

December 23, 2021

**VIA ELECTRONIC FILING**

Michael Law  
President and Chief Executive Officer  
Alberta Electric System Operator  
2500, 330 - 5 Avenue SW  
Calgary, Alberta  
T2P 0L4

RE: *North American Electric Reliability Corporation*

Dear Mr. Law:

The North American Electric Reliability Corporation (“NERC”) hereby submits Notice of Filing of the North American Electric Reliability Corporation of Revisions to the NERC Rules of Procedure. NERC requests, to the extent necessary, a waiver of any applicable filing requirements with respect to this filing.

Please contact the undersigned if you have any questions concerning this filing.

Sincerely,

/s/ Lauren Perotti

Lauren Perotti  
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Reliability Corporation*

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**BEFORE THE  
ALBERTA ELECTRIC SYSTEM OPERATOR**

**NORTH AMERICAN ELECTRIC )  
RELIABILITY CORPORATION )**

**NOTICE OF FILING OF THE NORTH AMERICAN ELECTRIC RELIABILITY  
CORPORATION OF REVISIONS  
TO THE NERC RULES OF PROCEDURE**

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**NOTICE OF FILING OF THE NORTH AMERICAN ELECTRIC RELIABILITY  
CORPORATION OF  
REVISIONS TO THE NERC RULES OF PROCEDURE**

The North American Electric Reliability Corporation (“NERC”) hereby submits this filing providing notice of revisions to the NERC Rules of Procedure (“ROP”) related to the Compliance Monitoring and Enforcement Program (“CMEP”), the Personnel Certification and Credential Maintenance Program, and the Training and Education Program.

NERC proposes revisions to Sections 400 and 1500 and Appendices 2 and 4C related to the CMEP to enhance the ERO Enterprise’s<sup>1</sup> risk-based approach to compliance monitoring and enforcement and to update and clarify the ROP.

This filing consists of the following sections:

- Section I–Executive Summary of the filing.
- Section II–the proposed revisions regarding the CMEP in Section 400 (Compliance Monitoring and Enforcement), Section 1500 (Confidential Information), Appendix 2 (Definitions), and Appendix 4C (Compliance Monitoring and Enforcement Program).
- Sections III and IV–the proposed revisions to Section 600 (Personnel Certification and Credential Maintenance Program) and Section 900 (Training and Education Program).

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<sup>1</sup> The ERO Enterprise is, collectively, NERC and the six Regional Entities. The Regional Entities - Northeast Power Coordinating Council, Midwest Reliability Organization, ReliabilityFirst Corporation, SERC Reliability Corporation, Texas Reliability Entity, Inc., and Western Electricity Coordinating Council - operate according to Regional Delegation Agreements to help execute NERC’s obligations as the Electric Reliability Organization.

## **I. Executive Summary**

In this filing, the ERO Enterprise proposes revisions to the NERC ROP to further enhance the risk-based approach to the CMEP whereby registered entities and the ERO Enterprise focus on the greatest risks to the reliability and security of the Bulk Power System (“BPS”). The ERO Enterprise has implemented the risk-based approach to the CMEP over the last decade with support from the Federal Energy Regulatory Commission (“FERC”) and its staff through orders approving the initiatives and feedback on oversight engagements that confirms the continued effectiveness of the risk-based CMEP activities. Even with this success, there continue to be opportunities to enhance various CMEP practices to allow for greater attention to the highest risk noncompliance and entities while also removing some of the unintended or unnecessarily burdensome administrative limitations in the current rules.

Among the most significant proposed revisions to the CMEP, the ERO Enterprise proposes to refine several rules related to compliance monitoring, especially Compliance Audits. These changes are intended to move away from a more arbitrary, time-based approach to monitoring that at times prevents the ERO Enterprise from prioritizing activities based on risk. The changes provide a better way to balance the ERO Enterprise’s flexibility to monitor risk on a more real-time basis while still providing registered entities with enough time to prepare for monitoring activities. The changes include:

- Tailoring timing and location requirements for Compliance Audits of Reliability Coordinators, Balancing Authorities, and Transmission Operators based on reliability and security risks;
- Providing registered entities with at least 270 days’ notice of an upcoming Compliance Audit, in lieu of an Annual Audit Plan, with the detailed notice at least 90 days prior to the Compliance Audit;
- Focusing registered entity evidence retention requirements on current and future-looking reliability and security;
- Posting summary results of Compliance Audits instead of public versions of Compliance Audit reports; and
- Eliminating the posting of an annual Self-Certification schedule in favor of Self-Certifications tailored and scheduled according to specific risks. Registered entities would receive at least 60 days’ notice of an upcoming Self-Certification.

The ERO Enterprise also proposes to increase the efficiency of resolving minimal risk noncompliance. The increased efficiency is crucial to allow both the ERO Enterprise and industry to allocate resources to significant risks while maintaining visibility into emerging risks and trends. The proposed revisions build upon many years of successful implementation of prior streamlining efforts. Specifically, the ERO Enterprise proposes to:

- Exempt properly self-logged items from the Preliminary Screen and subsequent reporting and disposition processes; and
- Adopt a process for reviewing Compliance Exception determinations by exception, instead of the monthly process of submission and duplicative review of all Compliance Exceptions by the Compliance Enforcement Authority (“CEA”), NERC, and then FERC. NERC and FERC would have the opportunity to review the determinations (by periodic sampling) to evaluate the noncompliance’s minimal risk assessment and resolution as a Compliance Exception.

Finally, the ERO Enterprise proposes revisions to the NERC ROP as described below in this filing and shown in the redlined versions of the applicable ROP Sections and Appendices that enhance and clarify the NERC ROP to help ensure the efforts of registered entities and the ERO Enterprise can be focused on the greatest risks to reliability and security without undue administrative burdens.

Regarding the Personnel Certification and Credential Maintenance Program, the ERO Enterprise proposes moving credential maintenance activities from the Reliability and Security Technical Committee (“RSTC”) to the Personnel Certification and Governance Committee (“PCGC”) under the NERC ROP. The ERO Enterprise also proposes to move the credential maintenance requirements to Section 600 with the other requirements applicable to the Personnel Certification Program, principally the System Operator certification.

## **II. Revisions to the Compliance Monitoring and Enforcement Program**

### **A. The Case for Change**

The ERO Enterprise proposes revisions to the ROP to continue to enhance its risk-based approach to monitoring and enforcing compliance with the NERC Reliability Standards and to enhance the ROP to add clarity and simplify unduly burdensome administrative business practices. The shift to a risk-based approach to the CMEP began in 2011 with the implementation of streamlined methods for disposing of

minimal risk noncompliance<sup>2</sup> and continued in 2015 with the move to monitoring strategies that took into greater account registered entities' specific risk and circumstances,<sup>3</sup> among other BPS risks. In its multiple oversight activities examining the ERO Enterprise, described in the following paragraphs, FERC has stated that the risk-based program is being successfully and appropriately implemented.

The effectiveness of the CMEP is a key component of NERC's performance assessments submitted periodically to FERC. With the implementation of the risk-based CMEP over the last several years, FERC has continued to conclude that NERC is effectively executing its responsibility to monitor and enforce compliance with the NERC Reliability Standards.<sup>4</sup>

For example, FERC staff regularly observes ERO Enterprise Compliance Audits to see how the risk-based CMEP works in practice. Further, for FERC-led audits of registered entities, FERC staff entrusts the ERO Enterprise with resolution of identified noncompliance through the existing risk-based enforcement programs.

For Enforcement, the risk-based approach includes the streamlined disposition methods of Compliance Exceptions and Find, Fix, Track and Report ("FFT") for resolving noncompliance posing a minimal or moderate risk to reliability. NERC and FERC conduct joint annual reviews to evaluate the Regional Entities' use of Compliance Exceptions and FFTs to ensure: 1) consistency in application across the United States; 2) accuracy of the risk assessments; and 3) mitigation of the noncompliance by the

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<sup>2</sup> *N. Am. Elec. Reliability Corp.*, 138 FERC ¶ 61,193 (2012) ("FFT Order"). In approving the Find, Fix, Track and Report ("FFT") disposition mechanism, FERC "agree[d] that NERC and the Regional Entities should have the flexibility to more efficiently process and track lesser risk violations in order to focus their resources on issues that pose the greatest risk to reliability." FFT Order at P 2. NERC submitted the proposed FFT mechanism as a Notice of Filing on September 30, 2011.

<sup>3</sup> See FERC Order in *N. Am. Elec. Reliability Corp.*, 150 FERC ¶ 61,108 (2015) ("RAI Order"). NERC submitted an Informational Filing describing the Reliability Assurance Initiative on July 16, 2015.

<sup>4</sup> See *N. Am. Elec. Reliability Corp.*, 170 FERC ¶ 61,029 at P 38 (2020) (concluding in the order on NERC's most recent performance assessment "that NERC demonstrated that it can develop and enforce Reliability Standards.").

registered entity. At the conclusion of those annual reviews, FERC staff has observed that the programs meet expectations, noting improvements year over year.<sup>5</sup>

The risk-based approach is more than a matter of convenience or a cost-reduction endeavor. In fact, the risk-based approach is necessary to allow NERC and the Regional Entities to target efforts in areas that pose the most risk and where they can derive the most benefit in ensuring the reliability and security of the BPS. The risk-based approach allows the ERO Enterprise to adapt its activities: 1) by proactively determining the appropriate cycle and nature of monitoring for each registered entity; and 2) by tailoring its handling of noncompliance to deter serious violations and promote sustainable practices. Certain of the provisions that would be revised as a result of this proposal at times restrict the ERO Enterprise's ability to apply the risk-based approach.

In implementing the risk-based approach to the CMEP, the ERO Enterprise has spent considerable time and effort to improve and harmonize its practices. The ERO Enterprise ensures consistency in the CMEP through various tools and practices.<sup>6</sup> In Enforcement, the risk-based approach relies on a common understanding of the risk of a potential noncompliance. The ERO Enterprise Enforcement Group, comprised of enforcement, risk assessment, and mitigation staff from NERC and the Regional Entities, has focused on risk assessment through: 1) training at the ERO Enterprise's annual CMEP workshop; 2) periodic calibration exercises; and 3) developing lists of the characteristics that are frequently associated with minimal, moderate, or serious risk noncompliance. Consistency in risk assessments leads to consistency in resolution of noncompliance.

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<sup>5</sup> See, e.g., Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-012 (August 24, 2021) ("2021 Notice of Staff Review").

<sup>6</sup> E.g., Registered Entity Self-Report and Mitigation Plan User Guide, available at [Registered Entity Self-Report and Mitigation Plan.pdf \(nerc.com\)](#); Self-Logging Program User Guide, available at [Self-Logging Program User Guide \(nerc.com\)](#); and Drafting Templates for CEs, FFTs, and SNOPs, available at [Enforcement and Mitigation \(nerc.com\)](#). Another example of process harmonization is the recently approved ROP revisions to the Sanction Guidelines, which, as directed by FERC provide transparency as to how the ERO Enterprise assesses penalties. *N. Am. Elec. Reliability Corp.*, 174 FERC ¶ 61,030 at P 33 (2021)).



For noncompliance that warrants a penalty, the Regional Entities use common factors to aggravate or mitigate penalties to enhance consistency in implementing the NERC Sanction Guidelines—which FERC approved earlier this year and which are not part of the proposed revisions.<sup>7</sup> As with risk assessments, the ERO Enterprise Enforcement Group regularly discusses the characteristics of noncompliance or a registered entity that can increase or decrease the financial penalty. Ensuring consistency in financial penalties is a significant element of NERC’s oversight for enforcement. This oversight includes NERC’s approval of all penalties assessed by the Regional Entities.

As with Enforcement, the ERO Enterprise has also worked extensively to ensure consistency in Compliance Monitoring. For Inherent Risk Assessments, the ERO Enterprise Risk and Performance Monitoring Group, comprised of auditors and subject matter experts from NERC and the Regional Entities, developed a base case of characteristics for understanding the fundamentals of a registered entity’s risk. The inherent risk of a registered entity will depend, among other things, on its registered functions, size, and location. Having a common framework for assessing registered entities is the necessary starting point to plan for monitoring of the registered entity.

After understanding what the registered entity *is*, the Regional Entity learns what the registered entity *does* by examining its controls, management practices, and compliance programs, among other things. These characteristics demonstrate how the registered entity operates to ensure sustainable reliability and security. The Regional Entity combines this understanding of the registered entity’s operations with the registered entity’s inherent risk to determine: 1) how often to monitor the registered entity; 2) the monitoring tools; and 3) the scope and depth of the monitoring activity. The annual CMEP workshop includes training on how to assess and monitor registered entities for compliance with various Operations and Planning and Critical Infrastructure Protection Reliability Standards.<sup>8</sup> The annual workshops, along with monthly meetings of ERO Enterprise CMEP personnel, enhance consistency by

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<sup>7</sup> NERC discussed penalties and the NERC Sanction Guidelines with FERC staff FERC’s order on the most recent five-year performance assessment.

<sup>8</sup> FERC staff participated in the 2021 CMEP workshop, which was virtual because of COVID-19 restrictions.

fostering common understanding of: 1) risks; 2) registered entities and their controls; and 3) best practices for monitoring compliance.

In addition to these regular activities that promote consistency, the ERO Enterprise used the planning and development of Align for further process harmonization. A single technology tool for all of the ERO Enterprise — instead of three tools — ensures a more uniform look and feel for CMEP activities to complement the substantive convergence produced by the activities described above.

The ERO Enterprise invites accountability for its responsibilities through the Program Alignment Tool. The Program Alignment Tool allows registered entities or individuals to submit concerns regarding possible inconsistent practices or outcomes within the ERO Enterprise. NERC reports to its Board of Trustees and the Compliance and Certification Committee on submissions to the Program Alignment Tool and the resolutions of submitted issues. The small number of issues submitted in recent years is another indicator of the general consistency and success in implementation of the risk-based CMEP across the ERO Enterprise.

With the implementation of the risk-based approach, the fundamental elements of mandatory Reliability Standards have not changed. Registered entities are still required to comply with all Reliability Standards and mitigate all noncompliance. Further, the ERO Enterprise and FERC have maintained oversight and visibility of CMEP activities, including identified noncompliance. Those fundamentals would not change as a result of the proposals. These proposals have the potential to enhance visibility for NERC and FERC by calibrating the response to noncompliance with the risk of that noncompliance. One of the goals of the proposals is to resolve serious risk violations sooner and more effectively by modifying the reporting and processing requirements for minimal risk noncompliance.

What the ERO Enterprise proposes to change are some of the rules that still limit the ability of the ERO Enterprise to focus compliance monitoring and enforcement resources most effectively and impose unnecessary administrative burdens on the resolution of minimal risk noncompliance. For the resolution

of minimal risk noncompliance, as discussed more fully below, the ERO Enterprise is proposing a different way of addressing it – one that focuses on mitigation, analysis, and identification of risk and trends rather than the current adjudicatory process that involves comprehensive dispositions for each individual noncompliance.

The manner in which the ERO Enterprise, in collaboration with FERC staff, addressed the COVID-19-related challenges, and in particular the expansion of the self-logging program during that period, has demonstrated the progressive maturity of the ERO Enterprise’s CMEP activities and provides a template for the proposed revisions. Regional Entities have continued with compliance monitoring for the overwhelming majority of Reliability Standards without visiting the registered entity’s site. Registered entities have been able to log and mitigate their noncompliance related to their coronavirus response for review by the Regional Entities, NERC, and FERC with no further disposition. These circumstances have provided an opportunity to reconsider when and for what purpose site visits are most useful and what is the best way to resolve minimal risk noncompliance.

The ERO Enterprise will still execute its responsibility to monitor and enforce compliance with Reliability Standards. The ERO Enterprise is continuing to evolve, however, to focus more of the traditional CMEP activities on the highest-risk issues while ensuring the small things stay small through successful mitigation and robust registered entity controls. For minimal risk noncompliance, the ERO Enterprise would analyze trends and publish insights from noncompliance that does not require a formal adjudication process. The purpose of the proposed changes is not to lessen accountability for registered entities or the ERO Enterprise. Indeed, the ERO Enterprise remains accountable to FERC, industry stakeholders, and the general public, who have entrusted NERC and the Regional Entities to oversee the reliability and security of the BPS. Rather, the ERO Enterprise is seeking to be more strategic and risk-based to deploy its resources more effectively in a manner that furthers reliability and security.

The ERO Enterprise developed these proposals with input from registered entities through the NERC Compliance and Certification Committee, the Standards Efficiency Review team, various trade

groups, and commenters who submitted comments during a 45-day public comment period.<sup>9</sup> The proposed changes have benefitted from the input of many different parties who share the ERO Enterprise's commitment to reliability and security. NERC's Board of Trustees approved the proposed revisions, supporting the changes as appropriate next steps in the risk-based CMEP. The ERO Enterprise submits these proposals with consensus support from industry for the fundamental elements of the risk-based approach to compliance monitoring and enforcement.

## **B. Revisions for a Risk-Based Approach to Compliance Monitoring and Enforcement**

### **a. The proposed revisions to Compliance Audit and Self-Certification notification timelines enhance the ERO Enterprise's focus on addressing evolving risks.**

#### **i. Annual Audit Plan**

To enhance the CEAs' ability to schedule Compliance Audits to address evolving risks, the ERO Enterprise proposes no longer to require the posting of an Annual Audit Plan.<sup>10</sup> Instead, as suggested by several commenters, the ERO Enterprise proposes that CEAs would provide registered entities with at least 270 days' notice of an upcoming Compliance Audit.<sup>11</sup> There are also several additional notifications that occur today, and the ERO Enterprise is not suggesting that these would change. First, the CEA develops a general plan for monitoring a registered entity, based on the CEA's understanding of the registered entity's inherent risk and internal controls. The CEA shares this plan with the registered entity, which would in most cases provide the initial indication of a general timeframe when the registered entity could expect a Compliance Audit. Second, the 270 days' notice would then provide more specific information on timing. Finally, the audit notice, which is provided at least 90 days prior to commencement of the Compliance Audit, would detail the audit period and the Reliability Standards that

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<sup>9</sup> The submitted comments, along with NERC's responses and consideration of those comments, are included in Attachment 9. None of the commenting parties addressed the revisions to the Personnel Certification, Credential Maintenance, and Training and Education Programs.

<sup>10</sup> Revised Section 4.1.1 of Appendix 4C. Commenters suggested retaining audit scheduling procedures that provide more advance notice to registered entities of upcoming Compliance Audits. In response to these comments, the ERO Enterprise revised its proposal to provide more notice to registered entities than initially proposed. With this proposal, the term "Annual Audit Plan" would be removed from the definitions in Appendix 2 of the ROP.

<sup>11</sup> *Id.*

would be part of the Compliance Audit. Further, the ERO Enterprise does not propose to change the CEA's obligation to provide lists of planned Compliance Audits and any changes to such planned Compliance Audits to NERC, FERC, and other Applicable Governmental Authorities.<sup>12</sup>

Agile risk assessments that allow the ERO Enterprise to adapt and respond to changing risks are important to the effective mitigation of risks to the reliability and security of the BPS. CEAs should be able to focus their compliance monitoring on registered entities and Reliability Standards posing higher levels of risk to reliability and security. Under the current rules for an Annual Audit Plan, CEAs must operate according to a schedule set far in advance of the compliance monitoring engagements. When the gap between scheduling and performing a Compliance Audit is 12-15 months or more, there is less of a nexus between the scheduled engagement and the most relevant risks at the time of the actual engagement.

Additionally, this proposal would be more equitable for all registered entities with audits throughout the year. Under the current rules, the Annual Audit Plan for the following year is posted at the end of the year. This results in entities who are audited in the beginning of the year having less advance indication that they will be audited than those which are audited later in the year.

#### **ii. Self-Certification scheduling**

The ERO Enterprise proposes to remove the requirement to post an annual Self-Certification schedule.<sup>13</sup> Self-Certifications are part of a risk-based approach to compliance monitoring described in the CEA's plan for monitoring the registered entity. The elimination of an annual Self-Certification schedule would also allow regional adaptability to initiate Self-Certifications as needed based on known or emerging risks. Registered entities would receive at least 60 days' notice of an upcoming Self-

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<sup>12</sup> *Id.*

<sup>13</sup> Revised Section 4.2.1 of Appendix 4C.

Certification.<sup>14</sup> This is a minor change, as the current rules generally require 30 days' notice for a Self-Certification.

**b. The proposed revisions to evidence retention increase protection of sensitive information.**

The ERO Enterprise also proposes that the evidence retention period for Compliance Audits would not necessarily be for the entire period covered by the Compliance Audit. Rather, 1) the evidence retention period for activities performed at least once every three calendar years would be the lesser of three years or the retention period described in Reliability Standards and 2) for activities performed on a periodic basis of greater than three calendar years, the CEA may require the registered entity to provide evidence showing performance at the last required interval and evidence establishing the prior intervals of performance.<sup>15</sup> For these less frequent activities, the CEA may require the registered entity to provide evidence showing the timing and results of the last performance, plus the program document that establishes the interval applicable to the last performance and when the next performance should occur. The change would not require the registered entity to provide the results of the performance at the last two intervals.

Reducing the amount of information that must be retained and the length of that retention should enhance the registered entities' ability to protect sensitive information related to their facilities, networks, and operations. The proposed revisions would reduce the risks of data loss and malicious parties gaining access to sensitive information. The increased frequency and severity of threats to critical infrastructure, as shown in the supply chain and ransomware compromises over the last several months, support requiring retention of a reasonable amount of information to gain assurance that registered entities are operating reliably and securely by complying with the NERC Reliability Standards.

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

<sup>15</sup> Revised Section 4.1.3.2 of Appendix 4C.

In adopting a more forward-looking approach to assessing compliance, the proposed evidence retention revisions would still allow the CEA to determine that the registered entity is meeting the reliability and security objectives of the audited Reliability Standards. For the more frequent activities, evidence of the last three years of performance should demonstrate that the registered entity has been complying with the audited requirements of the Reliability Standards. Combining that evidence with the CEA's understanding of the registered entity's controls and processes to ensure sustained and sustainable compliance should enable reasonable assurance that the registered entity will continue to operate reliably and securely after completion of the Compliance Audit. Requesting and reviewing an appropriate amount of evidence focuses the CEA's resources more closely on the present and the future and tailors the registered entity's responsibility to demonstrate its compliance. Requiring registered entities to retain records for longer periods provides, at best, attenuated benefits to reliability and security while imposing potential costs on registered entities through increased risks of data loss to malicious actors that target the owners and operators of critical electric infrastructure.

Further, the proposed revisions should reduce unintended administrative burdens for retaining evidence that may currently exist for registered entities. The ERO Enterprise's risk-based approach prioritizes compliance monitoring more frequently for higher-risk registered entities. Because smaller registered entities, absent specific performance or compliance history considerations, tend to pose a lower risk to the BPS, they have generally been audited at longer intervals than every three years. Higher-risk registered entities that are audited every three years (or in many cases even more frequently) are therefore not required to retain the same period's worth of evidence as many of the smaller registered entities.

**c. The proposed audit period modification recognizes the use of various compliance monitoring activities.**

The ERO Enterprise proposes to redefine the start and end dates of Compliance Audit periods<sup>16</sup> to reflect the scheduling of Compliance Audits under the risk-based approach as opposed to three- or six-

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<sup>16</sup> The start and end dates mark the period covered by the Compliance Audit, as described in Revised Section 4.1.3.2 of Appendix 4C.

year cycles. The current definition of the beginning date of the audit period does not sufficiently account for other CMEP activities, such as a Self-Certification, that may have occurred since the last Compliance Audit.

Under the proposed revisions, the beginning date of the audit period: 1) would no longer be tied to the end date of the prior Compliance Audit; and 2) would not be a date before the end date of a prior Compliance Audit for any given Reliability Standard Requirement. The beginning date of the audit period would be indicated in the notice of the Compliance Audit provided at least 90 days prior to the start of the Compliance Audit.<sup>17</sup>

The ERO Enterprise also proposes to define the end date of the audit period as the date of the 90-day notice.<sup>18</sup> The end date would no longer be defined as “a specified date prior to the scheduled start of the Compliance Audit.”

Commenters sought clarification on the start and end dates of the Compliance Audit period to ensure the start date of the audit period would not precede the end date of a previous Compliance Audit period for a given Reliability Standard Requirement — which it would not.

**d. Public posting of audit results would reduce the likelihood of inadvertent disclosure of non-public information.**

The ERO Enterprise proposes to revise the requirement to publicly post Compliance Audit reports.<sup>19</sup> The ERO Enterprise proposes to replace this practice with a posting of Compliance Audit results that would include information such as: 1) registered entity name; 2) NCR information; 3) date of the Compliance Audit; 4) audit period covered; and 5) any potential noncompliance. NERC would not post the audit results until final disposition of any potential noncompliance identified during the Compliance Audit. This proposal would eliminate the need for creating public and non-public versions of audit reports and reduce the likelihood of inadvertent posting of non-public information. Also, providing

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Revised Section 4.1.5 of Appendix 4C.



the results in a common format will make the information more accessible for interested registered entities or the ERO Enterprise in analyzing compliance monitoring data.

The ERO Enterprise proposes to add to the ROP that the registered entity has 30 days to review the draft Compliance Audit report. Commenters requested additional time (beyond the originally proposed ten business days) for registered entities to review draft Compliance Audit reports — resulting in the proposal for a 30-day review period. The current ROP does not specify the length of time for registered entity review.

**e. Reliability or security risks should justify the timing and location of Compliance Audits.**

The ERO Enterprise proposes to grant the CEA discretion for all registered functions as to when to conduct Compliance Audits and whether they will occur on the registered entity's site.<sup>20</sup> For Reliability Coordinators ("RC"s), Balancing Authorities ("BA"s), and Transmission Operators ("TOP"s), a subset of all registered functions, the current ROP requires a Compliance Audit every three years and with an on-site component. This provision unduly limits the CEA's discretion to decide when and how to monitor the RCs, BAs, and TOPs in its region using all of its different monitoring tools. For example, a Spot Check or a Self-Certification may be more effective than a Compliance Audit to evaluate some registered entities, no matter their registered function, that present a lower inherent risk to the reliability and security of the bulk power system.

Based on the different levels of risk associated with a diverse group of registered entities across North America, there may not be a reliability or security justification for conducting a Compliance Audit of a registered entity at least once every three years. Similarly, there may be a reliability or security justification for performing a Compliance Audit every one or two years, depending on risk. Further, when there is a Compliance Audit, whether a portion of it must occur on-site should be informed by risk and scope. According to experience, on-site components of Compliance Audits will continue for the

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<sup>20</sup> Revised Section 403.10.

majority of RCs, BAs, and TOPs, and Compliance Audits for some entities may occur even more frequently than every three years. Nevertheless, CEAs should be able to determine: 1) the frequency of Compliance Audits for all registered entities, including RCs, BAs, and TOPs; and 2) whether those Compliance Audits will include an on-site component.<sup>21</sup> In an unlikely scenario where NERC or an Applicable Governmental Authority believes an RC, BA, or TOP has gone too long without a Compliance Audit, they can use their respective authorities through the Regional Delegation Agreement (for NERC) or federal statutes and regulations (for FERC) to direct the CEA to perform such a Compliance Audit.<sup>22</sup>

**f. The proposed revisions to minimal risk noncompliance provide increased efficiency while maintaining visibility and allowing the ERO Enterprise to identify trends or emerging risks related to minimal risk noncompliance.**

The risk- based approach to the enforcement of Reliability Standards recognizes that “not all instances of noncompliance with Reliability Standards require the same type of processing and documentation.”<sup>23</sup> Accordingly, the CMEP recognizes that “[a]bsolute adherence to the enforcement process set out in section 5.0 [of the CMEP] may not be the most appropriate, efficient, or desirable means by which to achieve the overall objectives of the Compliance Program for NERC, the Compliance Enforcement Authority, and the Registered Entity.”<sup>24</sup> The proposed ROP revisions related to minimal risk noncompliance are intended to enable appropriate and efficient resolution of minimal risk noncompliance, while maintaining appropriate visibility of such matters and evaluating them for trends or emerging risks. Align allows for visibility for NERC and FERC, and NERC will continue to report quarterly and annually on noncompliance.

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<sup>21</sup> Strict rotational auditing that does not adjust to changes in risks does not comport with professional auditing standards, including those of the Institute of Internal Auditors, which apply to the ERO Enterprise’s Compliance Audit processes. Revised Section 4.1 of Appendix 4C.

<sup>22</sup> For example, FERC could use its authority under Section 39.9 of its regulations to ensure the ERO Enterprise has a rigorous audit program as described in Section 39.7(a).

<sup>23</sup> Section 3A.0 of Appendix 4C.

<sup>24</sup> *Id.*

The FFT program was a major step in implementing a risk- based approach to the enforcement of compliance with Reliability Standards. The FFT program evolved from a processing track limited to minimal risk noncompliance to a vehicle for efficient and effective disposition of moderate and minimal risk noncompliance. In approving the expansion of the FFT program, FERC recognized the efficiencies that had resulted from the FFT program.<sup>25</sup>

Building on the success of the FFT program, the ERO Enterprise developed the Compliance Exception and Self-Logging programs to further streamline the resolution of minimal risk noncompliance with NERC Reliability Standards. In February 2015, FERC approved these two components of NERC’s risk-based approach to enforcement. More specifically, the Compliance Exception process allowed Regional Entities to record minimal risk instances of noncompliance without triggering a formal enforcement action. Additionally, self-logging was approved by FERC as a voluntary program that allows pre-screened registered entities to log self-identified minimal risk instances of noncompliance — which would be presumed for treatment as Compliance Exceptions.<sup>26</sup> Under both of these programs, after the noncompliance is identified by the registered entity or the Regional Entity: 1) the Regional Entities ensure the noncompliance: a) is mitigated, b) posed a minimal risk to reliability, and c) is otherwise appropriate for Compliance Exception treatment; and 2) the Regional Entities process the noncompliance as a Compliance Exception and provide notice and detailed descriptions of the noncompliance, risk assessments, and mitigation to NERC and FERC.

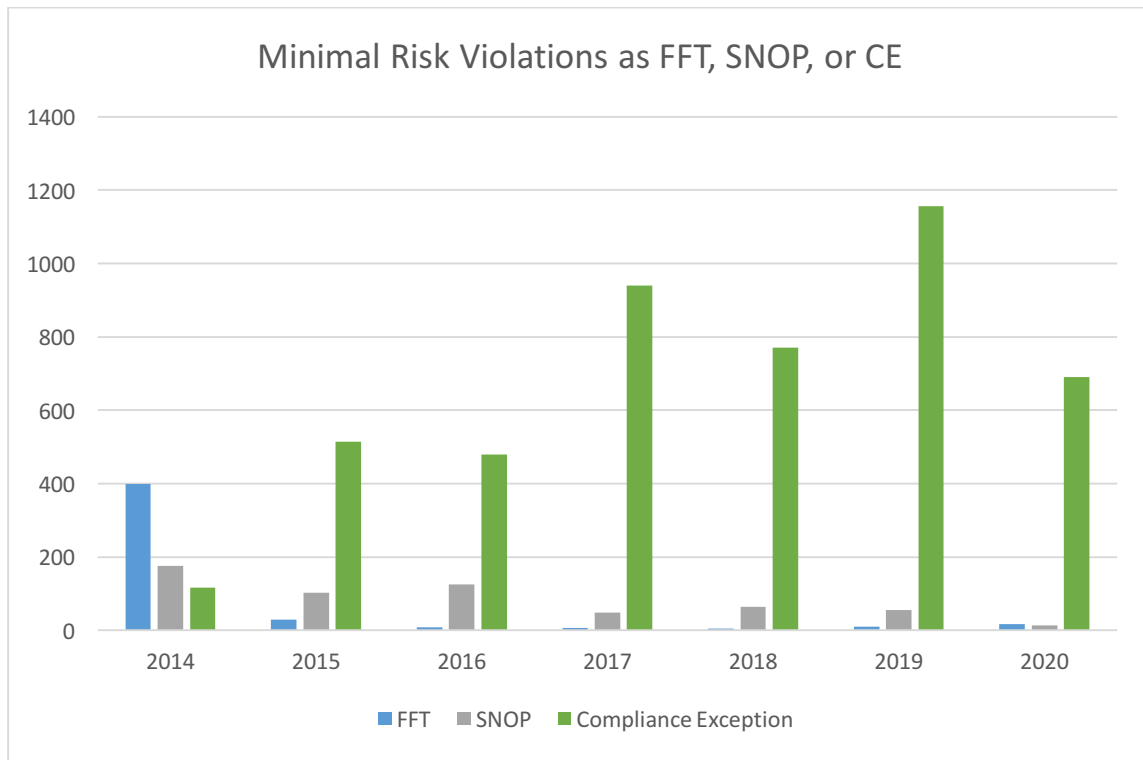
The ERO Enterprise has resolved over 5,500 instances of noncompliance posing a minimal risk to the BPS through Compliance Exceptions since the inception of the program. Compliance Exceptions are the primary method of disposition for minimal risk noncompliance, as shown in Figure 1 below. Self-

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<sup>25</sup> *N. Am. Elec. Reliability Corp.*, 148 FERC ¶ 61,214, at P 28 (2014). The expansion of the FFT program to certain moderate risk possible violations followed a pilot program approved by FERC in June 2013. *N. Am. Elec. Reliability Corp.*, 143 FERC ¶ 61,253 (2013).

<sup>26</sup> RAI Order at PP 2, 49-52; *order on compliance*, 153 FERC ¶ 61,130 (2015) (“RAI Compliance Order”).

logged noncompliance represents a relatively small portion, approximately 15%, of all Compliance Exceptions.



Streamlined Disposition of Minimal Risk Noncompliance

The Regional Entities’ effective use of Compliance Exceptions shows consistency in processing and understanding of the risk associated with individual noncompliance across the ERO Enterprise. Moreover, risk-based enforcement, including the Compliance Exception program, encourages sustainable reliability and security through mitigation that addresses root causes with the implementation of internal controls that reduce the likelihood of recurrence of the noncompliance.

In approving NERC’s 2012 CMEP revision, FERC stated that other approaches to the CMEP enforcement process should be limited to a reasonable exercise of NERC’s enforcement discretion.<sup>27</sup> The

<sup>27</sup> *N. Am. Elec. Reliability Corp.*, 141 FERC ¶ 61,241 at P 95 (2012). FERC further expressed “that any broader changes that NERC is contemplating to its CMEP process will be addressed in a separate proceeding before the Commission.” *Id.*

proposed ROP changes related to minimal risk noncompliance reflect the ERO Enterprise's reasonable exercise of NERC's enforcement discretion. The proposed enforcement ROP revisions for the Compliance Exception and Self-Logging programs are the natural next steps for the risk-based CMEP, representing more efficient means to resolve minimal risk noncompliance while maintaining an appropriate level of visibility and allowing the ERO Enterprise to identify trends or emerging risks related to minimal risk noncompliance.

**i. Compliance Exceptions**

Currently, all Compliance Exceptions are submitted to NERC by the Regional Entities in a spreadsheet format on a monthly basis for a 60-day review by NERC and FERC. NERC and FERC staff review the Compliance Exceptions after the Regional Entities to evaluate whether the submitted noncompliance is appropriate for Compliance Exception treatment. The Compliance Exception process involves the identification of minimal risk noncompliance that do not warrant a penalty, which are recorded and mitigated without triggering a formal enforcement action.<sup>28</sup> Compliance Exception dispositions cannot involve issues such as: extended outages, islanding, loss of load, cascading blackouts, vegetation contacts, systemic or significant performance failures, and/or intentional or willful acts or omissions and gross negligence or other misconduct.<sup>29</sup>

The ERO Enterprise proposes to refine the Compliance Exception process by removing the requirement for the CEA to submit Compliance Exceptions in a spreadsheet to NERC for the 60-day review by NERC and FERC. The proposal would reduce the duplicative reviews of minimal risk noncompliance by the CEA, NERC, and FERC. Noncompliance to be resolved as Compliance Exceptions would continue to go through the preliminary screen process at the CEA, and a notice of a preliminary screen would still be given to NERC, with subsequent notice of the potential noncompliance

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<sup>28</sup> Section 3A.1 of Appendix 4C.

<sup>29</sup> In the RAI filing, NERC affirmed that such matters are examples of serious and substantial risk violations where the ERO Enterprise concentrates its efforts for treatment in Notices of Penalty. "Informational Filing of the North American Electric Reliability Corporation," Docket No. RR15-2-000 (filed November 3, 2014), at pg. 42 ("RAI Filing").

to FERC.<sup>30</sup> The CEA would conduct its risk assessment, as it does today, and document its assessment in Align. Compliance Exceptions would still have to be mitigated, within one year of notification to NERC and FERC of Compliance Exception treatment. CEAs would review all mitigating activities for adequacy and then subsequently verify completion on a sample basis, as they do currently.

Then, instead of recording every Compliance Exception in a spreadsheet, the CEA would close the noncompliance. Upon closing the noncompliance as a Compliance Exception within Align, which would occur immediately upon the CEA's determination that Compliance Exception treatment is appropriate, NERC would provide FERC notice of the disposition. The Compliance Exception would be considered closed unless it is later determined that: 1) there was a material misrepresentation of fact, or 2) the registered entity did not complete the specified mitigating activities. In either case, the Regional Entity would remove the issue from Compliance Exception treatment and elevate the disposition. Additionally, Compliance Exceptions would be subject to NERC and FERC's annual review, as they are currently, and any additional review NERC or FERC deem necessary and appropriate.

When evaluating minimal risk noncompliance, the CEA will determine whether the noncompliance should be elevated to a different disposition method. In such circumstances, the CEA would resolve the potential noncompliance through the CMEP's other disposition methods. The FFT process and other disposition methods will remain available options for processing matters that do not qualify as a Compliance Exception. FFTs and other dispositions will still be subject to review by NERC and FERC through monthly submissions, as they are currently. While the majority of minimal risk noncompliance is processed as Compliance Exceptions, the ERO Enterprise continues to use other disposition methods for minimal risk noncompliance when other factors, such as the registered entity's compliance history or the registered entity's lack of cooperation, make an elevated disposition more appropriate.

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<sup>30</sup> Section 8.2 of Appendix 4C.

With the implementation of Align, NERC has access to all Regional Entities' issues of noncompliance and could inquire with a Regional Entity if an issue appears to have an elevated reliability risk. This continual visibility by NERC provides the opportunity for real-time analysis of potential issues of noncompliance, lessening the value of scheduled monthly submissions and duplicative reviews performed by NERC and FERC. This is a logical next step to focus more on issues that pose a moderate or serious risk to the reliability of the BPS.

This proposal for Compliance Exceptions is similar to FERC Office of Enforcement Staff's closing of a self-report without conversion to an investigation. As explained in the 2020 FERC Staff Report on Enforcement, FERC Enforcement Staff seeks to "promote transparency while encouraging the compliance efforts of regulated entities, ...[by] present[ing] the following illustrative examples of self-reports that DOI staff closed in FY2020 without conversion to an investigation."<sup>31</sup> Also similar to the illustrative summaries FERC Enforcement Staff provides in its Staff Reports on Enforcement, NERC will provide examples of noncompliance resolved as Compliance Exceptions in its Annual and Quarterly CMEP Reports. This will provide the public and registered entities information as to why matters were treated as Compliance Exceptions. Just as FERC Enforcement Staff uses the factors set forth in FERC's Revised Policy Statement on Enforcement when determining whether to close a self-report or open an investigation,<sup>32</sup> the ERO Enterprise will continue to use the approved factors when determining whether a matter is appropriate for Compliance Exception treatment.<sup>33</sup>

**1. NERC and FERC would continue to have meaningful oversight of Compliance Exceptions.**

With the proposed revisions to the Compliance Exception program, NERC and FERC would still be able to satisfy their responsibilities to assure reliability and security and ensure consistency in

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<sup>31</sup> FERC, *2020 Report on Enforcement* at 24, Docket No. AD07-13-014 (Nov. 2020), available at <https://www.ferc.gov/sites/default/files/2020-11/2020%20Annual%20Report%20on%20Enforcement.pdf>.

<sup>32</sup> *Id.* (citing Enforcement of Statutes, Regulations and Orders, 123 FERC ¶ 61,156, at P 25 (2008)).

<sup>33</sup> Compliance Exceptions must be minimal risk and cannot involve issues such as extended outages, islanding, loss of load, cascading blackouts, vegetation contacts, systemic or significant performance failures, or intentional or willful acts/omissions and gross negligence or other misconduct. RAI Filing at pg. 42.

implementation of the risk-based CMEP across the ERO Enterprise. NERC and FERC staff would continue to sample both Compliance Exceptions and FFTs on an annual basis for the Annual Compliance filing that is provided to FERC. This involves an in-depth review of sampled noncompliance resolved as Compliance Exceptions and FFTs. FERC staff and NERC recently concluded their latest annual review, finding that the sampled noncompliance were appropriately included in the CE and FFT programs and were adequately remediated. In addition, FERC staff “agreed with the final risk determinations, which clearly identified the factors affecting the risk prior to mitigation (such as potential and actual risk) and actual harm.”<sup>34</sup>

Outside of the current annual review, NERC and FERC may determine there is a need for additional information regarding certain noncompliance and may request such information from the Regional Entities.<sup>35</sup> Moreover, the failure to mitigate an issue within the established timeframe, or any material misrepresentation, will result in rescission of eligibility for Compliance Exception treatment.<sup>36</sup> FERC retains the ability to review a Compliance Exception at any time if it finds that Compliance Exception treatment was based on a material misrepresentation by the registered entity regarding the underlying facts of the noncompliance.<sup>37</sup> Nevertheless, the Regional Entities, working directly with the registered entities, are in the best position to know whether Compliance Exception treatment was obtained based on a material representation. The Regional Entities would continue their in-depth reviews of noncompliance as they do now. These reviews, together with continued NERC and FERC oversight activities, provide assurance that noncompliance are being properly reviewed and resolved.

More specifically regarding NERC’s oversight of CMEP activities, NERC has monthly meetings with each Regional Entity to discuss, among other things, issues of noncompliance. These monthly meetings provide an opportunity for NERC to discuss any current concerns about issues the Regional

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<sup>34</sup> Notice of Staff Review of Enforcement Programs, Docket No. RC11-6-012 (Aug. 24, 2021).

<sup>35</sup> NERC staff works with FERC staff to identify Compliance Exceptions that may require additional review (e.g., those involving Facility Ratings).

<sup>36</sup> RAI Order at P 21.

<sup>37</sup> *Id.* at P 48.



Entities are processing as Compliance Exceptions. Moreover, NERC provides observations and suggestions regarding potential noncompliance or improvements that the Regional Entities should consider when analyzing risk of minimal risk issues.

NERC will continue to provide FERC reports on annual reviews to inform FERC of NERC's evaluation of the Regional Entities' determinations of minimal risk assessments and resolutions as Compliance Exceptions. The annual informational filing to FERC would review the progress of the program, discuss appropriate enhancements, provide examples of issues the Regional Entities identified as Compliance Exceptions, and discuss observed trends.

**2. The ERO Enterprise would provide information on noncompliance that would be more useful to registered entities.**

The ERO Enterprise's proposed reporting is similar to the reporting on CIP noncompliance lessons learned implemented in 2021. The ERO Enterprise started this reporting in response to the FERC-NERC CIP Whitepaper's ending the public posting of information related to CIP noncompliance. With that change already in effect, the only change in noncompliance information provided to industry and the public under these proposals would be the elimination of posting of the limited number of minimal risk noncompliance with the Operations and Planning Reliability Standards resolved as Compliance Exceptions.

In general, noncompliance varies from registered entity to registered entity based on unique facts and circumstances of each noncompliance. Because the resolution of each noncompliance depends on the facts and circumstances of each case, there is limited value in a registered entity trying to compare a posted noncompliance to its current situation to determine if it is receiving consistent treatment from its CEA.

The ERO Enterprise would provide information to industry on what the Compliance Exceptions may show about risks to reliability and security. NERC discussed this proposal with representatives of industry trade organizations to ensure industry understanding and support of the proposal to replace the posting of each individual Compliance Exception with value-added reporting on minimal risk

noncompliance in the aggregate. The industry consensus showed a willingness to support the exchange of analytical reporting for the current system of posting all non-CIP minimal risk noncompliance. The ERO Enterprise will review and analyze Compliance Exceptions to identify and report on trends and issues at the regional or continent-wide level that merit more focus. Based on that review and analysis, the ERO Enterprise may, among other things:

- Consider additional monitoring, if applicable, e.g. Self-Certification, Spot Checks;
- Allocate ERO Enterprise resources to focus on appropriate issues that may pose risk to the security and reliability of BPS;
- Provide guidance to industry on best practices to comply with Reliability Standards and effective mitigation to remediate noncompliance; or
- Conduct outreach to specific registered entities.

## ii. Self-Logging

The current Self-Logging Program, finalized in May 2015, was approved by FERC as part of the Order approving NERC’s Reliability Assurance Initiative.<sup>38</sup> Under the Self-Logging Program, if a Regional Entity finds a registered entity to be eligible for the program after a review of a registered entity’s internal controls, the registered entity may log noncompliance for subsequent review by the Regional Entity in lieu of submitting Self-Reports.

The ERO Enterprise issued a revised *ERO Enterprise Self-Logging Program User Guide* in November 2018.<sup>39</sup> The document provides the method and process for the Regional Entity when considering a registered entity’s eligibility to participate in the Self-Logging Program.<sup>40</sup> An important aspect of the Self-Logging Program is that it allows a registered entity to log *minimal risk issues of noncompliance but not all issues of potential noncompliance* (Emphasis added). In cases where a registered entity identified potential issues of noncompliance that pose an increased risk to the reliability

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<sup>38</sup> RAI Order at PP 2, 49-52; *order on compliance*, 153 FERC ¶ 61,130 (2015) (“RAI Compliance Order”). [https://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Updated\\_ERO%20Enterprise%20Self-Logging%20Program%20\(2-1-16\).pdf](https://www.nerc.com/pa/comp/Reliability%20Assurance%20Initiative/Updated_ERO%20Enterprise%20Self-Logging%20Program%20(2-1-16).pdf).

<sup>40</sup> The *ERO Self-Logging Program User Guide* may be found here: <https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Self-Logging%20Program%20User%20Guide.pdf>.

of the BPS, the registered entity is required to self-report, rather than submitting the potential issue of noncompliance as a self-log.

Currently, the Regional Entity periodically reviews self-logs, performs risk assessments, and processes appropriately logged minimal risk noncompliance as Compliance Exceptions. Self-logged noncompliance represents a relatively small portion, approximately 15%, of all Compliance Exceptions. If the Regional Entity assesses that a self-logged potential issue of noncompliance poses a risk other than minimal, the Regional Entity elevates the processing method of the issues and the reporting designation is changed to a Self-Report rather than a self-log. If a registered entity continues to log potential issues of noncompliance that are not determined to be minimal risk, a Regional Entity will reevaluate the registered entity's participation in the Self-Logging Program. The Regional Entity may also provide outreach to the registered entity on assessing risk of potential issues of noncompliance to ensure the registered entity understands what is acceptable to be a minimal risk issue.

There are currently 88 registered entities in the Self-Logging Program in the United States. The ERO Enterprise continues to see benefits of the program. These benefits include visibility into registered entities' internal controls to identify, assess, and correct minimal risk noncompliance. That visibility enables registered entities' transparency with issues that are reported in the self-logs, including "near-misses" that are not potential noncompliance and would not be resolved as Compliance Exceptions. The ERO Enterprise has realized modest increased efficiencies through the streamlined processing and resolution of self-logged noncompliance.

To enhance the Self-Logging Program, the ERO Enterprise proposes to exempt self-logged items from the Preliminary Screen and subsequent reporting and disposition processes, such as the Compliance Exception or FFT programs or enforcement actions.<sup>41</sup> Self-logged noncompliance would be subject to review by the CEA and, upon request, by NERC and FERC. Self-logged noncompliance would still be

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<sup>41</sup> NERC would also revise the term "Self-Logging" in the definitions in Appendix 2.

limited to minimal risk noncompliance, and the requirement to mitigate the noncompliance would remain. Self-logged noncompliance that poses more than a minimal risk or otherwise is not appropriate for such expedited treatment would be resolved through the CMEP's other disposition methods.

Under the proposed revisions, the Regional Entities will continue to review all self-logs that are submitted, as they do now, and will recommend a registered entity self-report issues that need a more robust review or alternate disposition method. Open discussions between the Regional Entity and registered entity about self-log submissions will be encouraged, as they are now, and promote transparency between the Regional Entity and registered entity about issues of noncompliance and how the issues are being mitigated. It is still required for a registered entity to mitigate self-logged issues. Additionally, NERC and FERC may request a review or spot check of a Regional Entity's self-logs at any time to ensure the requirements of the Self-Logging Program are being met.

Additionally, under the proposal, NERC will track self-logged items through Align to identify broader risks. The proposal also provides that the logs themselves will be accessible to FERC and NERC, allowing FERC and NERC visibility to the specifics of the logged items. NERC and FERC Staff would still perform an annual review of selected self-logs and file the results of the review with FERC. As part of this analysis, NERC will also examine use of the Self-Logging Program. In addition, NERC will continue to provide statistical information regarding Self-Logging in its Annual and Quarterly CMEP Reports. If a Regional Entity, NERC, or FERC sees that a registered entity is not self-logging appropriate issues or mitigating the self-logged issues, or sees elevated risk in other areas of a registered entity's program, the registered entity's self-logging privileges may be revoked.

The ERO Enterprise has provided and will continue to provide outreach to stakeholders about the Self-Logging Program to ensure the program is accessible to all registered entities and is viewed as a benefit.<sup>42</sup> The outreach would address requirements<sup>42</sup> for applications to participate in the Self-Logging

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<sup>42</sup> See Self-Logging Program User Guide at 3 (reporting positive feedback from self-logging registered entities on the benefits of the Self-Logging Program).

Program. The ERO Enterprise would also reaffirm that admission into the program involves a robust review of the registered entity's compliance program and there are no guarantees that a registered entity would be admitted into the Self-Logging Program.

The review of a registered entity's request to participate in the Self-Logging Program is a benefit to reliability, as Regional Entities perform a robust analysis of a registered entity's internal compliance program. If accepted to the program, the logs are an ideal tool for the registered entity to conduct trend spotting within its own organization because all minimal risk noncompliance and associated mitigation are contained on the log. Additionally, log review and discussion, not only internally, but between a registered entity and Regional Entity, may trigger productive dialogue regarding risk for the registered entity and potential expansion of mitigating activities to prevent broader issues in the future. Also, for Reliability Standards involving high-frequency conduct, a registered entity may show its Regional Entity how it is being resilient through its internal controls and mitigating risk where there are issues of noncompliance.

With limited exception, commenters supported streamlining of noncompliance through revised processes for self-logged noncompliance and Compliance Exceptions. NERC discussed the concerns with the commenter that expressed concern with the proposed self-logging revision, explaining that NERC and FERC will still be able to review any noncompliance to ensure the Self-Logging Program and Compliance Exceptions continue to work as intended by applying to minimal risk noncompliance that is being mitigated. In addition, NERC will continue to report on statistics and trends in self-logged matters to inform stakeholders about self-logged issues.

The Self-Logging Program has proven to be successful in prompting conversations about controls and robust compliance programs when the Regional Entity evaluates eligibility and reviews self-logs, even with its limited participation from registered entities. It is therefore an appropriate time to enhance the program to broaden interest and enrollment by enabling a shift of registered entity and ERO Enterprise focus and resources to issues of noncompliance that pose a higher risk to the reliability of the

BPS. The proposal for self-logged issues of noncompliance to be exempt from the Preliminary Screen and subsequent reporting and disposition processes is the appropriate step in this direction.

### **iii. Compliance history for Compliance Exceptions**

The ERO Enterprise proposes to clarify the CEA's review of compliance history when analyzing subsequent Compliance Exceptions.<sup>43</sup> The revision would make clear that the CEA considers compliance history by looking at the registered entity's overall compliance history for the specific Standard and Requirement to determine whether the registered entity should continue to qualify for Compliance Exception treatment for subsequent noncompliance with the Standard and Requirement. This approach contrasts with separately analyzing each individual prior noncompliance, which had become the expectation in practice (although not expressly required).

More specifically, under the proposed revisions, in reviewing compliance history for the specific Standard and Requirement for a subsequent Compliance Exception, the CEA will evaluate overall compliance history, including: 1) whether or not there is a critical mass of prior noncompliance such that Compliance Exception treatment is not appropriate; or 2) compliance history otherwise indicates that subsequent Compliance Exception treatment is not appropriate. This overall review yields more value than reviewing each individual prior noncompliance. Reviewing each individual prior noncompliance is often futile in that even if a prior noncompliance involved arguably repetitive conduct, the subsequent minimal risk issues may still be appropriate for Compliance Exception treatment, especially where the noncompliance is self-identified, isolated, and/or the entity otherwise has strong controls in the specific program area, often involving high-frequency conduct where perfection is not realistic.

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<sup>43</sup> Revised Section 4A.1 of Appendix 4C.

**C. The proposed revisions to enhance and clarify the ROP would make the ROP easier to understand, administer, and follow.**

**a. Registration provisions**

The ERO Enterprise proposes to remove the registration-related provisions in Section 2.0 of Appendix 4C, as they are redundant with the requirements included in Section 500 and Appendix 5B. Appendix 4C begins with the presumption that organizations responsible for complying with Reliability Standards are registered entities.

**b. Interaction with the Compliance Enforcement Authority**

The ERO Enterprise proposes to simplify terminology and references to “NERC and [a] Regional Entity” in Section 2.0 of the CMEP to indicate that registered entities interact and correspond with a CEA, which may be NERC or a Regional Entity.

**c. Annual CMEP Implementation Plan**

The ERO Enterprise proposes to update the ROP in Section 400, the CMEP,<sup>44</sup> and Appendix 2 to reflect the current business practice of a single CMEP Implementation Plan that includes ERO Enterprise-wide and Regional Entity-specific reliability risks and provides a single set of expectations and risk focus areas for registered entities. The ERO Enterprise no longer has separate NERC and Regional Entity CMEP Implementation Plans.<sup>45</sup>

The ERO Enterprise proposes to revise the CMEP to change the initial posting of the annual CMEP Implementation Plan from September 1 to one posting “on or about November 1 of the calendar

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<sup>44</sup> Revised Section 3.0 of Appendix 4C.

<sup>45</sup> NERC would also delete the term “Regional Entity Compliance Monitoring and Enforcement Program Implementation Plan” from the definitions in Appendix 2. *See Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards* Order No. 672, 114 FERC ¶ 61,104 at P 464 (2006) (“Order No. 672”) (directing a single audit program applicable to both the ERO and the Regional Entities).

year preceding implementation.”<sup>46</sup> The earlier posting requirement for the NERC CMEP Implementation Plan allowed time for development of the Regional Entity CMEP Implementation Plans.

#### **i. Risk Elements**

The ERO Enterprise proposes to revise Section 401.6 to reflect current business practices for the development and use of Risk Elements in the annual CMEP Implementation Plan and planning for oversight of registered entities. The revisions also simplify the section and reduce redundancy.

#### **d. Compliance Audits**

The ERO Enterprise proposes to update language regarding Compliance Audits in revised Section 4.1 of the CMEP to reflect current business practices and terminology. For example, the ERO Enterprise proposes to remove the concept of “audit guides,” which do not exist *per se*, and refer instead to guidance from NERC in compliance guidance documents, such as CMEP Practice Guides, the Compliance Monitoring and Enforcement Manual, and Reliability Standard Audit Worksheets that are posted on NERC’s website.

The ERO Enterprise proposes to reduce redundancy between Section 400 and Appendix 4C by: 1) indicating in Section 400 that each Regional Entity will implement risk-based compliance monitoring in accordance with Appendix 4C; and 2) removing references to schedules, reports, and noncompliance dispositions to be published by NERC and the Regional Entities.

#### **i. Scope of Compliance Audits**

The ERO Enterprise proposes to clarify the description of Compliance Audits, which as currently written could be understood to require examination of all Reliability Standards, to indicate instead that CEAs scope Compliance Audits according to risk.<sup>47</sup> Registered entities are still responsible for complying with all Reliability Standards and are encouraged to self-report or self-log all potential noncompliance upon identification.

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<sup>46</sup> Revised Section 3.0 of Appendix 4C.

<sup>47</sup> Revised Section 4.1 of Appendix 4C.



## **ii. Registered entity objections to Compliance Audit team**

The ERO Enterprise proposes revisions to new Section 4.1.4.4 in the CMEP related to a registered entity's ability to object to members of the Compliance Audit team. The revisions provide additional time to the registered entity and also recognize that not all Compliance Audits have an on-site component.

### **e. Spot Checks**

The ERO Enterprise proposes to revise the CMEP's rules for Spot Checks to simplify the language and indicate that the CEA and NERC have discretion to initiate or direct Spot Checks.<sup>48</sup> Spot Checks still may be in response to events, operating problems, Complaints, or other circumstances. Nevertheless, the CMEP does not need to include a list of possible scenarios that could be considered exhaustive or limiting to the discretion of the CEA or NERC.

### **f. Compliance Investigations**

The ERO Enterprise proposes a revision to the footnote in new Section 4.4 of the CMEP that lists examples of the situations where NERC might lead a Compliance Investigation. The ERO Enterprise proposes to remove the situation involving a potential noncompliance by a Regional Entity or one of its affiliates because there are no longer any Reliability Standards applicable to a Regional Entity and none of the remaining six Regional Entities have affiliates or divisions that could have a potential noncompliance.

### **g. Self-Reports**

The ERO Enterprise proposes to remove the Self-Report provision from new Section 4.5 of the CMEP encouraging a Self-Report when the Violation Severity Level of a previously reported violation has changed. Registered entities should still inform the CEA when the extent of condition of a potential noncompliance has changed. For the last several years, however, CEAs and registered entities have handled this situation more efficiently by expanding the scope of the initial self-reported noncompliance

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<sup>48</sup> Revised Section 4.3 of Appendix 4C.

by sharing needed information about the potential noncompliance without the submission of a new Self-Report.

#### **h. Anonymous Complaints**

The ERO Enterprise proposes to clarify in new Section 4.7.2 of the CMEP that it may share the identity of an anonymous complainant with a Regional Entity as a CEA, but not other third parties. The ERO Enterprise also proposes to revise the requirement that the CEA notify the registered entity if it determines that the initiation of another CMEP process to address the complaint is not warranted. The ERO Enterprise proposes this revision to reduce the risk of retaliation against the anonymous complainant.

#### **i. Potential Noncompliance**

The ERO Enterprise proposes to refer to all failures to comply with a Reliability Standard as potential noncompliance. For potential noncompliance that would be subject to the Preliminary Screen and subsequent processes (i.e., non-self-logged noncompliance), the CEA would issue a Notice of Preliminary Screen<sup>49</sup> under new Section 5.2 of the CMEP after it has determined that: 1) the entity involved with the potential noncompliance is a registered entity; 2) the Reliability Standard involved with the potential noncompliance is applicable to the registered entity and was approved and in effect at the time of the potential noncompliance; and 3) the potential noncompliance is not a duplicate of one currently being processed. This Notice would: 1) state that a potential noncompliance has been identified; 2) provide basic details available regarding the potential noncompliance; and 3) instruct the registered entity to retain and preserve data and records related to the potential noncompliance. The CEA would provide this Notice to NERC through Align, which triggers NERC's responsibility to notify FERC in

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<sup>49</sup> In Appendix 2, "Notice of Preliminary Screen" replaces "Notice of Possible Violation" and "Potential Noncompliance" replaces "Possible Violation."

accordance with Section 8.0 of the CMEP. The ERO Enterprise proposes to extend the time to conduct a Preliminary Screen from 5 days to 10 days.<sup>50</sup>

Over the last several years, the vast majority of failures to comply posed a minimal risk to reliability and were resolved as Compliance Exceptions, outside of the enforcement action processes of the CMEP. The ERO Enterprise does not apply the “violation” label to such noncompliance. Similarly, noncompliance resolved through the FFT process is treated as an FFT remediated issue.

When a CEA determines that a potential noncompliance is not appropriate for Compliance Exception or FFT treatment, the potential noncompliance would be considered an Alleged Violation, with subsequent notice to the registered entity of the Alleged Violation, as specified in Section 5.3 of the CMEP, through: 1) a Notice of Alleged Violation and Proposed Penalty or similar notification (referred to as a NAVAPS); or 2) an offer of settlement.

#### **j. Settlement Agreements**

The ERO Enterprise proposes to clarify that the CEA may offer settlement for an Alleged Violation at any time even if the registered entity has not requested settlement negotiations.<sup>51</sup>

The ERO Enterprise proposes to revise the rule to issue a letter with the final settlement terms,<sup>52</sup> as settlement agreements and Notices of Penalty have served this purpose.

#### **k. Mitigation Plans and Mitigating Activities**

The ERO Enterprise proposes several revisions to update the ROP’s mitigation provisions.

First, the ERO Enterprise proposes revisions to make clear that formal Mitigation Plans are required only at the request of the CEA.<sup>53</sup> Otherwise, mitigating activities are the preferred method for remediating a potential noncompliance. Under the current ROP (Appendix 4C, Sec. 6.1), registered

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<sup>50</sup> Revised Section 4.8 of Appendix 4C.

<sup>51</sup> Revised Section 5.6 of Appendix 4C.

<sup>52</sup> *Id.*

<sup>53</sup> Section 6.1 of Appendix 4C.

entities may submit either a Mitigation Plan or a description of how the noncompliance has been mitigated (commonly referred to as “mitigating activities”). The proposed revisions do not change the obligation of the registered entity to submit mitigation, whether in the form of mitigating activities or a formal Mitigation Plan, that sufficiently remediates the noncompliance, including prevention of recurrence. Rather, the revisions make clear that mitigating activities should be the default mitigation submission method, and that Mitigation Plans are only required at the request of the CEA.

In line with the risk-based approach to enforcement, some of the more administrative requirements associated with Mitigation Plans, and formal NERC and FERC review associated with Mitigation Plans, should be reserved for complex or higher-risk issues where the CEA determines formal Mitigation Plans are required. Mitigating activities would be more appropriate for the majority of noncompliance, and, accordingly, the revisions are meant to encourage their use.

Second, the ERO Enterprise also proposes to increase the time, from 30 to 60 days each, for Regional Entity acceptance and NERC approval of a Mitigation Plan, and from 10 business days to 30 days, for Regional Entity acceptance of a revised Mitigation Plan.<sup>54</sup> With Mitigation Plans generally reserved for more complex or higher-risk noncompliance, the Regional Entity and NERC could benefit from a longer review period that could reduce the frequency of the Regional Entity or NERC extending the review period afforded by the ROP.

Third, the ERO Enterprise proposes to eliminate the practice of provisional acceptance of Mitigation Plans,<sup>55</sup> as the Regional Entities no longer use provisional acceptance. Provisional acceptance was meant to address circumstances where a Regional Entity might accept a Mitigation Plan and later determine that the scope of the Mitigation Plan is insufficient to address the violation because the facts of the noncompliance are different from those on which acceptance was based. However, when this is the case, Regional Entities have other avenues to ensure mitigation covers the scope of the noncompliance,

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<sup>54</sup> Revised Section 6.4 of Appendix 4C.

<sup>55</sup> *Id.*

such as requiring additional mitigation in the form of mitigating activities or a revised Mitigation Plan, before agreeing to resolve the noncompliance.

Fourth, the ERO Enterprise proposes to revise the requirement for public posting of Mitigation Plans for related Notices of Penalty, as dispositions of noncompliance include descriptions of the mitigating activities.<sup>56</sup>

Fifth, the ERO Enterprise proposes to revise the requirement to provide quarterly updates on the implementation of Mitigation Plans<sup>57</sup> given the baseline expectation to complete each mitigation milestone within 3 months, with CEA flexibility to grant extensions upon request by the registered entity.

**D. The ERO Enterprise proposes additional revisions to update the ROP to account for newer technology and operations.**

**a. Reporting requirements affected by Align**

The ERO Enterprise proposes revisions to CMEP Section 8.0's rules for reporting and disclosure of potential noncompliance based on current business practices and tools. For example, rather than requiring Regional Entities to submit reports to NERC with current information regarding potential noncompliance, the Regional Entities may make the information available through a common database.<sup>58</sup> The ERO Enterprise's new CMEP technology tool, Align, functions as the common database for the Regional Entities to provide this noncompliance information to NERC.

**b. Retention requirements for CMEP-related documents**

The ERO Enterprise proposes to revise the retention requirements of CMEP Section 9.2 to reflect the use of Align and the ERO Secure Evidence Locker ("ERO SEL") for CMEP activities. The ERO Enterprise proposes to add a technical feasibility limitation on a CEA's responsibility to retain information for the required period because documents created by the CEA in the ERO SEL environment cannot be backed up for retention purposes.

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<sup>56</sup> Revised Section 6.5 of Appendix 4C.

<sup>57</sup> Section 6.6 of Appendix 4C.

<sup>58</sup> Section 8.1 of Appendix 4C.

The ERO Enterprise proposes to state explicitly that registered entities have continuing obligations to retain CMEP data and information as directed by the CEA. These obligations apply to registered entity retention of CMEP data and information outside of Align or the ERO SEL, including information that the CEA may never formally possess because of use of the ERO SEL.

**c. Maintaining CMEP records**

The ERO Enterprise proposes to revise Section 401.9 to reflect current business practices regarding the maintenance of CMEP information. With the prior CMEP tracking systems and with the ERO Enterprise's newer CMEP tool, Align, NERC and the Regional Entities coordinate to maintain all information related to potential noncompliance.

**d. Program continuity**

The ERO Enterprise proposes to update the language in Section 401.5 for situations where NERC may not have a delegation agreement with the Regional Entity, NERC or the Regional Entity terminates the delegation agreement, or the Regional Entity does not administer the CMEP in accordance with the delegation agreement. The revised language reflects the ERO Enterprise's experience with the termination of two Regional Entities and current business practices related to coordinated oversight of multi-regional registered entities.

**e. Confidential Information**

The ERO Enterprise proposes to revise Section 401.10 to state that the treatment of all Confidential Information, including CMEP information, is subject to Section 1500 of the NERC ROP. This revision reduces redundancy throughout the ROP and lessens the likelihood of misaligned terms across various sections that address Confidential Information.

**f. Rules for public posting of noncompliance are subject to the disclosure regulations and requirements of the Applicable Governmental Authority**

The ERO Enterprise proposes to revise Section 401.11 to state explicitly that rules regarding the public posting of noncompliance information remain subject to the disclosure regulations and requirements of the Applicable Governmental Authority. This revision accommodates current business

practices and allows for adjustments if the Applicable Governmental Authority modifies its regulations or practices related to noncompliance information.

**g. NERC Oversight of an ERO Compliance Monitoring and Enforcement Program**

The ERO Enterprise proposes to update Section 402 to reflect NERC's current practices in executing and overseeing a single ERO CMEP across the ERO Enterprise. The ERO Enterprise proposes to consolidate Sections 402.1.2 and 402.1.3 into a new Section 402.1.2 requiring NERC to evaluate the effectiveness of each Regional Entity in meeting its delegated authority and responsibility to execute the CMEP, which incorporates criteria developed by the NERC Compliance and Certification Committee. These revisions are consistent with Appendix 4A. The ERO Enterprise proposes to eliminate references to Regional Entity boards imposing Penalties and sanctions on behalf of NERC because this role is done directly by Regional Entity staff. The ERO Enterprise proposes to revise Section 403.4 to reflect the availability of the Consolidated Hearing Process, adopted by five of the six Regional Entities, for hearings of contested noncompliance findings or sanctions.

The ERO Enterprise proposes to simplify the provisions of Section 402.2 regarding assuring consistency in the Regional Entities' execution of the CMEP. The ERO Enterprise proposes to revise the requirement to document in the Regional Delegation Agreement any differences in execution of the CMEP or application of the NERC Sanction Guidelines to assess penalties. Any such differences would still be justified and described on a case-by-case basis in the resolution of a noncompliance. The ERO Enterprise also proposes to update Section 402.2.1 to describe the periodic coordination of CMEP managers (through the ERO Enterprise Risk, Performance, and Monitoring Group and the ERO Enterprise Enforcement Group) to discuss and resolve CMEP-related issues as meetings rather than forums.

Finally, the ERO Enterprise proposes to streamline other provisions by adopting consistent use of the CEA and the CMEP acronyms, eliminating references associated with Regional Entities complying

with Reliability Standards and Regional Entity hearing bodies, and noting that confidentiality provisions apply to all CMEP activities and to anyone at the Regional Entities, not just Regional Entity CMEP staff.

**h. Monitoring NERC’s Compliance with the Rules of Procedure**

The ERO Enterprise proposes to add language to Section 405 stating that findings from Compliance and Certification Committee activities to monitor NERC’s adherence to the ROP will be addressed by the NERC Board of Trustees and the Board’s appropriate committees with responsibility for the applicable subject.

The ERO Enterprise proposes to add language to Section 406 stating that reports and responses related to independent audits of the Compliance Monitoring and Enforcement Program will be posted for public viewing when authorized by the NERC Board of Trustees or the appropriate Board committee.

**i. Potential conflicts with market rules**

The ERO Enterprise proposes to expand the rule of Section 402.7 regarding disclosure of potential conflicts with market rules to include any Reliability Standard, as opposed to only a Regional Reliability Standard.

**j. Updates for Critical Electric Infrastructure Information and Critical Energy Infrastructure Information**

The ERO Enterprise proposes to revise the definitions of Confidential Information in Appendix 2 and Section 1500 to reflect the terms used by FERC in its regulations on the protection of Critical Electric Infrastructure Information and Critical Energy Infrastructure Information.

**k. Definitions in Appendix 2**

**i. Alleged Violation and Find, Fix, Track and Report**

The ERO Enterprise proposes to revise the definitions of “Alleged Violation” and “Find, Fix, Track and Report” to reflect the replacement of “Possible Violation” with “Potential Noncompliance.”



## **ii. Exception Report**

The ERO Enterprise proposes deletion of the term “Exception Report” as it is no longer a discovery method in the CMEP.

### **III. Revisions to the Personnel Certification and Credential Maintenance Program**

#### **A. Summary**

NERC is proposing a structure change to enhance the governance of the System Operator Certification program. The Personnel Certification Governance Committee (“PCGC”) currently oversees the implementation of the System Operator certification program and the associated activities of the exam working group which develops the exam questions for System Operators. NERC proposes to move the System Operator credential maintenance program from the former Operating Committee (now the Reliability and Security Technical Committee) to the oversight of the PCGC.

This move aligns with the objectives of the PCGC in maintaining the integrity of the System Operator certification process. This process has two components that belong together. First, the PCGC oversees System Operator certification eligibility requirements, including the development, administration, and scoring of the System Operator assessment instruments for the System Operator Certification Program. Second, NERC proposes that the PCGC also oversee that appropriate providers are developing post-exam courses for System Operators to maintain their credentials and knowledge of the BPS. This is consistent with the overall purpose of the committee. Accordingly, NERC proposes to move requirements from Section 900 to Section 600. NERC also renames the “Personnel Certification Program” the “Personnel Certification and Credential Maintenance Program.”

### **IV. Revisions to the Training and Education Program**

#### **A. Summary**

In conjunction with the aforementioned revisions to Section 600, NERC proposes to delete Section 902 (Continuing Education Program) and move its requirements to Section 600.

Respectfully submitted,

/s/

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**ATTACHMENTS 1 - 11**