

Proposed Revisions to Section 500, and Appendices 2, 5A, 5B, 5C of the NERC Rules of Procedure

Organization Registration and Certification Program

Introduction

NERC's Risk-Based Registration (RBR) initiative was approved by the Federal Energy Regulatory Commission (FERC) on March 19, 2015. The purpose of the RBR initiative is to ensure that entities are registered and made subject to Reliability Standards based on the risk they pose to the Bulk Electric System (BES). NERC has implemented RBR for nearly five years, and in that time, NERC has learned how to make RBR related Registration and Certification procedures more efficient based on its experience and feedback gathered from the Regional Entities and Industry Stakeholders. NERC particularly identified opportunities to improve procedures related to the NERC-led Review Panel in *Appendix 5A* of the Rules of Procedure (ROP). In addition, on January 23, 2020, FERC issued an order accepting NERC's Five Year Performance Assessment in support of continued Certification as the nation's Electric Reliability Organization and directing compliance filings that included refinements to provisions of the ROP pertaining to Certification.¹

NERC proposes revisions to the following Sections and Appendices to update the ROP to reflect current business practices, provide further clarification and transparency to Industry Stakeholders, and form the basis of ERO training to support consistent Registration related procedures and processes:

- **Section 507 – Joint Registration Organization (JRO):** Specifying the Roles and Responsibilities of entities a part of a JRO.
- **Section 508 – Coordinated Functional Registration (CFR):** Specifying the Roles and Responsibilities of entities a part of a CFR.
- **Appendix 2 – Definitions Used in the ROP:** Adding Specification to the “Joint Registration Organization” definition and expanding the “Lead Entity” definition.
- **Appendix 5A – Organization Registration and Certification Manual:** Changing the NERC-led Review Panel process language to avoid confusion based on experience gained since its implementation; Adding a Certification Review Process section and subsections to the Certification Process to ensure transparency and consistency.

¹ *Order on Five-Year Performance Assessment*, 170 FERC ¶ 61,029 (*Five Year Order*) (2020) (also directing revisions to the ROP regarding Sanction Guidelines and requesting additional information on Oversight of Regional Entities, Guidance Development Process, and the E-ISAC with regards to Synergies with Reliability Standards Development, role of the MEC, and measuring performance). This document focuses on ROP directives pertaining to Certification processes.

- **Appendix 5B – Statement of Compliance Registry Criteria:** Removing the “Notes” sections as they have become redundant.
- **Appendix 5C – Procedure for Requesting and Receiving Exception from the Application of the Definition of Bulk Electric System:** Changing language for consistency across the ERO Enterprise.

Overview of Topics

Section 507 – Joint Registration Organizations

Proposal #1:

NERC proposes to require the entity registering as a JRO entity to identify itself as a Lead Entity, and to describe in more detail the responsibilities that are associated with registering as a Lead Entity of a JRO, as well as the responsibilities of all the other entities who are a part of a JRO.

Business Case: We are adding more granularity to existing rules to the applicable entities' obligations based on feedback from the registered entities. The proposed revisions are not intended to effect any substantive changes, but rather to more clearly convey the responsibilities of entities who agree to lead or be a part of a JRO. The change in term regarding Lead Entity can be seen below in Proposal 2 of *Appendix 2*.

Proposal #2:

NERC proposes to change the term “members” in *Section 507* to “parties.”

Business Case: *Section 507* currently has the term “members” as those who are a part of a JRO, and this implies that the provision applies only to cooperative or municipal organizations. Since this is not accurate, the term “parties” better describes that other types of entities can be a part of a JRO. The agreement may contain parties that are not municipal or cooperative organizations.

Section 508 – Coordinated Functional Registration

Proposal #1:

NERC proposes that one of the CFR entities serve as a point of contact and will be identified as a Lead Entity.

Business Case: In implementing the CFRs, there was confusion among registered entities as to which entity would be the point of contact and be responsible for providing and updating the agreement to the CFR parties and the Regional Entity. These revisions are intended to clarify this.

Proposal #2:

NERC proposes to specify that each party to the CFR is responsible for registering for the function associated with the CFR, as well as describing in more detail what information is needed for an acceptable CFR agreement and the responsibilities of entities who are parties to a CFR.

Business Case: The proposed clarification is to convey the responsibilities of parties to a CFR to avoid confusion. Each entity in a CFR must be registered for the function type(s) that has been specified in the written agreement and state which of the applicable Reliability Standards each of the CFR parties have agreed with which to comply. Each party also must have its own primary compliance contact through which all Compliance monitoring and Enforcement related communications would be directed. The proposed revisions are based on feedback from registered entities who noted that there was confusion regarding if applying to be a party to a CFR qualified as registering for the applicable function. The proposed revisions are not intended to effect any substantive change.

Appendix 2 – Definitions Used in the ROP

Proposal #1:

NERC proposes to revise the definition of a “Joint Registration Organization” to state explicitly that one entity will register on behalf of one or more entities for a function type(s).

Business Case: The proposed changes to the JRO definition are intended to explain better how a JRO is constructed as well as accurately reflect current business practices between organizations considering entering into a JRO.

Proposal #2:

NERC proposes to expand the definition of “Lead Entity” so that it includes Points of Contact for JROs and CFRs under the ROP.

Business Case: Under the current ROP, “Lead Entity” only applies to the entity that submits an Exception Request information on behalf of a group of entities submitting an Exception Request jointly. With this change, it will show that JROs and CFRs will have a Lead Entity and will be applied as described in the “Lead Entity” proposals for the JRO and CFR respective changes described above.

Appendix 5A – Organization Registration and Certification Manual

Proposal #1:

NERC proposes to remove the provision stating that Compliance and Certification Committee (CCC) must approve any revisions made to the Registration and Certification procedures in Appendix 5A before the revisions can be submitted to the NERC Board of Trustees.

Business Case: This change is to make sure that NERC’s ROP revision process is consistent across all its sections and Appendices. Currently only Appendix 5A requires the CCC approval before the ROP revisions can be submitted to the NERC Board for approval, and this change will make Appendix 5A revision process consistent with all other sections and Appendices. NERC will still seek input and feedback from the CCC when drafting revisions to its Registration and Certification procedures.

Proposal #2:

NERC proposes guidance in *Section III, Overview*, that in some cases it may be more appropriate to pursue a BES Exception determination related to the BES status of an Element before, or in lieu of, submitting a NERC-led Registration Review Panel request for a Registration determination. NERC would clarify that entities should initiate a proceeding under *Appendix 5C* where any application for a Registration determination is dependent on a BES Inclusion or Exclusion Exception of Element.

Business Case: The ROP is currently silent as to whether an entity seeking modifications to their compliance obligations would be better served through a request for review via the NERC-led Review Panel for a Registration determination under *Appendix 5A* or by an Inclusion or Exclusion Exception from the Application of the BES Definition via the process in *Appendix 5C*. *Appendix 5A* relates to registered entity status, whereas *Appendix 5C* relates to an Element’s BES status.

Sometimes a Registration matter is dependent upon an Element's BES status question being answered through an Exception Request under *Appendix 5C*. In such cases, the entity should initiate the *Appendix 5C* process before making a request to change Registration status. This situation is dependent on facts and circumstances. Language clarifying this process should increase transparency and efficiency for stakeholders, and these revisions are based on feedback informally received after implementation of the NERC-led Review Panel process.

Proposal #3:

NERC proposes to revise the NERC-led Review Panel process in *Section III.D* by renaming the NERC-led Review Panel to the NERC-led Registration Review Panel, streamlining the language used to describe how the process would be conducted and adding more specificity to the timelines and deadlines entities must abide by to avoid confusion.

NERC also proposes to revise *Section III* to make it consistent with other revisions being proposed in this package. NERC proposes to specify that an appeal of a Registration determination to the Board of Trustees Compliance Committee, described in the current *Section V* of *Appendix 5A*, should occur only after an entity has disputed the Registration determination through the NERC-led Review Panel of *Section III.D*.

Business Case: The proposed revisions are intended to make *Section III* consistent with the other revisions being proposed, as well as addressing when the appeals process of *Section V* is appropriate, as the ROP is currently silent on this point. The proposed revisions to the NERC-led Review Panel are intended to reflect lessons learned and the current business practices since the implementation of the NERC-led Review Panel, provide all entities involved in the NERC-led Registration Review Panel with a clearer understanding of the process and what is expected of them, and to eliminate redundant or confusing language.

Proposal #4:

NERC is proposing to add a new Certification Review Process section to *Appendix 5A*.

NERC is also proposing to improve to the existing Certification Process by enhancing the Purpose and Scope sub-section, describing multi-region registered entities in the Role and Responsibilities sub-section, and adding new sub-sections for Initiation, Planning, Fieldwork, Reporting, and Data Retention. These additions would include the scope describing the tools and skills to perform the functions, minimum criteria and processes to certify an entity, describing the requirements for a Certification team, and reviewing and approving of the proposed Certification Schedule.

Business Case: Adding a new section for Certification Reviews is necessary because the majority of the Certification related activity addresses changes to an entity's existing Certification. Including the process of maintaining an entity's Certification is necessary for transparency since it is currently not addressed in the ROP.

The enhancements to the Certification Process are intended to reflect current business practices and provide entities with a clearer understanding of how the process works and what is expected of entities applying for Certification. Further, these revisions would respond to FERC's directive in the Five Year Order

seeking, “...(1)an updated scope section covering the tools and skills needed to perform the registered function; (2) the minimum criteria for certification, including verification that the entity’s tools, personnel, facilities, and processes can fully support the function...”, and “...NERC to establish minimum requirements for the certification team that includes necessary diversity in technical training and experience of team members specific to the function being certified or re-certified, e.g., operations engineering, information technology, modeling, planning, forecasting and systems... NERC should also augment the certification program to include a review and approval of the proposed schedule for completing a certification.”.²

Proposal #5:

NERC proposes to create a new conditional Certification tool. The purpose of a conditional Certification is to act as an interim step before full Certification if an entity is on track to be certified but has not yet achieved all the requirements to do so. Upon receiving conditional Certification, an entity will be registered for a Balancing Authority, Reliability Coordinator, or Transmission Operator function.

Business Case: The current process does not address a potential scenario where the candidate for Registration has not successfully met the criteria for Certification before the proposed effective date of Registration. This is specifically cogent in the case where an incumbent Area operator will no longer perform the function as of a certain date and a new Area operator is required. Additionally, entities registered for functions requiring Certification as part of a CFR or JRO could require more nuance than Certification before Registration. An example of where this would have been or has been useful include the Certification Review of Peak Reliability as it transitioned from WECC during the pendency of mitigating activity associated with the Southwest Blackout. Additionally, there have been instances where there is a need for the ERO Enterprise to unilaterally register an entity for a function. Further, these revisions would respond to FERC’s directive in the Five Year Order seeking, “NERC should also consider whether it should permit a conditional approval of an entity that does not meet the requirements for certification if it includes an approved mitigation plan.” FERC’s directive also states “NERC should establish provisions to address the risk of an entity failing to be certified or to be certified when needed, and to provide a process to work with the impacted entities to mitigate the risk.”³

Proposal #6:

NERC proposes adding language on its authority to determine an entity’s eligibility to submit a Certification application based on NERC’s evaluation of the NERC glossary and Reliability Standards. If an applicant fails to meet Registry Criteria or does not perform the duties and responsibilities required under the Reliability Standards for the relevant function, NERC may reject the Certification application before beginning a substantive review of the application.

This proposal would allow the opportunity for entity to cure an incomplete or incorrect application.

Business Case: Today under the ROP, as the designated ERO, NERC must ensure that the following:

² See *Five Year Order*, 170 FERC ¶ 61,029 at P 86 & 87

³ See *Five Year Order*, 170 FERC ¶ 61,029 at P 86 & 87

- That no areas are lacking any entities to perform the duties and tasks identified in and required by the Reliability Standards to the fullest extent practical; and
- There is no duplication of such coverage or of required oversight of such coverage.

This change is required because of lessons learned over the past year with the Reliability Coordinator transition in the Western Interconnection. NERC has determined that the ERO Enterprise must have the final say as to the reasonableness and appropriateness of the Area(s) that any Balancing Authority, Transmission Operator, or Reliability Coordinator intends to operate. Examples of such cases are when an entity seeks Certification to perform Balancing Authority, Transmission Operator, or Reliability Coordinator services for an Area already covered by another Area creating gaps or overlaps in the duties and tasks required by the Reliability Standards or introducing ambiguity in operating authority. Further, these revisions would respond to FERC's directive in the Five Year Order seeking, "... (3) a mechanism to reject the request for certification if the entity does not meet the requirements for certification."⁴

Proposal #7:

NERC proposes adding language for the express right to revoke and/or de-certify an entity's Certification for cause in situations when a certified entity is no longer performing the responsibilities of the function for which they are registered

Business Case: NERC has the responsibility and authority to grant Certification to Balancing Authorities, Transmission Operators, or Reliability Coordinators; however, the ROP does not address NERC's ability to revoke that Certification under certain circumstances. As such, NERC should look to criteria in the ROP for indications that Certification is no longer warranted and express how such a situation would arise. Examples of such criteria are continued organizational relationships between Balancing Authority, Transmission Operator, and Reliability Coordinator, and sustained operations after being certified. Revoking an organization's Certification is an indication that the registered entity no longer has the necessary capabilities to operate competently the Area(s) for which they were certified and is power that NERC as the designated ERO should possess. Examples of instances where this would be necessary is when a Balancing Authority or Transmission Operator is found without a Reliability Coordinator or has abandoned or ceased its operations with respect to duties and tasks without completing the deregistration or deactivation process.

Appendix 5B – Statement of Compliance Registry Criteria “Notes to the Registry Criteria in Sections I-V”

Proposal #1:

NERC proposes to remove the “Notes” section in *Appendix 5B*.

Business Case: The “Notes to the Registry Criteria in Sections I-V” section is proposed to be removed because the notes contained therein are either redundant to other areas of the ROP, are no longer needed, or are more appropriately described in existing ERO Enterprise procedure documents.

- Note 1

⁴ See *Five Year Order*, 170 FERC ¶ 61,029 at P 86

- For example, Note 1 mentions that the Regional Entity may propose Registration for an entity that does not meet the criteria described in *Appendix B* if it believes the entity has a material impact on BES reliability, or vice versa, which would then be approved by NERC; however, as a result of the Risk-Based Registration changes, the NERC-led Review Panel process in *Appendix A* was established to accept, review, and approve Registration requests that are based on materiality, including those proposed by a Regional Entity.

Additionally, Note 1 contains an approach to assess materiality referred to as the “materiality test”; however, NERC created the Risk-Based Registration Implementation Guidance, which was posted on the NERC website December 15, 2015. This document includes all the items of the “materiality test” in *Appendix B*, as well as providing a more appropriate guideline for materiality assessments while still allowing for discretion and flexibility, as warranted. It is also the current reference document used by the NERC-led Review Panel when performing materiality evaluations. Therefore, Note 1 is both redundant and lacking to other more effective documents.

- Note 2
 - Note 2 mentions that an entity that does not meet Registration criteria may request that it be registered anyway. This note is not necessary because this situation is very unlikely, as well as redundant since is inclusive to the Organization Registration Process in *Appendix 5A, Section III.A*, whereby any entity may submit in writing, with supporting documentation, a request for Registration with their Regional Entity.
- Note 3
 - Note 3 mentions that an entity may challenge its Registration, and that NERC or the Regional Entity will provide such an entity with the timelines and procedures for a challenge. Note 3 is redundant and unnecessary because the procedures for challenging a Registration determination have already been established in *Appendix 5A, Section III.D*, NERC-led Registration Review Panel Process, and *Section V*, NERC Organization Registration Appeals Process.
- Note 4
 - Note 4 mentions that an entity that otherwise would not qualify may nonetheless be registered because it could be part of a class of entities that in aggregate have a material impact on BES reliability. Note 4 is redundant and unnecessary because aggregate impacts are a part of the materiality assessment in the Risk-Based Registration Implementation Guidance document, and is also already incorporated into the NERC-led Registration Review Panel Process in *Appendix 5A*.
- Note 5
 - Note 5 mentions that NERC may limit the compliance obligations of a registered entity for a particular function to a subset list of Reliability Standards. Note 5 is redundant and unnecessary

because this concept is already incorporated into the NERC-led Registration Review Panel Process in *Appendix 5A*.

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

Proposal #1:

NERC proposes to delete *Section 5.2.5* (Substantive Review of Exception Request for Approval or Disapproval).

Business Case: This section requires a reporting program and schedule under which Regional Entities submit to NERC periodic reports on BES Exception Request processing. NERC has completed its transition to the revised BES Definition, and there are far fewer Exception Requests being processed. Moreover, the BESnet information technology system ensures that NERC can regularly monitor Regional Entity initial screenings and substantive reviews of Exception Requests.

Proposal #2:

NERC proposes adding language to *Section 8.0* (Approval or Disapproval of an Exception Request) permitting a reset of the 90-day time period for the NERC Review Panel's examination of an Exception Request upon receiving a Submitting Entity's supplementation of the record. The same potential adjustment of the schedule is available to Regional Entities under *Section 6.0* (Supplementation of an Exception Request Prior to a Recommendation).

Business Case: The language would provide NERC with comparable rights to the Regional Entities to obtain additional time to review supplemental evidence.

Proposal #3:

NERC proposes adding language to *Section 8.0* expressing that the NERC President or the NERC President's delegate may designate the NERC Review Panel.

Business Case: This would give the NERC President express authority to designate a person to act on behalf of the NERC President.