

April 21, 2023

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[6450-01-P]

## DEPARTMENT OF ENERGY

### 10 CFR Part 590

#### Docket Nos.

|                                                         |                         |
|---------------------------------------------------------|-------------------------|
| Lake Charles Exports, LLC                               | [Docket No. 11-59-LNG]  |
| Gulf LNG Liquefaction Company, LLC                      | [Docket No. 12-101-LNG] |
| Golden Pass LNG Terminal LLC                            | [Docket No. 12-156-LNG] |
| Lake Charles LNG Export Co., LLC                        | [Docket No. 13-04-LNG]  |
| Magnolia LNG, LLC                                       | [Docket No. 13-132-LNG] |
| Delfin LNG LLC                                          | [Docket No. 13-147-LNG] |
| Alaska LNG Project LLC                                  | [Docket No. 14-96-LNG]  |
| Pieridae Energy (USA) Ltd.                              | [Docket No. 14-179-LNG] |
| Texas LNG Brownsville LLC                               | [Docket No. 15-62-LNG]  |
| Cameron LNG, LLC                                        | [Docket No. 15-90-LNG]  |
| Port Arthur LNG, LLC                                    | [Docket No. 15-96-LNG]  |
| Rio Grande LNG, LLC                                     | [Docket No. 15-190-LNG] |
| Venture Global Plaquemines LNG, LLC                     | [Docket No. 16-28-LNG]  |
| Lake Charles LNG Export Co., LLC                        | [Docket No. 16-109-LNG] |
| Lake Charles Exports, LLC                               | [Docket No. 16-110-LNG] |
| Driftwood LNG LLC                                       | [Docket No. 16-144-LNG] |
| Freeport LNG Expansion, L.P. & FLNG Liquefaction 4, LLC | [Docket No. 18-26-LNG]  |
| Mexico Pacific Limited LLC                              | [Docket No. 18-70-LNG]  |
| Corpus Christi Liquefaction, LLC                        | [Docket No. 18-78-LNG]  |
| ECA Liquefaction, S. de R.L. de C.V.                    | [Docket No. 18-144-LNG] |
| Energía Costa Azul, S. de R.L. de C.V.                  | [Docket No. 18-145-LNG] |
| Epcilon LNG LLC                                         | [Docket No. 20-31-LNG]  |
| Vista Pacifico LNG, S.A.P.I. de C.V.                    | [Docket No. 20-153-LNG] |

#### Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries

**AGENCY:** Office of Fossil Energy and Carbon Management, Department of Energy.

**ACTION:** Policy statement.

**SUMMARY:** The Department of Energy (DOE) is reaffirming the seven-year deadline for authorization holders to commence exports of domestically produced natural gas, including liquefied natural gas (LNG), to non-free trade agreement (non-FTA) countries set forth in long-term authorizations issued under the Natural Gas Act. For existing and future non-FTA

authorizations for the export of LNG, DOE will allow authorizations to expire on the export commencement deadline originally set forth in the order and will not consider an application for an extension, unless the authorization holder demonstrates both that: it has physically commenced construction on the associated export facility, and its inability to comply with the existing export commencement deadline is the result of extenuating circumstances outside of its control. Authorization holders unable to make this demonstration may submit a new non-FTA application, which will be considered without prejudice. This policy will increase transparency for non-FTA authorization holders and pending applicants who have not yet commenced exports, while providing greater certainty about DOE's approvals for the LNG export market. Concurrently with the issuance of this Policy Statement, DOE is issuing final orders on three pending applications for a commencement extension.

**DATES:** This Policy Statement is applicable on April 21, 2023.

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**SUPPLEMENTARY INFORMATION:**

*Acronyms and Abbreviations.* Acronyms and abbreviations used in this document are set forth below for reference.

|       |                                           |
|-------|-------------------------------------------|
| Bcf/d | Billion Cubic Feet per Day                |
| DOE   | United States Department of Energy        |
| FERC  | Federal Energy Regulatory Commission      |
| FTA   | Free Trade Agreement                      |
| LNG   | Liquefied Natural Gas                     |
| MARAD | Maritime Administration                   |
| NEPA  | National Environmental Policy Act of 1969 |
| NGA   | Natural Gas Act of 1938                   |
| Tcf   | Trillion Cubic Feet                       |

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## I. Statutory Background

DOE is responsible for authorizing exports of domestically produced natural gas, including LNG,<sup>1</sup> to foreign countries under section 3 of the Natural Gas Act (NGA).<sup>2</sup> The policy announced in this Policy Statement is specific to authorizations<sup>3</sup> for the export of natural gas to countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA countries).<sup>4</sup> NGA section 3(a) authorizes the exportation of natural gas from the United States unless DOE determines that doing so “will not be consistent with the public interest.”<sup>5</sup> DOE, as affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, has consistently interpreted this provision as creating a rebuttable presumption that a proposed export of natural gas to non-FTA countries is in the public interest.<sup>6</sup> Accordingly, DOE will conduct an informal adjudication and grant an application requesting a non-FTA authorization

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<sup>1</sup> In referring to natural gas in this Policy Statement, DOE refers primarily, but not exclusively, to LNG. Some DOE proceedings have involved (and, in the future, may involve) other types of natural gas, including compressed natural gas and compressed gas liquid. *See* 15 U.S.C. 717a(5) (definition of natural gas); 10 CFR 590.102(i).

<sup>2</sup> 15 U.S.C. 717b. The Secretary’s authority was established by the Department of Energy Organization Act, 42 U.S.C. 7151(b), which transferred jurisdiction over import and export authorizations from the Federal Power Commission to the Secretary of Energy; *see also* 42 U.S.C. 7172(f). The authority to regulate the imports and exports of natural gas, including LNG, under NGA section 3 has been delegated to the Assistant Secretary for Fossil Energy and Carbon Management (FECM) in Redelelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023.

<sup>3</sup> For purposes of this Policy Statement, DOE uses the terms “authorization” and “order” interchangeably.

<sup>4</sup> 15 U.S.C. 717b(a). This Policy Statement does not apply to exports to FTA countries under NGA section 3(c), 15 U.S.C. 717b(c). Section 3(c) of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486), requires that applications to export natural gas to FTA countries “shall be deemed to be consistent with the public interest” and granted “without modification or delay.” 15 U.S.C. 717b(c). Additionally, as of August 24, 2018, qualifying “small-scale natural gas exports” to non-FTA countries are deemed to be consistent with the public interest under NGA section 3(a). *See* 10 CFR 590.102(p); 10 CFR 590.208(a); *see also* U.S. Dep’t of Energy, Small-Scale Natural Gas Exports; Final Rule, 83 FR 35106 (July 25, 2018). Because small-scale orders contain different terms than non-FTA orders involving larger volumes of exports (specifically, requiring authorization holders to commence small-scale exports within two years), this Policy Statement also does not apply to small-scale exports of natural gas.

<sup>5</sup> 15 U.S.C. 717b(a).

<sup>6</sup> *See Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (“We have construed [NGA section 3(a)] as containing a ‘general presumption favoring [export] authorization.’”) (quoting *W. Va. Pub. Serv. Comm’n v. U.S. Dep’t of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)).

unless DOE finds that the proposed exportation will not be consistent with the public interest.<sup>7</sup>

NGA section 3(a) also authorizes DOE, “after opportunity for hearing, and for good cause shown,” to issue any supplemental order “as it may find necessary or appropriate.”<sup>8</sup>

DOE’s authorization is solely with respect to the export (or import) of natural gas and does not extend to authorization over the siting, construction, and operation of the liquefaction and export facilities. For LNG terminals located onshore or in state waters, the agency responsible for permitting the export facilities is the Federal Energy Regulatory Commission (FERC) pursuant to NGA section 3(e).<sup>9</sup> For LNG terminals located offshore beyond state waters, the responsible agency is the Maritime Administration (MARAD) within the Department of Transportation pursuant to the Deepwater Ports Act of 1974.<sup>10</sup>

Although most approved non-FTA exports originate (or will originate) from existing or proposed projects to be built in the United States, DOE has also approved non-FTA exports in extraterritorial proceedings involving Mexico or Canada. In such proceedings, DOE approves the export of U.S.-sourced natural gas by pipeline to Mexico or Canada under NGA section 3(c), and authorizes the re-export<sup>11</sup> of the U.S.-sourced natural gas in the form of LNG from a

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<sup>7</sup> *Id.* (“there must be ‘an affirmative showing of inconsistency with the public interest’ to deny the application” under NGA section 3(a)) (quoting *Panhandle Producers & Royalty Owners Ass’n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

<sup>8</sup> 15 U.S.C. 717b(a).

<sup>9</sup> 15 U.S.C. 717b(e); *see also* 15 U.S.C. 717a(11) (definition of LNG terminal); 18 CFR 153.2(d); *Sierra Club v. Fed. Energy Regulatory Comm’n*, 827 F.3d 36, 40 (D.C. Cir. 2016) (observing that, while DOE “maintains exclusive authority over the export of natural gas as a commodity,” DOE has delegated to FERC the authority to approve or deny an application for the siting, construction, operation, or expansion of an LNG terminal under NGA section 3(e)).

<sup>10</sup> *See* 33 U.S.C. 1502(9), 1503(a). The Deepwater Port Act originally applied only to oil import terminals, but was amended to include natural gas terminals. *See* Maritime Transportation Security Act of 2002, sec. 106, Pub. L. 107-295, 116 Stat. 2064.

<sup>11</sup> For purposes of these proceedings, “re-export” means to ship or transmit U.S.-sourced natural gas in its various forms (gas, compressed, or liquefied) subject to DOE’s jurisdiction under the NGA, 15 U.S.C. 717b, from one foreign country (*i.e.*, a country other than the United States) to another foreign country.

liquefaction and export facility to be built in Mexico or Canada, respectively, to non-FTA countries under NGA section 3(a).<sup>12</sup>

Before reaching a final decision on any non-FTA application, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA).<sup>13</sup>

## **II. Regulatory Background**

### **A. Long-Term Non-FTA Authorizations Issued to Date**

Although NGA section 3(a) establishes a broad public interest standard and a presumption favoring export authorizations, the statute does not define “public interest” or identify criteria that must be considered. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing an application to export LNG to non-FTA countries. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.<sup>14</sup>

Currently, there are 41 long-term orders<sup>15</sup> authorizing the export of LNG sourced from the United States (both the lower-48 states and Alaska) to non-FTA countries under NGA section 3(a).<sup>16</sup> These orders authorize a cumulative volume of non-FTA exports equivalent to 47.28

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<sup>12</sup> See, e.g., *Vista Pacifico LNG, S.A.P.I. de C.V.*, DOE/FECM Order No. 4929, Docket No. 20-153-LNG, Order Granting Long-Term Authorization to Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas from Mexico to Non-Free Trade Agreement Nations, 1-7 (Dec. 20, 2022).

<sup>13</sup> 42 U.S.C. 4321 *et seq.*

<sup>14</sup> See, e.g., *Sabine Pass Liquefaction, LLC*, DOE/FECM Order No. 4800, Docket No. 19-125-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 10-28 (Mar. 16, 2022).

<sup>15</sup> Under DOE practice, “long-term” refers to orders greater than two years in duration. See U.S. Dep’t of Energy, Including Short-Term Export Authority in Long-Term Authorizations for the Export of Natural Gas on a Non-Additive Basis; Policy Statement, 86 FR 2243 (Jan. 12, 2021).

<sup>16</sup> See *Freeport LNG Expansion, L.P., et al.*, DOE/FECM Order No. 4961, Docket No. 21-98-LNG, Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 72-76 (Mar. 3, 2023) (identifying final non-FTA authorizations sourced from the lower-48 states); see also *Alaska LNG Project LLC*, DOE/FE Order No. 3643-A, Docket No. 14-96-LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Aug. 20, 2020), *reh’g granted in part*, DOE/FE Order No. 3643-B (Apr. 15, 2021), *order aff’d*, DOE/FECM Order No. 3643-C (Apr. 13, 2023).

billion cubic feet (Bcf) per day (Bcf/d) of natural gas sourced from the lower-48 United States and 2.55 Bcf/d sourced from Alaska, or approximately 17.3 trillion cubic feet (Tcf) and 0.9 Tcf per year, respectively.<sup>17</sup> This cumulative volume includes 43.52 Bcf/d of U.S.-sourced natural gas authorized for export from facilities built (or proposed to be built) in the United States (including Alaska), and 6.31 Bcf/d of U.S.-sourced natural gas authorized for re-export in the form of LNG from facilities to be built in Mexico or Canada.<sup>18</sup> It does not include volumes from long-term non-FTA orders that DOE has vacated<sup>19</sup> or orders authorizing small-scale exports of natural gas.<sup>20</sup>

Of the 49.83 Bcf/d in approved non-FTA export volumes as of today (sourced from both the lower-48 states and Alaska), the cumulative total of U.S. and Mexico LNG export capacity that is operating or under construction across 11 mid- or large-scale export projects is 24.19 Bcf/d of natural gas.<sup>21</sup> The remaining 25.64 Bcf/d in approved non-FTA export volumes represent

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<sup>17</sup> See *Freeport LNG Expansion, L.P., et al.*, DOE/FECM Order No. 4961, at 72; see also *Alaska LNG Project LLC*, DOE/FE Order No. 3643-A, at 5, 40. Following issuance of *Freeport LNG Expansion, L.P., et al.*, DOE/FECM Order No. 4961, DOE vacated one long-term non-FTA authorization at the request of the authorization holder, Eagle LNG Partners Jacksonville II LLC (0.01 Bcf/d). See *infra* note 19.

<sup>18</sup> See *Freeport LNG Expansion, L.P., et al.*, DOE/FECM Order No. 4961, at 72-76; see also *Vista Pacifico LNG*, DOE/FECM Order No. 4929, at 7.

<sup>19</sup> To date, DOE has vacated nine long-term authorizations to export LNG to non-FTA countries (none over the objection of the authorization holder) in the following proceedings: *Eagle LNG Partners Jacksonville II LLC*, Docket No. 17-79-LNG (Mar. 12, 2023); *Bear Head Energy Inc. and Bear Head LNG (USA), LLC*, Docket No. 15-33-LNG (Jan. 20, 2023); *Jordan Cove Energy Project L.P.*, Docket No. 12-32-LNG (Apr. 22, 2022); *Air Flow N. Am. Corp.*, Docket No. 14-206-LNG (Dec. 30, 2021); *Emera CNG, LLC*, Docket No. 13-157-CNG (Oct. 20, 2021); *Annova LNG Common Infrastructure, LLC*, Docket No. 19-34-LNG (Apr. 23, 2021); *Floridian Natural Gas Storage Co., LLC*, Docket No. 15-38-LNG (Oct. 22, 2020); *Carib Energy (USA) LLC*, Docket No. 11-141-LNG (Nov. 17, 2020); *Flint Hills Res., LP*, Docket No. 15-168-LNG (Feb. 5, 2019).

<sup>20</sup> See 10 CFR 590.102(p); 10 CFR 590.208(a); see *supra* note 4.

<sup>21</sup> This 24.19 Bcf/d volume representing export capacity approved to non-FTA countries currently operating or under construction is comprised of:

- (i) 23.75 Bcf/d of non-FTA volumes under construction or operating in the United States at the end of March 2023 (see U.S. Energy Info. Admin., U.S. Liquefaction Capacity (Apr. 17, 2023), <https://www.eia.gov/naturalgas/U.S.liquefactioncapacity.xlsx>, calculated by adding Column N in “Existing & Under Construction” worksheet); and
- (ii) 0.44 Bcf/d in U.S.-sourced natural gas to be re-exported in the form of LNG by ECA Liquefaction, S. de R.L. de C.V. from the ECA Mid-Scale Project Phase 1, under construction in Mexico, to non-FTA countries (see Docket No. 18-144-LNG).

possible future export capacity from numerous other proposed LNG export projects, but these proposed projects have not yet progressed to the construction phase. Some of these projects received approval for non-FTA exports as far back as 2016.<sup>22</sup>

## **B. Seven-Year Commencement Deadline for Exports to Non-FTA Countries**

Both the NGA and DOE's regulations provide DOE with broad authority to attach conditions to non-FTA export authorizations. NGA section 3(a) states that DOE may grant an application for a non-FTA export authorization "upon such terms and conditions as the [Secretary] may find necessary or appropriate."<sup>23</sup> Similarly, under 10 CFR 590.404, DOE may "issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the final record."<sup>24</sup> Neither NGA section 3(a) nor DOE's regulations prescribe a specific time period for a non-FTA authorization. For this reason, DOE has determined that it has discretion under 10 CFR 590.404 to impose suitable terms.

For long-term orders authorizing the export of U.S.-sourced LNG to non-FTA countries, DOE provides each authorization holder with a period of seven years to commence export operations, set from the date the order is issued.<sup>25</sup> The end of this seven-year period is often referred to as the "commencement deadline," after which point the non-FTA authorization expires. If the authorization holder commences exports of LNG from its facility within this

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<sup>22</sup> See, e.g., *Pieridae Energy (USA) Ltd.*, DOE/FE Order No. 3768, Docket No. 14-179-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Feb. 5, 2016), discussed *infra*.

<sup>23</sup> 15 U.S.C. 717b(a).

<sup>24</sup> 10 CFR 590.404.

<sup>25</sup> The non-FTA exceptions are: (i) the Alaska LNG non-FTA authorization, which has a 12-year commencement deadline due to the unique aspects of that proposed project, see *Alaska LNG Project LLC*, DOE/FE Order No. 3643-A, at 41 (Ordering Para. D), and (ii) orders authorizing small-scale exports of natural gas, which have a two-year commencement deadline (see *supra* note 4).



seven-year period, its export term (whether for 20 years or for a term extending through December 31, 2050)<sup>26</sup> begins upon the date of first commercial export.<sup>27</sup>

This practice began in 2011, when DOE issued its first conditional long-term export authorization involving domestically produced LNG to Sabine Pass Liquefaction, LLC (Sabine Pass).<sup>28</sup> In its application, Sabine Pass had requested “that its authorization commence on the earlier of the date of first export or five years from the date of the issuance of the authorization.”<sup>29</sup> After reviewing the record evidence, DOE determined that a period of seven years for Sabine Pass to commence its non-FTA exports was consistent with the public interest.<sup>30</sup>

In reaching this conclusion, DOE first explained that the purpose of the commencement deadline “is to ensure that other entities that may seek similar authorizations are not frustrated in their efforts to obtain those authorizations by authorization holders that are not engaged in actual export operations.”<sup>31</sup> Next, DOE stated that “a seven-year operations commencement date has been selected as a reasonable accommodation given [Sabine Pass’s] representation that it plans to be ready to commence operations by 2015-2016.”<sup>32</sup> DOE reasoned that a seven-year commencement period “provides approximately two years beyond [Sabine Pass’s] current planned commencement date before the condition must be met,” and thus “will allow for time

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<sup>26</sup> See U.S. Dep’t of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020).

<sup>27</sup> See, e.g., *Magnolia LNG LLC*, DOE/FECM Order No. 3909-C, Docket No. 13-132-LNG, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 67-68 (Apr. 27, 2022) (Ordering Paras. A, D).

<sup>28</sup> See *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations (May 20, 2011). DOE incorporated this seven-year commencement period in Sabine Pass’s final order (DOE/FE Order No. 2961-A), issued on August 7, 2012.

<sup>29</sup> *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, at 2.

<sup>30</sup> *Id.* at 33, 43 (Ordering Para. C).

<sup>31</sup> *Id.* at 33.

<sup>32</sup> *Id.*

lost due to unplanned delays in licensing and construction of the planned liquefaction facilities.”<sup>33</sup>

Since 2011, DOE has continued to provide a seven-year period for authorization holders to commence exports to non-FTA countries. This seven-year commencement deadline is set forth in both the Terms and Conditions and the Ordering Paragraphs of each long-term non-FTA order.<sup>34</sup> Specifically, in the Terms and Conditions, DOE continues to cite the need for the seven-year commencement deadline “to ensure that other entities that may seek similar authorizations are not frustrated in their efforts to obtain those authorizations by authorization holders that are not engaged in actual export [or re-export] operations.”<sup>35</sup> In the relevant Ordering Paragraph of each non-FTA order, DOE states that the authorization holder “must commence export [or re-export] operations using the planned liquefaction facilities no later than seven years from the date of issuance of [the Order].”<sup>36</sup>

To date, all seven large-scale export facilities using U.S.-sourced natural gas that have commenced exports of LNG have done so before the seven-year commencement deadline established in the authorization holders’ corresponding non-FTA authorization(s).<sup>37</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> If an authorization holder has already commenced export operations from its facility and is requesting to export additional volumes, this term is unnecessary and is therefore omitted from successive orders. *See, e.g., Sabine Pass*, DOE/FECM Order No. 4800, at 68-75.

<sup>35</sup> *E.g., Corpus Christi Liquefaction Stage III, LLC*, DOE/FE Order No. 4490, Docket No. 18-78-LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 49 (Term and Condition B) (Feb. 10, 2020); *see also Vista Pacifico LNG, S.A.P.I. de C.V.*, DOE/FECM Order No. 4929, at 73-74 (Term and Condition B) (Dec. 20, 2022).

<sup>36</sup> *Magnolia LNG LLC*, DOE/FECM Order No. 3909-C, at 68 (Ordering Para. C). The exact phrasing of this Ordering Paragraph may vary among orders, but the seven-year commencement deadline is consistent.

<sup>37</sup> The authorization holders that have commenced exports before their commencement deadline are: (i) Sabine Pass; (ii) Cove Point LNG, LP; (iii) Southern LNG Company, L.L.C.; (iv) Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC (joint authorization holders); (v) Cameron LNG, LLC; (vi) Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (joint authorization holders); and (vii) Venture Global Calcasieu Pass, LLC. *See supra* note 21.

### **C. Applications to Extend the Export Commencement Deadline**

Several authorization holders have filed applications (or requests) asking DOE to extend their original seven-year commencement deadline to a later date, based on the circumstances associated with their proposed LNG facility.

#### **1. Orders Extending the Export Commencement Deadline Granted in 2020**

In 2020, DOE granted extensions of the commencement deadline in six non-FTA orders (held by four different authorization holders), as follows:

- *Golden Pass LNG Terminal LLC*, DOE/FE Order No. 3978-C, Docket No. 12-156-LNG, Order Granting Request for Extension of Export Commencement Deadlines (Mar. 24, 2020) (extending commencement deadline from April 25, 2024, to September 30, 2025);
- *Lake Charles LNG Export Company, LLC*, DOE/FE Order Nos. 3868-A and 4010-A, Docket Nos. 13-04-LNG and 16-109-LNG, Order Granting Application for Extension of Commencement Deadlines (Oct. 6, 2020) (extending commencement deadlines in two non-FTA orders from July 29, 2023 or June 29, 2024, respectively, to December 16, 2025);
- *Lake Charles Exports, LLC*, DOE/FE Order Nos. 3324-B and 4011-A, Docket Nos. 11-59-LNG and 16-110-LNG, Order Granting Application to Amend Long-Term Authorizations (Oct. 6, 2020) (extending commencement deadlines in two non-FTA orders from July 29, 2023 or June 29, 2024, respectively, to December 16, 2025); and
- *Cameron LNG, LLC*, DOE/FE Order No. 3846-A, Docket No. 15-90-LNG, Order Granting Application for Extension of Commencement Deadlines (Nov. 2, 2020) (extending commencement deadline from July 15, 2023, to May 5, 2026).

Although DOE evaluated these authorization holders' extension applications on a case-by-case basis, DOE considered the same general factors in each proceeding.

First, DOE considered whether FERC—the agency approving the siting, construction, and operation of the LNG export facility in each proceeding—had approved an extension of its own “construction and in-service deadline” for the proposed facility.<sup>38</sup> In each of these proceedings,

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<sup>38</sup> FERC's authorizations for proposed LNG export facilities under NGA section 3(e), 15 U.S.C. 717b(e), include a deadline for the authorization holder to complete construction of the facility and to make it available for service—

DOE found that FERC had already approved an extension for the facility's original construction and in-service deadline.

Second, DOE considered the project-specific facts presented in the extension application, including the authorization holder's progress in constructing the proposed export facility,<sup>39</sup> the additional time necessary for the authorization holder to commence exports, and any unique delays and challenges faced by the authorization holder.<sup>40</sup>

Finally, DOE published each application for a commencement extension in the *Federal Register* and provided the public with 15 days to submit protests, motions to intervene, and comments in response to the application.<sup>41</sup> As part of DOE's final order on each application, DOE considered any responses received during this comment period.<sup>42</sup>

In each of these proceedings, DOE found good cause to grant the application for the commencement extension and concluded that extending the export commencement deadline would not alter DOE's public interest determination in granting the original non-FTA authorization.<sup>43</sup>

## **2. Applications for Commencement Extensions Submitted Since 2022**

DOE has continued to receive new applications for commencement extensions. In 2022, Lake Charles LNG Export Company, LLC and Lake Charles Exports, LLC filed an application

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typically five years from the date of the order, which may be extended for good cause. *See, e.g., Rio Grande LNG, LLC*, Order Granting Extension of Time Request, 181 FERC ¶ 61032, P 10 (Oct. 14, 2022).

<sup>39</sup> Among the proceedings identified, progress on the proposed facility noted by DOE has included, for example, obtaining all required federal, state, and local authorizations; conducting or completing front-end engineering and design; awarding engineering, procurement, and construction contracts for the facility; and receiving authorization from FERC to proceed with site clearance.

<sup>40</sup> For example, the Lake Charles entities stated that they experienced an unforeseen construction delay resulting from a commercial merger in their corporate ownership. *See, e.g., Lake Charles LNG Export Co., LLC*, DOE/FE Order Nos. 3868-A and 4010-A, at 5.

<sup>41</sup> *See, e.g., U.S. Dep't of Energy, Cameron LNG, LLC; Request for Extension of Commencement Deadline for Non-Free Trade Agreement Authorization*, 85 FR 20993 (Apr. 15, 2020).

<sup>42</sup> *See, e.g., Golden Pass LNG Terminal LLC*, DOE/FE Order No. 3978-C, at 4, 8-10.

<sup>43</sup> *Id.* at 8-10.

requesting their second commencement extension across a total of four non-FTA orders,<sup>44</sup> and Port Arthur LNG, LLC filed an application requesting its first commencement extension.<sup>45</sup> Most recently, in 2023, Pieridae Energy (USA) Ltd.<sup>46</sup> and Magnolia LNG, LLC<sup>47</sup> have each filed an application requesting their first commencement extension.<sup>48</sup>

### **III. Policy Statement**

#### **A. Basis for Change in DOE’s Treatment of Applications for Commencement Extensions**

When DOE originally adopted a seven-year export commencement deadline for Sabine Pass’s non-FTA authorization in 2011, it did so based upon an explicit recognition that an authorization holder would need time to construct its proposed facility before commencing exports of LNG—and that this time period must be sufficiently long to allow for “unplanned delays in the licensing and construction” of the facility.<sup>49</sup> In the following 12 years, DOE’s conclusion that seven years was an adequate and reasonable amount of time for authorization holders to commence exports after initial authorization, and the reasoning underlying that conclusion, have been validated. All authorization holders currently exporting from the seven large-scale export facilities in the United States commenced exports within their original seven-year commencement period—some while facing the particularly challenging delays and uncertainties associated with the COVID-19 pandemic.<sup>50</sup> Most recently, Venture Global

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<sup>44</sup> See Docket Nos. 11-59-LNG, 16-110-LNG, 13-04-LNG, and 16-109-LNG.

<sup>45</sup> See Docket No. 15-96-LNG.

<sup>46</sup> See Pieridae Energy (USA) Ltd., Request for Extension for Long-Term, Multi-Contract Authorization to Export U.S. Sourced Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas, Docket No. 14-179-LNG (Feb. 2, 2023). Pieridae filed this extension application three days before the export commencement deadline set forth in its non-FTA order (DOE/FE Order No. 3768), which was February 5, 2023. Therefore, although Pieridae’s non-FTA order has technically expired, its extension application remains under review.

<sup>47</sup> See Magnolia LNG, LLC, Request for Limited Extension to Start Date of Term of Authorization, Docket No. 13-132-LNG (Mar. 20, 2023).

<sup>48</sup> See *infra* § III.D.

<sup>49</sup> Sabine Pass, DOE/FECM Order No. 4800, at 33; see *supra* § II.B.

<sup>50</sup> See *supra* note 37.

Calcasieu Pass, LLC (Calcasieu Pass) constructed and began operating its LNG export facility in Cameron Parish, Louisiana, within three years from the date it received its non-FTA authorization from DOE,<sup>51</sup> demonstrating that it is possible for major LNG projects to be placed in-service well within the seven-year commencement period, even during the COVID-19 pandemic.

Nonetheless, not all authorization holders have successfully moved forward with their projects and commenced exports within the seven-year deadline. Some have asked DOE to vacate their authorization prior to the commencement deadline,<sup>52</sup> whereas others (as discussed herein) have filed applications requesting more time.<sup>53</sup> Indeed, as part of its analysis in non-FTA orders, DOE has long noted the “continuing uncertainty that all or even most of the proposed LNG export projects will ever be realized because of the time, difficulty, and expense of commercializing, financing, and constructing LNG export terminals, as well as the uncertainties and competition inherent in the global market for LNG.”<sup>54</sup> Yet, DOE anticipates that authorization holders will continue to file applications requesting a commencement extension in an effort to keep their non-FTA authorization active, even if the likelihood of completing construction and commencing exports from their facility is uncertain. DOE notes, for example,

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<sup>51</sup> Calcasieu Pass received its non-FTA export authorization, DOE/FE Order No. 4346, on March 5, 2019. On March 1, 2022, Calcasieu Pass loaded its first cargo of LNG at the newly constructed Venture Global Calcasieu Pass Project, and it has exported dozens of cargoes to date. *See* Venture Global Calcasieu Pass, LLC, Semi-Annual Status Report, Dockets No. 13-69-LNG, *et al.*, at 2 (Mar. 31, 2023), [https://www.energy.gov/sites/default/files/2023-04/VG%20Calcasieu%20Pass\\_April%202023%20DOE%20Progress%20Report%20%28final%29.pdf](https://www.energy.gov/sites/default/files/2023-04/VG%20Calcasieu%20Pass_April%202023%20DOE%20Progress%20Report%20%28final%29.pdf).

<sup>52</sup> *See supra* note 19.

<sup>53</sup> DOE notes that, of the authorization holders that have applied for and received an extension to their export commencement deadline (*see supra* § II.C.1), none have yet commenced export operations.

<sup>54</sup> *Freeport LNG Expansion, L.P., et al.*, DOE/FECM Order No. 4961, at 71.

that by the end of 2026, the export commencement deadline in 14 long-term non-FTA authorizations will expire.<sup>55</sup>

Further, in monitoring market developments as the impact of successive authorizations of LNG exports unfolds, DOE has recognized new challenges involving the growing volume of approved non-FTA exports associated with facilities that are *not* currently operating or under construction. Over time, as more authorization holders are authorized to export or re-export U.S.-sourced LNG to non-FTA countries—but are not engaged in actual export or re-export operations—this approval gap, or “authorization overhang,” has widened, with detrimental effects.<sup>56</sup>

For example, in October 2019, DOE had issued final orders authorizing exports of LNG to non-FTA countries totaling 38.06 Bcf/d of natural gas, with 15.54 Bcf/d of export capacity then operating or under construction—a difference of 22.52 Bcf/d in approved exports. As of today, however, that difference has grown to 25.64 Bcf/d—with approved non-FTA exports from the United States totaling 49.83 Bcf/d,<sup>57</sup> and 24.19 Bcf/d of export capacity operating or under construction.<sup>58</sup> This overhang of authorized exports—25.64 Bcf/d of natural gas—is even larger than today’s “proven” U.S. LNG export market at 24.19 Bcf/d. This overhang obscures an accurate picture of investment-backed commitments involving U.S. LNG.

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<sup>55</sup> These 14 authorizations are: *Magnolia LNG, LLC* (DOE/FECM Order No. 3909-C); *Delfin LNG, LLC* (DOE/FE Order No. 4028-C); *Golden Pass LNG Terminal LLC* (DOE/FECM Order No. 3978-E); *Lake Charles Exports, LLC* (DOE/FE Order Nos. 3324-B, 4011-A); *Lake Charles LNG Export Co., LLC* (DOE/FE Order Nos. 3868-A, 4010-A); *Mexico Pacific Ltd. LLC* (DOE/FECM Order No. 4312-A); *ECA Liquefaction, S. de R.L. de C.V.* (DOE/FE Order No. 4364-B); *Energía Costa Azul, S. de R.L. de C.V.* (DOE/FECM Order No. 4365-B); *Cameron LNG, LLC* (DOE/FE Order No. 3846-B); *Port Arthur LNG, LLC* (DOE/FE Order No. 4372-A); *Driftwood LNG LLC* (DOE/FE Order No. 4373-A); *Freeport LNG Expansion, L.P., et al.* (DOE/FE Order No. 4374-A); *Gulf LNG Liquefaction Co., LLC* (DOE/FE Order No. 4410-A); and *Venture Global Plaquemines LNG, LLC* (DOE/FE Order No. 4446-A).

<sup>56</sup> See *supra* II.A.

<sup>57</sup> This total represents 47.28 Bcf/d in approved exports of LNG sourced from the lower-48 states and 2.55 Bcf/d sourced from Alaska. See *supra* II.A.

<sup>58</sup> See *supra* note 21.

When DOE’s cumulative volume of approved non-FTA exports is greater than the physical capacity to export these volumes, there is no assurance of when the full export capacity will be available, or whether it will become available at all. This uncertainty has become increasingly disruptive to DOE’s planning, economic forecasting, and market analysis of the U.S. LNG export market as reviews of non-FTA export applications continue. Since 2019, DOE has received eight new applications requesting long-term authority to export LNG to non-FTA countries in a combined volume equivalent to 9.8 Bcf/yr of natural gas.<sup>59</sup> With the non-FTA volumes already approved and these applications for new non-FTA exports under review, it is important for DOE to have a clear picture of the U.S. LNG export market, including what amount of export capacity may be commercialized within seven years. Further, DOE has become aware of the challenges this continuing uncertainty presents to participants in the U.S. and global LNG export markets, including U.S. allies and trading partners. The authorization overhang also may serve to discourage or delay potential new entrants to the U.S. export market—including those that seek to utilize newer technology and to adopt better environmental practices.

Finally, DOE notes that its public interest analysis supporting each non-FTA authorization under NGA section 3(a) may become stale after seven years, as the natural gas market and

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<sup>59</sup> These eight applications under review are: *Commonwealth LNG, LLC* (1.21 Bcf/d) (Docket No. 19-134-LNG); *Port Arthur LNG Phase II, LLC* (1.91 Bcf/d) (Docket No. 20-23-LNG); *Venture Global CP2 LNG, LLC* (3.96 Bcf/d) (Docket No. 21-131-LNG); *New Fortress Energy Louisiana FLNG LLC* (0.40 Bcf/d) (Docket No. 22-39-LNG); *NFE Altamira FLNG, S. de R.L. de C.V.* (0.40 Bcf/d) (Docket No. 22-110-LNG); *Mexico Pacific Limited LLC* (0.80 Bcf/d) (Docket No. 22-167-LNG); *Gulfstream LNG Development, LLC* (0.65 Bcf/d) (Docket No. 23-34-LNG); *Corpus Christi Liquefaction, LLC*, *CCL Midscale 8-9, LLC*, and *Cheniere Marketing, LLC* (0.47 Bcf/d) (Docket No. 23-46-LNG); see also U.S. Dep’t of Energy, Office of Fossil Energy and Carbon Management, Long Term Applications Received by DOE to Export Domestically Produced LNG, CNG, CGL from the Lower-48 States (as of Mar. 14, 2023), [https://www.energy.gov/sites/default/files/2023-03/Summary%20of%20LNG%20Export%20Applications%202023-14-23\\_0.pdf](https://www.energy.gov/sites/default/files/2023-03/Summary%20of%20LNG%20Export%20Applications%202023-14-23_0.pdf). Not included are two applications for an amended non-FTA volume which, if granted, would not receive a new seven-year export commencement deadline.



supporting analyses continue to evolve.<sup>60</sup> In the normal course, the NGA does not require DOE to affirmatively reevaluate whether exports remain in the public interest during the term of an existing export authorization. However, new DOE decisions regarding non-FTA exports, such as actions in response to the pending expiration of an authorization holder's export commencement deadline, should be made on the basis of the latest market information and analytical approaches available at the time of DOE's decision.

## **B. Policy and Implementation**

For the reasons set forth herein, DOE reaffirms the seven-year export commencement deadline set forth in long-term authorizations to export domestically produced LNG to non-FTA countries.<sup>61</sup> The timely commencement of exports from all seven large-scale export facilities currently operating in the United States demonstrates that seven years is a reasonable, achievable period of time for an authorization holder both to construct its facility and to commence exports of LNG.<sup>62</sup>

Accordingly, DOE is giving notice that, in general, it intends to allow non-FTA authorizations to expire at the end of the seven-year commencement period set forth in each authorization. As such, DOE will no longer consider applications for extensions to export commencement deadlines, unless an authorization holder submits an application prior to its commencement deadline demonstrating that:

- (i) The authorization holder (or its affiliate) has physically commenced construction on the associated export facility before the request for additional time to commence exports is made; and
- (ii) The authorization holder's inability to comply with its export commencement deadline is the result of extenuating circumstances outside

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<sup>60</sup> See *supra* II.A.

<sup>61</sup> As noted, this Policy Statement does not apply to orders authorizing small-scale exports of natural gas (*see supra* note 4); *see also supra* note 1.

<sup>62</sup> See *supra* note 37.

of the authorization holder's control, including but not limited to acts of God.<sup>63</sup>

An authorization holder seeking to apply for an extension under this Policy Statement should submit its application to DOE at least 90 days prior to the commencement deadline in its non-FTA order.<sup>64</sup> This will ensure that DOE has sufficient time to provide notice of the extension application in the *Federal Register* for a 30-day public comment period, and to evaluate the application and any public filings received in response to the notice of application prior to the expiration of the non-FTA order.<sup>65</sup> In the extension application, the authorization holder should provide evidence, including any supporting documentation, to meet both parts of the required demonstration.<sup>66</sup>

Evidence that an authorization holder (or its affiliate) has physically commenced construction on its export facility may include, for example: (i) a copy of its most recent status report or other update submitted to FERC or MARAD, if available (or, for extraterritorial projects, the comparable federal regulatory agency), describing the current construction status of the export facility;<sup>67</sup> (ii) a verified statement of the construction costs incurred to date, as compared to the total projected costs for construction; and/or (iii) documentation showing that the contractor has met one or more completion targets under the relevant engineering, procurement, and construction agreement.

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<sup>63</sup> For purposes of this Policy Statement, an "act of God" means a severe natural event outside of human control, such as a hurricane, flash flood, or other natural disaster.

<sup>64</sup> 10 CFR 590.201(b) ("Applications shall be filed at least ninety (90) days in advance of the proposed import or export or other requested action, unless a later date is permitted for good cause shown.").

<sup>65</sup> See *supra* § II.C.1; 10 CFR 590.205 (Notice of applications).

<sup>66</sup> An application for an export commencement extension must also meet other requirements set forth in DOE's regulations governing the export of natural gas, 10 CFR part 590.

<sup>67</sup> DOE notes that FERC's authorizations of LNG terminals under NGA section 3(e) require the authorization holder to provide status reports to FERC on a monthly basis until all construction activities are complete. These status reports must include the "current construction status of the project and work planned for the following reporting period." See, e.g., *Commonwealth LNG, LLC*, Order Granting Authorization Under Section 3 of the Natural Gas Act, 181 FERC ¶ 61,143, Appendix A (Enviro. Condition #8) (Nov. 17, 2022), [www.ferc.gov/media/c-2-cp19-502-000](http://www.ferc.gov/media/c-2-cp19-502-000).

Although the two-part demonstration described above is required for DOE to consider an application for a commencement extension, it does not guarantee that DOE will approve the request. Following the 30-day comment period, DOE will issue an order evaluating the application, and any responses received in response to the notice of application, under the good cause standard provided by NGA section 3(a), with appropriate consideration of the public interest.<sup>68</sup> Further, DOE will consider extending an export commencement deadline only for such time as DOE deems necessary for the authorization holder to commence exports, based on the extenuating circumstances identified in the application.

If an authorization holder reaches the end of the seven-year export commencement period set forth in its non-FTA authorization, and cannot make such a demonstration, the non-FTA authorization will expire on the deadline set forth in the order.<sup>69</sup> DOE will consider any new export application under NGA section 3(a) without prejudice, which would be evaluated pursuant to the policies and analytical tools in use at the time of the new application.

### **C. Policy Objectives**

Over time, this policy should reduce the authorization overhang, as authorizations expire on their commencement deadline (unless an authorization holder makes the demonstration set forth above and DOE determines there is good cause to grant the commencement extension). As a result, the total volume of exports approved under DOE's non-FTA orders should become more aligned with the export capacity under construction or operating using U.S.-sourced LNG. This, in turn, will allow DOE to better assess whether any new non-FTA applications are in the public

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<sup>68</sup> See, e.g., *Cameron LNG, LLC*, DOE/FE Order No. 3846-A, at 6 (evaluating extension application under NGA section 3(a) to determine whether there is good cause shown for extending the commencement deadline, and whether such extension would alter DOE's public interest determination in granting the original non-FTA export authorization).

<sup>69</sup> Because this Policy Statement does not apply to FTA export authorizations issued under NGA section 3(c) (*see supra* note 4), any related FTA authorization would not be affected by the expiration of a non-FTA authorization.

interest; provide more certainty to the U.S. and global LNG export markets; and ensure that DOE is making decisions utilizing the latest market information and analytical tools available. It should also encourage authorization holders to develop their export facilities in a timely manner, without excessive delays. Based on its analysis of the U.S. natural gas export market, and as discussed herein, DOE believes these changes are in the public interest.

#### **D. Applicability of Policy Statement**

In order to provide industry and the public with fair notice of the change in DOE policy described herein, this Policy Statement will apply to all existing and future long-term non-FTA authorizations, except for those authorizations for which an application requesting an export commencement extension was filed prior to issuance of this Policy Statement on April 21, 2023. DOE will review and act on those applications filed before April 21, 2023, at the appropriate time, using the case-by-case factual review undertaken by DOE prior to issuance of this Policy Statement.

Specifically, concurrently with this Policy Statement, DOE is issuing final orders on commencement extension applications filed by Lake Charles LNG Export Company, LLC; Lake Charles Exports, LLC; and Port Arthur LNG, LLC in their respective dockets. Because these applications were filed in 2022, DOE is not taking action on these applications under this Policy Statement, but rather under DOE's prior practice based on the record in each commencement extension proceeding.<sup>70</sup>

Likewise, because the commencement extension applications filed recently by Pieridae Energy (USA) Ltd. and Magnolia LNG, LLC (on February 2, 2023, and March 20, 2023, respectively) were filed before issuance of this Policy Statement, they will not be reviewed under

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<sup>70</sup> See *supra* at II.C.2.

this Policy Statement. At the appropriate time after the public comment period for each of these applications is complete, DOE will issue an order taking action on each application under DOE's prior practice based on the record in each commencement extension proceeding.<sup>71</sup>

#### **IV. Administrative Benefits**

In this Policy Statement, DOE is not proposing any new requirements for applicants or authorization holders under 10 CFR part 590. Rather, DOE's intent is to provide greater transparency to authorization holders and participants in the U.S. natural gas export market, and to minimize administrative burdens.

#### **V. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this policy statement.

#### **Signing Authority**

This document of the Department of Energy was signed on April 21, 2023, by Brad Crabtree, Assistant Secretary, Office of Fossil Energy and Carbon Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

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<sup>71</sup> See *supra* notes 46-47; see also Pieridae Energy (USA) Ltd., Request for Extension for Long-Term Authorization to Export Liquefied Natural Gas, 88 FR 18530 (Mar. 29, 2023) (establishing 30-day public comment period for Pieridae's application requesting an extension to its commencement deadline); Magnolia LNG, LLC, Request for Limited Extension to Start Date of Term of Authorization, 88 FR 23020 (Apr. 14, 2023) (establishing 30-day public comment period for Magnolia's application requesting an extension to its commencement deadline).

Signed in Washington, D.C., on April 21, 2023.

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Bradford Crabtree  
Assistant Secretary  
Office of Fossil Energy and Carbon Management