

Summary of Proposed Rules of Procedure Changes

Risk-Based Compliance and Enforcement | April 2015

Executive Summary

In its February 19, 2015 order, FERC directed NERC to “include fundamental RAI concepts and elements in the NERC Rules of Procedure.” *North American Electric Reliability Corporation*, 150 FERC ¶61,108 at P 29 (2015). FERC explained that it does not “expect NERC to include in the Rules of Procedure detailed procedures that would unduly hamstring the intended flexibility and streamlined processes that are the hallmark of RAI.” P 30. However, NERC was directed to, “at a minimum, recognize the existence of the RAI processes, articulate basic RAI concepts and define fundamental RAI elements, and require Commission approval for significant changes in RAI as NERC further develops and implements its risk-based approach.” *Id.* Therefore, FERC directed NERC to “articulate the RAI concepts and programs in the [Compliance Monitoring and Enforcement Program] CMEP.” P 31.

Attached to this summary are:

- i. [ATTACHMENT 1](#) – Proposed Changes to the Main Body of the Rules of Procedure
- ii. [ATTACHMENT 2](#) – Proposed Changes to Appendix 2: Definitions
- ii. [ATTACHMENT 3](#) – Proposed Changes to Appendix 4C: Compliance Monitoring and Enforcement Program

Detailed Review of Revisions

Definition of fundamental RAI elements

The following processes were defined in the CMEP and in Appendix 2 to the Rules of Procedure:

- Compliance Exceptions
- Find, Fix, Track and Report (FFT)
- Inherent Risk Assessment (IRA)
- Internal Controls Evaluation (ICE)
- Self-logging

In addition, the definitions of “NERC Compliance Monitoring and Enforcement Program Implementation Plan” and “Regional Implementation Plan” were revised to reflect the replacement of the actively monitored list with the identification of risk elements.

Recognition of the existence of RAI processes and articulation of basic RAI concepts Risk Elements, IRA, ICE, and CMEP Tools

Section 3.0 of the CMEP was revised to incorporate the requirement that the CEA determine the type and frequency of application of the compliance monitoring tools appropriate for a particular registered entity based on its specific reliability risks as evaluated through the IRA and ICE.

The same requirement is also reflected in section 3.1.4.1 related to the scope of Compliance Audits, in section 4.0, related to Annual Implementation Plans, and in section 400 of the Rules of Procedure. These provisions also describe the process of identifying risk elements for use in the development of annual Implementation Plans.

Self-logging

The existence of the self-logging program, the requirement for qualification of registered entities based on a formal review of internal controls, and the obligation by the CEA to make logs available to NERC and Applicable Governmental Authorities upon request was added to new section 3.5A. Also addressed are the content of logs, the rebuttable presumption that items logged will qualify for treatment as compliance exceptions and the limitation of the self-logging process to noncompliance posing a minimal risk to the reliability of the BPS unless otherwise authorized by an Applicable Governmental Authority.

Compliance Exceptions

The principles associated with the exercise of enforcement discretion associated with noncompliance that does not pose a serious or substantial risk to the reliability of the BPS were added to new section 3A.0. This section identifies the current processes of compliance exceptions and FFT, and indicates that compliance exceptions are limited to noncompliance posing a minimal risk to the reliability of the BPS unless an Applicable Governmental Authority authorizes expansion of the program. The section also outlines the circumstances under which a compliance exception would be considered part of the registered entity's violation history. With respect to the FFT program, the section indicates that noncompliance posing a minimal or moderate risk to the reliability of the BPS may be resolved through the FFT process.

The section also outlines the fundamental principles associated with the FFT and compliance exception processes for resolution of noncompliance outside of section 5.0 of the CMEP, including mitigation, availability of information to NERC and Applicable Governmental Authorities, tracking and analysis of information associated with such noncompliance, and ability of a registered entity to opt-out of such alternative process. This section also indicates that changes to such processes are subject to review and approval by Applicable Governmental Authorities.

Requirement of Commission approval for significant changes in RAI

In addition to the language in new section 3A.0 above, the inclusion of the definitions and fundamental principles described above in the Rules of Procedure, precludes NERC from making any significant changes in these processes without further Commission approval. Moreover, NERC reiterates its commitment to submitting additional changes to the review and approval of the Commission through an annual filing.