

amendment. Both expected benefits and costs of the proposed amendment are likely to be small. The likely effect on testing costs would be minor.

*Least burdensome requirement.* No other alternative would allow the Standard's level of safety and effectiveness to continue. Thus, the proposed amendment imposes the least burdensome requirement that would adequately address the risk of injury.

## J. Conclusion

For the reasons discussed above, the Commission preliminarily finds that amending the mattress flammability standard (16 CFR part 1632) to specify SRM 1196a cigarettes as the ignition source is needed to adequately protect the public against the unreasonable risk of the occurrence of fire leading to death, injury, and significant property damage. The Commission also preliminarily finds that the amendment to the Standard is reasonable, technologically practicable, and appropriate. The Commission further finds that the amendment is limited to the fabrics, related materials, and products that present such unreasonable risks.

### List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

For the reasons given above, the Commission proposes to amend 16 CFR part 1632 as follows:

### PART 1632—STANDARD FOR THE FLAMMABILITY OF MATTRESSES AND MATTRESS PADS (FF 4-72, AMENDED)

■ 1. The authority citation for part 1632 continues to read as follows:

**Authority:** 15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b).

■ 2. Revise § 1632.4(a)(2) to read as follows:

#### § 1632.4 Mattress test procedure.

(a) \* \* \*

(2) *Ignition source.* The ignition source shall be a Standard Reference Material cigarette (SRM 1196a), available for purchase from the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

\* \* \* \* \*

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 40

[Docket No. RM19-20-000]

### WECC Regional Reliability Standard BAL-002-WECC-3 (Contingency Reserve)

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to approve regional Reliability Standard BAL-002-WECC-3 (Contingency Reserve) submitted jointly by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, and the Western Electricity Coordinating Council (WECC). In addition, the Commission proposes to direct NERC and WECC to submit an informational filing.

**DATES:** Comments are due December 29, 2020.

**ADDRESSES:** Comments, identified by docket number RM19-20, may be filed in the following ways:

- **Electronic Filing through <http://www.ferc.gov>.** Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- **Mail/Hand Delivery:** Those unable to file electronically may mail or hand-deliver comments via United States Postal Service (USPS) to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

**Instructions:** For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA), the Commission proposes to approve regional Reliability Standard BAL-002-WECC-3 (Contingency Reserve). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), and Western Electricity Coordinating Council (WECC) jointly submitted the proposed regional Reliability Standard to the Commission for approval.

2. Proposed regional Reliability Standard BAL-002-WECC-3 applies to balancing authorities and reserve sharing groups in the WECC Region, and it specifies the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions.<sup>1</sup> The principal difference between the currently-effective regional Reliability Standard BAL-002-WECC-2a and the proposed version is the elimination of Requirement R2 from the currently-effective version. As discussed in the joint petition, Requirement R2 is redundant in the light of the implementation of the continent-wide Reliability Standard BAL-003-1.1 (Frequency Response and Frequency Bias Setting). Given the requirements of the continent-wide Reliability Standard BAL-003-1.1 and the results of field tests conducted by NERC and WECC assessing the potential impacts of the retirement of Reliability Standard BAL-002-WECC-2a Requirement R2 on contingency reserves in the Western Interconnection, the Commission proposes to approve regional Reliability Standard BAL-002-WECC-3 and retire the currently-effective version of the regional Reliability Standard.

3. In addition, although the Commission proposes to approve regional Reliability Standard BAL-002-WECC-3, the Commission believes it appropriate in this case to monitor the potential impacts of retiring Requirement R2 on the adequacy of contingency reserves in the Western Interconnection. Therefore, the Commission proposes to direct NERC and WECC to submit an informational filing 27 months following implementation of regional Reliability Standard BAL-002-WECC-3 that addresses the adequacy of contingency reserves in the Western Interconnection.

<sup>1</sup> Reserve sharing group is defined in the Glossary of Terms Used in NERC Reliability Standards (NERC Glossary) as, “[a] group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority’s use in recovering from contingencies within the group. . . .”

## I. Background

### A. Section 215 and Regional Reliability Standards

4. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval.<sup>2</sup> Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.<sup>3</sup>

5. A Regional Entity may develop a regional Reliability Standard for Commission approval to be effective in that region only.<sup>4</sup> In Order No. 672, the Commission stated that:

As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.<sup>5</sup>

While a Regional Entity may propose regional Reliability Standards that address specific, unique regional conditions and circumstances, such regional Reliability Standards can be retired if those justifications are no longer relevant. Accordingly, the Commission may approve retirement of a more stringent regional requirement “if the Regional Entity demonstrates that the continent-wide Reliability Standard is sufficient to ensure the reliability of that region.”<sup>6</sup>

### B. Regional Reliability Standard BAL-002-WECC-2

6. On November 21, 2013, the Commission approved regional Reliability Standard BAL-002-WECC-2 specifying the quantity and types of contingency reserve required to ensure

reliability under normal and abnormal conditions.<sup>7</sup> Regional Reliability Standard BAL-002-WECC-2 was more stringent than the continent-wide Reliability Standard BAL-002-1 because the regional Reliability Standard required applicable entities to restore contingency reserve within 60 minutes following the Disturbance Recovery Period while the continent-wide Reliability Standard only required restoration of contingency reserve within 90 minutes.<sup>8</sup> Requirement R2 of the regional Reliability Standard provides that balancing authorities and reserve sharing groups in the WECC Region “shall maintain at least half of its minimum amount of Contingency Reserve identified in Requirement R1, as Operating Reserve—Spinning.” In addition, the method for calculating minimum contingency reserve in the regional Reliability Standard was more stringent than Requirement R3.1 in Reliability Standard BAL-002-1 because it required minimum contingency reserve levels that will be at least equal to the Reliability Standard minimum (*i.e.*, equal to the most severe single contingency) and more often will be greater.<sup>9</sup>

### C. NERC Reliability Standard BAL-003-1

7. On January 16, 2014, the Commission approved continent-wide Reliability Standard BAL-003-1 (Frequency Response and Frequency Bias Setting).<sup>10</sup> The Commission explained that Reliability Standard BAL-003-1 defines the amount of frequency response needed from balancing authorities to maintain Interconnection frequency within predefined bounds and includes requirements for the measurement and provision of frequency response. In particular, Order No. 794 determined that Reliability Standard BAL-003-1 “establishes a minimum Frequency Response Obligation for each balancing

authority; provides a uniform calculation of frequency response; establishes Frequency Bias Settings that are closer to actual balancing authority frequency response; and encourages coordinated automatic generation control operation.”<sup>11</sup>

### D. NERC and WECC Joint Petition

8. On September 6, 2019, NERC and WECC submitted a joint petition seeking approval of proposed regional Reliability Standard BAL-002-WECC-3, the associated violation risk factors and violation severity levels, effective date, and implementation plan. The joint petition also requests retirement of the currently-effective WECC regional Reliability Standard BAL-002-WECC-2a.

9. In the joint petition, NERC and WECC explain that principal modification in the proposed regional Reliability Standard is the retirement of Requirement R2 in currently-effective regional Reliability Standard BAL-002-WECC-2a. NERC and WECC maintain that the regional 50% minimum operating reserve—spinning requirement in Requirement R2 was carried forward from the Reliability Management System of WECC’s predecessor, the Western Systems Coordinating Council.

10. NERC and WECC contend that continent-wide Reliability Standard BAL-003-1.1 “helps ensure that sufficient Frequency Response is provided to maintain Interconnection frequency in support of the reliable operation of the Interconnection,” and therefore renders regional Reliability Standard BAL-002-WECC-2a, Requirement R2 “redundant and no longer needed for reliability in the Western Interconnection.”<sup>12</sup> NERC and WECC assert that Reliability Standard BAL-003-1.1 “addresses the same frequency response components covered in currently effective Regional Reliability Standard BAL-002-WECC-2a Requirement R2 but in a results-based manner.”<sup>13</sup>

11. In particular, NERC and WECC state that Reliability Standard BAL-003-1.1, Requirement R1 requires that balancing authorities (or groups of balancing authorities known as frequency response sharing groups) “achieve an annual Frequency Response Measure that is equal to or more negative than its Frequency Response Obligation to ensure that it is providing sufficient Frequency Response.”<sup>14</sup>

<sup>11</sup> Order No. 794, 146 FERC ¶ 61,024 at P 22.

<sup>12</sup> Joint Petition at 4.

<sup>13</sup> *Id.* at 13.

<sup>14</sup> *Id.* at 4.

<sup>2</sup> 16 U.S.C. 824o.

<sup>3</sup> 16 U.S.C. 824o(e).

<sup>4</sup> 16 U.S.C. 824o(e)(4). A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO. See 16 U.S.C. 824o(a)(7) and (e)(4). On April 19, 2007, the Commission accepted delegation agreements between NERC and eight Regional Entities, including WECC. *North American Electric Reliability Council*, 119 FERC ¶ 61,060, order on reh’g, 120 FERC ¶ 61,260 (2007).

<sup>5</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, at P 291, order on reh’g, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

<sup>6</sup> *Version One Regional Reliability Standard for Resource and Demand Balancing*, Order No. 740, 133 FERC ¶ 61,063, at P 30 (2010).

<sup>7</sup> *Regional Reliability Standard BAL-002-WECC-2—Contingency Reserve*, Order No. 789, 145 FERC ¶ 61,141 (2013). On January 24, 2017, by delegated letter order, the Commission approved regional Reliability Standard BAL-002-WECC-2a, which added an interpretation to Requirement R2. *North American Electric Reliability Corporation*, Docket No. RD17-3-000 (Jan. 24, 2017) (delegated order).

<sup>8</sup> Reliability Standard BAL-002-3, approved on September 25, 2018, is the current version of the continent-wide Reliability Standard.

<sup>9</sup> Order No. 789, 145 FERC ¶ 61,141 at P 26.

<sup>10</sup> *Frequency Response and Frequency Bias Setting Reliability Standard*, Order No. 794, 146 FERC ¶ 61,024 (2014). Reliability Standard BAL-003-1.1 was subsequently approved by delegated letter order on November 13, 2015 and contained non-substantive changes over the prior version, Reliability Standard BAL-003-1. *North American Electric Reliability Corp.*, Docket No. RD15-6-000 (Nov. 13, 2015) (delegated order).

Moreover, NERC and WECC explain that retention of the regional 50% minimum operating reserve—spinning requirement, alongside the continent-wide frequency response requirement, could lead to confusion and the procurement of more spinning reserves than necessary for entities to meet their frequency response obligation, thereby increasing costs without providing additional reliability benefits.<sup>15</sup>

12. NERC and WECC also state that to evaluate the potential reliability impacts of retiring Requirement R2, WECC conducted a field test from May 1, 2017 through April 30, 2018, obtaining data from each balancing authority and each reserve sharing group.<sup>16</sup> NERC and WECC explain that the field test measured the effect of retiring Requirement R2 using two metrics: Disturbance control standard (DCS) performance and frequency response in the Western Interconnection.<sup>17</sup> The first metric measured, for each reportable DCS event,<sup>18</sup> whether an entity was unable to meet the DCS recovery period. The second metric monitored system performance for any loss of resources greater than 700 MW and for any adverse effects on frequency response.<sup>19</sup>

13. NERC and WECC assert that “analysis of the data demonstrates that all 66 DCS events occurring during the field test period had a 100% pass rate, showing no degradation to DCS performance. Entities carried and deployed enough reserves for post disturbance Area Control Area recovery.”<sup>20</sup> NERC and WECC also note

that the 2018 NERC State of Reliability Report indicates that frequency response performance “did not degrade in the Western Interconnection during the field test period.”<sup>21</sup>

14. Aside from eliminating Requirement R2, NERC and WECC assert that proposed regional Reliability Standard BAL-002-WECC-3 retains the other existing requirements because they are needed to maintain reliability and “continue[] to represent a more stringent set of requirements for entities in the Western Interconnection than those found in the continent-wide disturbance control standard, Reliability Standard BAL-002-3.”<sup>22</sup>

#### *E. Data Request and Response*

15. On February 18, 2020, the Director of the Office of Electric Reliability issued a data request to NERC and WECC seeking: (1) Data for the remainder of the field test term not provided in the joint petition (*i.e.*, from May 1, 2018 to September 30, 2019); and (2) supporting data for NERC frequency response metric (Metric M-4) as it pertains to the Western Interconnection during the field test period (*i.e.*, from May 1, 2017 to September 30, 2019).

16. On May 18, 2020, NERC and WECC submitted data in response to the February 18 data request.

## **II. Discussion**

17. Pursuant to FPA section 215(d)(2), the Commission proposes to approve WECC regional Reliability Standard BAL-002-WECC-3 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. For applicable entities in the WECC Region, proposed regional Reliability Standard BAL-002-WECC-3 eliminates the requirement in the currently-effective version that at least half of the minimum amount of contingency reserve shall be Operating Reserve—Spinning that meets certain reserve characteristics. The justification set forth in the joint petition taken together with the field test results support NERC and WECC’s position that the continent-wide Reliability Standard BAL-003-1.1 renders the existing 50% Operating Reserve—Spinning obligation redundant. Additionally, proposed regional Reliability Standard BAL-002-WECC-3, even without Requirement R2, will continue to provide protections beyond those contained in the continent-wide disturbance control Reliability Standard BAL-002-3.

18. While we propose to approve WECC regional Reliability Standard BAL-002-WECC-3, unique aspects of contingency reserves in the Western Interconnection raise concerns about deliverability of contingency reserves within reserve sharing groups. Thirty-four balancing authorities are registered with WECC of which 32 are members of one of the two reserve sharing groups within WECC. The Southwest Reserve Sharing Group (SRSG) geographic area covers the southwest United States including Arizona, New Mexico, southern Nevada, parts of southern California including the Imperial Valley, and El Paso, Texas. The Northwest Power Pool (NWPP) reserve sharing group geographic area covers two Canadian provinces and all the states in the Western Interconnection except Arizona, New Mexico southern Nevada, and part of California. Each reserve sharing group includes member balancing authorities that have hydroelectric resources. These hydroelectric resources represent a significant share of the reserve sharing group contingency reserves. These resources may or may not be deliverable to all member balancing authorities due to transmission constraints or limits on the hydro system.<sup>23</sup>

19. We believe it is important to monitor the reliability impacts that the retirement of Requirement R2 may have on contingency reserves in the Western Interconnection. Therefore, as detailed below, the Commission proposes to direct that NERC and WECC submit an informational filing 27 months following implementation of regional Reliability Standard BAL-002-WECC-3. We further propose to direct that NERC and WECC make the Commission immediately aware of any adverse impacts resulting from the retirement of Requirement R2, if they become apparent prior to the end of the reporting period, and any corrective actions taken or being considered.

20. We propose to direct that NERC and WECC submit an informational filing 27 months following implementation of regional Reliability Standard BAL-002-WECC-3 that addresses the adequacy of contingency

<sup>23</sup> The WECC operating committee raised similar issues in a report regarding the Northwest price spike event that occurred the week of March 1–4, 2019. See also, [https://www.wecc.org/Reliability/PricingEvent\\_Paper\\_Final.pdf](https://www.wecc.org/Reliability/PricingEvent_Paper_Final.pdf) at 13: “Reserves are calculated based on unit capacity and do not necessarily consider fuel availability. Limits on the hydro system and wind availability . . . could reduce actual reserve levels below the calculated and reported levels. Fuel-limited resources may be overcounted toward reserves as the full capacity of the unit may be counted without regard to the availability of fuel.”

<sup>15</sup> *Id.* at 12–13.

<sup>16</sup> *Id.* at 13. A report containing the results of the field test is appended to the joint petition as Exhibit C. Joint Petition, Exhibit C (Field Test Results, WECC-0115 BAL-002-WECC-2a Request to Retire Requirement R2).

<sup>17</sup> Disturbance control standard is defined in the NERC Glossary as, “[t]he reliability standard that sets the time limit following a Disturbance within which a Balancing Authority must return its Area Control Error to within a specified range.” See also Joint Petition, Exhibit C at 5.

<sup>18</sup> We understand the reference to “reportable DCS event” in the petition corresponds to the NERC Glossary term “reportable balancing contingency event” that appears in Reliability Standard BAL-002-3. The NERC Glossary defines reportable balancing contingency event as: “[a]ny Balancing Contingency Event occurring within a one-minute interval of an initial sudden decline in ACE based on EMS scan rate data that results in a loss of MW output less than or equal to the Most Severe Single Contingency, and greater than or equal to the lesser amount of: (i) 80% of the Most Severe Single Contingency, or (ii) the amount listed below for the applicable Interconnection. Prior to any given calendar quarter, the 80% threshold may be reduced by the responsible entity upon written notification to the Regional Entity. (Eastern Interconnection—900 MW, Western Interconnection—500 MW, ERCOT—800 MW, and Quebec—500 MW).”

<sup>19</sup> Joint Petition at 13–14.

<sup>20</sup> *Id.* at 14.

<sup>21</sup> *Id.* at 15.

<sup>22</sup> *Id.* at 10.

reserves in the Western Interconnection. Specifically, the report should provide, for an additional 24 month period after implementation of the standard, the following categories of data (similar to the data categories identified in the February 18, 2020 data request): (1) For any reportable DCS event, the date, time and required amount of contingency reserves at the time of the event, the actual amount of Operating Reserves—Spinning at the time of the event, and the actual DCS performance; (2) for events involving a loss of 700 MW or greater, whether it is a reportable DCS event or not, the date and time of the event, the name of the resource(s), and the total MW; (3) the amount of spinning reserve above or below 50% during non-event times on an hourly basis for 24 months following implementation; and (4) supporting data for NERC's frequency response metric (Metric M-4) as it pertains to the Western Interconnection.<sup>24</sup>

21. In addition to the data categories identified in the February 18 data request, we propose to direct that NERC and WECC provide: (1) The DCS performance—as described in request (1) in the paragraph above—on a balancing authority basis; and (2) the hourly amount of contingency reserve and the fraction of that contingency reserve that is classified as spinning for each hour by balancing authority (not reserve sharing group). We believe that this data is necessary to assess the amount of contingency reserves held by each balancing authority within a reserve sharing group since the contingency reserve data provided for a reserve sharing group are the aggregated sum of the contingency reserves of the participating balancing authorities.

### III. Information Collection Statement

22. The FERC-725E information collection requirements contained in this Notice of Proposed Rulemaking are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).<sup>25</sup> OMB's regulations require approval of certain information collection requirements imposed by agency rules.<sup>26</sup> Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these

<sup>24</sup> The informational filing report can be drafted in a similar manner as the field test report provided in the petition including all of the requested data.

<sup>25</sup> 44 U.S.C. 3507(d).

<sup>26</sup> 5 CFR 1320.11.

collections of information unless the collections of information display a valid OMB control number.

23. We solicit 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. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

24. *Public Reporting Burden:* The burden and cost estimates below are based on the need for applicable entities to revise documentation, already required by the current WECC regional Reliability Standard BAL-002-WECC-2a,<sup>27</sup> to reflect the retirement of Requirement R2 in the proposed WECC regional Reliability Standard BAL-002-WECC-3. Our estimates are based on the NERC Compliance Registry as of September 3, 2020, which indicates that 34 balancing authorities, 2 reserve sharing groups, 2 reliability coordinators, 265 generator owners, 256 generator operators, 78 transmission owners and 47 transmission operators are registered within WECC.

25. In addition to the changes identified in this Notice of Proposed Rulemaking, the Commission is adjusting burden estimates for the other WECC regional Reliability Standards in the FERC-725E information collection. These adjustments are warranted based on updates to the number of applicable registered entities that have changed due to normal industry fluctuations (e.g., companies merging or splitting, going into or leaving the industry, or filling more or fewer roles in the NERC Compliance Registry).

26. There are several regional Reliability Standards in the WECC region. These regional Reliability Standards generally require entities to document compliance with substantive

<sup>27</sup> BAL-002-WECC-2 is included in the OMB-approved inventory for FERC-725E. On November 9, 2016, NERC and WECC submitted a joint petition for approval of an interpretation of BAL-002-WECC-2, to be designated BAL-002-WECC-2a. BAL-002-WECC-2a was approved by order in Docket No. RD17-3-000 on January 24, 2017. The Order determined: "The proposed interpretation provides clarification regarding the types of resources that may be used to satisfy Contingency Reserve requirements in regional Reliability Standard BAL-002-WECC-2." BAL-002-WECC-2a did not trigger the Paperwork Reduction Act and did not affect the burden estimate.

requirements, retain documentation, and submit reports to WECC. The following standards will be continuing without change.

- BAL-004-WECC-3 (Automatic Time Error Correction) requires balancing authorities to document that time error corrections and primary inadvertent interchange payback were conducted according to the requirements in the standard.

- FAC-501-WECC-2 (Transmission Maintenance) requires transmission owners with certain transmission paths to have a transmission maintenance and inspection plan and to document maintenance and inspection activities according to the plan.

- VAR-501-WECC-3.1 (Power System Stabilizer [PSS])<sup>28</sup> requires generator owners and operators to ensure the Western Interconnection is operated in a coordinated manner by establishing the performance criteria for WECC power system stabilizers.

27. The associated reporting and recordkeeping requirements included in the regional standards above are not being revised, and the Commission will be submitting a request to OMB to extend these requirements for three years. The Commission's request to OMB will also reflect the following:

- Implement the regional Reliability Standard BAL-002-WECC-3 (addressed in this Notice of Proposed Rulemaking, Docket No. RM19-20), and

- Adjustments to the burden estimates due to changes in the NERC Compliance Registry for regional Reliability Standards BAL-002-WECC-3 (Contingency Reserve) and IRO-006-WECC-3 (Qualified Path Unscheduled Flow (USF) Relief).<sup>29</sup>

<sup>28</sup> VAR-501-WECC-3.1 was approved by order in Docket No. RD17-7-000 on September 26, 2017. The August 18, 2017 petition requested Commission approval of errata to mandatory and enforceable regional Reliability VAR-501-WECC-3 (Power System Stabilizer). Because the reporting burden for VAR-501-WECC-3.1 did not increase for entities that operate within the Western Interconnection, FERC submitted the order to OMB for information only. The burden related to VAR-501-WECC-3.1 does not differ from the burden of VAR-501-WECC-3, which is included in the OMB-approved inventory. VAR-501-WECC-3.1 is being included in this document and the Commission's submittal to OMB as part of FERC-725E.

<sup>29</sup> IRO-006-WECC-3 was approved by order in Docket No. RD19-4-000 on May 10, 2019. The March 6, 2019 petition states that WECC revised the regional Reliability Standard to clarify the purpose statement, replace certain defined terms, account for multiple reliability coordinators in the Western Interconnection, and conform the regional Reliability Standard to the current drafting conventions and template. Because the reporting burden for IRO-006-WECC-3 did not increase for entities that operate within the Western Interconnection, FERC submitted the order to OMB for information only. The burden related to IRO-006-WECC-3 does not differ from the burden of

28. *Changes Due to Docket No. RM19–20.* The Commission estimates the reduction in the annual public reporting burden for the FERC–725E (due to the retirement of BAL–002–WECC–2a, Requirement R2) as follows:

**FERC—725E—MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL, REDUCTIONS DUE TO DOCKET NO. RM19–20**

Information collection requirements and entity	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost <sup>30</sup> per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)
Balancing Authorities Years 1 and 2 <sup>31</sup> .	0 (no change)	0 (no change)	0 (no change)	0 hrs.; \$0 (no change) ...	0 hrs.; \$0 (no change).
Balancing Authorities Year 3 and Ongoing.	34	1	34	1 hr.; \$83.67 (reduction)	34 hrs.; \$2,844.78 (reduction).
Sub-Total, Reduction (Due to Docket No. RM19–20) in Year 3 and Ongoing.					34 hrs.; \$2,844.78 (reduction).

29. *Adjustments Due to normal industry fluctuations.* The Commission estimates the changes in the annual public reporting burden for the FERC–725E (due to the number of applicable registered entities) as follows:<sup>32</sup>

**FERC—725E—MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL, ADJUSTMENTS DUE TO NORMAL INDUSTRY FLUCTUATIONS**

Information collection requirements and entity	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost <sup>30</sup> per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)
Reliability Coordinators (IRO–006–WECC–3) Reporting Requirement.	1 (increase) ....	1	1	1 hr.; \$83.67 (increase) .....	1 hr.; \$83.67 (increase).
Reliability Coordinators (IRO–006–WECC–3) Record Keeping Requirement.	1 (increase) ....	1	1	1 hr.; \$34.79 (increase) .....	1 hr.; \$34.79 (increase).
Reserve Sharing Groups (BAL–002–WECC–3) Reporting Requirement.	1 (reduction) ..	1	1	1 hr.; \$83.67 (reduction) .....	1 hr.; \$83.67 (reduction).
Sub-Total, (Net Due to Adjustments).					1 hr.; \$34.79 (net change).

30. *Estimate of Continuing Annual Burden for Renewal:*<sup>33</sup> The Commission estimates the annual public reporting burden and cost as follows for FERC–725E. (This information will be submitted to OMB for approval.) These estimates reflect:

- Reliability Standards in FERC–725E which continue and remain unchanged (BAL–004–WECC–3, FAC–501–WECC–2, and VAR–002–WECC–3.1);
- Implement the regional Reliability Standard BAL–002–WECC–3 (addressed in this Notice of Proposed Rulemaking, Docket No. RM19–20–000); and

- Adjustments to the burden estimates for regional Reliability Standards BAL–002–WECC–3 (Contingency Reserve) and IRO–006–WECC–3 (Qualified Path Unscheduled Flow (USF) Relief).

IRO–006–WECC–2, which is included in the OMB-approved inventory. IRO–006–WECC–3 is being included in this document and the Commission’s submittal to OMB as part of FERC–725E.

<sup>30</sup>The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics (BLS) for three positions involved in the reporting and recordkeeping requirements. These figures include salary (based on BLS data for May 2019, [http://bls.gov/oes/current/naics2\\_22.htm](http://bls.gov/oes/current/naics2_22.htm)) and benefits (based on BLS data for December 2019; issued March 19, 2020, <http://www.bls.gov/news.release/>

[ecec.nr0.htm](http://www.bls.gov/news.release/ecec.nr0.htm)) and are Manager (Code 11–0000 \$97.15/hour), Electrical Engineer (Code 17–2071 \$70.19/hour), and File Clerk (Code 43–4071 \$34.79/hour). The hourly cost for the reporting requirements (\$83.67) is an average of the cost of a manager and engineer. The hourly cost for recordkeeping requirements uses the cost of a file clerk.

<sup>31</sup>The reduction in burden is zero for the first two years due to the directive in this document of Proposed Rulemaking to continue to report hourly contingency reserve data for 24 months.

<sup>32</sup>The number of applicable entities is based on the NERC Compliance Registry as of September 3, 2020.

<sup>33</sup>The Commission is also removing 1746 one-time burden hours associated with the requirements in Docket No. RD17–5 for regional Reliability Standard VAR–501–WECC–3 (Power System Stabilizer [PSS]). The one-time burden has been completed and will now be administratively removed on submittal to OMB. Those hours are not included in the table.

FERC—725E—MANDATORY RELIABILITY STANDARDS FOR THE WESTERN ELECTRIC COORDINATING COUNCIL  
 [New and continuing information collection requirements]

Entity	Number of respondents <sup>34</sup>	Annual number of responses per respondent	Annual number of responses	Average burden hrs. & cost <sup>30</sup> per response (\$)	Total annual burden hours & total annual cost (\$)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
<b>Reporting Requirements</b>						
Balancing Authorities Years 1 and 2 (BAL-002-WECC-3; BAL-004-WECC-3; IRO-006-WECC-3).	34	1	34	21 hrs.; \$1,757.07	714 hrs.; \$59,740.38	\$1,757.07
Balancing Authorities Year 3 and Ongoing (BAL-002-WECC-3; BAL-004-WECC-3; IRO-006-WECC-3).	34	1	34	20 hrs.; \$1,673.40 ..	680 hrs.; \$56,895.60	\$1,673.40
Reserve Sharing Groups (BAL-002-WECC-3).	2	1	2	1 hr.; \$83.67 .....	2 hrs.; \$167.34 .....	\$83.67
Reliability Coordinators (IRO-006-WECC-3).	2	1	2	1 hr.; \$83.67 .....	2 hrs.; \$167.34 .....	\$83.67
Transmission Owners that operate qualified transfer paths (FAC-501-WECC-2).	5	1	5	40 hrs.; \$3,346.80 ..	200 hrs.; \$16,734.00	\$3,346.80
Generator Owners and/or Operators (VAR-501-WECC-3.1).	291	2	582	1 hr.; \$83.67 .....	582 hrs.; \$48,695.94	\$167.34
Sub-Total for Reporting Requirements in Years 1 and 2.	.....	.....	625	.....	1,500 hrs.; \$125,505.00.	.....
Sub-Total for Reporting Requirements in Year 3 & Ongoing.	.....	.....	625	.....	1,466 hrs.; \$122,660.22.	.....
<b>Recordkeeping Requirements</b>						
Balancing Authorities (BAL-002-WECC-3; BAL-004-WECC-3; IRO-006-WECC-3)	34	1	34	3.1 hrs.; \$107.85 ...	105.4 hrs.; \$3,666.87	\$107.85
Reliability Coordinator (IRO-006-WECC-3).	2	1	2	1 hr.; \$34.79 .....	2 hrs.; \$69.58 .....	\$34.79
Transmission Owner that operate qualified transfer paths (FAC-501-WECC-2).	5	1	5	6 hrs.; \$208.74 .....	30 hrs.; \$1043.70 .....	\$208.74
Generator Owners and/or Operators (VAR-501-WECC-3.1).	291	2	582	0.5 hrs.; \$17.40 .....	291 hrs.; \$10,123.89	\$34.79
Sub-Total for Record-keeping Requirements.	.....	.....	623	.....	428.4 hrs.; \$14,904.04.	.....
Total for FERC-725E, in Yr. 1 and Yr. 2.	.....	.....	1248	.....	1,928.4 hrs.; \$140,409.04.	.....
Total for FERC-725E, in Yr. 3 & Ongoing.	.....	.....	1248	.....	1,894.4 hrs.; \$137,564.26.	.....

31. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission,

888 First Street NE, Washington, DC

20426, via email (*DataClearance@ferc.gov*) or telephone ((202) 502-8663).

<sup>34</sup>The number of respondents is derived from the NERC Compliance Registry as of September 3, 2020.

32. 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.

33. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Comments submitted to OMB should refer to OMB Control Nos. 1902-0246.

34. Please submit a copy of your comments on the information collections to the Commission via the eFiling link on the Commission's website at <http://www.ferc.gov>. If you are not able to file comments electronically, please send a copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Comments on the information collection that are sent to FERC should refer to RM19-20-000.

*Title:* FERC-725E, Mandatory Reliability Standards-WECC (Western Electric Coordinating Council).

*Action:* Three-year approval of the FERC-725E information collection requirements, as modified by Docket No. RM19-20-000 and due to normal industry fluctuations.

*OMB Control No:* 1902-0246 (FERC-725E).

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

*Frequency of Responses:* One-time.

*Necessity of the Information:* The proposed regional Reliability Standard BAL-002-WECC-3, if adopted, would implement 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. Specifically, the proposal ensures that balancing authorities and reserve sharing groups in the WECC Region have the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions.

*Internal review:* The Commission has reviewed the proposed regional Reliability Standard BAL-002-WECC-3

and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

#### IV. Environmental Analysis

35. 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.<sup>35</sup> 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.<sup>36</sup> The actions proposed here fall within this categorical exclusion in the Commission's regulations.

#### V. Regulatory Flexibility Act

36. The Regulatory Flexibility Act of 1980 (RFA)<sup>37</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small entity.<sup>38</sup> These standards are provided in the SBA regulations at 13 CFR 121.201.<sup>39</sup>

37. Under SBA's size standards,<sup>40</sup> balancing authorities, reserve sharing groups, generator operators, generator owners, transmission owners, and transmission operators all fall under the category of (NAICS code 221111-Hydroelectric Power Generation (500) and NAICS code 221118-Other Electric Power Generation (250)), with a total size threshold of 750 employees (including the entity and its associates).<sup>41</sup>

38. This proposed rule, if adopted, would apply to registered balancing

<sup>35</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

<sup>36</sup> 18 CFR 380.4(a)(2)(ii).

<sup>37</sup> 5 U.S.C. 601-612.

<sup>38</sup> 13 CFR 121.101.

<sup>39</sup> 13 CFR 121.201. See also U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (effective Feb. 26, 2016), [https://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

<sup>40</sup> 13 CFR 121.201.

<sup>41</sup> The threshold for the number of employees indicates the maximum allowed for a concern and its affiliates to be considered small.

authorities and reserved sharing groups in the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA-861 indicating that, of the 36 entities, 34 are registered balancing authorities and two are reserve sharing groups, two may qualify as small entities.<sup>42</sup>

39. Using the list from the NERC Compliance Registry (dated September 3, 2020), we estimate that approximately 22% of those entities are small entities.

40. The Commission estimates that, on average, each of the two affected small entities will have no further ongoing costs after year three. These figures are based on information collection costs plus additional costs for compliance.

41. The Commission does not consider this to be a significant economic impact for small entities because it should not represent a significant percentage of the operating budget. Accordingly, the Commission certifies that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Commission seeks comment on this certification.

#### VI. Comment Procedures

42. The Commission invites interested persons to submit comments on the matters and issues proposed in this document to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due December 29, 2020. Comments must refer to Docket No. RM19-20-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

43. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

44. Commenters that are not able to file comments electronically must send

<sup>42</sup> The RFA definition of "small entity" refers to the definition provided in the Small Business Act (SBA), 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. See 15 U.S.C. 632. According to the Small Business Administration, an electric utility is defined as "small" if, including its affiliates, the number of employees indicates the maximum allowed for a concern and its affiliates to be considered small.

an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

45. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### VII. Document Availability

46. 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>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington DC 20426.

47. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

48. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto: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](mailto:public.referenceroom@ferc.gov).

By direction of the Commission.

Issued: October 15, 2020.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2020-23297 Filed 10-29-20; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-119890-18]

RIN 1545-BO92

#### Section 42, Low-Income Housing Credit Average Income Test Regulations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations setting forth guidance on the average income test under section 42(g)(1)(C) of the Internal Revenue Code (Code) for purposes of the low-income housing credit. These proposed regulations affect owners of low-income housing projects, tenants in those projects, and State or local housing credit agencies that administer the low-income housing credit.

**DATES:** Written (including electronic) comments must be received by December 29, 2020.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-104591-18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, Dillon Taylor or Michael J. Torruella Costa at (202) 317-4137; concerning submissions of comments, Regina L. Johnson at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Code.

The Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085 (1986 Act) created the low-income housing credit under section 42 of the Code. Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(c)(1)(A) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to (i) the applicable fraction (determined as of the close of

the taxable year) of (ii) the eligible basis of the building (determined under section 42(d)). Sections 42(c) and 42(d) define applicable fraction and eligible basis. Section 42(d)(1) and (2) define the eligible basis of a new building or an existing building, respectively.

Section 42(c)(2) defines a qualified low-income building as any building which is part of a qualified low-income housing project at all times during the compliance period (that is, the period of 15 taxable years beginning with the first taxable year of the credit period) and to which the amendments made by section 201(a) of the 1986 Act apply (generally property placed in service after December 31, 1986, in taxable years ending after that date). To qualify as a low-income housing project, one of the section 42(g) minimum set-aside tests, as elected by the taxpayer, must be satisfied.

Prior to the enactment of the Consolidated Appropriations Act of 2018, Public Law 115-141, 132 Stat. 348 (2018 Act), section 42(g) set forth two minimum set-aside tests that a taxpayer may elect with respect to a low-income housing project, known as the 20-50 test and the 40-60 test. Under the 20-50 test, at least 20 percent of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 50 percent or less of the area median gross income (AMGI). Section 42(g)(1)(A). Under the 40-60 test, at least 40 percent of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 60 percent or less of AMGI. Section 42(g)(1)(B).

Section 103(a) of Division T of the 2018 Act added section 42(g)(1)(C) to the Code to provide a third minimum set-aside test that a taxpayer may elect with respect to a low-income housing project: The average income test. Section 42(g)(1)(C)(i) provides that, a project meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. Section 42(g)(1)(C)(ii)(I) and (III) provides that the taxpayer must designate the imputed income limitation for each unit and the designated imputed income limitation of any unit must be 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. Section 42(g)(1)(C)(ii)(II) provides that the average of the imputed income