

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Compliance Exception

Overview

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RELIABILITY | ACCOUNTABILITY



**3353 Peachtree Road NE
Suite 600, North Tower
Atlanta, GA 30326
404-446-2560 | www.nerc.com**

Introduction

A “**Compliance Exception**” is an instance of noncompliance which poses a minimal risk to the reliability of the bulk power system (BPS) that does not warrant a penalty and which is recorded and mitigated without triggering an enforcement action. The Compliance Exception process is set forth in Section 3.A of the NERC Compliance Monitoring and Enforcement Program (“CMEP”), Appendix 4C to the NERC Rules of Procedure.

Compliance Exceptions build on the success of the Find, Fix, Track and Report (FFT) program, which was the first step in implementing a risk-based strategy that recognizes that not all instances of noncompliance require the same type of enforcement process. The use of this streamlined mechanism is informed by the facts and circumstances of the noncompliance, the risk posed by the noncompliance to the reliability of the BPS, and the deterrent effect of an enforcement action or penalty, among other things. These considerations are very similar to the considerations that have been used since 2011 to determine whether noncompliance should be processed as an FFT.

This document describes the features of the Compliance Exception track, including:

- eligibility requirements;
- mitigation requirements;
- finality; and
- how visibility and accountability are maintained by the ERO Enterprise and Applicable Governmental Authorities, including the Federal Energy Regulatory Commission (FERC).

This document replaces the October 1, 2014 *Compliance Exception Overview* document.

Revision History

Version	Date	Notes
1.0	October 1, 2014	Original version.
2.0	March 23, 2016	Revisions to address regulatory directives.

Compliance Exception

Eligibility for Compliance Exception Treatment

At this time, only minimal risk noncompliance is eligible for processing as a Compliance Exception.¹ Minimal risk noncompliance is eligible for Compliance Exception treatment regardless of the discovery method.

In determining whether noncompliance is eligible for Compliance Exception treatment, Regional Entities focus on the underlying facts and circumstances of the noncompliance, including what happened, why, where, and when. Another factor Regional Entities use to determine whether a noncompliance should be eligible for Compliance Exception treatment is the level of risk to reliability, including mitigating factors during the pendency of the noncompliance. Regional Entities consider the registered entity's preventative and corrective processes and procedures to handle compliance, management practices, and culture of compliance as factors to help determine whether a noncompliance should receive Compliance Exception treatment. Effective management practices and a robust Internal Compliance Program (ICP) that led to timely discovery and timely mitigation of noncompliance would create a strong argument in favor of Compliance Exception treatment. A Regional Entity will also consider whether the mitigation activity performed or to be performed is appropriate to resolve the noncompliance and prevent recurrence. The next section contains additional detail regarding mitigation.

Noncompliance that is self-logged is presumed to be appropriate for disposition as a Compliance Exception, as described in the *ERO Enterprise Self-Logging Program* document.² To qualify for self-logging, a registered entity must demonstrate it has effective management practices that contribute to the reliability of the BPS—in particular, the ability to identify, assess, and correct instances of noncompliance with Reliability Standards. The properly mitigated minimal risk issues that the registered entity tracks on its log are presumed to be resolved as Compliance Exceptions.

An issue may be eligible for Compliance Exception treatment even if there are past violations of the same Reliability Standard and requirement. This ensures that NERC and the Regional Entities do not discourage registered entities from proactively identifying and reporting noncompliance. However, repeat noncompliance would lead to a deeper look into root causes, including the possible failure of prior mitigation, and an examination of the connection between the registered entity's management practices and ICP and its day-to-day adherence to Reliability Standards in operations. Because repeat noncompliance could indicate programmatic failures or other serious concerns, Regional Entities are required to assess subsequent noncompliance of the same or closely-related Reliability Standards to determine whether a repeat noncompliance should qualify for Compliance Exception treatment.

Mitigation

Compliance Exceptions must be mitigated within 12 months of the time of the notification to the registered entity of Compliance Exception treatment. Registered entities will notify the Regional Entity of completion of mitigation through an authorized representative of the registered entity (including through electronic means). Mitigation completion will be tracked by the Regional Entity. The Regional Entity will notify NERC of completion of mitigation. Failure to complete mitigation in the established timeframe, or any material misrepresentation of information provided in connection with this program, may result in rescission of the eligibility for Compliance Exception treatment for the noncompliance in question.

¹ The inclusion of moderate risk issues will be considered in the future as part of NERC's annual review of the program.

² Available at <http://www.nerc.com/pa/comp/Pages/Reliability-Assurance-Initiative.aspx>.

Finality

A Compliance Exception notice indicates to a registered entity that the Regional Entity has completed its review of the matter. As noted above, closure is subject to timely mitigation. Further, a material misrepresentation would rescind eligibility for Compliance Exception treatment.

The registered entity shall maintain evidence related to each Compliance Exception for no less than 18 months from the later of: (1) the date the Regional Entity sent the notice of Compliance Exception treatment; or (2) the date the registered entity completes the mitigation activities.

A registered entity may object to resolution of any issue as a Compliance Exception by providing written notification to the Regional Entity within seven days of the communication by the Regional Entity. If the registered entity opts out of Compliance Exception treatment, the matter will be pursued through the enforcement process set forth in Section 5.0 of the NERC CMEP.

Visibility and Accountability

The Compliance Exception track is not meant to eliminate or reduce oversight or visibility regarding minimal risk issues. NERC will perform oversight of the program as follows:

- All noncompliance, including that which is eligible for Compliance Exception processing, is entered into the Regional Entity system, given a tracking ID, and undergoes substantive review.
- NERC reports preliminary information on all noncompliance, including that which is eligible for Compliance Exception processing, to the NERC Board of Trustees Compliance Committee (BOTCC), FERC, and other applicable governmental authorities (as applicable) on a confidential basis.
- Upon determination that an item will be treated as a Compliance Exception, information regarding such item is provided to NERC in a tracking spreadsheet. The record includes the relevant Reliability Standard and requirement, a description of the issue, an assessment of the risk to the BPS, and the actions taken (or to be taken) to mitigate the issue and prevent recurrence.
- Each month, NERC posts public spreadsheets of Compliance Exceptions on its website. NERC provides public and non-public spreadsheets of Compliance Exceptions to FERC. Like FFTs, Compliance Exceptions are subject to a 60-day review period by FERC.
- NERC reviews a sample of Compliance Exceptions each month to provide guidance and ensure consistency in implementation across the ERO Enterprise. As a result of these reviews, NERC may consider adjustments to the program on a prospective basis.
- NERC analyzes all Compliance Exceptions for trending purposes. NERC makes an annual informational filing to FERC reviewing the success of the program and considering any enhancements that may be necessary. The annual report addresses NERC's review of the Regional Entities' implementation of the Compliance Exception and FFT programs. Also, NERC includes metrics associated with Compliance Exceptions in presentations to the BOTCC.
- Compliance Exceptions are not part of an entity's compliance history for purposes of aggravation of penalties, except in the limited circumstance where a failure to remediate the underlying noncompliance contributes to a subsequent serious or substantial noncompliance.
- The Regional Entity has the ability to decide to pursue a matter that otherwise would qualify for Compliance Exception treatment if recurrence of prior Compliance Exceptions indicates an increased risk or other concern.