NERC
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

NERC Compliance Process Bulletin #2009-007

Amended Interim Approach to Technical Feasibility Exceptions

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The purpose of this Compliance Process Bulletin is to provide revised guidance to affected Registered Entities concerning the applicability and implementation of NERC Critical Infrastructure Protection ("CIP") Reliability Standards that provide for Technical Feasibility Exceptions ("TFEs"), pending the adoption of a permanent TFE program. This Compliance Process Bulletin ("Second Interim TFE Bulletin") amends and supersedes Compliance Process Bulletin # 2009-006.[1] Effective immediately, TFE requests are to be submitted on an interim basis in conformance with the "Proposed Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards; Appendix 4D to the Rules of Procedure" ("Interim TFE Rules"), which are attached hereto as Attachment 1. These Interim TFE Rules reference a Part A Form, which is attached hereto as Attachment 2.[2]

Background

Certain requirements in the North American Electric Reliability Corporation's ("NERC") CIP-002 through CIP-009 Reliability Standards provide for TFEs. In its approval of these Reliability Standards,[3] the Federal Energy Regulatory Commission ("FERC") required NERC to establish a structure for accountability for those who rely on a TFE as an exception to compliance with the explicitly stated requirements in the Reliability Standards. Specifically, the Commission directed NERC as the ERO "to develop a set of conditions or criteria that a responsible entity must follow when relying on the technical feasibility exception contained in specific requirements of the CIP Reliability Standards."[4] The Commission also stated that "technical feasibility exceptions should be reported and justified and subject to approval by the ERO or the relevant Regional

[1] http://www.nerc.com/files/2009-006_Public%20Notice-V1.pdf ("First Interim TFE Bulletin").

[2] The Part A Form included in Attachment 2 is provided for reference only. Registered Entities seeking to submit assert a TFE by should fill out the form electronically using the secure compliance information mechanism established by their respective Regional Entities.

[3] *See* Mandatory Reliability Standards for Critical Infrastructure Protection, 122 FERC ¶ 61,040 (2008) ("Order No. 706").

[4] Id. at P 178.

Entity."[5] In Order No. 706, the Commission contemplated that TFEs would be raised and evaluated by the ERO in the context of compliance audits of individual Registered Entities.[6]

Last March, in developing the procedures and structure for Registered Entities to make use of TFEs, NERC staff developed a proposed program under which an entity could request and receive approval of TFEs.[7] The First Posted TFE Program provided for review and approval of TFEs by NERC (rather than the Reginal Entities) outside the compliance audit process, because of concerns that review of TFEs in the context of audits would require specialized expertise beyond that of existing auditors, could take too long to complete, and expose the BPS to undue risk until an audit is completed. The First TFE Program was posted as a proposed amendment to the NERC Rules of Procedure (RoP) for public comment on March 16, 2009. Over 50 sets of comments were submitted in late April and early May in response to the posting.

Given the significant amount of comments received on the First Posted TFE Program, coupled with the first set of Registered Entities reaching the compliant stage of the implementation plan for certain requirements in Reliability Standards CIP-002 through CIP-009 on July 1, 2009, NERC issued the First Interim TFE Bulletin to facilitate the processing of TFEs while the First Posted TFE Program was being evaluated. The First Interim TFE Bulletin was premised on the review of TFEs asserted by Registered Entities in the context of CIP compliance audits and spot-checks.

With the First Interim TFE Bulletin in place, NERC and the Regional Entities continued to work together to develop a second proposed program, taking into consideration comments received on the First Posted TFE Program.[8] The Second Posted TFE Program is structured to allow Regional Entities to receive and consider TFE requests, subject to NERC oversight.[9] Upon initial acceptance of the TFE request based on review of summary information, the Registered Entities will be allowed to operate under a safe harbor for compliance with the particular CIP standard or requirement, until the Regional Entity has completed a more detailed review of the TFE request, subject to NERC's

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[5] Id. at P 209.

[6] Order No. 706 at PP 213-214.

[7] "Request for Comments on Proposed Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards and Related Amendments to NERC Rules Of Procedure," available at http://www.nerc.com/files/TFE_RoP_Changes_Posting_Letter_%_2020090313%20FINAL.pdf, (March 16, 2009) ("First Posted TFE Program").

[8] "Request for Comments on Proposed Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards and Related Amendments to NERC Rules of Procedure," available at http://www.nerc.com/files/Final_TFE_Posting_08-25-09.pdf ("Second Posted TFE Program.").

[9] The Part A form is the Registered Entity's notification to a Regional Entity that a Registered Entity is requesting a TFE. Part A must be submitted in electronic form through a secure mode of transmission to a Regional Ent eligibility. NERC will use Part A information to develop its annual, wide-area report to the Commission and to provide oversight to the TFE process. ity using the provided template. Regional Entities will use Part A for initial screening for

oversight. This program was posted for public comment on August 25, 2009, and comments were received through September 11, 2009. During the comment period, 33 comments were submitted by interested parties.

Amended Interim TFE Process

Interim TFE Rules and Part A Form

In the Second Posted TFE Program, NERC proposed the following:

> Because of the pressing need to provide Registered Entities with a mechanism for requesting TFEs, NERC and the Regional Entities will begin accepting TFE requests as soon as the electronic portal described above for receipt of Part A of the TFE request is available, which is expected to be [September 17, 2009]. This time frame should enable NERC and the Regional Entities an adequate opportunity to consider industry comments on this proposal.

Given the considerable and valuable comments submitted by the industry, NERC and the Regional Entities have taken a little more time to refine the Second Posted TFE Program. The Interim TFE Rules and the Part A Form attached hereto reflect substantial improvements to the two prior proposals based on those comments. The Interim TFE Rules will be considered by the NERC Board for adoption as an Appendix to the NERC RoP on October 16, and assuming Board approval, will be filed with FERC for approval shortly thereafter.

Pending final approval of the Interim TFE Rules and Part A Form, however, there is a significant need for Registered Entities that now or will soon have to be compliant with requirements in Reliability Standards CIP-002 through CIP-009 to have a mechanism to assert TFEs for appropriate requirements. Accordingly, effective immediately, NERC is directing Registered Entities requesting TFEs to submit their proposed TFE requests in accordance with the process outlined in the Interim TFE Rules using the Part A Forms, which Regional Entities are now making available.

Implementation of the TFE procedures detailed in the Interim TFE Rules will be in effect on an interim basis until they are approved by FERC as an Appendix to the RoP. While the process outlined in the interim TFE Rules is consistent with the approach outlined in the Second Posted TFE Program, with Regional Entities taking significant responsibility to review and approve TFEs, the Interim TFE Rules reflect substantial improvements over the Second Posted TFE Program and the First Posted TFE Program based on comments, and a more detailed process for submission of TFEs than was provided for in the First Interim TFE Bulletin.

The following key provisions of the Interim TFE Rules, which are attached to this bulletin, govern the submission of TFEs under this interim process:

- Part A Form: Submission of the Part A form proposed in the Second Posted TFE Program (with slight modification) will serve as the basis for Registered Entities to assert TFEs in this interim process.

- Applicability of TFEs: Consistent with Comments received on the Second Posted TFE Program, TFEs may be requested for the following requirements:
  - CIP-005-1: R2.4, R2.6, R3.1 and R3.2
  - CIP-007-1: R2.3, R4, R5.3, R 5.3.1, R 5.3.2, R 5.3.3, R6 and R6.3

- Effect of TFE Submissions: Once Part A has been through an initial screening and accepted by a Regional Entity, the Registered Entity will be subject to a safe harbor pending final approval or disapproval of the TFE by the Regional Entity using existing processes in the Compliance Monitoring and Enforcement Program.

Grace Period for Submission of Interim TFEs

Although the Interim TFE Rules provide, going forward, that Registered Entities should assert TFEs at least 60 days prior to reaching the compliant stage of the implementation plan for which a TFE is appropriate, NERC and the Regional Entities will provide a submission window for Registered Entities on Tables 1 and 2 of the implementation plan that had to be compliant with requirements for which TFEs can be taken as of July 1, 2009 and for Table 3 entities that will need to be compliant with those requirements on January 1, 2010. Such entities will have **until January 31, 2010** to submit interim TFE requests in accordance with the Interim TFE Rules and the Part A Form.

Because the First Interim TFE Bulletin was issued without any detailed process for accepting interim TFEs, and a number of CIP audits and spot-checks have already been completed without the benefit of that process, any TFE request submitted during this submission window and accepted by a Regional Entity will confer safe harbor treatment for any possible violations found in such CIP audits and spot-checks.

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Process disclaimer: NERC reserves the right to issue new process bulletins or modify existing process bulletins when necessary and at its discretion.

REVISION HISTORY

Version	Date	Reviewers	Revision Description
1	October 12, 2009	NERC and Regional Entity Staff	Version 1.0

ATTACHMENT 1

INTERIM TFE RULES

NERC
NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

October 12, 2009

PROCEDURE FOR REQUESTING AND RECEIVING

TECHNICAL FEASIBILITY EXCEPTIONS

TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS

APPENDIX 4D TO THE RULES OF PROCEDURE

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PROCEDURE FOR REQUESTING AND RECEIVING TECHNICAL FEASIBILITY EXCEPTIONS TO NERC CRITICAL INFRASTRUCTURE PROTECTION STANDARDS

1.0 INTRODUCTION

1.1. Purpose

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation (NERC) provides the procedure by which a Responsible Entity may request and receive an exception from Strict Compliance with the terms of a requirement of certain NERC Critical Infrastructure Protection (CIP) Standards on the grounds of technical feasibility or technical limitations, where the text of the requirement provides for deviation from Strict Compliance with its terms on such grounds. Such an exception is referred to herein as a Technical Feasibility Exception (TFE). This Appendix is intended to implement authorization granted by FERC to allow such exceptions to Applicable Requirements of CIP Standards.[10]

1.2. Authority

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. As such, this Appendix has been approved by (i) the NERC Board of Trustees and (ii) FERC. Any future revisions to this Appendix must be adopted in accordance with Article XI, Section 2 of the NERC *Bylaws* and Section 1400 of the NERC *Rules of Procedure*, including approval by the NERC Board of Trustees and by FERC, in order to become effective.

1.3. Scope

This procedure for requesting and obtaining approval of TFEs is applicable only to those requirements of CIP Standards CIP-002 through CIP-009 that expressly provide either (i) that compliance with the terms of the requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the requirement. As of the effective date of this Appendix, in the United States the Applicable Requirements are:

CIP-005-1: R2.4, R2.6, R3.1 and R3.2

CIP-007-1: R2.3, R4, R5.3, R 5.3.1, R 5.3.2, R 5.3.3, R6 and R6.3

Subsequent versions of these requirements will also be eligible for TFEs if they continue to expressly provide either (i) that compliance with their terms is required where or as technically feasible or (ii) that technical limitations may preclude compliance with the terms of the requirement.[11] Other requirements of CIP Standards may become Applicable Requirements as the result of revisions to the CIP Standards in accordance with the NERC *Bylaws* and *Rules of Procedure* including Appendix 3A, *Reliability Standards Development Procedure*.

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[10] *Mandatory Reliability Standards for Critical Infrastructure Protection*, 122 FERC ¶ 61,040 (2008) (*Order No. 706*), at PP 157-222.

[11] *Order No. 706* at P 157 and note 65 and P 178.

1.4 Obligations of Canadian Entities and Cross-Border Regional Entities

A Responsible Entity that is a Canadian Entity seeking a TFE shall work with the Regional Entity, NERC, and Applicable Governmental Authorities, to the extent permitted under Canadian federal or provincial laws, and without being obligated to authorize the disclosure of information prohibited by Canadian federal or provincial law from disclosure to FERC or other Applicable Governmental Authorities in the U.S., to comply with the requirements of this Appendix. A Canadian Entity shall not be required to subject itself to United States federal or state laws not otherwise applicable to the Canadian Entity in order to utilize this Appendix to obtain a TFE. Cross-border Regional Entities shall implement this TFE Procedure in a manner consistent with their memoranda of understanding with Canadian Entities and Canadian Applicable Governmental Authorities concerning compliance monitoring and enforcement activities in particular provinces.

2.0. DEFINITIONS

For purposes of this Appendix, the following terms shall be defined as set forth in this Section 2.0. Capitalized terms used in this Appendix that are not defined in this Section 2.0 shall have the meanings as defined in, as applicable, (i) the NERC *Glossary of Terms Used in Reliability Standards*, or (ii) Section 1.0 of the NERC *Uniform Compliance Monitoring and Enforcement Program*, Appendix 4C to the NERC *Rules of Procedure*, or (iii) Section 1501 of the NERC *Rules of Procedure*.

2.1 Annual Report: The annual report to be filed by NERC with FERC and other Applicable Governmental Authorities in accordance with Section 12.0 of this Appendix.

2.2 Applicable Requirement: A requirement of a CIP Standard that expressly provides either (i) that compliance with the terms of the requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the requirement.

2.3 Canadian Entity: A Responsible Entity that is organized under Canadian federal or provincial law.

2.4 CIP Standard: Any of NERC Standards CIP-002 through CIP-009.

2.5 Classified National Security Information: Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35; or pursuant to any comparable provision of Canadian federal or provincial law.

2.6 Class-Type TFE: A type or category of equipment, device, process or procedure for which NERC has determined that a TFE from an Applicable Requirement is appropriate, as set forth on a list of such Class-Type TFEs posted on the NERC Web site.

2.7 CMEP: The NERC *Uniform Compliance Monitoring and Enforcement Program* (Appendix 4C to the NERC *Rules of Procedure*) or the Commission-approved program of a Regional Entity, as applicable.

2.8 Compliant Date: The date by which a Responsible Entity is required to be in compliance with an Applicable Requirement of a CIP Standard.

2.9 Confidential Information: (i) Confidential business and market information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; (vi) cybersecurity incident information; provided that public information developed or acquired by an entity shall be excluded from this definition; or (vii) any other information that is designated as Confidential Information in Section 11.0 of this Appendix.

2.10 Covered Asset: A Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

2.11 Delegate: A person to whom the Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R2.3 of CIP Standard CIP-003-1 (or any successor provision).

2.12 Effective Date: The date, as specified in a notice rejecting or disapproving a TFE Request or terminating an approved TFE, on which the rejection, disapproval or termination becomes effective.

2.13 Eligible Reviewer: A person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information, as applicable to the particular information to be reviewed.

2.14 Expiration Date: The date on which an approved TFE expires.

2.15 FERC: The United States Federal Energy Regulatory Commission.

2.16 FOIA: The U.S. Freedom of Information Act, 5 U.S.C. §552.

2.17 Hearing Procedures: Attachment 2 to the NERC or Regional Entity CMEP, as applicable.

2.18 NRC: The United States Nuclear Regulatory Commission.

2.19 NRC Safeguards Information: Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21-73.23; or pursuant to comparable provisions of Canadian federal or provincial law.

2.20 Part A Required Information: Required Information that is to be provided in Part A of a Responsible Entity's TFE Request.

2.21 Part B Required Information: Required Information that is to be provided in Part B of a Responsible Entity's TFE Request.

2.22 Protected FOIA Information: Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)), under any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

2.23 Responsible Entity: An entity that is registered for a reliability function in the NERC *Compliance Registry* and is responsible for complying with an Applicable Requirement, as specified in the "Applicability" section of the CIP Standard.

2.24 Required Information: The information required to be provided in a TFE Request, as specified in Section 4.0 of this Appendix.

2.25 Senior Manager: The person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity's implementation of, and adherence to, the CIP Standards.

2.26 Strict Compliance: Compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

2.27 Technical Feasibility Exception or TFE: An exception from Strict Compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria in Section 3.0 of this Appendix.

2.28 TFE Request: A request submitted by a Responsible Entity in accordance with this Appendix for an exception from Strict Compliance with an Applicable Requirement.

3.0. BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION

3.1. A Responsible Entity may request and obtain approval for a TFE when Strict Compliance with an Applicable Requirement, evaluated in the context or environment of the Responsible Entity's Covered Asset that is the subject of the TFE Request:

(i) is not technically possible or is precluded by technical limitations; or

(ii) is operationally infeasible or could adversely affect reliability of the Bulk Electric System to an extent that outweighs the reliability benefits of Strict Compliance with the Applicable Requirement; or

(iii) while technically possible and operationally feasible, cannot be achieved by the Responsible Entity's Compliant Date for the Applicable Requirement, due to factors such as, for example, scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or

(iv) would pose safety risks or issues that outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or

(v) would conflict with, or cause the Responsible Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Responsible Entity, the Covered Asset or the related Facility that must be complied with and cannot be waived or exempted; or

(vi) would require the incurrence of costs that far exceed the benefits to the reliability of the Bulk Electric System of Strict Compliance with the Applicable Requirement, such as for example by requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset, the related Facility and the Bulk Electric System of continuing to operate with the existing equipment can be shown to be minimal; or

(vii) is a Class-Type TFE as posted by NERC on the NERC Web site.

3.2. A TFE does not relieve the Responsible Entity of its obligation to comply with the Applicable Requirement. Rather, a TFE authorizes an alternative (to Strict Compliance) means of compliance with the Applicable Requirement through the use of compensating measures and/or mitigating measures.

3.3. A TFE typically must be requested for, and will be approved only for, a limited duration, until a stated Expiration Date. The Responsible Entity will be expected to achieve Strict Compliance with the Applicable Requirement by the Expiration Date. Under limited, justified circumstances, a TFE Request may be approved without a specified Expiration Date, subject to periodic review to verify continuing justification for the TFE.

4.0. FORM, CONTENTS AND SUBMISSION OF A TFE REQUEST

4.1. Separate Submissions for Each TFE Request

A separate TFE Request shall be submitted for each Applicable Requirement pertaining to each Covered Asset for which the Responsible Entity seeks a TFE. There is one exception to this requirement: where the Responsible Entity seeks TFEs from the same Applicable Requirement for multiple, similar Covered Assets (either at the same location or at different

locations within the geographic boundaries of a Regional Entity) on the same basis, with the same compensating measures and/or mitigating measures, and with the same proposed Expiration Date, the TFE Requests for all the Covered Assets may be included in one submission. A TFE Request may not be submitted for Covered Assets located within the geographic boundaries of different Regional Entities.

4.2. Form and Format of TFE Request

A TFE Request shall consist of two parts:

(i) Part A of the TFE Request is the notification to a Regional Entity that a Responsible Entity is requesting a TFE. Part A must be submitted in a secure electronic form using the template provided by the Regional Entity. Regional Entities will use the Part A Required Information for initial screening to accept or reject the TFE Request. NERC will use a portion or subset of the Part A Required Information to develop its Annual Report to the Applicable Governmental Authorities and to provide oversight to the TFE process.

(ii) Part B of the TFE Request contains the detailed material to support a TFE Request and includes the documents, drawings, and other information necessary to provide the details and justification for the requested TFE. Part B must also include a detailed description of the compensating measures and/or mitigating measures the Responsible Entity will implement while the TFE is in effect. The Part B Required Information must be available at the Responsible Entity's location for review by the Regional Entity and/or NERC beginning on the date the TFE Request is submitted.

(iii) A Regional Entity may also require the Responsible Entity to file all or a portion of the Part B Required Information with the Regional Entity, provided that (A) the information can be filed in a secure manner that does not compromise the confidentiality of any Confidential Information, Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information, and (B) the Responsible Entity shall not be required to file with a Regional Entity any Part B Required Information if, and to the extent that, such filing is prohibited by law.

4.3. Required Information to be Included in the TFE Request

4.3.1. Part A of a TFE Request shall contain the Part A Required Information specified by the Regional Entity in its template referred to in Section 4.2. Failure to provide all Required Information will result in rejection of the TFE Request as incomplete.

4.3.2 Part B of a TFE Request shall contain the Part B Required Information specified in this Section 4.3.2. Failure to include all Part B Required Information may result in disapproval of the TFE Request. The information provided for items 5 through 10 below should be comprehensive, as opposed to the summary information provided on the Part A submission, and should include any supporting documents.

1. A copy of Part A of the TFE Request.

2. Location(s) of the Covered Asset(s) for which the TFE is (are) requested.

3. The Applicable Requirement that is the subject of the TFE Request.

4. What Class-Type TFE the requested TFE falls within, if applicable.

5. A statement of the basis, consistent with Section 3.1 of this Appendix, on which the Responsible Entity contends the TFE Request should be approved, with supporting documentation. Without limiting the content of this statement, it must include: (i) a description of the specific equipment, device(s), process(es) or procedure(s) at or associated with the Covered Asset(s) and subject to or required by the Applicable Requirement, for which the TFE is requested; and (ii) an explanation of why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement (however, if the TFE Request is for a Class-Type TFE, information in response to item (ii) is not required).

6. A description of the compensating measures and/or mitigating measures the Responsible Entity proposes to implement and maintain as an alternate approach to achieving Strict Compliance with the Applicable Requirement, with supporting documentation. Without limiting the content of this description, it must include an explanation of how, and the extent to which, the proposed compensating measures and/or mitigating measures will reduce or prevent any adverse impacts on (i) the reliable operation of the Covered Asset(s) and (ii) the reliable operation of the Element(s) and Facility(ies) of the Bulk Electric System for which the Responsible Entity is responsible, resulting from the failure to achieve Strict Compliance with the Applicable Requirement, including reducing or eliminating any vulnerabilities resulting from lack of Strict Compliance.

7. An assessment of the impacts on reliable operation of (i) the Covered Asset(s) and (ii) the Elements and the Facility(ies), of the Bulk Electric System for which the Responsible Entity is responsible, if the proposed compensating measures and/or mitigating measures are insufficient or unsuccessful.

8. The Responsible Entity's proposed time schedule for implementing the proposed compensating measures and/or mitigating measures. The TFE Request may identify compensating measures and or mitigating measures that have already been implemented by the Responsible Entity.

9. The Responsible Entity's proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement, including the Responsible Entity's proposed Expiration Date. The Responsible Entity should either (i) describe the specific steps it plans to take to achieve Strict Compliance and the planned schedule for each step, including the date by which

the Responsible Entity intends to achieve Strict Compliance with the Applicable Requirement, and/or (ii) describe the specific research, design, analytical, testing or other activities the Responsible Entity intends to engage in to determine a means of achieving Strict Compliance with the Applicable Requirement, and the Responsible Entity's proposed time schedule for these activities.

10. If the Responsible Entity contends it will not be possible for it to achieve Strict Compliance with the Applicable Requirement and that the TFE being requested should have no Expiration Date, an explanation of why it will not be possible for the Responsible Entity to establish a date by which it can achieve Strict Compliance with the Applicable Requirement, why the TFE Request should be approved with no Expiration Date, and under what conditions, if any, the Responsible Entity will be able to achieve Strict Compliance with the Applicable Requirement at a future unknown and unspecified date.

11. The Responsible Entity's commitment to file quarterly reports with the Regional Entity on the Responsible Entity's progress (i) in implementing the proposed compensating measures and/or mitigating measures, and (ii) towards achieving Strict Compliance with the Applicable Requirement.

12. If the proposed Expiration Date is more than one (1) year from the date the TFE Request is submitted, or if the Responsible Entity contends the TFE should have no Expiration Date, the Responsible Entity's agreement to submit annual reports to the Regional Entity on the continued need for and justification for the TFE, for so long as the TFE remains in effect.

13. If the TFE Request is supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information, a statement identifying which of these categories each such item of information falls into and explaining why each such item of information is Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information. If the Responsible Entity is prohibited by law from disclosing any Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), the TFE Request shall identify the Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information that is subject to such restrictions on disclosure and shall identify the criteria which a person must meet in order to be an Eligible Reviewer of the Classified National Security Information, NRC Safeguards Information and/or Protected FOIA Information.

14. A statement, signed and dated by the Senior Manager or Delegate, that the Senior Manager or Delegate has read the TFE Request and approved the compensating measures and/or mitigating measures and the implementation plan, and on behalf

of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria in Section 3.1 of this Appendix.

4.3.3. All scheduled implementation dates and other activity dates, and the Expiration Date, in the TFE Request shall be stated as specific calendar dates.

4.4 Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information

4.4.1. Upon reasonable advance notice from a Regional Entity or NERC, and subject to Section 4.4.2, the Responsible Entity must provide the Regional Entity or NERC (i) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the Part B Required Information, and (ii) with access to the Covered Asset(s) and the related Facility(ies) for purposes of making a physical review and inspection.

4.4.2. If the Responsible Entity is prohibited by law from disclosing any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information to any person who is not an Eligible Reviewer (such as, for example, the restriction on access to Classified National Security Information specified in Section 4.1 of Executive Order No. 12958, as amended), then such Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information shall only be reviewed by a representative or representatives of the Regional Entity or NERC (which may include contractors) who are Eligible Reviewers.

4.4.3. The Regional Entity or NERC, as applicable, will work cooperatively with the Responsible Entity to access Protected FOIA Information in a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure.

4.5 Submission of TFE Request in Advance of Compliant Date

The Responsible Entity should submit a TFE Request at least sixty (60) calendar days prior to the Responsible Entity's Compliant Date for the Applicable Requirement that is the subject of the TFE Request, to avoid the risk that the initial screening will not be completed by the Compliant Date and the Responsible Entity will become subject to issuance of a notice of Alleged Violation for noncompliance with the Applicable Requirement.

5.0 REVIEW, ACCEPTANCE/REJECTION, AND APPROVAL/DISAPPROVAL OF TFE REQUESTS

5.1. Initial Screening of TFE Request for Acceptance or Rejection

5.1.1. Upon receipt of Part A of a TFE Request, the Regional Entity (i) will assign a unique identifier to the TFE Request, and (ii) will review the TFE Request to

determine that the TFE Request is for an Applicable Requirement and that all Part A Required Information has been provided.

5.1.2. The unique identifier assigned to the TFE Request will be in the form of XXXX-YYYY-TFEZZZZZ, where "XXXX" is the year in which the TFE Request is received by the Regional Entity (*e.g.*, "2009"); "YYYY" is the acronym for the Regional Entity within whose geographic boundaries the Covered Asset is located[12]; and "ZZZZZ" is the sequential number of the TFE Requests received by the Regional Entity in that year. If the TFE Request is amended or resubmitted, "-AZ" will be added to the end of the identifier, where "Z" is the number of the amendment to the TFE Request.

5.1.3.

(a) The Regional Entity will typically complete its initial screening within sixty (60) calendar days after receiving the TFE Request.

(b) If the Regional Entity determines at any time that for a specified period of time, the Regional Entity will be unable to complete initial screenings of TFE Requests within sixty (60) calendar days after receipt and substantive reviews of TFE Requests within one year after receipt, the Regional Entity, based on consultation with NERC, shall establish an alternative time period objective and work plan for completing initial screenings and substantive reviews of TFE Requests during the specified period of time. The alternative time period objective and work plan shall be publicized by issuance of a notice to all Registered Entities within the geographic boundaries of the Regional Entity and by posting on the Regional Entity's Website.

(c) If the Regional Entity is unable to complete its initial screening within sixty (60) calendar days after receiving the TFE Request, the Responsible Entity will not be subject to imposition of any findings of violations, or imposition of penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable Requirement that is the subject of the TFE Request, beginning on the sixty-first (61st) calendar day after the Regional Entity received the TFE Request and continuing thereafter in accordance with Section 5.3.

5.1.4. If, based on its initial screening, the Regional Entity determines the TFE Request is for an Applicable Requirement and contains all Part A Required Information,

[12] The acronyms to be used are: FRCC (Florida Reliability Coordinating Council); MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (Reliability*First* Corporation); SERC (SERC Reliability Corporation); SPP (Southwest Power Pool Regional Entity); TRE (Texas Regional Entity); WECC (Western Electricity Coordinating Council); and NERC (applicable where NERC, rather than a Regional Entity, is the Compliance Enforcement Authority for the Responsible Entity).

and that the Part A Required Information provided by the Responsible Entity indicates the TFE Request satisfies the criteria for approval of a TFE in Section 3.1 of this Appendix, the Regional Entity shall send a notice to the Responsible Entity, with a copy to NERC, accepting the TFE Request as complete.

5.1.5. If the Regional Entity determines, based on its review of the Part A Required Information provided by the Responsible Entity, that the TFE Request (i) is not for an Applicable Requirement, or (ii) does not contain all Part A Required Information, or (iii) does not satisfy the criteria for approval of a TFE in Section 3.1 of this Appendix, the Regional Entity shall send a notice to the Responsible Entity, with a copy to NERC, rejecting the TFE Request. The notice shall state an Effective Date which shall be no less than thirty-one (31) calendar days after the date of issuance of the notice.

5.1.6. If the Regional Entity rejects the TFE Request because not all Part A Required Information was provided, the Regional Entity's notice shall identify the Part A Required Information that was not provided in the TFE Request. The Responsible Entity may resubmit the TFE Request with all Part A Required Information included. If the Responsible Entity resubmits the TFE Request with all Part A Required Information included prior to the Effective Date, the Responsible Entity will not be subject to imposition of any findings of violations, or imposition of penalties or sanctions for violations, for failure to be in Strict Compliance with the Applicable Requirement that is the subject of the TFE Request, during the period the Regional Entity is conducting initial screening of the resubmitted TFE Request. The Responsible Entity may resubmit a TFE Request pursuant to this Section 5.1.6 only one time.

5.1.7. The Regional Entity must either accept the TFE Request in its entirety or reject the TFE Request in its entirety, even if the TFE Request is for two or more Covered Assets subject to the same Applicable Requirement.

5.2 Substantive Review of TFE Request for Approval or Disapproval

5.2.1 The Regional Entity shall conduct a substantive review of an accepted TFE Request to determine if it should be approved in accordance with Section 3.1 of this Appendix, or disapproved. The Regional Entity will conduct the substantive review in accordance with established compliance monitoring processes under the CMEP, such as a Compliance Audit or Spot-Check. The compliance monitoring activity may be conducted solely for the purpose of substantive review of the TFE Request, or may include review of the Responsible Entity's compliance with other reliability standards. As part of its substantive review, the Regional Entity may request access to and review the Part B Required Information, including any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information that is necessary to support the TFE Request; may conduct one or more physical inspections of the Covered Asset(s) and the related Facility(ies); may request additional information from the Responsible Entity; and may engage in discussions with the Responsible Entity concerning possible revisions to the TFE Request.

5.2.2. The Regional Entity shall complete its substantive review of the TFE Request and make its determination of whether the TFE Request is approved or disapproved, and issue a notice (in accordance with Sections 5.2.4 or 5.2.5) stating the TFE Request is approved or disapproved, within one (1) year after receipt of the TFE Request or within an alternative time period objective as specified in a work plan established under Section 5.1.3(b). In addition, the Regional Entity may extend the one-year time period for individual TFE Requests by issuing a notice to the Responsible Entity, with a copy to NERC, stating the revised date by which the Regional Entity will issue its notice approving or disapproving the TFE Request.

5.2.3. The Regional Entity must either approve the TFE Request in its entirety or disapprove the TFE Request in its entirety, even if the TFE Request is for two or more Covered Assets subject to the same Applicable Requirement.

5.2.4. If the Regional Entity approves the TFE Request, the Regional Entity shall issue a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request is approved.

5.2.5. If the Regional Entity disapproves the TFE Request, the Regional Entity shall issue a notice to the Responsible Entity, with a copy to NERC, stating that the TFE Request is disapproved and stating the reasons for the disapproval. In its notice disapproving a TFE Request, the Regional Entity shall state any revisions to the TFE Request it is able to identify that, if made by the Responsible Entity, would result in approval of the TFE Request. Such revisions may include, but are not limited to, changes to the Responsible Entity's proposed (i) compensating measures and/or mitigating measures, (ii) implementation schedules, or (iii) Expiration Date. If the Responsible Entity submits an amended TFE Request to the Regional Entity incorporating the revisions to the TFE Request set forth in the notice of disapproval, then the Regional Entity shall issue a notice, in accordance with Section 5.2.4, approving the revised TFE Request.

5.2.6. A notice disapproving a TFE Request shall state an Effective Date, which shall be no earlier than the sixty-first (61st) calendar day following the date of the notice. Following the Effective Date, the Responsible Entity is subject to issuance of a notice of Alleged Violation by the Regional Entity with respect to the Applicable Requirement that was the subject of the disapproved TFE Request, unless the Responsible Entity (i) has submitted an amended TFE Request in accordance with Section 5.2.5, or (ii) has achieved Strict Compliance with the Applicable Requirement. Provided, that if the Effective Date occurs prior to the Responsible Entity's Compliant Date for the Applicable Requirement, then the Responsible Entity is not subject to issuance of a notice of Alleged Violation until the Compliant Date. A notice of Alleged Violation issued with respect to the Applicable Requirement shall be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

5.2.7 Within thirty (30) calendar days after issuing a notice approving or disapproving a TFE Request, the Regional Entity shall submit a report to NERC setting forth the basis on which the Regional Entity approved or disapproved the TFE Request.

5.3 No Findings of Violations or Imposition of Penalties for Violations of an Applicable Requirement for the Period a TFE Request is Being Reviewed

The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE Request, for the period from:

(i) the earlier of (A) the date of the Regional Entity's notice that the TFE Request is accepted as complete and (B) the date that is sixty (60) calendar days after submission of the TFE Request,

to:

(ii) (A) the Effective Date of the Regional Entity's notice that the TFE Request is rejected, or (B) the date of the Regional Entity's notice that the TFE Request is approved, or (C) the Effective Date of the Regional Entity's notice that the TFE Request is disapproved, whichever is applicable.

Provided, that (i) while a TFE Request is undergoing initial screening, the Regional Entity shall not issue a notice of Alleged Violation to the Responsible Entity for being noncompliant with the Applicable Requirement that is the subject of the TFE Request during the period on and after the TFE Request was submitted; and (ii) if the TFE Request is accepted, the Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of the accepted TFE Request, during the period from submission of the TFE Request to the date of the Regional Entity's notice that the TFE Request is accepted.

6.0 IMPLEMENTATION AND REPORTING BY THE RESPONSIBLE ENTITY PURSUANT TO AN APPROVED TFE

6.1. The Responsible Entity will be required to implement compensating measures and/or mitigating measures as described, and in accordance with the time schedule(s) set forth, in the approved TFE.

6.2. Unless the TFE has been approved with no Expiration Date, the Responsible Entity will be required to implement steps, or conduct research and analysis, towards achieving Strict Compliance with the Applicable Requirements and eliminating the TFE, as described, and in accordance with the time schedule set forth, in the approved TFE.

6.3. The Responsible Entity shall submit quarterly reports to the Regional Entity on (i) the Responsible Entity's progress in implementing the compensating measures and/or mitigating measures the Responsible Entity is adopting pursuant to the approved TFE, and (ii) the Responsible Entity's progress in implementing steps and/or conducting research and/or analysis to achieve Strict Compliance with the Applicable Requirement.

6.4. All quarterly reports shall be submitted to the Regional Entity by no later than the last business day of the month immediately following the end of the calendar quarter for which the report is being submitted.

6.5. If the Expiration Date of the TFE is more than one (1) year after the TFE Request was submitted, or if the approved TFE has no Expiration Date, the Responsible Entity shall submit annual reports to the Regional Entity supporting the continuing need and justification for the approved TFE. The first annual report shall be due on the last business day of the month immediately following the end of the fourth calendar quarter after acceptance of the TFE Request. The annual report shall contain information as specified in items 1 through 10 and 13 of Section 4.3.2, but revised as appropriate based on current information as of the date of the report. The annual report shall not propose revisions to implementation, research and reporting dates that were specified in the approved TFE, but rather shall report on the Responsible Entity's progress and accomplishments in carrying out the implementation and research activities. Any revisions to implementation, research and reporting dates, or to other requirements, that were specified in the approved TFE shall be requested by an amendment filing in accordance with Section 7.2 of this Appendix.

6.6. Each report submitted pursuant to Section 6.3 or Section 6.5 shall include a statement, signed and dated by the Senior Manager or Delegate, that the Senior Manager or Delegate has read, and approved the submission of, the report.

6.7. The Regional Entity shall issue an acknowledgement notice to the Responsible Entity and to NERC that a report has been received, but no other issuances shall be required from the Regional Entity in response to submission of such a report.

6.8. If a Responsible Entity fails to implement or maintain a compensating measure or mitigating measure or fails to conduct research or analysis towards achieving Strict Compliance, in accordance with the approved TFE; or fails to submit one or more reports by the required submission date, the Responsible Entity (i) is required to file a Self Report in accordance with Section 3.5 of the CMEP, and (ii) will be subject to issuance of a notice of Alleged Violation for noncompliance with the Applicable Requirement that is the subject of the approved TFE. Any such notice of Alleged Violation shall be processed in accordance with Sections 5.0, 6.0 and 7.0 of the CMEP.

6.9. At least thirty (30) calendar days prior to the Expiration Date, the Responsible Entity shall submit a report to the Regional Entity, signed and dated by the Senior Manager or Delegate, demonstrating that the Responsible Entity has achieved, or will be able to achieve by the Expiration Date, Strict Compliance with the Applicable Requirement.

7.0 AMENDMENT OF A TFE REQUEST OR APPROVED TFE

7.1. Amendment of a Pending TFE Request

A Responsible Entity may at any time amend a pending TFE Request that is under review by a Regional Entity, for the purpose of providing additional or revised Required Information.

The Responsible Entity shall submit an amended Part A and shall include in the Part B Required Information a written explanation of what Required Information is being added or revised and the purpose of the amendment. Submission of an amendment to a pending TFE Request may, in the Regional Entity's discretion, extend the time period for the Regional Entity's initial screening or substantive review, as applicable, of the TFE Request.

7.2. Amendment of an Approved TFE

7.2.1. A Responsible Entity may submit an amendment to an approved TFE for the purpose of requesting revision to any of the requirements specified in the approved TFE, such as, for example, revisions to the specific compensating measures and/or mitigating measures to be implemented, revisions to the schedule for implementing the compensating measures and/or mitigating measures, or a change in the Expiration Date. The Responsible Entity shall submit all the Part A Required Information, as amended, as specified in Section 4.3.1, and make available the Part B Required Information, as amended, as specified in Section 4.3.2. The Responsible Entity shall also include in the Part B Required Information a written explanation of the amendment, the reason for and purpose of the amendment, and the reason the requirements in the approved TFE should be revised.

7.2.2. The Regional Entity shall review the amended Part A Required Information to determine if it is complete, and shall issue a notice to the Responsible Entity, with a copy to NERC, stating if the amendment is accepted as complete or rejected as incomplete. If the Regional Entity issues a notice that the amendment is accepted as complete, the Regional Entity shall conduct a substantive review of the amendment, including such review of the amended Part B Required Information as the Regional Entity deems necessary, to determine if the amended TFE Request should be approved or disapproved, and shall issue a notice of approval or disapproval, in accordance with Section 5.2. If the Regional Entity determines the amendment should be approved, the TFE as amended replaces the previously approved TFE.

7.2.3. An approved TFE that is the subject of an amendment filing remains in effect unless and until the amendment is approved by the Regional Entity.

8.0 COMPLIANCE AUDIT REQUIREMENTS RELATING TO APPROVED TFE

8.1. Following approval of a Responsible Entity's TFE Request, subsequent Compliance Audits of the Responsible Entity conducted prior to the Expiration Date shall include audit of (i) the Responsible Entity's implementation and maintenance of the compensating measures and/or mitigating measures specified in the approved TFE, in accordance with the time schedule set forth in the approved TFE, and (ii) the Responsible Entity's implementation of steps and conduct of research and analyses towards achieving Strict Compliance with the Applicable Requirement, in accordance with the time schedule set forth in the approved TFE. These topics shall be included in such Compliance Audits regardless of whether a Compliance Audit was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

8.2 The first Compliance Audit of the Responsible Entity subsequent to the Expiration Date shall include audit of the Responsible Entity's Strict Compliance with the Applicable Requirement that was the subject of the approved TFE. This topic shall be included in such Compliance Audit regardless of whether it was otherwise scheduled to include the CIP Standard that includes the Applicable Requirement.

9.0 TERMINATION OF AN APPROVED TFE

9.1. An approved TFE shall terminate on its Expiration Date, unless it is terminated at an earlier date pursuant to this Section 9.0.

9.2. The Responsible Entity may terminate an approved TFE by submitting a notice to the Regional Entity stating that the Responsible Entity is terminating the TFE and the Effective Date of the termination.

9.3. A Regional Entity or NERC may terminate an approved TFE based on the results of a Spot-Check initiated and conducted pursuant to the CMEP to determine whether the approved TFE should be terminated prior to its Effective Date or should be revised to impose additional or different requirements or to advance the Expiration Date to an earlier date. Following issuance to the Responsible Entity of a draft Spot-Check report concluding that the approved TFE should be terminated or revised (including by advancement of the Expiration Date), and opportunity for the Responsible Entity to submit comments on the draft Spot-Check report, the Regional Entity or NERC, if it has determined that the approved TFE should be terminated or revised, shall issue a notice of termination to the Responsible Entity stating the Effective Date of termination of the approved TFE. The Effective Date shall be no earlier that the sixty-first (61st) date after the date of issuance of the notice of termination.

9.4. The Responsible Entity shall not be subject to imposition of any findings of violations, or imposition of penalties or sanctions for violations, for failure to be in Strict Compliance with an Applicable Requirement that is the subject of a TFE that has been terminated, until the Effective Date of the notice of termination.

10.0 HEARINGS AND APPEALS PROCESS FOR RESPONSIBLE ENTITY

A Responsible Entity whose TFE Request has been rejected or disapproved, or whose approved TFE has been terminated, and thereafter receives a notice of Alleged Violation for the Applicable Requirement that was the subject of the TFE Request or the approved TFE, is entitled to a hearing before the Regional Entity Hearing Body (or before the NERC Compliance and Certification Committee if NERC is the Compliance Enforcement Authority with respect to the Responsible Entity's compliance with the Applicable Requirement), in accordance with the Hearing Procedures, if the Responsible Entity contests the notice of Alleged Violation, the proposed penalty or sanction, or Mitigation Plan components. The Responsible Entity may raise issues relating to the rejection or disapproval of its TFE Request or the termination of the approved TFE in the hearing concerning the notice of Alleged Violation, proposed penalty or sanction, or Mitigation Plan components.

11.0 CONFIDENTIALITY OF TFE REQUESTS AND RELATED INFORMATION

11.1. Except as expressly stated in this Section 11.0, the submission, review, acceptance/rejection, and approval/disapproval of TFE Requests, and the implementation and termination of approved TFEs, shall be maintained as confidential. The following documents are Confidential Information and shall be treated as such in accordance with Section 1500 of the NERC *Rules of Procedure*:

(i) All TFE Requests and proposed amendments, including without limiting the foregoing the Required Part A Information and Required Part B Information submitted, filed or made available by the Responsible Entity;

(ii) All notices issued by a Regional Entity or NERC pursuant to this Appendix;

(iii) All requests for documents or information made by a Regional Entity or NERC pursuant to this Appendix;

(iv) All submissions of documents and information by a Responsible Entity to a Regional Entity or NERC pursuant to this Appendix;

(v) All post-approval reports submitted by a Responsible Entity pursuant to this Appendix;

(vi) All correspondence, notes, drawings, drafts, work papers, electronic communications, reports and other documents generated by a Regional Entity or NERC in connection with a TFE Request, including (without limiting the scope of this provision) in connection with reviewing a TFE Request and supporting documents and information submitted, filed or made available by the Responsible Entity, conducting a physical inspection of the Covered Asset(s) or the related Facility(ies), reviewing and analyzing post-approval reports submitted by a Responsible Entity, or conducting compliance monitoring processes pursuant to the CMEP with respect to a TFE Request or approved TFE.

11.2. The Annual Report to be submitted by NERC pursuant to Section 12.0 shall be filed with Applicable Governmental Authorities on a public basis and shall not be considered Confidential Information. NERC shall prepare the Annual Report in such a manner that no Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information is disclosed in the Annual Report.

12.0 ANNUAL REPORT TO FERC AND OTHER APPLICABLE GOVERNMENTAL AUTHORITIES

12.1. Contents of Annual Report

NERC shall submit an Annual Report to FERC that provides a wide-area analysis or analyses, which NERC shall prepare in consultation with the Regional Entities, regarding the use

of TFEs and the impact on the reliability of the Bulk Electric System, as required by Paragraphs 220 and 221 of *Order No. 706*, which state:

> . . . [W]e direct the ERO to submit an annual report to the Commission that provides a wide-area analysis regarding use of the technical feasibility exception and the effect on Bulk-Power System reliability. The annual report must address, at a minimum, the frequency of the use of such provisions, the circumstances or justifications that prompt their use, the interim mitigation measures used to address vulnerabilities, and efforts to eliminate future reliance on the exception. . . [T]he report should contain aggregated data with sufficient detail for the Commission to understand the frequency with which specific provisions are being invoked as well as high level data regarding mitigation and remediation plans over time and by region . . . .

Copies of the Annual Report shall be filed with other Applicable Governmental Authorities. The Annual Report shall contain, at a minimum, the following information:

(i) The frequency of use of the TFE Request process, disaggregated by Regional Entity and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, including (A) the numbers of TFE Requests that have been submitted, accepted/rejected, and approved/disapproved during the preceding year and cumulatively since the effective date of this Appendix, (B) the number of approved TFEs that are still in effect as of on or about the date of the Annual Report; (C) the numbers of approved TFEs that reached their Expiration Dates or were terminated during the preceding year; and (D) the number of approved TFEs that are scheduled to reach their Expiration Dates during the ensuing year;

(ii) Categorization of the submitted and approved TFE Requests to date by broad categories such as the general nature of the TFE Request and the Applicable Requirements covered by submitted and approved TFE Requests;

(iii) Categorization of the circumstances or justifications on which the approved TFEs to date were submitted and approved, by broad categories such as the need to avoid replacing existing equipment with significant remaining useful lives, unavailability of suitable equipment to achieve Strict Compliance in a timely manner, or conflicts with other statutes and regulations applicable to the Responsible Entity;

(iv) Categorization of the compensating measures and mitigating measures implemented and maintained by Responsible Entities pursuant to approved TFEs, by broad categories of compensating measures and mitigating measures;

(v) A discussion, on an aggregated basis, of Compliance Audit results and findings concerning the implementation and maintenance of compensating measures and mitigating measures, and the implementation of steps and the conduct of research

and analyses to achieve Strict Compliance with the Applicable Requirements, by Responsible Entities in accordance with approved TFEs;

(vi) Assessments, by Regional Entity (and for more discrete areas within a Regional Entity, if appropriate) and in the aggregate for the United States and for the jurisdictions of other Applicable Governmental Authorities, of the wide-area impacts on the reliability of the Bulk Electric System of approved TFEs in the aggregate, including the compensating measures and mitigating measures that have been implemented; and

(vii) Discussion of efforts to eliminate future reliance on TFEs.

12.2. Due Date for Annual Reports

The first Annual Report shall cover the period through the end of the fourth full calendar quarter ending after the effective date of this Appendix, and shall be filed with FERC and with other Applicable Governmental Authorities no later than 90 days after the end of such calendar quarter. Subsequent Annual Reports shall be filed at one year intervals thereafter.

12.3. Annual Report to be a Public Document

The Annual Report shall be a public document. Therefore, NERC shall prepare the annual report in such a manner that it does not include or disclose any Confidential Information, Classified National Security Information, NRC Safeguards Information or Protected FOIA Information.

12.4. Responsible Entities Must Cooperate in Preparation of Annual Report

As specified in Paragraph 220, note 74 of Order No. 706, Responsible Entities must cooperate with NERC and in providing information deemed necessary for NERC to fulfill its reporting obligations to FERC.

ATTACHMENT 2

PART A FORM
AND INSTRUCTIONS

Complete and submit the following information:

TFE Request Identification Number (Regional Entity use only):

Responsible Entity Name:

Responsible Entity NERC Compliance Registry ID:

Request Submittal Date:

Is this an amended TFE Request? Select One...

If yes, what was the original TFE Request Identification Number?

Technical Contact:

Name:

Mailing Address:

Phone Number: Extension:

Fax Number:

E-mail:

Applicable Requirement for which the TFE is being requested: Select One...

Number of Covered (Cyber) Asset(s) for which the TFE is being requested:

Is a similar TFE Request being filed with other regions? Select One...

If yes, which regions will this TFE (with different Covered Assets) be submitted to?

FRCC:	Select One...	SERC:	Select One...
MRO:	Select One...	SPP RE:	Select One...
NPCC:	Select One...	Texas RE:	Select One...
RFC:	Select One...	WECC:	Select One...

For which type(s) of equipment, process, or procedure at or associated with the Covered Asset(s) and subject to or required by the Applicable Requirement is the TFE is requested? If relying upon a NERC Class-Type TFE, select "Class-Type TFE" and enter the Class-Type TFE Identifier below:
Select one or more types

If Other, please briefly describe or if Class-Type TFE, enter the NERC Class-Type TFE Identifier:

What is the basis for the TFE Request? Select One...

Provide a brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement:

What is the estimated impact on reliable operation of the Bulk Electric System of the Responsible Entity if the compensating and mitigating measures for the covered asset(s) are not sufficient and cyber security is compromised? Select One...

Provide a brief summary of the compensating and/or mitigating measures that are planned or have been implemented:

Have the compensating and/or mitigating measures been fully implemented? Select One...

If Yes, what is the actual completion date for implementing all necessary compensating and/or mitigating measures?

If No, what is the proposed date for implementing all necessary compensating and/or mitigating measures?

Is there a proposed plan and time schedule for terminating the TFE and achieving Strict Compliance with the Applicable Requirement? Select One...

If Yes, what is the proposed Expiration Date?
And, what is the plan for terminating the TFE? Select One...
Provide a brief explanation for "Other":

If No, explain why an open-ended TFE is requested:

Is this TFE Request supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information? Select One...

Does the Responsible Entity understand and agree to the requirement to submit timely periodic and other reports as specified in the approved TFE? The reports that the Responsible Entity may be required to submit following approval of the TFE request to the applicable Regional Entity include: (i) reports on the Responsible Entity's progress in implementing and maintaining the compensating measures and/or mitigating measures the Responsible Entity is adopting pursuant to the approved TFE; (ii) reports on the Responsible Entity's progress in implementing steps and/or conducting research and/or analysis to achieve Strict Compliance with the Applicable Requirement; and (iii) reports supporting the continued justification for the approved TFE.
Select One...

Include a statement, signed and dated by the Senior Manager or Delegate, asserting that the Senior Manager or Delegate has read the TFE Request and approved the compensating measures and/or mitigating measures and the implementation plan, and on behalf of the Responsible Entity that the Responsible Entity believes approval of the TFE Request is warranted pursuant to the criteria specified in the Part A Instructions.

Technical Feasibility Exception Request – Part A Instructions

Applicable to NERC Reliability Standards CIP-002-1 through CIP-009-1

Please complete the information in the Technical Feasibility Exception Request – Part A form. The information provided on the Part A form should be summary in nature. Comprehensive responses including supporting documents should be included in the Part B Required Information.

Complete responses are essential to the evaluation and approval of the TFE Request. All submitted TFE Requests and supporting documentation will be protected from unauthorized access and disclosure by the Regional Entity recipient per NERC Rules of Procedure Section 1500.

TFE Requests are limited to those requirements in the Cyber Security Standards (CIP-002-1 through CIP-009-1) where technical feasibility or similar language is found ("Applicable Requirements"). As of October 1, 2009, the Applicable Requirements are:

- CIP-005-1, Requirements R2.4, R2.6, R3.1, and R3.2
- CIP-007-1, Requirements R2.3, R4, R5.3, R5.3.1, R5.3.2, R5.3.3, R6, and R6.3

Applicability is specific to the requirement and is not automatically conveyed to any sub-requirements of the Applicable Requirement.

One TFE Request may be submitted for multiple Covered Assets that are subject to an Applicable Requirement, provided the Covered Assets:

- are located within the same Regional Entity,
- have a common basis of technical infeasibility,
- will employ the same compensating measures and/or mitigating measures,
- will be subject to a common implementation plan to achieve Strict Compliance with the Applicable Requirement, and
- have the same Expiration Date for the TFE.

An example would involve multiple device types (e.g. printers, card access controllers, and network switches) that cannot support the required password length, and are compensated for in the same way.

Definitions

Note: Capitalized terms may appear in the NERC *Glossary of Terms Used in Reliability Standards*, the NERC Uniform Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure), or in the list of Definitions below. The Definitions below are from Section 2.0 of the NERC TFE Procedure.

Applicable Requirement: A requirement of a CIP standard that expressly provides either (i) that compliance with the terms of the requirement is required where or as technically feasible, or (ii) that technical limitations may preclude compliance with the terms of the requirement.

Classified National Security Information: Required Information that has been determined to be protected from unauthorized disclosure pursuant to Executive Order No. 12958, as amended, and/or the regulations of the NRC at 10 C.F.R. §95.35; or pursuant to any comparable provision of Canadian federal or provincial law.

Compliant Date: The date by which a Responsible Entity is required to be in compliance with an Applicable Requirement of a CIP Standard.

Confidential Information: (i) Confidential business and market information; (ii) Critical Energy Infrastructure Information; (iii) personnel information that identifies or could be used to identify a specific individual, or reveals personnel, financial, medical, or other personal information; (iv) work papers, including any records produced for or created in the course of an evaluation or audit; (v) investigative files, including any records produced for or created in the course of an investigation; (vi) cybersecurity incident information; provided, that public information developed or acquired by an entity shall be excluded from this definition; or (vii) any other information that is designated as Confidential Information in Section 11.0 of the NERC TFE Procedure.

Covered Asset: A Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement.

Delegate: A person to whom the Senior Manager of a Responsible Entity has delegated authority pursuant to Requirement R2.3 of CIP Standard CIP-003-1 (or any successor provision).

Eligible Reviewer: A person who has the required security clearances or other qualifications, or who otherwise meets the applicable criteria, to have access to Confidential Information, Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information, as applicable to the particular information to be reviewed.

Expiration Date: The date on which an approved TFE expires.

NRC Safeguards Information : Required Information that is subject to restrictions on disclosure pursuant to 42 U.S.C. §2167 and the regulations of the NRC at 10 C.F.R. §73.21 – 73.23; or pursuant to comparable provisions of Canadian federal or provincial law.

Protected FOIA Information: Required Information, held by a governmental entity, that is subject to an exemption from disclosure under FOIA (5 U.S.C. §552(e)) or any similar state or local statutory provision, or under any comparable provision of Canadian federal or provincial law, which would be lost was the Required Information to be placed into the public domain.

Responsible Entity: An entity that is registered for a reliability function in the NERC *Compliance Registry* and is responsible for complying with an Applicable Requirement, as specified in the "Applicability" section of the CIP Standard.

Senior Manager: The person assigned by the Responsible Entity, in accordance with CIP Standard CIP-003-1 Requirement R2 (or subsequent versions), to have overall responsibility for leading and managing the Responsible Entity's implementation of, and adherence to, the CIP Standards.

Strict Compliance: Compliance with the terms of an Applicable Requirement without reliance on a Technical Feasibility Exception.

Technical Feasibility Exception (TFE): An exception from Strict Compliance with the terms of an Applicable Requirement on grounds of technical feasibility or technical limitations in accordance with one or more of the criteria shown below.

TFE Request: A request submitted by a Responsible Entity in accordance with the NERC TFE Procedure for an exception from Strict Compliance with an Applicable Requirement.

BASIS FOR APPROVAL OF A TECHNICAL FEASIBILITY EXCEPTION

A Responsible Entity may request and obtain approval for a TFE when Strict Compliance with an Applicable Requirement, evaluated in the context or environment of the Responsible Entity's Covered Asset that is the subject of the TFE Request:

1. is not technically possible, or is precluded by technical limitations; or
2. is operationally infeasible or could adversely affect reliability of the Bulk Electric System to an extent that outweighs the reliability benefits of Strict Compliance with the Applicable Requirement; or
3. while technically possible and operationally feasible, cannot be achieved by the Responsible Entity's Compliant Date for the Applicable Requirement, due to factors such as scarce technical resources, limitations on the availability of required equipment or components, or the need to construct, install or modify equipment during planned outages; or
4. would pose safety risks or issues that outweigh the reliability benefits of Strict Compliance with the Applicable Requirement; or
5. would conflict with, or cause the Responsible Entity to be non-compliant with, a separate statutory or regulatory requirement applicable to the Responsible Entity, the Covered Asset or the related Facility that must be complied with and cannot be waived or exempted; or
6. would require the incurrence of costs that far exceed the benefits to the reliability of the Bulk Electric System of Strict Compliance with the Applicable Requirement, such as for example by requiring the retirement of existing equipment that is not capable of Strict Compliance with the Applicable

Requirement but is far from the end of its useful life and replacement with newer-generation equipment that is capable of Strict Compliance, where the incremental risk to the reliable operation of the Covered Asset, the related Facility and the Bulk Electric System of continuing to operate with the existing equipment can be shown to be minimal or

7. satisfies the criteria for a Class-Type TFE as posted by NERC on the NERC Website.

GENERAL INSTRUCTIONS

1. All questions must be answered. Failure to answer a question will result in rejection of the TFE Request. Entities will have thirty (30) days after the first rejection to remedy any issues and resubmit the TFE Request.

2. All text fields are limited to 255 characters.

3. Drop-down lists are indicated by the text "Select One…" You must select a response from the list provided.

SPECIFIC QUESTION INSTRUCTIONS

Technical Contact: Enter the contact information for Responsible Entity's designated contact person for the TFE Request.

Number of Covered (Cyber) Asset(s) for which the TFE is being requested: Enter the total number of Covered Assets covered by this TFE Request. Do not include Covered Assets located within any other Regional Entities.

Is a similar TFE Request being filed with other Regional Entities? Indicate Yes or No. If your answer is "Yes," identify the other Regional Entities that will receive a similar TFE Request(s). This information will be used to coordinate the screening and evaluation of the TFE Requests by all the Regional Entities to which it is submitted.

Provide a brief statement describing and justifying why the Responsible Entity cannot achieve Strict Compliance with the Applicable Requirement: Provide a summary-level explanation of the technical infeasibility issue and why you cannot achieve Strict Compliance with the Applicable Requirement. A comprehensive explanation, including supporting documents, should be included in your Part B Required Information.

Provide a brief summary of the compensating and/or mitigating measures that are planned or have been implemented: Provide a summary-level overview of how you have or will compensate and/or mitigate the inability to achieve Strict Compliance with the Applicable Requirement. A comprehensive description of the compensating measures and/or mitigating measures and the Responsible Entity's plan for implementing them, including supporting documents, should be included in your Part B Required Information.

Is this TFE Request supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, or Protected FOIA Information? This question refers, in the United States, to information classified by a US Government Agency (refer to Executive Order 12958 – Classified National Security Information, as Amended), information protected under 10 CFR 73.21-73.23 – Protection of Safeguards Information, and information asserted by a US Government Agency to be protected from Freedom of Information Act requests in accordance with 5 U.S.C.§ 552(b); or to information subject to similar statutes and regulations applicable to Responsible Entities in Canada. Additional information on Classified National Security Information can be found at: http://www.archives.gov/isoo/. Information on comparable Canadian requirements can be found here: http://www.csis-scrs.gc.ca/nwsrm/bckgrndrs/bckgrndr12-eng.asp. Additional information on the protection of NRC Safeguards Information can be found at: http://www.nrc.gov/reading-rm/doc-collections/cfr/part073/. Information on FOIA exemptions can be found at: http://www.osec.doc.gov/omo/FOIA/exemptions.htm.

Does the Responsible Entity understand and agree to the requirement to submit timely periodic reports? Entities are required to submit quarterly progress reports concerning (i) implementation and maintenance of the compensating measures and/or mitigating measures, and (ii) implementation activities towards achieving Strict Compliance with the Applicable Requirement by a specified Expiration Date for the TFE. Additionally, if the proposed Expiration Date is more than one year from the date the TFE Request is submitted, or if the Responsible Entity contends the TFE should have no Expiration Date, the Responsible Entity will be required to submit annual reports on the continued need and justification for the TFE. Selecting "Yes" to this question affirms the Responsible Entity understands these requirements. The Responsible Entity's proposed plan and schedule for achieving Strict Compliance with the Applicable Requirements, and proposed Expiration Date (or justification for no Expiration Date), will be included in the Responsible Entity's Part B Required Information.