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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM19–17–001; Order No. 902]

Electric Reliability Organization Proposal To Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Review

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final action.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves the retirement of six Reliability Standards and their requirements proposed by the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization.

DATES: This action is effective February 1, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: 1.

Pursuant to section 215(d)(2) of the Federal Power Act (FPA),¹ the Commission approves the North American Electric Reliability Corporation's (NERC) request to retire six Reliability Standards with a combined total of 56 requirements. For the reasons discussed below, we determine that the retirement of six Reliability Standards (the MOD A

Reliability Standards)² in their entirety is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

I. Background

A. Section 215 of the FPA and the Mandatory Reliability Standards

2. Section 215 of the FPA provides that the Commission may certify an ERO, the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.³ Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.⁴ Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,⁵ and subsequently certified NERC.⁶

B. NERC Petition

3. On June 7, 2019, NERC submitted a petition proposing, among other things, the retirement of the MOD A Reliability Standards, in their entirety without replacement (NERC Petition). NERC explained that these requirements are administrative in nature or relate expressly to commercial or business practices and provide little or no reliability benefit.⁷ NERC explained that the MOD A Reliability Standards were submitted in response to Commission's directives in Order No. 890 and Order No. 693 to develop Reliability Standards "to provide for consistency and transparency in the methodologies used by transmission providers to calculate [Available Transfer Capability]." ⁸ NERC

² Reliability Standards MOD–001–1a (Available Transmission System Capability), MOD–004–1 (Capacity Benefit Margin), MOD–008–1 (Transmission Reliability Margin Calculation Methodology), MOD–028–2 (Area Interchange Methodology), MOD–029–2a (Rated System Path Methodology), and MOD–030–3 (Flowgate Methodology).

³ 16 U.S.C. 824o(c).

⁴ *Id.* 824o(e).

⁵ *Rules Concerning Certification of the Elec. Reliability Org. & Procedures for the Establishment, Approval, & Enft. of Elec. Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, *order on reh'g*, Order No. 672–A, 114 FERC ¶ 61,328 (2006).

⁶ *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁷ *Id.* at 21–22.

⁸ NERC Petition at 18 (*citing Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 72 FR 12266 (Mar. 15, 2007)), 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890–A, 73

clarified that "[Available Transfer Capability] and [Available Flowgate Methodology], as well as e-Tags, are commercially-focused elements facilitating interchange and balancing of interchange," and that system operators maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits.⁹

C. Notice of Proposed Rulemaking

4. On January 23, 2020, the Commission issued a NOPR proposing to approve the retirement of 74 of the 77 Reliability Standard requirements requested by NERC.¹⁰ In the NOPR, the Commission proposed, *inter alia*, to approve the retirement of the MOD A Reliability Standards, but noted that, if approved, the Commission intended to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor North American Energy Standards Board (NAESB) business practice standards.¹¹ The Commission explained that equivalent NAESB business practice standards are expected to replace the MOD A Reliability Standards proposed for retirement.¹²

5. The Commission noted that NERC's proposed retirements "are largely consistent with the Commission-approved bases for retiring Reliability Standard requirements articulated in

FR 2984 (Jan. 16, 2008) 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890–C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009); *Mandatory Reliability Standards for the Bulk-Power Sys.*, Order No. 693, 72 FR 16416 (Apr. 4, 2007), 118 FERC ¶ 61,218, at PP 1020–1126 *order on reh'g*, Order No. 693–A, 120 FERC ¶ 61,053 (2007). In 2009, the Commission approved the six MOD Reliability Standards containing methodologies for calculating Available Transfer Capability (ATC) or Available Flowgate Capacity (AFC). *See, Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, & Existing Transmission Commitments & Mandatory Reliability Standards for the Bulk-Power Sys.*, Order No. 729, 74 FR 64884 (Dec 8, 2009), 129 FERC ¶ 61,155 (2009), *order on reh'g*, Order No. 729–A, 75 FR 26057 (May 11, 131 FERC ¶ 61,109 (2010).

⁹ NERC Petition at 21.

¹⁰ *Elec. Reliability Org. Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Rev.*, Notice of Proposed Rulemaking, 170 FERC ¶ 61,032 (Jan. 23, 2020) (NOPR).

¹¹ *Id.* P 21 n.35.

¹² *Id.*

¹ 16 U.S.C. 824o(d)(2).

prior proceedings.”¹³ In proposing to approve NERC’s request, the Commission stated that NERC “provided an adequate basis to conclude that the requirements proposed for retirement: (1) provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.”¹⁴ Further, the Commission acknowledged NERC’s assertion that retiring the MOD A Reliability Standards is justified because, being primarily administrative or related to commercial or business practices, they “no longer serve a reliability purpose.”¹⁵ Specifically, the Commission noted NERC’s assertion that the MOD A Reliability Standards contain “commercially-focused elements facilitating interchange and balancing of interchange,” and system operators maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits.¹⁶

D. NOPR Comments

6. The Commission received five sets of comments—two of which were specific to the proposed retirement of the MOD A Reliability Standards.¹⁷ Neither of the two comments the Commission received in response to NERC’s proposed retirement of the MOD A Reliability Standards opposed NERC’s proposal. In its comments, Bonneville states that it appreciates the Commission’s recognition of the relationship between the MOD A retirements and the publication of Business Practice Standards by NAESB to replace the commercial aspects of the MOD requirements.¹⁸ Further, Bonneville believes “it will be important to continue the efforts to avoid commercial requirements in the NERC Reliability Standards and, likewise, avoid reliability requirements in NAESB Business Practice Standards.”¹⁹ Similarly, WAPA expressed its support for the direction of the industry and the work performed by

the Standards Efficiency Review project. More specifically, WAPA agreed with NERC’s assertion that Available Transfer Capability/Available Flowgate Capability, along with e-Tags, “are commercially-focused elements facilitating interchange and balancing of interchange.”²⁰ WAPA also asked the Commission to ensure that “appropriate measures are in place to ensure stakeholder[s] can provide input into the development of the new business practices.”²¹

E. Order No. 873 and the Prior Retirements of Other Reliability Standard Requirements

7. On September 17, 2020, the Commission issued Order No. 873,²² approving the retirement of 18 Reliability Standard requirements,²³ remanding two requirements for further consideration by NERC, and taking no action on the proposed retirement of the MOD A Reliability Standards.²⁴ In Order No. 873, the Commission confirmed the approach proposed in the NOPR and provided developments since then, noting that on March 30, 2020, NAESB submitted Version 003.3 of the Standards for Business Practices and Communication Protocols for Public Utilities, including the Modeling business practices intended to replace the MOD A Reliability Standards upon their retirement, for which the Commission had issued a NOPR.²⁵ The Commission concluded that “[i]n light of these developments, this final action does not address the retirement of MOD A Reliability Standards. The Commission will determine the appropriate action regarding the proposed retirement of the MOD A Reliability Standards at a later time.”²⁶

F. NAESB Standards for Business Practices and Communications Protocols for Public Utilities

8. In Order No. 676–J, the Commission revised its regulations to incorporate by reference, as mandatory enforceable requirements, the current version of NAESB’s Standards for Business Practices and Communication Protocols for Public Utilities adopted by

the Wholesale Electric Quadrant (WEQ) of NAESB, Version 003.3 of the NAESB WEQ Business Practice Standards (WEQ Version 003.3 Standards).²⁷ Among other things, the WEQ Version 003.3 Standards address the technical issues affecting Available Transfer Capability and Available Flowgate Capability calculation for wholesale transmission services, with the addition of certain revisions and corrections. The Commission also revised its regulations to provide that transmission providers must avoid unduly discriminatory and preferential treatment in the calculation of Available Transfer Capability.²⁸

9. The first compliance filing concerned the cybersecurity and Parallel Flow Visualization standards included in Version 003.3. The Commission directed utilities to make the second compliance filing reflecting the remainder of the revisions in Version 003.3 12 months after implementation of the WEQ Version 003.2 Standards, or no earlier than October 27, 2022, with an implementation date no earlier than three months following compliance filings submission (no earlier than January 27, 2023), resulting in a 15-month implementation period.²⁹

II. Commission Determination

10. Pursuant to section 215(d)(2) of the FPA,³⁰ the Commission approves the proposed retirement of the MOD A Reliability Standards, to be coordinated with the effective date of the tariff records accepted in the orders on the second set of Order No. 676–J compliance filings, February 1, 2024.³¹ As explained herein, we are satisfied with NERC’s justification for these retirements. In particular, we note NERC’s explanation that the MOD A Reliability Standards are no longer necessary because Available Transfer Capability, Available Flowgate Capability, and e-Tags fundamentally pertain to commercial and business operations, and that system operators

²⁷ *Standards for Bus. Pracs. & Comm’n Protocols for Pub. Utils.*, Order No. 676–J, 86 FR 29491 (June 2, 2021), 175 FERC ¶ 61,139 (2021).

²⁸ *Id.* P 33.

²⁹ *Id.* PP 48, 50. The Commission noted that the implementation of the NAESB Available Transfer Capability-related standards contained in WEQ–023 will be coordinated with the retirement of the NERC MOD A Reliability Standards. *Id.* P 43 n.53.

³⁰ 16 U.S.C. 824(o)(2).

³¹ See *ISO-New England*, 185 FERC ¶ 61,070 (2023); *N.Y. Indep. Sys. Operator, Inc.*, 185 FERC ¶ 61,067 (2023); *PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,068 (2023); *Ala. Power Co.*, 185 FERC ¶ 61,073; *Versant Power*, 185 FERC ¶ 61,065 (2023); *Cal. Indep. Sys. Operator Corp.*, 185 FERC ¶ 61,072 (2023); *MATL LLP*, 185 FERC ¶ 61,074 (2023); *Golden Spread Elec. Coop., Inc.*, 185 FERC ¶ 61,071 (2023).

¹³ *Id.* P 1 (citing *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193, at P 81 (March 2012 Order), *order on reh’g and clarification*, 139 FERC ¶ 61,168 (2012); *Elec. Reliability Org. Proposal to Retire Requirements in Reliability Standards*, Order No. 788, 78 FR 73424 (Dec. 6, 2013), 145 FERC ¶ 61,147, at P 1 (2013)).

¹⁴ *Id.* P 25.

¹⁵ *Id.* P 21.

¹⁶ See *id.* P 22 (citing NERC Petition at 21).

¹⁷ These two comments were received from the Bonneville Power Administration (Bonneville) and the Western Area Power Administration (WAPA).

¹⁸ Bonneville Comments at 3.

¹⁹ *Id.*

²⁰ WAPA Comments at 3.

²¹ *Id.* at 5.

²² *Elec. Reliability Org. Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Rev.*, Order No. 873, 172 FERC ¶ 61,225 (2020).

²³ NERC withdrew the originally requested retirement of Reliability Standard VAR–001–6, Requirement R2 on May 14, 2020.

²⁴ *Id.* P 4.

²⁵ *Id.* (citing *Standards for Bus. Pracs. & Comm’n Protocols for Pub. Utils.*, Notice of Proposed Rulemaking, 172 FERC ¶ 61,047 (2020)).

²⁶ *Id.*

maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits. We are further persuaded that retiring the MOD A Reliability Standards will not result in a reliability gap.

11. Regarding WAPA’s comments focused on the importance of ensuring stakeholders’ ability to provide input.³² Order No. 676–J explained that NAESB has procedures to ensure that interested persons have input into NAESB’s standard development regardless of the interested persons’ NAESB membership and that “each standard NAESB adopts must be supported by a consensus of the relevant industry segments. Standards that fail to gain consensus support are not adopted.”³³ Therefore, we believe WAPA’s concerns were fully addressed.

III. Information Collection Statement

12. The information collection requirements contained in this final action are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.³⁴ OMB’s regulations require approval of certain information collection

requirements imposed by agency rules.³⁵ Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Comments on the collection of information are due within 60 days of the date this order is published in the **Federal Register**. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission’s need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents’ burden, including the use of automated information techniques.

13. These MOD Standards are currently located in the FERC–725A (OMB Control No. 1902–0244) collection. The collection is currently approved by OMB and contains Reliability Standards MOD–0001–1a, MOD–004–1, MOD–008–1, MOD–028–

2, MOD–029–2a and MOD–030–3 (the MOD A Reliability Standards), along with other Reliability Standards. In Docket No. RM19–17–001, the Commission approves the retirement of these six current OMB-approved MOD Reliability Standards and their associated requirements. The retirements will be coordinated with the effective dates for the successor NAESB business practice standards, which mirror the retired responsibilities from the MOD–A Reliability Standards.

14. Reliability Standards MOD–001–1a, MOD–004–1, MOD–008–1, MOD–028–2, MOD–029–2a, and MOD–030–3 are all currently approved within the FERC–725A information collection. The number of respondents below is based on an estimate of the NERC compliance registry for transmission service providers (TSP), transmission operators (TOP), transmission planners (TP), resource planners (RP), and balancing authorities (BA).³⁶ As these entities still have obligation to other NERC Reliability Standards when updating the FERC–725A for this collection the number respondents shall remain the same and only the man-hours will be reduced.

MOD–001–1a—AVAILABLE TRANSMISSION SYSTEM CAPABILITY—RETIREMENT

[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4) ³⁷	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC–725A, OMB Control No. 1902–0244					
TSP—Retired	71	1	71	120 hrs.; \$8,144.40	8,520 hrs.; \$578,252.4.
TOP—Retired	165	1	165	120 hrs.; \$8,144.40	19,800 hrs.; \$1,343,826.
FERC–725A for MOD–001–1a Total Retired ..					28,320 hrs.; \$1,922,078.40.

MOD–004–1—CAPACITY BENEFIT MARGIN—RETIREMENT

[Burden reduction]³⁸

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4) ³⁹	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
RP—Retired	159	1	159	60 hrs.; \$4,072.20	9,540 hrs.; \$647,479.80.
TSP—Retired	71	1	71	60 hrs.; \$4,072.20	4,260 hrs.; \$289,126.20.
BA—Retired	98	1	98	60 hrs.; \$4,072.20	5,880 hrs.; \$399,075.60.

³² WAPA Comments at 5.

³³ See Order No. 676–J, 175 FERC ¶ 61,139 at P 5.

³⁴ 44 U.S.C. 3507(d).

³⁵ 5 CFR 1320.

³⁶ The number of TSP (71), TOP (165), TP (98), RP (159), and BA (98) are taken based on the NERC Compliance Registry information as of August 17, 2023, and represent U.S. registered entities.

³⁷ The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor

Statistics (BLS), as of 2022, for 75% of the average of an Electrical Engineer (17–2071) \$77.29/hr, 77.29 × .75 = 57.9675 (\$57.97-rounded) (\$57.97/hour) and 25% of an Information and Record Clerk (43–4199) \$39.58/hr × .25% = 9.895 (\$9.90 rounded) (\$9.90/hour), for a total (\$57.97 + \$9.90 = \$67.87/hour).

³⁸ In 2015 the Commission approved the retirement of the load-serving entity function. See *N. Am. Elec. Reliability Corp.*, 150 FERC ¶ 61,213 (2015); *N. Am. Elec. Reliability Corp.*, 153 FERC ¶ 61,024 (2015). NERC has an ongoing standard drafting team project to replace this function as an

applicable entity in the Reliability Standards with the distribution provider function. See Project-2022–02 Modifications to TPL–001 and MOD–032.

³⁹ The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2022, for 75% of the average of an Electrical Engineer (17–2071) \$77.29/hr, 72.29 × .75 = 57.9576 (\$57.96-rounded) (\$57.96/hour) and 25% of an Information and Record Clerk (43–4199) \$39.58/hr, 39.58 × .25% = 9.895 (\$9.90 rounded) (\$9.90/hour), for a total (\$57.96+\$9.90 = \$67.86/hour).

MOD-004-1—CAPACITY BENEFIT MARGIN—RETIREMENT—Continued
[Burden reduction]³⁸

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4) ³⁹	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
TP—Retired	203	1	203	60 hrs.; \$4,072.20	12,180 hrs.; \$826,656.60.
FERC-725A for MOD-004-1 Total Retired					31,860 hrs.; \$2,162,338.20.

MOD-008-1—TRANSMISSION RELIABILITY MARGIN CALCULATION METHODOLOGY—RETIREMENT
[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4) ⁴⁰	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC-725A, OMB Control No. 1902-0244					
TOP—Retired	165	1	165	60 hrs.; \$4,072.20	9,900 hrs.; \$671,913.
FERC-725A for MOD-008-1 Total Retired					9,900 hrs.; \$671,913.

MOD-028-2—AREA INTERCHANGE METHODOLOGY PROPOSED FOR RETIREMENT
[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4) ⁴¹	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC-725A, OMB Control No. 1902-0244					
TOP—Retired	165	1	165	60 hrs.; \$4,072.20	9,900 hrs.; \$671,913.
TSP—Retired	71	1	71	60 hrs.; \$4,072.20	4,260 hrs.; \$289,126.20.
FERC-725A for MOD-028-2 Total Retired					14,160 hrs.; \$961,039.20.

MOD-029-2a—FLOWGATE METHODOLOGY—RETIREMENT
[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of response (1) * (2) = (3)	Average burden hours and cost per responses (4) ⁴²	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC-725A, OMB Control No. 1902-0244					
TOP—Retired	165	1	165	60 hrs.; \$4,072.20	9,900 hrs.; \$671,913.
TSP—Retired	71	1	71	60 hrs.; \$4,072.20	4,260 hrs.; \$289,126.20.
Total for MOD-029-2a for Retired					14,160 hrs.; \$961,039.20.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

MOD-030-2—FLOWGATE METHODOLOGY—RETIREMENT
[Burden reduction]

Applicable entity (respondent)	Number of respondents	Annual number of responses per respondent	Annual number of responses	Average burden hours and cost per response ⁴³	Total annual burden hours and cost reduction (rounded)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
FERC-725A, OMB Control No. 1902-0244					
TOP—Retired	165	1	165	60 hrs.; \$4,072.20	9,900 hrs.; \$671,913.
TSP—Retired	71	1	71	60 hrs.; \$4,072.20	4,260 hrs.; \$289,126.20.
Total for MOD-030-2 for Retired					14,160 hrs.; \$961,039.20.

Title: FERC-725A, Mandatory Reliability Standards for the Bulk-Power System.

Action: Modifications to Existing Collections of Information in FERC-725A.

OMB Control No: 1902-0244 (FERC-725A).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: On occasion (and proposed for deletion).

Necessity of the Information: Reliability Standards MOD-001-1a (Available Transmission System Capability), MOD-004-1 (Capacity Benefit Margin), MOD-008-1 (Transmission Reliability Margin Calculation Methodology), MOD-028-2 (Area Interchange Methodology), MOD-029-2a (Rated System Path Methodology), and MOD030-3 (Flowgate Methodology) (the MOD A Reliability Standards) were part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation’s Bulk-Power system. As these Reliability Standards are retired, their purpose and requirements have been moved into the NAESB business practice standards.

Internal review: The Commission has reviewed NERC’s proposal and determined that this action is necessary to implement section 215 of the FPA.

15. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, email: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

16. Comments concerning the information collections and requirements approved for retirement in this final action and the associated burden estimates, should be sent to the

Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: oir_submission@omb.eop.gov.

IV. Environmental Analysis

17. 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.⁴⁴ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.⁴⁵ The actions approved here fall within this categorical exclusion in the Commission’s regulations.

V. Regulatory Flexibility Act

18. The Regulatory Flexibility Act of 1980 (RFA)⁴⁶ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.

19. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration’s Office of Size Standards develops the numerical definition of a small business.⁴⁷ The Small Business Administration has established size standards, for the types

of affected entities that range from a maximum of 250–1,000 employees for an entity and its affiliates to be considered small.

20. This final action accepts the request of NERC, the Commission-certified ERO, to retire the MOD A Reliability Standards and recognizes that NAESB business practice standards will cover the obligations. This final action reduces paperwork burdens for both large and small business entities. The Commission estimates the total industry reduction in burden for all entities (large and small) to be 112,560 hours or 68.5 hours per response.

21. Based on the information above, the Commission certifies that the proposed reductions will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required. The Commission certifies that this final action will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

22. 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>).

23. 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.

24. 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

⁴⁴ *Reguls. Implementing the Nat’l Env’t Policy Act*, Order No. 486, FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

⁴⁵ 18 CFR 380.4(a)(2)(ii).

⁴⁶ 5 U.S.C. 601-612.

⁴⁷ 13 CFR 121.101.

⁴³ *Id.*

Public Reference Room at
public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

25. These regulations are effective February 1, 2024. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a “major rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Issued October 26, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–24095 Filed 10–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 240

RIN 1530–AA22

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Bureau of the Fiscal Service (Fiscal Service) of the Department of the Treasury (Treasury) is amending its regulations that govern the payment of checks drawn on the United States Treasury (Treasury checks). The amendments coincide with the development of Fiscal Service’s enhanced check post payment processing system, which will provide Treasury check return information to financial institutions more quickly than today. Financial institutions will receive this information through their existing communication channels with the Federal Reserve Banks (FRBs), generally prior to the expiration of the time periods in which financial institutions must make Treasury check deposits available for withdrawal as prescribed by Regulation CC, Availability of Funds and Collection of Checks. Accordingly, Fiscal Service is amending its regulations so that, with certain exceptions, a financial institution will be liable if it pays a canceled Treasury check, also known as a payment over cancellation (POC), without waiting to receive the return information that would enable the financial institution to know the check has been canceled.

DATES: Effective December 1, 2023.

FOR FURTHER INFORMATION CONTACT: Gary Swasey, Director, Post Payment Division at (215) 816–8230 or *gary.swasey@fiscal.treasury.gov*; or Thomas Kearns, Senior Counsel, at (202) 874–6680 or *thomas.kearns@fiscal.treasury.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, when either Fiscal Service or a payment certifying agency puts a “stop payment” (also known as a “check stop”) on a Treasury check to cancel it, there is a possibility that the canceled check may still be paid. Fiscal Service or an agency may put a “stop payment” on a check payment because the payee submitted a check claim (*i.e.*, claimed that the check was either lost or stolen), because the certifying agency realized the payment was incorrect, or because it was otherwise improper. When a canceled or “stopped” check is subsequently paid, this leads to what is known as a payment over cancellation (POC). POCs are improper payments, which can amount to \$100 million or more each year.

Fiscal Service is developing enhancements to its post payment processing system that will result in Treasury check return information being made available to financial institutions sooner than is the case today. With Fiscal Service’s current post payment processing system, several days often pass before Fiscal Service can provide information on Treasury check returns that the Federal Reserve Banks (FRBs) transmit to financial institutions through existing communication channels. The system enhancements will enable Fiscal Service to provide check return information to financial institutions through these existing channels within the time periods prescribed by Regulation CC, Availability of Funds and Collection of Checks (12 CFR part 229), for when a financial institution must make funds deposited by Treasury check available for withdrawal.

Under the current regulations at 31 CFR part 240, a financial institution generally is not liable for a POC if the institution has taken “reasonable efforts” to ensure the check is authentic.¹ The final rule amends the definition of “reasonable efforts” found at 31 CFR 240.2 to include a requirement that financial institutions wait for check return information within the time periods set out by Regulation CC to help verify that a Treasury check

is valid² and authentic. It is also making conforming changes to 31 CFR part 240 to require that financial institutions ensure a Treasury check has not been canceled before making the funds associated with that check available for withdrawal.

In those instances where a financial institution has taken reasonable efforts but check return information for a POC on a properly presented check is not transmitted to the financial institution prior the funds availability timeframe specified in Regulation CC, the financial institution would not be liable for releasing the funds associated with the Treasury check. While Fiscal Service expects this circumstance to be uncommon, it understands that compliance with Regulation CC requires the release of the funds within certain timeframes, and thus under the final rule a financial institution will not be liable for a POC due to complying with Regulation CC. (Note, however, that this does not affect the presentment guarantees found in 31 CFR 240.4. As is currently the case, if Fiscal Service declines a check due to improper presentment and reverses the provisional credit, the presenting financial institution may still be liable for payment on the check regardless of Regulation CC’s requirements.)

After enhancements to Treasury’s post payment processing system have been implemented and the final rule’s requirements become effective (no sooner than 30 days after publication of the final rule), the system and rule changes should greatly reduce payment issues involving Treasury checks and more closely align the treatment of canceled Treasury checks with industry practices for other canceled checks in the banking system. The changes will eliminate many POCs, because they will allow a certifying agency to place a “true stop” on a Treasury check. The system changes will also help reduce instances where a Treasury check (or an item purporting to be a Treasury check) may be charged back to the financial institution, because they will allow the financial institution to verify that the check is not counterfeit, that the amount has not been altered, that the check is not stale-dated, and that the check has not been previously negotiated. For these non-POC circumstances, financial institutions are already liable for accepting such instruments. While the final rule does not impact a financial institution’s liability in these other circumstances, Fiscal Service’s enhanced post payment processing

¹ “Authenticity” is a presentment guaranty, as described by 31 CFR 240.4.

² “Validity” and “valid check” are defined in the final rule. See section III.B., below.