate.

* * * * *

12.0 Merging Bundles of Flats on Pallets Using a 5 Percent Threshold

12.1 Periodicals

* * * * *

12.1.5 Pallet Preparation and Labeling

* * * Prepare and label pallets as follows:

* * * * *

[Revise the text of item 12.1.5(h) to read as follows:]

h. *SCF/LPC through mixed ADC,* use 8.10.2h through 8.10.2k, as applicable, to prepare and label SCF/LPC, ADC/RPDC, Origin Mixed ADC (OMX) and mixed ADC pallet levels.

12.2 USPS Marketing Mail

* * * * *

12.2.3 Pallet Preparation and Labeling

* * * Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.

* * * * *

[Revise the introductory text of item (g) to read as follows:]

g. *SCF/LPC,* required, may contain carrier route price, automation price, and Presorted price bundles. Labeling: * * *

[Revise the introductory text of item (h) to read as follows:]

h. ASF, required, except that an ASF sort may not be required if using bundle reallocation under 8.13.3. May contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L010. All optional mixed ADC bundles on ASF/RPDC pallets must contain only pieces destinating within the ASF/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling: * * *

[Revise the introductory text of item (i) to read as follows:]

i. *NDC/RPDC,* required, may contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L010. All optional mixed ADC bundles on NDC/RPDC pallets must contain only pieces destinating within the NDC/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling: * * *

* * * * *

13.0 Merging Bundles of Flats on Pallets Using the City State Product and a 5 Percent Threshold

13.1 Periodicals

* * * * *

13.1.5 Pallet Preparation and Labeling

* * * Prepare and label pallets as follows:

* * * * *

[Revise item (h) to read as follows:]

h. *SCF/LPC through mixed ADC,* use 8.10.2h through 8.10.2k, as applicable, to prepare and label SCF/LPC, ADC/RPDC, Origin Mixed ADC (OMX) and mixed ADC pallet levels.

13.2 USPS Marketing Mail

* * * * *

13.2.4 Pallet Preparation and Labeling

* * * Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.

* * * * *

[Revise the introductory text of item (g) to read as follows:]

g. *SCF/LPC,* required, may contain carrier route price, automation price, and Presorted price bundles. Labeling: * * *

[Revise the introductory text of item (h) to read as follows:]

h. ASF, required, except that an ASF sort may not be required if using bundle reallocation under 8.13.3. May contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L010. All optional mixed ADC bundles on ASF/RPDC pallets must contain only pieces destinating within the ASF/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling: * * *

[Revise the introductory text of item (i) to read as follows:]

i. *NDC/RPDC,* required, may contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L010. All optional mixed ADC bundles on NDC/RPDC pallets must contain only pieces destinating within the NDC/RPDC as shown in 6.3. See 263.2.0 for additional requirements for DNDC price eligibility. Labeling: * * *

* * * * *

15.0 Combining USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats

15.1 Basic Standards

15.1.1 General

Authorized mailers may combine USPS Marketing Mail flats, Bound Printed Matter flats, and Periodicals flats in a single mailing as follows: * * *

h. Each comailing containing Bound Printed Matter flats must meet the following requirements:

[Revise items (h1) and (h2) to read as follows:]

1. Except under 15.1.1h2, BPM flat-sized pieces must not weigh more than 20 ounces when combined in applicable bundles, and must be entered at a destination sectional center facility (DSCF)/local processing center (LPC) on 5-digit or 3-digit/sectional center facility (SCF) level pallets, or at a destination delivery unit (DDU)/sorting & delivery center (SDC).

2. BPM flat-sized pieces may weigh up to 24 ounces when combined in carrier-route (CR) level bundles on a pallet included in no less than SCF/3D sortation entered at an SCF/LPC. BPM flat-sized pieces must not exceed 20 ounces if prepared in the CR level bundle with certain Periodicals pieces that may weigh more than 20 ounces. The maximum number of BPM pieces weighing more than 20 ounces up to the maximum of 24 ounces must not exceed 50 percent of each mailing.

* * * * *

15.1.10 Other Periodicals Pricing

Other prices for Periodicals flats in a combined mailing of USPS Marketing Mail and Periodicals flats on pallets will be assessed as follows: * * *

[Revise items (a) and (b) to read as follows:]

a. The bundle prices applicable to the ADC/RPDC container level will be applied to the ASF/NDC/RPDC container levels.

b. The container prices applicable to the ADC/RPDC pallet level will apply to the ASF/NDC/RPDC pallet levels. * * *

c. The bundle price applicable to the ADC bundle placed on the ADC/RPDC container level will apply to mixed ADC bundles placed on mixed NDC pallets. * * *

[Revise the title of 15.1.11 to read as follows:]

15.1.11 Bundle Reallocation To Protect the SCF/LPC or NDC/RPDC Pallet

[Revise 15.1.11 to read as follows:]

Mailers may reallocate bundles under 8.11 or 8.13 to protect the SCF/LPC or NDC/RPDC pallet.

* * * * *

15.2 Combining USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats in the Same Bundle

* * * * *

15.2.3 Pallet Presort and Labeling

[Revise the first sentence of 15.2.3 to read as follows:]

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC/RPDC pallets must contain at least 250 pounds of combined USPS Marketing Mail and Periodicals mailpieces, except as allowed under 8.5.3. * * *

* * * * *

15.3 Combining Bundles of USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats on the Same Pallet

* * * * *

15.3.3 Pallet Presort and Labeling

[Revise the first sentence of 15.3.3 to read as follows:]

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC/RPDC pallets must contain at least 250 pounds of combined USPS Marketing Mail and Periodicals, except as allowed under 8.5.3. * * *

* * * * *

15.4 Pallet Preparation

15.4.1 Pallet Preparation, Sequence and Labeling

When combining USPS Marketing Mail, Bound Printed Matter, and Periodicals flats within the same bundle or combining bundles of USPS Marketing Mail flats, Bound Printed Matter flats and bundles of Periodicals flats on pallets, bundles must be placed on pallets. For labeling, ''STD/BPM/PER FLTS'', as applicable' means to label each individual pallet based on the classes of mailpieces on that individual pallet. As an example, in a combined mailing of USPS Marketing Mail, Bound Printed Matter, and Periodicals flats, some pallets may be labeled ''STD/BPM/PER'' while others might properly be labeled ''STD/BPM,'' ''STD/PER,'' ''BPM/PER,'' or even ''STD,'' ''BPM,'' or ''PER.'' Preparation, sequence and labeling: * * *

[Revise the introductory text of item (g) to read as follows:]

g. *SCF/LPC, required.* Pallet may contain carrier route, automation or Presorted mail for the 3-digit ZIP Code groups in L005. Labeling: * * *

[Revise the introductory text of item (i) to read as follows:]

i. *NDC/RPDC, required.* Pallet may contain carrier route, automation or presorted mail for the 3-digit ZIP Code groups in L601. ADC bundles are assigned to pallets according to the ''label to'' ZIP Code in L004 as appropriate. Labeling: * * *

[Revise the introductory text of item (j) to read as follows:]

j. *Mixed NDC, required, 100 pound minimum.* Pallet may contain carrier route, automation or presorted mail. Pallet includes MXD ADC bundles, prepared according to the ''label to'' ZIP in L009, as appropriate. Unless authorized by the processing and distribution manager, pallet must be entered at the NDC/RPDC serving the 3-digit ZIP Code of the entry Post Office. Labeling:

[Revise item (j1) to read as follows:]

1. Line 1: ''MXD'' followed by the information in L601, for the NDC/RPDC serving the 3-digit ZIP Code prefix of the entry Post Office. * * *

* * * * *

23.0 Full-Service Automation Option

* * * * *

23.2 General Eligibility Standards

First-Class Mail (FCM), Periodicals, and USPS Marketing Mail, cards (FCM only), letters (except letters using simplified address format) and flats meeting eligibility requirements for automation or carrier route prices (except for USPS Marketing Mail ECR saturation flats), and Bound Printed Matter presorted or carrier route barcoded flats, are potentially eligible for full-service incentives. Additionally, all pieces entered under full-service pricing must: * * *

[Revise the first sentence of item 23.2 (e) to read as follows:]

a. Be scheduled for an appointment using the Facility Access and Shipment Tracking (FAST) system for dropship mailings (except for mailings entered at a DDU/SDC) or as required in a customer/supplier agreement. * * *

* * * * *

Notice 123 (Price List)

[Revise prices as applicable.]

* * * * *

Sarah Sullivan,

Attorney, Ethics and Legal Compliance.

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