



## **Table of Contents**

I.	Executive Summary.....	2
II.	Revisions to the Registration and Certification Program.....	4
A.	Background and Purpose .....	4
B.	Registration Revisions.....	5
1.	Joint Registration Organization (“JRO”).....	5
2.	Coordinated Functional Registration (“CFR”).....	6
3.	Appendix 5A – Organization Registration and Certification Manual.....	6
4.	Appendix 5B – Statement of Compliance Registry .....	8
5.	Appendix 5C – Procedure for Requesting and Receiving an Exception from the Application of the NERC Definition of Bulk Electric System .....	10
C.	Certification Revisions.....	11
1.	Section 500 – Organization Registration and Certification.....	12
2.	Appendix 5A – Organization Registration and Certification Manual.....	12
III.	Revisions to the Infrastructure Security Program.....	16
A.	Background and Purpose .....	16
B.	Section 1003 Revisions.....	16
IV.	Revisions to the Sanction Guidelines.....	17
A.	Background and Purpose .....	17
B.	Appendix 4B Revisions .....	18
1.	Determination of Base Penalty Amount Using the Violation Risk Factor and Violation Severity Level .....	19
2.	Potential Range for Factors Used in Increasing or Decreasing the Base Monetary Penalty Amount .....	20
3.	Consideration of Non-Monetary Sanctions in Determining a Final Monetary Penalty .....	20
4.	Assessment of a Monetary Penalty When Dealing with Multiple Subsidiaries That Commit the Same Violation .....	21
5.	How to Calculate a Single Penalty for Multiple Violations by a Single Entity .....	21
6.	Consideration of a Violator’s Ability to Pay a Penalty .....	22
7.	Other changes .....	22
8.	NERC review with the Commission of any tools or formulae used to implement the Sanction Guidelines .....	28
V.	All Points Bulletins .....	29
VI.	Conclusion.....	31

## **Attachments**

### *Registration and Certification*

- Attachment 1** Section 500 Clean
- Attachment 2** Section 500 Redline
- Attachment 3** Appendix 2 Clean
- Attachment 4** Appendix 2 Redline
- Attachment 5** Appendix 5A Clean
- Attachment 6** Appendix 5A Redline
- Attachment 7** Appendix 5B Clean
- Attachment 8** Appendix 5B Redline
- Attachment 9** Appendix 5C Clean
- Attachment 10** Appendix 5C Redline
- Attachment 11** 1st Consideration of Comments
- Attachment 12** 2nd Consideration of Comments

### *Infrastructure Security*

- Attachment 13** Section 1003 Clean
- Attachment 14** Section 1003 Redline
- Attachment 15** Consideration of Comments

### *Sanction Guidelines*

- Attachment 16** Appendix 4B Clean
- Attachment 17** Appendix 4B Redline
- Attachment 18** Consideration of Comments



NERC proposes revisions to Sections 500 and 1003 and Appendices 2, 4B, 5A, 5B, and 5C to respond to the Commission's directives in the Order, update the ROP to reflect current business practices, and provide further transparency to industry stakeholders.

This filing consists of the following sections:

- In Section I, NERC provides an executive summary of the petition.
- In Section II, NERC discusses the proposed revisions to the Registration and Certification Program in Section 500 (Organization Registration and Certification), and Appendices 2 (Definitions Used in the ROP), 5A (Organization Registration and Certification Manual), 5B (Statement of Compliance Registry Criteria), and 5C (Procedure for Requesting and Receiving Exception from the Application of the Definition of Bulk Electric System).
- In Section III, NERC discusses the proposed updates to Section 1003 (Infrastructure Security Program) to correct inconsistencies and to align the ROP with current operational practices related to NERC's infrastructure security program.
- In Section IV, NERC discusses the proposed updates to Appendix 4B (Sanction Guidelines) to reflect the current practices of NERC and the Regional Entities in levying monetary and non-monetary sanctions for violations of the NERC Reliability Standards and Regional Reliability Standards, provide more transparency in the Sanction Guidelines regarding the potential ranges for the various adjustment factors, and address several other specific scenarios raised by FERC.
- In Section V, NERC responds to the Commission's directive to provide additional information regarding the E-ISAC's development and issuances of APBs.

## **I. Executive Summary**

In this petition, NERC proposes revisions to its Registration and Certification Programs, Infrastructure Security Program, and Sanction Guidelines. Regarding the proposed revisions to the Registration and Certification Program, NERC proposes to (1) specify the roles and responsibilities of entities which are parties to a Joint Registration Organization ("JRO") or Coordinated Functional Registration ("CFR"), (2) eliminate the requirement that the Compliance and Certification Committee ("CCC") approve revisions to Appendix 5A of the ROP before submittal to the NERC Board of Trustees ("Board"), (3) revise the NERC-led Review Panel

process to avoid confusion based on the experience gained since its implementation, (4) add a new section to Appendix 5A, “*Organization Certification Review Process*,” to increase transparency regarding the processes, (5) add new subsections to the existing certification process section of Appendix 5A, which includes how NERC addresses the Commission’s directives regarding Certification, (6) remove the unnecessary and redundant “*Notes*” in Appendix 5B, and (7) revise language in Appendix 5C to accurately reflect the current business practices across the ERO Enterprise.

Regarding the Infrastructure Security Program, NERC proposes to (1) provide a more accurate description of the E-ISAC and its role as it operates with ongoing support from the electricity sector, (2) clarify that NERC “operates the E-ISAC on behalf of the electricity sector” in accordance with the request of the U.S. Secretary of Energy in 1998, (3) accurately reflect NERC’s relationship with the Electricity Subsector Coordinating Council (“ESCC”), (4) revise language regarding NERC’s use of a risk management approach to Critical Infrastructure protection to more accurately describe how this is accomplished, and (5) delete references to activities that NERC no longer performs or engages in.

Regarding the Sanction Guidelines, NERC details (1) how it and the Regional Entities determine the base penalty amount within the range based on Violation Risk Factor and Violation Severity Level and other documented factors, (2) what aggravating and mitigating factors can affect the monetary penalty and the potential ranges for each factor, and whether or how non-monetary penalties will be considered in reaching the final monetary penalty amount, (3) how it and the Regional Entities calculate a single penalty for multiple violations by a single entity, (4) how it and the Regional Entities consider the violator’s financial ability to pay the penalty so that no penalty is inconsequential to the violator to whom it is assessed, (5) how it and the Regional

Entities assess a penalty when dealing with multiple subsidiaries of a parent corporation that commit the same violations, and (6) several other changes to accurately reflect the current practices of the ERO Enterprise when assessing a penalty for violations of the Reliability Standards.

## **II. Revisions to the Registration and Certification Program**

### **A. Background and Purpose**

NERC's RBR initiative was approved by the Commission on March 19, 2015. The purpose of the RBR initiative was to ensure that entities are registered and made subject to Reliability Standards based on the risk they pose to the Bulk Electric System ("BES"). NERC has implemented RBR for over five years now, and in that time NERC has learned how to make RBR-related Registration and Certification procedures more efficient based on NERC's experience and feedback gathered from the Regional Entities and industry stakeholders. As a result, NERC began identifying opportunities to improve and clarify its Registration and Certification procedures. This effort was done in coordination with the Compliance and Certification Committee ("CCC"), specifically the Organization Registration and Certification Subcommittee ("ORCS"). While this effort to revise Registration and Certification procedures was underway, the Commission issued the Order, which highlighted additional areas for improvement in the Certification program. In this section, NERC outlines its proposed revisions to the Registration and Certification Program in Section 500 and Appendices 2, 5A, 5B, and 5C. The revisions can be found in clean and redline versions in **Attachments 1-10**.

Also, NERC posted the proposed revisions to the Registration and Certification Programs twice for public comment from March 12, 2020 through April 27, 2020 and from June 10, 2020 through July 13, 2020. In the first comment period, NERC received several comments from industry stakeholders requesting further clarification and additions to the revisions, as well as

showing an appreciation of the revision efforts. NERC reached out to the commenters who requested further clarification revisions to address their concerns and made appropriate changes to the revisions. Thereafter, NERC posted the updated revisions for the second comment period. NERC received far fewer comments, which only requested minor changes in language to ensure there was no confusion as to NERC's intent in its revisions. A summary of all the comments and NERC's responses can be found in **Attachments 11 and 12**.

## **B. Registration Revisions**

### ***1. Joint Registration Organization ("JRO")***

NERC proposes to add more granularity to Section 507 and the other provisions pertaining to JROs. The intent of NERC's proposals is to explain better how a JRO is constructed and to reflect current business practices among organizations considering entering into a JRO. Specifically, NERC proposes that the term "members" be replaced with "parties," because "members" implies that the provision applies only to cooperative or municipal organizations. This is not accurate, and, as such, the term "parties" better describes that other types of entities can be a part of a JRO.

NERC proposes the entity that is registering and accepting the compliance obligations on behalf of the other entities be identified as the "Lead Entity." As a result of this proposal, NERC has made conforming changes to the definition of "Lead Entity" in Appendix 2, to include the registering JRO entity. NERC also proposes to revise the definition of a JRO in Appendix 2, to state that one entity will register on behalf of one or more entities for the function type(s) described in the JRO. The proposed revisions are not intended to effect any substantive changes, but rather to more clearly convey the responsibilities of entities that agree to lead or be a part of a JRO.

## ***2. Coordinated Functional Registration (“CFR”)***

NERC proposes to add more granularity to Section 508 around what information is required for an acceptable CFR agreement and the roles and responsibilities of entities that are parties to a CFR. Specifically, NERC proposes that a single entity in a CFR identify as the “Lead Entity” and serve as the point of contact responsible for providing and updating the agreement to the CFR parties and the Regional Entity. This proposal is in response to feedback from industry stakeholders that the currently effective ROP is not clear as to which entity would be the point of contact in a CFR agreement. As a result of this proposal, NERC has made conforming changes to the definition of “Lead Entity” in Appendix 2, to include the entity that will serve as the point of contact in a CFR agreement.

NERC also proposes to specify that each party to the CFR is responsible for registering for the function associated with the CFR. The proposed revisions are based on feedback from industry stakeholders who noted there is currently confusion about whether applying to be a party to a CFR qualified as registering for the applicable function—which it does not.

## ***3. Appendix 5A – Organization Registration and Certification Manual***

In Section I, “*Overview*,” NERC proposes to remove the provision stating that the CCC must approve any revisions made to the Registration and Certification procedures in Appendix 5A before the revisions can be submitted to the NERC Board. This revision was unanimously approved by the CCC and is intended to ensure that NERC’s ROP revision process is consistent across all its sections and appendices. Currently, only Appendix 5A requires the CCC’s approval before ROP revisions can be submitted to the NERC Board for approval. However, even though seeking CCC approval will not be required before bringing revisions to the Board, NERC will still seek feedback from the CCC before any revisions are proposed to the Board. The CCC is a highly valued resource by NERC and provides invaluable insight into how industry stakeholders view,

interpret, and accomplish reliability goals set by NERC. The purpose of this change is to streamline the ROP revision process by being more efficient as well as ensuring consistency across all the sections and appendices of the ROP.

In Section I, “*To Whom Does This Document Apply?*”, NERC proposes to remove the language detailing sub-set lists of Reliability Standards. In its place, NERC proposes to point to Section III(D) of the Appendix, which has the procedure detailing how an entity would apply for a sub-set list. The reason for this change is that Appendix 5A is not the appropriate place to explain functions and Registry Criteria, which can be found in Appendix 5B. Rather, Appendix 5A describes the procedures an entity uses to become a Registered and/or Certified Entity. NERC also proposes adding Planning Coordinator (“PC”) alongside Planning Authority (“PA”) in the registered function list of Appendix 5A in order to make this list consistent with the function type list in Appendix 5B.<sup>2</sup> This proposal is in response to a comment NERC received during its first public posting of the proposed Registration and Certification revisions.

The ROP is currently silent as to whether an entity seeking modifications to its compliance obligations would be better served through a request for review via the NERC-led Review Panel for a Registration determination under Appendix 5A or by an Inclusion or Exclusion Exception from the application of the BES Definition via the process in Appendix 5C. For this reason, NERC proposes to add language in Section III “*Overview*” specifying situations when it would be more appropriate for an entity to seek a BES Exception determination, related to the BES status of an Element before, or in lieu of, submitting a NERC-led Review Panel request for a Registration determination. This proposal is based on the lessons learned since the implementation of RBR, as well as feedback NERC received from industry stakeholders that entities were unsure as to which

---

<sup>2</sup> See Appendix 5B, Resolution II, Registered Function Type Table.

situations made a BES Exception or NERC-led Review Panel more appropriate. NERC also experienced cases where an entity requested a Registration determination via the NERC-led Review Panel, but the issue the entity brought forward could not be resolved until there was a determination on the status of the BES Element which would be examined under Appendix 5C of the ROP. NERC's proposal intends to avoid this confusion going forward.

NERC proposes to rename the "NERC-led Review Panel," of Section III(D), to the "NERC-led Registration Review Panel." The purpose of this revision is to specify that this particular panel process is regarding Registration matters, and to prevent confusion with other review panels that NERC conducts, particularly the review panel used in the BES Exception Process of Appendix 5C. The majority of NERC's proposals in Section III(D) are to streamline the process and eliminate redundant and confusing language. These streamlining revisions are intended to reflect lessons learned and the current business practices since the implementation of the NERC-led Review Panel in the RBR initiative. Furthermore, NERC proposes to specify that an appeal of a Registration determination to the Board of Trustees Compliance Committee ("BOTCC"), described in the current Section V of Appendix 5A, should occur only after an entity has disputed the Registration determination through the NERC-led Registration Review Panel of Section III(D). These proposed revisions to Section III(D) are intended to more clearly convey the NERC-led Registration Review Panel process and specify that it should be pursued prior to a Registration appeal to the BOTCC.

#### ***4. Appendix 5B – Statement of Compliance Registry***

NERC proposes to eliminate the list of inclusions and exclusions from Appendix 5B because they are already present under the BES definition in Appendix 2. NERC also proposes to clarify the Reliability Standards applicable to UFLS-Only Distribution Providers. In the currently effective ROP, UFLS-Only Distribution Providers are subject to the specific versions and regional

variances of Reliability Standard PRC-005 and Reliability Standard PRC-006. Since Reliability Standards are revised over time, NERC proposes to eliminate specific references to the version of a given Reliability Standard. These changes were made so there would not be inconsistencies if and when new regional variances and versions of PRC-005 and PRC-006 are developed. Rather, by keeping the references to the Reliability Standards general, it ensures the currently effective versions of the Reliability Standards and any updates that are developed will be a part of the criteria without the need to update Appendix 5B.

NERC proposes to remove the “Notes” section, specifically Notes 2, 3, and 4, and rename Notes 1 and 5 to “*Determination of Material Impact*” and “*Limitation of responsibilities to a subset of Reliability Standards,*” respectively. Notes 2, 3, and 4 are being removed because they are redundant and no longer necessary within the context of Appendix 5B. These notes are redundant as follows:

- Note 2 states that an entity that does not meet Registration criteria may request that it be registered anyway. First, this situation is highly unlikely and second, this is addressed in an even broader scope in Appendix 5A, Section III(A), whereby any entity may submit in writing, with supporting documentation, a request for Registration with their Regional Entity.
- Note 3 states that an entity may challenge its Registration, and that NERC or the Regional Entity will provide such an entity with the timelines and procedures for a challenge. This provision is redundant and unnecessary because the procedures for challenging a Registration determination have already been established and described in the NERC-led Registration Review Panel process of Appendix 5A, Section III(D), and in the NERC Organization Registration Appeals Process of Appendix 5A, Section V.
- Note 4 states that an entity that otherwise would not qualify for Registration may nonetheless be registered because it could be part of a class of entities that in aggregate have a material impact on BES reliability. This provision is unnecessary as the proposed Appendix 5A, Section III(D)(8) describes that the NERC-led Registration Review Panel will review individual and aggregate system-wide risks to reliability of the BPS and BES during its determination of material impact.

The following two notes would remain, as renamed and revised:

Note 1 is a non-exclusive list describing how the “materiality” of an entity will be determined, if it is at issue, by the NERC-led Registration Review Panel process. Note 1 has been renamed to “*Determination of Material Impact*,” as it more accurately describes the purpose of the provision and will make finding the non-exclusive list of the “materiality test” much easier and straightforward.

Note 5 describes how NERC may limit the compliance obligations of a Registered Entity for a particular function to a sub-set list of Reliability Standards. Note 5 has been renamed to “*Limitation of responsibilities to a sub-set of Reliability Standards*” to more accurately describe the purpose of the provision. Also, NERC proposes to add that if it develops criteria and a sub-set list of Reliability Standards for a similarly situated class of entities, that criteria and sub-set list of Reliability Standards shall be posted on the Registration and Certification page of the NERC website. This shall ensure transparency, while maintaining the necessary level of responsiveness.

***5. Appendix 5C – Procedure for Requesting and Receiving an Exception from the Application of the NERC Definition of Bulk Electric System***

NERC proposes to delete subsection 5.2.5 from Section 5.2 “*Substantive Review of Exception Request for Approval or Disapproval.*” This section requires a reporting program and schedule under which Regional Entities submit to NERC periodic reports on BES Exception Request processing. NERC has completed its transition to the revised BES Definition, and there are far fewer Exception Requests being processed. Moreover, the BESnet information technology system ensures that NERC can regularly monitor Regional Entity initial screenings and substantive reviews of Exception Requests.

NERC proposes to add language to Section 8.0, “*Approval or Disapproval of an Exception Request,*” permitting a reset of the 90-day time period for the NERC Review Panel’s examination of an Exception Request upon receiving a Submitting Entity’s supplementation of the record. This

provision gives NERC the same ability to adjust the schedule that is available to Regional Entities under Section 6.0, “*Supplementation of an Exception Request Prior to a Recommendation.*”

NERC proposes to add language to Section 8.0 expressly stating that the NERC President may assign a delegate to designate the NERC Review Panel of an Exception Request.

NERC proposes to rename Section 11.0 from “*Termination of an Approved Exception Request*” to “*Certification, Notice of Change in Condition, and Termination of an Exception Request.*” This would more accurately describe what the provisions of the section accomplish. At present, the title is too limited.

### **C. Certification Revisions**

The Commission issued the following directives regarding NERC’s Certification processes:

We direct NERC to revise its Rules of Procedure pertaining to the certification process... NERC should include in the certification process: (1) an updated scope section covering the tools and skills needed to perform the registered function; (2) the minimum criteria for certification, including verification that the entity’s tools, personnel, facilities, and processes can fully support the function; and (3) a mechanism to reject the request for certification if the entity does not meet the requirements for certification. NERC should also consider whether it should permit a conditional approval of an entity that does not meet the requirements for certification if it includes an approved mitigation plan.<sup>3</sup>

We also direct NERC to establish minimum requirements for the certification team that includes necessary diversity in technical training and experience of team members specific to the function being certified or re-certified, e.g., operations engineering, information technology, modeling, planning, forecasting and systems. Such requirements will better ensure an effective review of certifications. NERC should also augment the certification program to include a review and approval of the proposed schedule for completing a certification. Finally, NERC should establish provisions to address the risk of an entity failing to be certified or to be certified when needed, and to provide a process to work with the impacted entities to mitigate the risk.<sup>4</sup>

---

<sup>3</sup> *Order, supra*, at P 86.

<sup>4</sup> *Id.* at P 87.

### **1. Section 500 – Organization Registration and Certification**

NERC proposes to revise Section 501.2 by adding more specificity to the minimum criteria for Certification by detailing that an entity’s tools, personnel, facilities, and process used to perform the duties and tasks required by the applicable Reliability Standards will be evaluated. This revision is in response to one of the Commission’s directives.<sup>5</sup> NERC is also specifying that the evaluation is determining the entity’s ability to perform the function for a specified Area.<sup>6</sup>

### **2. Appendix 5A – Organization Registration and Certification Manual**

NERC proposes to add a new section to Appendix 5A, “Certification Review Process,” which would become the new Section V. This proposal is necessary because the majority of Certification-related activities address changes to an entity’s existing Certification. Including the process of maintaining an entity’s Certification is important for transparency because it is currently not addressed in the ROP. Also, within this new Section V, Overview, NERC proposes to state explicitly that it has the ability to revoke an entity’s certification and de-certify an entity that is no longer performing the responsibilities of the function for which it is certified and registered. Revoking an entity’s Certification would be an indication that the Registered Entity no longer has the necessary capabilities to operate competently the Area(s) for which it was certified. As the ERO, NERC believes this is an authority it should possess under such circumstances, as NERC currently has the responsibility and authority to grant Certification for the functions of Reliability Coordinator (“RC”), Transmission Operator (“TOP”), and Balancing Authority (“BA”).

NERC proposes to improve the existing Certification Process of Appendix 5A, Section IV, by enhancing the Purpose and Scope subsection, describing multi-region registered entities in the

---

<sup>5</sup> *Id.* at P 86(2).

<sup>6</sup> When the term “Area” is used and capitalized, it is being used in the certification context, and is inclusive of terms currently defined in the NERC Glossary of Terms and Appendix 2 of the ROP, specifically, “Balancing Authority Area,” “Reliability Coordinator Area,” or “Transmission Operator Area.”

Role and Responsibilities sub-section, and adding new sub-sections for Initiation, Planning, Fieldwork, Reporting, and Data Retention. These proposals expand the scope to describe the tools and skills to perform the functions and describe the minimum criteria and processes to certify an entity; the requirements for a Certification team; and, the process for reviewing and approving the proposed Certification Schedule.

Regarding the enhancements made to the Purpose and Scope sub-section, NERC proposes to specify that Certification activities assess the processes, procedures, tools, and training of entities applying to be certified for the functions of RC, TOP, and BA. NERC also specifies that the entity applying for the function must demonstrate a prospective level of assurance that it has the capacity to meet the reliability obligations of its registration for its Area(s). These proposals are in response to the Commission's directives and are intended to address the tools and skills needed to perform the registered function and the minimum criteria for certification.<sup>7</sup>

NERC proposes to describe the requirements for a Certification team in Section IV, Planning sub-section. In Section IV, Planning(1)(b)(i-iv), NERC specifies the composition of a Certification team for each of the functions that are required to be certified. NERC provides further specification as to what is expected of the Certification team in Section IV, Planning(2), which states that members shall be diverse in their technical training and experience to collectively represent the subject matter competencies needed to evaluate the specific function being certified. Finally, NERC specifies the training and forms each member of the Certification team is required to complete before the Certification activities begin in Section IV, Planning (4). These proposals

---

<sup>7</sup> *Order, supra*, at P 86(1) & (2).

are in response to the Commission's directive, which required NERC to establish minimum requirements for the certification team.<sup>8</sup>

NERC proposes to specify that there must be a Certification schedule in Section IV, Initiation(3)(b)(i). This provision specifies that the Regional Entity and entity applying for certification create a timeline of specific milestones for the Certification process and submit a draft of the final schedule to NERC for approval. NERC will have the opportunity to review the draft of the final schedule and will (i) approve; (ii) modify; or (iii) reject the final schedule within 45 days of receiving the draft schedule. This proposal is in response to the Commission's directive requiring NERC to include a review and approval of the proposed schedule for completing a certification.<sup>9</sup>

Furthermore, NERC proposes to add language expressly reflecting NERC's ability to reject a Certification application before officially beginning a substantive review of the application in Section IV, Initiation(1)(c)(ii). This proposal would allow the Regional Entity that is reviewing the application to propose to reject it on a procedural basis if the Regional Entity and NERC subsequently determine that the applicant would fail to meet Registry Criteria or would otherwise not be able to competently perform the duties and responsibilities required under relevant Reliability Standards. The applicant may file an appeal of the rejection in accordance with the Certification Appeals Process of Section VII in Appendix 5A. This proposal is in response to the Commission's directive requiring a mechanism to reject the request for certification if the entity does not meet the requirements for certification.<sup>10</sup>

---

<sup>8</sup> *Id.* at P 87 (“We also direct NERC to establish minimum requirements for the certification team that includes necessary diversity in technical training and experience of team members specific to the function being certified or re-certified, e.g., operations engineering, information technology, modeling, planning, forecasting and systems.”).

<sup>9</sup> *Id.* at P 87 (“NERC should also augment the certification program to include a review and approval of the proposed schedule for completing a certification.”).

<sup>10</sup> *Id.* at P 86(3).

Finally, NERC proposes to establish the ability to issue Conditional Certification in Section IV, Reporting(11)(a). This proposal would allow NERC to use its discretion to issue a conditional Certification to ensure that the entity can be Registered and no areas of the BPS are lacking any entities to perform the duties and tasks identified in and required by the Reliability Standards. Conditional Certification would include an implementation plan which provides qualifications or criteria that NERC and the Regional Entity have determined necessary to address the risk of an entity failing to be certified or to be certified when needed, and ensure that the delayed or failed certification is mitigated so that there are no gaps in reliability. The implementation plan would also detail potential impacts both to the applicant and to any affected entities, and discuss how those impacts would be mitigated, how required functions would be served, and how other affected entities within the applicant's prospective footprint would meet their compliance responsibilities.

Conditional Certification is being established is because the current process does not address a potential scenario where the candidate for Registration has not successfully met the criteria for Certification before the proposed effective date of Registration. This is especially cogent in the case where an incumbent Area operator will no longer perform the function as of a certain date and a new Area operator is required. This is in response to the Commission's directives that NERC should permit a conditional approval of an entity that does not meet the requirements for certification,<sup>11</sup> and that NERC should establish provisions to address the risk of an entity failing to be certified or to be certified when needed, and to provide a process to work with the impacted entities to mitigate the risk.<sup>12</sup>

---

<sup>11</sup> *Id.* at P 86(3).

<sup>12</sup> *Id.* at P 87.

### **III. Revisions to the Infrastructure Security Program**

#### **A. Background and Purpose**

Section 1003 of the ROP describes NERC’s infrastructure security program, including, among other things, its operation of the E-ISAC and its relationship with the ESCC. Consistent with the Order, the purpose of the proposed revisions is to update Section 1003 to correct inconsistencies and accurately reflect current operational practices related to NERC’s infrastructure security program. Clean and redline versions showing the revisions to Section 1003 are included in **Attachments 13 and 14**. A summary of all the comments and NERC’s response can be found in **Attachment 15**.

#### **B. Section 1003 Revisions**

The Commission issued the following directives regarding NERC’s Infrastructure Security Program:

We direct NERC in the 180-days compliance filing to propose updates to section 1003 of its Rules of Procedure to correct any inconsistencies, particularly regarding the ESCC, and to reflect current operational practices and oversight of the E-ISAC.<sup>13</sup>

The following is an overview of the key proposed revisions to Section 1003 in response to the Commission’s directive:

- Clarify that NERC “operates the E-ISAC on behalf of the electricity sector” in accordance with the request of the U.S. Secretary of Energy in 1998 (see revised section 1003.1.1).
- Add a more accurate description of the E-ISAC and its role in the electric industry (see revised section 1003.1.2-3).
- Revise the language related to NERC’s relationship to the ESCC to provide that NERC shall “coordinate with” the ESCC instead of “fill the role” of the ESCC (see revised section 1003.1.6).

---

<sup>13</sup> *Id.* at P 74.

- Revise the language regarding NERC’s use of a risk management approach to Critical Infrastructure protection to describe more accurately the manner in which NERC carries out that mandate (see revised section 1003.2.1).
- Add language to reflect that NERC considers security alongside consideration of reliability and resilience (see revised section 1003.2.2).
- Delete references to NERC (1) participating in the critical spare transformer program, (2) working with the U.S. Department of Energy and Department of Homeland Security regarding the National Infrastructure Protection Plan, (3) conducting vulnerability assessments of supervisory control and data acquisition (SCADA) and process control systems, and (4) working with the National SCADA Test Bed and Process Control Systems Forum. NERC no longer engages in any of these activities.

Additional revisions include clean-up changes, such as updating the name of the E-ISAC and the National Infrastructure Advisory Council, and other minor clarifications to reflect accurately NERC’s activities and practices.

#### **IV. Revisions to the Sanction Guidelines**

##### **A. Background and Purpose**

Appendix 4B of the ROP describes the NERC Sanction Guidelines, which NERC and the Regional Entities use to determine appropriate monetary and non-monetary penalties for violations of the NERC Reliability Standards and Regional Reliability Standards by registered entities. The purpose of the proposed revisions is to update Appendix 4B to reflect the current practices of NERC and the Regional Entities in levying monetary and non-monetary penalties for violations of the NERC Reliability Standards and Regional Reliability Standards, provide more transparency in the Sanction Guidelines regarding the various adjustment factors used in determining monetary and non-monetary penalties and the potential ranges for those factors, and address several other specific scenarios raised by FERC. The revisions of Appendix 4B can be found in clean and redline versions in **Attachments 16 and 17**.

NERC posted the proposed revisions to the Sanction Guidelines for public comment from May 21, 2020 through July 10, 2020. In the comment period, NERC received comments from

industry stakeholders requesting further clarification of some proposed revisions and some additional revisions, objecting to certain proposed revisions, and expressing support for other proposed revisions. NERC reached out to several commenters with more extensive comments in order to better understand their concerns and, as appropriate, make changes to the proposed revisions. A summary of all the comments and NERC's response can be found in **Attachment 18**.

## **B. Appendix 4B Revisions**

The Commission issued the following directives regarding NERC's Sanction Guidelines:

We direct NERC to amend its Sanction Guidelines in the 180-day compliance filing to provide more transparency in those guidelines as to how NERC and the Regional Entities apply the Base Penalty, Adjustment Factors and Non-Monetary Sanctions, and to submit for Commission review any "tools or formulae" used to implement the Sanction Guidelines.<sup>14</sup>

NERC should ensure that its revised Sanction Guidelines reflect how NERC and the Regional Entities currently apply the various factors when determining penalties. First, the revisions should explain how NERC and the Regional Entities choose the base penalty amount within the range based on violation risk factor and violation severity level (i.e., section 3.1 and 3.2 of the Sanction Guidelines). Second, the revised guidelines should detail the potential range for aggravating factors applied to the base penalty amount for: (1) risk; (2) duration of violations; (3) size of the entity; (4) management involvement; (5) repetitive violations; and (6) any other factors applied to increase the base penalty amount. NERC should ensure the revised guidelines similarly detail the potential range of mitigating factors applied to reduce the resulting penalty amount for: (1) settlement; (2) self-reporting; (3) admission; (4) internal compliance program; (5) cooperation; and (6) any other credits used to decrease the base penalty amount. Finally, the revised guidelines should address: (1) whether and/or how non-monetary sanctions will be considered in reaching the final penalty amount; (2) how NERC and the Regional Entities will assess a penalty which bears a reasonable relation to the seriousness of the violation and the size of the violator when dealing with multiple subsidiaries of a parent corporation that commit the same violations; (3) how NERC and the Regional Entities will calculate a single penalty for multiple violations by a single entity; and (4) how NERC and the Regional Entities consider "the violator's financial ability to pay the Penalty," so that "no Penalty is inconsequential to the violator to whom it is assessed," as provided in section 2.6 of the current Sanction Guidelines.<sup>15</sup>

---

<sup>14</sup> *Id.* at P 81.

<sup>15</sup> *Id.* at P 82.

The Commission's order did not call into question any monetary or non-monetary penalties applied by NERC or the Regional Entities. The proposed revisions are not intended to substantively modify how NERC or the Regional Entities calculate monetary or non-monetary penalties, but instead to provide additional transparency to the Commission and industry regarding the various factors considered and the potential ranges used for each such factor. As has always been the case, the Sanction Guidelines continue to contemplate greater flexibility in the case of settlement, which is how the vast majority of cases are resolved.

***1. Determination of Base Penalty Amount Using the Violation Risk Factor and Violation Severity Level***

NERC proposes to explain in the proposed Section 3.2.1 how, in general, NERC or the Regional Entity will start with the lowest value of the initial monetary penalty value range based on the intersection of the violation's Violation Risk Factor ("VRF") and Violation Severity Level ("VSL") in the table in the same section. This approach is appropriate because the other factors considered in the Base Monetary Penalty determination (Entity Size, Assessed Risk, Violation Duration, and Violation Time Horizon) generally increase the proposed monetary penalty and the aggravating factors have the potential for significant increases in the proposed monetary penalty.

The proposed Section 3.2.1 also notes that NERC or the Regional Entity has the discretion to start at a higher value within the ranges in the table in the same section as appropriate on a case-by-case basis, particularly when using the lowest value of the initial monetary penalty value range results in a proposed monetary penalty that does not bear a reasonable relationship to the seriousness of the violation after consideration of the other factors in the Sanction Guidelines. Finally, the proposed Section 3.2.1 adjusts the highest monetary penalty in the VRF and VSL

Table to \$1,291,894 per violation, per day to be consistent with the maximum civil monetary penalty set forth in 18 CFR § 385.1602(d).

***2. Potential Range for Factors Used in Increasing or Decreasing the Base Monetary Penalty Amount***

NERC proposes to update the existing Sanction Guidelines to include two factors that are currently used in the determination of the Base Monetary Penalty Amount, specifically “Assessed Risk” and “Violation Duration” in proposed Sections 3.2.3 and 3.2.4, respectively. NERC further proposes to more clearly explain the use of the “Entity Size” factor in proposed Section 3.2.2. For all factors considered in the determination of a monetary penalty, including aggravating and mitigating factors, NERC proposes to define the potential ranges for each factor in Appendix A. The proposed ranges for these factors are based on existing practices by NERC and the Regional Entities in the use of those factors.

***3. Consideration of Non-Monetary Sanctions in Determining a Final Monetary Penalty***

NERC proposes to address the FERC directive regarding “whether and/or how non-monetary sanctions will be considered in reaching the final penalty amount” in proposed Sections 2.2 and 4. In both sections, the revised language requires NERC or the Regional Entity to explain in the Notice of Penalty how the non-monetary penalty impacted the final monetary penalty amount if there was any such impact. NERC further proposes to remove the existing Section 2.14. Monetization of the Value of Sanctions because NERC and the Regional Entities do not, in practice, have a mechanism for valuing non-monetary sanctions or penalties in monetary terms. The examples of non-monetary penalties provided in proposed Section 4 may have a monetary value that varies by entity or have no monetary value at all, and NERC or the Regional Entity may choose to impose non-monetary penalties without making any adjustments to the monetary penalty. Therefore, NERC believes that the most logical means to inform industry of the impact

that the imposition of a non-monetary penalty has on a monetary penalty is to have NERC or the Regional Entity explain that impact, if any, in the Notice of Penalty.

**4. *Assessment of a Monetary Penalty When Dealing with Multiple Subsidiaries That Commit the Same Violation***

NERC proposes to address the FERC directive regarding “how NERC and the Regional Entities will assess a penalty which bears a reasonable relation to the seriousness of the violation and the size of the violator when dealing with multiple subsidiaries of a parent corporation that commit the same violations” in the last bullet point of proposed Section 3.2.2, which addresses the “Entity Size” factor. Specifically, NERC proposes that NERC or the Regional Entity shall endeavor to ensure that the monetary penalty in such cases is approximately the same regardless of whether the multiple subsidiaries are assessed a single violation or if each subsidiary is assessed its own violation, provided that the subsidiaries operate under the same or substantially the same compliance program.

**5. *How to Calculate a Single Penalty for Multiple Violations by a Single Entity***

NERC proposes to address the FERC directive regarding “how NERC and the Regional Entities will calculate a single penalty for multiple violations by a single entity” in proposed Section 2.6. There are two means for determining such a penalty. NERC or the Regional Entity may levy, in its sole discretion, a separate monetary penalty and/or non-monetary penalty for each violation, describing the penalty for each violation individually for the total penalty for the group of violations as a whole. Alternatively, NERC or the Regional Entity may levy, in its sole discretion, a single, aggregate monetary penalty and/or non-monetary penalty bearing reasonable relationship to the aggregate seriousness of the violations as a whole, provided that such a monetary penalty and/or non-monetary penalty will generally be at least as large or expansive as what would be called for individually for the most serious of the violations.

## **6. *Consideration of a Violator's Ability to Pay a Penalty***

NERC proposes to address the FERC directive regarding “how NERC and the Regional Entities consider ‘the violator’s financial ability to pay the Penalty,’ so that ‘no Penalty is inconsequential to the violator to whom it is assessed,’ as provided in section 2.6 of the current Sanction Guidelines” in proposed Section 2.4. NERC notes that it or the Regional Entities may make adjustments to the values for all the factors described in the Sanction Guidelines in order to reach a penalty that is consequential to the entity while bearing a reasonable relation to the reliability impact and seriousness of the violation. Such adjustments will generally occur in the most significant cases involving programmatic failures or multiple serious risk violations. In such cases, NERC proposes that NERC or the Regional Entity review publicly available information regarding the entity involved, then consider whether the proposed penalty is consequential to the entity in light of the information reviewed, and increase the penalty as appropriate if it is not, subject to the maximum limitation on monetary penalties described in proposed Section 2.3 of the Sanction Guidelines. If NERC or the Regional Entity makes such an adjustment to the penalty, it must describe in the Notice of Penalty the analysis of the publicly available information that led it to increase the monetary and/or non-monetary penalty.

## **7. *Other changes***

NERC proposes several other changes to clarify concepts and update the Sanction Guidelines to reflect current practices by NERC and the Regional Entities.

### **a. *Reorganization of structure***

NERC proposes several revisions to reorganize the structure of the Sanction Guidelines. NERC proposes to reduce the number of basic principles in the proposed Sanction Guidelines by moving some of the discussion of factors that impact the monetary penalty (such as Violation Time Horizon and economic choice to violate) from the basic principles section to the determination of

monetary penalties section and removing sections that are no longer used, such as the monetization of the value of sanctions section. NERC further reorganized the determination of monetary penalties section by grouping like factors together, such as the factors considered in all penalty determinations to establish the base monetary penalty amount (Violation Risk Factor, Violation Severity Level, Entity Size, Assessed Risk, Violation Duration, and Violation Time Horizon), all aggravating factors that can increase the base monetary penalty amount, all mitigating factors that can decrease the base monetary penalty amount, and all final adjustment factors that can be considered, as appropriate, after evaluation of all the other factors.

**b. Changes to discussion of Remedial Action Directives**

NERC proposes to remove much of the discussion of Remedial Action Directives from the Sanction Guidelines, except for the aggravating factor of an entity failing to comply with a Remedial Action Directive. As defined in Appendix 2 of the Rules of Procedure, a Remedial Action Directive is

... an action (other than a Penalty or sanction) required by a Compliance Enforcement Authority that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat.

The purpose of Remedial Action Directives is therefore broader than penalizing entities for violations of the NERC or Regional Reliability Standards, and Remedial Action Directives can be imposed even before the violation of a Reliability Standard in order to protect the reliability of the Bulk-Power System from an imminent threat. Further, the existing Sanction Guidelines do not provide any explanation of how to determine whether to impose a Remedial Action Directive and instead focus on the imposition of monetary and/or non-monetary penalties for actual violations of the NERC or Regional Reliability Standards.

The existing Sanction Guidelines point to Section 7.0 of Appendix 4C, which provides details about the circumstances in which a Remedial Action Directive can be issued, what actions can be required, the procedural requirements that must be followed when issuing a Remedial Action Directive, and the process for a registered entity to contest a Remedial Action Directive. Given the difference between monetary and non-monetary penalties and Remedial Action Directives, NERC proposes to remove most of the existing discussion of Remedial Action Directives from the revised Sanction Guidelines and allow the other sections of the Rules of Procedure, primarily in Section 402.5, Appendix 2, and Appendix 4C, to fully address Remedial Action Directives.

**c. Changes to discussion of failures to comply with agreed corrective or mitigating activities**

NERC proposes to remove the discussion in existing Section 3.3.2 regarding an entity's violation of a Reliability Standard Requirement despite having agreed to corrective or Mitigating Activities for prior violations and NERC or the Regional Entity considering an increase in the penalty in such cases, and focusing the revised proposed Section 3.3.2 solely on a failure to comply with a Remedial Action Directive. NERC believes that an entity's failure to comply with agreed to corrective or Mitigating Activities for prior violations is more appropriately addressed as an aggravating factor based on an entity's repetitive violation or compliance history in proposed Section 3.3.1, which notes that aggravation of a monetary penalty may be warranted in cases in which the prior violation(s) had the same root cause as the instant violation and mitigation activities that should have prevent future violations. NERC further notes that existing Section 6.6 of Appendix 4C also describes the steps that NERC or a Regional Entity should take if it discovers that an entity has not completed all required actions in a Mitigation Plan within the applicable deadline.

**d. Monetary penalties not available for cases involving federal entities**

NERC proposes to acknowledge in proposed Section 2.1 that monetary penalties are not available in cases involving federal entities, consistent with the decision in *Southwest Power Administration v. FERC*.<sup>16</sup> As noted in its consideration of comments, NERC believes that certain non-monetary penalties should be available for federal entities and that such entities retain the ability to challenge proposed non-monetary penalties pursuant to the hearing process laid out in Appendix 4C of the Rules of Procedure.

**e. Look-back period of five years for aggravating factors**

NERC proposes to adopt a look-back period of five years from the start date of the instant violation for the various aggravating factors that can increase a monetary penalty. NERC believes this five year look-back period is appropriate because it strikes a reasonable balance between (1) the value of assessing the full scope of an entity's compliance history for relevance and determining whether any relevant prior violations or conduct related to such violations warranted aggravating the monetary penalty and (2) the burden of undertaking such an effort without placing a limit on how far back in time a review of compliance history or conduct related to prior violations could go and without considering the significant changes in compliance obligations that have resulted from revisions to the Reliability Standards in just a few years. As described in the proposed revisions, NERC or the Regional Entity would determine any increase to the monetary penalty based on the particular facts and circumstances of the violation(s) at issue.

**f. Clarifications to Self-Report credit**

NERC proposes to clarify when self-reporting credit is appropriate in proposed Section 3.3.8. NERC's proposed revisions clarify that an entity should generally self-report a possible

---

<sup>16</sup> *Sw. Power Admin. v. FERC*, 763 F.3d 27 (D.C. Cir. 2014).

noncompliance within three months of discovery to receive self-reporting credit, and that self-reporting credit is generally not available after the entity receives a notification letter for an upcoming compliance monitoring engagement if the self-reported violation is of the same Standard and Requirement that is in scope for the compliance monitoring engagement.

**g. Updates to Considerations of an Entity's Ability to Pay a Monetary Penalty**

NERC proposes to consolidate the discussion in the existing Sanction Guidelines regarding an entity's ability to pay into proposed Section 3.4.4, clarify what types of information from an entity that NERC or a Regional Entity may review in order to determine its ability to pay, and make clear that NERC and the Regional Entities have the option to extend the period over which a monetary penalty must be paid using a reasonable installment schedule in situations in which an entity requests consideration of its ability to pay a monetary penalty. In footnote 17 of proposed Section 3.4.4, NERC identifies examples of relevant, verifiable information that an entity may provide regarding its ability to pay and addresses situations in which an entity has declared, or expects to declare, bankruptcy and how NERC or the Regional Entity will take appropriate actions to preserve any claims related to monetary penalties for violations of Reliability Standards with the appropriate bankruptcy court. Further, NERC's proposed addition of a reasonable installment schedule as an option in ability to pay cases reflects the use of installment schedules in past cases, making clear that it is an available option, but it is not intended to indicate a preference for installment schedules over the other options available to NERC or the Regional Entities that are listed in proposed Section 3.4.4.

**h. No Penalties for Noncompliance or Violations Processed through the Compliance Exception or Find, Fix, Track and Report (“FFT”) Disposition Methods and Ability to Impose Zero Dollar Monetary Penalties**

In proposed Section 2.1, NERC proposes to clarify existing practices by NERC and the Regional Entities that monetary or non-monetary penalties do not apply for noncompliance or violations processed through the Compliance Exception or FFT disposition methods and that NERC and the Regional Entities have the discretion to impose a zero dollar monetary penalty where appropriate after consideration of all the relevant principles and factors discussed in the Sanction Guidelines.

**i. Addition of a pandemic as an example of an extenuating circumstance**

NERC proposes to add in proposed Sections 2.9 and 3.4.3 the example of a pandemic as a possible extenuating circumstance that may cause or contribute to a violation but warrant a significant reduction or elimination of a monetary penalty by NERC or the Regional Entity.

**j. Expansion of aggravating factor involving concealment and non-responsiveness**

NERC proposes to expand upon the concepts in existing Section 3.3.7 regarding aggravation of a penalty based on violation concealment and non-responsiveness to include similar conduct, such as an entity’s resistance, impediment, or lack of cooperation during the discovery and review of a violation in proposed Section 3.3.4. NERC and the Regional Entities had considered such conduct by entities as potentially warranting aggravation of penalties based on facts and circumstances and NERC’s proposed revisions incorporate those concepts into the Sanction Guidelines.

**k. Clarification of application of various factors**

NERC proposes several other revisions to clarify the application of various factors, including repetitive violations and compliance history in proposed Section 3.3.1 (explaining the

conditions under which greater aggravation of a monetary penalty may occur), intentional violations in proposed Section 3.3.3 (adding a good faith effort to preserve personnel safety as an acceptable reason to intentionally violate a Reliability Standard), and the entity's internal compliance program in proposed Section 3.3.6 (explaining that the lack of an internal compliance program or failed program is not, solely on its own, grounds for increasing an entity's monetary penalty but that other factors present in such circumstances might warrant an aggravation in the monetary penalty amount).

**l. Clarification of settlement credit**

NERC proposes to clarify the credit available for an entity resolving a violation through settlement in proposed Section 3.4.1. NERC's proposed revisions make clear that settlement credit can be awarded based on an entity's good faith efforts to reach settlement without undue delay, rather than solely focusing on the speed with which settlement was reached. NERC further proposes to document the existing practice by NERC and the Regional Entities of offering additional credit for entities that admit to and accept responsibility for a violation.

**m. Additional examples of non-monetary penalties and clarification regarding application of non-monetary penalties**

NERC proposes to provide additional examples of non-monetary penalties, some of which have been used in settlements with registered entities, and clarify the circumstances in which some of those non-monetary penalties would be applied and what they involve in proposed Section 4.

**8. *NERC review with the Commission of any tools or formulae used to implement the Sanction Guidelines***

On September 1, 2020, NERC had discussions with Commission staff regarding the use of tools and formulae by NERC and the Regional Entities to implement the Sanction Guidelines, as required by Paragraph 81 of the Order.

## V. All Points Bulletins

In footnote 89 of the Order, the Commission directed NERC “to clarify its processes regarding the development and issuance of All Points Bulletins.” The following section discusses the process for the development and issuance of APBs and the factors the E-ISAC considers in deciding whether to issue an APB and whether to do so in conjunction with a NERC Alert or other forms of communication.

As background, the E-ISAC’s use of All Points Bulletins is part of its Critical Broadcast Program (“CBP”). The purpose of the CBP is to provide for the rapid dissemination of critical security information to electricity sector asset owners and operators as security threats and attacks develop, and critical, time-sensitive security information becomes available. Cyber and physical security threats and attacks develop quickly. To respond to these events, the CBP provides an established approach for sharing time-sensitive information with electricity sector asset owners and operators to help them prevent an imminent cyber or physical attack on the grid, reduce the scope of a successful attack, or implement ongoing measures to defend against an attack. The CBP leverages E-ISAC staff and stakeholder expertise to obtain and disseminate the best-available information and potential mitigation strategies to address developing security threats and events in a timely manner. As discussed below, a CBP communication could take the form of a conference call or webinar with relevant entities or the issuance of a written document, referred to as an APB, posted on the E-ISAC portal or disseminated through other channels as deemed appropriate by the E-ISAC given the facts and circumstances presented.

The process for activating the CBP involves the following steps:

- *Threshold for Activation* – As the E-ISAC becomes aware of security threats to or attacks on the North American electric grid, it considers the need to activate its CBP. In making this determination, the E-ISAC uses the best information available at the time to assess the impact or potential impact of the security threat to or attack on the reliability and security of the electric grid. Triggers for activation of the CBP include, but are not limited to: (1)

reports from governmental partners, E-ISAC members, and private-sector partners regarding imminent cyber or physical security threats or events that could potentially affect or are affecting the electricity sector; (2) any confirmed indicator of compromise (“IOC”) on an E-ISAC member’s Operational Technology or Information Technology (“IT”) environment; and (3) disclosure of a cyber vulnerability deemed to be of sufficient scope as to put critical components of the electricity sector at risk.

- *Approving Activation* – Anyone in the E-ISAC may initiate the process to develop an APB, although the NERC officer responsible for the E-ISAC, or designee, must make the final determination to approve of the activation of the CBP. Prior to activation, the NERC President and Chief Executive Officer must be informed of such activation. When activating the CBP, the E-ISAC, as time permits, also works with its governmental partners and the ESCC to share critical information and enhance situational awareness.
- *Targeted Audience* – When activating the CBP, the E-ISAC determines the proper audience for any communications. Based on the nature and target of the security threat or attack, the E-ISAC decides whether to issue a communication to all or a select group of asset owners and operators and whether to include government and cross-sector partners. The E-ISAC also considers which personnel to target the communication (e.g., executive level personnel, cyber experts, physical security experts).
- *Methods of Communication* – The E-ISAC also determines the appropriate method(s) for communicating the critical, time-sensitive security information. At a minimum, the method of communication will include an ABP posted to the E-ISAC portal. Depending on the nature and severity of the security threat or attack, the methods of communication may also include, among other things, conference calls and webinars. The greater the severity and urgency to communicate, the more likely it is for the E-ISAC to initially communicate through conference call and webinars followed by an ABP.
- *Timing of Communication* – The timing for any CBP communication, whether a conference call or an ABP, is dictated largely by the facts and circumstances presented. Nevertheless, the E-ISAC aims to begin CBP communication within six hours of becoming aware of a developing security threat or attack. Following the initial communication, the E-ISAC shall continue to monitor the situation and provide updated information as soon as reasonably possible to help ensure the target audience is provided the best-available information at the time.

The CBP works in conjunction with, and complements other information sharing mechanisms, such as the NERC Alert process, which is designed to be a deliberative and collaborative process for developing a more detailed analysis of security risks and mitigation approaches. Following activation of the CBP, the E-ISAC may conduct further analysis to develop a NERC Alert and/or other communications, as necessary.

The E-ISAC considers the following factors in determining whether to activate the CBP (as a call, webinar, or an APB) alone or in addition to the NERC Alert process:

- *Time-sensitive nature of information* – As noted above, the CBP is designed for the rapid dissemination of security information as threats and attacks are developing. In contrast, as provided in Section 810 of the ROP, the NERC Alert process is deliberative and intended to put industry on formal notice of NERC’s events analysis findings, analyses, and recommendations. The ROP requires that NERC “advise the Commission and other Applicable Governmental Authorities of its intent to issue” a NERC Alert “at least five (5) business days prior to issuance, unless extraordinary circumstances exist that warrant issuance less than five (5) business days after such advice.”
- *Method of communication* – As noted, there is flexibility in the manner in which the E-ISAC may communicate under the CBP (e.g., portal postings, conference calls, webinars, etc.), whereas the NERC Alert process provides for written documents only.
- *Audience* – CBP issuances, whether a call, a webinar, or an APB, may be sent to any organization with an E-ISAC portal account and any additional entities if the E-ISAC deems it appropriate to amplify the message further.<sup>17</sup> The E-ISAC has the flexibility within the CBP to select a broad audience or a more targeted audience based on the nature and target of the security threat or attack. By comparison, NERC Alerts are disseminated to the primary NERC contact for all registered entities included on the NERC Compliance Registry.<sup>18</sup>
- *Industry Responses* – In certain cases, NERC may determine a need for information from asset owners and operators to conduct additional analysis to understand a particular threat, vulnerability, or event. Under the CBP, NERC may request that entities voluntarily provide any requested information. Under the ROP, NERC may use the NERC Alert process to require NERC Registered Entities to provide such additional information. Accordingly, CBP broadcasts are a complement to a NERC Alert when the collection of critical information on a mandatory basis is warranted.

## **VI. Conclusion**

For the reasons set forth above, NERC requests that the Commission approve these proposed revisions to the NERC ROP. In addition, NERC requests that the proposed revisions be made effective upon Commission approval.

---

<sup>17</sup> For example, the E-ISAC could work with the trade associations to have them distribute an APB to their members that do not have E-ISAC portal accounts and those that are not on the NERC Compliance Registry.

<sup>18</sup> The primary contact for NERC Alerts may or may not be a security professional within the registered entity with the ability to act quickly on the content in the Alert.

Respectfully submitted,

/s/ Candice Castaneda

Shamai Elstein

Assistant General Counsel

James McGrane

Senior Counsel

Candice Castaneda

Counsel

North American Electric Reliability  
Corporation

1325 G Street, N.W., Suite 600

Washington, D.C. 20005

(202) 400-3000

(202) 644-8099 – facsimile

[shamai.elstein@nerc.net](mailto:shamai.elstein@nerc.net)

[james.mcgrane@nerc.net](mailto:james.mcgrane@nerc.net)

[candice.castaneda@nerc.net](mailto:candice.castaneda@nerc.net)

*Counsel for North American Electric  
Reliability Corporation*

Date: September 28, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding. Dated at Washington, D.C. this 28<sup>th</sup> day of September 2020.

*/s/ Candice Castaneda*

Candice Castaneda

*Counsel for North American Electric  
Reliability Corporation*

Attachment 1:

Registration and Certification:  
Section 500

Clean

## SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

### 501. Scope of the Organization Registration and Organization Certification Programs

The purpose of the Organization Registration Program is to clearly identify those entities that are responsible for compliance with the FERC approved Reliability Standards. Organizations that are registered are included on the NERC Compliance Registry (NCR) and are responsible for knowing the content of and for complying with all applicable Reliability Standards. Registered Entities are not and do not become Members of NERC or a Regional Entity, by virtue of being listed on the NCR. Membership in NERC is governed by Article II of NERC's Bylaws; membership in a Regional Entity or regional reliability organization is governed by that entity's bylaws or rules.

The purpose of the Organization Certification Program is to ensure that the new entity (i.e., applicant to be an RC, BA, or TOP that is not already performing the function for which it is applying to be certified as) has the tools, processes, training, and procedures to demonstrate their ability to meet the Requirements/sub-Requirements of all of the Reliability Standards applicable to the function(s) for which it is applying thereby demonstrating the ability to become certified and then operational.

Organization Registration and Organization Certification may be delegated to Regional Entities in accordance with the procedures in this Section 500; the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into these Rules of Procedure as **Appendix 5A**; and, approved Regional Entity delegation agreements or other applicable agreements.

1. **NERC Compliance Registry** — NERC shall establish and maintain the NCR of the Bulk Power System owners, operators, and users that are subject to approved Reliability Standards.
  - 1.1 (a) The NCR shall set forth the identity and functions performed for each organization responsible for meeting Requirements/sub-Requirements of the Reliability Standards. Bulk Power System owners, operators, and users (i) shall provide to NERC and the applicable Regional Entity information necessary to complete the Registration, and (ii) shall provide NERC and the applicable Regional Entity with timely updates to information concerning the Registered Entity's ownership, operations, contact information, and other information that may affect the Registered Entity's Registration status or other information recorded in the Compliance Registry.

(b) Entities may address registration obligations for applicable function types using a Joint Registration Organization (JRO), in lieu of each of the JRO's parties' entities being registered individually for one or more functions. Refer to Section 507.

(c) Entities may each register using a Coordinated Functional Registration (CFR) for one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function pursuant to a written agreement for the division of compliance responsibility. Refer to Section 508.

- 1.2 In the development of the NCR, NERC and the Regional Entities shall determine which organizations should be placed on the NCR based on the criteria provided in the NERC *Statement of Compliance Registry Criteria* which is incorporated into these Rules of Procedure as **Appendix 5B**.
- 1.3 NERC and the Regional Entities shall use the following rules for establishing and maintaining the NCR based on the Registration criteria as set forth in **Appendix 5B** *Statement of Compliance Registry Criteria*:
  - 1.3.1 NERC shall notify each organization that it is on the NCR. The Registered Entity is responsible for compliance with all the Reliability Standards applicable to the functions for which it is registered from the time it receives the Registration notification from NERC.
  - 1.3.2 Any organization receiving such a notice may challenge its placement on the NCR according to the process in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Section V.
  - 1.3.3 The Compliance Committee of the Board of Trustees shall promptly issue a written decision on the challenge, including the reasons for the decision.
  - 1.3.4 The decision of the Compliance Committee of the Board of Trustees shall be final unless, within 21 days of the date of the Compliance Committee of the Board of Trustees decision, the organization appeals the decision to the Applicable Governmental Authority.
  - 1.3.5 Each Registered Entity identified on the NCR shall notify its corresponding Regional Entity(s) of any corrections, revisions, deletions, changes in ownership, corporate structure, or similar matters that affect the Registered Entity's responsibilities with respect to the Reliability Standards. Failure to notify will not relieve the Registered Entity from any responsibility to comply with the Reliability Standards or shield it from any Penalties or sanctions associated with failing to comply with the Reliability Standards applicable to its associated Registration.
- 1.4 For all geographical or electrical areas of the Bulk Power System, the Registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the Reliability Standards to the fullest extent practical, and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage. In particular the process shall:

- 1.4.1 Ensure that all areas are under the oversight of one and only one Reliability Coordinator.
- 1.4.2 Ensure that all Balancing Authorities and Transmission Operator entities<sup>1</sup> are under the responsibility of one and only one Reliability Coordinator.
- 1.4.3 Ensure that all transmission Facilities of the Bulk Power System are the responsibility and under the control of one and only one Transmission Planner, Planning Authority, and Transmission Operator.
- 1.4.4 Ensure that all Loads and generators are under the responsibility and control of one and only one Balancing Authority.
- 1.5 NERC shall maintain the NCR of organizations responsible for meeting the Requirements/sub-Requirements of the Reliability Standards currently in effect on its website and shall update the NCR monthly.
- 1.6 With respect to: (i) entities to be registered for the first time; (ii) currently-registered entities or (iii) previously-registered entities, for which registration status changes are sought, including availability and composition of a sub-set list of applicable Reliability Standards (which specifies the Reliability Standards and may specify Requirements/sub-Requirements), the registration process steps in Section III of **Appendix 5A** apply.
- 1.7 NERC shall establish a NERC-led, centralized review panel, comprised of a NERC lead with Regional Entity participants, in accordance with **Appendix 5A**, *Organization Registration and Organization Certification Manual*, Section III.D and **Appendix 5B**, *Statement of Compliance Registry Criteria*.
- 2. **Entity Certification** — NERC shall provide for Certification of all entities with primary reliability responsibilities requiring Certification. The NERC programs shall:
  - 2.1 Evaluate the entity’s tools, personnel, facilities, and processes used to perform the duties and tasks identified in and required by the Reliability Standards. The entities currently requiring Certification include Reliability Coordinators, Transmission Operators, and Balancing Authorities.
  - 2.2 Certify each applicant’s ability to perform the function for a specified Area.<sup>2</sup>
  - 2.3 Maintain process documentation.

---

<sup>1</sup> Some organizations perform the listed functions (e.g., Balancing Authority, Transmission Operator) over areas that transcend the Footprints of more than one Reliability Coordinator. Such organizations will have multiple Registrations, with each such Registration corresponding to that portion of the organization’s overall area that is within the Footprint of a particular Reliability Coordinator.

<sup>2</sup> When the term “Area” is used and capitalized it is being used in the certification context, and is inclusive of terms currently defined in NERC Glossary of Terms and Appendix 2 of the ROP, specifically, “Balancing Authority Area,” “Reliability Coordinator Area,” or “Transmission Operator Area.”

- 2.4 Maintain records of currently certified entities.
- 2.5 Issue a Certification document to the applicant that successfully demonstrates its competency to perform the evaluated functions.

**3. Delegation and Oversight**

- 3.1 NERC may delegate responsibilities for Organization Registration and Organization Certification to Regional Entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the Regional Entity or other applicable agreement. The Regional Entity shall administer Organization Registration and Organization Certification Programs in accordance with such delegations to meet NERC's programs goals and requirements subject to NERC oversight.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of Organization Registration and Organization Certification within the geographic or electrical boundaries of a Regional Entity in the event that no entity is functioning as a Regional Entity for that Region, or the Regional Entity withdraws as a Regional Entity, or does not operate its Organization Registration and Organization Certification Programs in accordance with delegation agreements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee the NERC Organization Registration and Organization Certification Programs activities that are delegated to each Regional Entity through a delegation agreement or other applicable agreement.
  - 3.3.1 This program shall monitor whether the Regional Entity carries out those delegated activities in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability.
  - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in the Organization Registration and Organization Certification Programs with periodic reviews of documents and records of both programs.

**502. Organization Registration and Organization Certification Program Requirements**

- 1. NERC shall maintain the Organization Registration and Organization Certification Programs.
  - 1.1 The roles and authority of Regional Entities in the programs are delegated from NERC pursuant to the Rules of Procedure through regional delegation agreements or other applicable agreements.
  - 1.2 Processes for the programs shall be administered by NERC and the Regional Entities. Materials that each Regional Entity uses are subject to review and approval by NERC.

- 1.3 The appeals process for the Organization Registration and Organization Certification Programs are identified in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Sections VI and VII, respectively.
- 1.4 The Certification Team membership is identified in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Section IV.
2. To ensure consistency and fairness of the Organization Registration and Organization Certification Programs, NERC shall develop procedures to be used by all Regional Entities and NERC in accordance with the following criteria:
  - 2.1 NERC and the Regional Entities shall have data management processes and procedures that provide for confidentiality, integrity, and retention of data and information collected.
  - 2.2 Documentation used to substantiate the conclusions of the Regional Entity/ NERC related to Registration and/or Certification must be retained by the Regional Entity for (6) six years, unless a different retention period is otherwise identified, for the purposes of future audits of these programs.
  - 2.3 To maintain the integrity of the NERC Organization Registration and Organization Certification Programs, NERC, Regional Entities, Certification Team members, program audit team members (Section 506), and committee members shall maintain the confidentiality of information provided by an applicant or entities.
    - 2.2.1 NERC and the Regional Entities shall have appropriate codes of conduct and confidentiality agreements for staff, Certification Team, Certification related committees, and Certification program audit team members.
    - 2.2.2 NERC, Regional Entities, Certification Team members, program audit team members and committee members shall maintain the confidentiality of any Registration or Certification-related discussions or documents designated as confidential (see Section 1500 for types of Confidential Information).
    - 2.2.3 NERC, Regional Entities, Certification Team members, program audit team members and committee members shall treat as confidential the individual comments expressed during evaluations, program audits and report-drafting sessions.
    - 2.2.4 Copies of notes, draft reports, and other interim documents developed or used during an entity Certification evaluation or program audit shall be destroyed after the public posting of a final, uncontested report.
    - 2.2.5 Information deemed by an applicant, entity, a Regional Entity, or NERC as confidential, including Critical Energy Infrastructure Information,

shall not be released publicly or distributed outside of a committee or team.

2.2.6 In the event that an individual violates any of the confidentiality rules set forth above, that individual and any member organization with which the individual is associated will be subject to immediate dismissal from the audit team and may be prohibited from future participation in Compliance Monitoring and Enforcement Program activities by the Regional Entity or NERC.

2.2.7 NERC shall develop and provide training in auditing skills to all individuals prior to their participation in Certification evaluations. Training for Certification Team leaders shall be more comprehensive than the training given to industry subject matter experts and Regional Entity members. Training for Regional Entity members may be delegated to the Regional Entity.

2.4 An applicant that is determined to be competent to perform a function after completing all Certification requirements shall be deemed certified by NERC to perform that function for which it has demonstrated full competency.

2.4.1 All NERC certified entities shall be included on the NCR.

### **503. Regional Entity Implementation of Organization Registration and Organization Certification Program Requirements**

1. **Delegation** — Recognizing the Regional Entity’s knowledge of and experience with its members, NERC may delegate responsibility for Organization Registration and Organization Certification to the Regional Entity through a delegation agreement.
2. **Registration** — The following Organization Registration activities shall be managed by the Regional Entity per the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into the Rules of Procedure as Appendix 5A *Organization Registration and Organization Certification Manual*:
  - 2.1 Regional Entities shall verify that all Reliability Coordinators, Balancing Authorities, and Transmission Operators meet the Registration requirements of Section 501(1.4).
3. **Certification** — The following Organization Certification activities shall be managed by the Regional Entity in accordance with an approved delegation agreement or another applicable agreement:
  - 3.1 An entity seeking Certification to perform one of the functions requiring Certification shall contact the Regional Entity for the Region(s) in which it plans to operate to apply for Certification.

- 3.2 An entity seeking Certification and other affected entities shall provide all information and data requested by NERC or the Regional Entity to conduct the Certification process.
- 3.3 Regional Entities shall notify NERC of all Certification applicants.
- 3.4 NERC and/or the Regional Entity shall evaluate the competency of entities requiring Certification to meet the NERC Certification requirements.
- 3.5 NERC or the Regional Entity shall establish Certification procedures to include evaluation processes, schedules and deadlines, expectations of the applicants and all entities participating in the evaluation and Certification processes, and requirements for Certification Team members.
  - 3.5.1 The NERC / Regional Entity Certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (including requesting a demonstration of all tools identified in the Certification process), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the Certification process), reviewing Certification documents and projected system operator work schedules, and reviewing any additional documentation needed to support the completed questionnaire or inquiries arising during the site visit.
  - 3.5.2 The NERC/ Regional Entity Certification procedures will provide for preparation of a written report by the Certification Team, detailing any deficiencies that must be resolved prior to granting Certification, along with any other recommendations for consideration by the applicant, the Regional Entity, or NERC.

#### **504. Appeals**

- 1. NERC shall maintain an appeals process to resolve any disputes related to Registration or Certification activities per the *Organization Registration and Organization Certification Manual*, which is incorporated in these Rules of Procedure as Appendix 5A.
- 2. The Regional Entity Certification appeals process shall culminate with the Regional Entity board or a committee established by and reporting to the Regional Entity board as the final adjudicator, provided that where applicable, Canadian provincial governmental authorities may act as the final adjudicator in their jurisdictions. NERC shall be notified of all appeals and may observe any proceedings (**Appendix 5A** *Organization Registration and Organization Certification Manual*).

#### **505. Program Maintenance**

NERC shall maintain its program materials, including such manuals or other documents as it deems necessary, of the governing policies and procedures of the Organization Registration and Organization Certification Programs.

**506. Independent Audit of NERC Organization Registration and Organization Certification Program**

1. NERC, through the Compliance and Certification Committee, shall provide for an independent audit of its Organization Registration and Organization Certification Programs at least once every three years, or more frequently, as determined by the Board. The audit shall be conducted by independent expert auditors as selected by the Board.
2. The audit shall evaluate the success, effectiveness and consistency of the NERC Organization Registration and Organization Certification Programs.
3. The final report shall be provided to the NERC Board of Trustees or its appropriate committees, and posted for public viewing. Confidential Information shall be handled in accordance with the NERC Rules of Procedure Section 1500, *Confidential Information*
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response to the Board within 30 days of the final report, detailing the disposition of each and every recommendation, including an explanation of the reasons for rejecting a recommendation and an implementation plan for the recommendations accepted.

**507. Provisions Relating to Joint Registration Organizations (JRO)**

1. In addition to registering as the entity responsible for all function type(s) that it performs itself, an entity may execute an agreement to register as a Lead Entity of a JRO on behalf of one or more parties to the agreement for one or more function type(s) for which such parties would otherwise be required to register. The Lead Entity thereby, accept on behalf of such parties all compliance responsibility for the function types(s) covered by the JRO registration, including all reporting requirements. The Lead Entity of a JRO must execute a written agreement with the parties on whose behalf it registers that: (1) governs the relationship between the parties; (2) addresses the function type(s) described within Appendix 5B for which the Lead Entity is registering for and taking responsibility, and which would otherwise be the responsibility of one or more of the other parties to the JRO; (3) identifies which entity is the Lead Entity and a point of contact within the Lead Entity; and (4) identifies a point of contact for each of the parties to the JRO.
2. For every JRO, the written agreement must be submitted to the appropriate Regional Entity for its retention. Neither NERC nor the Regional Entity shall be parties to any such agreement. Neither NERC nor the Regional Entity shall have responsibility for reviewing or approving any such agreement, other than to verify that the agreement addresses the function type(s) consistent with the Lead Entity's Registration.
3. The JRO Registration data must include all Registration and Certification information as needed by the Regional Entity to complete the Registration process and to perform assessments of compliance. All Compliance Monitoring and Enforcement related

communications shall be directed to the primary compliance contact identified for the Lead Entity of the JRO.<sup>3</sup>

4. The Regional Entity shall notify NERC when it registers a Lead Entity of a JRO. The notification will identify the point of contact and the function type(s) for which the Lead Entity of the JRO is registered on behalf of the JRO parties and a point of contact for each of the JRO parties.
5. For purposes of Compliance Audits, the Regional Entity shall keep a list of all JROs, the Lead Entities, the JRO parties,es and the function type(s) for which the Lead Entity of the JRO has registered for each partythat . It is the responsibility of the Lead Entity of the JRO to provide the Regional Entity with this information as well as the applicable JRO agreement(s).
6. The Regional Entity can request clarification of any list submitted to it that identifies the parties to the JRO and can request such additional information as the Regional Entity deems appropriate.
7. The Regional Entity's acceptance of a Lead Entity's registration as part of a JRO shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded that the registration of the Lead Entity of the JRO meets the Registration requirements of Section 501(1.4).
8. NERC shall maintain, and post on its website, a listing of all JROs, Lead Entities, JRO parties, and the function type(s) for which the Lead Entity of the JRO has registered for each party.
9. The Lead Entity of the JRO shall inform the Regional Entity of any changes to an existing JRO. The Regional Entity shall promptly notify NERC of each such revision.
10. Nothing in Section 507 shall preclude any party to a JRO from registering on its own behalf and undertaking full compliance responsibility for the function type(s) for which the Lead Entity of the JRO has registered. Such registration shall include submission of data or information that includes any documentation that the agreement supporting the JRO has been terminated as to the registering party. In addition to any notification requirements contained within the written agreement, a JRO party ,that registers as responsible for any function type(s) for which the Lead Entity of a JRO was previously responsible shall inform the Lead Entity of the JRO and/or other parties once its Registration has been accepted by the Regional Entity.

#### **508. Provisions Relating to Coordinated Functional Registration (CFR) Entities**

1. In addition to registering as an entity responsible for all functions that it performs itself, multiple entities using a CFR must register for the function associated with the CFR. The

---

<sup>3</sup> The primary compliance contact for the Lead Entity of a JRO can be the same person who serves as the point of contact for the Lead Entity of the JRO. However, it is not required that the same person serve as both the primary compliance contact and the point of contact.

CFR submission to the Regional Entity must include a written agreement that: (1) governs itself; (2) specifies the entities' respective compliance responsibilities; (3) identifies which entity is the Lead Entity, a point of contact within the Lead Entity, and a point of contact for each of the parties to the CFR. The Lead Entity identified for each CFR is responsible for providing the written agreement between the parties, including submitting updates for currently active CFRs to the Regional Entity related to the CFR Registration; and (4) lists one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function type.

2. Neither NERC nor the Regional Entity shall be parties to any such agreement. Neither NERC nor the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the function type for which the parties are registered and the responsibility(ies) which are addressed through the CFR.
3. The CFR Registration data must include all Registration and Certification information and data, as needed by the Regional Entity to complete the Registration process and to perform assessments of compliance, as it relates to the CFR. All Compliance Monitoring and Enforcement related communications shall be directed to the primary compliance contact(s) identified for each of the CFR parties.
4. Each party to a CFR shall have compliance responsibility for those Reliability Standards and/or Requirements/sub-Requirements for which it has registered pursuant to the CFR.
5. The Regional Entity shall notify NERC of each CFR that the Regional Entity accepts, and the notification shall include identification of the Lead Entity of a CFR, the function type that the CFR addresses, a point of contact for each of the CFR parties, and any updates to currently active CFRs.
6. For purposes of Compliance Audits, the Regional Entity shall keep a list of all CFRs, the Lead Entities, the CFR parties, the function type that the CFR addresses, and the responsibilities assigned to each of the CFR parties.
7. The Regional Entity can request clarification of any list submitted to it that identifies the parties to the CFR and can request such additional information as the Regional Entity deems appropriate.
8. The Regional Entity's acceptance of a Lead Entity's registration as part of a CFR shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded that the registration of the CFR meets the Registration requirements of Section 501(1.4).
9. NERC shall maintain, and post on its website, a listing of all CFRs, the Lead Entity of CFRs, CFR parties, the function type that the CFR addresses, and the responsibilities assigned to each of the CFR parties. The posting shall clearly list all the Reliability Standards or Requirements/sub-Requirements thereof for which each entity of the CFR is responsible for under the CFR.

10. Any noncompliance shall be investigated in accordance with the NERC Rules of Procedure Section 400, *Compliance Enforcement*.
11. Nothing in Section 508 shall preclude a party to a CFR from registering on its own behalf and undertaking full compliance responsibility including reporting Requirements for the Reliability Standards to which a CFR is applicable. . Such registration shall include submission of data or information that includes any documentation that the agreement supporting the CFR has been terminated or revised as to the Reliability Standards for which the registering party is now taking compliance responsibility. In addition to any notification requirements contained within the written agreement, an entity registered in a CFR that registers as responsible for any Reliability Standard or Requirement/sub-Requirement of a Reliability Standard shall inform the Lead Entity of the CFR and/or other parties once its Registration has been accepted by the Regional Entity.

**509. Exceptions to the Definition of the Bulk Electric System**

An Element is considered to be (or not be) part of the Bulk Electric System by applying the BES Definition to the Element (including the inclusions and exclusions set forth therein). Appendix 5C sets forth the procedures by which (i) an entity may request a determination that an Element that falls within the definition of the Bulk Electric System should be exempted from being considered a part of the Bulk Electric System, or (ii) an entity may request that an Element that falls outside of the definition of the Bulk Electric System should be considered part of the Bulk Electric System.

Attachment 2:

Registration and Certification:  
Section 500

Redline

## SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

### 501. Scope of the Organization Registration and Organization Certification Programs

The purpose of the Organization Registration Program is to clearly identify those entities that are responsible for compliance with the FERC approved Reliability Standards. Organizations that are registered are included on the NERC Compliance Registry (NCR) and are responsible for knowing the content of and for complying with all applicable Reliability Standards. Registered Entities are not and do not become Members of NERC or a Regional Entity, by virtue of being listed on the NCR. Membership in NERC is governed by Article II of NERC's Bylaws; membership in a Regional Entity or regional reliability organization is governed by that entity's bylaws or rules.

The purpose of the Organization Certification Program is to ensure that the new entity (i.e., applicant to be an RC, BA, or TOP that is not already performing the function for which it is applying to be certified as) has the tools, processes, training, and procedures to demonstrate their ability to meet the Requirements/sub-Requirements of all of the Reliability Standards applicable to the function(s) for which it is applying thereby demonstrating the ability to become certified and then operational.

Organization Registration and Organization Certification may be delegated to Regional Entities in accordance with the procedures in this Section 500; the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into these Rules of Procedure as **Appendix 5A**; and, approved Regional Entity delegation agreements or other applicable agreements.

1. **NERC Compliance Registry** — NERC shall establish and maintain the NCR of the Bulk Power System owners, operators, and users that are subject to approved Reliability Standards.
  - 1.1 (a) The NCR shall set forth the identity and functions performed for each organization responsible for meeting Requirements/sub-Requirements of the Reliability Standards. Bulk Power System owners, operators, and users (i) shall provide to NERC and the applicable Regional Entity information necessary to complete the Registration, and (ii) shall provide NERC and the applicable Regional Entity with timely updates to information concerning the Registered Entity's ownership, operations, contact information, and other information that may affect the Registered Entity's Registration status or other information recorded in the Compliance Registry.
  - (b) ~~A generation or transmission cooperative, a joint action agency or another organization~~ Entities may register as address registration obligations for applicable function types using a Joint Registration Organization (JRO), in lieu of each of the JRO's ~~members or related parties'~~ entities being registered individually for one or more functions. Refer to Section 507.

(c) ~~Multiple e~~Entities may each register using a Coordinated Functional Registration (CFR) for one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function pursuant to a written agreement for the division of compliance responsibility. Refer to Section 508.

- 1.2 In the development of the NCR, NERC and the Regional Entities shall determine which organizations should be placed on the NCR based on the criteria provided in the NERC *Statement of Compliance Registry Criteria* which is incorporated into these Rules of Procedure as **Appendix 5B**.
- 1.3 NERC and the Regional Entities shall use the following rules for establishing and maintaining the NCR based on the Registration criteria as set forth in **Appendix 5B** *Statement of Compliance Registry Criteria*:
  - 1.3.1 NERC shall notify each organization that it is on the NCR. The Registered Entity is responsible for compliance with all the Reliability Standards applicable to the functions for which it is registered from the time it receives the Registration notification from NERC.
  - 1.3.2 Any organization receiving such a notice may challenge its placement on the NCR according to the process in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Section V.
  - 1.3.3 The Compliance Committee of the Board of Trustees shall promptly issue a written decision on the challenge, including the reasons for the decision.
  - 1.3.4 The decision of the Compliance Committee of the Board of Trustees shall be final unless, within 21 days of the date of the Compliance Committee of the Board of Trustees decision, the organization appeals the decision to the Applicable Governmental Authority.
  - 1.3.5 Each Registered Entity identified on the NCR shall notify its corresponding Regional Entity(s) of any corrections, revisions, deletions, changes in ownership, corporate structure, or similar matters that affect the Registered Entity's responsibilities with respect to the Reliability Standards. Failure to notify will not relieve the Registered Entity from any responsibility to comply with the Reliability Standards or shield it from any Penalties or sanctions associated with failing to comply with the Reliability Standards applicable to its associated Registration.
- 1.4 For all geographical or electrical areas of the Bulk Power System, the Registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the Reliability Standards to the fullest extent practical, and (2) there is no unnecessary

duplication of such coverage or of required oversight of such coverage. In particular the process shall:

- 1.4.1 Ensure that all areas are under the oversight of one and only one Reliability Coordinator.
  - 1.4.2 Ensure that all Balancing Authorities and Transmission Operator entities<sup>1</sup> are under the responsibility of one and only one Reliability Coordinator.
  - 1.4.3 Ensure that all transmission Facilities of the Bulk Power System are the responsibility and under the control of one and only one Transmission Planner, Planning Authority, and Transmission Operator.
  - 1.4.4 Ensure that all Loads and generators are under the responsibility and control of one and only one Balancing Authority.
  - 1.5 NERC shall maintain the NCR of organizations responsible for meeting the Requirements/sub-Requirements of the Reliability Standards currently in effect on its website and shall update the NCR monthly.
  - 1.6 With respect to: (i) entities to be registered for the first time; (ii) currently-registered entities or (iii) previously-registered entities, for which registration status changes are sought, including availability and composition of a sub-set list of applicable Reliability Standards (which specifies the Reliability Standards and may specify Requirements/sub-Requirements), the registration process steps in Section III of **Appendix 5A** apply.
  - 1.7 NERC shall establish a NERC-led, centralized review panel, comprised of a NERC lead with Regional Entity participants, in accordance with **Appendix 5A**, *Organization Registration and Organization Certification Manual*, Section III.D and **Appendix 5B**, *Statement of Compliance Registry Criteria*.
2. **Entity Certification** — NERC shall provide for Certification of all entities with primary reliability responsibilities requiring Certification. ~~This includes those entities that satisfy the criteria established in the NERC provisional Certification process.~~ The NERC programs shall:
- 2.1 Evaluate ~~the entity's tools, personnel, facilities, and certify the competency of processes used to perform the duties and tasks identified in and required by the Reliability Standards. The entities performing reliability functions. The entities presently expected to be certified currently requiring Certification~~ include Reliability Coordinators, Transmission Operators, and Balancing Authorities.

---

<sup>1</sup> Some organizations perform the listed functions (e.g., Balancing Authority, Transmission Operator) over areas that transcend the Footprints of more than one Reliability Coordinator. Such organizations will have multiple Registrations, with each such Registration corresponding to that portion of the organization's overall area that is within the Footprint of a particular Reliability Coordinator.

- 2.2 ~~Evaluate and C~~ertify each applicant's ability to ~~meet-perform~~ the ~~requirements function~~ for ~~Certification~~a specified Area.<sup>2</sup>
- 2.3 Maintain process documentation.
- 2.4 Maintain records of currently certified entities.
- 2.5 Issue a Certification document to the applicant that successfully demonstrates its competency to perform the evaluated functions.

### 3. **Delegation and Oversight**

- 3.1 NERC may delegate responsibilities for Organization Registration and Organization Certification to Regional Entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the Regional Entity or other applicable agreement. The Regional Entity shall administer Organization Registration and Organization Certification Programs in accordance with such delegations to meet NERC's programs goals and requirements subject to NERC oversight.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of Organization Registration and Organization Certification within the geographic or electrical boundaries of a Regional Entity in the event that no entity is functioning as a Regional Entity for that Region, or the Regional Entity withdraws as a Regional Entity, or does not operate its Organization Registration and Organization Certification Programs in accordance with delegation agreements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee the NERC Organization Registration and Organization Certification Programs activities that are delegated to each Regional Entity through a delegation agreement or other applicable agreement.
  - 3.3.1 This program shall monitor whether the Regional Entity carries out those delegated activities in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability.
  - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in the Organization Registration and Organization Certification Programs with periodic reviews of documents and records of both programs.

## **502. Organization Registration and Organization Certification Program Requirements**

---

<sup>2</sup> When the term "Area" is used and capitalized it is being used in the certification context, and is inclusive of terms currently defined in NERC Glossary of Terms and Appendix 2 of the ROP, specifically, "Balancing Authority Area," "Reliability Coordinator Area," or "Transmission Operator Area."

1. NERC shall maintain the Organization Registration and Organization Certification Programs.
  - 1.1 The roles and authority of Regional Entities in the programs are delegated from NERC pursuant to the Rules of Procedure through regional delegation agreements or other applicable agreements.
  - 1.2 Processes for the programs shall be administered by NERC and the Regional Entities. Materials that each Regional Entity uses are subject to review and approval by NERC.
  - 1.3 The appeals process for the Organization Registration and Organization Certification Programs are identified in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Sections **VI** and **VII**, respectively.
  - 1.4 The Certification Team membership is identified in **Appendix 5A** *Organization Registration and Organization Certification Manual*, Section IV.**8.d**.
2. To ensure consistency and fairness of the Organization Registration and Organization Certification Programs, NERC shall develop procedures to be used by all Regional Entities and NERC in accordance with the following criteria:
  - 2.1 NERC and the Regional Entities shall have data management processes and procedures that provide for confidentiality, integrity, and retention of data and information collected.
  - 2.2 Documentation used to substantiate the conclusions of the Regional Entity/ NERC related to Registration and/or Certification must be retained by the Regional Entity for (6) six years, unless a different retention period is otherwise identified, for the purposes of future audits of these programs.
  - 2.3 To maintain the integrity of the NERC Organization Registration and Organization Certification Programs, NERC, Regional Entities, Certification Team members, program audit team members (Section 506), and committee members shall maintain the confidentiality of information provided by an applicant or entities.
    - 2.2.1 NERC and the Regional Entities shall have appropriate codes of conduct and confidentiality agreements for staff, Certification Team, Certification related committees, and Certification program audit team members.
    - 2.2.2 NERC, Regional Entities, Certification Team members, program audit team members and committee members shall maintain the confidentiality of any Registration or Certification-related discussions or documents designated as confidential (see Section 1500 for types of Confidential Information).

- 2.2.3 NERC, Regional Entities, Certification Team members, program audit team members and committee members shall treat as confidential the individual comments expressed during evaluations, program audits and report-drafting sessions.
  - 2.2.4 Copies of notes, draft reports, and other interim documents developed or used during an entity Certification evaluation or program audit shall be destroyed after the public posting of a final, uncontested report.
  - 2.2.5 Information deemed by an applicant, entity, a Regional Entity, or NERC as confidential, including Critical Energy Infrastructure Information, shall not be released publicly or distributed outside of a committee or team.
  - 2.2.6 In the event that an individual violates any of the confidentiality rules set forth above, that individual and any member organization with which the individual is associated will be subject to immediate dismissal from the audit team and may be prohibited from future participation in Compliance Monitoring and Enforcement Program activities by the Regional Entity or NERC.
  - 2.2.7 NERC shall develop and provide training in auditing skills to all individuals prior to their participation in Certification evaluations. Training for Certification Team leaders shall be more comprehensive than the training given to industry subject matter experts and Regional Entity members. Training for Regional Entity members may be delegated to the Regional Entity.
- 2.4 An applicant that is determined to be competent to perform a function after completing all Certification requirements shall be deemed certified by NERC to perform that function for which it has demonstrated full competency.
- 2.4.1 All NERC certified entities shall be included on the NCR.

**503. Regional Entity Implementation of Organization Registration and Organization Certification Program Requirements**

- 1. **Delegation** — Recognizing the Regional Entity’s knowledge of and experience with ~~their~~its members, NERC may delegate responsibility for Organization Registration and Organization Certification to the Regional Entity through a delegation agreement.
- 2. **Registration** — The following Organization Registration activities shall be managed by the Regional Entity per the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into the Rules of Procedure as Appendix 5A *Organization Registration and Organization Certification Manual*:

- 2.1 Regional Entities shall verify that all Reliability Coordinators, Balancing Authorities, and Transmission Operators meet the Registration requirements of Section 501(1.4).
3. **Certification** — The following Organization Certification activities shall be managed by the Regional Entity in accordance with an approved delegation agreement or another applicable agreement:
  - 3.1 An entity seeking Certification to perform one of the functions requiring Certification shall contact the Regional Entity for the Region(s) in which it plans to operate to apply for Certification.
  - 3.2 An entity seeking Certification and other affected entities shall provide all information and data requested by NERC or the Regional Entity to conduct the Certification process.
  - 3.3 Regional Entities shall notify NERC of all Certification applicants.
  - 3.4 NERC and/or the Regional Entity shall evaluate the competency of entities requiring Certification to meet the NERC Certification requirements.
  - 3.5 NERC or the Regional Entity shall establish Certification procedures to include evaluation processes, schedules and deadlines, expectations of the applicants and all entities participating in the evaluation and Certification processes, and requirements for Certification Team members.
    - 3.5.1 The NERC / Regional Entity Certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (including requesting a demonstration of all tools identified in the Certification process), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the Certification process), reviewing Certification documents and projected system operator work schedules, and reviewing any additional documentation needed to support the completed questionnaire or inquiries arising during the site visit.
    - 3.5.2 The NERC/ Regional Entity Certification procedures will provide for preparation of a written report by the Certification Team, detailing any deficiencies that must be resolved prior to granting Certification, along with any other recommendations for consideration by the applicant, the Regional Entity, or NERC.

## 504. Appeals

1. NERC shall maintain an appeals process to resolve any disputes related to Registration or Certification activities per the *Organization Registration and Organization Certification Manual*, which is incorporated in these Rules of Procedure as Appendix 5A.
2. The Regional Entity Certification appeals process shall culminate with the Regional Entity board or a committee established by and reporting to the Regional Entity board as the final adjudicator, provided that where applicable, Canadian provincial governmental authorities may act as the final adjudicator in their jurisdictions. NERC shall be notified of all appeals and may observe any proceedings (**Appendix 5A** *Organization Registration and Organization Certification Manual*).

**505. Program Maintenance**

NERC shall maintain its program materials, including such manuals or other documents as it deems necessary, of the governing policies and procedures of the Organization Registration and Organization Certification Programs.

**506. Independent Audit of NERC Organization Registration and Organization Certification Program**

1. NERC, through the Compliance and Certification Committee, shall provide for an independent audit of its Organization Registration and Organization Certification Programs at least once every three years, or more frequently, as determined by the Board. The audit shall be conducted by independent expert auditors as selected by the Board.
2. The audit shall evaluate the success, effectiveness and consistency of the NERC Organization Registration and Organization Certification Programs.
3. The final report shall be ~~posted by~~ provided to the NERC Board of Trustees or its appropriate committees, and posted for public viewing. Confidential Information shall be handled in accordance with the NERC Rules of Procedure Section 1500, Confidential Information
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response to the Board within 30 days of the final report, detailing the disposition of each and every recommendation, including an explanation of the reasons for rejecting a recommendation and an implementation plan for the recommendations accepted.

**507. Provisions Relating to Joint Registration Organizations (JRO)**

1. In addition to registering as the entity responsible for all function ~~type(s)~~ that it performs itself, an entity may execute an agreement to register as a Lead Entity of a JRO on behalf of one or more ~~of its members or related entities~~ parties to the agreement for one or more function ~~type(s)~~ for which such ~~members or related entities~~ parties would otherwise be required to register, ~~and, The Lead Entity~~ thereby, accept on behalf of such ~~members or related entities~~ parties all compliance responsibility for ~~that the~~ function types(s) covered by the JRO registration, or those functions including all reporting requirements. Any entity seeking to register as The Lead Entity of a JRO must submit ~~execute~~ a written agreement with the parties on whose behalf it registers that: (1) governs the relationship between the

parties; (2) addresses the function type(s) described within Appendix 5B~~its members or related entities for all Requirements/sub-Requirements for the function(s)~~ for which the Lead Entity is registering for and ~~takes taking~~ responsibility ~~for~~, and which would otherwise be the responsibility of one or more of ~~the other parties to the JRO~~~~its members or related entities~~; (3) identifies which entity is the Lead Entity and a point of contact within the Lead Entity; and (4) identifies a point of contact for each of the parties to the JRO.

- ~~1.2.~~ For every JRO, the written agreement must be submitted to the appropriate Regional Entity for its retention. Neither NERC nor the Regional Entity shall be parties to any such agreement. ~~Neither, nor shall~~ NERC nor the Regional Entity shall have responsibility for reviewing or approving any such agreement, other than to verify that the agreement addresses the function type(s)~~provides for an allocation or assignment of responsibilities~~ consistent with the ~~JRO~~ Lead Entity's Registration.
- ~~2.3.~~ The JRO Registration data must include ~~all the same~~ Registration and Certification information ~~as a normal compliance Registration entry. The JRO is responsible for providing all of the information and data, including submitting reports,~~ as needed by the Regional Entity to complete the Registration process and to perform assessments of compliance. All Compliance Monitoring and Enforcement related communications shall be directed to the primary compliance contact identified for the Lead Entity of the JRO~~for performing assessments of compliance.~~<sup>3</sup>
- ~~3.4.~~ The Regional Entity shall notify NERC when it registers a Lead Entity of a of each JRO that the Regional Entity accepts. The notification will identify the point of contact and the functions type(s) for which the Lead Entity of the JRO is being registered ~~for~~ on behalf of the JRO parties and a point of contact for each of the JRO parties~~its members or related entities.~~
- ~~4.5.~~ For purposes of Compliance Audits, the Regional Entity shall keep a list of all JROs, the Lead Entities, the JRO parties,~~This document shall contain a list of each JRO's members or related entities~~ and the function type(s) for which the Lead Entity of the JRO is has registered for each party~~that member(s) or related entity(s)~~. It is the responsibility of the Lead Entity of the JRO to provide the Regional Entity with this information as well as the applicable JRO agreement(s).
- ~~5.6.~~ The Regional Entity ~~may can~~ request clarification of any list submitted to it that identifies the ~~members of parties to~~ the JRO and ~~may can~~ request such additional information as the Regional Entity deems appropriate.
- ~~6.7.~~ The Regional Entity's acceptance of a Lead Entity's registration as part of a JRO shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded that the registration of the Lead Entity of the JRO will meets the Registration requirements of Section 501(1.4).

---

<sup>3</sup> The primary compliance contact for the Lead Entity of a JRO can be the same person who serves as the point of contact for the Lead Entity of the JRO. However, it is not required that the same person serve as both the primary compliance contact and the point of contact.

- ~~8.~~ 8. NERC shall maintain, and post on its website, a JRO registry listing of all JROs, Lead Entities, JRO parties, and the function type(s) for which the Lead Entity of the JRO has registered for each party.
- ~~7.~~ Registrations that have been reviewed and accepted by the Regional Entity. The posting shall identify the JRO entity taking compliance responsibilities for itself and its members.
- ~~8.9.~~ The Lead Entity of the JRO shall inform the Regional Entity of any changes to an existing JRO. The Regional Entity shall promptly notify NERC of each such revision.
- ~~9.10.~~ Nothing in Section 507 shall preclude a member of a JRO, a related entity, or any party to a JRO other entity from registering on its own behalf and undertaking full compliance responsibility including reporting Requirements for the Reliability Standards applicable to the function type(s) for which the Lead Entity of the JRO has registered. Such registration shall include submission of data or information that includes any documentation that the agreement supporting the JRO has been terminated as to the registering party. In addition to any notification requirements contained within the written agreement, a member or other entity is registering. A JRO party member or related entity, that registers as responsible for any function type(s) for which the Lead Entity of a JRO was previously responsible Reliability Standard or Requirement/sub-Requirement of a Reliability Standard shall inform the Lead Entity of the JRO and/or other parties once of its Registration has been accepted by the Regional Entity.

#### **508. Provisions Relating to Coordinated Functional Registration (CFR) Entities**

1. In addition to registering as an entity responsible for all functions that it performs itself, multiple entities ~~may each register~~ using a CFR must register for the function associated with the CFR for one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function. The CFR submission to the Regional Entity must include a written agreement that: (1) governs itself; (2) and clearly specifies the entities' respective compliance responsibilities; (3) identifies which entity is the Lead Entity, a point of contact within the Lead Entity, and a point of contact for each of the parties to the CFR. The Registration of the CFR is the complete Registration for each entity. The Lead Entity identified for each CFR is responsible for providing the written agreement between the parties, including submitting updates for currently active CFRs to the Regional Entity related to the CFR Registration; and (4) lists one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function type. Additionally, each entity shall take full compliance responsibility for those Reliability Standards and/or Requirements/sub-Requirements it has registered for in the CFR.
- ~~1.2.~~ Neither NERC nor the Regional Entity shall be parties to any such agreement. Neither nor shall NERC nor the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the function type for which the parties are registered and the responsibility(ies) which are addressed through the CFR.

- ~~2.~~ 3. The CFR Registration data must include all Registration and Certification information and data, as needed by the Regional Entity to complete the Registration process and to perform assessments of compliance, as it relates to the CFR. All Compliance Monitoring and Enforcement related communications shall be directed to the primary compliance contact(s) identified for each of the CFR parties. ~~Each CFR or~~ each individual entity within a CFR must identify a point of contact that is responsible for providing information and data, including submitting reports as needed by the Regional Entity related to the CFR Registration.
- ~~4.~~ 4. Each party to a CFR shall have compliance responsibility for those Reliability Standards and/or Requirements/sub-Requirements for which it has registered pursuant to the CFR.
- ~~53.~~ 53. The Regional Entity shall notify NERC of each CFR that the Regional Entity accepts, and the notification shall include identification of the Lead Entity of a CFR, the function type that the CFR addresses, a point of contact for each of the CFR parties, and any updates to currently active CFRs.
- ~~6.~~ 6. For purposes of Compliance Audits, the Regional Entity shall keep a list of all CFRs, the Lead Entities, the CFR parties, the function type that the CFR addresses, and the responsibilities assigned to each of the CFR parties.
- ~~74.~~ 74. ~~NERC or~~ The Regional Entity ~~may can~~ request clarification of any list submitted to it that identifies the ~~parties to~~ compliance responsibilities of the CFR and ~~may can~~ request such additional information as ~~NERC or~~ the Regional Entity deems appropriate.
- ~~58.~~ 58. The Regional Entity's acceptance of a Lead Entity's registration as part of a ~~that~~ CFR shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded that the registration of the CFR ~~will~~ meets the Registration requirements of Section 501(1.4).
- ~~69.~~ 69. NERC shall maintain, and post on its website, a ~~CFR registry~~ listing of all CFRs, the Lead Entity of CFRs, CFR parties, the function type that the CFR addresses, and the responsibilities assigned to each of the CFR parties. ~~Registrations that have been accepted by NERC or by a Regional Entity.~~ The posting shall clearly list all the Reliability Standards or Requirements/sub-Requirements thereof for which each entity of the CFR is responsible for under the CFR.
- ~~107.~~ 107. ~~The point of contact shall inform the Regional Entity of any changes to an existing CFR. The Regional Entity shall promptly notify NERC of each such revision.~~
- ~~108.~~ 108. In the event of a violation of a Reliability Standard or of a Requirement/sub-Requirement of a Reliability Standard for which an entity of a CFR is registered, that entity shall be identified in the Notice of Alleged Violation and shall be assessed the sanction or Penalty in accordance with the NERC Sanctions Guidelines. In the event a Regional Entity is not able to determine which entity(ies) is responsible for a particular Reliability Standard, or Requirements/sub-Requirements thereof that has been violated, the Regional Entity shall investigate the ~~Any~~ noncompliance shall be investigated in accordance with the NERC Rules of Procedure Section 400, *Compliance Enforcement*.

~~to determine the entity(ies) to which the Regional Entity shall to issue the sanction or Penalty for the violation.~~

- ~~911.~~ Nothing in Section 508 shall preclude ~~an entity registered in a party to~~ a CFR, ~~or any other entity~~ from registering on its own behalf and undertaking full compliance responsibility including reporting Requirements for the Reliability Standards to which a CFR is applicable applicable to the function(s) for which the entity is registering. . Such registration shall include submission of data or information that includes any documentation that the agreement supporting the CFR has been terminated or revised as to the Reliability Standards for which the registering party is now taking compliance responsibility. In addition to any notification requirements contained within the written agreement. ~~A~~an entity registered in a CFR that registers as responsible for any Reliability Standard or Requirement/sub-Requirement of a Reliability Standard shall inform the Lead Entity of the CFR and/or other parties once point of contact of its Registration has been accepted by the Regional Entity.

#### **509. Exceptions to the Definition of the Bulk Electric System**

An Element is considered to be (or not be) part of the Bulk Electric System by applying the BES Definition to the Element (including the inclusions and exclusions set forth therein). Appendix 5C sets forth the procedures by which (i) an entity may request a determination that an Element that falls within the definition of the Bulk Electric System should be exempted from being considered a part of the Bulk Electric System, or (ii) an entity may request that an Element that falls outside of the definition of the Bulk Electric System should be considered part of the Bulk Electric System.

Attachment 3:

Registration and Certification:  
Appendix 2

Clean

“Interconnection” means a geographic area in which the operation of Bulk Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the Facilities within their control.++ When capitalized, any one of the four major electric system networks in North America: Eastern, Western, ERCOT and Quebec.\*\*

“Interconnection Reliability Operating Limit” means a System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading outages that adversely impact the reliability of the Bulk Electric System.\*\*

“Intermediate System” means a Cyber Asset or collection of Cyber Assets performing access control to restrict Interactive Remote Access to only authorized users. The Intermediate System must not be located inside the Electronic Security Perimeter.\*\*

“Internal Control Evaluation” or “ICE” means a review by the Compliance Enforcement Authority of a Registered Entity’s internal controls. The ICE may further refine the compliance oversight plan, including the scope of an audit, the type and application of compliance monitoring tools, the depth and breadth of a particular area of review.

“Interpretation” means an addendum to a Reliability Standard, developed in accordance with the NERC *Standard Processes Manual* and approved by the Applicable Governmental Authority(ies), that provides additional clarity about one or more Requirements in the Reliability Standard.

“ISO/RTO” means an independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.

“Joint Registration Organization” means two or more entities (the parties) agree in writing upon a division of compliance responsibility where an entity registers in the Compliance Registry for one or more function type(s) for itself and on behalf of one or more other parties to such agreement for function type(s) for which such parties would otherwise be required to register.

“Lead Entity” means (1) within the meaning of Appendices 5A and 5B, the entity identified in a Joint Registration Organization or Coordinated Functional Registration agreement as the primary Point of Contact that administers that agreement with NERC and the applicable Regional Entity(ies), and (2) within the meaning of Appendix 5C, the entity that submits the Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

“Lead Mediator” means a member of a mediation team formed pursuant to Appendix 4E who is selected by the members to coordinate the mediation process and serve as the mediation team’s primary contact with the Parties.

“Load” means an end-use device or customer that receives power from the electric system.\*\*

“Load-Serving Entity” means an entity that secures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.\*\*

Attachment 4:

Registration and Certification:  
Appendix 2

Redline

“Interconnection” means a geographic area in which the operation of Bulk Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the Facilities within their control.++ When capitalized, any one of the four major electric system networks in North America: Eastern, Western, ERCOT and Quebec.\*\*

“Interconnection Reliability Operating Limit” means a System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading outages that adversely impact the reliability of the Bulk Electric System.\*\*

“Intermediate System” means a Cyber Asset or collection of Cyber Assets performing access control to restrict Interactive Remote Access to only authorized users. The Intermediate System must not be located inside the Electronic Security Perimeter.\*\*

“Internal Control Evaluation” or “ICE” means a review by the Compliance Enforcement Authority of a Registered Entity’s internal controls. The ICE may further refine the compliance oversight plan, including the scope of an audit, the type and application of compliance monitoring tools, the depth and breadth of a particular area of review.

“Interpretation” means an addendum to a Reliability Standard, developed in accordance with the NERC *Standard Processes Manual* and approved by the Applicable Governmental Authority(ies), that provides additional clarity about one or more Requirements in the Reliability Standard.

“ISO/RTO” means an independent transmission system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.

“Joint Registration Organization” means two or more entities (the parties) agree in writing upon a division of compliance responsibility where an entity ~~that~~ registers in the Compliance Registry ~~to perform reliability functions~~for one or more function type(s) for itself and on behalf of one or more ~~of its members or related entities~~other parties to such agreement for function type(s) for which such ~~members or related entities~~parties would otherwise be required to register.

“Lead Entity” means ~~the entity that submits~~(1) within the meaning of Appendices 5A and 5B, the entity identified in a Joint Registration Organization or Coordinated Functional Registration agreement as the primary Point of Contact that administers that agreement with NERC and the applicable Regional Entity(ies), and (2) within the meaning of Appendix 5C, the entity that submits the Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

“Lead Mediator” means a member of a mediation team formed pursuant to Appendix 4E who is selected by the members to coordinate the mediation process and serve as the mediation team’s primary contact with the Parties.

“Load” means an end-use device or customer that receives power from the electric system.\*\*

“Load-Serving Entity” means an entity that secures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.\*\*

Attachment 5:

Registration and Certification:  
Appendix 5A

Clean

**NERC**

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# Appendix 5A

## Organization Registration and Certification Manual

Effective Date: , 2020

**RELIABILITY | ACCOUNTABILITY**



**3353 Peachtree Road NE  
Suite 600, North Tower  
Atlanta, GA 30326  
404-446-2560 | [www.nerc.com](http://www.nerc.com)**

# Table of Contents

---

Section I — Executive Summary .....	1
Overview .....	1
To Whom Does This Document Apply? .....	1
When did These Processes Begin?.....	1
Where to Access and Submit Form(s)?.....	1
Roles and Responsibilities.....	2
NERC.....	2
Regional Entity .....	2
Entity Submitting the Application .....	2
Section II — Introduction to Organization Registration and Organization Certification Processes.....	4
Organization Registration — Entities Required to Register.....	4
Organization Certification.....	4
Section III — Organization Registration Process .....	6
Purpose and Scope .....	6
Overview .....	6
A. Organization Registration Application Process .....	6
B. Deactivation Process .....	9
C. Reactivation Process.....	9
D. NERC-led Registration Review Panel .....	10
Section IV — Organization Certification Process.....	13
Purpose and Scope .....	13
Organization Certification Process .....	13
Initiation .....	13
Planning.....	14
Fieldwork.....	16
Reporting.....	17
Data Retention .....	19
Section V — Organization Certification Review Process.....	20
Purpose and Scope .....	20
Overview .....	20
Organization Certification Review Process.....	21
Initiation .....	21
Planning.....	22

Fieldwork..... 24

Reporting..... 25

Data Retention ..... 26

Section VI — NERC Organization Registration Appeals Process..... 27

    Purpose and Scope ..... 27

    Overview ..... 27

    Organization Registration Appeals Procedure..... 27

Section VII — NERC Organization Certification Appeals Process ..... 29

    Purpose and Scope ..... 29

    Overview ..... 29

    Organization Certification Appeals Procedure ..... 29

Definitions ..... 31

## Section I — Executive Summary

---

### Overview

The purpose of this document is twofold: (1) to define the process utilized in the North American Electric Reliability Corporation (NERC) Organization Registration Program for identifying which functional entities must register as owners, operators, and users of the Bulk Power System (BPS) for compliance with Reliability Standards; and (2) to define the process utilized in the Organization Certification Program for certifying the following entities: Reliability Coordinator (RC), Balancing Authority (BA), and Transmission Operator (TOP).

### To Whom Does This Document Apply?

All industry participants responsible for or intending to be responsible for, the following functions must register with NERC through the Organization Registration process. The entities are defined in the NERC *Statement of Compliance Registry Criteria*, set forth in **Appendix 5B** to the NERC Rules of Procedure (ROP), with responsibilities designated by the individual Reliability Standards or by a sub-set list of the otherwise applicable Reliability Standards determined in accordance with this **Appendix 5A**, Section III(D) to the NERC ROP.

	Entities that Must Register	Entities that Need to be Certified
Reliability Coordinator (RC)	√	√
Transmission Operator (TOP)	√	√
Balancing Authority (BA)	√	√
Planning Authority/Planning Coordinator (PA/PC)	√	
Transmission Planner (TP)	√	
Transmission Service Provider (TSP)	√	
Transmission Owner (TO)	√	
Resource Planner (RP)	√	
Distribution Provider (DP)	√	
Generator Owner (GO)	√	
Generator Operator (GOP)	√	
Reserve Sharing Group (RSG)	√	
Frequency Response Sharing Group (FRSG)	√	
Regulation Reserve Sharing Group	√	

### When did These Processes Begin?

The initial Registration process began in January of 2006. Registration of new entities is an ongoing process. If a Registered Entity's information changes, these changes must be submitted to the applicable Regional Entity(ies).

Certification is ongoing for entities in accordance with Sections IV and V of this manual.

### Where to Access and Submit Form(s)?

Certification forms are provided on each Regional Entity's website. Completed forms are to be sent electronically to the Compliance and Certification Manager of the applicable Regional Entity(ies). Registration information is submitted electronically via an online application that is hosted on the NERC website. If an entity operates in more than one Region, separate Registration applications must be completed and submitted to each of the Regional

Entities. NERC will coordinate process execution when an entity is registering or certifying with multiple Regional Entities.

## Roles and Responsibilities

The following is a high-level overview of the roles and responsibilities in the Registration and Certification processes:

### NERC

1. Oversight of entity processes performed by the Regional Entities, including:
  - a. Governance per the Regional Entity's delegation agreement with NERC.
  - b. Coordination of process execution when an entity is registering and/or certifying with multiple Regional Entities.
2. Manage each entity's NERC Compliance Registry identification number (NERC ID) including:
  - a. Sending a Registration or Certification letter that contains the NERC ID to the applicable Regional Entity(ies) for review and approval. If the Regional Entity(ies) agrees with all the information provided, it will notify NERC to issue the NERC ID to the Registered Entity and will send a copy of the notification being provided to the Regional Entity(ies).
  - b. Ensuring each Registered Entity has only one NERC ID for all Regional Entities in which registered.
3. Make modeling changes based on Registration information.
4. Maintain accurate Registration and Certification records including granting Certification certificates for the Registered Entity(ies) responsible for compliance (including Joint Registration Organization (JRO)/Coordinated Functional Registration (CFR)).
5. Maintain published up-to-date list of Registered Entities (i.e. the NERC Compliance Registry (NCR)) on the NERC website. NERC maintains the NCR, which identifies each Registered Entity and the applicable functional categories for which it is registered.
6. Lead panel reviews in accordance with **Appendix 5A, Organization Registration and Organization Certification Manual**, Section III(D).

### Regional Entity

1. Performs data collection and mapping of BPS Facilities and those Facilities that have a material impact on the BPS within its Regional Entity defined reliability Region boundaries.
2. Approves or disapproves entity Registration applications.
3. Reviews entity Certification applications for completeness.
4. Notifies NERC of entities registered with the Regional Entity.
5. Approves or denies Certification Team (CT) recommendations and notifies the entity and NERC of the decision.
6. Provides leadership to the CT throughout the Certification process.

### Entity Submitting the Application

1. Completes and submits Registration and/or Certification application.

2. Submits updates to Registration and/or Certification information as necessary and/or requested.
3. Responds to Regional Entity and/or NERC questions pertaining to Registration and/or Certification.
4. Provides documentation or other evidence requested or required to verify compliance with Certification requirements.

## Section II — Introduction to Organization Registration and Organization Certification Processes

---

The processes utilized to implement the Organization Registration and Organization Certification Programs are administered by each Regional Entity. Pursuant to its delegation agreement with NERC, each Regional Entity is responsible for registering and certifying industry participants within its Regional Entity reliability Region boundaries. Each Regional Entity must use the following NERC processes.

### Organization Registration — Entities Required to Register

All industry participants responsible for one or more of the functions below must register for each function through the Organization Registration Program. These entities are defined in the NERC *Statement of Compliance Registry Criteria*.

- RC
- TOP
- BA
- PA/PC
- TP
- TSP
- TO
- RP
- DP
- GO
- GOP
- RSG
- FRSG
- Regulation Reserve Sharing Group

The Registration procedure is in Section III of this manual.

### Organization Certification

Prospective and existing Registered Entities intending to perform or performing the RC, TOP, and/or BA functions shall achieve and/or maintain certification to operate one or more RC, TOP, and/or BA Areas. Every RC, TOP, and BA Area shall have a certified RC, TOP, and BA responsible for performing the duties and tasks identified in and required by the Reliability Standards.

Certification is required prior to the start of, and during the operation of a RC, TOP, or BA Area, subject to exception in NERC's sole discretion (conditional Certification). In such exceptions, the Registered Entity must satisfy conditions imposed according to an implementation plan agreed to by NERC to continue or discontinue operating its Area(s).

The activities of the program are designed to identify issues that, if not closed, could lead to unacceptable performance of the duties and responsibilities applicable to the certified function. The absence of a certified RC,

TOP, and/or BA for any Area jeopardizes the functional relationships within and between Areas specified by the Reliability Standards, and may lead to the inability of Registered Entities to maintain compliance with standards requiring performance with respect to those relationships.

The Certification/Review Team (CRT) works to establish one of the two findings below, utilizing Open Issues and Areas of Concern derived from an in-depth review and well-documented assessment of an entity's capability to perform the tasks of the certifiable function. Open Issues are items that must be closed before (continued) Certification is recommended.

- Certification/Review Team (CRT) recommends (initial or continued) certification contingent upon resolution of specified Open Issues (if any)
- Certification/Review Team (CRT) cannot recommend (initial or continued) certification. (Usually where the applicant contests Open Issues. The applicant has remedy in the appeal process of Section VII.)

This Certification process is described in Section IV of this manual. Certification reviews are conducted according to Section V. The Registered Entity is required to start operation of its Area within 12 months of being NERC certified.

## Section III – Organization Registration Process

---

### Purpose and Scope

The purpose and scope of this process is to provide guidance on how a user, owner, and/or operator of the BPS should be registered in the NCR.

### Overview

Section 39.2 of the Commission’s regulations, 18 C.F.R. § 39.2, requires each owner, operator, and user of the BPS to be registered with NERC and to comply with approved Reliability Standards.

Owners, operators, and users of the BPS will be registered by function(s) and are:

1. Responsible for compliance with all applicable Requirements/sub-Requirements within Reliability Standards approved by Applicable Governmental Authorities, for the applicable functions for which the Registered Entity is registered, except to the extent that an entity is granted a sub-set list of applicable Reliability Standards, which specifies the Reliability Standards and may specify Requirements/sub-Requirements by NERC, in which case the entity will be responsible for compliance with only such sub-set list; and
2. Subject to the compliance monitoring and enforcement requirements of Section 400 of the ROP.

If an entity does not agree with a Registration determination, it may request a NERC-led Registration Review Panel evaluation in accordance with Section III(D) of Appendix 5A. Entities should seek a determination from the NERC-led Registration Review Panel prior to making an appeal to the BOTCC in accordance with NERC ROP Section 500 and Section VI of Appendix 5A.

For Registration determinations dependent on application of the BES Definition, NERC has established a procedure to determine Inclusion and Exclusion Exceptions to the BES Definition (Appendix 5C). Appendix 5A relates to Registered Entity status whereas Appendix 5C relates to an Element’s BES status. In cases where a BES Exception determination pursuant to Appendix 5C directly impacts an entity’s functional registration requirements, the entity must initiate the BES Exceptions process prior to requesting a Registration change in status, and should be aware that the determination in that proceeding may be necessary prior to reaching a final decision by the NERC-led Registration Review Panel. This situation is dependent on facts and circumstances.

### A. Organization Registration Application Process

1. This procedure applies to the following applicable entities: 1) those entities to be registered for the first time and 2) currently registered or previously registered entities for which registration changes are sought. Deactivation, Reactivation, and registration for a sub-set list of Reliability Standards are subject to the procedures in this subsection III(A). Additional procedures applicable to Deactivation and Reactivation are contained in subsections III(B) and III(C), respectively. Applicable entities shall begin the Registration process by submitting a completed Registration application to the Regional Entity(ies) of the reliability Region(s) where the entity performs or intends to perform its function(s).
  - a. At any time, an entity may recommend in writing, with supporting documentation, to the Regional Entity(ies) that an entity be added to or removed from the Compliance Registry.
  - b. If an entity does not have a NERC ID, NERC shall assign one.
  - c. An entity responsible for more than one function will use a single NERC ID.

- d. The Registration process for an entity may also be initiated by a Regional Entity, NERC, or Applicable Governmental Authority.
- e. At any time, an entity whose registration is at issue may request expedited treatment and waiver of applicable timelines. NERC, in its sole discretion, shall determine if such a request will be granted and alternative timelines. NERC's decision is not a final decision that is subject to appeal.
- f. The following issues require determination by a NERC-led Registration Review Panel:
  - i. If, based on the entity's materiality to BES reliability, the Regional Entity proposes to register an entity that does not meet the criteria set forth in Appendix 5B, Statement of Compliance Registry Criteria, the Regional Entity will submit a request for a determination by a NERC-led Registration Review Panel in accordance with Appendix 5A, Section III(D).
  - ii. If, based on the entity's lack of materiality to BES reliability, an entity that meets the criteria set forth in Appendix 5B, Statement of Compliance Registry Criteria, believes that it should not be registered, the entity may submit a request for a determination by a NERC-led Registration Review Panel in accordance with Appendix 5A, Section III(D).
  - iii. If an entity disputes a Regional Entity determination that the entity meets the criteria set forth in Appendix 5B, Statement of Compliance Registry Criteria, the entity may submit a request for determination by a NERC-led Registration Review Panel in accordance with Appendix 5A, Section III(D).
  - iv. An entity seeking to be registered for a sub-set list of Reliability Standards may submit a request for a determination by a NERC-led Registration Review Panel in accordance with Appendix 5A, Section III(D).<sup>1</sup>
2. NERC shall coordinate Registration of entities that are required to register with multiple Regional Entities in order to ensure consistency of the Registration process.
3. For entities applying for the RC, TOP, and BA functions, Certification and Registration processes should be initiated concurrently using the applicable processes set forth in this manual. The entity should initiate the Certification process per Section IV of this manual.
4. Regional Entities shall evaluate the submitted information and determine if the information is complete/correct. If the information is not complete/correct, the entity will be notified to complete/correct or clarify the Registration information.
5. A single entity must register for all function type(s) that it performs itself. Provided that, an entity may execute an agreement to register as a Lead Entity of a JRO on behalf of one or more of its parties to the JRO agreement for one or more function type(s) for which the parties would have otherwise been required to register. The Lead Entity thereby, accepts on the parties' behalf compliance responsibility for all Requirements/sub-Requirements of Reliability Standards applicable to that function or those functions including reporting requirements.(ROP Section 507)
6. Multiple entities may each register for a function and delineate compliance responsibility for that function using a CFR for one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function type.(ROP Section 508)

---

<sup>1</sup> If NERC has established clearly defined criteria for eligibility for a sub-set list of applicable Reliability Standards and has identified the sub-set list that may apply to similarly situated entities, such criteria shall govern the applicability of such sub-set list and such a matter shall not proceed to the NERC-led review panel, unless there is a dispute by the entity whose sub-set list treatment is at issue.

7. In completing the Regional Entity responsibilities for the Registration process, the following are key items the Regional Entity must verify:
  - a. That function registrations are consistent with the requirements contained in ROP Section 501(1.4).
  - b. The Registration submission includes all data requested by NERC that is necessary for accurately identifying and contacting the Registered Entity.
8. The Regional Entity shall forward all Registration information to NERC for inclusion of an entity on the NCR:
  - a. Within five business Days of a Registration determination by NERC or the NERC-led Registration Review Panel, as applicable, NERC will forward the proposed additions or changes to the NCR to the Regional Entity for review and comment.
  - b. The Regional Entity has five business Days to respond to the proposed changes.
  - c. If NERC does not receive any comments, the NCR will be revised. If NERC does receive comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.
9. NERC updates the NCR and notifies the applicable Registered Entity(ies) within five business Days of the update.
10. The Registered Entity may appeal the final registration determination by NERC in accordance with the ROP Section 500 and Section VI of **Appendix 5A**.
11. The NCR shall be dynamic and will be revised as necessary to take account of changing circumstances. Per the Regional Entity's delegation agreement, the Regional Entity will take any recommendation received under Section 1.a, and other applicable information, under advisement as it determines whether an entity should be on the NCR.
  - a. Each Registered Entity identified in the NCR shall notify its corresponding Regional Entity and/or NERC of any corrections, revisions, deletions, changes in ownership, changes in corporate structure, or similar matters that affect the Registered Entity's responsibilities with respect to the Reliability Standards.<sup>2</sup> Failure to notify will not relieve the Registered Entity from any responsibility to comply with the Reliability Standards or shield it from any Penalties or sanctions associated with failing to comply with the Reliability Standards. (ROP Section 400).
  - b. Each Regional Entity has an independent obligation, even in the absence of a notification by an entity, to review and submit updates to the NCR to NERC, consistent with the procedures in this Section III, with appropriate notification to the affected entities, to the extent the Regional Entity is aware of, or possesses information that the NCR should be updated. These updates include, but are not limited to: 1) conditions on which the sub-set list are no longer applicable; 2) where a new and emerging risk to reliability is identified that changes the basis: a) upon which the entity was deactivated or deregistered; or b) upon which a sub-set list of requirements was made applicable; or 3) deactivation of entities that no longer meet the applicable registration thresholds. This does not excuse the Registered Entity from its obligation to provide such required notifications.
12. NERC may extend the timelines for processing Registration matters for good cause shown. Requests should be sent to the Registration email address, found on the Registration and Certification page of the NERC website. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.

---

<sup>2</sup> This includes changes in ownership of BES Facilities, changes in the applicability of the BES Definition to a Facility, and newly installed BES Facilities.

**B. Deactivation Process**

1. The term Deactivation refers to removal of an entity from the NCR for a specific functional category.
2. As a result of Deactivation, the entity is no longer subject to any prospective compliance obligations with respect to Reliability Standards applicable to that functional category.
3. If all functional categories have been deactivated for a given entity, such entity would be deregistered and removed from the NCR. However, the entity's compliance history will be retained. In its letter notifying the entity of its Deactivation or deregistration, as applicable, NERC will notify the entity of the required retention period, in accordance with the NERC ROP.
4. An entity seeking Deactivation of RC, TOP, or BA registrations shall demonstrate to the satisfaction of its Regional Entity and NERC through the Certification review process, described in **Appendix 5A** Section V, that the duties and tasks identified in and required by the Reliability Standards either have properly been transferred to another Certified and Registered Entity or the Area has ceased to operate.
5. A Registered Entity may submit a request for Deactivation and supporting information to the Regional Entity at any time. Such information shall include:
  - a. Entity name and NCR ID number;
  - b. Functions for which Deactivation is requested; and
  - c. The basis on which Deactivation is requested, including supporting documentation, which may be limited to an attestation, if appropriate.
6. The Regional Entity shall request any additional information from the Registered Entity within 10 Days of receipt of the request for Deactivation.
7. The Registered Entity shall provide the additional information within 20 Days of its request for Deactivation.
8. The Regional Entity will issue a decision within 50 Days of the date of receipt of all requested information from the Registered Entity.
9. If the Regional Entity approves the request for Deactivation, it shall forward its Deactivation determination to NERC within five business Days of issuance of the decision.
10. If NERC approves the Deactivation determination and the Registered Entity agrees with the determination, NERC will forward within five business Days of receipt of the Deactivation determination from the Regional Entity, the proposed additions or changes to the NCR to the Regional Entity for review and comment.
  - a. The Regional Entity has five business Days to respond to the proposed changes.
  - b. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.

**C. Reactivation Process**

1. NERC maintains the NCR, which identifies each Registered Entity and the applicable functional categories for which it is registered.
2. The term Reactivation refers to re-registration of an entity to the NCR for a specific functional category or the revocation of, or additions to, a sub-set list of Reliability Standards (which specifies Reliability Standards and may specify Requirements/sub-Requirements) that has been granted to an entity. Reactivation may be initiated by NERC, a Regional Entity or an entity with respect to such entity's own

functional categories or sub-set list of Reliability Standards (which specifies Reliability Standards and may specify Requirements/sub-Requirements).

3. As a result of Reactivation, and consistent with the implementation plan to be developed pursuant to this paragraph, the entity shall prospectively comply with all Reliability Standards applicable to that functional category, or with the sub-set list specified in the Reactivation determination, unless otherwise notified. Within 30 days of a final Reactivation determination, the entity shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the Reactivation. The Regional Entity and Registered Entity shall confer to agree upon such schedule. If the Regional Entity and Registered Entity are unable to agree on the implementation plan, the Regional Entity shall notify NERC via the Registration email address, found on the Registration and Certification page of the NERC website, of the disagreement, and shall provide statements of the Regional Entity's and the Registered Entity's positions, and NERC shall specify a reasonable implementation schedule.
4. The entity's prior compliance history will be retained and shall apply with respect to the Reactivation. In its letter notifying the entity of its Reactivation, NERC will notify the entity of its registration in accordance with the NERC ROP.

#### **D. NERC-led Registration Review Panel**

1. NERC shall establish a NERC-led Registration Review Panel (Panel) comprised of a NERC lead with Regional Entity participants, to evaluate: 1) Registered Entity requests for Deactivation of, or decisions not to register, an entity that meets Sections I through IV of the Registry Criteria, 2) requests to add an entity that does not meet (i.e., falls below) Sections I through IV of the Registry Criteria, 3) disputes regarding the application of Sections I through IV of the Registration Criteria, and/or requests for a sub-set list of applicable Reliability Standards (which may specify the Requirements/sub-Requirements).
  - a. The Panel will be comprised of a standing pool of individuals with relevant expertise from NERC and each of the Regional Entities. Individuals with relevant expertise shall be appointed by the Regional Entity senior executive (CEO, President, General Manager, etc.) and individuals with relevant expertise shall be appointed by the NERC senior executive (CEO, President, General Manager, etc.). NERC shall select the Panel members for a given matter from the standing pool.
  - b. Panel members for a given matter shall comply with Subsection 7 of Section 403 of the NERC ROP, shall not be employed by the Regional Entity whose determination is being reviewed or have otherwise participated in the review of the registration matter, and shall have the required technical background to evaluate registration matters.
2. An applicant requests a Panel review by completing an application using the **NERC-led Review Request Form** (Request Form) available on the NERC website ([www.nerc.com](http://www.nerc.com))
  - a. The Request Form provides instruction for submittal of documentation and data associated with the request.
  - b. The applicant<sup>3</sup> should include an evaluation of materiality,<sup>4</sup> a description of the applicability of Sections I through IV, of the Registration Criteria, and/or an assessment of the impact of a sub-set of reliability standards, as appropriate.
  - c. The burden of proof is on the applicant that makes the request for a Panel review, except in two instances where the burden of proof is on the applicable Regional Entity. These two instances include: 1) disputes regarding application of Sections I through IV of Registry Criteria for registration,

---

<sup>3</sup> Applicants can either be a Regional Entity or an entity whose registration or sub-set list status is at issue.

<sup>4</sup> The evaluation of materiality should include the relevant "materiality test" factors listed in the "Determination of Material Impact" section of Appendix 5B, and/or any other factors that may be considered relevant to the request for Panel review.

- and 2) disputes where NERC has (i) established clearly defined criteria for eligibility for a sub-set of applicable Reliability Standards (which may specify Requirements/sub-Requirements) and (ii) identified similarly situated entities that the sub-set list may apply to.
- d. For the purpose of this Panel process, the parties are the applicable Regional Entity(ies), RC, BA, TOP, and PC and the entity whose registration status is at issue.
  - e. Parties are to upload any documents, data, and/or information related to the Panel request to the secure location established by NERC for the Panel review.<sup>5</sup> When materials are uploaded to this location by a party, that party will provide notice to all other parties via email.
3. NERC will review the submitted documentation and determine if the application is valid within 30 days of receipt.
  4. If the application is deemed not valid, NERC will send a written notification to the applicant via email with a reason the application was rejected.
  5. If the application is deemed valid, NERC will send a written notice of NERC’s acceptance of a valid Panel request to the applicant and the parties via email.
    - a. Unless informed other in NERC’s notice of a valid request, the entity whose status at issue will have their current responsibilities for compliance with approved Reliability Standards in effect until the issue at hand has a final determination.
  6. The Regional Entity(ies) or the entity whose registration status is as issue, as appropriate, will provide a written assessment of the Panel request to NERC, as described in step 2(e), within 20 days of NERC’s acceptance of a valid Panel request.
    - a. The RC, BA, TOP, and PC are also requested to provide a written assessment to NERC, as described in step 2(e), within 30 days of NERC’s acceptance of a valid Panel request.
    - b. The Regional Entity, or entity whose registration status is at issue, as appropriate, can provide a written response to NERC, as described in step 2(e), of any party’s assessment within 40 days of NERC’s acceptance of a valid Panel request.
  7. The standard of proof in any proceeding under these procedures shall be by a preponderance of the evidence. The Panel will evaluate all documentation, assessments, and responses submitted to determine whether the weight of the evidence supports the Registration action under review more than it does not support the action. The Panel may issue a request for information to the applicant or any of the parties and will copy all parties on any such correspondence. The Panel will render its decision within 60 Days of the final submission to the panel or relevant correspondence is received related to the request from any party.
  8. In reaching a decision, the Panel will apply the materiality test and other criteria, as applicable, set forth in the “Determination of Material Impact” section of **Appendix 5B, Statement of Compliance Registry Criteria** and any applicable guidance. The Panel shall also include a review of individual and aggregate system-wide risks to, and considerations of, reliability of the BPS, as well as the BES Definition, as applicable.
  9. NERC may use its discretion to extend the timelines of the Panel process for good cause. Any party may also request to extend the timelines by sending an email to the Registration email address, found on the Registration and Certification page of the NERC website. NERC shall notify all parties of such time extensions.

---

<sup>5</sup> NERC will provide instructions to each party regarding how to request access to the secure location.

10. The Panel decision will be issued to the applicant with a copy to all parties via email. The decision (including its basis) will also be posted on the NERC website,<sup>6</sup> with confidential information redacted in accordance with Section 1500 of the NERC ROP.
11. Any required changes to the NCR resulting from the Panel decision will be initiated by the Regional Entity in accordance with the Organization Registration Process of this manual. An entity may file an appeal with the BOTCC, in accordance with NERC ROP Section 500 and **Appendix 5A**, Section VI, if it wishes to dispute the Registration determination of the Panel.

---

<sup>6</sup> A Panel decision subject to appeal will not be posted prior to the 21 day appeal window closing (in accordance with **Appendix 5A**, Section VI), which begins when the decision is issued to the parties. If no appeal is received, the decision will be posted and the Federal Energy Regulatory Commission will be notified.

## Section IV – Organization Certification Process

---

### Purpose and Scope

Reliability Coordinators, Transmission Operators, and Balancing Authorities take actions in Real-time that impact the reliable operation of the Bulk Power System. Certification activities assess the processes, procedures, tools, and training these organizations use in performing these functions and provide a prospective level of assurance that the organization has the capacity to meet the reliability obligations of its registration. The Certification will adhere to the following process to the extent allowed by the circumstances.

### Organization Certification Process

#### Initiation

1. Certification processes shall begin upon the Regional Entity's receipt of a certification application for a Registered Entity or prospective Registered Entity; or when an entity has been registered by NERC for the functions of RC, TOP, and BA.
  - a. An entity in a single Regional Entity reliability region shall initiate the Certification process by completing a Certification application (Certification applications are provided on each Regional Entity's website) and sending it to that Regional Entity which will manage the Certification process.
  - b. An entity in multiple Regional Entity reliability regions shall initiate the Certification process by completing a Certification application (Certification applications are provided on each Regional Entity's website) and sending it to each Regional Entity. Each Regional will inform NERC of request with a recommendation for which Regional Entity will provide the leadership to manage the Certification process. NERC will determine which Regional Entity shall lead review of the application.
  - c. The Regional Entity leading the review of the application shall review the application, and respond and acknowledge receipt or submit requests for more information within 30 days of its receipt of the application.
    - i. If the application is not complete or accurate, the Regional Entity will notify the entity to revise the application as needed.
    - ii. As part of such review, the Regional Entity may propose to issue a determination rejecting an application on a procedural basis. The applicant will be given 15 days to resolve the reason for rejection. If the Regional Entity and NERC determine that the applicant would fail to meet Registry Criteria or would otherwise not be able to competently perform the duties and responsibilities required under relevant Reliability Standards for the applicable Area, then a rejection notice will be sent to the applicant. Thereafter, the applicant may file an appeal of the rejection in accordance with Appendix 5A, Section VII.
  - d. With the agreement of the Registered Entity, the Regional Entity or NERC may initiate certification processes based on documented conversations or other communications with a Registered Entity that contain information equivalent to that of the application.
2. The Regional Entity shall identify a team lead (CTL) for the certification activity.
3. The CTL shall notify NERC of the request for certification, and the following will take place:
  - a. The CTL and NERC will review the request for Certification and concur on acceptance. When the application is deemed complete and accurate, it will be accepted.

- b. If accepted, the CTL will inform the Registered Entity of the decision to initiate certification activities.
    - i. The entity and the Regional Entity shall agree to a timeline including specific milestones for the Certification process. The proposed schedule for the Certification Process shall be submitted to NERC for approval. NERC shall review the draft final schedule and will (i) approve; (ii) modify; or (iii) reject the final schedule within 45 days of receipt from the CTL.
    - ii. Certification activities are expected to be completed, allowing sufficient time to correct any Open Issues noted in the entity’s preparedness, prior to the effective date of an entity’s Registration.
  - c. In the case when an entity has been registered by NERC on behalf of the entity for the functions of RC, TOP, or BA, Certification activities will be concurrent with the entity’s Registration implementation plan.
4. The following subsections detail which entities are required to be certified if they are a party to a JRO, CFR, or other delegation agreement.
- a. Each entity that has taken responsibility for Reliability Standards and/or Requirements/sub-Requirements applicable to the certifiable functions by virtue of being a member of a JRO, CFR, or other agreement shall be the entity NERC certifies to operate their portion of the RC, TOP, or BA Area(s).
  - b. For all other entities that perform tasks related to the RC, TOP, or BA functions within a JRO or other agreement, the Regional Entity(ies) shall, based on a review of the JRO or other agreement, identify and notify such entities of the need for an evaluation and determination of the applicability of a “capability verification” or “readiness evaluation”<sup>7</sup> for those tasks.

## Planning

1. The CTL shall form the team that will be responsible for performing the activities included in the Certification process.
  - a. Participants shall adhere to NERC’s confidentiality requirements for any data or information made available through the Certification process. Participants shall not be employees of or have a direct financial interest in the entity or any of its affiliates.
  - b. Certification teams (CT) shall consist of the following:
    - i. For BA certifications, the CT shall have representation from an existing BA, the entity’s proposed RC, TOP, each affected Regional Entity, and NERC.
    - ii. For RC certifications, the CT shall have representation from an existing RC, a BA and a TOP in the proposed Reliability Coordinator Area, each affected Regional Entity, and NERC.
    - iii. For TOP certifications, the CT shall have representation from an existing TOP, the entity’s proposed BA(s) and RC, each affected Regional Entity, and NERC.
    - iv. Additional CT members with expertise in any of the NERC registry functional areas may be added as necessary (i.e., NERC, Regional Entity staff).
  - c. If the entity objects to any member of the CT, the entity must make that known, in writing, to the Regional Entity listing the reasons for the objection. The Regional Entity will either replace the team member or respond with written justification for keeping the member on the team.

---

<sup>7</sup> A “capability verification” or “readiness evaluation” is a review of the duties and tasks of the Registered Entity that it has delegated to another entity through an agreement.

- d. Entities such as government representatives or other stakeholders may be observers in the Certification process. Any Confidential Information will be handled in accordance with Section 1500 of the NERC ROP.
2. CT members shall have the necessary diversity in their technical training and experience to collectively represent the subject matter competencies needed to perform the evaluation of the specific function being certified. Previous experience as a System Operator, Operations Support Personnel, or management of a Control Center is desired for CT members performing the on-site visit.
3. The CTL shall ensure all CT members have completed the following:
  - a. Certification team member training requirements as established by NERC
  - b. Non-ERO employees shall also complete the following:
    - i. Certification team member training record form
    - ii. Certification team conflict of interest form
    - iii. An ERO confidentiality agreement form
4. The CTL shall review the certification application (and Entity information available through other ERO programs) with NERC to determine the scope of the assessment. The CTL shall identify the competency areas to be evaluated based on the function(s) for which the entity is to be certified and the method(s) for their evaluation.
5. The CTL shall utilize a secured server to distribute and house all relevant certification activity documents, including but not limited to the following:
  - a. The application or other documented correspondence with the Registered Entity initiating the certification activity
  - b. All relevant correspondence between the CTL and the applicant, including the certification packet (as described in step 6 below)
  - c. All relevant correspondence between the CTL and the CT members
  - d. The work papers used to evaluate the entity during the process
  - e. The overall process schedule
  - f. The agenda for the on-site visit
  - g. The final certification report
  - h. The Regional Entity certification process check sheet indicating the completion of certain process check-points
6. A Certification packet shall be developed and sent to the entity at least ninety (90) days prior to an on-site visit. It shall contain the following:
  - a. Notification of the certification process
  - b. Logistic information request
  - c. The tentative overall process schedule and on-site agenda
  - d. The CT roster and member biographies
  - e. Request of confirmation of no objections to CT members
  - f. Pre-certification survey that must be returned to the CTL within fifteen (15) days of receipt
  - g. Any initial requests for information

7. CTL shall contact the entity within one week of submitting the packet to confirm receipt of the package and discuss any concerns the entity may have.
8. The entity shall complete and return the requested information and supporting documentation no later than four (4) weeks prior to the on-site visit.
9. The CTL and CT shall review the logistic information request response, in order to do the following:
  - a. Understand the entity's expectations of the CT when on site
  - b. Make all travel arrangements
10. If the CT is to be broken into smaller groups, the CTL shall identify sub-teams and assign a scribe(s) to document the assessment:
  - a. For complex Certifications, the CTL may assign members of the CT to different focus areas. For example:
    - i. Facilities: Examples may include the physical cyber assets against the CIP standards, the cyber training, the maintenance contracts and records for the facilities, the electrical system and uninterruptible power supply (UPS), the cybersecurity of servers, passwords, etc., per the CIP standards, and the physical installation of data and voice equipment.
    - ii. EMS/SCADA: Interview the EMS/SCADA SMEs to ensure that the tools will provide adequate situational awareness against the NERC standards. Ensure adequate change control of the EMS/SCADA. Review the data transfer, server, applications, and redundancy configuration of the core tools including EMS, OSI-PI, ICCP, outage scheduling, scheduling, map-board displays, communication systems, etc.
    - iii. Operator Preparedness: Interview the operators at their workstations and ask them to present the tools, procedures, and job aids in use for normal day-to-day and emergency operations. This could include cyber intrusion detection and real-time assessment. Interview the training staff regarding initial training needed to support the transition to the new responsibilities and continuing training to the NERC standards.
    - iv. Critical Infrastructure Preparedness: Interview the CIP staff to understand how critical infrastructure protections are being utilized.
  - b. The CTL shall ensure documentation used to substantiate the conclusions of the Certification (Review) is collected from each sub-team.

## Fieldwork

1. Areas of capability to be evaluated by the certification activity shall be tailored to the situation and matched with appropriate assessment methods (e.g., validation of legacy information, review of entity responses, document review, direct observation, or personnel interview, etc.)
2. The CTL shall schedule a document review(s) with the CT prior to the on-site visit. Document reviews could take place face-to-face or via teleconference.
3. During document reviews, the CT shall note all the following:
  - a. Follow-up or corroborating questions for the entity's management, SMEs, and system operators based upon the review of supporting documentation
  - b. Additional requests for information (to be submitted to the entity prior to the on-site visit.)

- c. Comments during the document review that support the entity's abilities to perform the function for which the entity applied and indicate items which do not need further review
  - d. Issues that need to be addressed prior to certification being granted
4. The CTL shall provide the entity a final schedule and agenda for the on-site visit based upon the results of the document review.
  5. The CT on-site visit to the entity's location where operational functionality is performed shall include the following:
    - a. Opening presentation
    - b. At a minimum, the team will:
      - i. Review with the entity the data that is available only on-site;
      - ii. Interview the operations, management, and training personnel;
      - iii. Inspect the Facilities and equipment associated with the function being certified;
      - iv. Request demonstration of all tools identified in the scope of the Certification;
      - v. Review documents and data including agreements, processes, and procedures identified in the document review;
      - vi. Verify operating personnel Certification credentials and proposed work schedules; and
      - vii. Review any additional documentation resulting from inquiries arising during the on-site visit.
    - c. The CT shall interview other entity personnel as required to clarify responses covered in the document review.
    - d. At the end of each day, the CT will meet for the debriefing. The CTL shall lead a daily debriefing with the entity in order to do the following:
      - i. Identify the status of the assessment
      - ii. Identify any items of concern that need to be addressed
      - iii. Provide an update to the schedule
    - e. The CTL shall provide an exit briefing at the end of the on-site visit in order to do the following:
      - i. Identify any Open Issues that need to be addressed, and identify a timeline for follow-up to closure
      - ii. Discuss the reporting process
      - iii. Discuss the next steps in the certification process, including any Areas of Concern and the schedule of a post-onsite visit, if required.
      - iv. Convey that entity feedback forms will be sent to allow the entity to resolve any open with a request for candid feedback.

## Reporting

1. The CTL will provide the CT and entity with feedback forms, and request that they are returned within five (5) calendar days with a copy to the Certification email address, found on the Registration and Certification page of the NERC website.

2. After completion of the on-site visit, the CTL shall develop a draft final report, in coordination with input from the CT, which presupposes all Open Issues are closed. The format for the report shall conform to the template posted on the NERC website, generally containing:
  - Title page
  - Table of Contents
  - Introduction – A brief discussion on the Regional Entity(ies) involved, the entity being certified, a description of the function the entity(ies) are being certified for, and a brief timeline of the Certification project.
  - CT – Provide the CT makeup.
  - Objective and Scope – Discussion on entity application (who, what, when, & how).
  - Overall Conclusion – finding of the CT.
  - Open Issues - Any item(s) that must be closed prior to going operational and within 180 days of conclusion of the on-site visit.
  - Positive Observations.
  - Company History – Discussion on the applicant’s company history.
  - Company Details – Specific details regarding the Reliability Coordinator, Transmission Operator or Balancing Authority Areas to be operated and the entity’s relationship with other entities (RCs, TOPs, and BAs etc.).
  - Documentation List – Provide a list of critical documentation reviewed by the CT used to make the CT’s conclusion and the documentation retention requirements.
  - Attachments – Describe those attachments that are for public viewing and those that are separated from the report due to confidentiality issues such as Critical Infrastructure documentation.
3. The CTL shall transmit the draft final report to the CT requesting final comments within five (5) business days, unless agreed to otherwise.
4. After the CT has completed their review of the draft report, the CTL shall transmit the draft final report to the entity, requesting return with comments within fourteen (14) calendar days, unless agreed to otherwise.
5. Entity comments will be given due consideration and incorporated in the final report at the discretion of the CTL and the input of the CT. The CTL and CT will review the completed final report.
6. When all Open Issues are satisfactorily closed, the CTL will submit the final report to Regional Entity(ies) management for consideration and approval. CT minority opinions and areas where CT consensus was not reached will be communicated to Regional Entity(ies) management prior to approval, but will not be included in the final report nor in the Regional Entity recommendation to NERC.
  - a. If Regional Entity management contradicts the CT finding, the CTL will work with the CT the entity to resolve any issues.
  - b. The Regional Entity CEO (or a designee) will transmit to NERC and copy the entity the final CT report with a recommendation regarding NERC’s certification of the entity.
7. If NERC approves the entity for certification, NERC shall email confirmation to the entity and post the final report on NERC’s public website. Attached to the email will be the formal certification letter and NERC certificate. Any Confidential Information will be redacted in accordance with Section 1500 of the NERC ROP.

8. The entity may appeal NERC’s decision in accordance with the Rules of Procedure and Section VII of this manual.
9. The certification process shall be completed within nine (9) months unless agreed to by all parties involved in the process
10. Operational responsibility for RC, TOP, or BA Areas shall not begin prior to the entity’s registration effective date. Trial operations, conducted in parallel with an incumbent RC, TOP, or BA who retains responsibility, shall be coordinated to ensure operational authority for an Area is clear at all times.
11. The applicant must commence operations for its RC, TOP, or BA Areas within twelve (12) months of being certified by NERC. If the applicant fails to commence operation within twelve (12) months, the certification process must be repeated.
  - a. During the pendency of the certification process, NERC may use its discretion to issue conditional Certification to ensure that the entity can be Registered, and no areas of the BPS are lacking any entities to perform the duties and tasks identified in and required by the Reliability Standards to the fullest extent practical.
    - i. Conditional Certification will include an implementation plan which provides qualifications or criteria that NERC and the Regional Entity have determined necessary to address the risk of an entity failing to be certified or to be certified when needed.
    - ii. The entity subject to conditional Certification shall create an implementation plan that establishes how delayed or failed certification is mitigated so that no gaps in reliability occur. The implementation plan would also detail potential impacts both to the applicant and to any affected entities, and discuss how those impacts would be mitigated, how required functions would be served, and how other affected entities within its prospective footprint would meet their compliance responsibilities if certification is failed or delayed.
    - iii. NERC and the Regional Entity will work with the applicant to develop the implementation plan. If the parties are unable to agree upon an implementation plan, NERC will issue an implementation plan

## Data Retention

1. Documentation used to substantiate the conclusions of the Certification (Review) must be retained by the Regional Entity for six (6) years.
2. Documentation used to substantiate program oversight of the Certification processes must be retained by NERC for six (6) years.

NERC will maintain and post all Certification Final Reports on its website. Any Confidential Information will be redacted in accordance with Section 1500 of the NERC ROP.

## Section V – Organization Certification Review Process

---

### Purpose and Scope

Certification review provides reasonable assurance an already certified and operational Registered Entity will continue to support reliable operations of the BPS after initiating a material change. The review will seek assurance that the entity has addressed personnel training and qualifications, facilities, and equipment needed to perform and maintain the reliability functions in accordance with the applicable Requirements of Reliability Standards, considering among others the following:

- BPS reliability impacts of the change
- Critical Infrastructure Protection implications of the change
- Operator training in support of the change
- Data collection, sharing, and facilities monitoring and control necessary for Real-time Assessments, as well as next-day and longer-term planning
- Coordination of normal and emergency operations

### Overview

Certification review activities, including the checks and balances of reporting and documenting those activities, should take place in advance of the change. Functional operations and compliance to the Standards remain the responsibility of the applicable Registered Entity. Certification is of the organization performing the function—not of a facility or system of equipment. Every RC, TOP, and BA Area shall have a certified RC, TOP, and BA registered as responsible for performing the duties and tasks identified in and required by the Reliability Standards. Entities seeking Deactivation of BA, TOP, or RC registrations shall demonstrate to the satisfaction of their Regional Entity and NERC through the Certification review process that the duties and tasks identified in and required by the Reliability Standards either have properly been transferred to another Certified and Registered Entity or the Area has ceased to operate. An entity remains certified during the review activities and subject to all applicable requirements of Reliability Standards, unless conditional Certification is granted by NERC providing qualifications or criteria that NERC and the Regional Entity have determined necessary to address the risk of an entity failing to be certified or to be certified when needed.

Items that are to be considered for a Certification review include one or more of the following non-exhaustive list of changes from an entity's prior certification assessments.

- a. Changes to Registered Entity's footprint<sup>8</sup> (including de-certification changes to existing JRO/CFR assignments or sub-set list of requirements):
  - i. The review of changes to an already registered and operational Entity's footprint is primarily concerned with ensuring the gaining functional entity has the tools, training, and security in place to reliably operate with new responsibilities. Changes to an entity's footprint can be characterized by new metered boundaries associated with the integration or dis-association of existing electrical areas of the BPS (Reliability Coordinator Area, Transmission Operator Area, or Balancing Authority Area).
- b. Relocation of the Control Center:
  - i. Fundamental to the reliable operation of the interconnected transmission network are the control centers that continuously monitor, assess, and control the generation and

---

<sup>8</sup> This includes changes in ownership of BES Facilities, changes in the applicability of the BES Definition to a Facility, and newly installed BES Facilities.

transmission power flows on the BES. Of interest are impacts to the functionality provided within these facilities for continued reliable operations of the BES that affect:

- Tools and applications that System Operators use for situational awareness of the BES
  - Data exchange capabilities
  - Interpersonal (and alternate) Communications capabilities
  - Power source(s)
  - Physical and cyber security
- ii. The impact of the relocation of the Control Center on the entity’s ability to perform the functions for which the entity is registered under normal and emergency conditions should be explored and documented to understand the manner in which the Control Center continues to support the reliable operations of the BES.
- c. Modification of the Energy Management System (EMS) which is expected to materially affect CIP security perimeters or the System Operator’s: 1) situational awareness tools, 2) functionality, or 3) machine interfaces.

NERC may revoke an entity’s certification and de-certify that entity if NERC determines that the entity is no longer performing the responsibilities that are associated with the function for which it is certified. Revocation shall be posted to the NERC website. The entity will remain registered and subject to compliance for the function, unless it has gone through the deactivation or deregistration process for the applicable function. NERC’s revocation may be appealed in accordance with **Appendix 5A**, Section VII.

## Organization Certification Review Process

### Initiation

1. A Registered Entity that requires a review of the conditions upon which their certification was granted shall complete the appropriate form and submit it to the applicable Regional Entity. Informal dialogue on potential certification activity is encouraged as far in advance as possible.
  - a. An entity in a single Regional Entity reliability region shall initiate the Certification review process by completing an application (Certification review applications are provided on each Regional Entity’s website) and sending it to the Regional Entity that will manage the Certification review process.
  - b. An entity in multiple Regional Entity reliability regions shall initiate the certification process by completing a certification application (certification applications are provided on each Regional Entity’s website) and sending it to each Regional Entity. Each Regional Entity will inform NERC of the request with a recommendation for which Regional Entity will provide leadership to manage the certification process. NERC will determine which Regional Entity shall lead review of the application.
  - c. The Regional Entity leading the review of the application shall review the application and respond with either acceptance or a request for more information within 30 days of the receipt of the request.

2. Upon receipt of the request for Certification review, the Regional Entity(ies) shall evaluate as follows:
  - a. If the application is not complete or accurate, the Regional Entity will notify the entity to revise the application as needed.
  - b. For an entity that is not required to be certified but performs tasks associated with a RC, TOP, or BA in accordance with Section IV, the Regional Entity shall consult with the Registered Entity regarding the applicability of a “capability verification” or “readiness evaluation” regarding those tasks.
  - c. The Regional Entity or NERC may initiate the Certification review processes based on documented conversations or other communications with a Registered Entity that contain information equivalent to that of the application.
  - d. The decision to certify changes to an already operating and certified Registered Entity is a collaborative decision between the affected Regional Entity(ies) and NERC. The decision may be to conduct a review under this Certification review process or engage in any lesser activity necessary to understand changes that are material to an entity’s operations or inherent risk.
3. When the decision is made to initiate a Certification review, the Regional Entity shall identify a team lead (CRTL) for the Certification review activity and the following will take place:
  - a. The CRTL will inform the Registered Entity of the decision to initiate Certification review activities.
  - b. The CRTL shall tailor the scope of the Certification review to evaluate those capabilities that are affected as a direct result of the reason for the review.
  - c. The Regional Entity and NERC will determine if an on-site visit is required or if off-site review is sufficient. NERC has the final authority in this decision.
  - d. The entity and the Regional Entity shall agree to a timeline including specific milestones for the Certification review process. The proposed schedule for the Certification review process shall be submitted to NERC for approval. NERC shall review the draft final schedule and will (i) approve; (ii) modify; or (iii) reject the final schedule within 45 days of receipt from the CRTL.
    - Certification review activities are expected to be completed allowing sufficient time to address the risk of an entity failing to be certified or to be certified when needed prior to the effective date of any registration changes

## Planning

1. The CRTL shall form the team (CRT) that will be responsible for performing the activities included in the Certification review process.
  - a. The CRTL shall review the request (and entity information available through other ERO programs) with NERC to identify the competency areas to be evaluated and the method(s) for their evaluation (entity/neighbor questionnaire, request documents for review, on-site demonstration, personnel interview, etc.)
  - b. The CRT participants shall adhere to NERC’s confidentiality requirements under Section 1500 for any data or information made available through the Certification review process. Participants shall not be employees of or have a direct financial interest in the entity or any of its affiliates.
  - c. CRT Composition:

- i. The CRT shall have the necessary diversity in their technical training and experience to collectively represent the subject matter competencies needed to perform the evaluation of the specific function being certified. Previous experience as a System Operator, Operations Support Personnel, or management of a Control Center is desired for CRT members performing the on-site visit.
    - ii. Entities such as government representatives or other stakeholders may be observers in the Certification review process.
  - d. If the entity objects to any member of the CRT, the entity must make that known, in writing, to the Regional Entity, listing the reasons for the objection. The Regional Entity will either replace the team member or respond with written justification for keeping the member on the team.
2. The CRTL shall ensure all CRT members have completed the following:
  - a. Certification team member training requirements as established by NERC
  - b. Team Member profile documenting technical training and experience of team members
  - c. For non-ERO employees they shall also complete the following:
3. The CRTL shall utilize a secured server to distribute and house all relevant Certification review activity documents, including but not limited to the following:
  - a. The application or other documented correspondence with the Registered Entity initiating the certification activity
  - b. All relevant correspondence between the CRTL and the applicant, including the certification packet (as described in step 4 below)
  - c. All relevant correspondence between the CRTL and the CRT members
  - d. The work papers used to evaluate the entity during the process
  - e. The overall process schedule
  - f. The agenda for the on-site visit, if required
  - g. The final Certification review summary report
  - h. The Regional Entity certification process check sheet indicating the completion of certain process check-points
4. A Certification review packet shall be developed and sent to the entity at least ninety (90) days prior to an on-site visit. It shall contain the following:
  - a. Notification of the Certification review process
  - b. Logistic information request
  - c. The tentative overall process schedule and tentative on-site agenda
  - d. The CRT roster and member biographies
  - e. Request of confirmation of no-objections to CRT members
  - f. Pre-certification survey that must be returned to the CRTL within fifteen (15) days of receipt
  - g. Any initial requests for information

5. The CRTL shall contact the entity within one week of submitting the packet to confirm receipt of the package and discuss any concerns the entity may have.
6. The entity shall complete and return the requested information no later than four (4) weeks prior to the on-site visit.
7. The CRTL and CRT shall review the logistic information request, in order to do the following:
  - a. Understand the entity's expectations of the CRT when on site
  - b. Make travel arrangements

## Fieldwork

1. Areas of capability to be evaluated by the Certification review activity shall be tailored to the situation and matched with appropriate assessment methods (e.g., validation of legacy information, review of questionnaire responses, document review, direct observation, or personnel interview, etc.)
2. The CRTL shall schedule a document review(s) with the CRT prior to the on-site visit. Document reviews could take place face-to-face or via teleconference.
3. During document reviews, the CRT shall note all the following:
  - a. Follow-up or corroborating questions for the entity's management, SMEs, and system operators based upon the review of supporting documentation
  - b. Additional requests for information (to be submitted to the entity)
  - c. Comments during the document review that support the entity's abilities to perform the function for which the entity applied and items which do not need further review
  - d. Issues that need to be addressed prior to continued certification being recommended
4. The CRTL shall provide the entity a final schedule and agenda for the on-site visit (if applicable) based upon the results of the document review.
5. As appropriate, the CRT shall conduct interviews at the entity's facilities or via teleconference. The team will:
  - a. Review with the entity any data or information requiring clarification
  - b. Interview operations, management, and training personnel
  - c. During on-site visits:
    - i. Inspect the Facilities and equipment associated with the applicable Reliability Standards referenced in the questionnaire;
    - ii. Request demonstration of all tools affected by the change;
  - d. Review documents and data including agreements, processes, and procedures identified by CRT
  - e. Review any additional documentation resulting from inquiries arising during the interview
6. At the end of each on-site day, the CRT will meet for debriefing. The CRTL shall lead a daily debriefing with the entity in order to do the following:

- a. Identify the status of the assessment
  - b. Identify any items of concern that need to be addressed
  - c. Provide an update to the schedule
7. The CRTL shall provide an exit briefing at the end of the on-site visit in order to do the following:
- a. Identify any Open Issues that need to be addressed, and identify a timeline for follow-up to closure
  - b. Discuss the reporting process
  - c. Discuss the next steps in the Certification review process, including any areas of concern and the schedule of a post-onsite visit, if required
  - d. Convey that entity feedback forms will be sent to the entity

## Reporting

1. The CRTL will provide the CRT and entity with feedback forms, and request that they are returned within five (5) calendar days with a copy to the Certification email address, found on the Registration and Certification page of the NERC website.
2. After completion of the on-site visit, the CRTL shall develop a draft summary report, in coordination with input from the CRT, which presupposes all Open Issues are closed. The format for the report shall conform to the template posted on the NERC website.
3. The entity, in conjunction with the CRT, shall attempt to resolve any Open Issues prior to issuance of the draft summary report.
4. The CRTL shall transmit the draft final report to the CRT requesting final comments within five (5) business days, unless agreed to otherwise.
5. After the CRT has completed their review of the draft report, the CRTL shall transmit the draft final report to the entity, requesting return with comments within fourteen (14) calendar days, unless agreed to otherwise.
6. At the discretion of the CRT and NERC, the entity may be permitted to implement the change at any point in time after the exit briefing. Trial operations, if used, shall be coordinated to ensure operational authority for an Area is clear at all times.
7. Entity comments will be given due consideration and incorporated into the summary report at the discretion of the CRTL and the input of the CRT. The CRTL will review the completed summary report with the CRT.
8. When all Open Issues are satisfactorily closed, the CRTL will submit the summary report to Regional Entity(ies) management for consideration and approval. CRT minority opinions and areas where CRT consensus was not reached will be communicated to Regional Entity(ies) management prior to approval but will not be included in the final report nor in the Regional Entity recommendation to NERC.
  - a. If Regional Entity management contradicts the CRT finding, the CRTL will work with the CRT and the entity to resolve any issues.

- b. The Regional Entity CEO (or a designee) will transmit to NERC and copy the entity the final CRT report with a recommendation regarding NERC’s certification of the entity.
9. If NERC approves continued certification for the entity, NERC shall email confirmation to the entity.
10. If NERC declines continued certification for the entity, NERC shall make available to the entity Hearing Procedures for use in Appeals of Certification Matters, CCCPP-005 contained in Appendix 4E.

### **Data Retention**

1. Documentation used to substantiate the conclusions of the Certification review must be retained by the Regional Entity for six (6) years.
2. Documentation used to substantiate program oversight of the certification processes must be retained by NERC for six (6) years.

## Section VI — NERC Organization Registration Appeals Process

---

### Purpose and Scope

This section describes the process that any organization must use to seek review of its listing and functional assignment on the NCR.

### Overview

NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 3, *Organization Registration Appeals Process Overview*.

### Organization Registration Appeals Procedure

1. Any Registered Entity included on the NCR may challenge final decisions regarding its listing, functional assignments, and determinations regarding the applicability of a sub-set of Reliability Standards (which specifies the specific Reliability Standards and may specify Requirements/sub-Requirements).
2. All registration appeals must be filed in writing to NERC, via registered mail. Appeals are sent to:  
Compliance Operations  
3353 Peachtree Road NE  
Suite 600, North Tower  
Atlanta, GA 30326  
Main: (404) 446-2560  
Facsimile: (404) 446-2595
3. Each party in the appeals process shall pay its own expenses for each step in the process.
4. A stipulation of invoking the appeals process is that the Regional Entity or Registered Entity requesting the appeal agrees that NERC (its Members, Board, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable for, and shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
5. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.
6. All appeals must be received within 21 Days of receipt of the NERC determination that is being appealed. The appeal must state why the Registered Entity believes it should not be registered or should be deactivated based on the NERC ROP and the *NERC Statement of Compliance Registry Criteria* or why its compliance obligations should be limited only to a sub-set list of otherwise applicable Reliability Standards (which specifies the Reliability Standards and may specify Requirements/sub-Requirements). A copy of the appeal must be concurrently served on the Regional Entity.

7. After receipt of the appeal, the Registered Entity has a 30 day period to work with the Regional Entity to resolve the appeal, if possible. NERC may extend such deadline in its sole discretion. If the appeal is resolved, the Regional Entity will notify NERC with the details of the resolution and NERC will close the appeal.
8. At any time through this appeals process, a Registered Entity may agree with the decision and/or agree to close the appeal. NERC shall notify the involved parties and the NERC BOTCC that the appeal is resolved and update the NCR as applicable.
9. NERC will notify the Registered Entity and the applicable Regional Entity(ies) regarding the appeal with the following expectations:
  - a. The Registered Entity will provide NERC and the applicable Regional Entity(ies) any additional data supporting its appeal within 10 Days of the date of the NERC appeal notification.
  - b. The applicable Regional Entity(ies) will provide a copy of its assessment directly to the Registered Entity, as well as to NERC, within 20 Days of the date of the NERC appeal notification.
  - c. The Registered Entity may submit a response to the Regional Entity(ies) assessment, with copies to the Regional Entity(ies) and NERC, within 30 Days of the date of the NERC appeal notification.
  - d. To ensure there is no confusion with respect to the rights and responsibilities of the Registered Entity during the appeal process, the notification will confirm whether the Registered Entity will remain on the NERC Compliance Registry and will be responsible for compliance with approved Reliability Standards applicable to the function under appeal during the appeal.
  - e. NERC may extend the timelines for good cause shown. Requests should be sent to the Registration email address, found on the Registration and Certification page on the NERC website. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.
10. Hearing and Ruling by the BOTCC
  - a. The BOTCC will resolve Registration disputes.
  - b. The BOTCC may request additional data from NERC, the relevant Regional Entity(ies) or the Registered Entity, and prescribe the timeframe for the submitting the requested data.
  - c. The BOTCC will provide a written decision regarding any appeals, along with the basis for its decision.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the Registered Entity and Regional Entity(ies) that the appeal was granted.
    - Update the NCR.
  - e. If the BOTCC does not uphold the appeal, NERC will:
    - Notify the Registered Entity and the Regional Entity(ies) that the appeal was denied.
    - The Registered Entity may appeal to Federal Energy Regulatory Commission (FERC) or another Applicable Governmental Authority within 21 Days of the notification of the decision.
  - f. A record of the appeals process shall be maintained by NERC. Confidentiality of the record of the appeal will be based on the NERC ROP Section 1500.

## Section VII — NERC Organization Certification Appeals Process

---

### Purpose and Scope

This section describes the process for an organization to appeal the Certification decision that was determined in the Certification process.

### Overview

The NERC Organization Certification Program provides a key means to fulfill NERC's mission. In conducting this program, NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 4 *Organization Certification Appeals Process Overview*.

### Organization Certification Appeals Procedure

1. Appeal for an Organization Certification finding.
2. Any entity can appeal an Organization Certification decision issued as a result of the Certification process.
3. Requirements and Conditions for Appeals.
  - a. For all appeals under the NERC Organization Certification Program, the appeals process begins when an entity notifies the NERC via the Certification email address, found on the Registration and Certification page of the NERC website that it wishes to use the NERC appeals process.
    - The Director of Compliance is the main contact for all parties in all steps of the appeals process.
    - If an appeal is not filed within 21 Days of the date that the Certification report or finding is issued, or the final Regional Entity appeals process ruling is made, the finding shall be considered final and un-appealable.
  - b. Each party in the appeals process shall pay its own expenses for each step in the process.
  - c. A stipulation of invoking the appeals process is that the Regional Entity or entity requesting the appeal agrees that NERC (its Members, Board, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable, and shall be held harmless against the consequences of any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This "hold harmless" clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
  - d. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.
4. At any time through this appeals process, an entity may withdraw its appeal.
5. Hearing and Ruling by the Compliance and Certification Committee.
  - a. Within 28 Days of receiving notice from the NERC Director of Compliance, the CCC will conduct a hearing where all the parties or representatives of the disputing parties will present the issue in question, in accordance with CCC procedure CCCPP-005, *Hearing Procedures for Use in Appeals of Certification Matters*, which is incorporated in **Appendix 4E** of the ROP.
  - b. If the appeal is upheld, NERC notifies the entity and Regional Entity(ies), updates the NCR, and issues any appropriate letter and certificate to the entity.
  - c. If the appeal is denied, NERC notifies the entity and Regional Entity(ies).

6. Hearings and Ruling by the BOTCC.
  - a. The BOTCC will be asked to resolve a dispute related to the NERC Organization Certification Program if any party to the appeal contests the CCC final order.
  - b. The BOTCC may request additional data from NERC, Regional Entity(ies) or the entity and prescribe the timeframe for submitting the requested data.
  - c. At the next regularly scheduled BOTCC meeting, or at a special meeting if the Board determines it is necessary, the Chair of the CCC will present a summary of the dispute and the actions taken to the BOTCC.
    - Each party will have an opportunity to state its case.
    - The BOTCC will then rule on the dispute.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the entity and the Regional Entity(ies) that the appeal was upheld.
    - Update the NCR.
    - Issue a Certification letter and a certificate to the entity as applicable.
  - e. If the BOTCC does not uphold the appeal, NERC will notify the entity and the Regional Entity(ies) that the appeal was denied.
    - The entity may appeal to Applicable Governmental Authorities within 21 Days of the issuance of the decision.
  - f. A record of the appeals process shall be maintained by NERC and available upon request. Confidentiality of the record of the appeal will be based on the NERC ROP Section 1500.

## Definitions

Capitalized terms used in this Appendix shall have the definitions set forth in Appendix 2 of the ROP. For convenience of reference, definitions used in this Appendix are also set forth below:

<b>NERC Organization Certification</b>	The process undertaken by NERC and a Regional Entity to verify that a new entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator, and/or Reliability Coordinator.
<b>Compliance and Certification Manager</b>	The individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities with applicable NERC Reliability Standards.
<b>Days</b>	Days as used in the Registration and Certification processes are defined as calendar days.
<b>Footprint</b>	The geographical or electric area served by an entity.
<b>Functional Entity</b>	An entity responsible for a function that is required to ensure the Reliable Operation of the electric grid as identified in the NERC Reliability Standards.
<b>Mapping</b>	The process of determining whether a Regional Entity's Footprint is being served by Registered Entities.
<b>NERC Identification Number (NERC ID)</b>	A number given to NERC Registered Entities that will be used to identify the entity for certain NERC activities. Corporate entities may have multiple NERC IDs to show different corporate involvement in NERC activities.
<b>Regional Entity</b>	An entity having enforcement authority pursuant to 18 C.F.R. § 39.8.
<b>Registration</b>	Processes undertaken by NERC and Regional Entities to identify which entities are responsible for reliability functions within the Regional Entity's Region.
<b>Coordinated Functional Registration (CFR)</b>	Where two or more entities (parties) agree in writing upon a division of compliance responsibility among the parties for one or more Reliability Standard(s) applicable to a particular function, and/or for one or more Requirement(s)/sub-Requirement(s) within particular Reliability Standard(s).

Attachment 6:

Registration and Certification:  
Appendix 5A

Redline

**NERC**

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# Appendix 5A

## Organization Registration and Certification Manual

Effective Date: ~~October 31, 2016~~ 2020

**RELIABILITY | ACCOUNTABILITY**



3353 Peachtree Road NE  
Suite 600, North Tower  
Atlanta, GA 30326  
404-446-2560 | [www.nerc.com](http://www.nerc.com)

## Table of Contents

<u>Section I — Executive Summary</u> .....	1
<u>Overview</u> .....	1
<u>To Whom Does This Document Apply?</u> .....	1
<u>When did These Processes Begin?</u> .....	1
<u>Where to Access and Submit Form(s)?</u> .....	2
<u>Roles and Responsibilities</u> .....	2
<u>NERC</u> .....	2
<u>Regional Entity</u> .....	2
<u>Entity Submitting the Application</u> .....	3
<u>Section II — Introduction to Organization Registration and Organization Certification Processes</u> .....	4
<u>Organization Registration — Entities Required to Register</u> .....	4
<u>Organization Certification</u> .....	4
<u>Section III — Organization Registration Process</u> .....	6
<u>Purpose and Scope</u> .....	6
<u>Overview</u> .....	6
<u>A. Organization Registration Application Process</u> .....	6
<u>B. Deactivation Process</u> .....	9
<u>C. Reactivation Process</u> .....	11
<u>D. NERC-led Registration Review Panel</u> .....	12
<u>Section IV — Organization Certification Process</u> .....	18
<u>Purpose and Scope</u> .....	18
<u>Organization Certification Process</u> .....	18
<u>Initiation</u> .....	18
<u>Planning</u> .....	20
<u>Fieldwork</u> .....	23
<u>Reporting</u> .....	24
<u>Data Retention</u> .....	26
<u>Section V — Organization Certification Review Process</u> .....	29
<u>Purpose and Scope</u> .....	29
<u>Overview</u> .....	29
<u>Organization Certification Review Process</u> .....	30
<u>Initiation</u> .....	30
<u>Planning</u> .....	31
<u>Fieldwork</u> .....	32

Reporting.....	33
Data Retention .....	34
Section VI — NERC Organization Registration Appeals Process.....	35
Purpose and Scope .....	35
Overview .....	35
Organization Registration Appeals Procedure.....	35
Section VII — NERC Organization Certification Appeals Process .....	39
Purpose and Scope .....	39
Overview .....	39
Organization Certification Appeals Procedure .....	39
Definitions .....	42

Section I — Executive Summary.....	1
Overview.....	1
To Whom Does This Document Apply? .....	1
When did These Processes Begin?.....	1
Where to Access and Submit Form(s)?.....	2
Service.....	2
Roles and Responsibilities.....	2
NERC.....	2
Regional Entity .....	2
Entity Submitting the Application .....	3
Section II — Introduction to Organization Registration and Organization Certification Processes.....	4
Organization Registration — Entities Required to Register.....	4
Organization Certification.....	4
Section III — Organization Registration Process .....	5
Purpose and Scope .....	5
Overview .....	5
Section IV — Organization Certification Process.....	15
Purpose and Scope .....	15
Overview.....	15
Organization Certification Process .....	15

Section V — NERC Organization Registration Appeals Process.....	20
Purpose and Scope .....	20
Overview .....	20
Organization Registration Appeals Procedure.....	20
Section VI — NERC Organization Certification Appeals Process .....	23
Purpose and Scope .....	23
Overview .....	23
Organization Certification Appeals Procedure .....	23
Definitions .....	26

# Section I — Executive Summary

## Overview

The purpose of this document is twofold: (1) to define the process utilized in the [North American Electric Reliability Corporation \(NERC\) Organization Registration Program](#) for identifying which functional entities must register as owners, operators, and users of the Bulk Power System (BPS) for compliance with Reliability Standards; and (2) to define the process utilized in the Organization Certification Program for certifying the following entities: Reliability Coordinator (RC), Balancing Authority (BA), and Transmission Operator (TOP). ~~The North American Electric Reliability Corporation (NERC) Compliance and Certification Committee (CCC) is responsible for approving and forwarding these processes to the NERC Board of Trustees (Board) for its approval. Where a proposal for revisions to these processes comes to the Board from sources other than the CCC, the Board will seek the concurrence of the CCC before taking action on the proposal.~~

## To Whom Does This Document Apply?

All industry participants responsible for or intending to be responsible for, the following functions must register with NERC through the Organization Registration process. The entities are defined in the NERC *Statement of Compliance Registry Criteria*, set forth in **Appendix 5B** to the NERC Rules of Procedure (ROP), with responsibilities designated by the individual Reliability Standards or by a sub-set list of the otherwise applicable Reliability Standards. ~~Such sub-set list will specify the Reliability Standards and may specify Requirements/sub-Requirements by NERC, in which case the entity will be responsible for compliance with only such sub-set list, in accordance with **Appendix 5B** determined in accordance with this **Appendix 5A, Section III(D)** to the NERC ROP.~~

	Entities that Must Register	Entities that Need to be Certified
Reliability Coordinator (RC)	√	√
Transmission Operator (TOP)	√	√
Balancing Authority (BA)	√	√
Planning Authority/ <a href="#">Planning Coordinator (PA/PC)</a>	√	
Transmission Planner (TP)	√	
Transmission Service Provider (TSP)	√	
Transmission Owner (TO)	√	
Resource Planner (RP)	√	
Distribution Provider (DP)	√	
Generator Owner (GO)	√	
Generator Operator (GOP)	√	
Reserve Sharing Group (RSG)	√	
Frequency Response Sharing Group (FRSG)	√	
Regulation Reserve Sharing Group	√	

## When did These Processes Begin?

The initial Registration process began in January of 2006. Registration of new entities is an ongoing process. If a Registered Entity's information changes, these changes must be submitted to the applicable Regional Entity(ies).

Certification is ongoing for ~~new~~ entities in accordance with Sections [IV](#) and [V](#) of this manual.

## Where to Access and Submit Form(s)?

~~Registration and~~ Certification forms are provided on each Regional Entity’s website. Completed forms are to be sent electronically to the Compliance and Certification Manager of the applicable Regional Entity(ies). ~~It is desirable that entities operate within a single Regional Entity Region; however, Registration information is submitted electronically via an online application that is hosted on the NERC website.~~ If an entity operates in more than one Region, separate Registration applications must be completed and submitted to each of the Regional Entities. NERC will coordinate process execution when an entity is registering or certifying with multiple Regional Entities.

## Service

~~Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.~~

## Roles and Responsibilities

The following is a high-level overview of the roles and responsibilities in the Registration and Certification processes:

### NERC

1. Oversight of entity processes performed by the Regional Entities, including:
  - a. Governance per the Regional Entity’s delegation agreement with NERC.
  - b. Coordination of process execution when an entity is registering and/or certifying with multiple Regional Entities.
2. Manage each entity’s NERC Compliance Registry identification number (NERC ID) including:
  - a. Sending a Registration or Certification letter that contains the NERC ID to the applicable Regional Entity(ies) for review and approval. If the Regional Entity(ies) agrees with all the information provided, it will notify NERC to issue the NERC ID to the Registered Entity and will send a copy of the notification being provided to the Regional Entity(ies).
  - b. Ensuring each Registered Entity has only one NERC ID for all Regional Entities in which registered.
3. Make modeling changes based on Registration information.
4. Maintain accurate Registration and Certification records including granting Certification certificates for the Registered Entity(ies) responsible for compliance (including Joint Registration Organization (JRO)/Coordinated Functional Registration (CFR)).
5. Maintain published up-to-date list of Registered Entities (i.e. the NERC Compliance Registry (NCR)) on the NERC website. NERC maintains the NCR, which identifies each Registered Entity and the applicable functional categories for which it is registered.
6. Lead panel reviews in accordance with **Appendix 5A, Organization Registration and Organization Certification Manual**, Section III-(D) ~~and Appendix 5B, Statement of Compliance Registry Criteria.~~

### Regional Entity

1. Performs data collection and ~~M~~mapping of BPS Facilities and those Facilities that have a material impact on the BPS within its Regional Entity defined reliability Region boundaries.

2. Approves or disapproves entity Registration applications.
3. Reviews entity Certification applications for completeness.
4. Notifies NERC of entities registered with the Regional Entity.
5. Approves or denies Certification Team (CT) recommendations and notifies the entity and NERC of the decision.
6. Provides leadership to the CT throughout the Certification process.

### **Entity Submitting the Application**

1. Completes and submits Registration and/or Certification application.
2. Submits updates to Registration and/or Certification information as necessary and/or requested.
3. Responds to Regional Entity and/or NERC questions pertaining to Registration and/or Certification.
4. Provides documentation or other evidence requested or required to verify compliance with Certification requirements.

## Section II – Introduction to Organization Registration and Organization Certification Processes

---

The processes utilized to implement the Organization Registration and Organization Certification Programs are administered by each Regional Entity. Pursuant to its delegation agreement with NERC, each Regional Entity is responsible for registering and certifying industry participants within its Regional Entity reliability Region boundaries. Each Regional Entity must use the following NERC processes.

### Organization Registration – Entities Required to Register

All industry participants responsible for one or more of the functions below must register for each function through the Organization Registration Program. These entities are defined in the NERC *Statement of Compliance Registry Criteria*.

- RC
- TOP
- BA
- PA/PC
- TP
- TSP
- TO
- RP
- DP
- GO
- GOP
- RSG
- FRSG
- Regulation Reserve Sharing Group

The Registration procedure is in Section III of this manual.

### Organization Certification

All Prospective and existing Registered Entities registered in the NCR for intending to perform or performing the RC, TOP, and/or BA functions shall achieve and/or maintain certification to operate one or more RC, TOP, and/or BA Areas. Every RC, TOP, and BA Area shall have a certified RC, TOP, and BA responsible for performing the duties and tasks identified in and required by the Reliability Standards.

Certification requires is required prior to the start of, and during the operation of a RC, TOP, or BA Area, subject to exception in NERC's sole discretion (conditional Certification). In such exceptions, the Registered Entity must satisfy conditions imposed according to an implementation plan agreed to by NERC to continue or discontinue operating its Area(s) to start operation within 12 months of being NERC certified.

The activities of the program are designed to identify issues that, if not closed, could lead to unacceptable performance of the duties and responsibilities applicable to the certified function. The absence of a certified RC,

TOP, and/or BA for any Area jeopardizes the functional relationships within and between Areas specified by the Reliability Standards, and may lead to the inability of Registered Entities to maintain compliance with standards requiring performance with respect to those relationships.

The Certification/Review Team (CRT) works to establish one of the two findings below, utilizing Open Issues and Areas of Concern derived from an in-depth review and well-documented assessment of an entity’s capability to perform the tasks of the certifiable function. Open Issues are items that must be closed before (continued) Certification is recommended.

- Certification/Review Team (CRT) recommends (initial or continued) certification contingent upon resolution of specified Open Issues (if any)
- Certification/Review Team (CRT) cannot recommend (initial or continued) certification. (Usually where the applicant contests Open Issues. The applicant has remedy in the appeal process of Section VII.)

This Certification process is described in Section IV of this manual. Certification reviews are conducted according to Section V. The Registered Entity is required to start operation of its Area within 12 months of being NERC certified.

## Section III – Organization Registration Process

---

### Purpose and Scope

The purpose and scope of this process is to provide guidance on how a user, owner, and/or operator of the BPS should be registered in the NCR.

### Overview

Section 39.2 of the Commission’s regulations, ~~and Title 18 of the C.F.R. § 39.2,~~ requires each owner, operator, and user of the BPS to be registered with NERC and to comply with approved Reliability Standards.

Owners, operators, and users of the BPS will be registered by function(s) and are:

1. Responsible for compliance with all applicable Requirements/sub-Requirements within Reliability Standards approved by Applicable Governmental Authorities, for the applicable functions for which the Registered Entity is registered, except to the extent that an entity is granted a sub-set list of applicable Reliability Standards, which specifies the Reliability Standards and may specify Requirements/sub-Requirements by NERC, in which case the entity will be responsible for compliance with only such sub-set list; and,
2. Subject to the compliance monitoring and enforcement requirements of Section 400 of the ROP.

If an entity does not agree with a Registration determination, it may request a NERC-led Registration Review Panel evaluation in accordance with Section III(D) of Appendix 5A. Entities should seek a determination from the NERC-led Registration Review Panel prior to making an appeal to the BOTCC in accordance with NERC ROP Section 500 and Section VI of Appendix 5A.

For Registration determinations dependent on application of the BES Definition, NERC has established a procedure to determine Inclusion and Exclusion Exceptions to the BES Definition (Appendix 5C). Appendix 5A relates to Registered Entity status whereas Appendix 5C relates to an Element’s BES status. In cases where a BES Exception determination pursuant to Appendix 5C directly impacts an entity’s functional registration requirements, the entity must initiate the BES Exceptions process prior to requesting a Registration change in status, and should be aware that the determination in that proceeding may be necessary prior to reaching a final decision by the NERC-led Registration Review Panel. This situation is dependent on facts and circumstances.

See Figure 1A Organization Registration Process Overview.

#### A. Organization Registration Application Process

1. This procedure applies to the following applicable entities: 1) those entities to be registered for the first time and 2) currently registered or previously registered entities for which registration changes are sought. Deactivation, Reactivation, and registration for a sub-set list of Reliability Standards are subject to the procedures in this subsection III(A). Additional procedures applicable to Deactivation and Reactivation are contained in subsections III(B) and III(C), respectively. Applicable entities shall begin the Registration process by submitting a completed Registration application to the Regional Entity(ies) of the reliability Region(s) where the entity performs or intends to perform its function(s). ~~(Registration forms are provided on each Regional Entity’s website).~~
  - a. At any time, an entity may recommend in writing, with supporting documentation, to the Regional Entity(ies) that an entity be added to or removed from the Compliance Registry.
  - b. If an entity does not have a NERC ID, NERC shall assign one.
  - c. An entity responsible for more than one function will use a single NERC ID.

~~b.d.~~ The Registration process for an entity may also be initiated by a Regional Entity, NERC, or Applicable Governmental Authority.

~~c.e.~~ At any time, an entity whose registration is at issue may request expedited treatment and waiver of applicable timelines. NERC, in its sole discretion, shall determine if such a request will be granted and alternative timelines. NERC's decision is not a final decision that is subject to appeal.

~~f.~~ The following issues require determination by a NERC-led Registration Review Panel:

~~i.~~ If, based on the entity's materiality to BES reliability, the Regional Entity proposes to register an entity that does not meet the criteria set forth in Appendix 5B, Statement of Compliance Registry Criteria, the Regional Entity will submit a request for a determination by a NERC-led Registration Review Panel in accordance with Appendix 5A, Section III(D).

~~ii.~~ If, based on the entity's lack of materiality to BES reliability, an entity that meets the criteria set forth in Appendix 5B, Statement of Compliance Registry Criteria, believes that it should not be registered, the entity may submit a request for a determination by a NERC-led Registration Review Panel in accordance with Appendix 5A, Section III(D).

~~iii.~~ If an entity disputes a Regional Entity determination that the entity meets the criteria set forth in Appendix 5B, Statement of Compliance Registry Criteria, the entity may submit a request for determination by a NERC-led Registration Review Panel in accordance with Appendix 5A, Section III(D).

~~iv.~~ An entity seeking to be registered for a sub-set list of Reliability Standards may submit a request for a determination by a NERC-led Registration Review Panel in accordance with Appendix 5A, Section III(D).<sup>1</sup>

2. NERC shall coordinate Registration of entities that are required to register with multiple Regional Entities in order to ensure consistency of the Registration process.

3. For entities ~~that are required to~~ applying for the RC, TOP, and BA functions, Certification and Registration processes ~~should be certified, initiated concurrently using the applicable Regional Entity(ies) shall ensure that the Registration information provided is accurate for updating the NCR per items 4 through 12 below and notifies the processes set forth in this manual. The entity should~~ initiate the Certification process per Section IV of this manual.

~~4. Entities that have a NERC ID shall use it on the form.~~

~~a. If an entity does not have a NERC ID, NERC shall assign one.~~

~~b. An entity responsible for more than one function will use a single NERC ID.~~

~~5.4.~~ Regional Entities shall evaluate the submitted information and determine if the information is complete/correct. —If the information is not complete/correct, the entity will be notified to complete/correct or clarify the Registration information.

~~6.5.~~ A single entity must register for all function type(s) that it performs itself. ~~In addition, Provided that, an~~ entity may execute an agreement to register as a Lead Entity of a JRO on behalf of one or more of its ~~members or related entities parties to the JRO agreement~~ for one or more function type(s) for which ~~such members or related entities~~ the parties would have otherwise been required to register, ~~and, The Lead~~

<sup>1</sup> If NERC has established clearly defined criteria for eligibility for a sub-set list of applicable Reliability Standards and has identified the sub-set list that may apply to similarly situated entities, such criteria shall govern the applicability of such sub-set list and such a matter shall not proceed to the NERC-led review panel, unless there is a dispute by the entity whose sub-set list treatment is at issue. (See, e.g., UFLS-Only DPs.)

Entity thereby, accepts on the parties' behalf ~~of such members or related entities all~~ compliance responsibility for all Requirements/sub-Requirements of Reliability Standards applicable to that function or those functions including reporting requirements.(ROP Section 507)

~~7-6.~~ Multiple entities may each register for a function and delineate compliance responsibility for that function using a CFR for one or more Reliability Standard(s) and/or for one or more Requirements/sub-Requirements within particular Reliability Standard(s) applicable to a specific function type.(ROP Section 508)

~~8-7.~~ In completing the Regional Entity responsibilities for the Registration process, the following are key items the Regional Entity must verify:

- a. That ~~function~~Regional Entity registrations ~~meet~~are consistent with the ~~geographical and electrical~~ Registration boundaries requirements ~~of the~~contained in ROP Section 501(1.4).
- b. The Registration submission includes all data requested by NERC that is necessary for accurately identifying and contacting the Registered Entity.

~~9-8.~~ The Regional Entity shall forward all Registration information to NERC for inclusion of an entity on the NCR:

~~a. If the Registration determination involves (i) the materiality test set forth in the notes in **Appendix 5B, Statement of Compliance Registry Criteria**; (ii) a sub-set list of Reliability Standards (which specifies Requirements and may specify sub-Requirements);<sup>2</sup> or (iii) a dispute by an entity whose registration status is at issue regarding the Regional Entity's application of **Appendix 5B, Statement of Compliance Registry Criteria**, a NERC-led review panel will be convened in accordance with **Appendix 5A, Organization Registration and Organization Certification Manual, Section III.D.**~~

~~b.a.~~ Within five business Days of a Registration determination by NERC or the NERC-led Registration ~~Review~~ Panel, as applicable, NERC will forward the proposed additions or changes to the NCR to the Regional Entity for review and comment.

~~b.b.~~ The Regional Entity has five business Days to respond to the proposed changes.

~~c.c.~~ If NERC does not receive any comments, the NCR will be revised. If NERC does receive comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.

~~10-9.~~ NERC updates the NCR and notifies the applicable Registered Entity(ies) within five business Days of the update.

~~11-10.~~ The Registered Entity may appeal the final registration determination by NERC in accordance with the ROP Section 500 and Section VI of **Appendix 5A**.

~~12-11.~~ The NCR shall be dynamic and will be revised as necessary to take account of changing circumstances ~~such as corrections, revisions, and or deletions~~. Per the Regional Entity's delegation agreement, the Regional Entity will take any recommendation received under Section 1.a, and other applicable information, under advisement as it determines whether an entity should be on the NCR.

- a. Each Registered Entity identified in the NCR shall notify its corresponding Regional Entity and/or NERC of any corrections, revisions, deletions, changes in ownership, changes in corporate structure, or similar matters that affect the Registered Entity's responsibilities with respect to the Reliability

<sup>2</sup> ~~If NERC has established clearly defined criteria for eligibility for a sub-set list of applicable Reliability Standards and has identified the sub-set list that may apply to similarly situated entities, such criteria shall govern the applicability of such sub-set list and such a matter shall not proceed to the NERC-led review panel, unless there is a dispute by the entity whose sub-set list treatment is at issue. (See, e.g., UFLS-Only DPs.)~~

Standards.<sup>3</sup> Failure to notify will not relieve the Registered Entity from any responsibility to comply with the Reliability Standards or shield it from any Penalties or sanctions associated with failing to comply with the Reliability Standards. (ROP Section 400).

- b. Each Regional Entity has an independent obligation, even in the absence of a notification by a ~~Registered Entity~~ an entity, to review and submit updates to the NCR to NERC, consistent with the procedures in this Section III, with appropriate notification to the affected entities, to the extent the Regional Entity is aware of, or possesses information that the NCR should be updated. These updates include, but are not limited to: 1) conditions on which the sub-set list are no longer applicable, or; 2) where a new and emerging risk to reliability is identified that changes the basis: a) upon which the entity was deactivated, or deregistered; or b) upon which a sub-set list of requirements was made applicable, in addition to; or 3) deactivation<sup>4</sup> of entities that no longer meet the applicable registration thresholds. This does not excuse the Registered Entity from its obligation to provide such required notifications.

~~13. Entities registered or subject to registration as a DP that qualify as Underfrequency Load Shedding (UFLS) Only DPs shall submit Registration information to the Regional Entity. The UFLS Only DP shall be subject only to the sub set list of Reliability Standards identified in Appendix 5B. Within 50 Days of the entity's submission of the Registration information to the Regional Entity, the Regional Entity shall issue a decision as to whether UFLS Only DP treatment is appropriate. If the Regional Entity concludes that it is, then the Regional Entity shall forward the information to NERC and NERC will forward the proposed additions or changes to the NCR to the Regional Entity for review and comment. The Regional Entity has five business Days to respond to the proposed changes. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly. NERC updates the NCR and notifies the applicable Registered Entity(ies) within five business Days of the update. If the entity whose registration is at issue does not agree with the Regional Entity's decision regarding UFLS Only DP treatment, the entity may, within 30 Days of issuance of the decision, seek review by the NERC led review panel in Appendix 5A, Organization Registration and Organization Certification Manual, Section III.D. If the entity whose registration is at issue does not agree with the determination of the NERC led review panel, the entity may file an appeal with the NERC Board Compliance Committee (BOTCC) in accordance with the provisions set forth in Section V of this Appendix 5A.~~

~~The Registered Entity may file a registration appeal with the NERC BOTCC in accordance with the provisions set forth in Section V of Appendix 5A if it does not agree with the determination of the NERC led review panel.~~

~~14.12.~~ NERC may extend the timelines for processing Registration matters for good cause shown. Requests should be sent to the Director of Compliance.<sup>5</sup>Registration email address, found on the Registration and Certification page of the NERC website. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.

## B. Deactivation Process

1. The term Deactivation refers to removal of an entity from the NCR for a specific functional category.
2. As a result of Deactivation, the entity is no longer subject to any prospective compliance obligations with respect to Reliability Standards applicable to that functional category.

<sup>3</sup> This includes changes in ownership of BES Facilities, changes in the applicability of the BES Definition to a Facility, and newly installed BES Facilities.

<sup>4</sup> See Figure 1B: Deactivation Process Overview

<sup>5</sup> References to the term Director of Compliance in the NERC ROP should be read to include an equivalent position.

3. If all functional categories have been deactivated for a given entity, such entity would be deregistered and removed from the NCR. However, the entity’s compliance history will be retained. In its letter notifying the entity of its Deactivation or deregistration, as applicable, NERC will notify the entity of the required retention period, in accordance with the NERC ROP.
4. An entity seeking Deactivation of RC, TOP, or BA registrations shall demonstrate to the satisfaction of its Regional Entity and NERC through the Certification review process, described in Appendix 5A Section V, that the duties and tasks identified in and required by the Reliability Standards either have properly been transferred to another Certified and Registered Entity or the Area has ceased to operate.
- 4.5. A Registered Entity may submit a request for Deactivation and supporting information to the Regional Entity at any time. Such information shall include:
  - a. Entity name and NCR ID number;
  - b. Functions for which Deactivation is requested; and
  - c. The basis on which Deactivation is requested, including supporting documentation, which may be limited to an attestation, if appropriate.
- 5.6. The Regional Entity shall request any additional information from the Registered Entity within 10 Days of receipt of the request for Deactivation.
- 6.7. The Registered Entity shall provide the additional information within 20 Days of its request for Deactivation.
- 7.8. The Regional Entity will issue a decision within 50 Days of the date of receipt of all requested information from the Registered Entity.
- 8.9. If the Regional Entity agrees with/approves the request for Deactivation, it shall forward its Deactivation determination to NERC within five business Days of issuance of the decision.
- 9.10. \_\_\_\_\_ If NERC accepts/approves the Deactivation determination and the Registered Entity agrees with the determination, NERC will forward within five business Days of receipt of the Deactivation determination from the Regional Entity, the proposed additions or changes to the NCR to the Regional Entity for review and comment.
  - a. The Regional Entity has five business Days to respond to the proposed changes.
  - b. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.

~~If the Regional Entity or NERC does not agree with the request for Deactivation, the Registered Entity may seek review by the NERC-led review panel in Appendix 5A, Organization Registration and Organization Certification Manual, Section III.D.~~

~~If the Deactivation determination involves (i) the materiality test set forth in the notes in Appendix 5B, Statement of Compliance Registry Criteria; (ii) a determination that a sub-set list of Reliability Standards (which will specify Reliability Standards and may specify Requirements/sub-Requirements) should apply as an alternative to Deactivation;<sup>6</sup> or (iii) the Registered Entity disagrees with the Regional Entity determination, the determination will be submitted to the NERC-led review panel process in Appendix~~

<sup>6</sup> ~~If NERC has established clearly defined criteria for eligibility for a sub-set list of applicable Reliability Standards and has identified the sub-set list that may apply to similarly situated entities, such criteria shall govern the applicability of such sub-set list and such a matter shall not proceed to the NERC-led review panel, unless there is a dispute by the entity whose sub-set list treatment is at issue. (See, e.g., UFLS-Only DPs.)~~

~~5A, Organization Registration and Organization Certification Manual, Section III.D within 30 Days after issuance of the determination.~~

~~If the NERC-led review panel approves the request for Deactivation, NERC will forward within five business Days of the panel decision, the proposed additions or changes to the NCR to the Regional Entity for review and comment.~~

~~a. The Regional Entity has five business Days to respond to the proposed changes.~~

~~b. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.~~

~~10. The Registered Entity may file a registration appeal with the NERC BOTCC in accordance with the provisions set forth in Section V of Appendix 5A if it does not agree with the determination of the NERC-led review panel.~~

~~11. NERC may extend the timelines for good cause shown. Requests should be sent to the Director of Compliance. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.~~

### C. Reactivation Process

1. NERC maintains the NCR, which identifies each Registered Entity and the applicable functional categories for which it is registered.

2. The term Reactivation refers to re-registration pursuant to the NERC ROP Section 500 and ~~Appendices 5A and 5B~~ of an entity to the NCR for a specific functional category or the revocation of, or additions to, a sub-set list of Reliability Standards (which specifies Reliability Standards and may specify Requirements/sub-Requirements) that has been granted to an entity. Reactivation may be initiated by NERC, a Regional Entity or an entity with respect to such entity's own functional categories or sub-set list of Reliability Standards (which specifies Reliability Standards and may specify Requirements/sub-Requirements).

~~3. Reactivation shall be governed by the procedures in the NERC ROP Section 500 and Section III.A and, as applicable, Section III.D of this Appendix 5A.~~

~~4.3.~~ As a result of Reactivation, and consistent with the implementation plan to be developed pursuant to this paragraph, the entity shall prospectively comply with all Reliability Standards applicable to that functional category, or with the sub-set list specified in the Reactivation determination, unless otherwise notified. Within 30 days of a final Reactivation determination, the entity shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the Reactivation. The Regional Entity and Registered Entity shall confer to agree upon such schedule. If the Regional Entity and Registered Entity are unable to agree on the implementation plan, the Regional Entity shall notify ~~the NERC Director of Compliance~~ [NERC via the Registration email address, found on the Registration and Certification page of the NERC website](#), of the disagreement, and shall provide statements of the Regional Entity's and the Registered Entity's positions, and NERC shall specify a reasonable implementation schedule.

~~5.4.~~ The entity's prior compliance history will be retained and shall apply with respect to the Reactivation. In its letter notifying the entity of its Reactivation, NERC will notify the entity of its registration in accordance with the NERC ROP.

~~6. The Registered Entity may file a registration appeal with the NERC BOTCC in accordance with the provisions set forth in Section V of Appendix 5A if it does not agree with the determination of the NERC-led review panel.~~

~~7. NERC may extend the timelines for good cause shown. Requests should be sent to the Director of Compliance. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.~~

#### D. NERC-led **Registration Review Panel**

1. NERC shall establish a NERC-led, ~~centralized review panel,~~ **Registration Review Panel (Panel)** comprised of a NERC lead with Regional Entity participants, to ~~evaluate:~~ **1) Registered Entity** requests for Deactivation of, or decisions not to register, an entity that meets Sections I through IV of the Registry Criteria ~~or,~~ **2) requests to add an entity that does not meet (i.e., falls below) Sections I through IV of the Registry Criteria, ~~as well as~~ **3) disputes regarding the application of Sections I through IV of the Registration Criteria, and ~~or~~ requests for a sub-set list of applicable Reliability Standards (which may specify the Requirements/sub-Requirements).****

- a. The ~~NERC-led review p~~**Panel** will be comprised of a standing pool of individuals with relevant expertise from NERC and each of the Regional Entities. Individuals with relevant expertise shall be appointed by the Regional Entity senior executive (CEO, President, General Manager, etc.) and individuals with relevant expertise shall be appointed by the NERC senior executive (CEO, President, General Manager, etc.). NERC shall select the ~~p~~**Panel** members for a given matter from the standing pool.
- b. Panel members for a given matter shall comply with Subsection 7 of Section 403 of the NERC ROP, shall not be employed by the Regional Entity whose determination is being reviewed or have otherwise participated in the review of the registration matter, and shall have the required technical background to evaluate registration matters.

~~2. With respect to~~ **An applicant requests a Panel review of the by completing an application using the NERC-led Review Request Form (Request Form) available on the NERC website (www.nerc.com)**

- a. The Request Form provides instruction for submittal of documentation and data associated with the request.
- b. The applicant<sup>7</sup> should include an evaluation of the criteria contained in the Statement materiality,<sup>8</sup> a description of the applicability of Compliance Registry Criteria Sections I through IV, of the Registration Criteria, and/or an assessment of the impact of a sub-set of reliability standards, as appropriate.
- c. ~~†~~The burden of proof is on the applicant that makes the request for a Panel review, except in two instances where the burden of proof is on the applicable NERC and the Regional Entity, to demonstrate that an entity meets the These two instances include: 1) disputes regarding application of Sections I through IV of Registry Criteria for registration, and 2) disputes where NERC has (i) established clearly defined criteria for eligibility for a sub-set of applicable Reliability Standards (which may specify Requirements/sub-Requirements) and (ii) identified similarly situated entities that the sub-set list may apply to.
- d. For the purpose of this Panel process, the parties are the applicable Regional Entity(ies), RC, BA, TOP, and PC and the entity whose registration status is at issue.
- a.e. Parties are to upload any documents, data, and/or information related to the Panel request to the secure location established by NERC for the Panel review.<sup>9</sup> When materials are uploaded to this location by a party, that party will provide notice to all other parties via email.

<sup>7</sup> Applicants can either be a Regional Entity or an entity whose registration or sub-set list status is at issue.

<sup>8</sup> The evaluation of materiality should include the relevant “materiality test” factors listed in the “Determination of Material Impact” section of Appendix 5B, and/or any other factors that may be considered relevant to the request for Panel review.

<sup>9</sup> NERC will provide instructions to each party regarding how to request access to the secure location.

- ~~2. The burden of proof with respect to the materiality test, set forth in **Appendix 5B, Statement of Compliance Registry Criteria**, is on the entity making the request, i.e., the entity asking to be excluded from the NCR (despite satisfying the threshold criteria)<sup>40</sup> and the Regional Entity seeking to include an entity in the NCR (that does not satisfy the threshold criteria).~~

~~The burden of proof with respect to a determination as to whether an entity's compliance obligations should be limited to only a specified sub-set of otherwise applicable Reliability Standards is on the entity requesting such treatment, provided, however, that where NERC has established clearly defined criteria for eligibility for a sub-set of applicable Reliability Standards (which may specify Requirements/sub-Requirements) and has identified the sub-set list that may apply to similarly situated entities (e.g., UFLS-Only DPs), the burden of proof to demonstrate that an entity does not meet the criteria for such a sub-set list is on the Regional Entity and NERC.~~

~~The entity who bears the burden of proof with respect to application of the materiality test, or a sub-set list of applicable Reliability Standards (which may specify Requirements/sub-Requirements) must submit to NERC, in writing, details of the issues and identification of the Responding Entity,<sup>41</sup> and the applicable Regional Entity(ies), RC, BA, PA and TOP that have (or will have upon registration of the entity) the entity whose registration status is at issue within their respective Scope of Responsibility.~~

- ~~3. NERC will review the submitted documentation and determine if the application is valid within 30 days of receipt.~~
- ~~4. If the application is deemed not valid, NERC will send a written notification to the applicant via email with a reason the application was rejected.~~
- ~~5. If the application is deemed valid, NERC will send a written notice of NERC's acceptance of a valid Panel request to the applicant and the parties via email.~~
- ~~a. Regional Entity(ies), Unless informed other in NERC's notice of a valid request, the entity whose registration status or sub-set list treatment is at issue will have their current responsibilities for compliance with approved Reliability Standards in effect until the issue at hand has a final determination, and the referenced~~
- ~~6. The Regional Entity(ies) or the entity whose registration status is as issue, as appropriate, will provide a written assessment of the Panel request to NERC, as described in step 2(e), within 20 days of NERC's acceptance of a valid Panel request.~~
- ~~a. The RC, BA, PA and TOP, and PC are also requested to provide a written assessment to NERC, as described in step 2(e), within 30 days of NERC's acceptance of a valid Panel request. acknowledging receipt of the notification of panel review.~~
- ~~a.b. The Regional Entity, or entity whose registration status is at issue, as appropriate, can provide a written response to NERC, as described in step 2(e), of any party's assessment within 40 days of NERC's acceptance of a valid Panel request.~~

<sup>40</sup>~~By way of example, the Registered Entity whose Deactivation request was denied by the Regional Entity bears the burden of proof (i.e., on materiality) and both requests panel review and makes the submissions required, under 6(a) and (c), unless the issue involves the Regional Entity's application of the threshold criteria. If the issue involves the Regional Entity's application of the threshold criteria, then the Regional Entity bears the burden of proof and makes the submissions required by sections 6(a) and (c), although it is the Registered Entity who makes the request for panel review.~~

<sup>41</sup>~~By way of example, if a Registered Entity is seeking to be deactivated based on the materiality test and therefore bears the burden of proof, then the Responding Entity is the Regional Entity. If a Regional Entity bears the burden of proof in a materiality test case, then the entity whose registration status is at issue is the Responding Entity.~~

To ensure there is no confusion with respect to the rights and responsibilities of a Registered Entity during the panel review process, the notification will confirm whether the Registered Entity will remain on the NCR and will be responsible for compliance with approved Reliability Standards applicable to the function under review.

The panel review process timelines with respect to application of the materiality test, or sub-set list treatment of applicable Reliability Standards (which may specify Requirements/sub Requirements) are as follows:

Within 10 Days of the date of the NERC-led review panel notification, the entity with the burden of proof will provide any additional data supporting its request to NERC (who will forward to the NERC-led review panel), the Responding Entity, the applicable Regional Entity(ies), and the RC, BA, PA and TOP that has (or will have upon registration of the entity) the entity whose registration status at issue within their respective Scope of Responsibility.

The Responding Entity will provide a copy of its assessment directly to all parties, as well as to NERC, within 20 Days of the date of the NERC panel review notification. If the RC, BA, PA and TOP provide an assessment, they must provide a copy to all parties, as well as NERC, within 20 Days of the date of the NERC panel review notification.

The entity with the burden of proof may submit a response to the Responding Entity assessment, and any assessment submitted by the RC, BA, PA and TOP, with copies to all parties and NERC, within 30 Days of the date of the NERC panel review notification.

The standard of proof in any proceeding under these procedures shall be by a preponderance of the evidence.

—The standard of proof in any proceeding under these procedures shall be by a preponderance of the evidence.

7. The Panel will evaluate all documentation, assessments, and responses submitted to determine whether the weight of the evidence supports the registration action under review more than it does not support the action. The Panel may issue a request for information to the applicant or any of the parties and will copy all parties on any such correspondence. The NERC-led review pPanel will render its decision within 60 Days of the final submission to the panel or relevant correspondence is received related to the request from any party.

3. ~~With respect to threshold disputes regarding application of Sections I through IV of **Appendix 5B, Statement of Compliance Registry Criteria**, the entity whose registration status is at issue must submit to NERC, in writing, details of the issues and identification of the applicable Regional Entity(ies), RC, BA, PA and TOP that have (or will have upon registration of the entity) the entity whose registration status is at issue within their respective Scope of Responsibility, NERC will send a notification to the Regional Entity(ies), the entity whose registration status is at issue, and the referenced RC, BA, PA and TOP acknowledging receipt of the notification of panel review.~~

a. ~~To ensure there is no confusion with respect to the rights and responsibilities of a Registered Entity during the panel review process, the notification will confirm whether the Registered Entity will remain on the NCR and will be responsible for compliance with approved Reliability Standards applicable to the function under review.~~

4. ~~The panel review process timelines for threshold disputes regarding application off Sections I through IV of **Appendix 5B, Statement of Compliance Registry Criteria** are as follows:~~

~~The entity whose registration status is at issue will provide NERC (who will forward to the NERC-led review panel), the applicable Regional Entity(ies), and the RC, BA, PA and TOP that has (or will have upon registration of the entity) the entity whose registration status at issue within their respective Scope of Responsibility, any additional data supporting its request within 10 Days of the date of the NERC panel review notification. In such a case, the Regional Entity has the burden of proof on application of the threshold criteria.~~

~~The Regional Entity will provide a copy of its assessment directly to all parties, as well as to NERC, within 20 Days of the date of the NERC panel review notification. If the RC, BA, PA and TOP provide an assessment, they must provide a copy to all parties, as well as NERC, within 20 Days of the date of the NERC panel review notification.~~

- ~~a. The entity whose registration status is at issue may submit a response to the Regional Entity assessment, and any assessment submitted by the RC, BA, PA and TOP, with copies to all parties and NERC, within 30 Days of the date of the NERC panel review notification.~~

~~The standard of proof in any proceeding under these procedures shall be by a preponderance of the evidence.~~

~~The NERC led review panel will render its decision within 60 Days of the final submission to the panel.~~

~~5.8. In reaching a decision, the NERC led review pPanel will apply the materiality test and other criteria and notes, as applicable, set forth in the “Determination of Material Impact” section of Appendix 5B, Statement of Compliance Registry Criteria, and any applicable guidance. The NERC led review pPanel shall also include a review of individual and aggregate system-wide risks to, and considerations of, reliability of the BPS, as well as the BES Definition, as applicable.~~

~~6.9. NERC may use its discretion to extend the timelines of the Panel process for good cause shown. Requests should be sent to the Director of Compliance. Any party may also request to extend the timelines by sending an email to the Registration email address, found on the Registration and Certification page of the NERC website. NERC shall notify all parties the entity whose registration status or sub-set list treatment is at issue and the Regional Entity of such time extensions, as well as the RC, BA, PA and TOP, of such time extensions.~~

~~7.10. Once a The Panel decision is made, it will be issued to the applicant with a copy to all parties via email to the entity whose registration status or sub-set list treatment is at issue, the Regional Entity and the referenced RC, BA, PA and TOP. The decision (including its basis) will also be posted on the NERC website,<sup>12</sup> with confidential information redacted in accordance with Section 1500 of the NERC ROP.~~

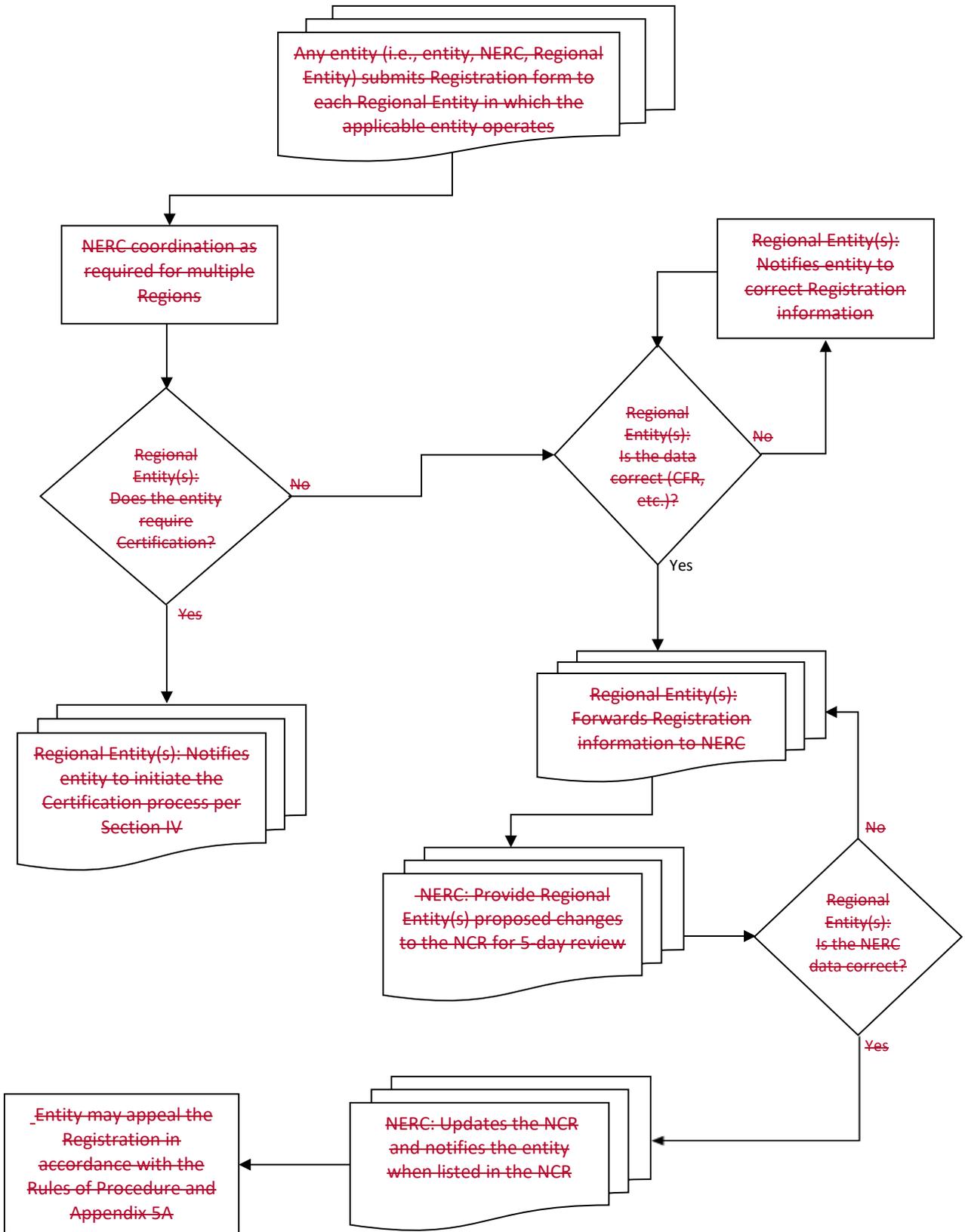
~~8. NERC will forward within five business Days the proposed additions or Any required changes to the NCR resulting from the Panel decision will be initiated by the Regional Entity in accordance with the Organization Registration Process of this manual. An entity may file an appeal with the to the Regional Entity for review and comment.~~

~~9. The Regional Entity has 5 business Days to respond to the proposed changes.~~

~~10. If NERC does not receive any comments, the NCR will be revised. If NERC receives comments, NERC will work with the Regional Entity to the extent changes are needed to the NCR and will revise the NCR accordingly.~~

~~11. The BOTCC will resolve appeals of registration disputes, in accordance with NERC ROP Section 500 and Appendix 5A, Organization Registration and Organization Certification Manual, Section VI, if it wishes to dispute the Registration determination of the Panel.~~

<sup>12</sup> A Panel decision subject to appeal will not be posted prior to the 21 day appeal window closing (in accordance with Appendix 5A, Section VI), which begins when the decision is issued to the parties. If no appeal is received, the decision will be posted and the Federal Energy Regulatory Commission will be notified.



**Figure 1A: Organization Registration Process Overview**

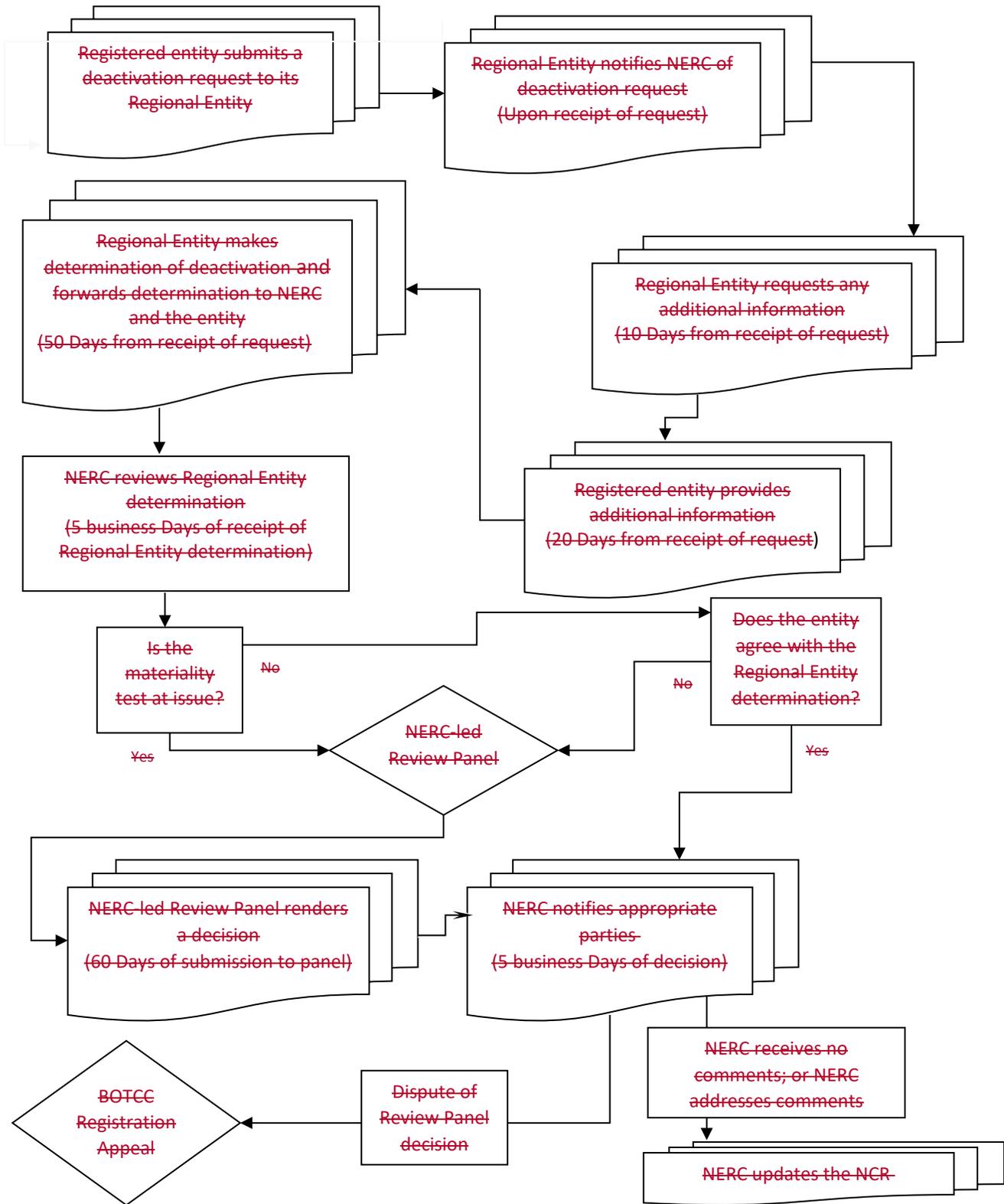


Figure 1B: Deactivation Process Overview

## Section IV — Organization Certification Process

---

### Purpose and Scope

~~The purpose and scope of this process is to provide guidance for completing the Certification of a new entity that will become NERC certified and registered as an RC, TOP, or BA. Reliability Coordinators, Transmission Operators, and Balancing Authorities take actions in Real-time that impact the reliable operation of the Bulk Power System. Certification activities assess the processes, procedures, tools, and training these organizations use in performing these functions and provide a prospective level of assurance that the organization has the capacity to meet the reliability obligations of its registration. The Certification will adhere to the following process to the extent allowed by the circumstances.~~

### Overview

~~See Figure 2 Organization Certification Process Overview for an overview of the Certification process.~~

## Organization Certification Process

### Initiation

1. ~~Certification processes shall begin upon the Regional Entity's receipt of a certification application for a Registered Entity or prospective Registered Entity; or when an entity has been registered by NERC for the functions of RC, TOP, and BA.:~~
  - a. ~~An entity in a single Regional Entity reliability Rregion shall initiate the Certification process by completing a Certification application (Certification applications are provided on each Regional Entity's website) and sending it to that Regional Entity which will manage the Certification process.~~
  - a.b. ~~An entity in multiple Regional Entity reliability regions shall initiate the Certification process by completing a Certification application (Certification applications are provided on each Regional Entity's website) and sending it to the each Regional Entity. Each Regional will inform NERC of request with a recommendation for which will Regional Entity will provide the leadership to manage the Certification process. NERC will determine which Regional Entity shall lead review of the application.~~
  - b. ~~An entity in multiple Regional Entity reliability Regions shall initiate the Certification process by completing a Certification application (Certification applications are provided on each Regional Entity's website) and sending it to the Regional Entities in those reliability Regions. Each Regional Entity will inform NERC of the request. The Regional Entities will determine which Regional Entity will provide the leadership to manage the Certification process.~~
  - c. ~~Provisional Certification Process – All RCs, BAs, and/or TOPs that were already registered and operating on June 18, 2007 become “NERC Certified” upon completion of (1) a NERC readiness evaluation (on-site activities completed by the evaluation team); and (2) a CMEP Compliance Audit (on-site activities completed by the Compliance Audit team) after June 18, 2007. Recertification on a periodic basis of these Registered Entities will not be required. Demonstration of ongoing satisfactory performance of applicable RC, BA, and TOP functional Requirements shall be accomplished by completion of a CMEP Compliance Audit every three years per the requirements of the NERC ROP. The Regional Entity leading the review of the application shall review the application, and respond and acknowledge receipt or submit requests for more information within 30 days of its receipt of the application.~~
    - i. ~~If the application is not complete or accurate, the Regional Entity will notify the entity to revise the application as needed.~~

- ii. As part of such review, the Regional Entity may propose to issue a determination rejecting an application on a procedural basis. The applicant will be given 15 days to resolve the reason for rejection. If the Regional Entity and NERC determine that the applicant would fail to meet Registry Criteria or would otherwise not be able to competently perform the duties and responsibilities required under relevant Reliability Standards for the applicable Area, then a rejection notice will be sent to the applicant. Thereafter, the applicant may file an appeal of the rejection in accordance with Appendix 5A, Section VII.
- ~~e.d. With the agreement of the Registered Entity, the Regional Entity or NERC may initiate certification processes based on documented conversations or other communications with a Registered Entity that contain information equivalent to that of the application.~~
- 2. The Regional Entity shall identify a team lead (CTL) for the certification activity.
  - 3. The CTL shall notify NERC of the request for certification, and the following will take place:
- ~~2. For an entity that is not required to be certified, the Regional Entity(ies) shall reject the application and notify the entity that Certification is not required:~~
- a. ~~If the application is not complete or accurate, the Regional Entity will notify the entity to revise the application as needed. The CTL and NERC will review the request for Certification and concur on acceptance.~~ When the application is deemed complete and accurate, it will be accepted.
  - b. ~~If accepted, the CTL will inform the Registered Entity of the decision to initiate certification activities.~~
- i. ~~The entity and the Regional Entity shall agree to a timeline including specific milestones for the Certification process. The proposed schedule for the Certification Process shall be submitted to NERC for approval. NERC shall review the draft final schedule and will (i) approve; (ii) modify; or (iii) reject the final schedule within 45 days of receipt from the CTL.~~
- ~~3. The decision to certify changes to an already operating and certified Registered Entity is a collaborative decision between the affected Regional Entity(s) and NERC. NERC has the final authority regarding this decision. Items to consider for this decision include one or more of the following:~~
- a. ~~Changes to a Registered Entity's Footprint or operational challenges (i.e., TLRs) due to the changes~~
  - b. ~~Organizational restructuring that could impact the BPS reliability~~
  - c. ~~Relocation of the control center~~
  - d. ~~Changes to Registered Entity ownership requiring major operating procedure changes~~
  - e. ~~Significant changes to JRO/CFR assignments or agreements changes~~
  - f. ~~Addition or removal of member JRO/CFR utilities or entities~~
  - g. ~~Complete replacement of a Supervisory, Control and Data Acquisition (SCADA)/Energy Management System (EMS) system~~
- ii. ~~The Certification activities process shall be expected to be completed, allowing sufficient time to correct any Open Issues noted in the entity's preparedness, within nine months of prior to the effective date of an entity's Registration acceptance of the application unless agreed to by all parties involved in the process and approved by NERC.~~
- a.c. In the case when an entity has been registered by NERC on behalf of the entity for the functions of RC, TOP, or BA, Certification activities will be concurrent with the entity's Registration implementation plan.

4. The following subsections detail which entities are required to be certified if they are a party to a JRO, CFR, or other delegation agreement.
  - a. Each entity that has taken responsibility for Reliability Standards and/or Requirements/sub-Requirements applicable to the certifiable functions by virtue of being a member of a JRO, CFR, or other agreement shall be the entity NERC certifies to operate their portion of the RC, TOP, or BA Area(s).
  - b. For all other entities that perform tasks related to the RC, TOP, or BA functions within a JRO or other agreement, ~~the~~ Regional Entity(ies) shall, based on a review of the JRO or other agreement, identify and notify such entities of the need for an evaluation and determination of the applicability of a “capability verification” or “readiness evaluation”<sup>13</sup> for those tasks. ~~NERC that the Certification process has begun to enable NERC to carry out its roles and responsibilities.~~

~~The Regional Entity will send a questionnaire with a submission deadline and a statement of expectations to all entities participating in the Certification process. These questionnaires and other related documents are located on the NERC website. The Regional Entity shall distribute questionnaires and other related documents to the following entities, as required:~~

## **Planning**

- ~~a. Entity seeking Certification.~~
  - ~~b. Participating BAs, RCs, and TOPs in Footprints in which the entity intends to operate or with which the entity intends to interconnect transmission Facilities.~~
  - ~~c. Participating TOs, TSPs, PAs, GOs, GOPs, TPs, DPs, and/or other applicable entities.~~
1. The Regional Entity shall assemble a CT~~The CTL shall form the team~~ that will be responsible for performing the activities included in the Certification process.
    - a. ~~The CT members~~Participants shall adhere to NERC’s confidentiality ~~requirements~~agreements for any data or information made available ~~to the CT member~~ through the Certification process. ~~Team members~~Participants shall not be employees of or have a direct financial interest in the entity or any of its affiliates.
    - b. Certification teams (CT) shall consist of the following:
      - i. For BA certifications, the CT shall have representation from an existing BA, the entity’s proposed RC, TOP, each affected~~The Regional Entity, and NERC.~~with concurrence of NERC, may increase or decrease the distribution of the questionnaires and other related documents based upon the complexity of the Certification.
      - ii. For RC certifications, the CT shall have representation from an existing RC, a BA and a TOP in the proposed Reliability Coordinator Area, each affected Regional Entity, and NERC.
      - iii. For TOP certifications, the CT shall have representation from an existing TOP, the entity’s proposed BA(s) and RC, each affected Regional Entity, and NERC.
      - ~~iv.~~ Additional CT members with expertise in any of the NERC registry functional areas may be added as necessary (i.e., NERC, Regional Entity staff).

<sup>13</sup> A “capability verification” or “readiness evaluation” is a review of the duties and tasks of the Registered Entity that it has delegated to another entity through an agreement.

~~b.c.~~ If the entity objects to any member of the CT, the entity must make that known, in writing, to the Regional Entity listing the reasons for the objection. ~~The Regional Entity will either replace the team member or respond with written justification for keeping the member on the team.~~

~~i. CT composition~~

~~ii. The BA CT shall consist of representatives from an existing BA, the entity's proposed RC, TOP, each affected Regional Entity, and NERC.~~

~~iii. The RC CT shall consist of representatives from an existing RC, a BA and a TOP in the proposed RC Area, each affected Regional Entity, and NERC.~~

~~iv. The TOP CT shall consist of representatives from an existing TOP, the entity's proposed RC, each affected Regional Entity, and NERC.~~

~~v. Additional CT members with expertise in the any of the NERC Compliance Registry functional areas can be added as necessary.~~

~~vi. Additional CT members from NERC or Regional Entity staff may be added as necessary.~~

d. Entities such as government representatives or other stakeholders may be observers in the Certification process. Any Confidential Information will be handled in accordance with Section 1500 of the NERC ROP.

~~2. Each CT member must complete the NERC auditor training prior to participation.~~

~~3. The CT will review the entity's submitted documentation and address any issues prior to the site visit.~~

~~4. The CT shall inform the entity before the on-site visit of any documentation or clarification that is necessary to support the questionnaires.~~

2. The entity shall identify to CT members shall have the necessary diversity in their technical training and experience to collectively represent the subject matter competencies needed to perform the evaluation of the specific function being certified. Previous experience as a System Operator, Operations Support Personnel, or management of a Control Center is desired for CT members performing the on-site visit.

3. The CTL shall ensure all CT members have completed the following:

a. Certification team member training requirements as established by NERC

b. Non-ERO employees shall also complete the following:

i. Certification team member training record form

ii. Certification team conflict of interest form

iii. An ERO confidentiality agreement form

4. The CTL shall review the certification application (and Entity information available through other ERO programs) with NERC to determine the scope of the assessment. The CTL shall identify the competency areas to be evaluated based on the function(s) for which the entity is to be certified and the method(s) for their evaluation.

5. The CTL shall utilize a secured server to distribute and house all relevant certification activity documents, including but not limited to the following:

a. The application or other documented correspondence with the Registered Entity initiating the certification activity

b. All relevant correspondence between the CTL and the applicant, including the certification packet (as described in step 6 below)

c. All relevant correspondence between the CTL and the CT members

- d. The work papers used to evaluate the entity during the process
  - e. The overall process schedule
  - f. The agenda for the on-site visit
  - g. The final certification report
  - h. The Regional Entity certification process check sheet indicating the completion of certain process check-points
- 6. A Certification packet shall be developed and sent to the entity at least ninety (90) days prior to an on-site visit. It shall contain the following:
  - a. Notification of the certification process
  - b. Logistic information request
  - c. The tentative overall process schedule and on-site agenda
  - d. The CT roster and member biographies
  - e. Request of confirmation of no objections to CT members
  - f. Pre-certification survey that must be returned to the CTL within fifteen (15) days of receipt
  - g. Any initial requests for information
- 7. CTL shall contact the entity within one week of submitting the packet to confirm receipt of the package and discuss any concerns the entity may have.
- 8. The entity shall complete and return the requested information and supporting documentation no later than four (4) weeks prior to the on-site visit.
- 9. The CTL and CT shall review the logistic information request response, in order to do the following:
  - a. Understand the entity's expectations of the CT when on site
  - b. Make all travel arrangements
- 10. If the CT is to be broken into smaller groups, the CTL shall identify sub-teams and assign a scribe(s) to document the assessment:
  - a. For complex Certifications, the CTL may assign members of the CT to different focus areas. For example:
    - i. Facilities: Examples may include the physical cyber assets against the CIP standards, the cyber training, the maintenance contracts and records for the facilities, the electrical system and uninterruptible power supply (UPS), the cybersecurity of servers, passwords, etc., per the CIP standards, and the physical installation of data and voice equipment.
    - ii. EMS/SCADA: Interview the EMS/SCADA SMEs to ensure that the tools will provide adequate situational awareness against the NERC standards. Ensure adequate change control of the EMS/SCADA. Review the data transfer, server, applications, and redundancy configuration of the core tools including EMS, OSI-PI, ICCP, outage scheduling, scheduling, map-board displays, communication systems, etc.
    - iii. Operator Preparedness: Interview the operators at their workstations and ask them to present the tools, procedures, and job aids in use for normal day-to-day and emergency operations. This could include cyber intrusion detection and real-time assessment. Interview the training staff regarding initial training needed to support the transition to the new responsibilities and continuing training to the NERC standards.
    - iv. Critical Infrastructure Preparedness: Interview the CIP staff to understand how critical infrastructure protections are being utilized.
  - b. The CTL shall ensure documentation used to substantiate the conclusions of the Certification (Review) is collected from each sub-team.

## Fieldwork

1. Areas of capability to be evaluated by the certification activity shall be tailored to the situation and matched with appropriate assessment methods (e.g., validation of legacy information, review of entity responses, document review, direct observation, or personnel interview, etc.)
- 5.2. The CTL shall schedule a document review(s) with the CT prior to the on-site visit. Document reviews could take place face-to-face or via teleconference. ~~all Reliability Standards or Requirements/sub Requirements which have been delegated to another entity.~~
  - a. ~~The CT will review the entity(ies) ability to perform those delegated Requirements/sub Requirements or Reliability Standards.~~
3. The CT shall conduct at least one on-site visit to the entity's Facilities. During document reviews, the CT shall note all the following:
  - a. Follow-up or corroborating questions for the entity's management, SMEs, and system operators based upon the review of supporting documentation
  - b. Additional requests for information (to be submitted to the entity prior to the on-site visit.)
  - c. Comments during the document review that support the entity's abilities to perform the function for which the entity applied and indicate items which do not need further review
  - d. Issues that need to be addressed prior to certification being granted
4. The CTL shall provide the entity a final schedule and agenda for the on-site visit based upon the results of the document review.
5. The CT on-site visit to the entity's location where operational functionality is performed shall include the following:
  - a. Opening presentation
  - a.b. At a minimum, the team will:
    - i. Review with the entity the data ~~collected through the questionnaires, and such data~~ that is available only on-site;
    - ii. Interview the operations ~~and,~~ management, and training personnel;
    - iii. Inspect the Facilities and equipment associated with the function being certified; ~~applicable Reliability Standards referenced in the questionnaire;~~
    - iv. Request demonstration of all tools identified in the scope of the Certification ~~process~~;
    - v. Review documents and data including agreements, processes, and procedures identified in the Certification process ~~document review~~;
    - vi. Verify operating personnel ~~NERC Certification~~ credentials ~~documents~~ and proposed work schedules; and,
    - vii. Review any additional documentation resulting from inquiries arising during the on-site visit.
  - b.c. The CT shall interview other entity, personnel as required to clarify responses covered in the document review. ~~in conjunction with the CT, shall attempt to resolve any deficiencies prior to issuance of the draft report.~~

- d. At the end of each day, the CT will meet for the debriefing. The CTL shall lead a daily debriefing with the entity in order to do the following:~~The draft report is provided to the entity for review for 14 Days and any resulting comments will be assessed by the CT for possible inclusion in the report.~~
- i. Identify the status of the assessment
  - ii. Identify any items of concern that need to be addressed
  - iii. Provide an update to the schedule
- e. The CTL shall provide an exit briefing at the end of the on-site visit in order to do the following:
- i. Identify any Open Issues that need to be addressed, and identify a timeline for follow-up to closure
  - ii. Discuss the reporting process
  - iii. Discuss the next steps in the certification process, including any Areas of Concern and the schedule of a post-onsite visit, if required.
  - iv. Convey that entity feedback forms will be sent to allow the entity to resolve any open with a request for candid feedback.

## **Reporting**

1. The CTL will provide the CT and entity with feedback forms, and request that they are returned within five (5) calendar days with a copy to the Certification email address, found on the Registration and Certification page of the NERC website.
- ~~1. The Regional Entity(ies) may grant a time extension, not to exceed 180 Days, to the entity to allow the entity to resolve any open Certification issues.~~
- ~~2. The CT shall provide a Certification recommendation and identification of audit deficiencies in the final written report. All members of the CT shall have an equal voice in the Certification recommendation. This allows for a minority opinion if the review team cannot reach a consensus. The final written Certification report is distributed to NERC, the entity, and the other affected Regional Entities, as applicable.~~
- ~~3.2. After completion of the on-site visit, the CTL shall develop a draft final report, in coordination with input from the CT, which presupposes all Open Issues are closed. The format for the report shall conform to the template posted on the NERC website, generally containing:~~The following is the format for the final report:
  - Title page
  - Table of Contents
  - Introduction – A brief discussion on the Regional Entity(ies) involved, the entity being certified, a description of the function the entity(ies) are being certified for, and a brief timeline of the Certification project.
  - CT – Provide the CT makeup.
  - Objective and Scope – Discussion on entity application (who, what, when, & how).
  - Overall Conclusion – ~~Recommendation being made by~~finding of the CT.
  - ~~CT Findings – Open Issues - Any item(s) needing to that must~~ Any item(s) needing to that must be closed prior to going operational and within 180 days of conclusion of the on-site visit. ~~that do not hinder the CT from making a recommendation.~~
  - Positive Observations.

- Company History – Discussion on the applicant’s company history.
- Company Details – Specific details regarding why the Reliability Coordinator, Transmission Operator or Balancing Authority Areas to be operated and the entity’s is being certified and its relationship with other entities (BAs, RCs, and TOPs, and BAs etc.).
- Documentation List – Provide a list of critical documentation reviewed by the CT used to make the CT’s conclusion and the documentation retention requirements.
- Attachments – Describe those attachments that are for public viewing and those that are separated from the report due to confidentiality issues such as Critical Infrastructure documentation.

~~4. Certification recommendation and approval.~~

- ~~a. If the entity intends to operate in a single Regional Entity’s reliability Region, the CT shall make a Certification recommendation to that Regional Entity. The Regional Entity shall approve or disapprove the recommendation. The Regional Entity shall notify the entity and NERC of the Certification decision.~~
- ~~b. If the entity intends to operate in multiple Regional Entities, the CT shall make a Certification recommendation to all applicable Regional Entities in a single report. Certification recommendation by the Regional Entities must be unanimous. The Regional Entities shall notify the entity and NERC of the Certification decision.~~
- ~~c. NERC shall approve or disapprove all final Certification recommendations and notify the entity of the decision.~~

~~5. The entity may appeal the decision in accordance with the NERC ROP and Section VI of this manual.~~

~~6. If the entity is approved for Certification, NERC shall provide the entity a Certification letter and a NERC certificate indicating that that entity is NERC certified as a BA, RC, and/or TOP as applicable.~~

- ~~a. For those CFR entities that agree upon a division of compliance responsibilities for one or more Reliability Standards or Requirements/sub Requirements, NERC shall provide all entities responsible for BA, RC and/or TOP Requirements/sub Requirements and approved for Certification as BA, RC and/or TOP a NERC certificate indicating that those entities are NERC certified as a BA, RC, and/or TOP.~~
- ~~b. NERC shall update the Compliance Registry prior to the entity(s) going operational.~~

~~3. After the entity has been awarded Certification, the Regional Entity(ies) shall notify all applicable entities as to the date that the entity may begin its operation as a certified entity. The entity must commence operation within 12 months of Certification. Failure to begin operation within the 12-month period shall require the entity to reapply for Certification. The CTL shall transmit the draft final report to the CT requesting final comments within five (5) business days, unless agreed to otherwise.~~

~~4. After the CT has completed their review of the draft report, the CTL shall transmit the draft final report to the entity, requesting return with comments within fourteen (14) calendar days, unless agreed to otherwise.~~

~~5. Entity comments will be given due consideration and incorporated in the final report at the discretion of the CTL and the input of the CT. The CTL and CT will review the completed final report.~~

~~6. When all Open Issues are satisfactorily closed, the CTL will submit the final report to Regional Entity(ies) management for consideration and approval. CT minority opinions and areas where CT consensus was not reached will be communicated to Regional Entity(ies) management prior to approval, but will not be included in the final report nor in the Regional Entity recommendation to NERC.~~

- a. If Regional Entity management contradicts the CT finding, the CTL will work with the CT the entity to resolve any issues.
  - b. The Regional Entity CEO (or a designee) will transmit to NERC and copy the entity the final CT report with a recommendation regarding NERC’s certification of the entity.
7. If NERC approves the entity for certification, NERC shall email confirmation to the entity and post the final report on NERC’s public website. Attached to the email will be the formal certification letter and NERC certificate. Any Confidential Information will be redacted in accordance with Section 1500 of the NERC ROP.
8. The entity may appeal NERC’s decision in accordance with the Rules of Procedure and Section VII of this manual.
9. The certification process shall be completed within nine (9) months unless agreed to by all parties involved in the process
10. Operational responsibility for RC, TOP, or BA Areas shall not begin prior to the entity’s registration effective date. Trial operations, conducted in parallel with an incumbent RC, TOP, or BA who retains responsibility, shall be coordinated to ensure operational authority for an Area is clear at all times.
11. The applicant must commence operations for its RC, TOP, or BA Areas within twelve (12) months of being certified by NERC. If the applicant fails to commence operation within twelve (12) months, the certification process must be repeated.
  - a. During the pendency of the certification process, NERC may use its discretion to issue conditional Certification to ensure that the entity can be Registered, and no areas of the BPS are lacking any entities to perform the duties and tasks identified in and required by the Reliability Standards to the fullest extent practical.
    - i. Conditional Certification will include an implementation plan which provides qualifications or criteria that NERC and the Regional Entity have determined necessary to address the risk of an entity failing to be certified or to be certified when needed.
    - ii. The entity subject to conditional Certification shall create an implementation plan that establishes how delayed or failed certification is mitigated so that no gaps in reliability occur. The implementation plan would also detail potential impacts both to the applicant and to any affected entities, and discuss how those impacts would be mitigated, how required functions would be served, and how other affected entities within its prospective footprint would meet their compliance responsibilities if certification is failed or delayed.
    - iii. NERC and the Regional Entity will work with the applicant to develop the implementation plan. If the parties are unable to agree upon an implementation plan, NERC will issue an implementation plan

## **Data Retention**

1. Documentation used to substantiate the conclusions of the Certification (Review) must be retained by the Regional Entity for six (6) years.
2. Documentation used to substantiate program oversight of the Certification processes must be retained by NERC for six (6) years.
3. NERC will maintain and post all Certification Final Reports on its website. Any Confidential Information will be redacted in accordance with Section 1500 of the NERC ROP.



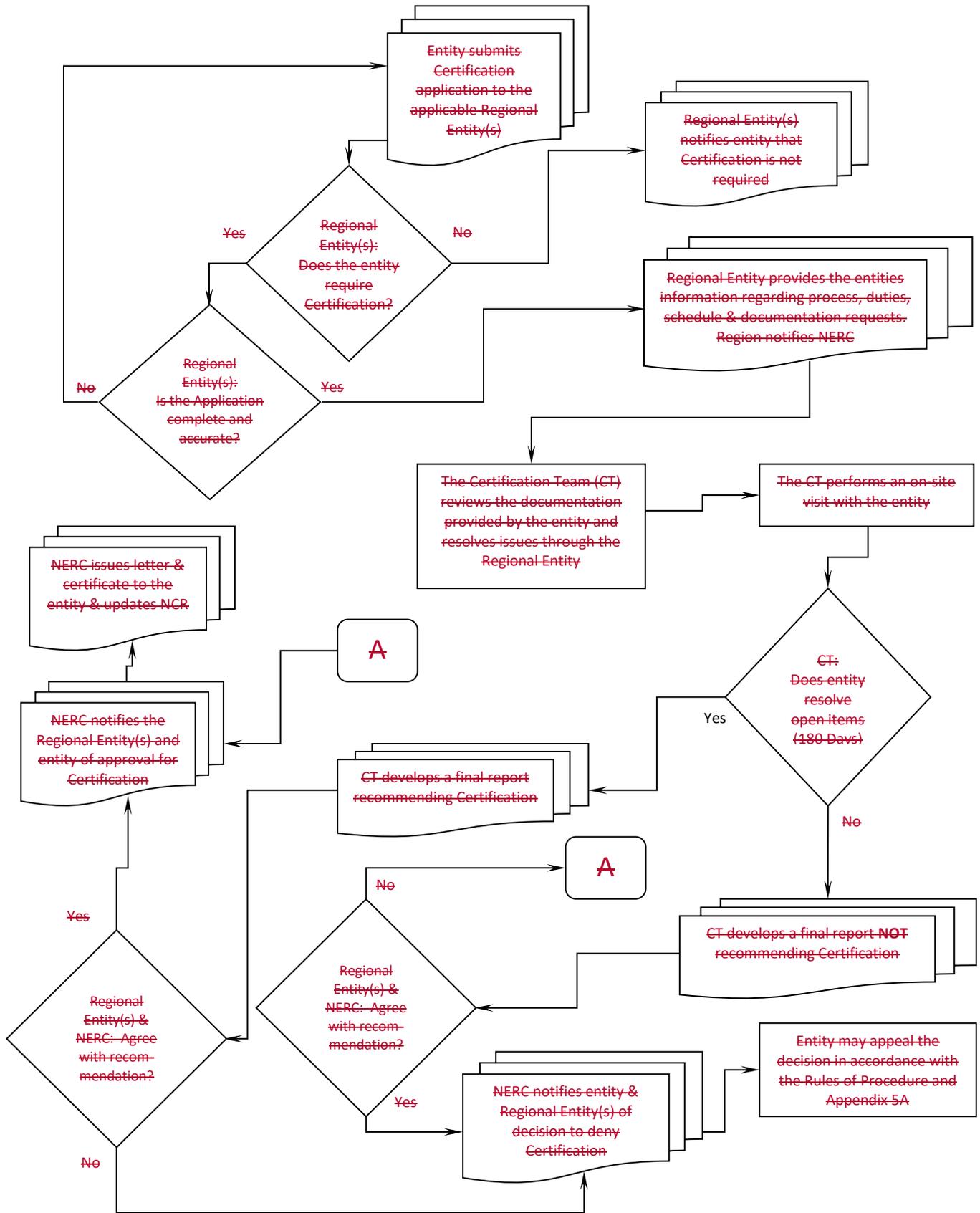


Figure 2: Organization Certification Process Overview

## Section V – Organization Certification Review Process

### Purpose and Scope

Certification review provides reasonable assurance an already certified and operational Registered Entity will continue to support reliable operations of the BPS after initiating a material change. The review will seek assurance that the entity has addressed personnel training and qualifications, facilities, and equipment needed to perform and maintain the reliability functions in accordance with the applicable Requirements of Reliability Standards, considering among others the following:

- BPS reliability impacts of the change
- Critical Infrastructure Protection implications of the change
- Operator training in support of the change
- Data collection, sharing, and facilities monitoring and control necessary for Real-time Assessments, as well as next-day and longer-term planning
- Coordination of normal and emergency operations

### Overview

Certification review activities, including the checks and balances of reporting and documenting those activities, should take place in advance of the change. Functional operations and compliance to the Standards remain the responsibility of the applicable Registered Entity. Certification is of the organization performing the function—not of a facility or system of equipment. Every RC, TOP, and BA Area shall have a certified RC, TOP, and BA registered as responsible for performing the duties and tasks identified in and required by the Reliability Standards. Entities seeking Deactivation of BA, TOP, or RC registrations shall demonstrate to the satisfaction of their Regional Entity and NERC through the Certification review process that the duties and tasks identified in and required by the Reliability Standards either have properly been transferred to another Certified and Registered Entity or the Area has ceased to operate. An entity remains certified during the review activities and subject to all applicable requirements of Reliability Standards, unless conditional Certification is granted by NERC providing qualifications or criteria that NERC and the Regional Entity have determined necessary to address the risk of an entity failing to be certified or to be certified when needed.

Items that are to be considered for a Certification review include one or more of the following non-exhaustive list of changes from an entity’s prior certification assessments.

- a. Changes to Registered Entity’s footprint<sup>14</sup> (including de-certification changes to existing JRO/CFR assignments or sub-set list of requirements):
  - i. The review of changes to an already registered and operational Entity’s footprint is primarily concerned with ensuring the gaining functional entity has the tools, training, and security in place to reliably operate with new responsibilities. Changes to an entity’s footprint can be characterized by new metered boundaries associated with the integration or dis-association of existing electrical areas of the BPS (Reliability Coordinator Area, Transmission Operator Area, or Balancing Authority Area).
- b. Relocation of the Control Center:
  - i. Fundamental to the reliable operation of the interconnected transmission network are the control centers that continuously monitor, assess, and control the generation and transmission power flows on the BES. Of interest are impacts to the functionality provided within these facilities for continued reliable operations of the BES that affect:

<sup>14</sup> This includes changes in ownership of BES Facilities, changes in the applicability of the BES Definition to a Facility, and newly installed BES Facilities.

- Tools and applications that System Operators use for situational awareness of the BES
  - Data exchange capabilities
  - Interpersonal (and alternate) Communications capabilities
  - Power source(s)
  - Physical and cyber security
- ii. The impact of the relocation of the Control Center on the entity's ability to perform the functions for which the entity is registered under normal and emergency conditions should be explored and documented to understand the manner in which the Control Center continues to support the reliable operations of the BES.
- c. Modification of the Energy Management System (EMS) which is expected to materially affect CIP security perimeters or the System Operator's: 1) situational awareness tools, 2) functionality, or 3) machine interfaces.

NERC may revoke an entity's certification and de-certify that entity if NERC determines that the entity is no longer performing the responsibilities that are associated with the function for which it is certified. Revocation shall be posted to the NERC website. The entity will remain registered and subject to compliance for the function, unless it has gone through the deactivation or deregistration process for the applicable function. NERC's revocation may be appealed in accordance with **Appendix 5A**, Section VII.

## Organization Certification Review Process

### Initiation

1. A Registered Entity that requires a review of the conditions upon which their certification was granted shall complete the appropriate form and submit it to the applicable Regional Entity. Informal dialogue on potential certification activity is encouraged as far in advance as possible.
  - a. An entity in a single Regional Entity reliability region shall initiate the Certification review process by completing an application (Certification review applications are provided on each Regional Entity's website) and sending it to the Regional Entity that will manage the Certification review process.
  - b. An entity in multiple Regional Entity reliability regions shall initiate the certification process by completing a certification application (certification applications are provided on each Regional Entity's website) and sending it to each Regional Entity. Each Regional Entity will inform NERC of the request with a recommendation for which Regional Entity will provide leadership to manage the certification process. NERC will determine which Regional Entity shall lead review of the application.
  - c. The Regional Entity leading the review of the application shall review the application and respond with either acceptance or a request for more information within 30 days of the receipt of the request.
2. Upon receipt of the request for Certification review, the Regional Entity(ies) shall evaluate as follows:
  - a. If the application is not complete or accurate, the Regional Entity will notify the entity to revise the application as needed.



## Section VI — NERC Organization Registration Appeals Process

---

- d. If the entity objects to any member of the CRT, the entity must make that known, in writing, to the Regional Entity, listing the reasons for the objection. The Regional Entity will either replace the team member or respond with written justification for keeping the member on the team.
2. The CRTL shall ensure all CRT members have completed the following:
  - a. Certification team member training requirements as established by NERC
  - b. Team Member profile documenting technical training and experience of team members
  - c. For non-ERO employees they shall also complete the following:
3. The CRTL shall utilize a secured server to distribute and house all relevant Certification review activity documents, including but not limited to the following:
  - a. The application or other documented correspondence with the Registered Entity initiating the certification activity
  - b. All relevant correspondence between the CRTL and the applicant, including the certification packet (as described in step 4 below)
  - c. All relevant correspondence between the CRTL and the CRT members
  - d. The work papers used to evaluate the entity during the process
  - e. The overall process schedule
  - f. The agenda for the on-site visit, if required
  - g. The final Certification review summary report
  - h. The Regional Entity certification process check sheet indicating the completion of certain process check-points
4. A Certification review packet shall be developed and sent to the entity at least ninety (90) days prior to an on-site visit. It shall contain the following:
  - a. Notification of the Certification review process
  - b. Logistic information request
  - c. The tentative overall process schedule and tentative on-site agenda
  - d. The CRT roster and member biographies
  - e. Request of confirmation of no-objections to CRT members
  - f. Pre-certification survey that must be returned to the CRTL within fifteen (15) days of receipt
  - g. Any initial requests for information
5. The CRTL shall contact the entity within one week of submitting the packet to confirm receipt of the package and discuss any concerns the entity may have.
6. The entity shall complete and return the requested information no later than four (4) weeks prior to the on-site visit.
7. The CRTL and CRT shall review the logistic information request, in order to do the following:
  - a. Understand the entity's expectations of the CRT when on site
  - b. Make travel arrangements

### **Fieldwork**

1. Areas of capability to be evaluated by the Certification review activity shall be tailored to the situation and matched with appropriate assessment methods (e.g., validation of legacy

## Section VI — NERC Organization Registration Appeals Process

information, review of questionnaire responses, document review, direct observation, or personnel interview, etc.)

2. The CRTL shall schedule a document review(s) with the CRT prior to the on-site visit. Document reviews could take place face-to-face or via teleconference.
3. During document reviews, the CRT shall note all the following:
  - a. Follow-up or corroborating questions for the entity's management, SMEs, and system operators based upon the review of supporting documentation
  - b. Additional requests for information (to be submitted to the entity)
  - c. Comments during the document review that support the entity's abilities to perform the function for which the entity applied and items which do not need further review
  - d. Issues that need to be addressed prior to continued certification being recommended
4. The CRTL shall provide the entity a final schedule and agenda for the on-site visit (if applicable) based upon the results of the document review.
5. As appropriate, the CRT shall conduct interviews at the entity's facilities or via teleconference. The team will:
  - a. Review with the entity any data or information requiring clarification
  - b. Interview operations, management, and training personnel
  - c. During on-site visits:
    - i. Inspect the Facilities and equipment associated with the applicable Reliability Standards referenced in the questionnaire;
    - ii. Request demonstration of all tools affected by the change;
  - d. Review documents and data including agreements, processes, and procedures identified by CRT
  - e. Review any additional documentation resulting from inquiries arising during the interview
6. At the end of each on-site day, the CRT will meet for debriefing. The CRTL shall lead a daily debriefing with the entity in order to do the following:
  - a. Identify the status of the assessment
  - b. Identify any items of concern that need to be addressed
  - c. Provide an update to the schedule
7. The CRTL shall provide an exit briefing at the end of the on-site visit in order to do the following:
  - a. Identify any Open Issues that need to be addressed, and identify a timeline for follow-up to closure
  - b. Discuss the reporting process
  - c. Discuss the next steps in the Certification review process, including any areas of concern and the schedule of a post-onsite visit, if required
  - d. Convey that entity feedback forms will be sent to the entity

### Reporting

1. The CRTL will provide the CRT and entity with feedback forms, and request that they are returned within five (5) calendar days with a copy to the Certification email address, found on the Registration and Certification page of the NERC website.

## Section VI — NERC Organization Registration Appeals Process

---

2. After completion of the on-site visit, the CRTL shall develop a draft summary report, in coordination with input from the CRT, which presupposes all Open Issues are closed. The format for the report shall conform to the template posted on the NERC website.
3. The entity, in conjunction with the CRT, shall attempt to resolve any Open Issues prior to issuance of the draft summary report.
4. The CRTL shall transmit the draft final report to the CRT requesting final comments within five (5) business days, unless agreed to otherwise.
5. After the CRT has completed their review of the draft report, the CRTL shall transmit the draft final report to the entity, requesting return with comments within fourteen (14) calendar days, unless agreed to otherwise.
6. At the discretion of the CRT and NERC, the entity may be permitted to implement the change at any point in time after the exit briefing. Trial operations, if used, shall be coordinated to ensure operational authority for an Area is clear at all times.
7. Entity comments will be given due consideration and incorporated into the summary report at the discretion of the CRTL and the input of the CRT. The CRTL will review the completed summary report with the CRT.
8. When all Open Issues are satisfactorily closed, the CRTL will submit the summary report to Regional Entity(ies) management for consideration and approval. CRT minority opinions and areas where CRT consensus was not reached will be communicated to Regional Entity(ies) management prior to approval but will not be included in the final report nor in the Regional Entity recommendation to NERC.
  - a. If Regional Entity management contradicts the CRT finding, the CRTL will work with the CRT and the entity to resolve any issues.
  - b. The Regional Entity CEO (or a designee) will transmit to NERC and copy the entity the final CRT report with a recommendation regarding NERC's certification of the entity.
9. If NERC approves continued certification for the entity, NERC shall email confirmation to the entity.
10. If NERC declines continued certification for the entity, NERC shall make available to the entity Hearing Procedures for use in Appeals of Certification Matters, CCCPP-005 contained in Appendix 4E.

### **Data Retention**

1. Documentation used to substantiate the conclusions of the Certification review must be retained by the Regional Entity for six (6) years.
2. Documentation used to substantiate program oversight of the certification processes must be retained by NERC for six (6) years.

## Section VI — NERC Organization Registration Appeals Process

---

### Purpose and Scope

This section describes the process that any organization must use to seek review of its listing and functional assignment on the NCR.

### Overview

NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 3, *Organization Registration Appeals Process Overview*.

### Organization Registration Appeals Procedure

1. Any Registered Entity included on the NCR may challenge final decisions regarding its listing, functional assignments, and determinations regarding the applicability of a sub-set of Reliability Standards (which specifies the specific Reliability Standards and may specify Requirements/sub-Requirements).
2. All registration appeals must be filed in writing to NERC, via registered mail. Appeals are sent to:  
Compliance Operations  
3353 Peachtree Road NE  
Suite 600, North Tower  
Atlanta, GA 30326  
Main: (404) 446-2560  
Facsimile: (404) 446-2595
3. Each party in the appeals process shall pay its own expenses for each step in the process.
4. A stipulation of invoking the appeals process is that the Regional Entity or Registered Entity requesting the appeal agrees that NERC (its Members, Board, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable for, and shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
5. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.
6. All appeals must be received within 21 Days of receipt of the NERC determination that is being appealed. The appeal must state why the Registered Entity believes it should not be registered or should be deactivated based on the NERC ROP and the *NERC Statement of Compliance Registry Criteria* or why its compliance obligations should be limited only to a sub-set list of otherwise applicable Reliability Standards (which specifies the Reliability Standards and may specify Requirements/sub-Requirements). A copy of the appeal must be concurrently served on the Regional Entity.

## Section VI — NERC Organization Registration Appeals Process

---

7. After receipt of the appeal, the Registered Entity has a 30 day period to work with the Regional Entity to resolve the appeal, if possible. [NERC may extend such deadline in its sole discretion.](#) If the appeal is resolved, the Regional Entity will notify NERC with the details of the resolution and NERC will close the appeal.
8. At any time through this appeals process, a Registered Entity may agree with the decision and/or agree to close the appeal. NERC shall notify the involved parties and the NERC BOTCC that the appeal is resolved and update the NCR as applicable.
9. NERC will notify the Registered Entity and the applicable Regional Entity(ies) regarding the appeal with the following expectations:
  - a. The Registered Entity will provide NERC and the applicable Regional Entity(ies) any additional data supporting its appeal within 10 Days of the date of the NERC appeal notification.
  - b. The applicable Regional Entity(ies) will provide a copy of its assessment directly to the Registered Entity, as well as to NERC, within 20 Days of the date of the NERC appeal notification.
  - c. The Registered Entity may submit a response to the Regional Entity(ies) assessment, with copies to the Regional Entity(ies) and NERC, within 30 Days of the date of the NERC appeal notification.
  - d. To ensure there is no confusion with respect to the rights and responsibilities of the Registered Entity during the appeal process, the notification will confirm whether the Registered Entity will remain on the NERC Compliance Registry and will be responsible for compliance with approved Reliability Standards applicable to the function under appeal during the appeal.
  - e. NERC may extend the timelines for good cause shown. Requests should be sent to the [Registration email address, found on the Registration and Certification page on the NERC website](#)~~Director of Compliance~~. NERC shall notify the Registered Entity and the Regional Entity of such time extensions.
10. Hearing and Ruling by the BOTCC
  - a. The BOTCC will resolve Registration disputes.
  - b. The BOTCC may request additional data from NERC, the relevant Regional Entity(ies) or the Registered Entity, and prescribe the timeframe for the submitting the requested data.
  - c. The BOTCC will provide a written decision regarding any appeals, along with the basis for its decision.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the Registered Entity and Regional Entity(ies) that the appeal was granted.
    - Update the NCR.
  - e. If the BOTCC does not uphold the appeal, NERC will:
    - Notify the Registered Entity and the Regional Entity(ies) that the appeal was denied.
    - The Registered Entity may appeal to Federal Energy Regulatory Commission (FERC) or another Applicable Governmental Authority within 21 Days of the notification of the decision.
  - f. A record of the appeals process shall be maintained by NERC. Confidentiality of the record of the appeal will be based on the NERC ROP Section 1500.



Section VI — NERC Organization Registration Appeals Process

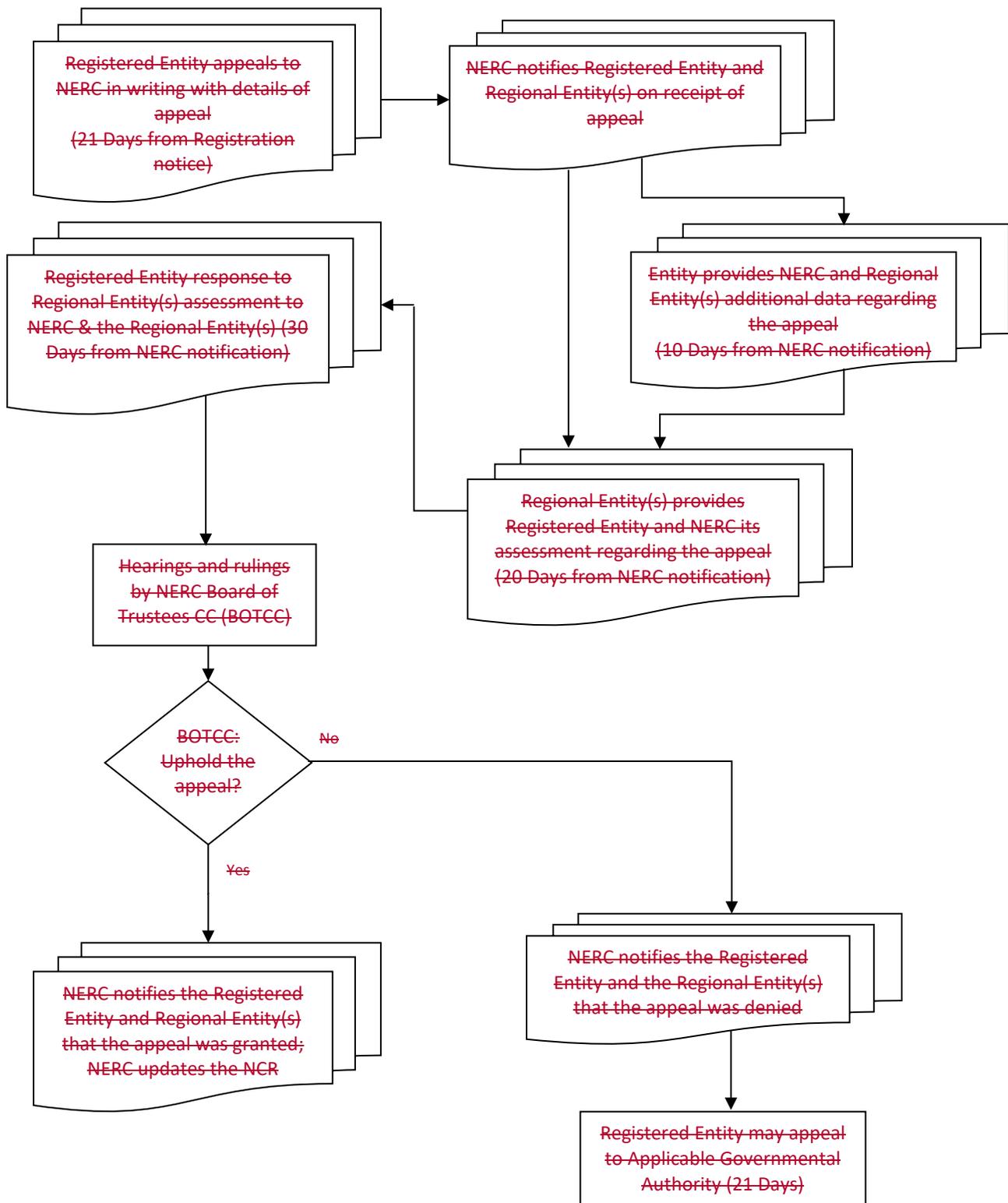


Figure 3: Organization Registration Appeals Process Overview

## Section VI — NERC Organization Certification Appeals Process

### Purpose and Scope

This section describes the process for an organization to appeal the Certification decision that was determined in the Certification process.

### Overview

The NERC Organization Certification Program provides a key means to fulfill NERC's mission. In conducting this program, NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 4 *Organization Certification Appeals Process Overview*.

### Organization Certification Appeals Procedure

1. Appeal for an Organization Certification ~~F~~inding.
2. Any entity can appeal an ~~e~~Organization Certification decision issued as a result of the Certification process.
3. Requirements and Conditions for Appeals.
  - a. For all appeals under the NERC Organization Certification Program, the appeals process begins when an entity notifies the NERC via the Certification email address, found on the Registration and Certification page of the NERC website~~Vice President and Director of Compliance, in writing~~, that it wishes to use the NERC appeals process.
    - The Director of Compliance is the main contact for all parties in all steps of the appeals process.
    - If an appeal is not filed within 21 Days of the date that the Certification report or finding is issued, or the final Regional Entity appeals process ruling is made, the finding shall be considered final and un-appealable.
  - b. Each party in the appeals process shall pay its own expenses for each step in the process.
  - c. A stipulation of invoking the appeals process is that the Regional Entity or entity requesting the appeal agrees that NERC (its Members, Board, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable, and shall be held harmless against the consequences of ~~or~~any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This "hold harmless" clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
  - d. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.
4. At any time through this appeals process, an entity may withdraw its appeal.
5. Hearing and Ruling by the Compliance and Certification Committee.
  - a. Within 28 Days of receiving notice from the NERC Director of Compliance, the CCC will conduct a hearing where all the parties or representatives of the disputing parties will present the issue in question, in accordance with CCC procedure CCCPP-005, *Hearing Procedures for Use in Appeals of Certification Matters*, which is incorporated in **Appendix 4E** of the ROP.
  - b. If the appeal is upheld, NERC notifies the entity and Regional Entity(~~ies~~), updates the NCR, and issues any appropriate letter and certificate to the entity.

- c. If the appeal is denied, NERC notifies the entity and Regional Entity(ies).
6. Hearings and Ruling by the BOTCC.
  - a. The BOTCC will be asked to resolve a dispute related to the NERC Organization Certification Program if any party to the appeal contests the CCC final order.
  - b. The BOTCC may request additional data from NERC, Regional Entity(ies) or the entity and prescribe the timeframe for ~~the~~ submitting the requested data.
  - c. At the next regularly scheduled BOTCC meeting, or at a special meeting if the Board determines it is necessary, the Chair~~man~~ of the CCC will present a summary of the dispute and the actions taken to the BOTCC.
    - Each party will have an opportunity to state its case.
    - The BOTCC will then rule on the dispute.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the entity and the Regional Entity(ies) that the appeal was upheld.
    - Update the NCR.
    - Issue a Certification letter and a certificate to the entity as applicable.
  - e. If the BOTCC does not uphold the appeal, NERC will notify the entity and the Regional Entity(ies) that the appeal was denied.
    - The entity may appeal to Applicable Governmental Authorities within 21 Days of the issuance of the decision.
  - f. A record of the appeals process shall be maintained by NERC and available upon request. Confidentiality of the record of the appeal will be based on the NERC ROP Section 1500.

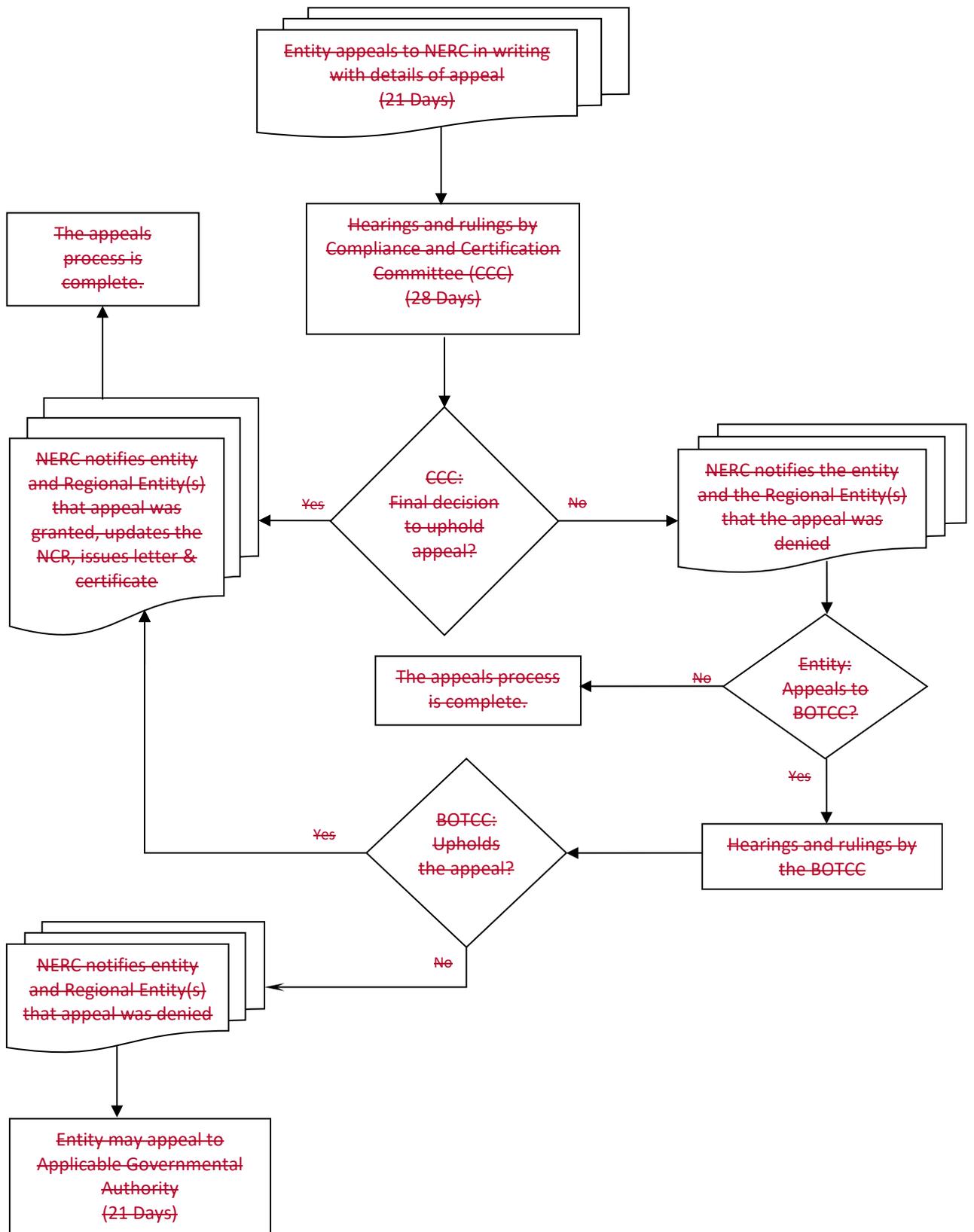


Figure 4: Organization Certification Appeals Process Overview

## Definitions

---

Capitalized terms used in this Appendix shall have the definitions set forth in Appendix 2 of the ROP. For convenience of reference, definitions used in this Appendix are also set forth below:

<b>NERC Organization Certification</b>	The process undertaken by NERC and a Regional Entity to verify that a new entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator, and/or Reliability Coordinator.
<b>Compliance and Certification Manager</b>	The individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities with applicable NERC Reliability Standards.
<b>Days</b>	Days as used in the Registration and Certification processes are defined as calendar days.
<b>Footprint</b>	The geographical or electric area served by an entity.
<b>Functional Entity</b>	An entity responsible for a function that is required to ensure the Reliable Operation of the electric grid as identified in the NERC Reliability Standards.
<b>Mapping</b>	The process of determining whether a Regional Entity's Footprint is being served by Registered Entities.
<b>NERC Identification Number (NERC ID)</b>	A number given to NERC Registered Entities that will be used to identify the entity for certain NERC activities. Corporate entities may have multiple NERC IDs to show different corporate involvement in NERC activities.
<b>Regional Entity</b>	An entity having enforcement authority pursuant to 18 C.F.R. § 39.8.
<b>Registration</b>	Processes undertaken by NERC and Regional Entities to identify which entities are responsible for reliability functions within the Regional Entity's Region.
<b>Coordinated Functional Registration (CFR)</b>	Where two or more entities (parties) agree in writing upon a division of compliance responsibility among the parties for one or more Reliability Standard(s) applicable to a particular function, and/or for one or more Requirement(s)/sub-Requirement(s) within particular Reliability Standard(s).

Attachment 7:

Registration and Certification:  
Appendix 5B

Clean

## Appendix 5B

# Statement of Compliance Registry Criteria

Revision 7

Effective: , 2020

## Table of Contents

Statement of Compliance Registry Criteria (Revision 7) .....	1
Summary .....	1
Background .....	2
Statement of Issue .....	2
Resolution .....	3
Determination of Material Impact.....	7
Limitation of responsibilities to a sub-set of Reliability Standards.....	8

## Statement of Compliance Registry Criteria (Revision 7)

### Summary

This document describes how the North American Electric Reliability Corporation (NERC) will identify organizations that may be candidates for Registration and assign them to the Compliance Registry.

NERC and the Regional Entities<sup>1</sup> have the obligation to identify and register all entities that meet the criteria for inclusion in the Compliance Registry, as further explained in the balance of this document.

Organizations will be responsible to register and to comply with approved Reliability Standards to the extent that they are owners, operators, and users of the Bulk Power System (BPS), perform a function listed in the functional types identified in Section II of this document, and are material to the Reliable Operation of the interconnected BPS as defined by the criteria and sections set forth in this document. NERC will apply the following principles to the Compliance Registry:

- In order to carry out its responsibilities related to enforcement of Reliability Standards, NERC must identify the owners, operators, and users of the BPS who have a material impact<sup>2</sup> on the BPS through a Compliance Registry. NERC and the Regional Entities will make their best efforts to identify all owners, users and operators who have a material impact on the BPS in order to develop a complete and current Compliance Registry list. The Compliance Registry will be updated as required and maintained on an on-going basis.
- Organizations listed in the Compliance Registry are responsible and will be monitored for compliance with applicable mandatory Reliability Standards. They will be subject to NERC's and the Regional Entities' Compliance Monitoring and Enforcement Programs.
- NERC and Regional Entities will not monitor nor hold those not in the Compliance Registry responsible for compliance with the Reliability Standards. An entity which is not initially placed on the Compliance Registry, but which is identified subsequently as having a material impact on the BPS, will be added to the Compliance Registry. Such entity will not be subject to a sanction or Penalty by NERC or the Regional Entity for actions or inactions prior to being placed on the Compliance Registry, but may be required to comply with a Remedial Action Directive or Mitigation Plan in order to become compliant with applicable Reliability Standards. After such entity has been placed on the Compliance Registry, it shall be responsible for complying with Reliability Standards and may be subject to sanctions or Penalties as well as any Remedial Action Directives and Mitigation Plans required by the Regional Entities or NERC for future violations, including any failure to follow a Remedial Action Directive or Mitigation Plan to become compliant with Reliability Standards.

---

<sup>1</sup> The term "Regional Entities" includes Cross-Border Regional Entities that have footprints in the U.S., Canada, and Mexico, as applicable. Applicable Governmental Authorities in Canadian jurisdictions may have adopted their own Rules of Procedure and Compliance Registry requirements. Registered Entities may be subject to the Compliance Monitoring and Enforcement Programs (CMEP) in their respective jurisdictions, in accordance with applicable laws and regulations.

<sup>2</sup> The criteria for determining whether an entity will be placed on the Compliance Registry are set forth in the balance of this document. At any time a person may recommend in writing, with supporting reasons, to the Director of Compliance (or an equivalent position) that an organization be added to or removed from the Compliance Registry, pursuant to NERC Rules of Procedure Section 501.1.3.5.

- Required compliance by a given organization with the Reliability Standards will begin the later of (i) inclusion of that organization in the Compliance Registry and (ii) approval by the Applicable Governmental Authority of mandatory Reliability Standards applicable to the registered entity.

Entities responsible for funding NERC and the Regional Entities have been identified in the budget documents filed with FERC.<sup>3</sup> Presence on or absence from the Compliance Registry has no bearing on an entity's independent responsibility for funding NERC and the Regional Entities.

## Background

In 2005, NERC and the Regional Entities conducted a voluntary organization registration program limited to Balancing Authorities, Planning Authorities, regional reliability organizations, Reliability Coordinators, Transmission Operators, and Transmission Planners. The list of the entities that were registered constitutes what NERC considered at that time as its Compliance Registry.

NERC initiated a broader program to identify additional organizations potentially eligible to be included in the Compliance Registry and to confirm the information of organizations currently on file, taking into account the following considerations:

- As of July 20, 2006, NERC was certified as the Electric Reliability Organization (ERO) created for the U.S. by the Energy Policy Act of 2005 (EPA) and FERC Order No. 672. NERC has received similar recognition by Canadian authorities in their respective jurisdictions.
- FERC Order No. 672 directs that owners, operators and users of the BPS in the U.S. shall be registered with the ERO and the appropriate Regional Entities.
- As the ERO, NERC has filed its current Reliability Standards with FERC and with Canadian authorities. As accepted and approved by FERC and appropriate Canadian authorities, the Reliability Standards are no longer voluntary, and organizations that do not fully comply with them may face Penalties or other sanctions, in accordance with applicable laws, regulations and orders of Applicable Governmental Authorities.
- NERC's Reliability Standards include compliance Requirements for additional reliability function types beyond the six types registered by earlier registration programs.
- Based on selection as the ERO, NERC's Organization Registration program<sup>4</sup> is the means by which NERC and the Regional Entities plan, manage and execute Reliability Standard compliance oversight of owners, operators, and users of the BPS.
- Organizations listed in the Compliance Registry are subject to NERC's and the Regional Entities' Compliance Monitoring and Enforcement Programs.

## Statement of Issue

As the ERO, NERC intends to comprehensively and thoroughly protect the reliability of the grid. To support this goal NERC will include in its Compliance Registry each entity that NERC concludes can materially impact the reliability of the BPS.

---

<sup>3</sup> Budget documents are submitted to Applicable Governmental Authorities in Canada for information.

<sup>4</sup> See NERC ERO Application; Exhibit C; Section 500 – Organization Registration and Certification.

NERC wishes to identify those entities that may need to be listed in its Compliance Registry. Identifying these organizations is necessary and prudent for the purpose of determining resource needs, both at the NERC and Regional Entity level, and for communicating with these entities regarding their potential responsibilities and obligations. Candidate entities can be identified at any time, as and when needed. The Compliance Registry is available on NERC's website.

### **Resolution**

The potential costs and effort of registering every organization potentially within the scope of "owner, operator, and user of the BPS," while ignoring their impact upon reliability, would be disproportionate to the improvement in reliability that would reasonably be anticipated from doing so.

NERC and the Regional Entities have identified two principles they believe are key to the entity selection process. These are:

1. There needs to be consistency between Regions and across the continent with respect to which entities are registered; and
2. Any entity reasonably deemed material to the reliability of the BPS will be registered, irrespective of other considerations.

To address the second principle the Regional Entities, working with NERC, will identify and register any entity they deem material to the reliability of the BPS.

In order to promote consistency, NERC and the Regional Entities use the following criteria as the basis for determining whether particular entities should be identified as candidates for Registration. All organizations meeting or exceeding the criteria will be identified as candidates.

The following four groups of criteria (Sections I-IV) plus the statement in Section V will provide guidance regarding an entity's Registration status:

- Section I determines if the entity is an owner, operator, or user of the BPS and, hence, a candidate for organization Registration.
- Section II uses NERC's current functional type definitions to provide an initial determination of the functional types for which the entities identified in Section I should be considered for Registration.
- Section III lists the criteria regarding smaller entities; these criteria can be used to forego the Registration of entities that were selected to be considered for Registration pursuant to Sections I and II and, if circumstances change, for later removing entities from the Compliance Registry that no longer meet the relevant criteria.
- Section IV — additional criteria for joint Registration. Joint Registration criteria may be used by joint action agencies, generation and transmission cooperatives and other entities which agree upon a clear division of compliance responsibility for Reliability Standards by written agreement. Rules pertaining Joint Registration Organizations, as well as Coordinated Functional Registrations, are now found in Sections 501, 507 and 508 of the NERC Rules of Procedure.

- I. Entities that use, own or operate Elements of the Bulk Electric System (BES) as established by NERC’s approved definition of BES as stated in Appendix 2 of the NERC Rules of Procedure and the NERC Glossary are (i) owners, operators, and users of the BPS and (ii) candidates for Registration:
  
- II. Entities identified in Section I above will be categorized as Registration candidates who may be subject to Registration under one or more appropriate Functional Entity types based on a comparison of the functions the entity normally performs against the following function type definitions:<sup>5</sup>

Function Type	Acronym	Definition/Discussion
Balancing Authority	BA	The responsible entity that integrates resource plans ahead of time, maintains Load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real-time.
Distribution Provider	DP	Provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.  Note: As provided in Section III.b.1 below, a Distribution Provider entity shall be an Underfrequency Load Shedding (UFLS)-Only Distribution Provider if it is the responsible entity that owns, controls or operates UFLS Protection System(s) needed to implement a required UFLS program designed for the protection of the BES, but does not meet any of the other registration criteria for a Distribution Provider.
Frequency Response Sharing Group	FRSG	A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating resources required to jointly meet the sum of the Frequency Response Obligations of its members.
Generator Operator	GOP	The entity that operates generating Facility(ies)and performs the functions of supplying energy and Interconnected Operations Services.

<sup>5</sup> Exclusion: An entity will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, including bilateral agreements and Sections 501, 507 and 508 of the NERC Rules of Procedure.

Function Type	Acronym	Definition/Discussion
Generator Owner	GO	Entity that owns and maintains generating Facility(ies).
Planning Authority/ Planning Coordinator	PA/PC	The responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.
Reliability Coordinator	RC	The entity that is the highest level of authority who is responsible for the Reliable Operation of the BES, has the Wide Area view of the BES, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator’s vision.
Regulation Reserve Sharing Group		A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply the Regulating Reserve required for all member Balancing Authorities to use in meeting applicable regulating standards.
Reserve Sharing Group	RSG	A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority’s use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g., ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes), then, for the purposes of disturbance control performance, the areas become a Reserve Sharing Group.
Resource Planner	RP	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific Loads (customer demand and energy requirements) within a Planning Authority area.
Transmission Owner	TO	The entity that owns and maintains transmission Facilities.

Function Type	Acronym	Definition/Discussion
Transmission Operator	TOP	The entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission Facilities.
Transmission Planner	TP	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.
Transmission Service Provider	TSP	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.

III. Except as provided in Section V below, entities identified in Section II above as being subject to Registration as a Distribution Provider should be included in the Compliance Registry for these functions only if they meet any of the criteria listed below:

III(a) Distribution Provider:

- III.a.1 Distribution Provider system serving >75 MW of peak Load that is directly connected to the BES;<sup>6</sup> or
- III.a.2 Distribution Provider is the responsible entity that owns, controls, or operates Facilities that are part of any of the following Protection Systems or programs designed, installed, and operated for the protection of the BES:<sup>7</sup>
  - a required Undervoltage Load Shedding (UVLS) program and/or
  - a required Special Protection System or Remedial Action Scheme and/or
  - a required transmission Protection System; or
- III.a.3 Distribution Provider that is responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs) pursuant to an executed agreement; or
- III.a.4 Distribution Provider with field switching personnel identified as performing unique tasks associated with the Transmission Operator’s restoration plan that are outside of their normal tasks.

III(b) Distribution Provider with UFLS-Only assets (referred to as “UFLS-Only Distribution Provider”)

- III.b.1 UFLS-Only Distribution Provider does not meet any of the other registration criteria in Sections III(a)(1)-(4) for a Distribution Provider; and

<sup>6</sup> Ownership, control or operation of UFLS Protection System(s) needed to implement a required UFLS Program designed for the protection of the BES does not affect an entity’s eligibility for registration pursuant to III.a.1.

<sup>7</sup> As used in Section III.a.2, “protection of the Bulk Electric System” means protection to prevent instability, Cascading, or uncontrolled separation of the BES and not for local voltage issues (UVLS) or local line loading management (Special Protection System) that are demonstrated to be contained within a local area.

- III.b.2 UFLS-Only Distribution Provider is the responsible entity that owns, controls, or operates UFLS Protection System(s) needed to implement a required UFLS Program designed for the protection of the BES.

*The Reliability Standards applicable to UFLS-Only Distribution Providers are: (1) any version of PRC-005 and PRC-006 applicable to UFLS-Only Distribution Providers, (2) any regional Reliability Standard whose purpose is to develop or establish a UFLS Program, and (3) any Reliability Standard that lists UFLS-Only Distribution Provider in the applicability section. Reliability Standards that apply to Distribution Providers will not apply to UFLS-Only Distribution Providers, unless explicitly stated in the applicability section of these Reliability Standards and in future revisions and/or versions.*

- IV. Joint Registration Organization, Coordinated Functional Registration and applicable Member Registration.

Pursuant to FERC's directive in paragraph 107 of Order No. 693, NERC's rules pertaining to joint Registrations and Joint Registration Organizations, as well as Coordinated Functional Registrations, are now found in Section 501, 507 and 508 of the NERC Rules of Procedure.

- V. If NERC or a Regional Entity encounters an organization that is not listed in the Compliance Registry, but which should be subject to the Reliability Standards, NERC or the Regional Entity is obligated and will initiate actions to add that organization to the Compliance Registry, subject to that organization's right to challenge as provided in Section 500 of NERC's Rules of Procedure.

### **Determination of Material Impact**

An entity that does not meet (i.e., falls below) the criteria may nevertheless be registered if it can be demonstrated that the entity has a material impact on the reliability of the BES. Similarly, an entity that meets the criteria may be excluded if it can be demonstrated to NERC that the entity does not have a material impact on the reliability of the BES. Such Registration decisions regarding materiality must be made by the NERC-led Registration Review Panel in accordance with Section III(D) of Appendix 5A to the NERC Rules of Procedure. In order to ensure a consistent approach to assessing materiality, a non-exclusive set of factors ("materiality test") for consideration is identified below; however, only a sub-set of these factors, or other additional factors, may be applicable to a particular functional registration category or specific entity, as appropriate:

1. Is the entity specifically identified in the emergency operation plans and/or restoration plans of an associated Reliability Coordinator, Balancing Authority, Generator Operator or Transmission Operator?
2. Will intentional or inadvertent removal of an Element owned or operated by the entity, or a common mode failure of two Elements as identified in the Reliability Standards (for example, loss of two Elements as a result of a breaker failure), lead to a reliability issue on another entity's system (such as a neighboring entity's Element exceeding an applicable rating, or loss of non-consequential load due to a single contingency)? Conversely, will such contingencies on a neighboring entity's system result in issues for Reliability Standards compliance on the system of the entity in question?

3. Can the normal operation, misoperation or malicious use of the entity's cyber assets cause a detrimental impact (e.g., by limiting the operational alternatives) on the operational reliability of an associated Balancing Authority, Generator Operator or Transmission Operator?
4. Can the normal operation, misoperation, or malicious use of the entity's Protection Systems (including UFLS, UVLS, Special Protection System, Remedial Action Schemes and other Protection Systems protecting BES Facilities) cause an adverse impact on the operational reliability of any associated Balancing Authority, Generator Operator or Transmission Operator, or the automatic load shedding programs of a PC or TP (UFLS, UVLS)?

### **Limitation of responsibilities to a sub-set of Reliability Standards**

NERC may limit the compliance obligations of (1) a given entity registered for a particular function or (2) a similarly situated class of entities, as warranted based on the particular facts and circumstances, to a sub-set list of Reliability Standards (which may specify Requirements/sub-Requirements). If NERC establishes a sub-set list for similarly situated class of entities, NERC will post the eligibility criteria and sub-set list of applicable Reliability Standards to the Registration and Certification page of the NERC Website.

Attachment 8:

Registration and Certification:  
Appendix 5B

Redline

## Appendix 5B

# Statement of Compliance Registry Criteria

Revision 76

Effective: ~~October 31, 2016~~, 2020

## Table of Contents

<u>Statement of Compliance Registry Criteria (Revision 7)</u> .....	1
<u>Summary</u> .....	1
<u>Background</u> .....	2
<u>Statement of Issue</u> .....	2
<u>Resolution</u> .....	3
<u>Determination of Material Impact</u> .....	9
<u>Limitation of responsibilities to a sub-set of Reliability Standards</u> .....	10

## Statement of Compliance Registry Criteria (Revision 67)

### Summary

This document describes how the North American Electric Reliability Corporation (NERC) will identify organizations that may be candidates for Registration and assign them to the Compliance Registry.

NERC and the Regional Entities<sup>1</sup> have the obligation to identify and register all entities that meet the criteria for inclusion in the Compliance Registry, as further explained in the balance of this document.

Organizations will be responsible to register and to comply with approved Reliability Standards to the extent that they are owners, operators, and users of the Bulk Power System (BPS), perform a function listed in the functional types identified in Section II of this document, and are material to the Reliable Operation of the interconnected BPS as defined by the criteria and ~~sections~~ ~~notes~~ set forth in this document. NERC will apply the following principles to the Compliance Registry:

- In order to carry out its responsibilities related to enforcement of Reliability Standards, NERC must identify the owners, operators, and users of the BPS who have a material impact<sup>2</sup> on the BPS through a Compliance Registry. NERC and the Regional Entities will make their best efforts to identify all owners, users and operators who have a material impact on the BPS in order to develop a complete and current Compliance Registry list. The Compliance Registry will be updated as required and maintained on an on-going basis.
- Organizations listed in the Compliance Registry are responsible and will be monitored for compliance with applicable mandatory Reliability Standards. They will be subject to NERC's and the Regional Entities' Compliance Monitoring and Enforcement Programs.
- NERC and Regional Entities will not monitor nor hold those not in the Compliance Registry responsible for compliance with the Reliability Standards. An entity which is not initially placed on the Compliance Registry, but which is identified subsequently as having a material impact on the BPS, will be added to the Compliance Registry. Such entity will not be subject to a sanction or Penalty by NERC or the Regional Entity for actions or inactions prior to being placed on the Compliance Registry, but may be required to comply with a Remedial Action Directive or Mitigation Plan in order to become compliant with applicable Reliability Standards. After such entity has been placed on the Compliance Registry, it shall be responsible for complying with Reliability Standards and may be subject to sanctions or Penalties as well as any Remedial Action Directives and Mitigation Plans required by the Regional Entities or NERC for future violations, including any failure to follow a Remedial Action Directive or Mitigation Plan to become compliant with Reliability Standards.

<sup>1</sup> The term "Regional Entities" includes Cross-Border Regional Entities, that have footprints in the U.S., Canada, and Mexico, as applicable. Applicable Governmental Authorities in Canadian jurisdictions may have adopted their own Rules of Procedure and Compliance Registry requirements. Registered Entities may be subject to the Compliance Monitoring and Enforcement Programs (CMEP) in their respective jurisdictions, in accordance with applicable laws and regulations.

<sup>2</sup> The criteria for determining whether an entity will be placed on the Compliance Registry are set forth in the balance of this document. At any time a person may recommend in writing, with supporting reasons, to the Director of Compliance (or an equivalent position) that an organization be added to or removed from the Compliance Registry, pursuant to NERC Rules of Procedure Section 501.1.3.5.

- Required compliance by a given organization with the Reliability Standards will begin the later of (i) inclusion of that organization in the Compliance Registry and (ii) approval by the Applicable Governmental Authority of mandatory Reliability Standards applicable to the registered entity.

Entities responsible for funding NERC and the Regional Entities have been identified in the budget documents filed with FERC.<sup>3</sup> Presence on or absence from the Compliance Registry has no bearing on an entity's independent responsibility for funding NERC and the Regional Entities.

## Background

In 2005, NERC and the Regional Entities conducted a voluntary organization registration program limited to Balancing Authorities, Planning Authorities, regional reliability organizations, Reliability Coordinators, Transmission Operators, and Transmission Planners. The list of the entities that were registered constitutes what NERC considered at that time as its Compliance Registry.

NERC initiated a broader program to identify additional organizations potentially eligible to be included in the Compliance Registry and to confirm the information of organizations currently on file, taking into account the following considerations:

- As of July 20, 2006, NERC was certified as the Electric Reliability Organization (ERO) created for the U.S. by the Energy Policy Act of 2005 (EPA) and FERC Order No. 672. NERC has received similar recognition by Canadian authorities in their respective jurisdictions.
- FERC Order No. 672 directs that owners, operators and users of the BPS in the U.S. shall be registered with the ERO and the appropriate Regional Entities.
- As the ERO, NERC has filed its current Reliability Standards with FERC and with Canadian authorities. As accepted and approved by FERC and appropriate Canadian authorities, the Reliability Standards are no longer voluntary, and organizations that do not fully comply with them may face Penalties or other sanctions, in accordance with applicable laws, regulations and orders of Applicable Governmental Authorities.
- NERC's Reliability Standards include compliance Requirements for additional reliability function types beyond the six types registered by earlier registration programs.
- Based on selection as the ERO, NERC's Organization Registration program<sup>4</sup> is the means by which NERC and the Regional Entities plan, manage and execute Reliability Standard compliance oversight of owners, operators, and users of the BPS.
- Organizations listed in the Compliance Registry are subject to NERC's and the Regional Entities' Compliance Monitoring and Enforcement Programs.

## Statement of Issue

As the ERO, NERC intends to comprehensively and thoroughly protect the reliability of the grid. To support this goal NERC will include in its Compliance Registry each entity that NERC concludes can materially impact the reliability of the BPS.

---

<sup>3</sup> Budget documents are submitted to Applicable Governmental Authorities in Canada for information.

<sup>4</sup> See NERC ERO Application; Exhibit C; Section 500 – Organization Registration and Certification.

NERC wishes to identify those entities that may need to be listed in its Compliance Registry. Identifying these organizations is necessary and prudent for the purpose of determining resource needs, both at the NERC and Regional Entity level, and for communicating with these entities regarding their potential responsibilities and obligations. ~~NERC and the Regional Entities believe that~~ candidate entities can be identified at any time, as and when needed. The Compliance Registry is available on NERC's website.

### Resolution

The potential costs and effort of registering every organization potentially within the scope of "owner, operator, and user of the BPS," while ignoring their impact upon reliability, would be disproportionate to the improvement in reliability that would reasonably be anticipated from doing so.

NERC and the Regional Entities have identified two principles they believe are key to the entity selection process. These are:

1. There needs to be consistency between Regions and across the continent with respect to which entities are registered; and
2. Any entity reasonably deemed material to the reliability of the BPS will be registered, irrespective of other considerations.

To address the second principle the Regional Entities, working with NERC, will identify and register any entity they deem material to the reliability of the BPS.

In order to promote consistency, NERC and the Regional Entities use the following criteria as the basis for determining whether particular entities should be identified as candidates for Registration. All organizations meeting or exceeding the criteria will be identified as candidates.

The following four groups of criteria (Sections I-IV) plus the statements in Section V will provide guidance regarding an entity's Registration status:

- Section I determines if the entity is an owner, operator, or user of the BPS and, hence, a candidate for organization Registration.
- Section II uses NERC's current functional type definitions to provide an initial determination of the functional types for which the entities identified in Section I should be considered for Registration.
- Section III lists the criteria regarding smaller entities; these criteria can be used to forego the Registration of entities that were selected to be considered for Registration pursuant to Sections I and II and, if circumstances change, for later removing entities from the Compliance Registry that no longer meet the relevant criteria.
- Section IV — additional criteria for joint Registration. Joint Registration criteria may be used by joint action agencies, generation and transmission cooperatives and other entities which agree upon a clear division of compliance responsibility for Reliability Standards by written agreement. Rules pertaining ~~to joint Registration and~~ Joint Registration Organizations, as well as Coordinated Functional Registrations, are now found in Sections 501, 507 and 508 of the NERC Rules of Procedure.

- I. Entities that use, own or operate Elements of the Bulk Electric System (BES) as established by NERC's approved definition of BES as stated in Appendix 2 of the NERC Rules of Procedure and the NERC Glossary below are (i) owners, operators, and users of the BPS and (ii) candidates for Registration:

~~“Bulk Electric System” or “BES” means unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.~~

**~~Inclusions:~~**

- ~~● I1 – Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded by application of Exclusion E1 or E3.~~
- ~~● I2 – Generating resource(s) including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above with:
 
  - ~~a) Gross individual nameplate rating greater than 20 MVA. Or,~~
  - ~~b) Gross plant/facility aggregate nameplate rating greater than 75 MVA.~~~~
- ~~● I3 – Blackstart Resources identified in the Transmission Operator’s restoration plan.~~
- ~~● I4 – Dispersed power producing resources that aggregate to a total capacity greater than 75 MVA (gross nameplate rating), and that are connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage of 100 kV or above. Thus, the facilities designated as BES are:
 
  - ~~a) The individual resources, and~~
  - ~~b) The system designed primarily for delivering capacity from the point where those resources aggregate to a greater than 75 MVA to a common point of connection at a voltage of 100 kV or above.~~~~
- ~~● I5 – Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1 unless excluded by application of Exclusion E4.~~

**~~Exclusions:~~**

- ~~● E1 – Radial systems: A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:
 
  - ~~a) Only serves Load. Or,~~
  - ~~b) Only includes generation resources, not identified in Inclusions I2, I3, or I4, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,~~
  - ~~c) Where the radial system serves Load and includes generation resources, not identified in Inclusions I2, I3 or I4, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).~~~~

~~Note 1—A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.~~

~~Note 2—The presence of a contiguous loop operated at a voltage level of 50 kV or less, between configurations being considered as radial systems, does not affect this exclusion.~~

- ~~E2—A generating unit or multiple generating units on the customer’s side of the retail meter that serve all or part of the retail Load with electric energy if: (i) the net capacity provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.~~

- ~~E3—Local networks (LN): A group of contiguous transmission Elements operated at less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN’s emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customers and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:~~

- a) ~~Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusions I2, I3, or I4 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);~~

- b) ~~Real Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and~~

- c) ~~Not part of a Flowgate or transfer path: The LN does not contain any part of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).~~

- ~~E4—Reactive Power devices installed for the sole benefit of a retail customer(s).~~

~~Note—Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.~~

II. Entities identified in Section I above will be categorized as Registration candidates who may be subject to Registration under one or more appropriate Functional Entity types based on a comparison of the functions the entity normally performs against the following function type definitions:<sup>5</sup>

Function Type	Acronym	Definition/Discussion
Balancing Authority	BA	The responsible entity that integrates resource plans ahead of time, maintains Load-interchange-generation balance within a

<sup>5</sup> Exclusion: An entity will not be registered based on these criteria if responsibilities for compliance with approved NERC Reliability Standards or associated Requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, including bilateral agreements and Sections 501, 507 and 508 of the NERC Rules of Procedure.

Function Type	Acronym	Definition/Discussion
		Balancing Authority Area, and supports Interconnection frequency in real-time.
Distribution Provider	DP	<p>Provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.</p> <p>Note: As provided in Section III.b.1 <del>and Note 5</del> below, a Distribution Provider entity shall be an Underfrequency Load Shedding (UFLS)-Only Distribution Provider if it is the responsible entity that owns, controls or operates UFLS Protection System(s) needed to implement a required UFLS program designed for the protection of the BES, but does not meet any of the other registration criteria for a Distribution Provider.</p>
Frequency Response Sharing Group	FRSG	A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating resources required to jointly meet the sum of the Frequency Response Obligations of its members.
Generator Operator	GOP	The entity that operates generating Facility(ies)and performs the functions of supplying energy and Interconnected Operations Services.
Generator Owner	GO	Entity that owns and maintains generating Facility(ies).
Planning Authority/ Planning Coordinator	PA/PC	The responsible entity that coordinates and integrates transmission Facilities and service plans, resource plans, and Protection Systems.
Reliability Coordinator	RC	The entity that is the highest level of authority who is responsible for the Reliable Operation of the BES, has the Wide Area view of the BES, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator’s vision.

Function Type	Acronym	Definition/Discussion
Regulation Reserve Sharing Group		A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply the Regulating Reserve required for all member Balancing Authorities to use in meeting applicable regulating standards.
Reserve Sharing Group	RSG	A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each Balancing Authority’s use in recovering from contingencies within the group. Scheduling energy from an Adjacent Balancing Authority to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g., ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes), then, for the purposes of disturbance control performance, the areas become a Reserve Sharing Group.
Resource Planner	RP	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific Loads (customer demand and energy requirements) within a Planning Authority area.
Transmission Owner	TO	The entity that owns and maintains transmission Facilities.
Transmission Operator	TOP	The entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission Facilities.
Transmission Planner	TP	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area.
Transmission Service Provider	TSP	The entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable Transmission Service agreements.

III. Except as provided in Section V ~~and the Notes to the Criteria~~ below, entities identified in Section II above as being subject to Registration as a Distribution Provider should be included in the Compliance Registry for these functions only if they meet any of the criteria listed below:

III(a) Distribution Provider:

- III.a.1 Distribution Provider system serving >75 MW of peak Load that is directly connected to the BES;<sup>6</sup> or
- III.a.2 Distribution Provider is the responsible entity that owns, controls, or operates Facilities that are part of any of the following Protection Systems or programs designed, installed, and operated for the protection of the BES:<sup>7</sup>
- a required Undervoltage Load Shedding (UVLS) program and/or
  - a required Special Protection System or Remedial Action Scheme and/or
  - a required transmission Protection System; or
- III.a.3 Distribution Provider that is responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs) pursuant to an executed agreement; or
- III.a.4 Distribution Provider with field switching personnel identified as performing unique tasks associated with the Transmission Operator’s restoration plan that are outside of their normal tasks.

III(b) Distribution Provider with UFLS-Only assets (referred to as “UFLS-Only Distribution Provider”)

- III.b.1 UFLS-Only Distribution Provider does not meet any of the other registration criteria in Sections III(a)(1)-(4) for a Distribution Provider; and
- III.b.2 UFLS-Only Distribution Provider is the responsible entity that owns, controls, or operates UFLS Protection System(s) needed to implement a required UFLS Program designed for the protection of the BES.

*The Reliability Standards applicable to UFLS-Only Distribution Providers are: (1) any version of PRC-005,<sup>8</sup> and PRC-006 applicable to UFLS-Only Distribution Providers, -1, PRC-006-2, and (2) any regional Reliability Standard whose purpose is to develop or establish a UFLS Program [PRC-006-NPCC-1 and PRC-006-SERC-01]., and (3) any Reliability Standard that lists UFLS-Only Distribution Provider in the applicability section. Reliability Standards that apply to Distribution Providers will not apply to UFLS-Only Distribution Providers, unless explicitly stated in the applicability section of these Reliability Standards and in future revisions and/or versions.*

IV. Joint Registration Organization, Coordinated Functional Registration and applicable Member Registration.

<sup>6</sup> Ownership, control or operation of UFLS Protection System(s) needed to implement a required UFLS Program designed for the protection of the BES does not affect an entity’s eligibility for registration pursuant to III.a.1.

<sup>7</sup> As used in Section III.a.2, “protection of the Bulk Electric System” means protection to prevent instability, Cascading, or uncontrolled separation of the BES and not for local voltage issues (UVLS) or local line loading management (Special Protection System) that are demonstrated to be contained within a local area.

<sup>8</sup> ~~Four versions of PRC-005 are currently in various stages of Commission approval and standard development. For the period that each is in effect, PRC-005-2(ii), PRC-005-3(i), PRC-005-3(ii), PRC-005-4, PRC-005-5, and PRC-005-6 will apply to an entity included on the NCR as a UFLS-Only Distribution Provider during that period.~~

Pursuant to FERC's directive in paragraph 107 of Order No. 693, NERC's rules pertaining to joint Registrations and Joint Registration Organizations, as well as Coordinated Functional Registrations, are now found in Section 501, 507 and 508 of the NERC Rules of Procedure.

- V. If NERC or a Regional Entity encounters an organization that is not listed in the Compliance Registry, but which should be subject to the Reliability Standards, NERC or the Regional Entity is obligated and will initiate actions to add that organization to the Compliance Registry, subject to that organization's right to challenge as provided in Section 500 of NERC's Rules of Procedure ~~and as described in Note 3 below.~~

### ~~Notes to the Registry Criteria in Sections I–V~~ **Determination of Material Impact**

~~1. The above are general criteria only. The Regional Entity considering Registration of an organization not meeting (e.g., smaller in size than) An entity that does not meet (i.e., falls below) the criteria may propose Registration of that organization if the Regional Entity believes and nevertheless be registered if it can reasonably demonstrate<sup>9</sup> be demonstrated that the organization is entity has a BES owner, or operates, or uses BES assets, and is material impact on to the reliability of the BES. Similarly, the Regional Entity may exclude an organization an entity that meets the criteria described above as a candidate for Registration may be excluded if it believes and can reasonably be demonstrated to NERC that the BES owner, operator, or user entity does not have a material impact on the reliability of the BES. Such Registration decisions regarding materiality must be made by the NERC-led Registration Review Panel in accordance with Section III(D) of Appendix 5A to the NERC Rules of Procedure. In order to ensure a consistent approach to assessing materiality, a non-exclusive set of factors ("materiality test") for consideration is identified below; however, only a sub-set of these factors, or other additional factors, may be applicable to a particular functional registration categories category or specific entity, as appropriate:~~

- ~~1. \_\_\_\_\_~~ Is the entity specifically identified in the emergency operation plans and/or restoration plans of an associated Reliability Coordinator, Balancing Authority, Generator Operator or Transmission Operator?
- ~~2. \_\_\_\_\_~~ Will intentional or inadvertent removal of an Element owned or operated by the entity, or a common mode failure of two Elements as identified in the Reliability Standards (for example, loss of two Elements as a result of a breaker failure), lead to a reliability issue on another entity's system (such as a neighboring entity's Element exceeding an applicable rating, or loss of non-consequential load due to a single contingency)?~~?~~ Conversely, will such contingencies on a neighboring entity's system result in issues for Reliability Standards issues-compliance on the system of the entity in question?
3. Can the normal operation, misoperation or malicious use of the entity's cyber assets cause a detrimental impact (e.g., by limiting the operational alternatives) on the operational reliability of an associated Balancing Authority, Generator Operator or Transmission Operator?
4. Can the normal operation, mMisoperation, or malicious use of the entity's Protection Systems (including UFLS, UVLS, Special Protection System, Remedial Action Schemes and other Protection Systems protecting BES Facilities) cause an adverse impact on the operational reliability

~~<sup>9</sup>The reasonableness of any such demonstration will be subject to review and remand by NERC itself, or by any Applicable Governmental Authority, as applicable.~~

of any associated Balancing Authority, Generator Operator or Transmission Operator, or the automatic load shedding programs of a PC or TP (UFLS, UVLS)?

- ~~2. An organization not identified using the criteria, but wishing to be registered, may request that it be registered. For further information refer to: NERC Rules of Procedure, Section 500—Organization Registration and Certification; Part 1.3.~~
- ~~3. An organization may challenge its Registration within the Compliance Registry. NERC or the Regional Entity will provide the organization with all information necessary to timely challenge that determination including notice of the deadline for contesting the determination and the relevant procedures to be followed as described in the NERC Rules of Procedure; Section 500—Organization Registration and Certification.~~
- ~~4. If an entity is part of a class of entities excluded based on any of the criteria above as individually being unlikely to have a material impact on the reliability of the BES, but that in aggregate have been demonstrated to have such an impact it may be registered for applicable Reliability Standards and Requirements irrespective of other considerations, in accordance with laws, regulations and orders of an Applicable Governmental Authority.~~
- 5.

#### **Limitation of responsibilities to a sub-set of Reliability Standards**

NERC may limit the compliance obligations of (1) a given entity registered for a particular function or (2) a similarly situated class of entities, as warranted based on the particular facts and circumstances, to a sub-set list of Reliability Standards (which may specify Requirements/sub-Requirements). If NERC establishes a sub-set list for similarly situated class of entities, NERC will post the eligibility criteria and sub-set list of applicable Reliability Standards to the Registration and Certification page of the NERC Website.

Attachment 9:

Registration and Certification:  
Appendix 5C

Clean



**APPENDIX 5C**

**PROCEDURE FOR REQUESTING AND RECEIVING**

**AN EXCEPTION FROM THE APPLICATION**

**OF THE**

**NERC DEFINITION OF BULK ELECTRIC SYSTEM**

**Effective: [ ], 2020**

# Table of Contents

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1.	Purpose.....	1
1.2.	Authority.....	2
1.3	Canadian and Mexican Entities and Cross-Border Regional Entities .....	2
<b>2.0.</b>	<b>DEFINITIONS .....</b>	<b>2</b>
<b>3.0.</b>	<b>BASIS FOR APPROVAL OF AN EXCEPTION .....</b>	<b>5</b>
3.1.	Grounds for an Exception .....	5
3.2.	Burden.....	5
<b>4.0.</b>	<b>FORM, CONTENTS, AND SUBMISSION OF AN EXCEPTION REQUEST.....</b>	<b>5</b>
4.1.	Eligible Submitters of an Exception Request.....	5
4.2.	Separate Submissions for Each Exception Request .....	6
4.3.	Withdrawal of an Exception Request.....	7
4.5.	Required Information to be Included in the Exception Request .....	7
4.6	Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information .....	9
<b>5.0</b>	<b>REVIEW, ACCEPTANCE OR REJECTION, AND RECOMMENDATION REGARDING EXCEPTION REQUESTS .....</b>	<b>10</b>
5.1.	Initial Screening of Exception Request for Acceptance or Rejection .....	11
5.2	Substantive Review of Exception Request for Approval or Disapproval .....	12
5.3	Technical Review Panel.....	13
<b>6.0</b>	<b>SUPPLEMENTATION OF AN EXCEPTION REQUEST PRIOR TO A RECOMMENDATION.....</b>	<b>14</b>
<b>7.0</b>	<b>APPEAL OF REJECTION OF AN EXCEPTION REQUEST.....</b>	<b>14</b>
<b>8.0</b>	<b>APPROVAL OR DISAPPROVAL OF AN EXCEPTION REQUEST.....</b>	<b>15</b>
<b>9.0</b>	<b>CHALLENGES TO APPROVAL OR DISAPPROVAL OF EXCEPTION REQUESTS.....</b>	<b>16</b>
<b>10.0</b>	<b>IMPLEMENTATION PERIOD FOR EXCEPTIONS.....</b>	<b>16</b>
10.1	Inclusion Exceptions .....	16
10.2	Denials of Exception Requests for Exclusion .....	16
<b>11.0</b>	<b>CERTIFICATION, NOTICE OF CHANGE IN CONDITION, AND TERMINATION OF AN EXCEPTION.....</b>	<b>17</b>

## 1.0 INTRODUCTION

### 1.1. Purpose

The NERC definition of the Bulk Electric System uses specific terms and thresholds that, in most cases, should appropriately identify Elements and groups of Elements that are appropriately classified as part of the Bulk Electric System. Conversely, the BES Definition should, in most cases, exclude Elements that are not part of the Bulk Electric System. In certain cases, however, the BES Definition may classify certain Elements as part of the Bulk Electric System that are not necessary for the Reliable Operation of the interconnected bulk-power transmission system or the BES Definition may classify certain Elements as non-Bulk Electric System that are necessary for the Reliable Operation of the interconnected bulk-power transmission system.

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation provides the procedure by which an entity may request and receive an Exception which will have the effect of either including within the BES an Element or Elements that would otherwise be excluded by application of the BES Definition or excluding from the BES an Element or Elements that would otherwise be included by application of the BES Definition. This Appendix is intended to implement authorization granted by FERC to allow such Exceptions from the BES Definition.<sup>1</sup>

An entity must request and obtain an Exclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is included in the BES by application of the BES Definition shall be excluded from the BES. Likewise, an entity must request and obtain an Inclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is excluded from the BES by application of the BES Definition shall be included in the BES.

During the pendency of an Exception Request, the status of an Element(s) that is the subject of an Exception Request shall remain as it is determined based on application of the BES Definition. This status will continue until all appeals to all Applicable Governmental Authorities are completed. An entity that is planning a connection of a new Element for which it believes an Exception would be appropriate may request an Exception prior to commercial operation of the Element.

The Owner of the Element to which the Exception Request applies or, with respect to an Element owned by another Registered Entity, any Regional Entity, Planning Authority (“PA”), Reliability Coordinator (“RC”), Transmission Operator (“TOP”), Transmission Planner (“TP”) or Balancing Authority (“BA”) that has (or will have upon inclusion of the Elements in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the Element as provided in this Exception Procedure.

---

<sup>1</sup> *Revision to Electric Reliability Organization Definition of Bulk Electric System*, 133 FERC ¶ 61,150 (“Order No. 743”) (2010), *Order on Rehearing, Revision to Electric Reliability Organization Definition of Bulk Electric System*, 134 FERC ¶61,210 (“Order No. 743-A”) (2011).

## 1.2. Authority

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. 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. This Exception Procedure or an equivalent procedure is to be implemented in Canada and Mexico consistent with their respective laws and agreements.

## 1.3 Canadian and Mexican Entities and Cross-Border Regional Entities

A Registered Entity that is a Canadian Entity or a Mexican Entity seeking an Exception will be expected to work with the Regional Entity, NERC, and Applicable Governmental Authorities in Canada or Mexico, as appropriate, consistent with their respective laws and agreements, and without being obligated to authorize the disclosure of information prohibited by applicable federal, state or provincial law from disclosure to FERC or other governmental authorities in the U.S., in order to implement this Exception Procedure or an equivalent procedure. A Canadian Entity or a Mexican Entity shall not be required to subject itself to United States federal or state laws not otherwise applicable to the entity in order to utilize this Exception Procedure or an equivalent procedure.

## 2.0. DEFINITIONS

For purposes of this Appendix, capitalized terms shall have the definitions set forth in Appendix 2 to the Rules of Procedure. For ease of reference, the definitions of the following terms that are used in this Appendix are also set forth below.

**2.1 Acceptance of the Exception Request (or Acceptance):** The determination that an eligible Exception Request (i.e., an Exception Request permitted by section 4.1) contains all the Required Information so that it can undergo substantive review.

**2.2 Approval of the Exception Request (or Approval):** The determination by NERC that an Exception Request meets the criteria to receive the requested Exception.

**2.3 BES:** Bulk Electric System.

**2.4 BES Definition:** The NERC definition of the Bulk Electric System as set forth in the NERC *Glossary of Terms Used in Reliability Standards*.

**2.5 Canadian Entity:** A Registered Entity that is organized under Canadian federal or provincial law.

**2.6 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 or Mexican federal or provincial law.

**2.7 Disapproval of the Exception Request (or Disapproval):** The determination by NERC that an Exception Request does not meet the criteria to receive the requested Exception.

**2.8 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.

**2.9 Exception:** Either an Inclusion Exception or an Exclusion Exception.

**2.10 Exception Procedure:** The procedure set forth in this Appendix.

**2.11 Exception Request:** A request made by a Submitting Entity in accordance with this Appendix for an Exception.

**2.12 Exception Request Form:** The form adopted by each Regional Entity, in accordance with a template provided by NERC, for use by Submitting Entities in submitting Exception Requests; provided, that the Exception Request Form must include Section III.B as adopted by NERC.

**2.13 Exclusion Exception:** A determination that an Element that falls within the BES Definition should be excluded from the BES.

**2.14 FERC:** The United States Federal Energy Regulatory Commission.

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

**2.16 Inclusion Exception:** A determination that an Element that falls outside the BES Definition should be included in the BES.

**2.17 Lead Entity:** The entity that submits Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

**2.18 Mexican Entity:** A Registered Entity that is organized under Mexican law.

**2.19 NRC:** The United States Nuclear Regulatory Commission.

**2.20 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 or Mexican federal or provincial law.

**2.21 Owner:** The owner(s) of an Element or Elements that is or may be determined to be part of the BES as a result of either the application of the BES Definition or an Exception, or another entity, such as an operator, authorized to act on behalf of the owner of the Element or Elements in the context of an Exception 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 or Mexican federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

**2.23 Recommendation:** The report to NERC containing the evaluation prepared in accordance with section 5.2 concerning whether or to what extent an Exception Request should be approved.

**2.24 Rejection of the Exception Request (or Rejection):** The determination that an Exception Request is not an eligible Exception Request (i.e., an Exception Request permitted by section 4.1) or does not contain all the Required Information in accordance with section 4.5 in order to be reviewed for substance.

**2.25 Required Information:** Information required to be provided in an Exception Request, as specified in section 4.0.

**2.26 Scope of Responsibility:** The registered functions of a PA, RC, TOP, TP or BA and the geographical or electric region in which the PA, RC, TOP, TP or BA operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region.

**2.27 Section I Required Information:** Required Information that is to be provided in Section I of a Submitting Entity's Exception Request.

**2.28 Section II Required Information:** Required Information that is to be provided in Section II of a Submitting Entity's Exception Request.

**2.29 Section III Required Information:** Required Information that is to be provided in Section III of a Submitting Entity's Exception Request.

**2.30 Submitting Entity:** The entity that submits an Exception Request in accordance with section 4.0.

**2.31 Technical Review Panel:** A panel established pursuant to section 5.3 of this Appendix.

### **3.0. BASIS FOR APPROVAL OF AN EXCEPTION**

#### **3.1. Grounds for an Exception**

##### (a) Exclusion Exception

An entity may request and obtain Approval from NERC for an Exclusion Exception on the grounds that the Element(s) for which the Exception Request is filed is included within the BES based on application of the BES Definition but is not necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).

##### (b) Inclusion Exception

An entity may request and obtain Approval from NERC for an Inclusion Exception on the grounds that the Element(s) for which the Exception Request is filed is not included within the BES based on application of the BES Definition but is necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).

#### **3.2. Burden**

The burden to provide a sufficient basis for Approval of an Exception Request in accordance with the provisions of this Exception Procedure is on the Submitting Entity. It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Exception Procedure, to evaluate the request and make a Recommendation to NERC regarding its Approval. All evidence provided as part of an Exception Request or response will be considered in determining whether an Exception Request shall be approved or disapproved.

### **4.0. FORM, CONTENTS, AND SUBMISSION OF AN EXCEPTION REQUEST**

#### **4.1. Eligible Submitting Entities**

The Owner of an Element may submit an Exception Request for either an Inclusion Exception or an Exclusion Exception regarding that Element. A Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by a Registered Entity, provided that before doing so, (i) the Submitting Entity conferred with the Owner about the reasons for an Exception, and (ii) could not reach agreement regarding the submission of such an Exception Request. (If the Owner agrees with submitting an Exception Request, the Owner should be the Submitting Entity.) Only a Regional Entity may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by an Owner that is not a Registered Entity. Only an

Owner or a Regional Entity may submit an Exception Request for the exclusion from the BES of an Element.

When a Regional Entity requests an Exception, the Regional Entity shall be the Submitting Entity and shall prepare and submit copies of its Exception Request (or portions thereof) to all applicable entities in accordance to this section 4.0.

With respect to an Element that crosses a boundary between Regional Entities, (1) the Submitting Entity will submit the Exception Request to both (or all) Regional Entities, which will cooperate to process the Exception Request pursuant to section 5.1 below, or (2) the Regional Entities must jointly submit an Exception Request to NERC (neither Regional Entity shall be allowed to submit such Exception Request unilaterally).

#### **4.2. Separate Submissions for Each Exception Request**

A separate Exception Request shall be submitted for each Element or set of connected Elements for which the Submitting Entity seeks an Exception. The scope of an Exception Request shall cover the terminal connections of the Element or set of Elements as identified in the Exception Request. Where the Submitting Entity seeks Exceptions from the BES Definition for multiple, similar Elements (either at the same location or at different locations within the geographic boundaries of a Regional Entity) on the same basis, the Exception Requests for all such Elements may be included in one Exception Request with all such Elements or sets of connected Elements separately identified. A single Exception Request may not be submitted for separate Elements within the geographic boundaries of more than one Regional Entity.

Multiple Submitting Entities may jointly file Exception Requests for similar Elements for which they are requesting Exceptions on the same basis. In such a situation, the Submitting Entities will submit a package comprised of a complete Exception Request Form for a Lead Entity, and an Exception Request Form for each other Submitting Entity that (1) provides the Submitting Entity's differing individual information to the extent such is required (e.g., contact information, identification, and location of Element(s), etc.), and (2) otherwise references the pertinent portions of the complete Exception Request Form filed by the Lead Entity (e.g., status under application of the BES Definition, basis for an Exception under section 3.1, etc.). For any Exception Request filed by multiple Submitting Entities as provided in this section, the Lead Entity shall be considered the "Submitting Entity" for purposes of the Regional Entity's and NERC's notices and actions in accordance with the remainder of this Exception Procedure. However, any Owner nonetheless may take any action otherwise appropriate for a Submitting Entity (e.g., respond to a Recommendation, submit an appeal, etc.).

#### **4.3. Withdrawal of an Exception Request**

A Submitting Entity may withdraw an Exception Request at any time prior to NERC Approval or Disapproval of the Exception Request.

#### **4.4. Form and Format of Exception Request**

An Exception Request shall consist of three sections, all of which must be submitted to the applicable Regional Entity. If the Submitting Entity is not the Owner [i.e., is a Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion of the Element in the BES) the Elements covered by an Exception Request within its Scope of Responsibility], it shall at the same time provide a copy of the Exception Request to the Owner (or if the Owner is unknown, to the operator of the Element(s)) to which the Exception Request applies.

#### **4.5. Required Information to be Included in the Exception Request**

**4.5.1.** Section I of an Exception Request shall contain the Required Information specified in this section 4.5.1. At the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section I to each PA, RC, TOP, TP, and BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility. Failure to provide all Section I Required Information may result in Rejection of the Exception Request as incomplete.

1. Name and address of Submitting Entity.
2. Submitting Entity NERC Compliance Registry ID (if yet assigned).
3. Name of the Owner, if different than the Submitting Entity,
4. Owner's NERC Compliance Registry ID (if yet assigned).
5. Exception Request submittal date.
6. Whether the Exception Request is an original Exception Request or an amended Exception Request; and if it is an amended Exception Request, the identification number(s) of the original Exception Request and any previous amendments.
7. Whether the Exception Request is being submitted in conjunction with Exception Requests by other Submitting Entities. If so, the names of the other Submitting Entities.
8. Whether the Submitting Entity is filing a similar Exception Request(s) with one or more other Regional Entities, and if yes, the name(s) of the other Regional Entity(ies).
9. The type(s) of Element(s) for which the Exception is being requested.
10. Status, based on application of the BES Definition, of the Element(s) for which the Exception is being requested.

**4.5.2.** Section II of an Exception Request shall contain the Required Information specified in this section 4.5.2. At the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section II to each PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility. Failure to provide all Section II Required Information may result in Rejection of the Exception Request as incomplete.

Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing the Exception Request.

1. Identification and location(s) of Element(s) for which the Exception is being requested.
2. Name, title, phone number, facsimile number, and E-mail address of the Submitting Entity's technical contact person for the Exception Request.
3. Certification by the Submitting Entity (if other than Owner) that it conferred with the Owner regarding the reason for the requested Exception, but could not reach agreement regarding the submission of an Exception Request.
4. To the extent known by the Submitting Entity, name, mailing address, phone number, facsimile number, and E-mail address of the Owner's technical contact person for the Exception Request, if the Owner is different from the Submitting Entity.
5. Identification of PA, RC, TOP, TP, and BA that has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility, and certification by the Submitting Entity that it has sent copies of Sections I and II to each such entity.
6. A statement of the basis on which the Submitting Entity contends the Exception Request should be approved, and if the Submitting Entity is not the Owner, a statement of the basis of the Submitting Entity's reason for submitting the Exception Request.
7. A statement, signed and dated by an authorized representative of the Submitting Entity's senior management stating that the representative has read the Exception Request on behalf of the Submitting Entity and that the Submitting Entity believes Approval of the Exception Request is warranted.

**4.5.3** Section III of an Exception Request shall contain the **Detailed Information to Support an Exception Request** as specified on the Exception Request Form. Failure to include all Section III Required Information may result in Rejection of the Exception Request. The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.

1. If the Exception Request is supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information, Section III shall include 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.
2. If the Submitting 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), Section III 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.

**4.5.4** The Owner of the Element(s) to which the Exception Request applies, if different than the Submitting Entity, may file a response to supplement, correct or disagree with all or any part of an Exception Request. Any PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may also provide input to the Regional Entity regarding the Exception Request. If in order to evaluate an Exception Request, the Owner, PA, RC, TOP, TP or BA wishes to obtain any Required Information in Section III of the Exception Request, the Owner, PA, RC, TOP, TP or BA may submit to the Regional Entity that received the Exception Request a request stating its reason for wanting to review such information, and the Regional Entity may provide such information to the Owner, PA, RC, TOP, TP or BA if the Regional Entity believes such review may assist the Regional Entity's review; if any of such Section III Required Information has been designated Confidential Information, prior to being provided the Confidential Information, the Owner, PA, RC, TOP, TP or BA shall execute a confidentiality agreement in a form established by the Regional Entity. Any response provided pursuant to this section 4.5.4 must be submitted to the Regional Entity with copies to the Submitting Entity and the Owner, if different from the Submitting Entity, within forty-five (45) days after the date the Exception Request Form was submitted to the Regional Entity.

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

**4.6.1.** Upon reasonable advance notice from a Regional Entity, and subject to section 4.6.2, a Submitting Entity or Owner must provide the Regional Entity (a) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the Exception Request, and (b) with

access for purposes of making a physical review and inspection of the Element or Elements for which an Exception Request has been submitted.

**4.6.2.** If the Submitting Entity or Owner 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 which may include contractors, who are Eligible Reviewers.

**4.6.3.** The Regional Entity, as applicable, will work cooperatively with the Submitting Entity and/or Owner to provide necessary levels of protection for information identified in Section 1500 of the NERC Rules of Procedure and to access Protected FOIA Information in a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure. If the Regional Entity shares any Confidential Information with a third party it shall do so subject to restrictions in applicable law under appropriate confidentiality agreements.

## **5.0 REVIEW, ACCEPTANCE OR REJECTION, AND RECOMMENDATION REGARDING EXCEPTION REQUESTS**

The Regional Entity's evaluation of the Exception Request will consist of two stages:

- (a) During the first stage, the Regional Entity shall conduct an initial screening to determine whether to accept or reject the Exception Request; and
- (b) During the second stage, the Regional Entity shall conduct a substantive review to determine its Recommendation to NERC as to whether or not the Exception Request should be approved.

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 Exception Requests within the time provided by section 5.1.3 and/or substantive reviews of Exception Requests within the time provided in section 5.2.2, 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 Exception Requests during the specified period of time. The alternative time period and work plan shall be publicized by posting on the Regional Entity's website.

When a Regional Entity is the Submitting Entity of an Exception Request, it nonetheless shall process such Request in accordance with this section 5.0, with the following exceptions:

- i. There will be no initial screening, Acceptance, or Rejection, and therefore sections 5.1.3 through 5.1.6 will not apply;

- ii. No later than sixty (60) days after the submission of the Exception Request to the Owner and other applicable entities, the Regional Entity shall commence its substantive review of the Exception Request (and of any responses received from the Owner and other applicable entities) in accordance with section 5.2 and shall complete such substantive review within six (6) months; and
- iii. Before the Regional Entity issues a Recommendation to NERC to approve or disapprove the Exception Request in whole or in part, the Technical Review Panel shall review the proposed determination and issue an opinion with copies provided to the Owner and to NERC, in accordance with section 5.3.

### **5.1. Initial Screening of Exception Request for Acceptance or Rejection**

**5.1.1.** Upon receipt of an Exception Request, the Regional Entity will assign a unique identifier to the Exception Request, and will review the Exception Request to determine that the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from the application of the BES Definition and that all Required Information has been provided. If the Exception Request indicates that the Submitting Entity has submitted a similar Exception Request to one or more other Regional Entities, the Regional Entities shall coordinate their actions undertaken pursuant to this section 5.0. If the Exception Request is for an Element that crosses boundaries between or among Regional Entities, the Regional Entities shall cooperatively determine a lead Regional Entity to assess the request in a single process yielding a single Recommendation to NERC.

**5.1.2.** The unique identifier assigned to the Exception Request will be in the form of XXXX-YYYY-NERCID-ExceptionZZZZZ, where “XXXX” is the year in which the Exception Request is received by the Regional Entity (*e.g.*, “2012”); “YYYY” is the acronym for the Regional Entity within whose geographic boundaries the relevant Element or Elements are located<sup>2</sup>; NERCID is the Submitting Entity’s NERC Compliance Registry ID (or an abbreviation of its name if an ID is not yet assigned); and “ZZZZZ” is the sequential number of the Exception Requests received by the Regional Entity in that year. If the Exception 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 Exception Request. If the Exception Request is for an Element that crosses boundaries between or among Regional Entities, the YYYY identifier shall be that of the lead Regional Entity assessing the request.

**5.1.3.** The Regional Entity will complete its initial screening of the Exception Request Form and any Owner’s response submitted pursuant to section 4.5.4 no later than either sixty (60) days after receiving the Exception Request or, if the Submitting Entity is not the Owner, thirty (30) days after receiving any Owner’s response, whichever is later, unless (i) the Regional Entity has established an alternative time period objective and work plan for

---

<sup>2</sup> The acronyms to be used are: MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (ReliabilityFirst Corporation); SERC (SERC Reliability Corporation); TRE (Texas Reliability Entity); and WECC (Western Electricity Coordinating Council), and NERC in cases where the Exception Request is submitted to NERC.

completing initial screenings pursuant to this section 5.0 that provides for a different time period(s) for completing initial screenings, or (ii) the Regional Entity issues a notice to the Submitting Entity, and to the Owner if different, prior to the deadline date for completing the initial screening, stating that the Regional Entity will not be able to complete the initial screening by the deadline date and stating a revised deadline date.

**5.1.4.** If, based on its initial screening, the Regional Entity determines the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from the BES Definition, and that all Required Information has been provided, the Regional Entity shall accept the Exception Request as complete and send a notice of such Acceptance to the Submitting Entity, with a copy to the Owner, if different than the Submitting Entity, and to NERC.

**5.1.5.** (a) If the Regional Entity determines, based on its review of the Exception Request, that the Exception Request (i) is not from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from application of the BES Definition, and/or (ii) does not contain all Required Information, the Regional Entity shall reject the Exception Request as incomplete and send a notice of such Rejection to the Submitting Entity, with a copy to the Owner, if different than the Submitting Entity, and to NERC. To the extent feasible, if an Exception Request Form is missing Required Information, the Regional Entity shall not reject the Exception Request until (1) it has contacted the Submitting Entity to request that the Exception Request Form be supplemented with the missing Required Information, and (2) the Submitting Entity has failed to submit such Required Information within thirty (30) days or such additional period of time as the Regional Entity may allow at its discretion based on the circumstances. Under appropriate confidentiality/security agreements, the Regional Entity shall facilitate the access to data and information from other entities required by the Submitting Entity to accurately supply the **Detailed Information to Support an Exception Request** (e.g., interconnection base case power flow studies) and/or by the Owner to accurately respond. When a Submitting Entity submits supplemental Required Information in response to a request under this section 5.1.5(a), the time for the Regional Entity to perform its initial screening will be extended for fifteen (15) days after receipt of the supplemental Required Information.

(b) If the Regional Entity rejects the Exception Request in accordance with section 5.1.5 (a), the Regional Entity's notice shall explain the reason for the Rejection. The Submitting Entity may, within thirty (30) days after receipt of the Rejection, appeal to NERC in accordance with section 7.0 of this Exception Procedure to reverse the Rejection and to direct the Regional Entity to proceed with a substantive review of the Exception Request.

**5.1.6.** The Regional Entity may either accept the Exception Request in its entirety, reject the Exception Request in its entirety, or if the Exception Request is for more than one Element, may accept it with respect to a subset of the Elements and reject it with respect to the remainder based on the similarity of the evidence presented for the Exception Request.

## **5.2 Substantive Review of Exception Request for Approval or Disapproval**

**5.2.1** After Acceptance of an Exception Request, the Regional Entity shall conduct a substantive review of all evidence provided as part of an Exception Request or response to evaluate whether or to what extent the Exception Request should be approved. As part of its substantive review, depending on the circumstances of the Exception Request, the Regional Entity may request access to and review the Required Information, including any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information that is necessary to support the Exception Request; may conduct one or more physical inspections of the relevant Element(s) and its (their) context and surrounding Elements and Facilities; may request additional information from the Submitting Entity, Owner, or applicable PAs, RCs, BAs, TOPs and TPs; and may engage in further discussions concerning possible revisions to the Exception Request.

**5.2.2.** At the outset of its substantive review of the Exception Request, the Regional Entity shall develop a milestone schedule pursuant to which it plans to conduct the substantive review, and shall send a copy of the milestone schedule to the Submitting Entity and the Owner, if different, for information. The Regional Entity shall complete the substantive review of the Exception Request within six months after Acceptance of the Exception Request or within an alternative time period under section 5.0, at the conclusion of which the Regional Entity shall issue a notice (in accordance with section 5.2.3) stating its Recommendation that the Exception Request be approved or disapproved. The Regional Entity may extend the period of substantive review for individual Exception Requests; the revised date by which the Regional Entity will issue its Recommendation concerning the Exception Request shall be stated in a notice issued by the Regional Entity.

**5.2.3.** Upon completion of its substantive review of the Exception Request, the Regional Entity shall issue a Recommendation to NERC, with a copy to the Submitting Entity and to the Owner if different than the Submitting Entity, including the Regional Entity's evaluation of whether and to what extent the Exception Request qualifies to be approved in its entirety or be disapproved in its entirety, or if the Exception Request is for more than one Element, to be approved with respect to a subset of the Elements and disapproved with respect to the remainder of the Elements. The Recommendation shall set forth the basis on which the Regional Entity arrived at its Recommendation. With the Recommendation, the Regional Entity will also send NERC copies of the Exception Request Form and all other information considered by the Regional Entity in arriving at its Recommendation.

**5.2.4** The Regional Entity shall not recommend Disapproval of the Exception Request in whole or in part without first submitting the Exception Request for review to a Technical Review Panel and receiving its opinion, in accordance with section 5.3.

### **5.3 Technical Review Panel**

Each Regional Entity shall establish provisions for a Technical Review Panel consisting of not less than three (3) individuals appointed by the Regional Entity senior executive (CEO, President, General Manager, etc.). Panel members shall comply with Subsection 7 of Section 403 of the NERC Rules of Procedure, shall not have participated in the review of the Exception

Request, and shall have the required technical background to evaluate Exception Requests. When the Regional Entity intends pursuant to section 5.2.2 to issue a Recommendation of Disapproval, in whole or in part, the Technical Review Panel must first review the Regional Entity's proposed determinations and provide an opinion, a copy of which shall be provided to the Submitting Entity (and Owner if different) in the event the Regional Entity decides to disapprove the Exception Request. The Regional Entity will not be bound by the opinion of the Technical Review Panel, but such evaluation shall become part of the record associated with the Exception Request and shall be provided to NERC.

## **6.0 SUPPLEMENTATION OF AN EXCEPTION REQUEST PRIOR TO A RECOMMENDATION**

A Submitting Entity or Owner at any time prior to the Regional Entity issuing its Recommendation may supplement a pending Exception Request that is under review by a Regional Entity, either at the request of the Regional Entity or at the Submitting Entity's or Owner's own initiative, for the purpose of providing additional or revised Required Information. The Submitting Entity or Owner shall submit a written explanation of what Required Information is being added or revised and the purpose of the supplementation. Supplementing a pending Exception Request may, in the Regional Entity's discretion, reset the time period for the Regional Entity's initial screening or substantive review, as applicable, of the Exception Request.

## **7.0 APPEAL OF REJECTION OF AN EXCEPTION REQUEST**

The Submitting Entity may submit to the NERC Director of Compliance Operations (or an equivalent position), with a copy to the Regional Entity and Owner if different, information that demonstrates that the insufficiencies in an Exception Request Form identified in the notice of Rejection by the Regional Entity pursuant to section 5.1.5 are incorrect or otherwise do not warrant Rejection of the Exception Request, and that the Exception Request should be accepted and proceed to substantive review. A Submitting Entity's submission to NERC under this section 7.0 shall be in writing, shall provide the Exception Request which received the Rejection (using the identifier assigned to the Exception Request pursuant to section 5.1.2), and shall set forth a description of the errors that the Submitting Entity believes are in the notice of Rejection. The Submitting Entity's submission must demonstrate that it is eligible (in accordance with section 4.1) to submit the Exception Request and that all Required Information for the Exception Request has been provided. NERC will review the Submitting Entity's submission and the reports submitted by the Regional Entity or Regional Entities pursuant to section 5.1.5 with respect to the Exception Request, and if NERC determines that the Submitting Entity is eligible (in accordance with section 4.1) to submit the Exception Request, that all Required Information has been provided, and that the Exception Request should proceed to substantive review, NERC shall, within forty-five (45) days after receiving the submission, issue a decision directing the Regional Entity to proceed to a substantive review of the Exception Request in accordance with section 5.2. NERC will send a written notice to the Submitting Entity, the Owner if different, and the Regional Entity stating that NERC either directs the Regional Entity to proceed to a substantive review or that NERC does not direct such a review.

## **8.0 APPROVAL OR DISAPPROVAL OF AN EXCEPTION REQUEST**

Following the date of the Regional Entity's Recommendation to NERC, a Submitting Entity or Owner, will have thirty (30) days to submit a comment in support of or opposition to the Recommendation. The NERC President or his/her delegate shall appoint a team of no less than (3) three persons with the required technical background to evaluate Exception Requests to review the Recommendation and accompanying materials provided by the Regional Entity pursuant to section 5.2.3, the Technical Review Panel opinion (if any), and any comment submitted by the Submitting Entity or Owner. The members of the review team shall have no financial, contractual, employment or other interest in the Submitting Entity or Owner that would present a conflict of interest and shall be free of any conflicts of interest in accordance with NERC policies. This review shall be completed within ninety (90) days after NERC receives the Recommendation. Supplementing a pending Exception Request may, in NERC's discretion, reset the time period for the NERC Review Panel's review of the Exception Request. NERC may choose to ask the Regional Entity, Submitting Entity and Owner, if different than the Submitting Entity, to appear at a NERC office for interviews or discussion regarding any questions. In lieu of appearing in person at a NERC office, appearances may be, upon the mutual agreement of NERC, the Regional Entity, the Submitting Entity and/or Owner, conducted by a conference call, teleconferencing, or webinar. By the end of the ninety-day review period, the team shall issue a proposed decision either to approve or to disapprove the Exception Request. If the Exception Request concerns more than one Element, the review team's proposed decision may approve the Exception Request in its entirety, disapprove the Exception Request in its entirety, or approve some portion of the Exception Request and disapprove the remaining portion. The proposed decision shall be in writing, shall be based on the team's independent consideration of the full record, and state the basis for the decision. If the proposed decision of the team was not unanimous, the dissenting team member may, if he or she wishes to do so, issue a minority report stating the dissenting member's reasons for disagreement with the proposed decision. Within thirty (30) days after the date of the review team's proposed decision, the NERC President or his/her delegate shall issue a final written decision on the Exception Request on behalf of NERC. The final decision may adopt the proposed decision or modify the proposed decision, and may reach a different conclusion than the proposed decision as to whether the Exception Request is approved or disapproved. The final decision issued by the NERC President or his/her delegate shall be the decision of NERC with respect to Approval or Disapproval of the Exception Request.

NERC shall provide to the Submitting Entity and to the Owner, if different, copies of any documents considered by the NERC review team in reaching its proposed decision, and any additional documents considered by the NERC President or his/her delegate in reaching the final decision, that were not originally provided by, or have not previously been provided to, the Submitting Entity or Owner.

Documentation used to substantiate the decision related to an Exception Request shall be retained by NERC for a minimum of seven (7) years or as long as the Exception is in effect, whichever is longer, unless a different retention period is otherwise identified

## **9.0 CHALLENGES TO APPROVAL OR DISAPPROVAL OF EXCEPTION REQUESTS**

A Submitting Entity or Owner aggrieved by NERC's Approval or Disapproval of an Exception Request or termination of an Exception may, within thirty (30) days following the date of NERC's decision, challenge such determination pursuant to Section 1703 of the NERC Rules of Procedure. If neither a Submitting Entity nor Owner challenges, within such period, NERC's determination with respect to any Element to which the Exception Request or the Exception applies, such determination shall become effective with respect to such Element on the thirty-first day following the date of the NERC decision.

## **10.0 IMPLEMENTATION PERIOD FOR EXCEPTIONS**

### **10.1 Inclusion Exceptions**

In the case of an Element not included in the BES by application of the BES Definition but for which an Inclusion Exception is approved, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations (or an equivalent position) of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

### **10.2 Denials of Exception Requests for Exclusion**

(a) In the case of a newly-constructed or installed Element which is included in the BES by application of the BES Definition but for which an Exception Request for an Exclusion Exception was submitted at least twelve (12) months before commercial operation of the Element, but which Exception Request either is still pending or has been rejected or disapproved at the time of commercial operation, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly constructed or installed Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

(b) In the case of an Element which is included in the BES based on application of the current BES Definition but was not included in the BES under the BES Definition in effect immediately prior to the current BES Definition, and for which an Exception Request for an Exclusion Exception was submitted no more than twelve (12) months after the current BES Definition became effective, but which Exception Request either is still pending or has been rejected or disapproved at the end of any applicable BES Definition implementation plan time period, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included

Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations (or an equivalent position) of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

## **11.0 CERTIFICATION, NOTICE OF CHANGE IN CONDITION, AND TERMINATION OF AN EXCEPTION REQUEST**

**11.1** An Exception Request typically will be approved without a specified date of termination but will be subject to review to verify continuing justification for the Exception.

**11.2** Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any change of condition which would affect the basis stated by NERC in its decision pursuant to section 8.0 approving the Exception Request. NERC shall review such notification and determine whether to direct the Regional Entity to perform a substantive review (pursuant to section 5.2) to verify continuing justification for the Exception and to issue a Recommendation to NERC.

**11.3** Submitting Entity(ies) shall certify<sup>3</sup> periodically to the appropriate Regional Entity that the basis for an Element being included or excluded in the BES through the Exception remains valid and in connection with each certification, shall provide the Regional Entity with any changes to Section I Required Information or Section II Required Information. The certification shall be due on the first day of the first quarter thirty-six (36) months after the date on which the Exception Request was approved and every thirty-six (36) months thereafter, as long as the Exception remains in effect. If such certification is not provided, the Exception is subject to termination ninety (90) days after the date the certification was due, and the Regional Entity shall send the Submitting Entity and NERC written notice of such termination.

**11.4** If the Regional Entity obtains information through means other than those described in sections 11.2 and 11.3 that indicates an Exception may no longer be warranted, the Regional Entity shall provide such information to NERC. NERC shall review the information and determine whether to direct the Regional Entity to perform a substantive review (pursuant to section 5.2) to verify continuing justification for the Exception and to issue a Recommendation to NERC.

---

<sup>3</sup> The certification shall consider the effect on the basis for the Exception of changes such as Load growth and topological changes, as well as the effect on system limits and impacts as a result of the contingencies listed in Table 1 of each applicable NERC TPL Reliability Standard.

**11.5** If the Regional Entity's Recommendation following a substantive review pursuant to section 11.2 or 11.4 is that the Exception shall be terminated, NERC shall (i) issue a written notice to the Submitting Entity and Owner, if different, that the Exception is under review for possible termination, (ii) allow the Submitting Entity and/or Owner, as applicable, thirty (30) days from the date of the notice to submit comments or information to NERC to show that the Exception continues to be justified and should remain in effect, and (iii) cause the Recommendation to be reviewed in accordance with section 8.0 of this Appendix. If the conclusion of the review is that the Exception should be terminated, NERC shall send a written notice to the Submitting Entity and Owner, if different, stating that the Exception is terminated and the reasons for the termination. When an Element will be included in the BES as a result of the termination of an Exclusion Exception under this section, an implementation plan detailing the schedule for complying with any Reliability Standards applicable to the newly included Element will be developed in accordance with section 10.1 as if it were an Inclusion Exception.

**11.6** Upon request by the Regional Entity, the Submitting Entity(ies) and/or Owner if different shall provide within thirty (30) days the most recent versions of any Section III Required Information so requested.

Attachment 10:

Registration and Certification:  
Appendix 5C

Redline



**APPENDIX 5C**

**PROCEDURE FOR REQUESTING AND RECEIVING**

**AN EXCEPTION FROM THE APPLICATION**

**OF THE**

**NERC DEFINITION OF BULK ELECTRIC SYSTEM**

Effective: ~~July 1, 2014~~[ ], 2020

# Table of Contents

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1.	Purpose.....	1
1.2.	Authority.....	2
1.3	Canadian and Mexican Entities and Cross-Border Regional Entities .....	2
<b>2.0.</b>	<b>DEFINITIONS .....</b>	<b>2</b>
<b>3.0.</b>	<b>BASIS FOR APPROVAL OF AN EXCEPTION .....</b>	<b>5</b>
3.1.	Grounds for an Exception .....	5
3.2.	Burden.....	5
<b>4.0.</b>	<b>FORM, CONTENTS, AND SUBMISSION OF AN EXCEPTION REQUEST.....</b>	<b>5</b>
4.1.	Eligible Submitters of an Exception Request.....	5
4.2.	Separate Submissions for Each Exception Request .....	6
4.3.	Withdrawal of an Exception Request.....	7
4.5.	Required Information to be Included in the Exception Request .....	7
4.6	Access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information Included in Required Information.....	9
<b>5.0</b>	<b>REVIEW, ACCEPTANCE OR REJECTION, AND RECOMMENDATION REGARDING EXCEPTION REQUESTS .....</b>	<b>10</b>
5.1.	Initial Screening of Exception Request for Acceptance or Rejection .....	11
5.2	Substantive Review of Exception Request for Approval or Disapproval .....	13
5.3	Technical Review Panel.....	14
<b>6.0</b>	<b>SUPPLEMENTATION OF AN EXCEPTION REQUEST PRIOR TO A RECOMMENDATION.....</b>	<b>14</b>
<b>7.0</b>	<b>APPEAL OF REJECTION OF AN EXCEPTION REQUEST.....</b>	<b>14</b>
<b>8.0</b>	<b>APPROVAL OR DISAPPROVAL OF AN EXCEPTION REQUEST.....</b>	<b>15</b>
<b>9.0</b>	<b>CHALLENGES TO APPROVAL OR DISAPPROVAL OF EXCEPTION REQUESTS.....</b>	<b>16</b>
<b>10.0</b>	<b>IMPLEMENTATION PERIOD FOR EXCEPTIONS.....</b>	<b>16</b>
10.1	Inclusion Exceptions .....	16
10.2	Denials of Exception Requests for Exclusion .....	16
<b>11.0</b>	<b><u>CERTIFICATION, NOTICE OF CHANGE IN CONDITION, AND TERMINATION OF AN APPROVED EXCEPTION</u>.....</b>	<b>17</b>

## 1.0 INTRODUCTION

### 1.1 Purpose

The NERC definition of the Bulk Electric System uses specific terms and thresholds that, in most cases, should appropriately identify Elements and groups of Elements that are appropriately classified as part of the Bulk Electric System. Conversely, the BES Definition should, in most cases, exclude Elements that are not part of the Bulk Electric System. In certain cases, however, the BES Definition may classify certain Elements as part of the Bulk Electric System that are not necessary for the Reliable Operation of the interconnected bulk-power transmission system or the BES Definition may classify certain Elements as non-Bulk Electric System that are necessary for the Reliable Operation of the interconnected bulk-power transmission system.

This Appendix to the Rules of Procedure of the North American Electric Reliability Corporation provides the procedure by which an entity may request and receive an Exception which will have the effect of either including within the BES an Element or Elements that would otherwise be excluded by application of the BES Definition or excluding from the BES an Element or Elements that would otherwise be included by application of the BES Definition. This Appendix is intended to implement authorization granted by FERC to allow such Exceptions from the BES Definition.<sup>1</sup>

An entity must request and obtain an Exclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is included in the BES by application of the BES Definition shall be excluded from the BES. Likewise, an entity must request and obtain an Inclusion Exception pursuant to an Exception Request under this Exception Procedure before any Element that is excluded from the BES by application of the BES Definition shall be included in the BES.

During the pendency of an Exception Request, the status of an Element(s) that is the subject of an Exception Request shall remain as it is determined based on application of the BES Definition. This status will continue until all appeals to all Applicable Governmental Authorities are completed. An entity that is planning a connection of a new Element for which it believes an Exception would be appropriate may request an Exception prior to commercial operation of the Element.

The Owner of the Element to which the Exception Request applies or, with respect to an Element owned by another Registered Entity, any Regional Entity, Planning Authority (“PA”), Reliability Coordinator (“RC”), Transmission Operator (“TOP”), Transmission Planner (“TP”) or Balancing Authority (“BA”) that has (or will have upon inclusion of the Elements in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the Element as provided in this Exception Procedure.

---

<sup>1</sup> *Revision to Electric Reliability Organization Definition of Bulk Electric System*, 133 FERC ¶ 61,150 (“Order No. 743”) (2010), *Order on Reh’g, Revision to Electric Reliability Organization Definition of Bulk Electric System*, 134 FERC ¶61,210 (“Order No. 743-A”) (2011).

## 1.2. Authority

This Appendix is a NERC Rule of Procedure and an Electric Reliability Organization Rule. 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. This Exception Procedure or an equivalent procedure is to be implemented in Canada and Mexico consistent with their respective laws and agreements.

## 1.3 Canadian and Mexican Entities and Cross-Border Regional Entities

A Registered Entity that is a Canadian Entity or a Mexican Entity seeking an Exception will be expected to work with the Regional Entity, NERC, and Applicable Governmental Authorities in Canada or Mexico, as appropriate, consistent with their respective laws and agreements, and without being obligated to authorize the disclosure of information prohibited by applicable federal, state or provincial law from disclosure to FERC or other governmental authorities in the U.S., in order to implement this Exception Procedure or an equivalent procedure. A Canadian Entity or a Mexican Entity shall not be required to subject itself to United States federal or state laws not otherwise applicable to the entity in order to utilize this Exception Procedure or an equivalent procedure.

## 2.0. DEFINITIONS

For purposes of this Appendix, capitalized terms shall have the definitions set forth in Appendix 2 to the Rules of Procedure. For ease of reference, the definitions of the following terms that are used in this Appendix are also set forth below.

**2.1 Acceptance of the Exception Request (or Acceptance):** The determination that an eligible Exception Request (i.e., an Exception Request permitted by section 4.1) contains all the Required Information so that it can undergo substantive review.

**2.2 Approval of the Exception Request (or Approval):** The determination by NERC that an Exception Request meets the criteria to receive the requested Exception.

**2.3 BES:** Bulk Electric System.

**2.4 BES Definition:** The NERC definition of the Bulk Electric System as set forth in the NERC *Glossary of Terms Used in Reliability Standards*.

**2.5 Canadian Entity:** A Registered Entity that is organized under Canadian federal or provincial law.

**2.6 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 or Mexican federal or provincial law.

**2.7 Disapproval of the Exception Request (or Disapproval):** The determination by NERC that an Exception Request does not meet the criteria to receive the requested Exception.

**2.8 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.

**2.9 Exception:** Either an Inclusion Exception or an Exclusion Exception.

**2.10 Exception Procedure:** The procedure set forth in this Appendix.

**2.11 Exception Request:** A request made by a Submitting Entity in accordance with this Appendix for an Exception.

**2.12 Exception Request Form:** The form adopted by each Regional Entity, in accordance with a template provided by NERC, for use by Submitting Entities in submitting Exception Requests; provided, that the Exception Request Form must include Section III.B as adopted by NERC.

**2.13 Exclusion Exception:** A determination that an Element that falls within the BES Definition should be excluded from the BES.

**2.14 FERC:** The United States Federal Energy Regulatory Commission.

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

**2.16 Inclusion Exception:** A determination that an Element that falls outside the BES Definition should be included in the BES.

**2.17 Lead Entity:** The entity that submits Exception Request information that is common to a group of Submitting Entities that are submitting Exception Requests jointly.

**2.18 Mexican Entity:** A Registered Entity that is organized under Mexican law.

**2.19 NRC:** The United States Nuclear Regulatory Commission.

**2.20 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 or Mexican federal or provincial law.

**2.21 Owner:** The owner(s) of an Element or Elements that is or may be determined to be part of the BES as a result of either the application of the BES Definition or an Exception, or another entity, such as an operator, authorized to act on behalf of the owner of the Element or Elements in the context of an Exception 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 or Mexican federal or provincial law, which would be lost were the Required Information to be placed into the public domain.

**2.23 Recommendation:** The report to NERC containing the evaluation prepared in accordance with section 5.2 concerning whether or to what extent an Exception Request should be approved.

**2.24 Rejection of the Exception Request (or Rejection):** The determination that an Exception Request is not an eligible Exception Request (i.e., an Exception Request permitted by section 4.1) or does not contain all the Required Information in accordance with section 4.5 in order to be reviewed for substance.

**2.25 Required Information:** Information required to be provided in an Exception Request, as specified in section 4.0.

**2.26 Scope of Responsibility:** The registered functions of a PA, RC, TOP, TP or BA and the geographical or electric region in which the PA, RC, TOP, TP or BA operates to perform its registered functions, or with respect to a Regional Entity, its Regional Entity Region.

**2.27 Section I Required Information:** Required Information that is to be provided in Section I of a Submitting Entity's Exception Request.

**2.28 Section II Required Information:** Required Information that is to be provided in Section II of a Submitting Entity's Exception Request.

**2.29 Section III Required Information:** Required Information that is to be provided in Section III of a Submitting Entity's Exception Request.

**2.30 Submitting Entity:** The entity that submits an Exception Request in accordance with section 4.0.

**2.31 Technical Review Panel:** A panel established pursuant to section 5.3 of this Appendix.

### **3.0. BASIS FOR APPROVAL OF AN EXCEPTION**

#### **3.1. Grounds for an Exception**

##### (a) Exclusion Exception

An entity may request and obtain Approval from NERC for an Exclusion Exception on the grounds that the Element(s) for which the Exception Request is filed is included within the BES based on application of the BES Definition but is not necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).

##### (b) Inclusion Exception

An entity may request and obtain Approval from NERC for an Inclusion Exception on the grounds that the Element(s) for which the Exception Request is filed is not included within the BES based on application of the BES Definition but is necessary for the Reliable Operation of the interconnected bulk-power transmission system as evidenced by Required Information provided pursuant to **Detailed Information to Support an Exception Request** (Section III.B of the Exception Request Form).

#### **3.2. Burden**

The burden to provide a sufficient basis for Approval of an Exception Request in accordance with the provisions of this Exception Procedure is on the Submitting Entity. It is the responsibility of the Regional Entity, subject to oversight by NERC as provided in this Exception Procedure, to evaluate the request and make a Recommendation to NERC regarding its Approval. All evidence provided as part of an Exception Request or response will be considered in determining whether an Exception Request shall be approved or disapproved.

### **4.0. FORM, CONTENTS, AND SUBMISSION OF AN EXCEPTION REQUEST**

#### **4.1. Eligible Submitting Entities**

The Owner of an Element may submit an Exception Request for either an Inclusion Exception or an Exclusion Exception regarding that Element. A Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by a Registered Entity, provided that before doing so, (i) the Submitting Entity conferred with the Owner about the reasons for an Exception, and (ii) could not reach agreement regarding the submission of such an Exception Request. (If the Owner agrees with submitting an Exception Request, the Owner should be the Submitting Entity.) Only a Regional Entity may submit an Exception Request for the inclusion in the BES of an Element or Elements owned by an Owner that is not a Registered Entity. Only an

Owner or a Regional Entity may submit an Exception Request for the exclusion from the BES of an Element.

When a Regional Entity requests an Exception, the Regional Entity shall be the Submitting Entity and shall prepare and submit copies of its Exception Request (or portions thereof) to all applicable entities in accordance to this section 4.0.

With respect to an Element that crosses a boundary between Regional Entities, (1) the Submitting Entity will submit the Exception Request to both (or all) Regional Entities, which will cooperate to process the Exception Request pursuant to section 5.1 below, or (2) the Regional Entities must jointly submit an Exception Request to NERC (neither Regional Entity shall be allowed to submit such Exception Request unilaterally).

#### **4.2. Separate Submissions for Each Exception Request**

A separate Exception Request shall be submitted for each Element or set of connected Elements for which the Submitting Entity seeks an Exception. The scope of an Exception Request shall cover the terminal connections of the Element or set of Elements as identified in the Exception Request. Where the Submitting Entity seeks Exceptions from the BES Definition for multiple, similar Elements (either at the same location or at different locations within the geographic boundaries of a Regional Entity) on the same basis, the Exception Requests for all such Elements may be included in one Exception Request with all such Elements or sets of connected Elements separately identified. A single Exception Request may not be submitted for separate Elements within the geographic boundaries of more than one Regional Entity.

Multiple Submitting Entities may jointly file Exception Requests for similar Elements for which they are requesting Exceptions on the same basis. In such a situation, the Submitting Entities will submit a package comprised of a complete Exception Request Form for a Lead Entity, and an Exception Request Form for each other Submitting Entity that (1) provides the Submitting Entity's differing individual information to the extent such is required (e.g., contact information, identification, and location of Element(s), etc.), and (2) otherwise references the pertinent portions of the complete Exception Request Form filed by the Lead Entity (e.g., status under application of the BES Definition, basis for an Exception under section 3.1, etc.). For any Exception Request filed by multiple Submitting Entities as provided in this section, the Lead Entity shall be considered the "Submitting Entity" for purposes of the Regional Entity's and NERC's notices and actions in accordance with the remainder of this Exception Procedure. However, any Owner nonetheless may take any action otherwise appropriate for a Submitting Entity (e.g., respond to a Recommendation, submit an appeal, etc.).

#### **4.3. Withdrawal of an Exception Request**

A Submitting Entity may withdraw an Exception Request at any time prior to NERC Approval or Disapproval of the Exception Request.

#### **4.4. Form and Format of Exception Request**

An Exception Request shall consist of three sections, all of which must be submitted to the applicable Regional Entity. If the Submitting Entity is not the Owner [i.e., is a Regional Entity, PA, RC, TOP, TP, or BA that has (or will have upon inclusion of the Element in the BES) the Elements covered by an Exception Request within its Scope of Responsibility], it shall at the same time provide a copy of the Exception Request to the Owner (or if the Owner is unknown, to the operator of the Element(s)) to which the Exception Request applies.

#### **4.5. Required Information to be Included in the Exception Request**

**4.5.1.** Section I of an Exception Request shall contain the Required Information specified in this section 4.5.1. At the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section I to each PA, RC, TOP, TP, and BA that has (or will have upon inclusion in the BES) the Elements covered by an Exception Request within its Scope of Responsibility. Failure to provide all Section I Required Information may result in Rejection of the Exception Request as incomplete.

1. Name and address of Submitting Entity.
2. Submitting Entity NERC Compliance Registry ID (if yet assigned).
3. Name of the Owner, if different than the Submitting Entity,
4. Owner's NERC Compliance Registry ID (if yet assigned).
5. Exception Request submittal date.
6. Whether the Exception Request is an original Exception Request or an amended Exception Request; and if it is an amended Exception Request, the identification number(s) of the original Exception Request and any previous amendments.
7. Whether the Exception Request is being submitted in conjunction with Exception Requests by other Submitting Entities. If so, the names of the other Submitting Entities.
8. Whether the Submitting Entity is filing a similar Exception Request(s) with one or more other Regional Entities, and if yes, the name(s) of the other Regional Entity(ies).
9. The type(s) of Element(s) for which the Exception is being requested.
10. Status, based on application of the BES Definition, of the Element(s) for which the Exception is being requested.

**4.5.2.** Section II of an Exception Request shall contain the Required Information specified in this section 4.5.2. At the same time the Submitting Entity submits the Exception Request Form to the Regional Entity, the Submitting Entity shall submit a copy of Section II to each PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility. Failure to provide all Section II Required Information may result in Rejection of the Exception Request as incomplete.

Section II Required Information will not be publicly posted or disclosed to third parties except for persons involved in reviewing the Exception Request.

1. Identification and location(s) of Element(s) for which the Exception is being requested.
2. Name, title, phone number, facsimile number, and E-mail address of the Submitting Entity's technical contact person for the Exception Request.
3. Certification by the Submitting Entity (if other than Owner) that it conferred with the Owner regarding the reason for the requested Exception, but could not reach agreement regarding the submission of an Exception Request.
4. To the extent known by the Submitting Entity, name, mailing address, phone number, facsimile number, and E-mail address of the Owner's technical contact person for the Exception Request, if the Owner is different from the Submitting Entity.
5. Identification of PA, RC, TOP, TP, and BA that has (or will have upon inclusion in the BES) the Elements covered by the Exception Request within its Scope of Responsibility, and certification by the Submitting Entity that it has sent copies of Sections I and II to each such entity.
6. A statement of the basis on which the Submitting Entity contends the Exception Request should be approved, and if the Submitting Entity is not the Owner, a statement of the basis of the Submitting Entity's reason for submitting the Exception Request.
7. A statement, signed and dated by an authorized representative of the Submitting Entity's senior management stating that the representative has read the Exception Request on behalf of the Submitting Entity and that the Submitting Entity believes Approval of the Exception Request is warranted.

**4.5.3** Section III of an Exception Request shall contain the **Detailed Information to Support an Exception Request** as specified on the Exception Request Form. Failure to include all Section III Required Information may result in Rejection of the Exception Request. The Submitting Entity may designate all or part of the Section III Required Information as Confidential Information.

1. If the Exception Request is supported, in whole or in part, by Classified National Security Information, NRC Safeguards Information, and/or Protected FOIA Information, Section III shall include 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.
2. If the Submitting 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), Section III 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.

**4.5.4** The Owner of the Element(s) to which the Exception Request applies, if different than the Submitting Entity, may file a response to supplement, correct or disagree with all or any part of an Exception Request. Any PA, RC, TOP, TP, and BA that has (or will have upon inclusion of the Element(s) in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may also provide input to the Regional Entity regarding the Exception Request. If in order to evaluate an Exception Request, the Owner, PA, RC, TOP, TP or BA wishes to obtain any Required Information in Section III of the Exception Request, the Owner, PA, RC, TOP, TP or BA may submit to the Regional Entity that received the Exception Request a request stating its reason for wanting to review such information, and the Regional Entity may provide such information to the Owner, PA, RC, TOP, TP or BA if the Regional Entity believes such review may assist the Regional Entity's review; if any of such Section III Required Information has been designated Confidential Information, prior to being provided the Confidential Information, the Owner, PA, RC, TOP, TP or BA shall execute a confidentiality agreement in a form established by the Regional Entity. Any response provided pursuant to this section 4.5.4 must be submitted to the Regional Entity with copies to the Submitting Entity and the Owner, if different from the Submitting Entity, within forty-five (45) days after the date the Exception Request Form was submitted to the Regional Entity.

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

**4.6.1.** Upon reasonable advance notice from a Regional Entity, and subject to section 4.6.2, a Submitting Entity or Owner must provide the Regional Entity (a) with access to Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information included in the Exception Request, and (b) with

access for purposes of making a physical review and inspection of the Element or Elements for which an Exception Request has been submitted.

**4.6.2.** If the Submitting Entity or Owner 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 which may include contractors, who are Eligible Reviewers.

**4.6.3.** The Regional Entity, as applicable, will work cooperatively with the Submitting Entity and/or Owner to provide necessary levels of protection for information identified in Section 1500 of the NERC Rules of Procedure and to access Protected FOIA Information in a way that does not waive or extinguish the exemption of the Protected FOIA Information from disclosure. If the Regional Entity shares any Confidential Information with a third party it shall do so subject to restrictions in applicable law under appropriate confidentiality agreements.

## **5.0 REVIEW, ACCEPTANCE OR REJECTION, AND RECOMMENDATION REGARDING EXCEPTION REQUESTS**

The Regional Entity's evaluation of the Exception Request will consist of two stages:

- (a) During the first stage, the Regional Entity shall conduct an initial screening to determine whether to accept or reject the Exception Request; and
- (b) During the second stage, the Regional Entity shall conduct a substantive review to determine its Recommendation to NERC as to whether or not the Exception Request should be approved.

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 Exception Requests within the time provided by section 5.1.3(a) and/or substantive reviews of Exception Requests within the time provided in section 5.2.2, 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 Exception Requests during the specified period of time. The alternative time period and work plan shall be publicized by posting on the Regional Entity's website.

When a Regional Entity is the Submitting Entity of an Exception Request, it nonetheless shall process such Request in accordance with this section 5.0, with the following exceptions:

- i. There will be no initial screening, Acceptance, or Rejection, and therefore sections 5.1.3 through 5.1.6 will not apply;

- ii. No later than sixty (60) days after the submission of the Exception Request to the Owner and other applicable entities, the Regional Entity shall commence its substantive review of the Exception Request (and of any responses received from the Owner and other applicable entities) in accordance with section 5.2 and shall complete such substantive review within six (6) months; and
- iii. Before the Regional Entity issues a Recommendation to NERC to approve or disapprove the Exception Request in whole or in part, the Technical Review Panel shall review the proposed determination and issue an opinion with copies provided to the Owner and to NERC, in accordance with section 5.3.

### **5.1. Initial Screening of Exception Request for Acceptance or Rejection**

**5.1.1.** Upon receipt of an Exception Request, the Regional Entity will assign a unique identifier to the Exception Request, and will review the Exception Request to determine that the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from the application of the BES Definition and that all Required Information has been provided. If the Exception Request indicates that the Submitting Entity has submitted a similar Exception Request to one or more other Regional Entities, the Regional Entities shall coordinate their actions undertaken pursuant to this section 5.0. If the Exception Request is for an Element that crosses boundaries between or among Regional Entities, the Regional Entities shall cooperatively determine a lead Regional Entity to assess the request in a single process yielding a single Recommendation to NERC.

**5.1.2.** The unique identifier assigned to the Exception Request will be in the form of XXXX-YYYY-NERCID-ExceptionZZZZZ, where “XXXX” is the year in which the Exception Request is received by the Regional Entity (*e.g.*, “2012”); “YYYY” is the acronym for the Regional Entity within whose geographic boundaries the relevant Element or Elements are located<sup>2</sup>; NERCID is the Submitting Entity’s NERC Compliance Registry ID (or an abbreviation of its name if an ID is not yet assigned); and “ZZZZZ” is the sequential number of the Exception Requests received by the Regional Entity in that year. If the Exception 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 Exception Request. If the Exception Request is for an Element that crosses boundaries between or among Regional Entities, the YYYY identifier shall be that of the lead Regional Entity assessing the request.

**5.1.3.** The Regional Entity will complete its initial screening of the Exception Request Form and any Owner’s response submitted pursuant to section 4.5.4 no later than either sixty (60) days after receiving the Exception Request or, if the Submitting Entity is not the Owner, thirty (30) days after receiving any Owner’s response, whichever is later, unless (i) the

---

<sup>2</sup> The acronyms to be used are: ~~FRCC (Florida Reliability Coordinating Council)~~; MRO (Midwest Reliability Organization); NPCC (Northeast Power Coordinating Council); RFC (ReliabilityFirst Corporation); SERC (SERC Reliability Corporation); ~~SPP (Southwest Power Pool Regional Entity)~~; TRE (Texas Reliability Entity); and WECC (Western Electricity Coordinating Council), and NERC in cases where the Exception Request is submitted to NERC.

Regional Entity has established an alternative time period objective and work plan for completing initial screenings pursuant to this section 5.0 that provides for a different time period(s) for completing initial screenings, or (ii) the Regional Entity issues a notice to the Submitting Entity, and to the Owner if different, prior to the deadline date for completing the initial screening, stating that the Regional Entity will not be able to complete the initial screening by the deadline date and stating a revised deadline date.

**5.1.4.** If, based on its initial screening, the Regional Entity determines the Exception Request is from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from the BES Definition, and that all Required Information has been provided, the Regional Entity shall accept the Exception Request as complete and send a notice of such Acceptance to the Submitting Entity, with a copy to the Owner, if different than the Submitting Entity, and to NERC.

**5.1.5.** (a) If the Regional Entity determines, based on its review of the Exception Request, that the Exception Request (i) is not from an eligible (in accordance with section 4.1) Submitting Entity for an Exception from application of the BES Definition, and/or (ii) does not contain all Required Information, the Regional Entity shall reject the Exception Request as incomplete and send a notice of such Rejection to the Submitting Entity, with a copy to the Owner, if different than the Submitting Entity, and to NERC. To the extent feasible, if an Exception Request Form is missing Required Information, the Regional Entity shall not reject the Exception Request until (1) it has contacted the Submitting Entity to request that the Exception Request Form be supplemented with the missing Required Information, and (2) the Submitting Entity has failed to submit such Required Information within thirty (30) days or such additional period of time as the Regional Entity may allow at its discretion based on the circumstances. Under appropriate confidentiality/security agreements, the Regional Entity shall facilitate the access to data and information from other entities required by the Submitting Entity to accurately supply the **Detailed Information to Support an Exception Request** (e.g., interconnection base case power flow studies) and/or by the Owner to accurately respond. When a Submitting Entity submits supplemental Required Information in response to a request under this section 5.1.5(a), the time for the Regional Entity to perform its initial screening will be extended for fifteen (15) days after receipt of the supplemental Required Information.

(b) If the Regional Entity rejects the Exception Request in accordance with section 5.1.5 (a), the Regional Entity's notice shall explain the reason for the Rejection. The Submitting Entity may, within thirty (30) days after receipt of the Rejection, appeal to NERC in accordance with section 7.0 of this Exception Procedure to reverse the Rejection and to direct the Regional Entity to proceed with a substantive review of the Exception Request.

**5.1.6.** The Regional Entity may either accept the Exception Request in its entirety, reject the Exception Request in its entirety, or if the Exception Request is for more than one Element, may accept it with respect to a subset of the Elements and reject it with respect to the remainder based on the similarity of the evidence presented for the Exception Request.

## 5.2 Substantive Review of Exception Request for Approval or Disapproval

**5.2.1** After Acceptance of an Exception Request, the Regional Entity shall conduct a substantive review of all evidence provided as part of an Exception Request or response to evaluate whether or to what extent the Exception Request should be approved. As part of its substantive review, depending on the circumstances of the Exception Request, the Regional Entity may request access to and review the Required Information, including any Confidential Information, Classified National Security Information, NRC Safeguards Information, and Protected FOIA Information that is necessary to support the Exception Request; may conduct one or more physical inspections of the relevant Element(s) and its (their) context and surrounding Elements and Facilities; may request additional information from the Submitting Entity, Owner, or applicable PAs, RCs, BAs, TOPs and TPs; and may engage in further discussions concerning possible revisions to the Exception Request.

**5.2.2.** At the outset of its substantive review of the Exception Request, the Regional Entity shall develop a milestone schedule pursuant to which it plans to conduct the substantive review, and shall send a copy of the milestone schedule to the Submitting Entity and the Owner, if different, for information. The Regional Entity shall complete the substantive review of the Exception Request within six months after Acceptance of the Exception Request or within an alternative time period under section 5.0, at the conclusion of which the Regional Entity shall issue a notice (in accordance with section 5.2.3) stating its Recommendation that the Exception Request be approved or disapproved. The Regional Entity may extend the period of substantive review for individual Exception Requests; the revised date by which the Regional Entity will issue its Recommendation concerning the Exception Request shall be stated in a notice issued by the Regional Entity.

**5.2.3.** Upon completion of its substantive review of the Exception Request, the Regional Entity shall issue a Recommendation to NERC, with a copy to the Submitting Entity and to the Owner if different than the Submitting Entity, including the Regional Entity's evaluation of whether and to what extent the Exception Request qualifies to be approved in its entirety or be disapproved in its entirety, or if the Exception Request is for more than one Element, to be approved with respect to a subset of the Elements and disapproved with respect to the remainder of the Elements. The Recommendation shall set forth the basis on which the Regional Entity arrived at its Recommendation. With the Recommendation, the Regional Entity will also send NERC copies of the Exception Request Form and all other information considered by the Regional Entity in arriving at its Recommendation.

**5.2.4** The Regional Entity shall not recommend Disapproval of the Exception Request in whole or in part without first submitting the Exception Request for review to a Technical Review Panel and receiving its opinion, in accordance with section 5.3.

~~**5.2.5**—NERC shall develop, and post on its web site, a reporting program and schedule pursuant to which Regional Entities will be required to submit to NERC periodic reports on the numbers, status and timing of their initial screenings and substantive reviews of Exception Requests.~~

### **5.3 Technical Review Panel**

Each Regional Entity shall establish provisions for a Technical Review Panel consisting of not less than three (3) individuals appointed by the Regional Entity senior executive (CEO, President, General Manager, etc.). Panel members shall comply with Subsection 7 of Section 403 of the NERC Rules of Procedure, shall not have participated in the review of the Exception Request, and shall have the required technical background to evaluate Exception Requests. When the Regional Entity intends pursuant to section 5.2.2 to issue a Recommendation of Disapproval, in whole or in part, the Technical Review Panel must first review the Regional Entity's proposed determinations and provide an opinion, a copy of which shall be provided to the Submitting Entity (and Owner if different) in the event the Regional Entity decides to disapprove the Exception Request. The Regional Entity will not be bound by the opinion of the Technical Review Panel, but such evaluation shall become part of the record associated with the Exception Request and shall be provided to NERC.

## **6.0 SUPPLEMENTATION OF AN EXCEPTION REQUEST PRIOR TO A RECOMMENDATION**

A Submitting Entity or Owner at any time prior to the Regional Entity issuing its Recommendation may supplement a pending Exception Request that is under review by a Regional Entity, either at the request of the Regional Entity or at the Submitting Entity's or Owner's own initiative, for the purpose of providing additional or revised Required Information. The Submitting Entity or Owner shall submit a written explanation of what Required Information is being added or revised and the purpose of the supplementation. Supplementing a pending Exception Request may, in the Regional Entity's discretion, reset the time period for the Regional Entity's initial screening or substantive review, as applicable, of the Exception Request.

## **7.0 APPEAL OF REJECTION OF AN EXCEPTION REQUEST**

The Submitting Entity may submit to the NERC Director of Compliance Operations (or an equivalent position), with a copy to the Regional Entity and Owner if different, information that demonstrates that the insufficiencies in an Exception Request Form identified in the notice of Rejection by the Regional Entity pursuant to section 5.1.5 are incorrect or otherwise do not warrant Rejection of the Exception Request, and that the Exception Request should be accepted and proceed to substantive review. A Submitting Entity's submission to NERC under this section 7.0 shall be in writing, shall provide the Exception Request which received the Rejection (using the identifier assigned to the Exception Request pursuant to section 5.1.2), and shall set forth a description of the errors that the Submitting Entity believes are in the notice of Rejection. The Submitting Entity's submission must demonstrate that it is eligible (in accordance with section 4.1) to submit the Exception Request and that all Required Information for the Exception Request has been provided. NERC will review the Submitting Entity's submission and the reports submitted by the Regional Entity or Regional Entities pursuant to section 5.1.5 with respect to the Exception Request, and if NERC determines that the Submitting Entity is eligible (in accordance with section 4.1) to submit the Exception Request, that all Required Information has been provided, and that the Exception Request should proceed to substantive review, NERC

shall, within forty-five (45) days after receiving the submission, issue a decision directing the Regional Entity to proceed to a substantive review of the Exception Request in accordance with section 5.2. NERC will send a written notice to the Submitting Entity, the Owner if different, and the Regional Entity stating that NERC either directs the Regional Entity to proceed to a substantive review or that NERC does not direct such a review.

## **8.0 APPROVAL OR DISAPPROVAL OF AN EXCEPTION REQUEST**

Following the date of the Regional Entity's Recommendation to NERC, a Submitting Entity or Owner, will have thirty (30) days to submit a comment in support of or opposition to the Recommendation. The NERC President or his/her delegate shall appoint a team of no less than (3) three persons with the required technical background to evaluate Exception Requests to review the Recommendation and accompanying materials provided by the Regional Entity pursuant to section 5.2.3, the Technical Review Panel opinion (if any), and any comment submitted by the Submitting Entity or Owner. The members of the review team shall have no financial, contractual, employment or other interest in the Submitting Entity or Owner that would present a conflict of interest and shall be free of any conflicts of interest in accordance with NERC policies. -This review shall be completed within ninety (90) days after NERC receives the Recommendation. Supplementing a pending Exception Request may, in NERC's discretion, reset the time period for the NERC Review Panel's review of the Exception Request. NERC may choose to ask the Regional Entity, Submitting Entity and Owner, if different than the Submitting Entity, to appear at a NERC office for interviews or discussion regarding any questions. In lieu of appearing in person at a NERC office, appearances may be, upon the mutual agreement of NERC, the Regional Entity, the Submitting Entity and/or Owner, conducted by a conference call, teleconferencing, or webinar. By the end of the ninety-day review period, the team shall issue a proposed decision either to approve or to disapprove the Exception Request. If the Exception Request concerns more than one Element, the review team's proposed decision may approve the Exception Request in its entirety, disapprove the Exception Request in its entirety, or approve some portion of the Exception Request and disapprove the remaining portion. The proposed decision shall be in writing, shall be based on the team's independent consideration of the full record, and state the basis for the decision. If the proposed decision of the team was not unanimous, the dissenting team member may, if he or she wishes to do so, issue a minority report stating the dissenting member's reasons for disagreement with the proposed decision. -Within thirty (30) days after the date of the review team's proposed decision, the NERC President or his/her delegate shall issue a final written decision on the Exception Request on behalf of NERC. The final decision may adopt the proposed decision or modify the proposed decision, and may reach a different conclusion than the proposed decision as to whether the Exception Request is approved or disapproved. The final decision issued by the NERC President or his/her delegate shall be the decision of NERC with respect to Approval or Disapproval of the Exception Request.

NERC shall provide to the Submitting Entity and to the Owner, if different, copies of any documents considered by the NERC review team in reaching its proposed decision, and any additional documents considered by the NERC President or his/her delegate in reaching the final decision, that were not originally provided by, or have not previously been provided to, the Submitting Entity or Owner.

Documentation used to substantiate the decision related to an Exception Request shall be retained by NERC for a minimum of seven (7) years or as long as the Exception is in effect, whichever is longer, unless a different retention period is otherwise identified

## **9.0 CHALLENGES TO APPROVAL OR DISAPPROVAL OF EXCEPTION REQUESTS**

A Submitting Entity or Owner aggrieved by NERC's Approval or Disapproval of an Exception Request or termination of an Exception may, within thirty (30) days following the date of NERC's decision, challenge such determination pursuant to Section 1703 of the NERC Rules of Procedure. If neither a Submitting Entity nor Owner challenges, within such period, NERC's determination with respect to any Element to which the Exception Request or the Exception applies, such determination shall become effective with respect to such Element on the thirty-first day following the date of the NERC decision.

## **10.0 IMPLEMENTATION PERIOD FOR EXCEPTIONS**

### **10.1 Inclusion Exceptions**

In the case of an Element not included in the BES by application of the BES Definition but for which an Inclusion Exception is approved, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations (or an equivalent position) of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

### **10.2 Denials of Exception Requests for Exclusion**

(a) In the case of a newly-constructed or installed Element which is included in the BES by application of the BES Definition but for which an Exception Request for an Exclusion Exception was submitted at least twelve (12) months before commercial operation of the Element, but which Exception Request either is still pending or has been rejected or disapproved at the time of commercial operation, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly constructed or installed Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

(b) In the case of an Element which is included in the BES based on application of the current BES Definition but was not included in the BES under the BES Definition in effect immediately prior to the current BES Definition, and for which an Exception Request for an

Exclusion Exception was submitted no more than twelve (12) months after the current BES Definition became effective, but which Exception Request either is still pending or has been rejected or disapproved at the end of any applicable BES Definition implementation plan time period, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule. If the Regional Entity and Owner are unable to agree on the implementation plan, the Regional Entity shall notify the NERC Director of Compliance Operations (or an equivalent position) of the disagreement, and shall provide statements of the Regional Entity's and the Owner's positions, and NERC shall specify a reasonable implementation schedule.

## **11.0 CERTIFICATION, NOTICE OF CHANGE IN CONDITION, AND TERMINATION OF AN ~~APPROVED~~ EXCEPTION REQUEST**

**11.1** An Exception Request typically will be approved without a specified date of termination but will be subject to review to verify continuing justification for the Exception.

**11.2** Submitting Entity(ies) shall notify the appropriate Regional Entity, with a copy to NERC, within ninety (90) days after learning of any change of condition which would affect the basis stated by NERC in its decision pursuant to section 8.0 approving the Exception Request. NERC shall review such notification and determine whether to direct the Regional Entity to perform a substantive review (pursuant to section 5.2) to verify continuing justification for the Exception and to issue a Recommendation to NERC.

**11.3** Submitting Entity(ies) shall certify<sup>3</sup> periodically to the appropriate Regional Entity that the basis for an Element being included or excluded in the BES through the Exception remains valid and in connection with each certification, shall provide the Regional Entity with any changes to Section I Required Information or Section II Required Information. The certification shall be due on the first day of the first quarter thirty-six (36) months after the date on which the Exception Request was approved and every thirty-six (36) months thereafter, as long as the Exception remains in effect. If such certification is not provided, the Exception is subject to termination ninety (90) days after the date the certification was due, and the Regional Entity shall send the Submitting Entity and NERC written notice of such termination.

**11.4** If the Regional Entity obtains information through means other than those described in sections 11.2 and 11.3 that indicates an Exception may no longer be warranted, the Regional Entity shall provide such information to NERC. NERC shall review the information and determine whether to direct the Regional Entity to perform a substantive review (pursuant to section 5.2) to verify continuing justification for the Exception and to issue a Recommendation to NERC.

---

<sup>3</sup> The certification shall consider the effect on the basis for the Exception of changes such as Load growth and topological changes, as well as the effect on system limits and impacts as a result of the contingencies listed in Table 1 of each applicable NERC TPL Reliability Standard.

**11.5** If the Regional Entity's Recommendation following a substantive review pursuant to section 11.2 or 11.4 is that the Exception shall be terminated, NERC shall (i) issue a written notice to the Submitting Entity and Owner, if different, that the Exception is under review for possible termination, (ii) allow the Submitting Entity and/or Owner, as applicable, thirty (30) days from the date of the notice to submit comments or information to NERC to show that the Exception continues to be justified and should remain in effect, and (iii) cause the Recommendation to be reviewed in accordance with section 8.0 of this Appendix. If the conclusion of the review is that the Exception should be terminated, NERC shall send a written notice to the Submitting Entity and Owner, if different, stating that the Exception is terminated and the reasons for the termination. When an Element will be included in the BES as a result of the termination of an Exclusion Exception under this section, an implementation plan detailing the schedule for complying with any Reliability Standards applicable to the newly included Element will be developed in accordance with section 10.1 as if it were an Inclusion Exception.

**11.6** Upon request by the Regional Entity, the Submitting Entity(ies) and/or Owner if different shall provide within thirty (30) days the most recent versions of any Section III Required Information so requested.

Attachment 11:

Registration and Certification:  
First Consideration of Comments

## Consideration of Comments

Rules of Procedure (ROP) Changes to Section 500, and Appendices 2, 5A, 5B, and 5C  
Pertaining to the Organization Registration and Certification Program

NERC thanks all commenters who submitted comments on the proposed changes to the Rules of Procedure. The proposed changes were posted for public comment from March 12, 2020 through April 27, 2020. Six sets of comments were submitted, as shown in the table on the following pages.

Submitted comments are posted on the [Rules of Procedure page](#).

## Table of Contents

List of Commenters .....	3
Comments .....	4
1. NERC Rules of Procedure Section 500 – <i>Organization Registration and Certification</i> .....	4
2. NERC Rules of Procedure Appendix 2 – <i>Definitions Used in the Rules of Procedure</i> .....	6
3. NERC Rules of Procedure Appendix 5A – <i>Organization Registration and Certification Manual</i> .....	7
4. NERC Rules of Procedure Appendix 5B – <i>Statement of Compliance Registry Criteria</i> .....	30
5. NERC Rules of Procedure Appendix 5C – <i>Procedure for Requesting and Receiving Exception from the Application of the Definition of Bulk Electric System</i> .....	33

## List of Commenters

Organization	
1	Cooperatives: Midwest Energy, Inc., Georgia System Operations Corporation (GSOC), ACES, National Rural Electric Cooperative Association (NRECA), Cooperative Energy
2	Edison Electric Institute (EEI)
3	Transmission Access Policy Study Group (TAPS)
4	Ameren (supported EEI comments)
5	Bonneville Power Administration (BPA)
6	American Public Power Association (APPA)

## Comments

### 1. NERC Rules of Procedure Section 500 – *Organization Registration and Certification*

NERC proposes to provide several redlines for consistency with other sections of the ROP as well as lessons learned from implementing the Joint Registration Organization (JRO) and Coordinated Functional Registration (CFR) processes.

#### Section 507 – Joint Registration Organizations

- NERC proposes to require the entity registering as a JRO entity to identify itself as a Lead Entity, and to describe in more detail the responsibilities that are associated with registering as a Lead Entity of a JRO, as well as the responsibilities of all the other entities who are a part of a JRO.
- NERC also proposes to change the term “members” in Section 507 to “parties.” Section 507 currently has the term “members” as those who are a part of a JRO, and this implies that the provision applies only to cooperative or municipal organizations.

#### Section 508 – Coordinated Functional Registrations

- NERC proposes that one of the CFR entities serve as a point of contact and will be identified as a Lead Entity.
- NERC also proposes to specify that each party to the CFR is responsible for registering for the function associated with the CFR, as well as describe in more detail what information is needed for an acceptable CFR agreement and the responsibilities of entities who are parties to a CFR.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Use of the term “Area” <ul style="list-style-type: none"> <li>• Section 501.2.2</li> <li>• Section 502.2.4</li> </ul>	Cooperatives noted that the proposed revisions in this section include the term “Area” and that it is not defined or indicated in full prior to use. Cooperatives also comment on the same in Appendix 5A.	The intent was that “Area” included terms in Appendix 2 of the ROP, specifically, “Balancing Authority Area,” “Reliability Coordinator Area,” and “Transmission Operator Area.” NERC will add a footnote to “Area” to clarify.
Section 502.1.4	EEI notes that the prior version of the ROP referenced “Certification Team membership” but has been deleted in this posting. The commenter suggests that either be referenced in this section or added to the Table of Contents for Appendix 5A.	NERC appreciates the comment. The reference was removed to prevent broken linkage in future updates. Team composition has not been changed. NERC will clarify the Table of Contents for Appendix 5A.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Section 506.3	EEI suggests language be added to this section to ensure that all confidential information that might be contained within the Final Report be removed from the report prior to posting on the NERC website for public viewing.	Section 506.3 pertains to the “Independent Audit of NERC Organization Registration and Organization Certification Program.” As such, the Final Report should not contain Confidential Information. However, such handling is prescribed pursuant to ROP Section 1500.
Section 507	Cooperatives request clarification whether the “point of contact” identified in the JRO (item 1), and the “primary compliance contact” (item 3) should be the same person.	They can be the same person, but they do not need to be. A Footnote will be added to make this point clear.
Section 508	BPA believes this will provide additional clarity to the roles and responsibilities associated with a CFR and supports the specification in the NERC ROP that each party to a CFR needs to be registered for the applicable functions covered in the CFR.	Thank you for your comments.

**2. NERC Rules of Procedure Appendix 2 – Definitions Used in the Rules of Procedure**

Stemming from proposed revisions to Section 507 and 508, NERC notes the following:

- NERC proposes to revise the definition of a “Joint Registration Organization” to state explicitly that one entity will register on behalf of one or more entities for a function type(s).
- NERC also proposes to expand the definition of “Lead Entity” so that it includes Points of Contact for JROs and CFRs under the ROP. Under the current ROP, “Lead Entity” only applies to the entity that submits an Exception Request on behalf of a group of entities submitting an Exception Request jointly. With this change, it will show that JROs and CFRs will have a Lead Entity and will be applied as described in the “Lead Entity” proposals for the JRO and CFR changes described above.

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
JRO Definition	EEI suggests the following modification to the JRO definition: “Joint Registration Organization means <del>where</del> two or more entities (parties) agree in writing upon a division of compliance responsibility where one entity registered in the Compliance Registry for <b>one or more</b> function type(s) for itself and on behalf of one or more <del>of the</del> other parties to such agreement for function type(s) for which such parties would otherwise be required to register.”	NERC has incorporated the suggested revisions.
Lead Entity Definition	BPA’s experience, as the “Lead Entity” in the NERC CFR Portal, makes clear that a Lead Entity and Lead Entity POC is important for the efficient execution and administration of CFRs.	Thank you for your comments.

### 3. **NERC Rules of Procedure Appendix 5A – *Organization Registration and Certification Manual***

NERC proposes to remove the provision stating that the Compliance and Certification Committee (CCC) must approve any revisions made to the Registration and Certification procedures in Appendix 5A before the revisions can be submitted to the NERC Board of Trustees. This change is to make sure that NERC’s ROP revision process is consistent across all its sections and Appendices.

Currently only Appendix 5A requires the CCC approval before the ROP revisions can be submitted to the NERC Board for approval, and this change will make the Appendix 5A revision process consistent with all other sections and Appendices. NERC will still seek input and feedback from the CCC when drafting revisions to its Registration and Certification procedures.

NERC also proposes guidance in Section III, Overview, that in some cases it may be more appropriate to pursue a BES Exception determination related to the BES status of an Element before, or in lieu of, submitting a NERC-led Registration Review Panel request for a Registration determination. NERC would clarify that entities should initiate a proceeding under Appendix 5C where any application for a Registration determination is dependent on a BES Inclusion or Exclusion Exception of Element. The ROP is currently silent as to whether an entity seeking modifications to their compliance obligations would be better served through a request for review via the NERC-led Review Panel for a Registration determination under Appendix 5A or by an Inclusion or Exclusion Exception from the Application of the BES Definition via the process in Appendix 5C.

#### NERC-led Review Panel

- NERC also proposes to revise the NERC-led Review Panel process in Section III.D by renaming the NERC-led Review Panel to the NERC-led Registration Review Panel, streamlining the description of the process and adding more specificity to the timelines and deadlines entities must abide by to avoid confusion.
- NERC also proposes to revise Section III to make it consistent with other revisions being proposed in this package. NERC proposes to specify that an appeal of a Registration determination to the Board of Trustees Compliance Committee, described in the current Section V of Appendix 5A, should occur only after an entity has disputed the Registration determination through the NERC-led Review Panel of Section III.D.

#### NERC Certification Program

- NERC is proposing to add a new Certification Review Process section to Appendix 5A.
- NERC is also proposing to improve the existing Certification Process by enhancing the Purpose and Scope sub-section, describing multi-region registered entities in the Role and Responsibilities sub-section, and adding new sub-sections for Initiation, Planning, Fieldwork, Reporting, and Data Retention. These additions would include: 1) the scope describing the

tools and skills to perform the functions, 2) minimum criteria and processes to certify an entity, 3) the requirements for a Certification team, and 4) review and approval of the proposed Certification Schedule. Further, these revisions would respond to FERC’s directives in the January 2020 Five-Year Order.

- NERC also proposes adding language for the express right to revoke and/or de-certify an entity’s Certification for cause in situations when a certified entity is no longer performing the responsibilities of the function for which they are registered.
- NERC also proposes to create a new conditional Certification tool. The purpose of a conditional Certification is to act as an interim step before full Certification if an entity is on track to be certified but has not yet achieved all the requirements to do so. Upon receiving conditional Certification, an entity will be registered for a Balancing Authority, Reliability Coordinator, or Transmission Operator function.
- NERC also proposes adding language on its authority to determine an entity’s eligibility to submit a Certification application based on NERC’s evaluation of the NERC Glossary of Terms and Reliability Standards. If an applicant fails to meet Registry Criteria or does not perform the duties and responsibilities required under the Reliability Standards for the relevant function, NERC may reject the Certification application before beginning a substantive review of the application.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Capitalized terms (such as “Area”)	Cooperatives recommend ensuring that capitalized terms are either defined in Appendix 2 or indicated in full prior to their first use	See response to similar comment on NERC Rules of Procedure Section 500 above.
Page Numbers & Table of Contents	EEl suggests adding page numbers to this Appendix and adding links from the Table of Contents to the Sections and Subsections.	NERC agrees.
Terms - “Director of Compliance”	Cooperatives note that there is inconsistency in the reference to “Director of Compliance.” The commenters suggest to address this ambiguity by either inserting a current, applicable position title, or, for consistency, revise references to “Director of Compliance” in a similar manner to that used to express other positions, e.g. “Director responsible for Compliance.”	NERC agrees with the comment about consistency. NERC will eliminate reference to a specific job title and add an email address for Registration on the Registration page of the NERC website. (NERC.Registration@nerc.net)

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Section I – Executive Summary: CCC Approval to Post Proposed ROP Revisions	Cooperatives understand the business case for the proposal to remove the CCC needing to approve a proposed redline of Appendix 5A to be consistent with other sections of the ROP, but propose possible replacement language. They propose the following language: <b>“Input and feedback from the North American Electric Reliability Corporation (NERC) Compliance and Certification Committee (CCC) will be sought on proposed revisions to these processes prior to submission of proposed revisions to the NERC Board of Trustees for approval.”</b>	NERC will continue to consult with the CCC, before any future ROP revisions pertaining to Registration and Certification are posted for comment.
Section II - Organization Certification: Certification Review Team	EEI suggests changing Certification/Review Team (CT) to Certification Review Team (CRT) for consistency with Section V.	NERC will make this revision.
Sections I & II: Planning Authority/Planning Coordinator	EEI suggests replacing instances of “Planning Authority (PA)” with “Planning Authority/Planning Coordinator (PA/PC).” They believe this would be less confusing, although most NERC Reliability Standards use the PC designation.	NERC will replace Planning Authority with Planning Authority / Planning Coordinator in the table in Section 1 for consistency with the NCR and Appendix 5B.
Section II - Organization Certification: “Finding” and “Open Issues	Cooperatives note that use of the term “Finding” relative to the outcome of a Certification or Certification Review indicates a defined term; however, no defined term was found in Appendix 2. Cooperatives would like “Finding” replaced with “determination.” Cooperatives is also concerned that the language suggests a predetermination that every Certification requires the identification of “Open Issues.” Cooperative request <b>“(if any)”</b> be added to avoid this.	NERC will revise “Finding” to “finding” and will add “if any” at the end of the Open Issues provisions.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Section II - Organization Certification:	Cooperatives requests consistency when naming functions that require Certification (RC, TOP, and/or BA).	NERC will correct this inconsistency.
Section III – Purpose and Scope: Extension of Timelines	TAPS suggest that the provision allowing NERC to extend registration timelines for good cause be moved from the Purpose and Scope portion of Section III back to its current location in III.A. Believes that revised placement can cause confusion.	NERC will incorporate this revision by moving extension of timelines language back to its current location.
Section III - Overview	Cooperatives requests removing “This is dependent upon facts and circumstances”	NERC believes this sentence is important because it emphasizes that each situation is reviewed on a case-by-case basis, according to the specific facts and circumstances.
Section III - Overview	BPA believes entities should absolutely pursue a BES exception, PRIOR to submitting a NERC-led Panel Review.	Thank you for your comment.
Section III – A. Organization Registration Process (1)(a)	Cooperatives note that current proposed language could lead to confusion on if an entity could request a separate entity be added/removed from Compliance Registry. Propose the following to avoid such confusion “At any time, an entity may recommend in writing, with supporting documentation, to the Regional Entity(ies) that <i>the</i> entity be added to or removed from the Compliance Registry.”	The Cooperatives are correct that an entity can recommend that another entity be added to or removed from the Compliance registry.
Section III – A. Organization Registration Process (3)	Cooperatives note that Section III requires that certification must be effective for registration to occur, while Section V indicates that certification can be revoked, but registration would remain active. Cooperatives believe these provisions are conflicting and irreconcilable. Proposes the following to address:	The proposed language was added in compliance with FERC’s directive at P 87 of the FYPA. NERC will add the following proposed language “ <b>the Certification and Registration processes should be initiated concurrently using the applicable processes set forth in this Appendix.</b> ”

Topic	Summary of Stakeholder Comments	Action/Response and Notes
	<p>“For entities applying for the BA, RC, and TOP functions, <b>the Certification and Registration processes should be initiated concurrently using the applicable processes set forth in this Appendix. Completion of the Certification Process is, however, required before an entity’s Registration becomes effective. The entity should initiate the Certification process per Section IV of this manual</b>”</p>	
<p>Section III – A. Organization Registration Process (7)</p>	<p>Cooperatives states that it is unclear if a Regional Entity can register an applicant for an unverified geographic and electrical area of the Bulk Power System that may be larger or different than the area indicated in the entity’s application for registration. Proposes the following to address “That function registrations <del>meet</del> <b>are consistent with the geographical and electrical areas of the Bulk Power System for which the registering entity will be responsible within the Regional Entity’s boundaries (ROP Section 501(1.4)).</b>”</p>	<p>The proposed revision is intended to reference ROP Section 501 (1.4) for consistency. The sentence will be revised as follows: “That functional registrations <b>are consistent with the requirements contained in ROP Section 501 (1.4).</b>”</p>
<p>Section III- A. Organization Registration Process (7)(a): Section 501.1.4</p>	<p>TAPS would like for NERC to restore currently-effective language referring to the requirements of Section 501(1.4) of the ROP, because the currently-effective language encompasses all of 501(1.4)’s requirements, while the proposed language is confusing and could be read to inaccurately suggest that registrations only need to coincide with the boundaries of the BPS.</p>	<p>The proposed revision is intended to reference ROP Section 501 (1.4) for consistency. The sentence will be revised as follows: “That functional registrations <b>are consistent with the requirements contained in ROP Section 501 (1.4).</b>”</p>
<p>Section III – A. Organization Registration Process (8)(a)</p>	<p>TAPS would like for NERC to clarify which entity is expected to submit the various sorts of requests for Panel determination by relocating the provision of</p>	<p>NERC will incorporate this revision and add that an entity may request a Panel review if they dispute a Regional Entity determination that the entity meets</p>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
	<p>(8)(a) to the beginning of Section A (2)(f), since in the case of materiality requests and entity-specific sub-set lists a Panel determination must be obtained before the registration process dependent on such a determination can proceed. TAPS suggests changing the language of the provision to the following:</p> <p>A(2)(f)(i) <b>“materiality-based registrations of entities that do not meet the bright-line criteria, submitted by the Regional Entity”;</b>            A(2)(f)(ii) <b>“materiality-based requests not to be registered, or for deactivation, despite meeting the bright-line criteria, submitted by the entity whose registration status is at issue”;</b> and            A(2)(f)(iii) <b>“requests for sub-set lists, submitted by the entity seeking the sub-set list.”</b></p>	<p>the Compliance Registry Criteria as provision A(2)(f)(iii) and put requests for sub-set lists as A(2)(f)(iv).</p> <p>Remove other references to UFLS-Only DP as it is no longer applicable to a Panel Review.</p>
Risk-Based Registration Implementation Guidance	Cooperatives are concerned that the ROP would make reference to and rely upon non-endorsed Implementation Guidance, and it is unclear how this Implementation Guidance will be managed in the future.	NERC will add the four “materiality test” criteria back into Appendix 5B. NERC highlights that, as stated originally, these are “a non-exclusive set of factors.” NERC will continue to use these factors when assessing materiality, but may use other factors as necessary depending upon the facts and circumstances of each situation, including those contained in the Implementation Guidance.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Section III – A. Organization Registration Process (12)(a) FN 2	Cooperatives are concerned that the addition of footnote 2 creates an overly broad notification and an unduly burdensome requirement for registered entities, such as requiring registered entities to notify the ERO Enterprise any time a facility or element is retired, energized, or merely changed. Particularly “status change” is viewed as ambiguous, and requested to be clarified as to not be unduly burdensome or have unintended consequences on registered entities.	NERC will clarify the intent of the footnote with the following modification: <b>“This includes changes in ownership of BES Facilities, changes in the applicability of the BES Definition to a Facility, and newly installed BES Facilities.”</b>
Section III – B. Deactivation Process (10)	Cooperatives are concerned with the addition of the phrase “and approve” by NERC and Regions to the Deactivation process. Cooperatives believe that this language adds an extra final step for registered entities requesting Deactivation, and raises the level of scrutiny for the process. Cooperatives note that NERC and the Regions through provisions 1-9 only had to “agree with” Deactivation process, and the phrase “and approve” is inconsistent with those provisions.	NERC will substitute “agree with” for “approve”.
Section III – B. Deactivation & C. Reactivation	TAPS requests that NERC clarify that Deactivation and Reactivation are types of Registration, and are accordingly subject to the procedures in Section III.A, as well as to the additional procedures and deadlines in Sections III.B and III.C. TAPS also requests NERC clarify that Registration for a sub-set list is a type of Registration and thus subject to the procedures in Section III.A;	NERC will add this clarification in Section III(A).  Deactivation, Reactivation, and sub-set lists are not types of Registration, but are types of registration requests that entities can submit for review and approval.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Section III – B. Deactivation & C. Reactivation	TAPS suggests deleting from Sections III.B and III.C text that is duplicative of Section III.A, to avoid the unintended implication that text from III.A that is <i>not</i> repeated in III.B or III.C does not apply to those types of Registration	NERC will incorporate these revisions.
Section III – D. NERC-led Registration Review Panel: Burden of Proof	TAPS is concerned with NERC’s revising the burden of proof language to “The burden of proof is on the entity that makes the request for a Panel review” TAPS is specifically concerned with the removal of burden of proof being on NERC and the Regional Entities to demonstrate that an entity meets the Registry Criteria for registration. TAPS is also concerned with the removal of the burden of proof being on NERC and the Regional Entities to demonstrate that an entity does not meet the criteria established by NERC for a sub-set of applicable Reliability Standards for similarly situated entities.	NERC will clarify that with respect to review of the application of criteria contained in the Statement of Compliance Registry Criteria Sections I through IV, and established sub-set list criteria, the relevant Regional Entity maintains the burden of proof to demonstrate that an entity meets the Registry Criteria for registration.
Section III – A(13): UFLS-Only DP deadline for Panel review	TAPS would like for NERC to delete the deadline for seeking Panel review of a denial of UFLS-Only DP treatment, for consistency with the remainder of Section III, which in NERC’s proposal no longer includes any other deadlines for seeking Panel review.	NERC agrees with TAPS, and with further review has determined that this section is no longer needed because it addressed implementation of changes to DP registrations (from DP to UFLS-Only DP) due to the Risk Based Registration initiative (“RBR”). This transition is complete (please refer to the current NCR on the NERC website which includes the dates when these changes occurred). UFLS-Only criteria are now firmly established as part of the Registration Criteria in

Topic	Summary of Stakeholder Comments	Action/Response and Notes
		Appendix 5B, Section III(b), and requests for UFLS-Only DP registration changes should be treated the same as any other Registration change request.
Section III – D. NERC-led Registration Review Panel	TAPS suggests specifying that a Panel request can be submitted by a Regional Entity	NERC will incorporate this revision in Section III A(2)(f)(i).
Section III – D. NERC-led Registration Review Panel: Terms – “Entity,” “Applicant,” and “Party”	Cooperatives recommend that NERC review the terms “party,” “entity,” “stakeholder,” and “applicant,” and their uses and clarify: (1) the use of these terms and (2) their specific rights, as they sometimes are used interchangeably and can cause confusion. Where applicable, the Cooperatives recommend the consistent use of the term “applicant” in the place of “entity,” where that is the intent.	NERC will replace “entity” with “applicant” where that is the intent.
Section III – D. NERC-led Registration Review Panel (1)	Cooperatives are concerned with “and” creating an unintended higher bar for Panel establishment. Propose adding “and/or” to the following provision: “2) disputes regarding the application of Sections I through IV of the Registration Criteria resulting in Registration of an entity, and/or 3) requests for a sub-set list of applicable Reliability Standards (which may specify the Requirements/sub-Requirements).”	NERC will incorporate this revision and change “and” to “and/or” as recommended
Section III – D. NERC-led Registration Review Panel (2)(b)	TAPS suggests that NERC add language to account for the fact that Panel reviews may involve the threshold registration criteria or UFLS-Only DP status.	NERC will restore the original language of Section III D.(1) and add language to Section III (A)(2)(f) to make clear that the Panel reviews may involve threshold registration criteria.
Section III – D. NERC-led Registration Review Panel	TAPS suggests NERC revise this provision to include what should occur when a Regional Entity requests a Panel, and requests that the Regional Entity not be	NERC will clarify that either the Regional Entity or the entity whose registration status is at issue may provide an assessment, as appropriate.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
(5): Regional Entity request a Panel review	charged with providing a written assessment of its own Panel request.	
Section III – D. NERC-led Registration Review Panel (5)(b): Notification and time for applicant’s response	Cooperatives note it is unclear if “notification” in the provision refers to notification of a valid request or notification that the request was received. Request clarification on this point. Cooperatives are also concerned with the amount of time an applicant is given after notification is provided and requests that the “10 days” to respond be changed to “20 days”. Proposed changes “The entity can provide a written response of an assessment(s) received to all of the parties within <b>20</b> days of the <del>notification date that the entity was provided with the assessments required by this provision.</del> ”	NERC will clarify that “notification” is notice of NERC’s acceptance of a valid Panel request. Based on experience, 10 days has been sufficient time for an entity to respond to assessments. In the event that an entity requires more time, it can submit a request to NERC to extend the timeline for good cause.
Section III – D. NERC-led Registration Review Panel (6): Evaluation of Documents	Cooperatives is concerned that language used for standard of proof can confuse applicants. Proposes the following “ <b>The Panel will determine, using the information presented, whether the requesting entity has provided adequate evidence for the panel to determine that the weight of that evidence either supports or does not support granting the entity’s request.</b> ”	NERC will keep the “Standard of Proof” provision, but will also change the provision above it to the following: “The Panel will evaluate all documentation, assessments, and responses submitted to <b>determine whether the weight of the evidence either supports or does not support granting the applicant’s request.</b> ”
Section III – D. NERC-led Registration Review Panel 7(a): Notification of registration status pending review	TAPS requests NERC restore language from currently-effective version regarding notification of entity’s registration status pending review because NERC is keeping the parallel language for appeals in Section VI. TAPS believes that this clarification of status is important in both Panel reviews and appeals.	NERC will add the following language to address Registered Entity compliance responsibility during Panel review: “ <b>Unless informed otherwise in NERC’s notice of a valid request, the entity whose status is at issue will have their current responsibilities for compliance</b> ”

Topic	Summary of Stakeholder Comments	Action/Response and Notes
		<b>with approved Reliability Standards in effect until the issue at hand has a final determination.”</b>
Section III – D. NERC-led Registration Review Panel (7): [Provision 8 in Clean]	TAPS suggests deleting this provision and restoring the currently effective language of D(1) as it more clearly indicates that all Panel reviews, whether initiated by the Regional Entity or the registered/candidate entity, are subject to the procedures in Subsection D.	NERC will incorporate this revision and restore the currently effective language from D(1).
Section III – D. NERC-led Registration Review Panel (8):	BPA notes section appears to be blank in redline document and suggests this numbered section be removed with subsequent sections renumbered.	Thank you for your comment.
Section III – D. NERC-led Registration Review Panel (9):	TAPS requests that NERC restore currently-effective text, with an added reference to “any applicable guidance,” rather than referring to the Risk-Based Registration Implementation Guidance for the Materiality test. This is for cases involving application of the threshold criteria or UFLS-Only DPs, where the Panel should be focusing on those criteria, not materiality in the abstract.	NERC will remove the reference to RBR Implementation Guidance.
Section III – D. NERC-led Registration Review Panel (9): Review of individual and aggregate system-wide risks	Cooperatives notes that Provision 9 is undefined as to how or when the data for this review is provided, where the data is sourced from, what criteria are utilized to define and prioritize risks, whether the applicant has an opportunity to review or respond to this data and/or review, or how the review fits into	NERC will add detail to Appendix 5A, Section III.D.(2)(e) which will provide greater clarity while still providing necessary flexibility on how and when data is reviewed during a Panel request.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
	the overall evaluation and decision-making. Requests clarification of the provision.	
Section III – D. NERC-led Registration Review Panel (9): “Good-cause” extension	TAPS believes that NERC has not justified changing the standard applicable to extensions in Panel reviews, and requests NERC restore currently-effective “good cause” standard to extensions of Panel review deadlines.	NERC will incorporate the revision.
Section III – D. NERC-led Registration Review Panel (9): Appeals of Extension of Timelines	Cooperatives understand the intent of NERC to allow extension of certain timelines but suggested that a registered entity may appeal an extension of a given timeline as stipulated in the ROP if they do not agree with the extension.	Adding an appeal for extension of timelines would cause undue delay. To balance this concern, extensions must be for good cause.
Section III – D. NERC-led Registration Review Panel (11): Posting Panel Decision	Cooperatives is concerned with posting a panel decision if the decision is being appealed.	NERC will add that decisions will not be posted until the 21-day appeal window closes, and the appeal window begins when parties are notified of the Panel decision.
Section IV – Organization Certification Process, Initiation (1)(c): Application terminology	Cooperatives notes that “application” and “request” are both used for the same submission of an entity. Proposes changing “request” to “application” for consistency and to avoid confusion. “The Regional Entity leading the review of the application shall review the application, and respond and acknowledge receipt or requests for more information within 30 days of its receipt of the <del>request</del> <b>application.</b> ”	NERC agrees. Section IV will be revised to use the term “application” for consistency and to avoid confusion.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
<p>Section IV – Organization Certification Process, Initiation (1)(c)(ii): Rejecting Certification Application</p>	<p>Cooperatives are concerned with the Regional Entity’s ability to unilaterally reject an application for certification without having to reach out to the entity. Also, the fact that the entity does not have a right to appeal the rejection adds to concerns of due process. Cooperatives acknowledge that this authority was a part of FERC’s Directives in their Five-Year Assessment Order, but believe the proposed revision infringes on an entity’s due process. Cooperatives suggest deletion or revising the provision to:  <b>“As part of such review, the Regional Entity may engage with the applicant and/or request additional information from the applicant regarding the Registry Criteria and/or the duties and responsibilities required under relevant Reliability Standards for the applicable Area.”</b></p>	<p>NERC will keep the references to its ability to reject a certification application per FYPA, Order, P 86. However, NERC will add the opportunity to cure an application and reflect the applicant’s opportunity to appeal the rejection.</p>
<p>Section IV – Organization Certification Process, Initiation (2)(a)(b)(c): BA and TOP Certification differences in CFR</p>	<p>Cooperatives believe that there are differences in how a BA and TOP would be certified if they were to be a part of a CFR. Cooperatives do not believe this difference is justified and request that the certification of BAs and TOPs be consistent for Lead Entities and “capability verification” or “readiness assessment” for other parties. Also the Cooperatives note that it is unclear how a currently certified registered entity enters into a new JRO or CFR. Cooperatives propose the following revisions to resolve the issues addressed:   <b>“b. The Lead Entity that has taken responsibility for Reliability Standards and/or Requirements/sub-</b></p>	<p>This section is intended to coordinate with CFR and JRO entity registrations to ensure capacity to meet the reliability obligations of their registration. There currently are no Coordinated Functional Registrations or Joint Registration Organizations associated with the RC function.</p> <p>In the case of JRO registration, the Lead Entity is placed on the NERC Compliance Registry. Thus, it is the Lead Entity that NERC certifies to operate the Area(s). Another JRO party may not be on the NCR, but any processes used to support compliance that are relied upon by the Lead Entity to meet compliance obligations, where appropriate, should be subject to</p>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
	<p>Requirements applicable to the function of TOP by virtue of being a member of a JRO, <b>CFR, or other agreement</b> shall be the entity NERC certifies to operate the TOP Area(s).”</p> <p>“c. The Lead Entity that has taken responsibility for Reliability Standards and/or Requirements/sub-Requirements applicable to the function of RC by virtue of being a member of a JRO, CFR, or other agreement shall be the entity NERC certifies to operate the RC Area(s).”</p> <p>“d. <b>For all other entities that are parties to the JRO, CFR, or other agreement and that performs task pursuant thereto, the Regional Entity(ies) shall identify and notify such entities of the need for an evaluation and determination of the applicability of a “capability verification” or “readiness evaluation” for those tasks. If no “capability verification” or “readiness evaluation” is necessary, the other entities shall be de-certified and/or deregistered, as applicable.</b>”</p> <p>“e. For an entity that is not required to be certified, but performs tasks associated with BA, RC, or TOP in accordance with 2(a, b, c, or d), the Regional Entity(ies) shall make a determination as to whether such entity shall be required to undergo a “capability verification” or “readiness evaluation” and shall notify such entity of their determination. <b>Upon completion of the “capability verification” or</b></p>	<p>capability verification as part of the Lead Entity’s certification.</p> <p>The proposed changes were included to reflect the difference in how Certification of BAs and TOPs should work when entities are a part of a CFR. However, after internal discussion we have decided to have a consistent Certification approach for RCs, TOPs, and BAs.</p> <p>NERC will modify these provisions to the following:</p> <p><b>“The following subsections detail which entities are required to be certified if they are a party to a JRO, CFR, or other delegation agreement.</b></p> <ul style="list-style-type: none"> <li>a. <b>Each entity that has taken responsibility for Reliability Standards and/or Requirements/sub-Requirements applicable to the certifiable functions by virtue of being a member of a JRO, CFR, or other agreement shall be the entity NERC certifies to operate their portion of the RC, TOP, or BA Area(s).</b></li> <li>b. <b>For all other entities that perform tasks related to the RC, TOP, or BA functions within a JRO or other agreement, the Regional Entity(ies) shall, based on a review of the JRO or other agreement, identify and notify such entities of the need for an evaluation and determination of the applicability of a</b></li> </ul>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
	<p><b>“readiness evaluation”, such entity shall remain registered, but shall not be certified for the performance of the applicable function. If the entity disagrees with the determination of need for a “capability verification” or “readiness evaluation,” it shall have a right to appeal the determination in accordance with the NERC Rules of Procedure and Section VII of this manual.”</b></p>	<p><b>“capability verification” or “readiness evaluation” for those tasks.”</b></p>
<p>Section IV – Organization Certification Process, Initiation (2)(e): Terms of “capability verification” and “readiness evaluation”</p>	<p>Cooperatives propose that “capability verification” and “readiness evaluation” be defined and include a description of process, parameters, and procedural mechanisms to which these activities would be subject. Also, Cooperatives ask for clarifications if such an activity leads to an adverse result, whether there is a right of appeal, or a conditional acceptance of the entity.</p>	<p>NERC will clarify what is meant by the “capability verification” and “readiness evaluation” by adding the following as a footnote.</p> <p><b>“A “capability verification” or “readiness evaluation” is a review of the duties and tasks of the Registered Entity that it has delegated to another entity through an agreement.”</b></p>
<p>Section IV – Organization Certification Process, Initiation (2)(f): Certification without registered entity agreement</p>	<p>Cooperatives are concerned that this provision could be construed as allowing NERC or a Regional Entity to initiate a certification based on communication between an entity and NERC or a Regional Entity in which the entity does not specifically request or agree to such certification. Cooperative proposes adding <b>“With the agreement of the Registered Entity,”</b> to the beginning of the provision.</p>	<p>NERC will incorporate this revision.</p>
<p>Section IV – Organization Certification Process; Initiation (2)(a) – (f): Location of subparts</p>	<p>EEL suggests that subparts a. through f. may be better placed in a new subsection 4 because they read like separate steps and not sub-activities for subsection 2.</p>	<p>NERC will move these subparts to a Subsection 4.</p>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Section IV – Organization Certification Process; Initiation (2)(f)	EEI asks NERC to clarify if the initiator of the certification process is responsible for the burden of proof.	NERC must be able to initiate a certification process even if there is not an application that has been submitted by the entity. However, the entity that is to be certified must show it is capable of fulfilling the duties of the function during the certification process
Section IV – Organization Certification Process; Initiation (3): Acceptance of Certification application	EEI notes that Section 1.c. creates a process through which the Regional Entity decides if the application is complete and (under subsection 2) accepts the application. However, within subsection 3, the CTL and NERC make a separate determination of whether the application is to be accepted. This seems to create some confusion within the process. Specifically, if the Regional Entity accepts the application, but the CTL and NERC do not accept the application, do the Regional Entity or the applicant have the right to appeal the CTL's and NERC's failure to accept the application? Please add more clarity to this process.	NERC will clarify that an acceptance of the application occurs at step 3 with CTL and NERC, and step 2 only involves the Region selecting a Team Lead after the Regional Entity receives the application.
Section IV – Organization Certification Process; Planning (1)(d): Observers to Certification Process	EEI is concerned with allowing the Certification Process to be open to the public, as provided within this section. If observers are allowed, then there should be a mechanism to put a protective order in place to protect the applicant's confidential or highly sensitive information from disclosure. We strongly caution against allowing the public to have access to confidential or highly sensitive information.	This provision is not changed from previous version. NERC will continue to protect Confidential Information in accordance with its obligations under Section 1500 of the ROP (including requiring execution of a non-disclosure agreement where appropriate). NERC will add that Confidential Information will be handled in accordance with Section 1500 of the ROP
Section IV – Organization Certification Process;	EEI asks that the process be modified in a manner that ensures that if the CT uses other information as a basis for making a decision beyond what has been	Entity information used in the determination is maintained by the Regional Entity, and will be available to applicant and be appropriately referenced

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Planning (3): Data used for Certification determination	provided directly by the affected entity submitting the application, then that entity should be notified with full disclosure of the additional information being reviewed by the CT.	in the decision. Entity information available through other ERO programs includes but is not limited to IRA summary reports, CMEP audit reports, Events Analysis information, and publicly available information.
Section IV – Organization Certification Process; Planning (5): Duplication typo	EEI notes that this process step seems to duplicate Step 3 and suggests consolidating steps 3 and 5.	NERC agrees and will delete Step 3.
Section IV – Organization Certification Process, Planning (5) & Section V - Certification Review Process, Planning (1)(a): Data used for Certification determination	Cooperatives state that it is unclear what data the Team Leads would be able to access or review, how he/she would be provided with such data, how consistency in the data requested would be driven, what the review process for such data requests would entail. Cooperatives are concerned with that the Team Leads would have overly broad authority to access data. Cooperative request 1) place clear boundaries on the data that may be accessed and its use; (2) to provide a clear, transparent process by which requests for registered entity data will be submitted, reviewed, and approved; and (3) to provide assurances regarding how such data will be accessed and/or provided.	Entity information used in the determination is maintained by the Regional Entity, and will be available to applicant and be appropriately referenced in the decision. Entity information available through other ERO programs includes but is not limited to IRA summary reports, CMEP audit reports, Events Analysis information, and publicly available information.
Section IV – Organization Certification Process, Planning (6): Consistency	Cooperatives suggest capitalizing use of “registered entity” in item (a) for consistency.	As this is a defined term in the Rules of Procedure, Appendix 2, NERC has made this change to capitalize “registered entity” in all instances.
Section IV – Organization Certification Process;	EEI disagrees with this step of the reporting process. CT minor opinions should be included in the final report and the Regional Entity’s recommendations to	Thank you for your comment. The minority opinion will be in writing and will be part of the “record”

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Reporting (6): Minor opinions in final report	ensure NERC has access to all conclusions and relevant factors.	documenting the basis upon which NERC’s certification decision was made.
Section IV – Organization Certification Process, Reporting (7): Confidential Information	Cooperatives suggest NERC consider revising the provision to recognize that confidential data shall be redacted from reports prior to posting them publicly.	The Final Report does not contain information deemed confidential. All confidential information is handled pursuant to ROP Section 1500.
Section IV – Organization Certification Process; Reporting (10): “Shadow Operations”	EEI asks that the term "shadow operations" as used within this reporting step be defined.	Thank you for your comment. NERC will replace “shadow operations” with <b>“Trial operations, conducted in parallel with an incumbent Balancing Authority, Transmission Operator, or Reliability Coordinator who retains responsibility, shall be coordinated to ensure operational authority for an Area is clear at all times.”</b>
Section IV – Organization Certification Process, Organization Certification Process & Section V - Certification Review Process, Organization Certification Review Process: Fieldwork sections	Cooperatives understand that there is a minimum level of data that must be evaluated and reviewed, prescribing whether review of documents must occur on-site versus off-site reduces the overall flexibility of these teams to perform the review within their allotted time and to work with the registered entity to ensure that the allotted time is used effectively and efficiently. Cooperatives respectfully suggest that NERC reduce the overall prescriptiveness of the document-related provisions to allow certification teams and registered entities flexibility. Also, Cooperatives note that “data” is stated twice.	<ul style="list-style-type: none"> <li>• The requirement to conduct at least one (1) on-site is unchanged from previous version, although “Facilities” is clarified to be the “location where operational functionality is performed.”</li> <li>• The intent of these revisions is in line with Cooperative’s comments – to the extent that the entity can make information available prior to on-site, the CT should review as part of “Fieldwork.” On-site should be reserved for those activities that are most appropriate. When a document review occurs after the on-site, it should be expected to be tracked as an “Open Issue” until the documents requested for the review are provided. Once the</li> </ul>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
		<p>requested documents are reviewed, the CT will close the Open Issue.</p> <ul style="list-style-type: none"> <li>NERC agrees to remove duplicate “data” in Fieldwork 5(b)(i)</li> </ul>
Section IV – Organization Certification Process, Reporting (11)(a)(ii): Typo	Cooperatives note “condition” needs to be “conditional”.	NERC has made this change.
Section IV – Organization Certification Process & Section V - Certification Review Process: Data Retention	Cooperatives request that an explanation be provided on how restricted data will be stored over the six (6) year retention period and suggest that certain information is redacted at a minimum.	Each Regional Entity is responsible for safeguarding entity information pursuant to ROP Section 502.2.2 and Section 1500.
Section IV – Organization Certification Process; Data Retention (3): Confidential Information	EEI asks that language be added to this step to ensure that all confidential information that might be contained within the Certification Final Report be removed from the report prior to posting on the NERC website.	The Final Report does not contain information deemed confidential. All Confidential Information is handled pursuant to ROP Section 1500.
Section V – Certification Review Process: Conditional Certification Concern	EEI notes that within Section IV (Organization Certification Process), new language has been added, which allows NERC to issue conditional Certification to a functional entity so that it can operate as a TOP, BA, or RC prior to being fully certified. (See page 29, Reporting, 11.a) However, NERC did not develop a similar provision for entities engaged in making material changes within Section IV. EEI asks NERC to consider the benefits of adding similar language to Section V - Certification Review Process that ensures that entities that are implementing material changes (e.g., changes to Energy Management Systems (EMS),	Conditional certification can be applied to already certified and operational entities as well as new entities seeking certification. Certification review is how NERC would identify conditions that need to be satisfied. Conditional certification is a status and not a process in itself that an entity can apply for. NERC will issue this status when the relevant facts and circumstances arise.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
	<p>System Control Center relocations, or system footprint changes) are afforded a similar allowance through the issuance of conditional Certifications. Providing NERC with the ability to issue conditional Certifications under the Section V - Certification Review Process, would represent a substantially lower risk than conditional Certifications issued to a new functional entity under Section IV, and would ensure that NERC has the flexibility to address certification reviews of new tools or locational changes, in a manner that balances system reliability and efficient timing of equipment upgrades/migration.</p>	
<p>Section V - Certification Review Process, Purpose and Scope: Consistency</p>	<p>The Cooperatives believe that the phrase “will continue to support reliable operations of the BPS after initiating a material change” is vague, ambiguous, and overly broad. Cooperatives recommends using the language closer to Certification definition language in Appendix 2 for consistency and reduce the chance for ambiguity and confusion. Proposes the following changes:  “Certification review provides reasonable assurance an already certified and operational Registered Entity will continue <del>to support reliable operations of the BPS</del> <b>to meet the criteria for certification by maintaining the capability to perform the responsibilities for tasks associated with its function type</b> after initiating a material change <b>that will directly or indirectly impact or modify its current capabilities necessary for the performance of its function type.</b>”</p>	<p>The intent of the revision is to provide clarity by narrowly setting the scope of the review to seek assurance that the entity has addressed personnel training and qualifications, facilities, and equipment needed to perform and maintain the reliability functions in accordance with the applicable Requirements of Reliability Standards rather than invoking a vague, ambiguous, and overly broad <i>de novo</i> “re-certification” of the entity as a result of the changed condition.</p>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Section V - Certification Review Process, Overview: Deactivation	<p>Cooperatives recommend that following provision of criteria for deactivation either be deleted or relocated to the proper section, Section III - Organization Registration Process, B. Deactivation Process.</p> <p>“Entities seeking Deactivation of BA, TOP or RC registrations shall demonstrate to the satisfaction of its Regional Entity and NERC through the Certification Review process that the duties and tasks identified in and required by the Reliability Standards either have properly been transferred to another Certified and Registered Entity or the Area has ceased to operate.”</p>	<p>Per FYPA Order P87, the intent of this revision is to provide a mechanism for the transition of responsibility for a TOP, BA, or RC Area in a way that satisfies ROP Section 501.1.4. This is so that when “Deactivation” of an incumbent Registered Entity occurs, there is another entity lined up to take responsibility for the Standards applicable to the function that the Registered Entity is “deactivating” from.</p> <p>NERC will add this provision to Section III B. Deactivation Process as provision (4), but will also leave it in the Certification Review Process.</p>
Section V - Certification Review Process, Overview (b): Relocation of Control Center	<p>Cooperatives are concerned with the language of Relocation of Control Center section and believe it suggests a determination of impact for any of those items listed without ever mentioning the impact to relocation of the control center. Proposes changing (b) (ii) to the following:</p> <p>“The impact of the relocation <b>of the control center</b> on the entity’s ability to perform the functions for which it is registered...”</p>	<p>NERC has incorporated this revision.</p>
Section V - Certification Review Process, Overview (c): Modification of EMS	<p>Cooperatives is concerned that the language added to Overview provision (c) is overly broad and could be construed to required notification or application for recertification for routine server refresh activities. Cooperatives believe the criteria for modification of</p>	<p>The revisions are intended to recognize the nexus between BES Cyber Systems that impact the reliable operation of the BES and an entity’s capacity to meet the reliability obligations of its registration in a way more specific than the original language.</p>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
	<p>EMS should focus on focused on the impact of those changes to the overall performance of the certified entity’s capabilities in real-time. Proposes the following changes to accomplish this criteria:  “Modification of the Energy Management System (EMS) system which is expected to <del>materially affect CIP security perimeters or the situational awareness tools, functionality, or machine interfaces of the System Operator</del> directly <b>affect situational awareness tools, functionality, or machine interfaces of the System Operator such that modifications to operating procedures, controls, user interfaces, operator training, and other real-time, operating processes are necessitated.</b>”</p>	<p>NERC will change the provision to the following proposed language.</p> <p>“Modification of the Energy Management System (EMS) which is expected to materially affect <b>CIP security perimeters or the System Operator’s: 1) situational awareness tools, 2) functionality, or 3) machine interfaces.</b>”</p>
<p>Section V - Certification Review Process, Overall: Revocation of Certification</p>	<p>Cooperatives is concerned with NERC’s ability to unilaterally revoke a registered entity’s certification and believe it impedes on a registered entity’s due process rights. Cooperatives would like for NERC to identify and provide a process, parameters, criteria, and procedural mechanisms to which these activities would be subject. Also, describe how notice would be provided, and allow for the registered entity to appeal NERC’s decisions to revoke certification. Cooperatives would also like for NERC to stipulate that decertification results in immediate deactivation/de-registration of the applicable function(s).</p>	<p>The intent of the revision is to provide for situations where Certification to operate an Area is no longer warranted for any one of a myriad of reasons.</p> <p>Performance issues regarding compliance with Reliability Standards are addressed through the CMEP. Entity preferences, contractual agreements and obligations, and existing operating agreements and relationships should all be considered by the entity when deciding to maintain their capability to operate an Area or cease to do so. An entity may appeal the NERC decision using Section VI — NERC Organization Certification Appeals Process.</p> <p>Deactivation/de-registration usually results in immediate decertification. However, in some cases it</p>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
		<p>becomes necessary to separate the two actions. (Deactivation may be delayed where ongoing open enforcement actions require the entity to remain on the NCR).</p>
<p>Section V - Certification Review Progress: Typo and onsite vs offsite review</p>	<p>Cooperatives note that the section title has a typo where “Progress” should be “Process”. Also, Cooperatives request that criteria are established for deciding if an onsite or offsite review is utilized.</p>	<p>NERC has corrected the typo.</p>
<p>Flowcharts</p>	<p>TAPS requests that the registration flowcharts not be removed and to add to the existing flowcharts to provide clarity regarding the various registration and Panel review processes.</p>	<p>The flowcharts were removed to avoid confusion as the language within the Appendix govern the procedures, and the flowcharts were not aligned with the language of the Appendix. Also, there are no other flowcharts within the ROP or other Appendices. NERC will remove the other flowcharts of the Appendix to ensure consistency.</p>

**4. NERC Rules of Procedure Appendix 5B – *Statement of Compliance Registry Criteria***

NERC proposes to remove the “Notes” section in Appendix 5B:

- Note 1 mentions that the Regional Entity may propose Registration for an entity that does not meet the criteria described in Appendix B if it believes the entity has a material impact on BES reliability, or vice versa, which would then be approved by NERC; however, as a result of the Risk-Based Registration changes, the NERC-led Review Panel process in Appendix A was established to accept, review, and approve Registration requests that are based on materiality, including those proposed by a Regional Entity.
- Note 2 mentions that an entity that does not meet Registration criteria may request that it be registered anyway. This note is not necessary because this situation is very unlikely, as well as redundant since it is included in the Organization Registration Process in Appendix 5A, Section III.A, whereby any entity may submit in writing, with supporting documentation, a request for Registration with their Regional Entity.
- Note 3 mentions that an entity may challenge its Registration, and that NERC or the Regional Entity will provide such an entity with the timelines and procedures for a challenge. Note 3 is redundant and unnecessary because the procedures for challenging a Registration determination have already been established in Appendix 5A, Section III.D, NERC-led Registration Review Panel Process, and Section V, NERC Organization Registration Appeals Process.
- Note 4 mentions that an entity that otherwise would not qualify may nonetheless be registered because it could be part of a class of entities that in aggregate have a material impact on BES reliability. Note 4 is redundant and unnecessary because aggregate impacts are a part of the materiality assessment in the Risk-Based Registration Implementation Guidance document and are also already incorporated into the NERC-led Registration Review Panel Process in Appendix 5A.
- Note 5 mentions that NERC may limit the compliance obligations of a registered entity for a particular function to a subset list of Reliability Standards. Note 5 is redundant and unnecessary because this concept is already incorporated into the NERC-led Registration Review Panel Process in Appendix 5A.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Table of Contents	EEl suggests that a Table of Contents be added.	NERC will incorporate this revision.
Section I	The colon should be removed after the Section I statement since the definition of BES has been removed from the document.	NERC will incorporate this revision.

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Section III(b) – UFLS-Only DP	<p>EEI provided three comments pertaining to this area: 1) modify the existing III.b.1 and III.b.2 to more clearly and logically describe a UFLS-Only DP; 2) remove the version numbers in the applicable Reliability Standards and the Regional Reliability Standard examples; and 3) delete Footnote 8 for similar reasons noting that effective dates for Reliability Standards are contained in those documents.</p>	<p>NERC will remove version numbers from the applicable Reliability Standards, the Regional Reliability Standards, and Footnote 8.</p>
Removal of “materiality factors” from the Notes	<p>TAPS is concerned that the removal of the non-exclusive “materiality factors” from the ROP, and using the more complete list of “materiality factors” described in the Risk-Based Registration Implementation Guidance would undermine transparency and NERC accountability. TAPS believes that NERC can change the Implementation Guidance without Stakeholder or FERC approval.</p> <p>Because of this concern, TAPS recommends restoring references to Appendix 5B’s materiality test and notes throughout the ROP.</p>	<p>NERC will reincorporate the notes regarding the materiality test as reflected in the updated posting. As presently highlighted, however, this represents a non-exclusive set of factors.</p>
Removal of Notes 1 & 5	<p>TAPS believes removing Notes 1 and 5 is unreasonable because the Statement of Compliance Registry Criteria should describe all of the bases on which an entity may be registered or its registration altered: based on the bright-line criteria (including those for UFLS-Only DPs), via a materiality determination, or through limitation of its compliance responsibilities to a sub-set list of standards.</p>	<p>NERC will reinstate Note 1 and Note 5.</p>

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Intent of the threshold criteria and materiality	<p>TAPS believes that Appendix 5B should acknowledge the intent that the function of the bright-line criteria is to provide a “rebuttable presumption” of materiality.</p> <p>TAPS disagrees with the deletion of the following bold language: “Organizations will be responsible to register and to comply with approved Reliability Standards to the extent that they are owners, operators, and users of the Bulk Power System (BPS), perform a function listed in the functional types identified in Section II of this document, and are material to the Reliable Operation of the interconnected BPS <b><i>as defined by the criteria and notes set forth in this document.</i></b>”</p>	NERC will incorporate this revision.
Materiality of BPS vs. BES	TAPS believes that the materiality of an entity being determined should be of BES and not of BPS.	NERC will have the materiality determination of an entity be of BES.



## 6. Additional Comments and Suggestions

Topic	Summary of Stakeholder Comments	Action/Response and Notes
General	The Cooperatives support NERC's efforts to ensure that the ROP are maintained.	
General	EEl comments that additional explanation of changes is needed.	
General	APPA fully endorses the TAPS comments that enumerate public power's concerns about NERC's proposed changes to the ROP and believes that withdrawing the proposal and convening a more fulsome review of the proposal is the appropriate course of action.	
General	Ameren agrees with and supports EEl's comments to NERC's Proposed Revisions to the NERC Rules of Procedure (Section 500 and Appendices 2, 5A, 5B, and 5C).	
General	BPA supports the proposed revisions.	

Attachment 12:

Registration and Certification:  
Second Consideration of Comments

## Second Consideration of Comments

Rules of Procedure (ROP) Changes to Section 500, and Appendices 2, 5A, 5B, and 5C  
Pertaining to the Organization Registration and Certification Program

NERC thanks the commenters who submitted comments on the proposed changes to the Rules of Procedure. The proposed changes were posted for the second public comment period from June 10, 2020 through July 13, 2020. Only one set of comments were submitted, as shown in the table on the following page. The comments submitted only addressed the proposed revisions of Appendices 5A and 5B.

Submitted comments are posted on the [Rules of Procedure page](#).

## Table of Contents

List of Commenters .....	3
Comments .....	4
1. NERC Rules of Procedure Appendix 5A – <i>Organization Registration and Certification Manual</i> .....	4
2. NERC Rules of Procedure Appendix 5B – <i>Statement of Compliance Registry Criteria</i> .....	8

## List of Commenters

Organization	
1	Transmission Access Policy Study Group (TAPS)

## Comments

### 1. **NERC Rules of Procedure Appendix 5A – *Organization Registration and Certification Manual***

NERC proposes to remove the provision stating that Compliance and Certification Committee (CCC) must approve any revisions made to the Registration and Certification procedures in Appendix 5A before the revisions can be submitted to the NERC Board of Trustees. This change is to make sure that NERC’s ROP revision process is consistent across all its sections and Appendices. Currently only Appendix 5A requires the CCC approval before the ROP revisions can be submitted to the NERC Board for approval, and this change will make Appendix 5A revision process consistent with all other sections and Appendices. NERC will still seek input and feedback from the CCC when drafting revisions to its Registration and Certification procedures.

NERC also proposes guidance in Section III, Overview, that in some cases it may be more appropriate to pursue a BES Exception determination related to the BES status of an Element before, or in lieu of, submitting a NERC-led Registration Review Panel request for a Registration determination. NERC would clarify that entities should initiate a proceeding under Appendix 5C where any application for a Registration determination is dependent on a BES Inclusion or Exclusion Exception of Element. The ROP is currently silent as to whether an entity seeking modifications to their compliance obligations would be better served through a request for review via the NERC-led Review Panel for a Registration determination under Appendix 5A or by an Inclusion or Exclusion Exception from the Application of the BES Definition via the process in Appendix 5C.

#### NERC-led Review Panel

- NERC also proposes to revise the NERC-led Review Panel process in Section III.D by renaming the NERC-led Review Panel to the NERC-led Registration Review Panel, streamlining the language used to describe how the process would be conducted and adding more specificity to the timelines and deadlines entities must abide by to avoid confusion.
- NERC also proposes to revise Section III to make it consistent with other revisions being proposed in this package. NERC proposes to specify that an appeal of a Registration determination to the Board of Trustees Compliance Committee, described in the current Section V of Appendix 5A, should occur only after an entity has disputed the Registration determination through the NERC-led Review Panel of Section III.D.

#### NERC Certification Program

- NERC is proposing to add a new Certification Review Process section to Appendix 5A.

- NERC is also proposing to improve to the existing Certification Process by enhancing the Purpose and Scope sub-section, describing multi-region registered entities in the Role and Responsibilities sub-section, and adding new sub-sections for Initiation, Planning, Fieldwork, Reporting, and Data Retention. These additions would include the scope describing the tools and skills to perform the functions, minimum criteria and processes to certify an entity, describing the requirements for a Certification team, and reviewing and approving of the proposed Certification Schedule. Further, these revisions would respond to FERC’s directives in the Five Year Order.
- NERC also proposes adding language for the express right to revoke and/or de-certify an entity’s Certification for cause in situations when a certified entity is no longer performing the responsibilities of the function for which they are registered.
- NERC also proposes to create a new conditional Certification tool. The purpose of a conditional Certification is to act as an interim step before full Certification if an entity is on track to be certified but has not yet achieved all the requirements to do so. Upon receiving conditional Certification, an entity will be registered for a Balancing Authority, Reliability Coordinator, or Transmission Operator function.
- NERC also proposes adding language on its authority to determine an entity’s eligibility to submit a Certification application based on NERC’s evaluation of the NERC glossary and Reliability Standards. If an applicant fails to meet Registry Criteria or does not perform the duties and responsibilities required under the Reliability Standards for the relevant function, NERC may reject the Certification application before beginning a substantive review of the application.
- NERC also proposes adding language for the express right to revoke and/or de-certify an entity’s Certification for cause in situations when a certified entity is no longer performing the responsibilities of the function for which they are registered.

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
Section III(D)(2)(c) - Burden of Proof	TAPS believes the proposed burden of proof language makes the two situations where the Regional Entity would always bear the burden an afterthought, and would like to revise the burden of proof language with the following: “The burden of proof is on the applicant that makes the request for a Panel review, <u>except that regardless of the identity of the applicant, the applicable Regional Entity bears the burden of proof in...</u> <del>However there are two instances where</del>	NERC believes the proposed language does not minimize the situations where the burden of proof would be on the Regional Entity. Rather, it specifically points to the two situations where this would occur. To ensure there is no confusion as to the two situations where the burden of proof is on the Regional Entity, NERC will revise to the following: The burden of proof is on the applicant that makes the request for a Panel review, <b>except in</b> <del>However there are two instances where</del> the burden of proof is on the

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p><del>the burden of proof is on the applicable Regional Entity. These two instances include:</del></p>	<p>applicable Regional Entity. These two instances include:</p>
<p>Section III(D)(7) - Evidentiary Standard in NERC-led Registration Review Panel (Panel)</p>	<p>TAPS wants to remove the proposed language: “The Panel will evaluate all documentation, assessments, and responses submitted to determine whether the weight of the evidence either supports or does not support granting the applicant’s request.”</p> <p>Because they believe the proposed language is directly at odds with the stated evidentiary standard and allocation of the burden of proof, in that it suggests that the requesting entity always bears the burden of prove.</p>	<p>NERC’s intent is not to contradict the evidentiary standard (Preponderance), but rather explains what it means. The revision below will go further to show this intent. With regards to the allocation of the burden of proof, NERC will revise the language to following: “The Panel will evaluate all documentation, assessments, and responses submitted to determine whether the weight of the evidence <del>either supports or does not support</del> <b>the registration action under review more than it does not support the action.</b>”</p> <p>This will clarify that this pertains to the evidentiary standard rather than the burden of proof, and go further to show it is intended to explain the evidentiary standard.</p>
<p>Section III(D)(5)(a) - Entity responsibilities pending Panel review</p>	<p>TAPS would like to replace NERC’s proposed language in describing what an entity’s compliance responsibilities would be during a Panel review with the currently effective language.</p>	<p>NERC will add a section in NERC’s template for notice of a valid Panel request, indicating what the compliance obligations of the entity will be until the final determination.</p>
<p>Flowcharts</p>	<p>TAPS disagrees with NERC’s proposal to remove all the flowcharts from Appendix 5A to be consistent with all other sections and appendices, and avoid confusion with the governing language of the Appendix.</p>	<p>NERC will investigate posting flowcharts for industry in process documents rather than in the ROP. Eliminating flowcharts from Appendix 5A makes the appendix consistent with all other sections and appendices, and removes the possibly of confusion as to whether the flowchart or ROP language governs procedures.</p>
<p>Section III(D) - “Applicant” in the Panel review process</p>	<p>TAPS would like NERC to replace “applicant” in the Section III(D) with “requesting entity” because “applicant” is also used in Section III(A) and only</p>	<p>NERC does not use the term “applicant” in Section III(A), and the proposed language in Section III(D) has a footnote specifying that “applicant” can mean a</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>refers to a potential registered entity, while in Section III(D) it would refer to either the entity who status is at issue or a Regional Entity. Also, a request for a Panel review is a “Request Form” and not an “application”.</p>	<p>Regional Entity or an entity whose status is at issue. Also, NERC’s proposed language states that the “Request Form” is an application for a Panel review, so it is not inconsistent with the terminology.</p>

**2. NERC Rules of Procedure Appendix 5B – Statement of Compliance Registry Criteria**

NERC proposes to remove “Notes” 2, 3, and 4 and to rename “Notes” 1 and 5 Appendix 5B:

- Note 1 is being renamed to “Determination of Material Impact” as it more accurately describes the purpose of this section, and will make finding the non-exclusive “materiality test” easier.
- Note 2 mentions that an entity that does not meet Registration criteria may request that it be registered anyway. This note is not necessary because this situation is very unlikely, as well as redundant since is inclusive to the Organization Registration Process in Appendix 5A, Section III.A, whereby any entity may submit in writing, with supporting documentation, a request for Registration with their Regional Entity.
- Note 3 mentions that an entity may challenge its Registration, and that NERC or the Regional Entity will provide such an entity with the timelines and procedures for a challenge. Note 3 is redundant and unnecessary because the procedures for challenging a Registration determination have already been established in Appendix 5A, Section III.D, NERC-led Registration Review Panel Process, and Section V, NERC Organization Registration Appeals Process.
- Note 4 mentions that an entity that otherwise would not qualify may nonetheless be registered because it could be part of a class of entities that in aggregate have a material impact on BES reliability. Note 4 is redundant and unnecessary because aggregate impacts are a part of the materiality assessment in the Risk-Based Registration Implementation Guidance document, and is also already incorporated into the NERC-led Registration Review Panel Process in Appendix 5A.
- Note 5 is being renamed to “Limitation of responsibilities to a sub-set of Reliability Standards” as it more accurately describes the purpose of this section.

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
Determination of Material Impact - Basis for materiality registrations	<p>TAPS believes that NERC made a substantive change in the Determination of Material Impact section by removing the following underlined language.</p> <p><u>“the organization is a BES owner, or operates, or uses BES assets, and is material to the reliability of the BES.”</u></p>	<p>A substantial change has not been made to the Determination of Material Impact section. This section references the criteria: “[a]n entity <u>that does not meet (i.e., falls below) the criteria</u> may nevertheless be registered if it can be demonstrated that the entity has a material impact on the reliability of the BES. Similarly, an entity <u>that meets the criteria</u> may be excluded if it can be demonstrated that the entity</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>TAPS believes that NERC <i>may not</i> register an entity that does not use, own, or operate BPS assets, regardless of that entity’s materiality to reliability.<sup>1</sup></p>	<p>does not have a material impact on the reliability of the BES”</p> <p>Resolution(I) of the criteria states ” Entities that use, own or operate Elements of the Bulk Electric System (BES) as established by NERC’s approved definition of BES as stated in Appendix 2 of the NERC Rules of Procedure and the NERC Glossary are (i) owners, operators, and users of the BPS and (ii) candidates for Registration.”</p> <p>The proposed language removes prior redundancy and streamlines the Determination of Material Impact section. It does not give NERC the authority to register an entity that does not use, own, or operator BPS assets.</p>
<p>Limitation of responsibilities to a sub-set of Reliability Standards - Sub-set list Criteria</p>	<p>TAPS believes that it is not enough to have sub-set criteria on the NERC website only, but that it should be in Appendix 5B as well, as was done with UFLS-Only DP criteria.</p>	<p>The ROP states “If NERC has established clearly defined criteria for eligibility for a sub-set list of applicable Reliability Standards and has identified the sub-set list that may apply to similarly situated entities, such criteria shall govern the applicability of such sub-set list...”.<sup>2</sup> It does not, however, require NERC add such criteria to Appendices 5A or 5B. Posting established criteria to the NERC website will balance transparency and efficiency, as criteria can be viewed and implemented much more quickly than if it</p>

<sup>1</sup> 16 USC § 824o(b)(1).

<sup>2</sup> See e.g. Appendix 5A, § III(A)(9)(a)FN1; Revised Appendix 5A, § III(A)(1)(f)(iv) FN1.

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
		had to be added to Appendix 5B. In order to be more specific and avoid confusion to location, NERC will revise this sentence to the following: <b>“If NERC establishes a sub-set list for similarly situated class of entities, NERC will post the eligibility criteria and sub-set list of applicable Reliability Standards to the Registration and Certification Page of the NERC Website.”</b>
Resolution III(b) - UFLS-Only Distribution Provider	TAPS believes that NERC would be dictating the applicability of future versions of standards by removing the references to specific versions of PRC-005 and PRC-006 and replacing them with “any applicable versions of PRC-005, PRC-006”.	The purpose of the proposed language and the removal of the specific versions is not to dictate the applicability of future versions of standards. Rather, it is done in the sake of efficiency so that NERC does not need to add every version of the standards that go in effect, and delete them when they go out of effect. To prevent such confusion, NERC will revise the language to the following: <b>“any applicable versions of PRC-005, PRC-006 applicable to UFLS-Only Distribution Providers...”</b>
Summary - Accuracy of conforming edits	TAPS would like for NERC to replace the following deleted text: “... are material to the Reliable Operation of the interconnected BPS as defined by the criteria <del>and notes</del> set forth in this document.” With the renamed sections of the former Notes section to ensure they are included in what defines entities’ materiality.	NERC will add the following: <b>“... are material to the Reliable Operation of the interconnected BPS as defined by the criteria and sections set forth in this document.”</b> This will ensure that the renamed sections are included in what defines materiality.

Attachment 13:

Infrastructure Security:  
Section 1003

Clean

### **1003. Infrastructure Security Program**

NERC shall participate in and, where appropriate, coordinate electric industry activities to promote Critical Infrastructure protection of the Bulk Power System in North America. NERC shall, where appropriate, take a leadership role in Critical Infrastructure protection of the electricity sector to help reduce vulnerability and improve mitigation and protection of the electricity sector's Critical Infrastructure. To accomplish these goals, NERC shall perform the following functions.

1. Electricity Information Sharing and Analysis Center (E-ISAC)
  - 1.1 NERC shall operate the E-ISAC on behalf of the electricity sector. In 1998, the U.S. Secretary of Energy asked NERC to serve as the information sharing and analysis center for the electricity sector, in implementation of Presidential Decision Directive 63, as part of a public/private partnership to deal with matters related to infrastructure security.
  - 1.2 The E-ISAC gathers and analyzes security information, coordinates incident management, and communicates mitigation strategies with stakeholders within the electricity sector, across interdependent sectors, and with government partners. The E-ISAC, in collaboration with the United States Department of Energy (DOE) and the Electricity Subsector Coordinating Council (ESCC), serves as the primary security communications channel for the electricity sector and enhances the sector's ability to prepare for and respond to cyber and physical threats, vulnerabilities, and incidents.
  - 1.3 NERC shall improve the capability of the E-ISAC to fulfill its mission..
  - 1.4 NERC shall work closely with governmental agencies, including, among others, DOE, the United States Department of Homeland Security, Natural Resources Canada, and Public Safety Canada.
  - 1.5 NERC shall strengthen and expand these functions and working relationships with the electricity sector, other Critical Infrastructure industries, governments, and government agencies throughout North America to ensure the protection of the infrastructure of the Bulk Power System.
  - 1.6 NERC shall coordinate with the ESCC and the Government Coordinating Council.
  - 1.7 NERC shall coordinate with other Critical Infrastructure sectors through active participation with the other Sector Coordinating Councils, other ISACs, and the National Infrastructure Advisory Council.
  - 1.8 NERC shall encourage and participate in coordinated Critical Infrastructure protection exercises, including interdependencies with other Critical Infrastructure sectors.

2. Security Planning

- 2.1 NERC shall take a risk management approach to Critical Infrastructure protection, considering probability and severity, through identification, protection, detection, response, and recovery functions.
- 2.2 NERC shall consider security along-side considerations of reliability and resiliency of the Bulk Power System.
- 2.3 NERC shall keep abreast of the changing threat environment through collaboration with appropriate government agencies.
- 2.4 NERC shall develop criteria to identify critical physical and cyber assets, assess security threats, identify risk assessment methods, and assess effectiveness of physical and cyber protection measures.
- 2.5 NERC shall support implementation of the Critical Infrastructure Protection Standards through education and outreach.
- 2.6 NERC shall review and improve existing security guidelines, develop new security guidelines to meet the needs of the electricity sector, and consider whether any guidelines should be developed into Reliability Standards.
- 2.7 NERC shall conduct education and outreach initiatives to increase awareness of security matters and respond to the security needs of the electricity sector.
- 2.8 NERC shall strengthen relationships with federal, state, and provincial government agencies on Critical Infrastructure protection matters.
- 2.9 NERC shall maintain and endeavor to improve mechanisms for the sharing of sensitive or classified information with federal, state, and provincial government agencies on Critical Infrastructure protection matters.
- 2.10 NERC shall improve methods to assess the impact of a possible physical attack on the Bulk Power System and means to deter, mitigate, and respond following an attack.

Attachment 14:

Infrastructure Security:  
Section 1003

Redline

### 1003. Infrastructure Security Program

NERC shall ~~participate in and, where appropriate,~~ coordinate electric industry activities to promote Critical Infrastructure protection of the Bulk Power System in North America. ~~NERC shall, where appropriate, by taking~~ a leadership role in Critical Infrastructure protection of the electricity sector ~~so as to help~~ reduce vulnerability and improve mitigation and protection of the electricity sector's Critical Infrastructure. To accomplish these goals, NERC shall perform the following functions.

1. ~~Electricity Sector~~ Information Sharing and Analysis Center (E-~~SISAC~~)

~~1.1~~ NERC shall ~~operateserve as~~ the ~~E-ISAC on behalf of the~~ electricity sector. ~~In 1998, the U.S. Secretary of Energy asked NERC to serve as the information sharing and analysis center for the electricity sector, in implementation of Presidential Decision Directive 63, as part of a public/private partnership to deal with matters related to infrastructure security.'s sector coordinator and operate its Information Sharing and Analysis Center \_ to gather information and communicate security related threats and incidents within the sector, with United States and Canadian government agencies, and with other Critical Infrastructure sectors.~~

~~1.1.2~~ The E-ISAC gathers and analyzes security information, coordinates incident management, and communicates mitigation strategies with stakeholders within the electricity sector, across interdependent sectors, and with government partners. The E-ISAC, in collaboration with the United States Department of Energy (DOE) and the Electricity Subsector Coordinating Council (ESCC), serves as the primary security communications channel for the electricity sector and enhances the sector's ability to prepare for and respond to cyber and physical threats, vulnerabilities, and incidents.

~~1.2.3~~ NERC shall improve the capability of the E-~~SISAC~~ to ~~fulfill its mission. and implement its strategic plan analyze security threats and incident information and provide situational assessments for the electricity sector and governments.~~

~~1.3.4~~ NERC shall work closely with ~~the governmental agencies, including, among others, DOE, the~~ United States Department of Homeland Security, ~~Department of Energy,~~ Natural Resources Canada, ~~and and~~ Public Safety and Emergency Preparedness Canada.

~~1.4.5~~ NERC shall strengthen and expand these functions and working relationships with the electricity sector, other Critical Infrastructure industries, governments, and government agencies throughout North America to ensure the protection of the infrastructure of the Bulk Power System.

~~1.5.6~~ NERC shall ~~fill the role of~~coordinate with the ~~Electricity Sector Coordinating Council~~ESCC and ~~coordinate with~~ the Government Coordinating Council.

~~1.61.7~~ NERC shall coordinate with other Critical Infrastructure sectors through active participation with the other Sector Coordinating Councils, ~~the~~ other ISACs, and the National Infrastructure Advisory ~~Council~~Committee.

~~1.71.8~~ NERC shall encourage and participate in coordinated Critical Infrastructure protection exercises, including interdependencies with other Critical Infrastructure sectors.

## 2. Security Planning

2.1 NERC shall take a risk management approach to Critical Infrastructure protection, considering probability and severity, ~~and recognizing that mitigation and recovery can be practical alternatives to prevention~~through identification, protection, detection, response, and recovery functions.

~~2.2~~ NERC shall consider security along-side considerations of reliability benefits and design constraints to provide built-in resilience that supports the ability and resiliency of the Bulk Power System to withstand, gracefully degrade, and recover.

~~2.22.3~~ NERC shall keep abreast of the changing threat environment through collaboration with appropriate government agencies.

~~2.32.4~~ NERC shall develop criteria to identify critical physical and cyber assets, assess security threats, identify risk assessment ~~methodologies~~, and assess effectiveness of physical and cyber protection measures.

~~2.4~~ ~~NERC shall enhance and maintain the Bulk Power System critical spare transformer program, encourage increased participation by asset owners, and continue to assess the need to expand this program to include other critical Bulk Power System equipment.~~

~~2.5~~

~~2.62.5~~ NERC shall support implementation of the Critical Infrastructure Protection Standards through education and outreach.

~~2.72.6~~ NERC shall review and improve existing security guidelines, develop new security guidelines to meet the needs of the electricity sector, and consider whether any guidelines should be developed into Reliability Standards.

~~2.82.7~~ NERC shall conduct education and outreach initiatives to increase awareness of security matters and respond to the security needs of the electricity sector.

~~2.92.8~~ NERC shall strengthen relationships with federal, state, and provincial government agencies on Critical Infrastructure protection matters.

~~2.102.9~~ NERC shall maintain and endeavor to improve mechanisms for the

sharing of sensitive or classified information with federal, state, and provincial government agencies on Critical Infrastructure protection matters; ~~work with DOE and DHS to implement the National Infrastructure Protection Plan, as applicable to the electricity sector; and coordinate this work with PSEPC.~~

~~2.11~~—NERC shall improve methods to ~~better~~ assess the impact of a possible physical attack on the Bulk Power System and means to deter, mitigate, and respond following an attack.

~~2.12~~—~~NERC shall assess the results of vulnerability assessments and enhance the security of system control and data acquisition (SCADA) and process control systems by developing methods to detect an emerging cyber attack and the means to mitigate impacts on the Bulk Power Systems.~~

~~2.132.10~~ \_\_\_\_\_ NERC shall work with the National SCADA Test Bed and the Process Control Systems Forum to accelerate the development of technology that will enhance the security, safety, and reliability of process control and SCADA systems.

Attachment 15:

Infrastructure Security:  
Consideration of Comments

# Consideration of Comments

## Rules of Procedure Changes to Section 1003

The North American Electric Reliability Corporation (“NERC”) thanks all commenters who submitted comments on the proposed changes to Section 1003 of the Rules of Procedure (ROP). The proposed changes were posted for public comment period from May 21, 2020 through July 10, 2020. Two organizations submitted comments: (1) the Edison Electric Institute (EEI) and (2) Electricity Consumers Resource Council (ELCON). These comments are posted on the [Rules of Procedure page](#). This document outlines NERC’s consideration of those comments.

### I. COMMENTS

NERC is proposing revisions to section 1003 of its Rules or Procedure (ROP) in accordance with the directive in the Federal Energy Regulatory Commission’s (“FERC”) order accepting NERC’s Five Year Performance Assessment.<sup>1</sup> Section 1003 of the ROP describes NERC’s infrastructure security program, including, among other things, its operation of the Electricity Information Sharing and Analysis Center (E-ISAC) and its relationship with the Electricity Subsector Coordinating Council (ESCC). The purpose of the proposed revisions is to update section 1003 to correct inconsistencies and accurately reflect current operational practices related to NERC’s infrastructure security program.

The table below NERC summarizes the comments received on the proposed revisions from EEI and ELCON and NERC’s responses to those comments:

---

<sup>1</sup> *Order on Five-Year Performance Assessment*, 170 FERC ¶ 61,029 (*Five Year Order*) (2020).

Topic	Summary of Stakeholder Comments	Action/Response and Notes
Reference to E-ISAC Long-Term Strategic Plan	EEI commented that NERC should remove the reference in section 1003.1.3 of to the E-ISAC Long-Term Strategic Plan since it is a dynamic document “can create uncertainly in the ROP.”	NERC removed references to the E-ISAC Long-Term Strategic Plan.
Clarify language in Section 1003.2.2	EEI commented that the language in revised section 1003.2.2 needs further explanation. EEI stated that the language is not responsive to the FERC directive “nor is it clear what the phrase ‘gracefully degrade’ means and what place it has in the ROP because it is not consistent with NERC’s RISC resilience framework.”	NERC has revised the language in section 1003.2.2 to state: “NERC shall consider security along-side considerations of reliability and resiliency of the Bulk Power System.” The original intent of section 1003.2.2 and the proposed modifications was to simply note that NERC shall not consider security matters separate and apart from overall reliability and resilience of the grid. The proposed revision provides a more straight forward articulation of this intent.
Page Numbers	EEI requested the addition of page numbers to the document.	The document with the draft revisions is a three-page excerpt from the ROP. Following approval, the changes to the ROP will be incorporated into the ROP master document, which includes page numbers.
Hyperlink to E-ISAC Mission and Strategic Plan documents	ELCON requests that “NERC provide in (or adjacent to) [section 1003.1.3] a hyperlink or other straightforward way to access the E-ISAC’s most recent mission and strategic plan documents.”	While NERC appreciates the need to ensure that the E-ISAC mission statement and Long-Term Strategic Plan are accessible, it is best to refrain from including any hyperlinks in the ROP as websites change over time and links may be broken. Both the E-ISAC mission statement and Long-Term Strategic Plan are available on the NERC and E-ISAC websites. NERC will consider ways to more prominently display the mission statement and Long-Term Strategic Plan to ensure greater accessibility.

Attachment 16:

Sanction Guidelines:  
Appendix 4B

Clean



**Sanction Guidelines  
of the  
North American  
Electric Reliability Corporation**

Effective: **Month Day, 2020**

**Table of Contents**

<b>1. Overview.....</b>	<b>3</b>
<b>2. General Principles .....</b>	<b>3</b>
2.1 Initial Determination of Whether Monetary and/or Non-Monetary Penalties are Necessary .....	3
2.2 Non-Exclusiveness of Monetary or Non-Monetary Penalties .....	3
2.3 Maximum Limitations of Monetary Penalties .....	4
2.4 Reasonable Relationship to Seriousness of Violation.....	4
2.5 Settlement of Violations .....	4
2.6 Multiple Violations.....	4
2.7 Multiple Reliability Functions .....	5
2.8 Frequency and Duration of Violations.....	5
2.9 Extenuating Circumstances.....	6
<b>3. Determination of Monetary Penalties.....</b>	<b>6</b>
3.1 Overview of the Calculation of Monetary Penalties.....	6
3.2 Establishing the Base Monetary Penalty Amount.....	6
3.2.1 Violation Risk Factor and Violation Severity Level Table.....	7
3.2.2 Entity Size.....	7
3.2.3 Assessed Risk.....	8
3.2.4 Violation Duration .....	8
3.2.5 Violation Time Horizon.....	8
3.3 Adjusting the Base Monetary Penalty Amount to Account for Aggravating and Mitigating Factors	8
3.3.1 Aggravating Factor: Repetitive Violations and Compliance History .....	9
3.3.2 Aggravating Factor: Failure to Comply with a Remedial Action Directive .....	9
3.3.3 Aggravating Factor: Intentional Violation.....	10
3.3.4 Aggravating Factor: Violation Concealment, Resistance, Impediment, Non-Responsiveness, and Lack of Cooperation .....	10
3.3.5 Aggravating Factor: Management Involvement .....	10
3.3.6 Mitigating Factor: Presence and Quality of Entity’s Internal Compliance Program .....	10
3.3.7 Mitigating Factor: Degree and Quality of Cooperation .....	11
3.3.8 Mitigating Factor: Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Entity .....	11
3.4 Final Adjustments to the Monetary Penalty.....	11
3.4.1 Settlement and Admitting to and Accepting Responsibility for Violation .....	11
3.4.2 Disgorgement of Unjust Profits .....	12
3.4.3 Extenuating Circumstances.....	12
3.4.4 Entity’s Financial Ability to Pay.....	12
<b>4. Determination of Non-Monetary Penalties .....</b>	<b>13</b>
<b>Appendix A: Monetary Penalty Factors .....</b>	<b>14</b>
Base Monetary Penalty Factors.....	14
Aggravating and Mitigating Factors.....	14
Final Adjustment Factors .....	15

## **1. Overview**

The North American Electric Reliability Corporation (“NERC”), as the Electric Reliability Organization (“ERO”), and Regional Entities to which NERC has delegated authority (hereinafter referred to collectively as “Regional Entities” or individually as a “Regional Entity”) shall determine and may levy monetary and non-monetary penalties against a Registered Entity (herein referred to as “entity” or “entities”), as owners, operators, and users of the Bulk Power System for violations of the NERC Reliability Standards and Regional Reliability Standards (collectively, “Reliability Standards”), which are approved by the Federal Energy Regulatory Commission (“FERC”) in the United States and/or Applicable Governmental Authorities in Canada and/or Mexico.

NERC and the Regional Entities will follow these Sanction Guidelines when determining monetary and non-monetary penalties, while retaining the discretion to take into account the facts surrounding each violation and using professional judgment to deviate from the recommended ranges for each factor as appropriate in order to achieve monetary and/or non-monetary penalties that bear a reasonable relationship to the seriousness of the violation. NERC shall ensure that Regional Entities achieve acceptable levels of consistency in the application of the Sanction Guidelines across North America via NERC’s oversight efforts.

Any revision to these Sanction Guidelines must first be approved by the NERC Board of Trustees, then by FERC to become effective and applicable within the United States. Similarly, these Sanction Guidelines must be approved by an Applicable Governmental Authority to become effective in that Applicable Governmental Authority’s jurisdiction.

## **2. General Principles**

The following paragraphs present and discuss the underlying principles that NERC and the Regional Entities use to determine monetary and non-monetary penalties for violations of the Requirements of the Reliability Standards.

### **2.1 Initial Determination of Whether Monetary and/or Non-Monetary Penalties are Necessary**

Situations involving multiple serious risk violations or systemic or programmatic failures should typically result in monetary penalties and/or non-monetary penalties.<sup>1</sup> Additionally, monetary penalties and/or non-monetary penalties may be appropriate for one or a small number of minimal, moderate, or serious risk violations, depending on the circumstances, including for example, the method of identification of the violation(s), the duration of the violation(s), and an entity’s compliance history. NERC or the Regional Entities have the discretion to impose a zero dollar monetary sanction where appropriate after consideration of all the relevant principles and factors discussed in these Sanction Guidelines. Monetary and non-monetary penalties do not apply for noncompliance or violations that NERC or the Regional Entities determine should be processed through the Compliance Exception or the Find, Fix, Track and Report (“FFT”) disposition methods described in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C of the NERC Rules of Procedure.

### **2.2 Non-Exclusiveness of Monetary or Non-Monetary Penalties**

NERC or the Regional Entity may impose a non-monetary penalty either in lieu of or in addition to a monetary penalty for the same violation, and vice versa. Imposition of a monetary or non-monetary penalty for a violation does not preclude the imposition of the other as long as the aggregate monetary penalty and non-monetary penalty bears a reasonable relation to the seriousness of the violation and other relevant factors stated herein. If NERC or a Regional Entity imposes a non-monetary penalty that impacts

---

<sup>1</sup> In cases involving federal entities, monetary penalties for violations are not available. *See Sw. Power Admin. v. FERC*, 763 F.3d 27 (D.C. Cir. 2014).

the final monetary penalty, NERC or the Regional Entity shall explain in the Notice of Penalty how the non-monetary penalty impacted the final monetary penalty amount.

### **2.3 Maximum Limitations of Monetary Penalties**

In the United States, the maximum monetary penalty amount that NERC or a Regional Entity will assess for a violation of a Reliability Standard Requirement is equal to current inflation-adjusted maximum civil monetary penalty set forth in 18 CFR § 385.1602(d).<sup>2</sup> NERC and the Regional Entities may assess monetary penalty amounts up to and including this maximum amount for violations where warranted pursuant to these Sanction Guidelines.

### **2.4 Reasonable Relationship to Seriousness of Violation**

The application of these Sanction Guidelines is intended to result in monetary and non-monetary penalties that bear a reasonable relation to the seriousness of the violation(s) and mitigate overly burdensome penalties to less consequential or financially-limited entities, while promoting that no penalty is inconsequential to the entity to whom it is assessed.

NERC or the Regional Entity considers the factors described in these Sanction Guidelines in the development of monetary and non-monetary penalties in order to ensure that those penalties are consequential enough such that entities do not consider the imposition of monetary and/or non-monetary penalties to be an economic choice or cost of doing business. NERC or the Regional Entity may make adjustments to the values for all the factors described in the Sanction Guidelines as necessary to reach a penalty that is consequential to the entity while bearing a reasonable relation to the reliability impact and seriousness of the violation. Such adjustments will generally occur in the most significant cases involving programmatic failures or multiple serious risk violations.

In such cases, NERC or the Regional Entity may review publicly available information regarding the entity involved, including, but not limited to, annual reports, quarterly reports, other financial statements, and penalties levied against the entity by other regulators. After completing the development of any monetary and non-monetary penalties using the process described in these Sanction Guidelines, NERC or the Regional Entity may consider whether the proposed penalty is consequential to the entity in light of the information reviewed and increase the penalty as appropriate, subject to the maximum limitation on monetary penalties described in Section 2.3 of these Sanction Guidelines. In such cases, NERC or the Regional Entity shall describe in the Notice of Penalty the analysis of the publicly available information that led it to increase the monetary and/or non-monetary penalty in order to ensure it was consequential to the entity and not an economic choice or cost of doing business.

### **2.5 Settlement of Violations**

Pursuant to the NERC Compliance Monitoring and Enforcement Program, Appendix 4C of the NERC Rules of Procedure, an entity's Possible or Alleged Violations of the Reliability Standards may be resolved through settlements reached between the relevant Compliance Enforcement Authority<sup>3</sup> and the entity. Any provisions within a settlement regarding monetary and non-monetary penalties can supersede any corresponding penalties that would otherwise be determined pursuant to these Sanction Guidelines. In particular, NERC or the Regional Entity may consider a reduction in the monetary penalty if the entity resolves the violation through settlement, taking into account the entity's good faith efforts to reach settlement without undue delay. This reduction applies to the monetary penalty amount after adjustments are made pursuant to the aggravating and mitigating factors listed in Section 3.3.

### **2.6 Multiple Violations**

The entity may be in violation of more than one Reliability Standard, Requirements of the same Reliability Standard, or have multiple instances of violations of the same Standard and Requirement. As

---

<sup>2</sup> As of 2020, the maximum civil monetary sanction set forth in 18 CFR § 385.1602(d) is \$1,291,894 per violation, per day.

<sup>3</sup> Regional Entities and NERC can act as the Compliance Enforcement Authority.

such, for each violation of a Reliability Standard Requirement addressed in a Notice of Penalty, NERC or the Regional Entity may levy, in its sole discretion, either (1) a separate monetary penalty and/or non-monetary penalty(s) for each violation, describing the penalty for each violation individually or the total penalty for the group of violations as a whole; or (2) a single, aggregate monetary penalty and/or non-monetary penalty bearing reasonable relationship to the aggregate seriousness of the violations as a whole. When using the second option described above, NERC or the Regional Entity has the discretion to adjust the factors described in these Sanction Guidelines to reach a monetary and/or non-monetary penalty that is appropriate and will generally impose a monetary and/or non-monetary penalty at least as large or expansive as what would be called for individually for the most serious of the violations.

## **2.7 Multiple Reliability Functions**

Some entities may register for more than one reliability function in the NERC Compliance Registry (e.g., Transmission Owner, Transmission Operator, Balancing Authority, Generation Operator), and as a result, a single Requirement in certain Reliability Standards may apply to the entity for more than one of its registered functions. Where an entity performs more than one registered function, NERC or the Regional Entity will assess a violation and associated penalty(s) against the entity, not against each function.

## **2.8 Frequency and Duration of Violations**

Some Reliability Standards may not support the assessment of a monetary penalty on a “per day, per violation” basis, but instead should have monetary penalties calculated based on an alternative violation frequency or duration. NERC or the Regional Entity shall determine the monetary penalties consistent with the following:

### Multiple Instances of Violation on One Day

The nature of some Reliability Standards includes the possibility that an entity could violate the same Requirement two or more times on the same day. In this instance NERC and the Regional Entity are not limited to penalizing the entity the maximum monetary penalty amount per day. NERC or the Regional Entity may deem that multiple violations of the same Requirement occurred on the same day, each of which is subject to the maximum monetary penalty amount per violation, per day. Also, NERC or the Regional Entity is not constrained to assessing the same monetary penalty amount for each of the multiple violations, irrespective of their proximity in time.

### Cumulative Over Time

Certain Requirements of Reliability Standards are measured not on the basis of discrete acts, but on cumulative acts over time. Reliability Standards that fall into this category generally involve measurements based on averages over a given period.

If a Reliability Standard Requirement measured by an average over time can only be violated once per applicable period, there is risk that a disproportionately mild monetary penalty might be levied in a situation where the violation was serious and the effects on the Bulk Power System were severe. As individual Reliability Standards are revised, each Reliability Standard Requirement that is based on an average over time will specify the minimum period in which a violation could occur and how to determine when a violation arises, which may be other than once per applicable period. Until relevant Reliability Standards are so modified, when assessing a monetary penalty for violation of such a Reliability Standard, NERC or the Regional Entity will generally consider that only one violation occurred per measurement period. However, if an average must be measured by a span of time greater than a month, each month of that span shall constitute at a minimum one violation.

### Periodically Monitored Discrete Violation

Some Reliability Standards may involve discrete events which are only monitored periodically or which are reported by exception. If a Requirement of such a Reliability Standard states that a discrete event constitutes a violation, then (i) a violation arises when that event occurs and (ii) that violation continues until remedied; and (iii) the violation occurred at the point that the entity entered into noncompliance with the Reliability Standard, regardless of the monitoring period for the activity or its date of discovery or

reporting. For example, if a task required by a Reliability Standard Requirement was not done by the required date, it is irrelevant that monitoring for compliance for the Requirement occurs only on a yearly or other periodic basis; NERC or the Regional Entity will deem a violation to have occurred on the first day of noncompliance and each day thereafter until compliance is effectuated. Similarly, if a discrete event occurs and is not remedied on the date of its occurrence, then NERC or the Regional Entity will deem a violation to have occurred on the day of the first instance of the noncompliance and each day thereafter until the entity is in compliance.

NERC or the Regional Entity may, at its discretion, assess the same monetary penalty amount for each day that the entity was in violation of the Reliability Standard Requirement in question.

## **2.9 Extenuating Circumstances**

In unique extenuating circumstances causing or contributing to the violation, such as, but not limited to, significant natural disasters or pandemic, NERC or the Regional Entity may significantly reduce or eliminate monetary and/or non-monetary penalties.

## **3. Determination of Monetary Penalties**

This Section describes the specific steps that NERC or the Regional Entity will follow to determine the monetary penalty for a violation.<sup>4</sup> Appendix A provides the ranges generally used for each factor used to determine the monetary penalty for a violation. NERC and the Regional Entities have the discretion to deviate from the ranges for the factors provided in Appendix A by applying professional judgment to the outcome of the calculations where appropriate in order to achieve a monetary penalty that bears a reasonable relationship to the seriousness of the violation(s). The determination of non-monetary penalties is discussed in Section 4 of these Sanction Guidelines.

### **3.1 Overview of the Calculation of Monetary Penalties**

The calculation of monetary penalties for violations of NERC or Regional Reliability Standards is calculated as follows:

**Step 1:** Establish the Base Monetary Penalty Amount, as discussed in Section 3.2.

**Step 2:** Adjust the Base Monetary Penalty Amount after accounting for any relevant aggravating or mitigating factors, resulting in the Adjusted Monetary Penalty Amount, as discussed in Section 3.3.

**Step 3:** Make final adjustments to the Adjusted Monetary Penalty Amount to account for other circumstances, as discussed in Section 3.4, such as agreeing to settlement, extenuating circumstances, disgorgement of unjust profits or economic benefits associated with an economic choice to violate, and/or entity requests to reduce the proposed monetary penalty in light of the entity's financial ability to pay the monetary penalty, resulting in the Final Monetary Penalty Amount.

### **3.2 Establishing the Base Monetary Penalty Amount**

NERC or the Regional Entity will set the Base Monetary Penalty Amount for the violation using the following factors:

1. VRF and VSL Table
2. Entity Size
3. Assessed Risk
4. Violation Duration
5. Violation Time Horizon

---

<sup>4</sup> The text in this section discusses the determination of a single monetary sanction for an individual violation; however, the process laid out is also applicable to determining the individual monetary sanction, or a single, aggregate monetary sanction, for multiple violations that are associated with each other as discussed in Section 2.6 of these Sanction Guidelines.

**3.2.1 Violation Risk Factor and Violation Severity Level Table**

NERC or the Regional Entity will determine an initial monetary penalty value by considering the Violation Risk Factor (“VRF”) of the Requirement violated and the Violation Severity Level (“VSL”) assessed for the violation. Using the VRF and VSL Table below, NERC or the Regional Entity will look up the initial monetary penalty value by finding the intersection of the violation’s VRF and VSL on the table. In general, NERC or the Regional Entity will start with the lowest value of the initial monetary penalty value range, and will adjust the initial monetary penalty value pursuant to the factors discussed below, but NERC or the Regional Entity has the discretion to start at a higher value within the ranges below on a case-by-case basis as appropriate. Starting at a higher value within the ranges below may be appropriate in cases where using the lowest value of the initial monetary penalty value range results in a proposed monetary penalty that does not bear a reasonable relationship to the seriousness of the violation after consideration of the other factors discussed below.

Violation Risk Factor	Violation Severity Level							
	Lower		Moderate		High		Severe	
	Low	High	Low	High	Low	High	Low	High
Lower	\$1,000	\$3,000	\$2,000	\$7,500	\$3,000	\$15,000	\$5,000	\$25,000
Medium	\$2,000	\$30,000	\$4,000	\$100,000	\$6,000	\$200,000	\$10,000	\$335,000
High	\$4,000	\$125,000	\$8,000	\$300,000	\$12,000	\$625,000	\$20,000	\$1,291,894

NOTE: This table describes the monetary penalty that could be applied for each day that a violation continues, subject to the consideration of the other factors described below that are used to determine a monetary penalty.

**3.2.1.1 Violation Risk Factor**

Each Reliability Standard Requirement has been assigned a VRF through the NERC Reliability Standards or Regional Reliability Standards development process. The VRFs have been defined and approved through the Reliability Standards development process and are assigned to Requirements to provide clear, concise and comparative association between the violation of a Requirement and the expected or potential impact of the violation to the reliability of the Bulk Power System. One of three defined levels of VRF is assigned to each Reliability Standards Requirement: Lower; Medium; or High.

**3.2.1.2 Violation Severity Level**

VSLs are defined levels of the degree to which a Requirement of a Reliability Standard was violated. Whereas VRFs are determined pre-violation and indicate the relative potential impacts that violations of each Reliability Standard could pose to the reliability of the Bulk Power System, VSLs are assessed post-violation and are an indicator of the severity of the actual violation of the Reliability Standard(s) Requirement(s) in question.

These Sanction Guidelines utilize the VSLs, which have been designated as: Lower, Moderate, High, and Severe.

**3.2.2 Entity Size**

NERC or the Regional Entity will adjust the monetary penalty amount based on entity size, in terms of generating capacity and/or transmission line miles, size of lines (in MVA, for example), and/or peak load served in order to more accurately reflect the potential impact and, consequently, the seriousness of the violation(s).

- If an entity belongs to a generation and transmission cooperative or joint-action agency, size will be attributed to the particular entity, rather than to the generation and transmission cooperative or joint-action agency.

- If the entity constitutes part of a corporate family, the size of the entity will be attributed to that entity alone, in the absence of any facts indicating involvement of the whole corporation or corporate affiliates of the entity.
- If the entity is established solely as a shell to register as subject to one or more Reliability Standards, the size of the entity will be disregarded in favor of consideration of the size of the parent entity or any affiliates that NERC or the Regional Entity deems involved and constituting the “actual” size of the entity.
- If the entity is made up of multiple subsidiaries of a parent corporation that commits the same violation, the size of the entity will be assessed using the combined size of the various subsidiaries, up to the size of the entire parent corporation. NERC or the Regional Entity will endeavor to ensure that the monetary penalty in such cases is approximately the same regardless of whether the multiple subsidiaries are assessed a single violation or if each subsidiary is assessed its own violation, provided that the subsidiaries operate under the same or substantially the same compliance program.

In general, an entity that is larger in size will have a higher multiplier than an entity that is smaller in size, all else being equal.

### **3.2.3 Assessed Risk**

NERC or the Regional Entity shall consider the assessed risk that the violation of the Reliability Standard Requirement posed to the reliability of the Bulk Power System. The assessed risk of a violation can be minimal, moderate, or serious and substantial. Assessed risk is the potential impact to the reliability of the Bulk Power System multiplied by the likelihood of that impact occurring, or the actual harm to reliability if the impact occurs, determined based on facts about the entity and the scope of the violation, including any facts that increase or decrease the potential impact to the reliability of the Bulk Power System, the likelihood of that impact occurring, or actual harm if the impact did occur. In general, violations with an assessed risk of serious and substantial will have a higher multiplier than violations with an assessed risk of moderate, and violations with an assessed risk of moderate will have a higher multiplier than violations with an assessed risk of minimal, all else being equal.

### **3.2.4 Violation Duration**

NERC or the Regional Entity shall consider the duration of the violation of the Reliability Standard Requirement. In general, violations with a longer duration will have a higher percentage increase to the monetary penalty than violations with a shorter duration, all else being equal.

### **3.2.5 Violation Time Horizon**

NERC or the Regional Entity shall consider the Violation Time Horizon of the Reliability Standard Requirement violated and adjust the monetary penalty accordingly. In general, violations with shorter Violation Time Horizons, such as Real Time Operations, will have a higher multiplier than violations with longer Violation Time Horizons, such as Long Term Planning, all else being equal. If the Reliability Standard Requirement does not have a Violation Time Horizon or if a different Violation Time Horizon is more appropriate based on the facts and circumstances of the violation, NERC or the Regional Entity may use the Violation Time Horizon that is most appropriate given the facts and circumstances of the violation.

## **3.3 Adjusting the Base Monetary Penalty Amount to Account for Aggravating and Mitigating Factors**

Adjustment factors allow NERC or the Regional Entity to adjust the Base Monetary Penalty Amount to reflect the specific facts and circumstances material to each violation and the entity.

These Sanction Guidelines identify aggravating and mitigating factors that, if present in connection with a violation, should be considered in determining the monetary and/or non-monetary penalty, and describes how these factors should be taken into account. Additional factors not identified in these Sanction

Guidelines may also be considered in determining a monetary and/or non-monetary penalty, as NERC or the Regional Entity deems appropriate under the circumstances. When additional factors are identified, the basis for their use, and the determination of whether they aggravated or mitigated the monetary penalty, will be provided in the Notice of Penalty. The absence of an aggravating or mitigating factor will have no impact on the monetary penalty.

These Sanction Guidelines recognize and require that, at a minimum, NERC or the Regional Entity consider the adjustment factors described in this section:

1. Repetitive violations and the entity's compliance history
2. Failure of the entity to comply with a Remedial Action Directive
3. Intentional violations
4. Any attempt by the entity to conceal the violation, or resist, impede, be non-responsive, or otherwise exhibit a lack of cooperation
5. Management involvement in any intentional violation or attempt to conceal the violation
6. The presence and quality of the entity's compliance program
7. Degree and quality of cooperation by the entity in the violation investigation and in any Mitigating Activities directed for the violation
8. Disclosure of the violation by the entity through self-reporting and voluntary Mitigating Activities by the entity

NERC or the Regional Entity may also consider other factors it deems appropriate under the circumstances as long as their use is clearly identified and adequately justified. The effect of using these factors must be fully and clearly disclosed in the Notice of Penalty.

### **3.3.1 Aggravating Factor: Repetitive Violations and Compliance History**

If an entity or relevant affiliate of an entity has had repetitive infractions of the same or a similar Reliability Standard Requirement, NERC or the Regional Entity will evaluate whether any such prior violations reflect recurring conduct by affiliates that are operated by the same corporate entity or whose compliance activities are conducted by the same corporate entity and shall consider an increase to the monetary penalty based on the facts and circumstances of the instant and prior violations. Repetitive infractions that may result in aggravation of the monetary penalty generally include prior violations that were still ongoing within five years of the start date of the instant violation that are either (1) violations with the same root cause as the instant violation and mitigation activities that should have prevented future violations; or (2) programmatic failures involving the same or similar Reliability Standards and Requirements.

NERC or the Regional Entity will generally aggravate the monetary penalty by a greater amount in cases where (1) the relevant violation history was closer in time to the instant violation, (2) the number of violations determined to be relevant violation history was higher, and/or (3) the relevant violation history involved programmatic failures or higher risk violations with the same root cause as the instant violation. NERC or the Regional Entity may deem relevant prior violations that are older if appropriate, provided it describes in the Notice of Penalty how that decision was reached. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of each case.

An entity with a compliance history of no violations will not, on the basis of its compliance history, receive a reduction of the monetary penalty otherwise determined.

### **3.3.2 Aggravating Factor: Failure to Comply with a Remedial Action Directive**

If the entity has violated Reliability Standard Requirements despite receiving related Remedial Action Directives, NERC or the Regional Entity shall consider increasing the monetary penalty. NERC or the Regional Entity will generally aggravate the monetary penalty by a greater amount in cases where the number of Remedial Action Directives that the entity did not comply with was higher within the last five

years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of each case.

### **3.3.3 Aggravating Factor: Intentional Violation**

When determining a monetary penalty NERC or the Regional Entity shall consider if the entity intentionally violated the Reliability Standard for purposes other than a demonstrably good faith effort to (1) avoid a significant and greater threat to the immediate reliability of the Bulk Power System or (2) preserve personnel safety. If the entity engaged in such conduct, a significant increase to the monetary penalty shall be considered; the presumption in such cases is to double the monetary penalty otherwise determined. NERC or the Regional Entity will generally aggravate the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of each case.

NERC or the Regional Entity will consider violations attributable to an economic choice to violate as intentional violations.

### **3.3.4 Aggravating Factor: Violation Concealment, Resistance, Impediment, Non-Responsiveness, and Lack of Cooperation**

NERC or the Regional Entity shall consider a significant increase to the monetary penalty if, based on its review of the facts, NERC or the Regional Entity determines that the entity concealed or attempted to conceal the violation or information necessary to investigate the violation. The presumption in such circumstances is to double the monetary penalty otherwise determined.

Additionally, NERC or the Regional Entity shall consider an increase to the monetary penalty if NERC or the Regional Entity determines, based on its review of the facts, that the entity resisted, impeded, was non-responsive, or otherwise exhibited a lack of cooperation during the discovery and review of a violation.

NERC or the Regional Entity will generally increase the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of the violation.

### **3.3.5 Aggravating Factor: Management Involvement**

If the entity's management or an individual within the high-level personnel of the organization participated in, directed, condoned, or was willfully ignorant of the violation, or tolerance of the violation by substantial authority personnel was pervasive within the entity as a whole or a unit of the entity, NERC or the Regional Entity shall consider a significant increase to the monetary penalty. The presumption in such circumstances is to double the monetary penalty otherwise determined. NERC or the Regional Entity will generally increase the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of the violation.

### **3.3.6 Mitigating Factor: Presence and Quality of Entity's Internal Compliance Program**

NERC or the Regional Entity shall consider the presence and quality of the entity's internal compliance program, if any, and other indicators of the entity's culture of compliance. An effective internal compliance program requires an entity to exercise due diligence to prevent and detect violations, promote an organizational culture that encourages a commitment to compliance with the Reliability Standards and

other laws and regulations, and design, implement, and enforce the internal compliance program so that it is generally effective in preventing and detecting violations. The failure to prevent or detect an instant violation does not necessarily mean that the internal compliance program is not generally effective in preventing and detecting violations. NERC or the Regional Entity may reduce the entity's monetary penalty as they deem appropriate. However, NERC or the Regional Entity may not increase an entity's monetary penalties solely on the grounds that the entity has no internal compliance program or a poor quality or failed program.<sup>5</sup>

### **3.3.7 Mitigating Factor: Degree and Quality of Cooperation**

NERC or the Regional Entity shall consider the degree and quality of the entity's cooperation with NERC or the Regional Entity in the investigation of the violation and any Mitigating Activities arising from it. To qualify for a reduction in the monetary penalty, cooperation must be both timely and thorough, starting at essentially the same time as the entity reports or otherwise becomes aware of a violation, and should include the disclosure of all pertinent information known by the entity. NERC or the Regional Entity may adjust the entity's monetary penalty as they deem appropriate, which may result in a decrease or no change to the monetary penalty.

### **3.3.8 Mitigating Factor: Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Entity**

NERC or the Regional Entity shall consider whether an entity self-reported the violation (1) within a reasonably prompt time after becoming aware of the violation,<sup>6</sup> and (2) prior to detection via a compliance monitoring engagement<sup>7</sup> by NERC or the Regional Entity or intervention by NERC or the Regional Entity via a notification of an upcoming compliance monitoring engagement, and any Mitigating Activities voluntarily undertaken by the entity to correct the violation.<sup>8</sup> As they deem warranted, NERC or the Regional Entity may reduce the entity's monetary penalty.

## **3.4 Final Adjustments to the Monetary Penalty**

NERC or the Regional Entity may make additional adjustments to the Adjusted Monetary Penalty Amount if the entity agrees to settlement, if there are applicable extenuating circumstances, or if the entity provides evidence that it lacks the financial ability to pay the proposed monetary penalty.

### **3.4.1 Settlement and Admitting to and Accepting Responsibility for Violation**

NERC or the Regional Entity may consider a reduction in the monetary penalty if the entity resolves the violation through settlement, taking into account the entity's good faith efforts to reach settlement without undue delay. If the entity agrees to settlement and also clearly demonstrated recognition and affirmative

---

<sup>5</sup> An entity with no internal compliance program or a poor quality or failed program may have violations that are of an increased risk given the lack of controls to prevent, identify, or mitigate violations. Similarly, an entity with no internal compliance program or a poor quality or failed program may be indicative of the entity's management or an individual within the high-level personnel of the organization being willfully ignorant of the potential for a violation. In such cases, NERC or the Regional Entity may increase the monetary sanction based on those factors as appropriate.

<sup>6</sup> An entity should submit a Self-Report as soon as practical, but typically within three months of discovery, and provide additional or more comprehensive information as it becomes known. NERC or the Regional Entity retain the discretion to provide self-reporting credit outside this period as appropriate based on relevant facts and circumstances.

<sup>7</sup> Compliance monitoring engagements include a Compliance Audit, Spot Check, or Self-Certification.

<sup>8</sup> An entity's receipt of a notification letter for an upcoming compliance monitoring engagement detailing the Reliability Standards and Requirements in scope for the upcoming compliance monitoring engagement generally terminates the entity's eligibility for self-reporting credit for violations of the Reliability Standard Requirements that are in scope for the compliance monitoring engagement until after the termination of the compliance monitoring engagement.

acceptance of responsibility for the violation, NERC or the Regional Entity may consider a further reduction in the monetary penalty beyond the credit given for resolving the violation through settlement.

### **3.4.2 Disgorgement of Unjust Profits**

Any monetary penalty issued for a violation involving an economic choice to violate shall, at a minimum, disgorge any profits the entity acquired as a consequence of the behavior, whenever and to the extent that they can be determined or reasonably estimated.

### **3.4.3 Extenuating Circumstances**

In unique extenuating circumstances causing or contributing to the violation, such as significant natural disasters or pandemic, NERC or the Regional Entity may significantly reduce or eliminate the monetary penalty otherwise determined.

### **3.4.4 Entity's Financial Ability to Pay**

At the written request of the entity, NERC or the Regional Entity will review the monetary penalty determined above in light of relevant, verifiable information that the entity provides regarding its financial ability to pay.<sup>9</sup> Financial ability shall include the financial strength of the entity as well as its financial structure (e.g., for-profit versus non-profit). NERC or the Regional Entity may consider the entity's inherent characteristics, such as but not limited to; its size, financial structure, and ownership structure. Consideration of an entity's size, financial structure, and ownership structure is intended to (i) promote that entities are penalized commensurate with the risk or impact that a specific violation of the Reliability Standards had or is having on the reliability of the Bulk Power System while also (ii) mitigating the potential of overly burdensome monetary penalties to less consequential or financially-limited entities.

At the conclusion of this review, NERC or the Regional Entity may:

1. Reduce the monetary penalty to an amount that NERC or the Regional Entity deems that the entity has the financial ability to pay if the entity is not likely to become able to pay the proposed monetary penalty with the use of a reasonable installment schedule;
2. Extend the period over which the monetary penalty must be paid using a reasonable installment schedule;
3. Excuse the monetary penalty amount payable; or
4. Sustain the monetary penalty amount determined above.

If NERC or the Regional Entity reduces the monetary penalty, such reduction will not be more than necessary to reach an amount that the entity has the financial ability to pay, and NERC or the Regional Entity shall consider the assessment of appropriate non-monetary penalties as a substitute or an alternative for the monetary penalty amount otherwise considered appropriate. NERC or the Regional Entity shall consider the assessment of appropriate non-monetary penalties as a substitute or an alternative for the monetary penalty amount otherwise considered appropriate in cases in which NERC or the Regional Entity excuses the monetary penalty.

---

<sup>9</sup> Examples of relevant, verifiable information that an entity may provide includes, but is not limited to, audited financial statements, filed state and federal tax returns, approved budgets, interim financial statements, loan or mortgage agreements related to the entity's operations, asset ledgers, and/or other documents showing financial or contractual obligations or legal relationships between the entity and other parties. If an entity has declared, or expects to declare, bankruptcy and requests that NERC or the Regional Entity review the monetary sanction in light of its financial ability to pay, it must provide NERC or the Regional Entity relevant, verifiable information regarding its financial ability to pay as provided in this Section. In such cases, NERC or the Regional Entity will take all appropriate actions necessary to preserve any claims related to monetary sanctions for violations of the Reliability Standards with the appropriate bankruptcy court.

#### **4. Determination of Non-Monetary Penalties**

Non-monetary penalties may be applied with the objective of promoting reliability, addressing risks to reliability, and ensuring compliance with the Reliability Standards. NERC or the Regional Entity should consider the factors in Section 3 when evaluating whether to impose non-monetary penalties and to what degree to impose non-monetary penalties that bear a reasonable relationship to the seriousness of the violation(s).<sup>10</sup> Non-monetary penalties are not actions that an entity would need to take in order to mitigate a violation or otherwise return to compliance. Non-monetary penalties may include, but are not limited to:

- requiring the chief executive officer or equivalent to sign the settlement agreement;
- requiring periodic reporting on reliability, security, and/or compliance related efforts to (1) the entity's board or equivalent, and/or (2) the NERC Board of Trustees Compliance Committee;
- issuing a non-public or public letter of reprimand;<sup>11</sup>
- conducting additional compliance monitoring of the entity, either through imposition of previously unscheduled engagements and/or increased frequency of planned engagements;
- placing the entity on a reliability watch list of significant entities that have violated Reliability Standards;<sup>12</sup> and/or
- setting conditions for carrying on certain activities, functions, or operations.

NERC or the Regional Entity may impose other non-monetary penalties using professional judgment as appropriate in order to achieve non-monetary penalty(s) that bear a reasonable relationship to the seriousness of the violation(s). Non-monetary penalties should have reasonable time limitations that are described in the Notice of Penalty.

If NERC or a Regional Entity imposes a non-monetary penalty that impacts the final monetary penalty, NERC or the Regional Entity shall explain in the Notice of Penalty how the non-monetary penalty impacted the final monetary penalty amount.

---

<sup>10</sup> For example, violations with higher assessed risk, more aggravating compliance history, management involvement in the violations, or evidence of concealment may warrant greater non-monetary penalties than violations without such factors present.

<sup>11</sup> A public letter of reprimand could be posted on NERC's website and should not include sensitive information that could be used to jeopardize the reliability or security of the Bulk Power System.

<sup>12</sup> An entity could be placed on a reliability watch list if, for example, it had significant reliability or security failures, repeated serious risk violations or programmatic failures, repeatedly failed to complete mitigation activities as required or on time, or engaged in other conduct that warranted such an action.

## Appendix A: Monetary Penalty Factors

NERC and the Regional Entities have the discretion to deviate from the ranges provided for each factor below by applying professional judgment to the outcome of the calculations in order to achieve a monetary penalty that bears a reasonable relationship to the seriousness of the violation(s).

### Base Monetary Penalty Factors

Base Monetary Penalty Factors	Range	Explanation
VRF and VSL Table	\$1,000 to \$20,000	The VRF and VSL Table is the starting point for monetary penalty calculations. The range represents the minimum and maximum “Low” level for all VRF and VSL combinations in the VRF and VSL Table.
Entity Size	0.25 to 6	Multiplies the monetary penalty amount derived above by 0.25 to 6
Assessed Risk	1 to 8	Multiplies the monetary penalty amount derived above by 1 to 8
Violation Duration	0 to 5	Increases the monetary penalty amount derived above by 0% to 500%
Violation Time Horizon	1 to 4	Multiplies the Violation Duration factor derived above by 1 to 4

### Aggravating and Mitigating Factors

Aggravating Factors	Range	Explanation
Repeat violations	0 to 8	Increases Base Monetary Penalty Amount by 0% to 800%
Failure to comply with a Remedial Action Directive	0 to 8	Increases Base Monetary Penalty Amount by 0% to 800%
Intentional Violation	0 to 8	Increases Base Monetary Penalty Amount by 0% to 800%
Concealment or Impediment	0 to 8	Increases Base Monetary Penalty Amount by 0% to 800%
Management Involvement	0 to 8	Increases Base Monetary Penalty Amount by 0% to 800%

Mitigating Factors	Range	Explanation
--------------------	-------	-------------

**NERC Sanction Guidelines**

Internal Compliance Program	0 to 0.4	Reduces Base Monetary Penalty Amount by 0% to 40%
Cooperation	0 to 0.2	Reduces Base Monetary Penalty Amount by 0% to 20%
Self-Report	0 to 0.3	Reduces Base Monetary Penalty Amount by 0% to 30%

**Final Adjustment Factors**

<b>Other Adjustment Factors</b>	<b>Range</b>	<b>Explanation</b>
Settlement/Avoiding Hearing and Admission/Acceptance of Responsibility	0 to 0.3 if entity agrees to settlement without admitting to and accepting responsibility for violation  0 to 0.4 if entity agrees to settlement and also admits to and accepts responsibility for violation	Reduces Adjusted Monetary Penalty Amount by 0% to 30% if entity agrees to settlement without admitting to and accepting responsibility for violation  Reduces Adjusted Monetary Penalty Amount by 0% to 40% if entity agrees to settlement and also admits to and accepts responsibility for violation

Attachment 17:

Sanction Guidelines:  
Appendix 4B

Redline



# Sanction Guidelines of the North American Electric Reliability Corporation

Effective: ~~July 1, 2014~~ **Month Day, 2020**  
(~~as noted below~~)

~~The highlighted term "Load" in footnote 7 will become effective as a defined term on July 1, 2014 in accordance with the Bulk Electric System Order (Order No. 773) and the June 13, 2013 Order Granting Extension of Time. See Appendix 2 of the Rules of Procedure.~~

## Table of Contents

<b>1. Overview</b>	<b>1</b>
<b>2. Basic Principles</b>	<b>4</b>
2.1 Settlement of Compliance Violations	3
2.2 Timing of Determination of Penalty, Sanction or Remedial Action Directive	4
2.3 Reasonable Relationship to Violation	4
2.4 Use of Factors to Determine Penalties	4
2.5 Multiple Violations	5
2.6 Relation of the Penalty to the Seriousness of the Violation and Violator's Ability to Pay	5
2.7 Violation Time Horizon	6
2.8 Extenuating Circumstances	7
2.9 Concealment or Intentional Violation	7
2.10 Economic Choice to Violate	7
2.11 No Influence by Outcome of Economic Choice to Violate	7
2.12 Non Monetary Sanctions or Remedial Actions	7
2.13 Non Exclusiveness of Monetary Penalties or Non Monetary Sanctions	7
2.14 Monetization of the Value of Sanctions	7
2.15 Maximum Limitations on Penalties	8
2.16 Frequency and Duration of Violations	6
<b>3. Determination of Monetary Penalties</b>	<b>10</b>
3.1 Initial Value Range of the Base Penalty Amount	10
3.1.1 Violation Risk Factor	11
3.1.2 Violation Severity Level	11
3.2 Setting of the Base Penalty Amount	12
3.2.1 Applicability of the Violation Risk Factor	13
3.2.2 First Violation	13
3.3 Application of Adjustment Factors	14
3.3.1 Repetitive Violations and Compliance History	14
3.3.2 Failure to Comply with a Remedial Action Directive or with Agreed Corrective or Mitigating Activity	15
3.3.3 Disclosure of the Violation Through Self Reporting and Voluntary Mitigating Activities by the Violator	15
3.3.4 Degree and Quality of Cooperation	15
3.3.5 Presence and Quality of Violator's Internal Compliance Program	16
3.3.6 Settlement	16
3.3.7 Violation Concealment and Non Responsiveness	16
3.3.8 Intentional Violation	16
3.3.9 Extenuating Circumstances	18
3.4 Setting of the Final Penalty Amount	18
3.4.1 Violator's Financial Ability to Pay	19
3.4.2 Confirmation of Disgorgement of Unjust Profit or Gain	19
<b>4. Determination of Non Monetary Sanctions</b>	<b>20</b>
<b>Appendix A: Base Penalty Amount Table</b>	<b>22</b>
<b>1. Overview</b>	<b>1</b>
<b>2. General Principles</b>	<b>1</b>
2.1 Initial Determination of Whether Monetary and/or Non-Monetary Penalties are Necessary	2
2.2 Non-Exclusiveness of Monetary or Non-Monetary Penalties	2
2.3 Maximum Limitations of Monetary Penalties	2
2.4 Reasonable Relationship to Seriousness of Violation	2
2.5 Settlement of Violations	3
2.6 Multiple Violations	4
2.7 Multiple Reliability Functions	5
2.8 Frequency and Duration of Violations	7

2.9 Extenuating Circumstances ..... 10

**3. Determination of Monetary Penalties ..... 10**

3.1 Overview of the Calculation of Monetary Penalties..... 10

3.2 Establishing the Base Monetary Penalty Amount ..... 10

    3.2.1 Violation Risk Factor and Violation Severity Level Table ..... 11

    3.2.2 Entity Size..... 12

    3.2.3 Assessed Risk ..... 12

    3.2.4 Violation Duration ..... 12

    3.2.5 Violation Time Horizon..... 12

3.3 Adjusting the Base Monetary Penalty Amount to Account for Aggravating and Mitigating Factors 13

    3.3.1 Aggravating Factor: Repetitive Violations and Compliance History ..... 14

    3.3.2 Aggravating Factor: Failure to Comply with a Remedial Action Directive ..... 15

    3.3.3 Aggravating Factor: Intentional Violation..... 16

    3.3.4 Aggravating Factor: Violation Concealment, Resistance, Impediment, Non-Responsiveness, and Lack of Cooperation ..... 16

    3.3.5 Aggravating Factor: Management Involvement ..... 17

    3.3.6 Mitigating Factor: Presence and Quality of Entity’s Internal Compliance Program ..... 17

    3.3.7 Mitigating Factor: Degree and Quality of Cooperation ..... 17

    3.3.8 Mitigating Factor: Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Entity ..... 18

3.4 Final Adjustments to the Monetary Penalty ..... 18

    3.4.1 Settlement and Admitting to and Accepting Responsibility for Violation ..... 18

    3.4.2 Disgorgement of Unjust Profits ..... 18

    3.4.3 Extenuating Circumstances ..... 18

    3.4.4 Entity’s Financial Ability to Pay ..... 19

**4. Determination of Non-Monetary Penalties ..... 20**

**Appendix A: Monetary Penalty Factors..... 22**

    Base Monetary Penalty Factors..... 22

    Aggravating and Mitigating Factors ..... 22

    Final Adjustment Factors ..... 23

## 1. Overview

The North American Electric Reliability Corporation (“NERC”), as the Electric Reliability Organization (“ERO”), and Regional Entities to ~~whom~~which NERC has delegated authority (hereinafter referred to collectively as “Regional Entities” or individually as a “Regional Entity”<sup>2+</sup>) shall determine and may levy monetary ~~Penalties~~ and non-monetary ~~sanctions and Remedial Action Directives~~penalties against a Registered Entity (herein referred to as “entity” or “entities”), as owners, operators, and users of the Bulk Power System for violations of the ~~Requirements of~~ NERC Reliability Standards and Regional Reliability Standards (collectively, “Reliability Standards”), which are approved by the Federal Energy Regulatory Commission (“FERC”) ~~and in the United States and/or~~ Applicable Governmental Authorities in Canada and/or Mexico. ~~This document sets out the processes and principles to be followed, and factors that will be considered when determining Penalties, sanctions, or Remedial Action Directives for violations. Collectively these processes, principles and factors are NERC’s Penalties, sanctions, and Remedial Action Directive guidelines.~~

NERC and the Regional Entities will follow ~~the directives, principles and processes in~~ these Sanction Guidelines when determining ~~Penalties, sanctions, or Remedial Action Directives for a violation. The adjustment factors in these Sanction Guidelines provide NERC and the Regional Entities the flexibility needed~~monetary and non-monetary penalties, while retaining the discretion to take into account the facts surrounding each violation and using professional judgment to deviate from the recommended ranges for each factor as appropriate in order to achieve monetary and/or non-monetary penalties that bear a reasonable relationship to the seriousness of the violation. NERC shall ensure that Regional Entities achieve acceptable levels of consistency in the application of the Sanction Guidelines across North America via NERC’s oversight efforts.

Any revision to these Sanction Guidelines must first be approved by the NERC Board of Trustees, then by FERC to become effective and applicable within the United States. Similarly, these Sanction Guidelines must be approved by an Applicable Governmental Authority to become effective in that Applicable Governmental Authority’s jurisdiction.

## 2. General Principles

The following paragraphs present and discuss the underlying principles that NERC and the Regional Entities use to determine monetary and non-monetary penalties for violations of the Requirements of the Reliability Standards.

---

<sup>+</sup> ~~For purposes of this document, the term “Regional Entity” shall be treated as either singular or plural, as necessary, to refer to the applicable Regional Entity or Regional Entities.~~

## **2.1 Initial – The outcome will be Determination of Whether Monetary and/or Non-Monetary Penalties are Necessary**

Situations involving multiple serious risk violations or systemic or programmatic failures should typically result in monetary penalties and/or non-monetary penalties.<sup>2</sup> Additionally, monetary penalties and/or non-monetary penalties may be appropriate for one or a small number of minimal, moderate, or serious risk violations, depending on the circumstances, including for example, the method of identification of the violation(s), the duration of the violation(s), and an entity’s compliance history. NERC or the Regional Entities have the discretion to impose a zero dollar monetary sanction where appropriate after consideration of all the relevant principles and factors discussed in these Sanction Guidelines. Monetary and non-monetary penalties do not apply for noncompliance or violations that NERC or the Regional Entities determine should be processed through the Compliance Exception or the Find, Fix, Track and Report (“FFT”) disposition methods described in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C of the NERC Rules of Procedure.

## **2.2 Non-Exclusiveness of Monetary or Non-Monetary Penalties and sanctions that are commensurate**

NERC or the Regional Entity may impose a non-monetary penalty either in lieu of or in addition to a monetary penalty for the same violation, and vice versa. Imposition of a monetary or non-monetary penalty for a violation does not preclude the imposition of the other as long as the aggregate monetary penalty and non-monetary penalty bears a reasonable relation to the seriousness of the violation and other relevant factors stated herein. If NERC or a Regional Entity imposes a non-monetary penalty that impacts the final monetary penalty, NERC or the Regional Entity shall explain in the Notice of Penalty how the non-monetary penalty impacted the final monetary penalty amount.

## **2.3 Maximum Limitations of Monetary Penalties**

In the United States, the maximum monetary penalty amount that NERC or a Regional Entity will assess for a violation of a Reliability Standard Requirement is equal to current inflation-adjusted maximum civil monetary penalty set forth in 18 CFR § 385.1602(d).<sup>3</sup> NERC and the Regional Entities may assess monetary penalty amounts up to and including this maximum amount for violations where warranted pursuant to these Sanction Guidelines.

## **2.4 Reasonable Relationship to Seriousness of Violation**

The application of these Sanction Guidelines is intended to result in monetary and non-monetary penalties that bear a reasonable relation to the seriousness of the violation(s) and mitigate overly burdensome penalties to less consequential or financially-limited entities, while promoting that no penalty is inconsequential to the entity to whom it is assessed.

NERC or the Regional Entity considers the factors described in these Sanction Guidelines in the development of monetary and non-monetary penalties in order to ensure that those penalties are consequential enough such that entities do not consider the imposition of monetary and/or non-monetary penalties to be an economic choice or cost of doing business. NERC or the Regional Entity may make adjustments to the values for all the factors described in the Sanction Guidelines as necessary to reach a penalty that is consequential to the entity while bearing a reasonable relation to the reliability impact of the violation and to those and seriousness of the violation. Such adjustments will generally occur in the most significant cases involving programmatic failures or multiple serious risk violations.

<sup>2</sup> In cases involving federal entities, monetary penalties for violations are not available. *See Sw. Power Admin. v. FERC*, 763 F.3d 27 (D.C. Cir. 2014).

<sup>3</sup> As of 2020, the maximum civil monetary sanction set forth in 18 CFR § 385.1602(d) is \$1,291,894 per violation, per day.

In such cases, NERC or the Regional Entity may review publicly available information regarding the entity involved, including, but not limited to, annual reports, quarterly reports, other financial statements, and penalties levied for similar violations, yet appropriately reflective against the entity by other regulators. After completing the development of any unique facts and circumstances regarding the specific violation and violator, monetary and non-monetary penalties using the process described in these Sanction Guidelines, NERC or the Regional Entity may consider whether the proposed penalty is consequential to the entity in light of the information reviewed and increase the penalty as appropriate, subject to the maximum limitation on monetary penalties described in Section 2.3 of these Sanction Guidelines. In such cases, NERC or the Regional Entity shall describe in the Notice of Penalty the analysis of the publicly available information that led it to increase the monetary and/or non-monetary penalty in order to ensure it was consequential to the entity and not an economic choice or cost of doing business.

~~Regional Entities shall follow these Sanction Guidelines when determining Penalties, sanctions, or Remedial Action Directives. NERC shall oversee the Regional Entities' application of the Sanction Guidelines to ensure that Regional Entities achieve acceptable levels of consistency. NERC's oversight will ensure that there is acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to reliability of the Bulk Power System. NERC may develop reporting requirements or a standard reporting form for use by the Regional Entities for this purpose, as NERC deems necessary or appropriate.~~

~~As experience is gained by NERC and the Regional Entities through the use and application of these Sanction Guidelines, NERC will review the Sanction Guidelines and may modify them as NERC deems appropriate or necessary. Authority delegated by NERC to the Regional Entities with respect to Penalties, sanctions, or Remedial Action Directives does not include the authority to modify these Sanction Guidelines.~~

~~NERC and the Regional Entities will apply the provisions of this document in accordance with applicable statutory provisions and the regulations, orders, and statements of policy of FERC and other Applicable Governmental Authorities that are applicable to the determination and imposition of Penalties and sanctions for violations of Reliability Standards in the respective jurisdictions.~~

~~Any revision to this document must first be approved by the Board, then by FERC, Applicable Governmental Authorities in Canada or Applicable Governmental Authorities in Mexico prior to becoming effective and applicable within the United States or these Applicable Governmental Authorities' respective jurisdictions.~~

## 1. ~~Basic Principles~~

The following paragraphs identify and discuss the basic principles underpinning why and how NERC and the Regional Entities will determine Penalties, sanctions, and Remedial action Directives for violations of the Requirements of the Reliability Standards.

The order in which the principles are presented in this document does not set or indicate order of precedence.

### 1.4.2.5 ~~Settlement of Compliance Violations~~

Pursuant to the NERC Compliance Monitoring and Enforcement Program, Appendix 4C ~~to~~ of the NERC Rules of Procedure, an entity's Possible or Alleged Violations of the Reliability Standards may be resolved through settlements reached between ~~NERC, a Regional Entity and the Registered Entity or Entities to whom a Possible or Alleged Violation is attributed by NERC or the Regional Entity~~ the relevant Compliance Enforcement Authority<sup>4</sup> and the entity. Any provisions within a settlement regarding ~~Penalties or sanctions~~ monetary and non-monetary penalties can supersede any corresponding ~~Penalties or sanctions~~ penalties that would otherwise be determined pursuant to these Sanction Guidelines.

### 1.2 ~~Timing of Determination of Penalty, Sanction or Remedial Action Directive~~

The ~~Penalty or sanction for a violation will be determined during the enforcement process in accordance with Section 5.0 of Appendix 4C.~~

At any time during the enforcement process, including any hearings or appeals, ~~NERC or the Regional Entity may determine that a Remedial Action Directive to the Registered Entity is warranted and, in accordance with~~ In particular, NERC or the Regional Entity may consider a reduction in the monetary penalty if the entity resolves the violation through settlement, taking into account the entity's good faith efforts to reach settlement without undue delay. This reduction applies to the monetary penalty amount after adjustments are made pursuant to the aggravating and mitigating factors listed in Section 7.0 of Appendix 4C, may direct that the Registered Entity implement the Remedial Action Directive3.3.

## 2.6 Multiple Violations

### 1.3 ~~Reasonable Relationship to Violation~~

~~Penalties and sanctions levied for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation while also reflecting consideration of the other factors specified in these Sanction Guidelines."~~

### 1.4 ~~Use of Factors to Determine Penalties~~

~~Penalties levied for a Reliability Standard violation will be based on all facts and information relevant to the violation. To that end, these Sanction Guidelines include factors that NERC and the Regional Entities will consider while determining the Penalty or sanction for a violation.~~

~~The presence of some factors in connection with a violation aggravates the seriousness of that The entity may be in violation and should increase the Penalty. Conversely, the presence of certain other factors mitigates the seriousness of the violation and should reduce the Penalty. The absence of an aggravating or mitigating factor will have no impact on the Penalty.~~

~~This document identifies many aggravating and mitigating factors that, if present in connection with a violation, should be considered in determining the Penalty or sanction, and describes how these~~

<sup>4</sup> Regional Entities and NERC can act as the Compliance Enforcement Authority.

factors should be taken into account. Additional factors not identified in this document may also be considered in determining a Penalty or sanction, as NERC or the Regional Entity deems appropriate under the circumstances. Where additional factors are considered they will be identified, and their use will be justified, in the Notice of Penalty, and the effect of using these factors on the Penalty or sanction determined will be fully and clearly disclosed.

#### **1.51.1 Multiple Violations**

A violation is a failure to meet a Requirement of a Reliability Standard by a Bulk Power System owner, operator or user responsible to comply with that Requirement.

The Registered Entity's noncompliance may involve of more than one Reliability Standard or several Requirements of a single the same Reliability Standard. As such, or have multiple individual instances of violations may exist when NERC or the Regional Entity determines Penalties or sanctions for a noncompliance.

NERC or of the Regional Entity may determinesame Standard and levy a separate Penalty or sanction upon a violator Requirement. As such, for each individual violation of a Reliability Standard Requirement. However, where multiple violations related to a single act or common incidence of noncompliance, or where Penalties or sanctions for several unrelated violations by the Registered Entity are being determined at the same time addressed in a Notice of Penalty, NERC or the Regional Entity may levy, in its sole discretion, either (1) a separate monetary penalty and/or non-monetary penalty(s) for each violation, describing the penalty for each violation individually or the total penalty for the group of violations as a whole; or (2) a single, aggregate monetary penalty and/or non-monetary penalty bearing reasonable relationship to the aggregate seriousness of the violations as a whole. When using the second option described above, NERC or the Regional Entity or Entities may determine and issue a single aggregate Penalty or sanction bearing reasonable relationship to the aggregate of the violations. In such a case, the Penalty or sanction will generally behas the discretion to adjust the factors described in these Sanction Guidelines to reach a monetary and/or non-monetary penalty that is appropriate and will generally impose a monetary and/or non-monetary penalty at least as large or expansive as what would be called for individually for the most serious of the violations.

## **2.7 Multiple Reliability Functions**

Some entities may register for more than one reliability function in the NERC Compliance Registry (e.g., Transmission Owner, Transmission Operator, Balancing Authority, Generation Operator), and as a result, a single Requirement in certain Reliability Standards may apply to the entity for several more than one of its registered functions. Where an entity performs several more than one registered functionsfunction, NERC or the Regional Entity will assess a violation and associated Penalty or sanctionpenalty(s) against the Registered Entityentity, not against each function.

### **1.6 Relation of the Penalty to the Seriousness of the Violation and Violator's Ability to Pay**

As stated in Section 2.3 above, Penalties levied for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation. As part of the assessment of the seriousness of the violation, NERC or the Regional Entity shall review the Violation Risk Factors<sup>5</sup> associated with the violation and the characteristics of the violator's operation or power system. NERC or the Regional Entity may consider the size of the violator. NERC or the Regional Entity will also consider the facts of the violation so that the "actual" size of the violator is appropriately considered. The following are provided as illustrative examples:

<sup>5</sup> See Section 3.1.1 for a discussion of these factors

- If the violator belongs to a generation and transmission cooperative or joint action agency, size will be attributed to the particular violator, rather than to that generation and transmission cooperative or joint action agency.
- If the violator constitutes part of a corporate family the size of the violator will be attributed to that violator alone, in the absence of any facts indicating involvement of the whole corporation or corporate affiliates of the violator.
- If the violator is an entity established solely as a shell to register as subject to one or more Reliability Standards the size of the entity will be disregarded in favor of consideration of the size of the parent entity or any affiliates that NERC or the Regional Entity deems involved and constituting the “actual” size of the violator.

At the request of the violator, NERC or the applicable Regional Entity or Entities may review the Penalty in light of the violator’s financial ability to pay the Penalty. Financial ability shall include the financial strength of the Registered Entity as well as its financial structure (e.g., ~~for profit versus non-profit~~). Where Penalties are reduced or eliminated NERC or the Regional Entity may consider non-monetary sanctions as alternatives or substitutes to the Penalty, pursuant to Sections 2.12, 2.13 and 2.14, below, of these Sanction Guidelines.

Consideration of the factors described in this subsection is intended to (i) promote that violators are penalized or sanctioned commensurate with the risk or effect that their specific violation of the Reliability Standards had or is having on the reliability of the Bulk Power System while also (ii) mitigating overly burdensome Penalties to less consequential or financially limited entities concurrent with (iii) promoting that no Penalty is inconsequential to the violator to whom it is assessed. Consideration of these factors is intended to result in Penalties levied for violations of Reliability Standards bearing a reasonable relationship to the seriousness of the violation while also addressing the violators’ ability to pay the Penalties that are assessed.

#### **1.6.11.1.1 Violation Time Horizon**

Reliability Standards involving longer and broader time horizons, such as long term planning activities, may have a lesser immediate impact and pose less immediate risk to the reliability of the Bulk Power System than Reliability Standards involving shorter and narrower timeframes, such as Registered Entities’ conduct in real time. Similarly, Reliability Standards involving longer and broader time horizons typically will provide a longer time period over which to discover and remedy a violation when compared to Reliability Standards involving more immediate activities such as next-day planning, same-day operations or real-time operations. Using a time horizon element in the determination of Penalties for violations provides for recognition of the “more immediate” nature—and hence higher risk—of the threat of some violations as opposed to the lesser risk “future threat if not corrected” nature of other violations.

NERC or the Regional Entity shall consider the time horizon of the Reliability Standard violated. Violations of Reliability Standards involving immediate or real-time activities will generally incur larger Penalties than violations of Reliability Standards with longer or broader time horizons.

Time horizons inherent in Reliability Standard Requirements are not reflected in their Violation Risk Factors or Violation Severity Levels for the Requirement<sup>6</sup>. Accordingly, the time horizon element of a violation will be considered when determining the Base Penalty Amount<sup>7</sup> for the violation.

NERC or the Regional Entity will utilize judgment and will analyze the facts of the violation to determine the time horizon for the violation and its impact on the selection of the Base Penalty

<sup>6</sup> See Section 3.1 for a discussion of these factors.

<sup>7</sup> See Section 3.2

~~Amount. The rationale for the time horizon used and its impact on the setting of the Base Penalty Amount will be provided within the Notice of Penalty issued for the violation.~~

#### ~~1.7.1.1 Extenuating Circumstances~~

~~In unique extenuating circumstances causing or contributing to the violation, such as significant natural disasters, NERC or the Regional Entity may significantly reduce or eliminate Penalties.~~

#### ~~1.8 Concealment or Intentional Violation~~

~~NERC or the Regional Entity shall always consider as an aggravating factor any attempt by a violator to conceal the violation from NERC or the Regional Entity, or any intentional violation incurred for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System.~~

#### ~~1.9 Economic Choice to Violate~~

~~Penalties shall be sufficient to assure that entities responsible for complying with Reliability Standards do not have incentives to make economic choices that cause or unduly risk violations of Reliability Standards, or incidents resulting from violations of the Reliability Standards. Economic choice includes economic gain for, or the avoidance of costs to, the violator. NERC or the Regional Entity shall treat economic choice to violate as an aggravating factor when determining a Penalty.~~

#### ~~1.10 No Influence by Outcome of Economic Choice to Violate~~

~~Whatever the financial outcome to the Registered Entity making an economic choice to violate a Reliability Standard, such decisions present a risk to reliability and to others, commonly without their knowledge or consent. Penalties levied to violators making an economic choice to violate shall reflect only that the violator made an economic choice to violate a Reliability Standard. The lack of or reduced magnitude of any actual benefit received, or any damage suffered, by the violator as a consequence of making this choice will have no influence upon the determination of the Penalty.~~

#### ~~1.11 Non-Monetary Sanctions or Remedial Actions~~

~~Enforcement actions taken by NERC or a Regional Entity are not limited to monetary Penalties. NERC or the Regional Entity may apply, at its discretion, non-monetary sanctions including limitations on activities, functions, operations, or placement of the violator's name on a reliability watch list of major violators.~~

#### ~~Non-Exclusiveness of Monetary Penalties or Non-Monetary Sanctions~~

~~NERC or the Regional Entity may impose a non-monetary sanction either in lieu of or in addition to a monetary Penalty for the same violation, and vice versa. Imposition of a monetary Penalty or non-monetary sanction for a violation does not preclude the imposition of the other as long as the aggregate Penalty bears a reasonable relation to the seriousness of the violation and other relevant factors.~~

#### ~~1.12 Monetization of the Value of Sanctions~~

~~A significant element of NERC's oversight of Penalties, sanctions, and Remedial Action Directives determined and levied by Regional Entities is to ensure acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to the reliability of the Bulk Power System by similarly situated entities. It is also a requirement and a commitment of NERC and the Regional Entities that Penalties or sanctions levied for the violation of a Reliability Standard bear reasonable relation to the seriousness of the violation. It is easier, more objective, and more transparent to monitor and test for the acceptable similarity of Penalties and sanctions if monetary Penalties or monetized values of sanctions are used as the primary basis of comparison. Similarly, there will be transparency, particularly to those familiar with the power industry, that NERC or the Regional Entity reasonably addressed the seriousness of a violation if the consequences are expressed clearly and quantifiably in monetary terms.~~

~~Penalties determined and levied by NERC or Regional Entities will by definition be valued in monetary terms: U.S. or Canadian dollars. It is the preference of NERC that non-monetary sanctions imposed either in lieu of or in addition to a Penalty should include disclosure of the monetary value of the sanctions. Generally, NERC or the Regional Entity will first determine the Penalty for the violation and may, at their discretion, introduce sanctions as appropriate alternatives to the Penalty or as additions to a lesser Penalty. However, NERC or the Regional Entity may determine the monetary value of sanctions using other methods.~~

### **1.13—Maximum Limitations on Penalties**

~~In the United States, the maximum Penalty amount that NERC or a Regional Entity will assess for a violation of a Reliability Standard Requirement is \$1,000,000 per day per violation. NERC and the Regional Entities will assess Penalties amounts up to and including this maximum amount for violations where warranted pursuant to these Sanction Guidelines.~~

~~In Canadian jurisdictions, the maximum monetary Penalty for a Reliability Standard violation is significantly less than \$1,000,000 per day per violation. Further, legislation presently governing certain Canadian jurisdictions does not accommodate the levying of such a Penalty under certain circumstances, may not accommodate the levying of such a Penalty for all violations, or does not accommodate the levying of any monetary Penalties.~~

~~When NERC or a Regional Entity levies a Penalty or proposes a Penalty to Applicable Governmental Authorities with jurisdiction to levy a Penalty, NERC or the Regional Entity shall follow these steps:~~

~~a. NERC or the Regional Entity will initially disregard the Penalty limitations of the Applicable Governmental Authorities, and will determine what the Penalties or sanctions would be pursuant to these Sanction Guidelines.~~

~~NERC or the Regional Entity will review the maximum Penalty allowed in the applicable jurisdiction.~~

~~b. NERC or the Regional Entity will set the actual Penalty as the lesser of (i) the Penalty determined pursuant to these Sanction Guidelines and (ii) the maximum Penalty or sanction allowed in the applicable jurisdiction.~~

~~c. If the maximum Penalty allowed in the applicable jurisdiction is lower than the Penalty determined under the Sanction Guidelines, in addition to the legally permissible Penalty, the Notice of Penalty or similar document issued by NERC or the Regional Entity regarding the violation will also list the Penalty that was determined pursuant to these Sanction Guidelines.~~

~~Adhering to the above steps will insure that the determination of any Penalty for any violation will produce output that can be directly compared (i.e. without influence of any Penalty limitations or restrictions applicable in certain jurisdictions) with the Penalty determined for any other violation, thus assisting the efforts of NERC and others to ensure that these Sanction Guidelines are uniformly applied and that there is an acceptable level of consistency in their application across North America. Applicable Governmental Authorities may also find such information useful for their determination of the appropriateness of any Penalty or sanction proposed to them to be levied against a violator of the Reliability Standards.~~

### **1.142.8 2.16—Frequency and Duration of Violations**

~~As stated in Section 2.15 above, the maximum Penalty that will be imposed in the U.S. for violation of a Reliability Standard is \$1,000,000 per day. However, some Some Reliability Standards may not support the assessment of Penaltiesa monetary penalty on a “per day, per violation” basis, but instead should have Penaltiesmonetary penalties calculated based on an alternative Penaltyviolation frequency or duration. Where NERC or the Regional Entity deems that a monetary Penalty is warranted, or where NERC or the~~

~~Regional Entity monetizes (Section 2.14) the value of a non-monetary sanction, they shall determine the Penalty or monetized amount~~ monetary penalties consistent with the following:

#### Multiple Instances of Violation on One Day

The nature of some Reliability Standards includes the possibility that ~~a Registered Entity~~ an entity could violate the same Requirement two or more times on the same day. In this instance NERC and the Regional Entity are not limited to penalizing the ~~violation~~ entity the maximum ~~of \$1,000,000~~ monetary penalty amount per day. NERC or the Regional Entity may deem that multiple violations of the same Requirement occurred on the same day, each of which is subject to the maximum ~~potential Penalty of \$1,000,000~~ monetary penalty amount per violation, per day. Also, NERC or the Regional Entity is not constrained to assessing the same ~~Penalty~~ monetary penalty amount for each of the multiple violations, irrespective of their proximity in time.

#### Cumulative Over Time

Certain Requirements of Reliability Standards are measured not on the basis of discrete acts, but on cumulative acts over time. Reliability Standards that fall into this category generally involve measurements based on averages over a given period.

If a Reliability Standard Requirement measured by an average over time can only be violated once per applicable period, there is risk that a disproportionately mild ~~Penalty~~ monetary penalty might be levied in a situation where the violation was serious and the effects on the Bulk Power System were severe. ~~In the future, as~~ As individual Reliability Standards are revised, each Reliability Standard Requirement that is based on an average over time will specify the minimum period in which a violation could occur and how to determine when a violation arises, which may be other than once per applicable period. ~~In the interim until~~ Until relevant Reliability Standards are so modified, ~~where~~ when assessing a ~~Penalty~~ monetary penalty for violation of such a Reliability Standard, NERC or the Regional Entity will generally consider that only one violation occurred per measurement period. However, if an average must be measured by a span of time greater than a month, each month of that span shall constitute at a minimum one violation.

#### Periodically Monitored Discrete Violation

Some Reliability Standards may involve discrete events which are only monitored periodically or which are reported by exception. If a Requirement of such a Reliability Standard states that a discrete event constitutes a violation, then (i) a violation arises when that event occurs and (ii) that violation continues until remedied; and (iii) the violation occurred at the point that the ~~Registered Entity~~ entity entered into noncompliance with the Reliability Standard, regardless of the monitoring period for the activity or its date of discovery or reporting. For example, if a task required by a Reliability Standard Requirement was not done by the required date, it is irrelevant that monitoring for compliance for the Requirement occurs only on a yearly or other periodic basis; NERC or the Regional Entity will deem a violation to have occurred on the first day of noncompliance and each day thereafter until compliance is effectuated. Similarly, if a discrete event occurs and is not remedied on the date of its occurrence, then NERC or the Regional Entity will deem a violation to have occurred on the day of the first instance of the noncompliance and each day thereafter until the entity is in compliance.

NERC or the Regional Entity may, at its discretion, assess the same ~~Penalty~~ monetary penalty amount for each day that the ~~Registered Entity~~ entity was in violation of the Reliability Standard Requirement in question.-

## 2.9 Extenuating Circumstances

In unique extenuating circumstances causing or contributing to the violation, such as, but not limited to, significant natural disasters or pandemic, NERC or the Regional Entity may significantly reduce or eliminate monetary and/or non-monetary penalties.

## 2.3. Determination of Monetary Penalties

This Section describes the specific steps that NERC or the Regional Entity will follow to determine the monetary Penalty for a violation<sup>8</sup>. The determination of non-monetary sanctions is discussed in Section 4 of this document. penalty for a violation.<sup>9</sup> Appendix A provides the ranges generally used for each factor used to determine the monetary penalty for a violation. NERC and the Regional Entities have the discretion to deviate from the ranges for the factors provided in Appendix A by applying professional judgment to the outcome of the calculations where appropriate in order to achieve a monetary penalty that bears a reasonable relationship to the seriousness of the violation(s). The determination of non-monetary penalties is discussed in Section 4 of these Sanction Guidelines.

### 3.1 Overview of the Calculation of Monetary Penalties

The calculation of monetary penalties for violations of NERC or the Regional Entity will set Reliability Standards is calculated as follows:

Step 1.—**Step 1:** Establish the Base Monetary Penalty Amount for the violation, as discussed in Sections 3.1 and 3.2, below.

NERC or the Regional Entity will adjust the Base Penalty Amount set in Step 1 pursuant to Section 3.3, below. This will result<sup>2</sup>.

**Step 2:** Adjust the Base Monetary Penalty Amount after accounting for any relevant aggravating or mitigating factors, resulting in the Adjusted Monetary Penalty Amount—, as discussed in Section 3.3. NERC or the Regional Entity may review **Step 3:** Make final adjustments to the Adjusted Monetary Penalty Amount determined in Step 2 in light of the violator's financial ability to pay the Penalty. Also, where applicable, NERC or the Regional Entity will confirm that the Penalty will disgorge to account for other circumstances, as discussed in Section 3.4, such as agreeing to settlement, extenuating circumstances, disgorgement of unjust profits or economic benefits associated with an economic choice to violate. At the conclusion of this review, NERC or the Regional Entity will set, and/or entity requests to reduce the proposed monetary penalty in light of the entity's financial ability to pay the monetary penalty, resulting in the Final Monetary Penalty Amount.

~~1.— At the discretion of NERC or the Regional Entity, a Penalty may be assessed on a per violation per day basis or with an alternative frequency or duration. Where NERC or the Regional Entity deems that alternative Penalty frequency or duration is warranted, the Notice of Penalty associated with the violation will clearly identify this and provide the rationale for it. Where NERC or the Regional Entity deems that alternative Penalty frequency or duration is warranted, Penalties shall be determined in accordance with section 2.16 of these Sanction Guidelines.— Establishing~~ **Initial Value Range of the Base Monetary Penalty Amount**

NERC or the Regional Entity will set the Base Monetary Penalty Amount for the violation using the following factors:

1. VRF and VSL Table

<sup>8</sup>The text in this section discusses the determination of a single Penalty for an individual violation; however, the process laid out is also applicable to determining the individual Penalties, or a single aggregate Penalty, for multiple violations that are associated with each other as discussed in Section 2.8 of this document.

<sup>9</sup>The text in this section discusses the determination of a single monetary sanction for an individual violation; however, the process laid out is also applicable to determining the individual monetary sanction, or a single, aggregate monetary sanction, for multiple violations that are associated with each other as discussed in Section 2.6 of these Sanction Guidelines.

- 2. Entity Size
- 3. Assessed Risk
- 4. Violation Duration
- 5. Violation Time Horizon

**3.2.1 Violation Risk Factor and Violation Severity Level Table**

NERC or the Regional Entity will determine an initial monetary penalty value range for the Base Penalty Amount by considering the Violation Risk Factor (“VRF”) of the Requirement violated and the Violation Severity Level (“VSL”) assessed for the violation. Using the Base Penalty Amount VRF and VSL Table provided in Appendix A below, NERC or the Regional Entity will look up the initial monetary penalty value range for the Base Penalty Amount by finding the intersection of the violation’s VRF and VSL on the table. In general, NERC or the Regional Entity will start with the lowest value of the initial monetary penalty value range, and will adjust the initial monetary penalty value pursuant to the factors discussed below, but NERC or the Regional Entity has the discretion to start at a higher value within the ranges below on a case-by-case basis as appropriate. Starting at a higher value within the ranges below may be appropriate in cases where using the lowest value of the initial monetary penalty value range results in a proposed monetary penalty that does not bear a reasonable relationship to the seriousness of the violation after consideration of the other factors discussed below.

Violation Risk Factor	Violation Severity Level							
	Lower		Moderate		High		Severe	
	Low	High	Low	High	Low	High	Low	High
Lower	\$1,000	\$3,000	\$2,000	\$7,500	\$3,000	\$15,000	\$5,000	\$25,000
Medium	\$2,000	\$30,000	\$4,000	\$100,000	\$6,000	\$200,000	\$10,000	\$335,000
High	\$4,000	\$125,000	\$8,000	\$300,000	\$12,000	\$625,000	\$20,000	\$1,291,894

NOTE: This table describes the <sup>10</sup>monetary penalty that could be applied for each day that a violation continues, subject to the consideration of the other factors described below that are used to determine a monetary penalty.

**4.15.1.13.2.1.1 Violation Risk Factor**

Each Reliability Standard Requirement has been assigned a VRF through the NERC Reliability Standards or Regional Reliability Standards development process. The VRFs have been defined and approved through the Reliability Standards development process and are assigned to Requirements to provide clear, concise and comparative association between the violation of a Requirement and the expected or potential impact of the violation to the reliability of the Bulk Power System. One of three defined levels of risk VRF is assigned to each Reliability Standards Requirement: Lower VRF; Medium VRF; or High VRF.

**4.15.1.23.2.1.2 Violation Severity Level**

VSLs are defined levels of the degree to which a Requirement of a Reliability Standard was violated. Whereas VRFs are determined pre-violation and indicate the relative potential impacts that violations of each Reliability Standard could pose to the reliability of the Bulk Power System, VSLs are assessed post-violation and are an indicator of the severity of the actual violation of the Reliability Standard(s) Requirement(s) in question.

These Sanction Guidelines utilize the VSLs, which have been designated as: Lower, Moderate, High, and Severe.

<sup>10</sup> As discussed in Section 2.5 of this document, where there is more than one violation, but the violations are sufficiently associated, NERC or the Regional Entity may set a single initial value range that is appropriate in light of the individual VRF/VSL combinations of the violations.

## 1.16—Setting of the Base Penalty Amount

### 3.2.2 Entity Size

NERC or the Regional Entity will ~~set the Base Penalty Amount~~ adjust the monetary penalty amount based on entity size, in terms of generating capacity and/or transmission line miles, size of lines (in MVA, for example), and/or peak load served in order to more accurately reflect the potential impact and, consequently, the violation. ~~The Base Penalty Amount for seriousness of the violation may(s).~~

- ~~If an entity belongs to a generation and transmission cooperative or joint-action agency, size will be set at the highest figure of attributed to the particular entity, rather than to the initial value range determined pursuant to Section 3.1, above. However, generation and transmission cooperative or joint-action agency.~~
- ~~If the entity constitutes part of a corporate family, the size of the entity will be attributed to that entity alone, in the absence of any facts indicating involvement of the whole corporation or corporate affiliates of the entity.~~
- ~~If the entity is established solely as a shell to register as subject to one or more Reliability Standards, the size of the entity will be disregarded in favor of consideration of the size of the parent entity or any affiliates that NERC or the Regional Entity may set the Base Penalty Amount at or below the lowest figure of the initial value range in light of two specific circumstances regarding the violation and the violator, specifically: deems involved and constituting the “actual” size of the entity.~~
- ~~If the entity is made up of multiple subsidiaries of a parent corporation that commits the same violation, the size of the entity will be assessed using the combined size of the various subsidiaries, up to the size of the entire parent corporation. NERC or the Regional Entity will endeavor to ensure that the monetary penalty in such cases is approximately the same regardless of whether the multiple subsidiaries are assessed a single violation or if each subsidiary is assessed its own violation, provided that the subsidiaries operate under the same or substantially the same compliance program.~~

In general, an entity that is larger in size will have a higher multiplier than an entity that is smaller in size, all else being equal.

### 3.2.3 Assessed Risk

NERC or the Regional Entity shall consider the assessed risk that the violation of the Reliability Standard Requirement posed to the reliability of the Bulk Power System. The assessed risk of a violation can be minimal, moderate, or serious and substantial. Assessed risk is the potential impact to the reliability of the Bulk Power System multiplied by the likelihood of that impact occurring, or the actual harm to reliability if the impact occurs, determined based on facts about the entity and the scope of the violation, including any facts that increase or decrease the potential impact to the reliability of the Bulk Power System, the likelihood of that impact occurring, or actual harm if the impact did occur. In general, violations with an assessed risk of serious and substantial will have a higher multiplier than violations with an assessed risk of moderate, and violations with an assessed risk of moderate will have a higher multiplier than violations with an assessed risk of minimal, all else being equal.

### 3.2.4 Violation Duration

NERC or the Regional Entity shall consider the duration of the violation of the Reliability Standard Requirement. In general, violations with a longer duration will have a higher percentage increase to the monetary penalty than violations with a shorter duration, all else being equal.

### 3.2.5 Violation Time Horizon

- a. ~~The applicability of the VRF to the specific circumstances<sup>++</sup> of the violator.~~

<sup>++</sup> ~~The circumstances of the violator will include but not be limited to: the violator’s aggregate and net Load; and interconnections characteristics such as voltage class and transfer ratings.~~

b. ~~Whether this is an inconsequential first violation by the violator of the Reliability Standard(s) in question.~~

~~As noted in Section 2.7, NERC or the Regional Entity will consider the time horizon for the violation when setting NERC or the Regional Entity shall consider the Violation Time Horizon of the Reliability Standard Requirement violated and adjust the monetary penalty accordingly. In general, violations with shorter Violation Time Horizons, such as Real Time Operations, will have a higher multiplier than violations with longer Violation Time Horizons, such as Long Term Planning, all else being equal. If the Reliability Standard Requirement does not have a Violation Time Horizon or if a different Violation Time Horizon is more appropriate based on the facts and circumstances of the violation, NERC or the Regional Entity may use the Violation Time Horizon that is most appropriate given the facts and circumstances of the violation.~~

### **1.17.3 Adjusting the Base Monetary Penalty Amount for the violation to Account for Aggravating and Mitigating Factors**

~~The Penalty amount resulting from this review will be the Base Penalty Amount that is used as the basis for further adjustment pursuant to the Adjustment factors discussed in the next section (3.3) of this document.~~

#### **1.17.1 Applicability of the Violation Risk Factor**

~~VRFs are assigned to Reliability Standards Requirements as indicators of the expected risk or harm to the Bulk Power System posed by the violation of a Requirement by a typical or median Registered Entity that is required to comply. NERC or the Regional Entity may consider the specific circumstances of the violator to determine if the violation of the Requirement in question actually produced the degree of risk or harm anticipated by the VRF. If that expected risk or harm was not or would not have been produced, NERC or the Regional Entity may set the Base Penalty Amount to a value it (i) deems appropriate and (ii) is within the initial value range set above pursuant to Section 3.1.~~

#### **1.17.2 First Violation**

~~If the actual or foreseen impact of the violation is judged to be inconsequential by NERC or the Regional Entity and the violation is the first incidence of violation of the Requirement in question by the violator, NERC or the Regional Entity may at its discretion: (i) set the Base Penalty Amount to a value it deems appropriate within the initial value range set above pursuant to Section 3.1, or (ii) excuse the Penalty for the violation (i.e. set the Base Penalty Amount to \$0).~~

~~This relief will generally not be afforded to the violator if allow NERC or the Regional Entity determines that the violator has a poor internal compliance program or there is other evidence of a poor culture of compliance or compliance record; e.g. the circumstances discussed in Section 3.3.1 have been an aggravating factor in one or more previous Penalties assessed against the violator.~~

~~This relief will not be available for consideration in those instances where the violator concealed or attempted to conceal the violation, failed or refused to comply with compliance directives from NERC or the Regional Entity, or intentionally violated for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System.~~

### 1.18—Application of Adjustment Factors

Adjustment factors provide an opportunity for NERC or the Regional Entity to adjust the Base Monetary Penalty Amount to reflect the specific facts and circumstances material to each violation and ~~violation~~the entity.

These Sanction Guidelines identify aggravating and mitigating factors that, if present in connection with a violation, should be considered in determining the monetary and/or non-monetary penalty, and describes how these factors should be taken into account. Additional factors not identified in these Sanction Guidelines may also be considered in determining a monetary and/or non-monetary penalty, as NERC or the Regional Entity deems appropriate under the circumstances. When additional factors are identified, the basis for their use, and the determination of whether they aggravated or mitigated the monetary penalty, will be provided in the Notice of Penalty. The absence of an aggravating or mitigating factor will have no impact on the monetary penalty.

These Sanction Guidelines recognize and require that, ~~as at~~ a minimum, NERC or the Regional Entity consider the ~~following~~adjustment factors described in this section:

1. Repetitive violations and the ~~violation's~~entity's compliance history
2. Failure of the ~~violation~~entity to comply with ~~compliance directives~~a Remedial Action Directive
3. ~~Intentional violations~~Disclosure of
4. ~~Any attempt by the entity to conceal~~ the violation ~~by the violator through self-reporting, or as resist, impede, be non-responsive, or otherwise exhibit a lack of cooperation~~
5. ~~Management involvement in any intentional violation or attempt to conceal~~ the ~~result of a violation~~
- 3-6. ~~The presence and quality of the entity's compliance self-analysis following a Bulk Power System event, and voluntary Mitigating Activities, by the violator~~program
- 4-7. Degree and quality of cooperation by the ~~violation~~entity in the violation investigation and in any Mitigating Activities directed for the violation
  - a. ~~The presence and quality~~Disclosure of the ~~violation's~~compliance program
  - b. ~~Settlement~~
  - 5-8. ~~Any attempt~~violation by the ~~violation~~entity through self-reporting and voluntary Mitigating Activities by the ~~violation~~entity
  - c. ~~Intentional violations~~
  - d. ~~Extenuating circumstances~~

NERC or the Regional Entity may also consider other factors it deems appropriate under the circumstances as long as their use is clearly identified and adequately justified. The effect of using these factors must be fully and clearly disclosed in the Notice of Penalty ~~and supporting documents~~.

#### 1.18.13.3.1 Aggravating Factor: Repetitive Violations and Compliance History

~~If a violator has had repetitive infractions of the same or a closely related Reliability Standard Requirement, particularly within a time frame defined within the Reliability Standard(s) or deemed appropriate by NERC or the Regional Entity in the absence of a definition of a time frame in the relevant Reliability Standard, NERC or the Regional Entity shall consider an increase to the Penalty. In evaluating the violator's compliance history, NERC or the Regional Entity will take into account previous violations by affiliates of the violator, particularly violations of the same or similar Reliability Standard Requirements, and~~If an entity or relevant affiliate of an entity has had repetitive infractions of the same or a similar Reliability Standard Requirement, NERC or the Regional Entity will evaluate whether any such prior violations reflect recurring conduct by affiliates that are operated by the same corporate entity or whose compliance activities are conducted by the same corporate entity; and shall consider an increase to the monetary penalty based on the facts and circumstances of the instant and prior violations. Repetitive infractions that may result in aggravation of the monetary penalty generally include prior violations that

were still ongoing within five years of the start date of the instant violation that are either (1) violations with the same root cause as the instant violation and mitigation activities that should have prevented future violations; or (2) programmatic failures involving the same or similar Reliability Standards and Requirements.

#### NERC or the Regional Entity

The reset period or reset time frame of a Reliability Standards Requirement may be defined or implied within a given Reliability Standard as the period of time generally required for a violator to continue operations without violating a Reliability Standard, particularly the initial Reliability Standard violated or a similar Reliability Standard. Expiration of this reset period or reset time frame would serve to negate or minimize consideration of the violator's previous violation history for sanctioning purposes in the event of a subsequent violation(s). NERC or the Regional Entity shall exercise appropriate judgment and discretion in this regard as warranted by the facts and circumstances, particularly where no reset period or reset time frame is specifically set within the Reliability Standard violated. Repeat violations within violation reset periods or reset time frames are aggravating factors in the determination of the Penalty or sanction. A violation history of no violations will produce no mitigation of the Penalty otherwise determined; a violation history of infrequent minor violations of lesser risk Requirements assessed lower VSLs may result in small or no increase; and a history of more frequent violations or previous violations of higher risk Requirements assessed more severe VSLs will generally incur commensurately larger increases.

will generally aggravate the monetary penalty by a greater amount in cases where (1) the relevant violation history was closer in time to the instant violation, (2) the number of violations determined to be relevant violation history was higher, and/or (3) the relevant violation history involved programmatic failures or higher risk violations with the same root cause as the instant violation. NERC or the Regional Entity may deem relevant prior violations that are older if appropriate, provided it describes in the Notice of Penalty how that decision was reached. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of each case.

An entity with a compliance history of no violations will not, on the basis of its compliance history, receive a reduction of the monetary penalty otherwise determined.

#### **1.18.23.3.2 Aggravating Factor: Failure to Comply with a Remedial Action Directive or with Agreed Corrective or Mitigating Activity**

If the ~~violator~~entity has violated Reliability Standard Requirements despite receiving related Remedial Action Directives ~~or despite having agreed to corrective or Mitigating Activities for prior violations~~, NERC or the Regional Entity shall consider increasing the Penalty.

#### **1.18.3 Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Violator**

NERC or the Regional Entity shall consider whether a violator reported the violation by a Self Report, prior to detection or intervention by NERC or the Regional Entity, and any Mitigating Activities voluntarily undertaken by the violator to correct the noncompliance. As they deem warranted, NERC or the Regional Entity may reduce the violator's Penalty. If a Self Report or a Self Certification submitted by the violator accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the violator to an escalated Penalty as a result of the Compliance Audit or Spot Check process unless the severity of the violation is found to be greater than reported by the violator in the Self Report or Self Certification.

#### **1.18.4 Degree and Quality of Cooperation**

monetary penalty. NERC or the Regional Entity will generally aggravate the monetary penalty by a greater amount in cases where the number of Remedial Action Directives that the entity did not comply

~~with was higher within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity shall consider the degree and quality of the violator's cooperation with NERC or the Regional Entity in the investigation of the violation and any Mitigating Activities arising from it.. NERC or the Regional Entity may adjust the violator's Penalty as they deem appropriate, which may result in an will determine the actual increase, a decrease or no change to the Penalty. to the monetary penalty based on the particular facts and circumstances of each case.~~

#### ~~1.18.5~~ ~~Presence and Quality of Violator's Internal Compliance Program~~

~~NERC or the Regional Entity shall consider the presence and quality of the violator's internal compliance program, if any, and other indicators of the violator's culture of compliance. NERC or the Regional Entity may reduce the violator's Penalty as they deem appropriate. However, NERC or the Regional Entity may not increase a violator's Penalty solely on the grounds that the violator has no internal compliance program or a poor quality program.~~

#### ~~1.18.6~~ ~~Settlement~~

~~NERC or the Regional Entity may consider a reduction in Penalty if the violator resolves the violation through settlement, taking into account the speed with which settlement was reached.~~

#### ~~3.3.7~~ ~~Violation Concealment and Non-Responsiveness~~

~~NERC or the Regional Entity shall consider a significant increase to the Penalty if NERC or the Regional Entity determines, based on its review of the facts, that the violator concealed or attempted to conceal the violation or information necessary to investigate the violation. The presumption in such circumstances is to double the Penalty otherwise determined; however, NERC or the Regional Entity will determine the actual increase to the Penalty based on the particular facts and circumstances of the violation. Additionally, NERC or the Regional Entity shall consider an increase to the Penalty if NERC or the Regional Entity determines, based on its review of the facts, that the violator resisted or impeded the discovery and review of a violation.~~

#### ~~1.18.73.3.3~~ ~~3.3.8~~ ~~Aggravating Factor: Intentional Violation~~

When determining a ~~Penalty~~ monetary penalty NERC or the Regional Entity shall consider if the ~~violator~~ entity intentionally violated the Reliability Standard for purposes other than a demonstrably good faith effort to (1) avoid a significant and greater threat to the immediate reliability of the Bulk Power System; or (2) preserve personnel safety. If the ~~violator~~ entity engaged in such conduct, a significant increase to the ~~Penalty~~ monetary penalty shall be considered; the presumption in such cases is to double the ~~Penalty~~ monetary penalty otherwise determined. ~~If conduct of this nature NERC or the Regional Entity will generally aggravate the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion, NERC or within the Regional Entity should assess an even larger increase to last five years, with more such conduct generally resulting in greater aggravation of the Penalty.~~ monetary penalty. NERC or the Regional Entity will determine the actual increase to the ~~Penalty~~ monetary penalty based on the particular facts and circumstances of each case.

NERC or the Regional Entity will consider violations attributable to an economic choice to violate as intentional violations.

#### ~~3.3.4~~ ~~Aggravating Factor: Violation Concealment, Resistance, Impediment, Non-Responsiveness, and Lack of Cooperation~~

~~NERC or the Regional Entity shall consider a significant increase to the monetary penalty if, based on its review of the facts, NERC or the Regional Entity determines that the entity concealed or attempted to~~

conceal the violation or information necessary to investigate the violation. The presumption in such circumstances is to double the monetary penalty otherwise determined.

Additionally, NERC or the Regional Entity shall consider an increase to the monetary penalty if NERC or the Regional Entity determines, based on its review of the facts, that the entity resisted, impeded, was non-responsive, or otherwise exhibited a lack of cooperation during the discovery and review of a violation.

NERC or the Regional Entity will ~~Any~~ generally increase the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of the violation.

### **3.3.5 Aggravating Factor: Management Involvement**

If the entity's management or an individual within the high-level personnel of the organization participated in, directed, condoned, or was willfully ignorant of the violation, or tolerance of the violation by substantial authority personnel was pervasive within the entity as a whole or a unit of the entity, NERC or the Regional Entity shall consider a significant increase to the monetary penalty. The presumption in such circumstances is to double the monetary penalty otherwise determined. NERC or the Regional Entity will generally increase the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of the violation.

### **3.3.6 Mitigating Factor: Presence and Quality of Entity's Internal Compliance Program**

NERC or the Regional Entity shall consider the presence and quality of the entity's internal compliance program, if any, and other indicators of the entity's culture of compliance. An effective internal compliance program requires an entity to exercise due diligence to prevent and detect violations, promote an organizational culture that encourages a commitment to compliance with the Reliability Standards and other laws and regulations, and design, implement, and enforce the internal compliance program so that it is generally effective in preventing and detecting violations. The failure to prevent or detect an instant violation does not necessarily mean that the internal compliance program is not generally effective in preventing and detecting violations. NERC or the Regional Entity may reduce the entity's monetary penalty as they deem appropriate. However, NERC or the Regional Entity may not increase an entity's monetary penalties solely on the grounds that the entity has no internal compliance program or a poor quality or failed program.<sup>12</sup>

### **3.3.7 Mitigating Factor: Degree and Quality of Cooperation**

NERC or the Regional Entity shall consider the degree and quality of the entity's cooperation with NERC or the Regional Entity in the investigation of the violation and any Mitigating Activities arising from it. To qualify for a reduction in the monetary penalty, cooperation must be both timely and thorough, starting at essentially the same time as the entity reports or otherwise becomes aware of a violation, and should include the disclosure of all pertinent information known by the entity. NERC or the Regional Entity may

---

<sup>12</sup> An entity with no internal compliance program or a poor quality or failed program may have violations that are of an increased risk given the lack of controls to prevent, identify, or mitigate violations. Similarly, an entity with no internal compliance program or a poor quality or failed program may be indicative of the entity's management or an individual within the high-level personnel of the organization being willfully ignorant of the potential for a violation. In such cases, NERC or the Regional Entity may increase the monetary sanction based on those factors as appropriate.

adjust the entity's monetary penalty as they deem appropriate, which may result in a decrease or no change to the monetary penalty.

### **3.3.8 Mitigating Factor: Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Entity**

NERC or the Regional Entity shall consider whether an entity self-reported the violation (1) within a reasonably prompt time after becoming aware of the violation,<sup>13</sup> and (2) prior to detection via a compliance monitoring engagement<sup>14</sup> by NERC or the Regional Entity or intervention by NERC or the Regional Entity via a notification of an upcoming compliance monitoring engagement, and any Mitigating Activities voluntarily undertaken by the entity to correct the violation.<sup>15</sup> As they deem warranted, NERC or the Regional Entity may reduce the entity's monetary penalty.

## **3.4 Final Adjustments to the Monetary Penalty**

NERC or the Regional Entity may make additional adjustments to the Adjusted Monetary Penalty Amount if the entity agrees to settlement, if there are applicable extenuating circumstances, or if the entity provides evidence that it lacks the financial ability to pay the proposed monetary penalty.

### **3.4.1 Settlement and Admitting to and Accepting Responsibility for Violation**

NERC or the Regional Entity may consider a reduction in the monetary penalty if the entity resolves the violation through settlement, taking into account the entity's good faith efforts to reach settlement without undue delay. If the entity agrees to settlement and also clearly demonstrated recognition and affirmative acceptance of responsibility for the violation, NERC or the Regional Entity may consider a further reduction in the monetary penalty beyond the credit given for resolving the violation through settlement.

### **3.4.2 Disgorgement of Unjust Profits**

Any monetary penalty issued for a violation involving ~~conduct of this manner~~ an economic choice to violate shall, at a minimum, disgorge any profits ~~or economic benefits~~ the ~~violator~~entity acquired as a consequence of the behavior, whenever and to the extent that they can be determined or reasonably estimated.

### **~~1.18.83.4.3~~ 3.3.9 Extenuating Circumstances**

~~NERC or the Regional Entity will consider any~~In unique extenuating circumstances ~~regarding causing or contributing to the violation that justify reduction~~, such as significant natural disasters ~~or elimination of the Penalty otherwise determined.~~

## **~~1.19~~ Setting of the Final Penalty Amount**

The Adjusted Penalty Amount determined in Step 2 may be reviewed in light of the violator's financial ability to pay the Penalty. If the violation resulted from an economic choice ~~pandemic~~, NERC or the Regional Entity ~~will confirm that the Penalty will disgorge any unjust profits~~may significantly reduce or

<sup>13</sup> An entity should submit a Self-Report as soon as practical, but typically within three months of discovery, and provide additional or more comprehensive information as it becomes known. NERC or the Regional Entity retain the discretion to provide self-reporting credit outside this period as appropriate based on relevant facts and circumstances.

<sup>14</sup> Compliance monitoring engagements include a Compliance Audit, Spot Check, or Self-Certification.

<sup>15</sup> An entity's receipt of a notification letter for an upcoming compliance monitoring engagement detailing the Reliability Standards and Requirements in scope for the upcoming compliance monitoring engagement generally terminates the entity's eligibility for self-reporting credit for violations of the Reliability Standard Requirements that are in scope for the compliance monitoring engagement until after the termination of the compliance monitoring engagement.

~~economic benefits. At the conclusion of this review, if applicable, NERC or the Regional Entity will set the Final Penalty Amount to eliminate the monetary penalty otherwise determined.~~

#### **1.19.13.4.4 Violator's Entity's Financial Ability to Pay<sup>16</sup>**

At the written request of the ~~violator~~entity, NERC or the Regional Entity will review the ~~Penalty~~monetary penalty determined ~~in Step 2 above~~ in light of relevant, verifiable information that the ~~violator~~entity provides regarding its financial ability to pay. ~~At~~<sup>17</sup> Financial ability shall include the ~~conclusion~~financial strength of the entity as well as its financial structure (e.g., ~~for-profit versus non-profit~~). ~~this review~~ NERC or the Regional Entity may ~~consider the entity's inherent characteristics, such as but not limited to; its size, financial structure, and ownership structure.~~ Consideration of an entity's size, financial structure, and ownership structure is intended to (i) promote that entities are penalized commensurate with the risk or impact that a specific violation of the Reliability Standards had or is having on the reliability of the Bulk Power System while also (ii) mitigating the potential of overly burdensome monetary penalties to less consequential or financially-limited entities.

At the conclusion of this review, NERC or the Regional Entity may:

1. Reduce the ~~Penalty~~monetary penalty to an amount that NERC or the Regional Entity deems that the ~~violator~~entity has the financial ability to pay, ~~or if the entity is not likely to become able to pay the proposed monetary penalty with the use of a reasonable installment schedule;~~
2. Extend the period over which the monetary penalty must be paid using a reasonable installment schedule;
- ~~2.3.~~ Excuse the ~~Penalty~~monetary penalty amount payable; or;
- ~~3.4.~~ Sustain the ~~Penalty~~monetary penalty amount determined ~~in Step 2 above~~.

If- NERC or the Regional Entity reduces ~~or excuses the Penalty,~~the monetary penalty, such reduction will not be more than necessary to reach an amount that the entity has the financial ability to pay, and NERC or the Regional Entity shall consider the assessment of appropriate non-monetary penalties as a substitute or an alternative for the monetary penalty amount otherwise considered appropriate. NERC or the Regional Entity shall consider the assessment of appropriate non-monetary ~~sanction(s)~~penalties as a substitute or an alternative for the ~~Penalty~~monetary penalty amount otherwise considered appropriate.

#### **1.19.2 Confirmation of Disgorgement of Unjust Profit or Gain**

~~Notwithstanding the application of any other consideration or factor applicable to the determination of a just and reasonable Penalty for the violation, if the violation in question involved an economic choice to violate a Reliability Standard, cases in which~~ NERC or the Regional Entity shall confirm that the Penalty meets the requirements set forth in Sections 2.10 and 2.11 of this document excuses the monetary penalty.

<sup>16</sup> ~~NERC anticipates that this will be the primary vehicle for addressing the ability to pay of "not for profit" and other similar organizations.~~

<sup>17</sup> Examples of relevant, verifiable information that an entity may provide includes, but is not limited to, audited financial statements, filed state and federal tax returns, approved budgets, interim financial statements, loan or mortgage agreements related to the entity's operations, asset ledgers, and/or other documents showing financial or contractual obligations or legal relationships between the entity and other parties. If an entity has declared, or expects to declare, bankruptcy and requests that NERC or the Regional Entity review the monetary sanction in light of its financial ability to pay, it must provide NERC or the Regional Entity relevant, verifiable information regarding its financial ability to pay as provided in this Section. In such cases, NERC or the Regional Entity will take all appropriate actions necessary to preserve any claims related to monetary sanctions for violations of the Reliability Standards with the appropriate bankruptcy court.

## 2. Determination of Non-Monetary Sanctions

### 4. ~~The imposition of sanctions is not limited to monetary~~ Penalties.

Non-monetary ~~sanctions~~penalties may be applied with the objective of promoting reliability ~~and, addressing risks to reliability, and ensuring~~ compliance with the Reliability Standards. ~~Non-monetary sanctions may include limiting activities, functions, or operations;~~ NERC or ~~the Regional Entity should~~ consider the factors in Section 3 when evaluating whether to impose non-monetary penalties and to what degree to impose non-monetary penalties that bear a reasonable relationship to the seriousness of the violation(s).<sup>18</sup> ~~Non-monetary penalties are not actions that an entity would need to take in order to mitigate a violation or otherwise return to compliance. Non-monetary penalties may include, but are not limited to:~~

- ~~requiring the chief executive officer or equivalent to sign the settlement agreement;~~
- ~~requiring periodic reporting on reliability, security, and/or compliance related efforts to (1) the entity's board or equivalent, and/or (2) the NERC Board of Trustees Compliance Committee;~~
- ~~issuing a non-public or public letter of reprimand;<sup>19</sup>~~
- ~~conducting additional compliance monitoring of the entity, either through imposition of previously unscheduled engagements and/or increased frequency of planned engagements;~~
- ~~placing the violator entity on a reliability watch list of significant violators; entities that have violated Reliability Standards;<sup>20</sup> and/or~~

<sup>18</sup> ~~For example, violations with higher assessed risk, more aggravating compliance history, management involvement in the violations, or evidence of concealment may warrant greater non-monetary penalties than violations without such factors present.~~

<sup>19</sup> ~~A public letter of reprimand could be posted on NERC's website and should not include sensitive information that could be used to jeopardize the reliability or security of the Bulk Power System.~~

<sup>20</sup> ~~An entity could be placed on a reliability watch list if, for example, it had significant reliability or security failures, repeated serious risk violations or programmatic failures, repeatedly failed to complete mitigation activities as required or on time, or engaged in other conduct that warranted such an action.~~

- setting conditions for carrying on certain activities, functions, or operations.

NERC or the Regional Entity may impose other non-monetary penalties using professional judgment as appropriate in order to achieve non-monetary penalty(s) that bear a reasonable relationship to the seriousness of the violation(s). Non-monetary penalties should have reasonable time limitations that are described in the Notice of Penalty.

If NERC or a Regional Entity imposes a non-monetary penalty that impacts the final monetary penalty, NERC or the Regional Entity shall explain in the Notice of Penalty how the non-monetary penalty impacted the final monetary penalty amount.

**Appendix A**

**Appendix A: Base Monetary Penalty Amount Table Factors**

The following lists the Base Penalty amounts corresponding to combinations of Violation Risk Factor and Violation Severity Level.

Violation Risk Factor	Violation Severity Level							
	Lower		Moderate		High		Severe	
	Range Limits		Range Limits		Range Limits		Range Limits	
	Low	High	Low	High	Low	High	Low	High
Lower	\$1,000	\$3,000	\$2,000	\$7,500	\$3,000	\$15,000	\$5,000	\$25,000
Medium	\$2,000	\$30,000	\$4,000	\$100,000	\$6,000	\$200,000	\$10,000	\$335,000
High	\$4,000	\$125,000	\$8,000	\$300,000	\$12,000	\$625,000	\$20,000	\$1,000,000

-NERC and the Regional Entities have the discretion to deviate from the ranges provided for each factor below by applying professional judgment to the outcome of the calculations in order to achieve a monetary penalty that bears a reasonable relationship to the seriousness of the violation(s).

**Base Monetary Penalty Factors**

<u>Base Monetary Penalty Factors</u>	<u>Range</u>	<u>Explanation</u>
<u>VRF and VSL Table</u>	<u>\$1,000 to \$20,000</u>	<u>The VRF and VSL Table is the starting point for monetary penalty calculations. The range represents the minimum and maximum “Low” level for all VRF and VSL combinations in the VRF and VSL Table.</u>
<u>Entity Size</u>	<u>0.25 to 6</u>	<u>Multiplies the monetary penalty amount derived above by 0.25 to 6</u>
<u>Assessed Risk</u>	<u>1 to 8</u>	<u>Multiplies the monetary penalty amount derived above by 1 to 8</u>
<u>Violation Duration</u>	<u>0 to 5</u>	<u>Increases the monetary penalty amount derived above by 0% to 500%</u>
<u>Violation Time Horizon</u>	<u>1 to 4</u>	<u>Multiplies the Violation Duration factor derived above by 1 to 4</u>

**Aggravating and Mitigating Factors**

<u>Aggravating Factors</u>	<u>Range</u>	<u>Explanation</u>
<u>Repeat violations</u>	<u>0 to 8</u>	<u>Increases Base Monetary Penalty Amount by 0% to 800%</u>

<u>Failure to comply with a Remedial Action Directive</u>	<u>0 to 8</u>	<u>Increases Base Monetary Penalty Amount by 0% to 800%</u>
<u>Intentional Violation</u>	<u>0 to 8</u>	<u>Increases Base Monetary Penalty Amount by 0% to 800%</u>
<u>Concealment or Impediment</u>	<u>0 to 8</u>	<u>Increases Base Monetary Penalty Amount by 0% to 800%</u>
<u>Management Involvement</u>	<u>0 to 8</u>	<u>Increases Base Monetary Penalty Amount by 0% to 800%</u>

<u>Mitigating Factors</u>	<u>Range</u>	<u>Explanation</u>
<u>Internal Compliance Program</u>	<u>0 to 0.4</u>	<u>Reduces Base Monetary Penalty Amount by 0% to 40%</u>
<u>Cooperation</u>	<u>0 to 0.2</u>	<u>Reduces Base Monetary Penalty Amount by 0% to 20%</u>
<u>Self-Report</u>	<u>0 to 0.3</u>	<u>Reduces Base Monetary Penalty Amount by 0% to 30%</u>

**Final Adjustment Factors**

<u>Other Adjustment Factors</u>	<u>Range</u>	<u>Explanation</u>
<u>Settlement/Avoiding Hearing and Admission/Acceptance of Responsibility</u>	<u>0 to 0.3 if entity agrees to settlement without admitting to and accepting responsibility for violation</u>  <u>0 to 0.4 if entity agrees to settlement and also admits to and accepts responsibility for violation</u>	<u>Reduces Adjusted Monetary Penalty Amount by 0% to 30% if entity agrees to settlement without admitting to and accepting responsibility for violation</u>  <u>Reduces Adjusted Monetary Penalty Amount by 0% to 40% if entity agrees to settlement and also admits to and accepts responsibility for violation</u>

~~NOTE: This table describes the amount of Penalty that could be applied for each day that a violation continues, subject to the considerations of Section 2.16 regarding frequency and duration of violations.~~

Attachment 18:

Sanction Guidelines:  
Consideration of Comments

# Consideration of Comments

## Rules of Procedure (ROP) Changes to Appendix 4B Pertaining to the Sanction Guidelines of the North American Electric Reliability Corporation

The North American Electric Reliability Corporation (NERC) thanks all commenters who submitted comments on the proposed changes to Appendix 4B of the Rules of Procedure (ROP). The proposed changes were posted for public comment period from May 21, 2020 through July 10, 2020. Eight organizations submitted comments:

- 1) Bonneville Power Administration (BPA)
- 2) Edison Electric Institute (EEI)
- 3) Electricity Consumers Resource Council (ELCON)
- 4) Southeastern Power Administration (SEPA)
- 5) Southwestern Power Administration (SWPA)
- 6) Tennessee Valley Authority (TVA)
- 7) Transmission Access Policy Study Group (TAPS)
- 8) Western Area Power Administration (WAPA)

These comments are posted on the [Rules of Procedure page](#). This document outlines NERC's consideration of those comments.

### 1. COMMENTS

NERC is proposing revisions to Appendix 4B of its Rules or Procedure (ROP) in accordance with the directive in the Federal Energy Regulatory Commission's (FERC or Commission) order accepting NERC's Five Year Performance Assessment.<sup>1</sup> Appendix 4B of the ROP describes the NERC Sanction Guidelines, which NERC and the Regional Entities follow when determining monetary and non-monetary penalties for violations of the NERC and Regional Reliability Standards. The purpose of the proposed revisions is to update Appendix 4B to accurately reflect the current factors that NERC and the Regional Entities consider when determining monetary and non-monetary sanctions, clearly document the potential ranges for the factors used, and address other FERC directives in the order.

---

<sup>1</sup> *Order on Five-Year Performance Assessment*, 170 FERC ¶ 61,029 (*Five Year Order*) (2020).

The table below summarizes the comments received on the proposed revisions from the commenters and NERC’s responses to those comments:

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
Professional Judgment and Discretion	EEI and TVA commented that the proposed revisions provide too much discretion, including through the use of professional judgment, to NERC and the Regional Entities.	NERC’s proposed edits are intended to highlight that NERC and the Regional Entities must use their professional judgment in determining how to evaluate each factor in the Sanction Guidelines, with oversight by NERC to ensure an acceptable level of consistency as described in proposed Section 1. In some cases, NERC or a Regional Entity may deviate from the documented ranges in certain circumstances, such as those described in proposed Section 2.4. Entities retain all pre-existing abilities to contest proposed monetary and non-monetary sanctions if they believe NERC or the Regional Entities have been unreasonable.
Section 1. Overview	TAPS commented that NERC’s proposed revisions would remove any reference to the need for consistent application of the Sanction Guidelines and that there should be a clear statement of the goal of consistent application of the Sanction Guidelines in the Sanction Guidelines.	NERC’s proposed edits in Section 1 and the deletion of language in existing Section 2.15 were intended to streamline duplicative language in the existing Sanction Guidelines. NERC has revised the proposed language in this section to make clear that NERC will work to ensure that the Regional Entities’ application of the Sanction Guidelines is acceptably consistent via its oversight efforts. The reference to existing Section 2.15 and the proposed deletions there involve a provision dealing with maximum penalties in Canada being significantly lower than in the United States and comparing penalties between entities in the United States and Canada. Given the limitations on penalties

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
		in some Canadian provinces and who conducts enforcement and mitigation activities there, and the revised language in Section 1, NERC did not believe it was necessary to retain the deleted language in existing Section 2.15.
Section 2.1. Initial Determination of Whether Monetary and/or Non-Monetary Penalties Necessary	<p>EEI commented that the language in footnote 2 explaining that NERC and the Regional Entities have discretion to impose zero dollar monetary sanctions should be moved into the body of Section 2.1.</p> <p>ELCON commented that there appeared to be a typographical error in this section of the Sanction Guidelines and proposed language to correct the error.</p> <p>TAPS commented that it supported NERC’s proposal to add a statement to the Sanction Guidelines that instances of noncompliance processed through the Find, Fix, Track and Report (FFT) and Compliance Exception (CE) processes are not subject to monetary or non-monetary penalties.</p>	<p>NERC has adopted the change proposed by EEI.</p> <p>NERC has adopted the proposed language to correct the typographic error identified by ELCON.</p> <p>NERC appreciates the comment from TAPS.</p>
Section 2.4. Reasonable Relationship to Seriousness of Violation	<p>EEI questioned whether there were degrees of programmatic failure and recommended deleting the “significant” qualifier or clarifying the various degrees of programmatic failure.</p> <p>EEI commented that the ROP should more clearly define what public information is used and the</p>	<p>NERC has deleted the “significant” qualifier as proposed by EEI. There are not degrees of programmatic failure.</p> <p>NERC has proposed revisions to the ROP that provide details about the types of public information that</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>factors for how public information is evaluated to ensure the penalty is consequential.</p> <p>EEI commented that the use of “consequential” should be clarified and that factors for determining sanctions should include clear criteria to determine whether the sanction should be increased and should be based on risk to the bulk power system. EEI also commented that if the paragraph was intended to ensure that a violation was not an economic choice or cost of doing business, the section describing intentional violations covers that concept.</p>	<p>could be considered when determining if a proposed penalty is consequential to the entity. This public information could include, but is not limited to, annual reports, quarterly reports, other financial statements, and penalties levied against the entity by other regulators. NERC cannot describe all possible factors for how such public information could be evaluated to ensure the proposed penalty is consequential, and therefore requires a description in the Notice of Penalty of the analysis of the publicly available information that led NERC or the Regional Entity to increase the monetary and/or non-monetary penalty in order to ensure it was consequential to the entity. The inclusion of this information in the Notice of Penalty should allow the entity, the Commission, and industry to determine if the analysis was reasonable, provide the entity the opportunity to contest the proposed penalty, and provide the Commission the opportunity to approve the penalty if it determines the penalty is reasonable and appropriate.</p> <p>The use of “consequential” is intended to ensure that an entity, generally one with programmatic failures or multiple serious risk violations, does not consider the imposition of a monetary or non-monetary penalty to be an economic choice or cost of doing business outside the concept of intentional violations. As these circumstances are not common and each entity is different, the analysis for determining whether to increase a monetary or non-monetary penalty for such an entity will, by necessity, be case-specific. To the</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>TAPS commented that NERC’s proposed edits to the Sanction Guidelines drop the goal in existing Section 2.6 of mitigating overly burdensome penalties to smaller entities and that it appears that entity size can only increase penalties.</p> <p>TVA commented that the statement that the entity’s size, the risk of the violation, and the entity’s compliance history are key factors in developing monetary and non-monetary sanctions that bear a reasonable relationship to the seriousness of a violation is not clear and provides no guidance to entities to follow.</p>	<p>extent that an entity believes the proposed monetary or non-monetary sanction is unreasonable or unduly punitive, the entity has the ability under Appendix 4C of the ROP to contest the proposed penalty or sanction in a hearing.</p> <p>NERC’s proposed revisions are not intended to prevent the mitigation of overly burdensome penalties to smaller entities and do not only increase penalties. The low end of the range for “Entity Size” in Appendix A is 0.25, which has the effect of reducing a penalty for the smallest entities by a factor of four from the initial starting penalty determined by the VRF and VSL Table. Any selection of a value of less than 1 for “Entity Size” would reduce a penalty from this initial amount. To the extent that an entity found the resulting penalty to be overly burdensome, that entity could request consideration of its financial ability to pay under Section 3.4.4 and seek to have the penalty reduced or excused. NERC has also restored to proposed Section 2.4 modified language about the goals in existing Section 2.6.</p> <p>NERC has removed the statement about key factors and made clear that NERC or the Regional Entity consider the factors in the Sanction Guidelines to determine monetary and non-monetary penalties, while noting that NERC or the Regional Entity may make adjustments to any of the values for all the factors in the Sanction Guidelines as needed to reach a penalty that is consequential to the entity while</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
		bearing a reasonable relation to the reliability impact and seriousness of the violation.
Section 2.5. Settlement of Violations	EEI commented that the references to “speed of settlement” should be removed from this section given the various factors that could cause delays in reaching settlement and that reductions in a proposed penalty should be based on the degree of cooperation, not the speed of settlement.	NERC has revised the language in sections 2.5 and 3.4.1 to reflect that settlement credit is dependent on good faith efforts by the entity to reach settlement without undue delay.
Section 2.9. Extenuating Circumstances	EEI commented that examples of unique extenuating circumstances (e.g., pandemic) could be provided in this section and in section 3.4.3.	NERC has added “pandemic” as an example of a unique extenuating circumstance to sections 2.9 and 3.4.3.
Section 3. Determination of Monetary Penalties	TVA commented that although the title of this section only refers to monetary penalties, it appears they could also apply to the development of non-monetary penalties and that NERC should clarify its intent regarding the applicability of these factors to non-monetary penalties.	NERC has provided additional clarification in Section 4 about the applicability of factors in Section 3 to the development of non-monetary penalties.
Section 3.2. Establishing the Base Monetary Penalty Amount	TAPS commented that NERC’s addition of two new factors (“Assessed Risk” and “Violation Duration”) to its calculation of the base penalty amount was not required by FERC’s order, which directs NERC to provide clarity about how it considers these and other factors. TAPS suggested that before adding these factors to the Sanction Guidelines, NERC should consider, and explain, whether the factors laid out in its existing Sanction Guidelines already encompass	NERC and the Regional Entities have considered the assessed risk of a violation and violation duration as separate factors in their monetary penalty determinations for a number of years. The proposed revisions ensure that the Sanction Guidelines accurately describe how NERC and the Regional Entities consider those factors and lay out the ranges used for each factor in the determination of monetary penalties. NERC and the Regional Entities consider

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>risk and/or violation duration. TAPS noted similarities between the description of “Assessed Risk” and the discussion of “Applicability of the Violation Risk Factor.”</p>	<p>“assessed risk” in the context of understanding the potential impact to reliability and the likelihood of such an impact occurring, or the actual harm to reliability if the impact occurs, as a result of a violation of a Reliability Standard and any mitigating factors in place at the time of the violation that would either reduce the likelihood of a harm occurring or reduce the impact of such a harm. This is a substantially different evaluation than that involved in considering the Violation Risk Factor, which is set by the Standard Drafting Team and approved by the Commission. As discussed below, NERC is removing its proposal to adjust the VRF if a Reliability Standard Requirement does not have a VRF or a different VRF is more appropriate based on the facts and circumstances of a violation.</p>
<p>Section 3.2.1. Violation Risk Factor and Violation Severity Level Table</p>	<p>ELCON commented that the proposed flexibility in which NERC or the Regional Entity has the discretion to start at a higher value within the ranges reflected in the VRF and VSL Table undermines the transparency and certainty otherwise provided by the VRF and VSL Table.</p>	<p>FERC’s order requiring revisions to the Sanction Guidelines required NERC to explain how NERC and the Regional Entities choose the base penalty amount within the range based on violation risk factor and violation severity level. NERC proposed revisions do this, noting that, in general, NERC and the Regional Entities start at the lowest value within the ranges provided in the VRF and VSL Table. NERC expects that deviations from this practice would be rare and limited to more significant cases where use of the low end of the ranges results in a proposed monetary penalty that does not bear a reasonable relationship to the seriousness of the violation(s). Entities would still</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
		retain the ability to understand the low and high value within the VRF and VSL Table for any particular violation, thereby preserving transparency and certainty.
Section 3.2.1.1. Violation Risk Factor	<p>EI commented that the new language allowing NERC or the Regional Entities to deviate from using FERC approved VRFs need more specificity.</p> <p>TVA commented that NERC should delete the new proposed language allowing NERC or the Regional Entities to modify the VRF, believing it gives NERC and the Regional Entities too much discretion and would result in significant variation across the Regional Entities.</p>	<p>NERC has removed the proposed language with which EI and TVA were concerned. This proposal was intended to address situations in which early versions of the Reliability Standards did not necessarily comply with the VRF criteria, available at <a href="https://www.nerc.com/pa/Stand/Resources/Documents/Violation_Risk_Factors.pdf">https://www.nerc.com/pa/Stand/Resources/Documents/Violation_Risk_Factors.pdf</a>. NERC has determined that such circumstances are increasingly rare as the Reliability Standards have been updated and has determined that this proposed language is not necessary.</p>
Section 3.2.1.2. Violation Severity Level	<p>EI commented that the new language allowing NERC or the Regional Entities to deviate from using FERC approved VSLs need more specificity.</p> <p>TVA commented that NERC should delete the new proposed language allowing NERC or the Regional Entities to modify the VSL, believing it gives NERC and the Regional Entities too much discretion and would result in significant variation across the Regional Entities.</p>	<p>NERC has removed the proposed language with which EI and TVA were concerned. This proposal was intended to address situations in which early versions of the Reliability Standards did not necessarily comply with the VSL Guidelines, available at <a href="https://www.nerc.com/pa/Stand/Resources/Documents/VSL_Guidelines.PDF">https://www.nerc.com/pa/Stand/Resources/Documents/VSL_Guidelines.PDF</a>. NERC has determined that such circumstances are increasingly rare as the Reliability Standards have been updated and has determined that this proposed language is not necessary.</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
<p>Section 3.2.2. Entity Size</p>	<p>EI commented that NERC should provide an objective measure of how the entity’s size is determined when assessing sanctions.</p> <p>TVA commented that the size of the registered entity should be irrelevant and that sanctions should align with the seriousness of the violation and not the size of the entity. TVA also commented that it was unclear how NERC intends to discern the intent behind a corporate structure and that focusing on corporate structure could lead to arbitrary results.</p>	<p>NERC has provided more detail in the proposed revisions about how an entity’s size is determined than was provided in prior versions of the Sanction Guidelines. Specifically, the proposed revisions note that NERC or the Regional Entity may consider the entity’s “generating capacity and/or transmission line miles, size of lines (in MVA, for example), and/or peak load served in order to more accurately reflect the potential impact and, consequently, the seriousness of the violation(s).” The determination of the entity’s size is case-specific, as some Reliability Standards only impact generation facilities, while others only involve transmission facilities. Therefore, an entity may therefore have a different size for penalty calculation purposes based on what Reliability Standard was violated and what types of facilities it uses, owns, or operates.</p> <p>NERC notes that NERC or the Regional Entity may consider the size of an entity under existing Section 2.6 of the Sanction Guidelines. Generally, entity size is considered in terms of the potential impact to the Bulk Power System. Depending on the type of violation at issue, a larger entity will likely pose a more significant potential impact to the grid than a smaller entity, and this potential impact should be reflected in the penalty determination. Likewise, although smaller entities are sometimes assessed monetary penalties for violations determined to pose a serious risk to the reliability of the Bulk Power System, the potential impact of such a violation will likely not be as significant as a larger</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
		<p>entity with a violation determined to pose a serious, or even moderate risk. Therefore, entity size is considered to appropriately reflect a violation’s potential impact to the Bulk Power System. NERC’s intent with the discussion of corporate structure in Section 3.2.2 is to ensure that an entity’s corporate structure or registration does not result in significantly different monetary penalties between two similarly sized entities solely as the result of the respective entities’ different corporate structures.</p>
<p>Section 3.2.3. Assessed Risk</p>	<p>EEl commented that consideration of “assessed risk” is appropriate but that additional clarification was needed to avoid subjectivity and to ensure transparency and consistency.</p> <p>TVA commented that NERC should define the three risk categories in detail to provide guidance and certainty to the registered entities.</p>	<p>NERC has added language to Section 3.2.3 to better describe how NERC and the Regional Entities view “assessed risk.” Given the wide variety of Reliability Standards and types of entities, evaluation of the assessed risk will necessarily be case-specific.</p> <p>NERC notes that the risk assessment process is fact-specific and that NERC has provided guidance on risk assessment in its Registered Entity Self-Report and Mitigation Plan User Guide, available at <a href="https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Registered%20Entity%20Self-Report%20and%20Mitigation%20Plan.pdf">https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Registered%20Entity%20Self-Report%20and%20Mitigation%20Plan.pdf</a>.</p>
<p>Section 3.3. Adjusting the Base Monetary Penalty Amount to Account for Aggravating and Mitigating Factors</p>	<p>EEl commented that the reference to “violator” in subpoint 8 should be changed to “entity” for consistency throughout the document.</p>	<p>NERC has changed “violator” to “entity” throughout the Sanction Guidelines, specifically in Section 2.4, 3.3, and 3.4.1.</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>EEl commented that the reference to “extenuating circumstances” in this section should be retained.</p>	<p>NERC does not agree that the retention of extenuating circumstances is appropriate in this section. Extenuating circumstances, like settlement, disgorgement of unjust profits, and the entity’s financial ability to pay are more appropriately considered final adjustments to a monetary penalty and do not constitute aggravating or mitigating factors within the control of the entity.</p>
<p>Section 3.3.1. Aggravating Factor: Repetitive Violations and Compliance History</p>	<p>EEl questioned whether there were degrees of programmatic failure and recommended deleting the “significant” qualifier or clarifying the various degrees of programmatic failure.</p> <p>EEl asked how NERC chose five years and commented that NERC should consider whether five years is reasonable for generally increasing monetary sanctions, especially in light of continuing change in Reliability Standards and compliance obligations and expectations.</p>	<p>NERC has deleted the “significant” qualifier as proposed by EEl.</p> <p>NERC is aware that the Reliability Standards have changed significantly over time and continue to evolve. NERC chose five years as the look-back period for compliance history because it struck a reasonable balance between the importance of assessing an entity’s compliance history, particularly the more recent and likely relevant compliance history, and the burden of going back to the beginning of the entity’s Reliability Standards compliance obligations and determining if older compliance history was relevant, shared the same or similar root cases, and was worthy of aggravating the proposed penalty. As noted in the proposed revisions, when determining whether to aggravate the penalty, NERC and the Regional Entities look at the facts and circumstances of the instant and prior violation(s) and focus on whether the prior</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>EEl commented that it would appreciate additional explanation of the statement that “A violation history of no violations will not result in mitigation of the monetary sanction otherwise determined” and asked whether the intent is to not take into account an otherwise spotless record of violations.</p>	<p>violation(s) had the same root cause as the instant violation or if there were programmatic failures involving the same or similar Reliability Standards.</p> <p>NERC has made clarifying edits to this provision. NERC and the Regional Entities may take into account an otherwise spotless record of violations as indicative of a strong internal compliance program and provide credit for that factor, but NERC and the Regional Entities do not provide mitigating credit for a lack of violation history.</p>
<p>Section 3.3.3. Aggravating Factor: Intentional Violation</p>	<p>EEl commented that this section should address circumstances where an “intentional” violation was permitted in order to preserve personnel safety or for other similar good faith reasons.</p>	<p>NERC has added language to this section allowing consideration of good faith efforts by entities to preserve personnel safety when determining whether to aggravate the penalty for an intentional violation. NERC believes that the existing language addresses the rest of EEl’s comment by noting that another good faith reason for an intentional violation would be to avoid a significant and greater threat to the immediately reliability of the Bulk Power System.</p>
<p>Section 3.3.6. Mitigating Factor: Presence and Quality of Entity’s Internal Compliance Program</p>	<p>ELCON commented that there appeared to be a typographical error in this section of the Sanction Guidelines and proposed language to correct the error.</p>	<p>NERC has adopted the proposed language to correct the typographic error identified by ELCON.</p>
<p>Section 3.3.8. Mitigating Factor: Disclosure of the Violation Through Self-</p>	<p>EEl commented that the phrase “reasonably prompt time” should be clarified and consider the time it</p>	<p>NERC has provided additional language explaining what a “reasonably prompt time” entails and is consistent with previous public guidance in the</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
<p>Reporting and Voluntary Mitigating Activities by the Entity</p>	<p>takes to internally review, investigate, and prepare a Self-Report.</p> <p>EEl also commented that the exclusion of self-reporting credit for violations detected during an audit should be limited to violations discovered during the course of the audit and should not act as a “no self reporting credit period.”</p> <p>TAPS also commented that NERC’s proposed language regarding the prohibition of self-reporting credit during the lead-up to a compliance engagement should be revised. Specifically, TAPS suggests that the deadline for submitting Self-Reports with the possibility of receiving self-reporting credit should begin on the date the compliance engagement begins and not the date that the entity is notified of the compliance engagement. TAPS also suggested adding language from the Turlock order to the Sanction Guidelines, specifically “<i>NERC and the Regional Entities should consider the timing of a self-disclosure of a violation and whether or when they could have detected the violation prior to such disclosures.</i>” TAPS further commented that self-reporting credit should be available for violations of Reliability Standard Requirements that are not in scope for that compliance engagement. Finally, TAPS proposed that the Sanction Guidelines should only</p>	<p>Registered Entity Self-Report and Mitigation Plan User Guide, available at <a href="https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Registered%20Entity%20Self-Report%20and%20Mitigation%20Plan.pdf">https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Registered%20Entity%20Self-Report%20and%20Mitigation%20Plan.pdf</a>.</p> <p>NERC has added language to Section 3.3.8 to address the comments from EEl and TAPS regarding self-reporting credit in the context of compliance monitoring engagements. Notification of the Reliability Standard Requirements in scope for a compliance monitoring engagement provides an entity with an indication of where they might focus their review and begin to pull relevant compliance data as a result of the notification or subsequent requests for information. The general presumption in such cases is that self-reporting credit is not appropriate</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>limit self-reporting credit during a compliance engagement and only with respect to the requirements in scope for that compliance engagement; and following the conclusion of a compliance engagement, self-reporting credit should be available for violations that occurred before or during the compliance engagement.</p> <p>TAPS commented that NERC’s proposed deletion of language in proposed Section 3.3.8 should not be adopted. NERC proposed deleting language regarding a prohibition on an escalated penalty if an entity submits a Self-Report or Self-Certification that accurately identifies a violation of a Reliability Standard and the same violation is subsequently identified in a Compliance Audit or Spot Check, unless the severity of the violation is found to be greater than reported by the entity in the Self-Report or Self-Certification. TAPS commented that it is not clear that the CMEP’s Preliminary Screen would prevent application of new or escalated penalty where the self-reported violation was treated as a Compliance Exception.</p>	<p>NERC believes that the proposed deletion in Section 3.3.8 is appropriate and that the language is not needed. There are several opportunities for NERC, the Regional Entity, or the registered entity to catch and address the unlikely circumstances that TAPS is concerned with before an increased penalty is levied. The Preliminary Screen process in Section 3.8 of Appendix 4C of the ROP looks at all incoming potential noncompliance and evaluates whether the potential noncompliance is a duplicate of noncompliance that has already been reported. If NERC or the Regional Entity found a duplicate noncompliance, they would dismiss the later discovered noncompliance. Prior to going on-site for a compliance monitoring engagement, NERC or Regional Entity auditors review open noncompliance for the entity for several reasons, including to (1) avoid calling out duplicate noncompliance, (2) assess whether the entity accurately reported the full scope of the reported noncompliance, or (3) evaluate the entity’s mitigation of the reported noncompliance during the compliance monitoring engagement. Further, the entity would have the opportunity during the audit to inform</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
		<p>auditors that it had previously self-reported the noncompliance, as well as similar opportunities with NERC or Regional Entity enforcement staff before a penalty would be levied. Finally, the entity has the opportunity to contest a violation or penalty in the unlikely event that NERC, the Regional Entity, and the entity itself did not realize that the auditors discovered a noncompliance identical to a previously self-reported noncompliance before NERC or the Regional Entity levied a second penalty against the entity. Given the ample opportunities for identification of such a case and NERC or the Regional Entity’s decision to then dismiss the case, NERC believes the language proposed for deletion is not necessary and should be deleted.</p>
<p>Section 3.4.1. Settlement and Admitting to and Accepting Responsibility for Violation</p>	<p>EEl commented that the references to “speed of settlement” should be removed from this section given the various factors that could cause delays in reaching settlement and that reductions in a proposed penalty should be based on the degree of cooperation, not the speed of settlement.</p> <p>EEl commented that the reference to “violator” in this section should be changed to “entity” for consistency throughout the document.</p> <p>EEl commented that the language regarding admitting and accepting responsibility be removed from this section and refocused to provide credit for</p>	<p>NERC has revised the language in sections 2.5 and 3.4.1 to reflect that settlement credit is dependent on good faith efforts by the entity to reach settlement without undue delay.</p> <p>NERC has changed “violator” to “entity” throughout the Sanction Guidelines, specifically in Section 2.4, 3.3, and 3.4.1.</p> <p>NERC believes that it is appropriate to provide additional mitigating credit for entities that are willing and able to admit to a violation and accept</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>entities that demonstrate transparency and cooperation through their engagement during the enforcement process. At a minimum, EEI commented that a third option should be included in the Final Adjustment Factors of Appendix A to allow the credit to be applied without such an admission if the entity demonstrates a level of transparency and cooperation that shows an entity recognizes the issue and severity and acts appropriately.</p>	<p>responsibility. NERC notes that entities that are transparent and cooperative through their engagement in the enforcement process could be eligible for internal compliance program or cooperation penalty credits even if they are unable to admit to a violation.</p>
<p>Section 3.4.3. Extenuating Circumstances</p>	<p>EEI commented that examples of unique extenuating circumstances (e.g., pandemic) could be provided in this section and in section 2.9.</p>	<p>NERC has added “pandemic” as an example of a unique extenuating circumstance to sections 2.9 and 3.4.3.</p>
<p>Section 3.4.4. Entity’s Financial Ability to Pay</p>	<p>TAPS commented that NERC’s proposed edits to the section addressing an entity’s ability to pay a monetary penalty would undermine the currently stated intent of mitigating the impact of overly burdensome penalties on small entities by drastically raising the bar as to what constitutes a burden.</p>	<p>NERC’s proposed edits to this section were not intended to change the intent of mitigating overly burdensome monetary penalties on less consequential or financially-limited entities. Further, the proposed edits are not intended to result in a preference for installment schedules, but merely to indicate that installment schedules are an available option to consider if an entity requests consideration of its ability to pay a monetary penalty. NERC has made clarifying edits regarding limitations on the reduction of monetary penalties to mirror language used earlier in the ability to pay section. NERC also notes that the consideration of an entity’s size first occurs in proposed Section 3.2.2, and may result in a lower proposed penalty for a small entity than what would</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
		be proposed for an average size entity before any consideration of an entity's ability to pay.
Section 4. Non-Monetary Sanctions	<p>Several federal entities (BPA, SEPA, SWPA, TVA, and WAPA) commented that they disagreed with NERC's position that NERC or the Regional Entities can levy non-monetary sanctions against federal entities. TVA commented that NERC or the Regional Entity might impose significant non-monetary penalties related to the CEO and the board for minor reliability items and suggests deleting those provisions from its proposed revisions.</p> <p>EEl commented on several items in this section. Specifically, EEl sought (1) clarification about what a</p>	<p>NERC has revised the language in footnote 1 to make clear that the SWPA case addressed only monetary penalties levied against federal entities. NERC believes that certain non-monetary penalties should be available for federal entities. To the extent that NERC or a Regional Entity propose to levy a non-monetary penalty against a federal entity, that entity could contest the proposed non-monetary penalty in a hearing pursuant to Appendix 4C of the ROP, at the Commission, or in federal court. NERC also has revised the proposed language in Section 4 to make clear that non-monetary penalties should bear a reasonable relationship to the seriousness of the violation and thus significant non-monetary sanctions would not be imposed for minor reliability issues. NERC also notes that the addition of proposed non-monetary penalties involving the CEO and board reflect examples of non-monetary sanctions that have been imposed in prior cases and are intended to ensure that the CEO and board have sufficient awareness of NERC compliance and resulting reliability and security concerns such that an entity does not continue to have programmatic failures or multiple serious risk violations in the future.</p> <p>NERC has proposed several edits in Section 4 to provide clarification as requested by EEl.</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	<p>public reprimand entails and how to ensure that a public reprimand does not include sensitive information that could increase the risk for a malicious attack, (2) time limitations for non-monetary sanctions and that such sanctions be addressed in the settlement, (3) clarification regarding the factors that would place an entity on a reliability watch list, and (4) correction of typographical issues.</p>	
Appendix A	<p>EI commented that the “Voluntary Mitigating Activities” listed in Section 3.3.8 should be added to the table in Appendix A as a mitigating factor and should have a range of up to 40% reduction of the Base Monetary Sanction amount in order to incentivize robust mitigation and demonstrate that a zero dollar monetary sanction is attainable.</p> <p>EI also commented that the range for self-reporting credit should be increased to up to a 40% reduction of the Base Monetary Sanction amount in order to incentivize robust self-reporting and demonstrate that a zero dollar monetary sanction is attainable.</p> <p>TAPS commented that the proposed table of penalty adjustments in Appendix A is inconsistent and should</p>	<p>NERC does not believe that adding a new mitigating factor for “Voluntary Mitigating Activities” should be added to the table in Appendix A. Entities are required to mitigate violations of the Reliability Standards. However, NERC notes that submission of voluntary mitigating activities with a Self-Report or shortly after submission of a Self-Report or receipt of an audit finding could be considered as positive aspects of an entity’s internal compliance program or cooperation, possibly resulting in mitigating credit for those factors.</p> <p>NERC believes that the existing range of 0-30% reduction in penalty is appropriate and supports robust self-reporting.</p> <p>NERC believes the table of penalty adjustments in Appendix A is sufficient clear and accurately describes</p>

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
	be revised and clarified such that every item is framed as a multiplier.	how NERC and the Regional Entities apply the various factors when determining monetary penalties.
Bulk power system instead of bulk electric system	ELCON questioned why Appendix 4B exclusively uses the term “bulk power system” instead of “bulk electric system.”	Appendix 4B uses the term “bulk power system” instead of “bulk electric system” because Section 215 of the Federal Power Act, Commission regulations regarding the certification of NERC as the Electric Reliability Organization and its ability to establish and enforce Reliability Standards, and Appendix 4C of the ROP use the term “bulk power system.”
Elimination of term “Penalty” and use of “Sanction” instead	<p>Several federal entities (BPA, SEPA, SWPA, and WAPA) commented that they disagreed with NERC’s proposed elimination of the term “penalty” and use of “sanction” instead.</p> <p>EI asked whether NERC would update Appendix 4C and other ROP references to “Penalties” and “Sanctions” to “Monetary Sanctions” and “Non-Monetary Sanctions” for consistency with Appendix 4B.</p>	NERC will revert back to language describing monetary and non-monetary penalties in line with the definition of “Penalty” in Appendix 2 of the ROP and the statutory language in Section 215 of the Federal Power Act. This change should also eliminate the need for further edits for consistency with other sections of the ROP, such as Appendix 4C.
Frequency and Duration of Violation in current 2.16	TAPS commented that NERC should justify its position that there are no longer any requirements for which violations are cumulative over time or which are periodically monitored and so the FERC-required language is no longer necessary, or should otherwise retain the existing explanations of how it calculates monetary penalties for such violations.	NERC has restored the language regarding violations that are cumulative over time and those which are periodically monitored with minor revisions. Revisions to the Reliability Standards have addressed many, if not all, of the issues raised by violations that are cumulative over time, but NERC will address that issue at a later time. For violations of periodically monitored Requirements, NERC believes the language may

Topic Area	Summary of Stakeholder Comments	Action/Response and Notes
		remain useful for explaining the duration of violations of periodically monitored requirements.
VRF/VSL Table	ELCON commented that the VRF/VSL table on page 12 was inconsistent with the VRF/VSL table on page 22.	The VRF/VSL table on page 22 is being deleted, leaving only the VRF/VSL table on page 12 (Section 3.2.1 of the proposed revisions to the Sanction Guidelines). This was not clear in the posted redline showing the proposed revisions to the Sanction Guidelines.