

FERC-725

Supporting Statement for
**FERC-725, Certification of Electric Reliability Organization;
Procedures for Electric Reliability Standards**
(OMB Control No. 1902-0225)
Extension Request through 6/30/2012

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve the extension (for a three-year period through 6/30/2012) of **FERC-725, Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards**. FERC-725 is a Commission data collection (application and filing requirements), contained in Title 18 Code of Federal Regulations (CFR), Part 39 (Attachment A).

Background

As stated by FERC Chairman Jon Wellinghoff on 4/16/2009 (posted at <http://www.ferc.gov/news/statements-speeches/wellinghoff/2009/04-16-09-wellinghoff.asp>), Electric Reliability continues to be one of the FERC's priorities.

"I also would like to briefly discuss my priorities as Chairman. I intend to build upon the Commission's reputation as an agency that is efficient and timely in its decision-making, respected for its technical and legal expertise, and recognized for the leadership it brings to the energy issues confronting our nation. Toward that end, we will maintain our commitment to four fundamental Commission responsibilities: developing needed energy infrastructure, fostering competitive energy markets that produce just and reasonable rates, **overseeing reliability standards**, and **effectively enforcing** both market and **reliability rules.**" [emphasis added]

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Since 1935, the Commission has regulated certain electric utility activities under the Federal Power Act (FPA). Under FPA Sections 205 and 206, the Commission oversees the rates, terms and conditions of sales for resale of electric energy and transmission service in interstate commerce by public utilities. The Commission must ensure that those rates, terms and conditions are just and reasonable and not unduly discriminatory or preferential.

Recent legislation has enhanced the Commission's efforts to strengthen the reliability of the interstate electric grid by giving FERC new authority. (See Attachment B.) The Electricity Modernization Act of 2005 was enacted into law (on 8/8/05) as part of the Energy Policy Act of 2005 ("EPAAct 2005"). Subtitle A of the Electricity Modernization Act amended the Federal Power Act (FPA) by adding a new section 215, titled "Electric Reliability." Section 215 of the

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FPA buttresses the Commission's efforts to strengthen the reliability of the interstate grid through the grant of authority for a system of mandatory Reliability Standards developed by the Electric Reliability Organization (ERO)¹ and reviewed and approved by FERC.

Subtitle A of the Electricity Modernization Act of 2005 also includes two reliability-related provisions that are not part of the new section 215 of the FPA.

- Section 1211(b) of the Act provides that the ERO certified by the Commission as well as Regional Entities is not a department, agency or instrumentality of the United States Government.
- Section 1211(c) provides that federal agencies responsible for approving access to electric transmission or distribution facilities located on lands within the United States will, in accordance with applicable law, expedite any federal agency approvals that are necessary to allow the owners or operators of these facilities to comply with a FERC-approved Reliability Standard that pertains to vegetation management, electric service restoration, or resolution of situations that imminently endanger the reliability or safety of the facilities.

On February 3, 2006, FERC issued Order No. 672² (in Docket No. RM05-30-000) to implement Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005 (Title XII of the Energy Policy Act of 2005). Order No. 672 established:

- criteria that an entity must satisfy to qualify to be the ERO
- ERO's role and responsibilities with respect to the users, owners and operators of the Bulk-Power System³
- procedures under which the ERO may develop and propose new or modified Reliability Standards for FERC review
- various elements of the enforcement process, such as procedures governing an enforcement action for the violation of a Reliability Standard⁴

1 The Electric Reliability Organization (ERO) is the organization, certified by the Commission, for the purpose of establishing and enforcing Reliability Standards for the Bulk-Power System, subject to Commission review.

2 Order No. 672 ("Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards"; posted at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10943451>; 71 FR 8,662, 2/17/2006) includes a comprehensive "Overview".

3 "Bulk-Power System" is defined as facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy. [215(a)(1) of FPA, and included in Attachment B]

4 This clearance package addresses only the FERC-725 and does not include the information collections related to compliance with the Reliability Standards. Reporting requirements (and the associated burden and cost) related to the Reliability Standards are cleared separately in other collections, including: FERC-725A (Mandatory Reliability Standards for the Bulk-Power System; OMB No. 1902-0244), FERC-725B (Mandatory Reliability Standards for Critical Infrastructure Protection; OMB No. 1902-0248), FERC-725D (Facilities Design, Connections and Maintenance Reliability Standards; OMB No. 1902-0247), FERC-725E (Mandatory Reliability Standards for the Western Electric Coordinating Council; OMB No. 1902-0246), and FERC-725F (Mandatory Reliability Standard for Nuclear Plant Interface Coordination; OMB No. 1902-0249).

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- need for the ERO (and any Regional Entity that receives a delegation of enforcement function) to develop an enforcement audit program
- requirement for the ERO to notify the Commission promptly of a self-reported violation or an investigation into a violation or alleged violation and its eventual disposition.

FERC required ERO applicants to submit an application no later than 4/4/2006.⁵ The ERO is responsible for developing proposed Reliability Standards and must submit each proposed Reliability Standard to FERC for approval. Only a Reliability Standard approved by FERC is enforceable under section 215 of the Federal Power Act (FPA). FERC may approve a proposed Reliability Standard (or modification to a Reliability Standard) if it determines that it is just, reasonable, not unduly discriminatory or preferential, and in the public interest and satisfies other requirements set out in Order No. 672.

The ERO may delegate its enforcement responsibilities to a Regional Entity (RE), after FERC approves the delegation agreement. A Regional Entity may also propose a Reliability Standard to the ERO for submission to FERC for approval. This Reliability Standard may be for application to the entire interconnected Bulk-Power System or only within its own region.

The ERO or a Regional Entity must monitor compliance with the Reliability Standards. They will conduct investigations of alleged violations of Reliability Standards. The ERO or Regional Entity may impose a penalty on a user, owner or operator for violating a Reliability Standard, subject to review by FERC.

To ensure that the ERO complies with the certification criteria on an ongoing basis, the ERO will undergo a performance assessment three years after certification and every five years thereafter. The ERO must submit a self-assessment to FERC explaining how it satisfies the ERO requirements. The ERO submittal must include an evaluation of the effectiveness of each Regional Entity. Regional Entities, users, owners and operators of the Bulk-Power System, and other interested entities will have an opportunity to make recommendations for the improvement of the ERO. After receipt of the assessment, FERC will establish a proceeding in which it will assess the performance of the ERO, and will allow opportunity for public comment. As a result of the assessment, FERC will issue an order finding that the ERO meets the statutory and regulatory criteria or directing the ERO to comply or improve compliance with the statutory and regulatory criteria for the ERO. Subsequently, if the ERO fails to comply adequately with FERC's order, the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider decertification of the ERO.

As part of its proceeding to assess the ERO's performance, FERC will assess the performance of each Regional Entity and issue an order addressing Regional Entity compliance. If a Regional Entity fails to comply adequately with the FERC order, FERC may institute a

⁵ After review of the submittals, FERC issued (on 7/20/06, in Docket No. RR06-1) an "Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing" (http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=4423670).

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proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider rescission of the Commission's approval of the Regional Entity's delegation agreement.

In general, FERC oversees the ERO, and the ERO oversees any approved Regional Entity. FERC generally expects to work cooperatively with the ERO and Regional Entities to resolve issues that may arise. Nonetheless, Order No. 672 clarifies the FERC's authority to take action against the ERO or a Regional Entity for non-compliance with section 215 of the FPA.

2. **HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION**

Prior to enactment of section 215, FERC had acted primarily as an economic regulator of wholesale power markets and the interstate transmission grid. In this regard, the Commission acted to promote a more reliable electric system by promoting regional coordination and planning of the interstate grid through regional independent system operators (ISOs) and regional transmission organizations (RTOs), adopting transmission pricing policies that provide price signals for the most reliable and efficient operation and expansion of the grid, and providing pricing incentives at the wholesale level for investment in grid improvements and assuring recovery of costs in wholesale transmission rates.

The passage of the Electricity Modernization Act of 2005 gave FERC the authority to strengthen the reliability of the interstate grid through the grant of new authority pursuant to section 215 of the FPA which provides for a system of mandatory Reliability Standards developed by the ERO, established by FERC, and enforced by the ERO and Regional Entities.

As part of FERC's efforts to promote grid reliability, the Commission created a new Office of Electric Reliability ("OER", announced 9/20/07 at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11457023> and described at <http://www.ferc.gov/about/offices/oer.asp>). OER:

- helps protect and improve the reliability and security of the nation's bulk power system through effective regulatory oversight as established in the EPAct 2005
- oversees the development and review of mandatory reliability and security standards
- ensures compliance with the approved mandatory standards by the users, owners, and operators of the bulk power system.

(Additional information on Electric Reliability and FERC's program is posted at <http://www.ferc.gov/industries/electric/indus-act/reliability.asp#orders> .)

Without the FERC-725 information, the FERC, ERO, and Regional Entities will not have the data needed to determine whether the program is working properly and, more importantly, whether sufficient and appropriate measures are being taken to ensure the reliability of the nation's electric grid.

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3. **DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.**

In general, the Commission continues to expand the list of filing types that may be submitted electronically (as described at <http://www.ferc.gov/docs-filing/efiling.asp>). As of 4/2/09, all reporting requirements in 18CFR Part 39 may be eFiled, except for the filing requirements in 39.7(b) (Report of Any Self-Reported Violation or Investigation of a Violation or an Alleged Violation of a Reliability Standard and its Eventual Disposition) and 39.7(b)(5) (Periodic Summary Reports as the Commission May Direct on Violations of Reliability Standards).

4. **DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2**

Filing requirements are periodically reviewed as OMB review dates arise, or as the Commission may deem necessary in carrying out its responsibilities, in order to eliminate duplication and ensure that filing burden is minimized. There are no similar sources of information available that can be used or modified for these reporting purposes.

5. **METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES**

FERC-725 is a filing requirement concerning the certification of an Electric Reliability Organization and its responsibilities as well as those of Regional Entities and Regional Advisory Bodies and the development of Reliability Standards. The Electricity Modernization Act specifies that the ERO and Regional Entities are not departments, agencies or instrumentalities of the United States government and will not be like most other businesses, profit or not-for-profit. Congress created the concept of the ERO and Regional Entities as select, special purpose entities that will transition the oversight of the Bulk-Power System reliability from voluntary, industry organizations to independent organizations subject to Commission jurisdiction. As such, the ERO and Regional Entities should not be considered a small entity under the standards established in the Regulatory Flexibility Act.

6. **CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY**

As FERC noted in its submission of the final rule, RM05-30-000 (Order No. 672), the information will be filed by an applicant certified to become the Electric Reliability Organization. Reassessments of the ERO and its performance are done three years after certification and every five years thereafter.

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In addition, the ERO and Regional Entities:

- propose new or revised Reliability Standards
- monitor the performance and possible violations of the Registered Entities
- collaborate with the Reliability Advisory Boards.

The ERO also monitors the performance of the Regional Entities

If the information were conducted less frequently or discontinued, the Commission would not have the data necessary for monitoring and complying with its statutory mandates and goal of a reliable electric grid.

7. **EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION**

The guidelines of 5 C.F.R. 1320.5(d) are being followed.

8. **DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS**

In accordance with OMB requirements in 5 C.F.R. 1320.8(d), a Notice requesting comments on the reporting requirements of FERC-725 was issued in FERC Docket No. IC09-725 on 2/4/09 (at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11923708>) and published in the **Federal Register** (74FR 6861, 2/11/2009). There were no comments filed in response to this Notice.

9. **EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS**

No payments or gifts have been made to respondents.

10. **DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

The Commission generally does not consider the data filed to be confidential. Information provided with the filing may be submitted with a specific request for confidential treatment to the extent permitted by law and pursuant to FERC's regulations.

11. **PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE.**

There are no questions of a sensitive nature that are considered private.

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12. and 13. ESTIMATED BURDEN OF COLLECTION OF INFORMATION; and ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Based on additional information from the ERO and staff, the burden and cost estimates provided in the 60-day Notice have been revised for both the 30-day Notice and this supporting statement. The estimated annual public reporting burden and cost for FERC-725 follow.

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FERC-725 ⁶			FTE	Est. Annual Burden (Hrs.)	Est. Annual Cost (\$)
Annual Costs for NERC (ERO) [1 ERO]	3 Year Self Assessment (Due 7/09) ⁷	Contractor	3.33 Error: Reference source not found	3,266.67 Error: Reference source not found	350,000 Error: Reference source not found
	Reliability Reporting Estimate ⁸	Internal	1.5	2,940	210,663
	Estimate	Software	0	0	75,000
	audits, spot checks, self certifications, periodic data submittals, investigations, & mitigation plan confirmation (under 18CFR39.11) Error: Reference source not found				41,437
Total Est. Annual Costs for NERC (ERO)			4.83	47,643.67	\$3,433,484

6 The burden and cost estimates do not include the cost of applying to become the ERO because that application process and the resulting FERC selection have been completed.

The burden and cost estimates for FERC-725 do not include compliance with the Reliability Standards. The reporting requirements (and the associated burden and cost) related to the Reliability Standards are cleared separately in other collections, including: FERC-725A (Mandatory Reliability Standards for the Bulk-Power System; OMB No. 1902-0244), FERC-725B (Mandatory Reliability Standards for Critical Infrastructure Protection; OMB No. 1902-0248), FERC-725D (Facilities Design, Connections and Maintenance Reliability Standards; OMB No. 1902-0247), FERC-725E (Mandatory Reliability Standards for the Western Electric Coordinating Council; OMB No. 1902-0246), and FERC-725F (Mandatory Reliability Standard for Nuclear Plant Interface Coordination; OMB No. 1902-0249). This Notice requests comments on only the FERC-725.

7 Per Order 672, the ERO will undergo a performance assessment three years after certification (July 2009) and every five years thereafter. Therefore, the total figures for FTE (10), burden hrs. (9,800), and cost (\$1,050,000) associated with doing the self-assessment have been divided by 3 to provide average annual figures for this notice.

The methodology for estimating the totals for the 3-year self assessment follows. Staff estimates that the self assessment will take 6 months to complete. In order for NERC to complete the work in half the time, we assume that NERC must hire double the workforce, so 10 contractors are used in the present calculation. The \$1,050,000 was taken directly from NERC's 2009 Business Plan and Budget.

8 NERC Employee Cost Estimate: NERC Employee Compensation Average is \$140,442 (from 2009 Budget salary average). For 1.5 Employees, the Annualized Salary Expense is \$210,663.

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Annual Costs ⁹ for Regional Entities (RE) [8REs ¹⁰]	Reliability Reporting Estimate	Internal	4.5	8,820	519,840
	Estimate	Software	0	0	225,000
	audits, spot checks, self certifications, periodic data submittals, investigations, & mitigation plan confirmation (under 18CFR39.11)Error: Reference source not found				208,060
Total Est. Annual Costs for Regional Entities			4.5	216,880	\$12,300,172
Annual Costs for Registered Entities ¹¹ [~1,800 Registered Entities]	audits, spot checks, self certifications, periodic data submittals, investigations, & mitigation plan confirmation (under 18CFR39.11)			707,781	43,656,818
Total Est. Annual Costs for Registered Entities				707,781	\$43,656,818
Total Estimated Annual Burden & Cost			9.33	972,304.6 7	\$59,390,474

See Attachment C for more information.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimate of the cost to the Federal Government is based on salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity. Based on the staff and resources involved in processing the information, the estimated average annual cost to FERC follows.

⁹ Regional Entity (RE) Employee Cost Estimate: RE Employee Compensation Average of \$115,520 (from 2009 Budget salary average). For 4.5 Employees, the Annualized Salary Expense is \$519,840.

¹⁰ There are eight Regional Entities: Florida Reliability Coordinating Council (“FRCC”); Midwest Reliability Organization (“MRO”); Northeast Power Coordinating Council, Inc. (“NPCC”); ReliabilityFirst Corporation (“ReliabilityFirst”); SERC Reliability Corporation (“SERC”); Southwest Power Pool Regional Entity (“SPP RE”); Texas Regional Entity (“Texas RE”), a Division of Electric Reliability Council of Texas (“ERCOT”); and Western Electricity Coordinating Council (“WECC”).

¹¹ The average employee works 2,080 hours per year. The estimated average annual cost per employee is \$128,297.

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FERC-725	No. of Employees (FTEs)	Resources in (\$)
3 Year Self Assessment (Due 7/09) ¹²	1.67	\$163,333.33
Reliability Reporting Estimate	0.85	87,313.00
processing related to investigations & mitigation plan confirmation (under 18CFR39.11) <small>Error: Reference source not found</small>	0.4793269 [or 997 hours]	\$61,496.00
Total FERC Costs	2.9993269	\$312,142.33

See Attachment C.

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

This information collection was new during the last clearance cycle, at which time the ERO, plus the Regional Entities and Regional Advisory bodies, had not been created. As a result, the full program or process had not yet been developed by the ERO. It was impossible to provide a complete estimate of the public burden, number of parties involved, and costs. The burden and cost figures provided above replace those earlier estimates. See Attachment C.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There are no tabulations, statistical analysis or publication plans for the information collection. The data are used for regulatory purposes.

17. DISPLAY OF THE EXPIRATION DATE

It is not appropriate to display the expiration date for OMB approval of the information collected. The information will not be collected on a standard, preprinted form which would avail itself to that display. The reporting requirements are in the regulations, and procedures and process imposed by the ERO and REs, and contain a mixture of narrative descriptions and empirical support that varies depending on the nature of the transaction.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

The data collected for this reporting requirement are not used for statistical purposes. Therefore, the Commission does not use, as stated in item no. 19(i), "effective and efficient statistical survey methodology." The information collected is case specific.

¹² The FERC cost of processing the ERO's 3-year self assessment is 5 FTEs and \$490,000. Because that effort happens only once during this 3-year OMB clearance period, the average annual cost for processing the self-assessment over this 3-year period is one-third of that (1.67 FTEs and \$163,333.33).

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B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This is not a collection of information employing statistical methods.

The specific reporting requirements related to FERC-725 appear in 18CFR Part 39.

Title 18: Conservation of Power and Water Resources

PART 39—RULES CONCERNING CERTIFICATION OF THE ELECTRIC RELIABILITY ORGANIZATION; AND PROCEDURES FOR THE ESTABLISHMENT, APPROVAL, AND ENFORCEMENT OF ELECTRIC RELIABILITY STANDARDS

Authority: 16 U.S.C. 824o.

Source: Order 672, 71 FR 8736, Feb. 17, 2006, unless otherwise noted.

§ 39.1 Definitions.

As used in this part:

Bulk-Power System means facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

Cybersecurity Incident means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

Electric Reliability Organization or “*ERO*” means the organization certified by the Commission under §39.3 the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System, subject to Commission review.

Electric Reliability Organization Rule means, for purposes of this part, the bylaws, a rule of procedure or other organizational rule or protocol of the Electric Reliability Organization.

Interconnection means a geographic area in which the operation of Bulk-Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the facilities within their control.

Regional Advisory Body means an entity established upon petition to the Commission pursuant to section 215(j) of the Federal Power Act that is organized to advise the Electric Reliability Organization, a Regional Entity, or the Commission regarding certain matters in accordance with §39.13.

Regional Entity means an entity having enforcement authority pursuant to §39.8.

Regional Entity Rule means, for purposes of this part, the bylaws, a rule of procedure or other organizational rule or protocol of a Regional Entity.

Reliability Standard means a requirement approved by the Commission under section 215 of the Federal Power Act, to provide for Reliable Operation of the Bulk-Power System. The term includes requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for Reliable Operation of the Bulk-Power System, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

Reliable Operation means operating the elements of the Bulk-Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a Cybersecurity Incident, or unanticipated failure of system elements.

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Transmission Organization means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

§ 39.2 Jurisdiction and applicability.

(a) Within the United States (other than Alaska and Hawaii), the Electric Reliability Organization, any Regional Entities, and all users, owners and operators of the Bulk-Power System, including but not limited to entities described in section 201(f) of the Federal Power Act, shall be subject to the jurisdiction of the Commission for the purposes of approving Reliability Standards established under section 215 of the Federal Power Act and enforcing compliance with section 215 of the Federal Power Act.

(b) All entities subject to the Commission's reliability jurisdiction under paragraph (a) of this section shall comply with applicable Reliability Standards, the Commission's regulations, and applicable Electric Reliability Organization and Regional Entity Rules made effective under this part.

(c) Each user, owner and operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall register with the Electric Reliability Organization and the Regional Entity for each region within which it uses, owns or operates Bulk-Power System facilities, in such manner as prescribed in the Rules of the Electric Reliability Organization and each applicable Regional Entity.

(d) Each user, owner or operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall provide the Commission, the Electric Reliability Organization and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by the Commission and set out in the Rules of the Electric Reliability Organization and each applicable Regional Entity. The Electric Reliability Organization and each Regional Entity shall provide the Commission such information as is necessary to implement section 215 of the Federal Power Act.

§ 39.3 Electric Reliability Organization certification.

(a) Any person may submit an application to the Commission for certification as the Electric Reliability Organization no later than April 4, 2006. Such application shall comply with the requirements for filings in proceedings before the Commission in part 385 of this chapter.

(b) After notice and an opportunity for public comment, the Commission may certify one such applicant as an Electric Reliability Organization, if the Commission determines such applicant:

(1) Has the ability to develop and enforce, subject to §39.7, Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System, and

(2) Has established rules that:

(i) Assure its independence of users, owners and operators of the Bulk-Power System while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any Electric Reliability Organization committee or subordinate organizational structure;

(ii) Allocate equitably reasonable dues, fees and charges among end users for all activities under this part;

(iii) Provide fair and impartial procedures for enforcement of Reliability Standards through the imposition of penalties in accordance with §39.7, including limitations on activities, functions, operations, or other appropriate sanctions or penalties;

(iv) Provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing Reliability Standards, and otherwise exercising its duties; and

(v) Provide appropriate steps, after certification by the Commission as the Electric Reliability Organization, to gain recognition in Canada and Mexico.

(c) The Electric Reliability Organization shall submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter. After receipt of the assessment, the Commission will establish a proceeding with opportunity for public comment in which it will review the performance of the Electric Reliability Organization.

(1) The Electric Reliability Organization's assessment of its performance shall include:

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(i) An explanation of how the Electric Reliability Organization satisfies the requirements of §39.3(b);

(ii) Recommendations by Regional Entities, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Electric Reliability Organization's operations, activities, oversight and procedures, and the Electric Reliability Organization's response to such recommendations; and

(iii) The Electric Reliability Organization's evaluation of the effectiveness of each Regional Entity, recommendations by the Electric Reliability Organization, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Regional Entity's performance of delegated functions, and the Regional Entity's response to such evaluation and recommendations.

(2) The Commission will issue an order finding that the Electric Reliability Organization meets the statutory and regulatory criteria or directing the Electric Reliability Organization or a Regional Entity to come into compliance with or improve its compliance with the requirements of this part. If the ERO fails to comply adequately with the Commission order, the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider decertification of the ERO consistent with §39.9. The Commission will issue an order finding that each Regional Entity meets the statutory and regulatory criteria or directing the Regional Entity to come into compliance with or improve its compliance with the requirements of this part. If a Regional Entity fails to comply adequately with the Commission order, the Commission may institute a proceeding to enforce its order, including, if necessary and appropriate, a proceeding to consider rescission of its approval of the Regional Entity's delegation agreement.

§ 39.4 Funding of the Electric Reliability Organization.

(a) Any person who submits an application for certification as the Electric Reliability Organization shall include in its application a formula or method for the allocation and assessment of Electric Reliability Organization dues, fees and charges. The certified Electric Reliability Organization may subsequently file with the Commission a request to modify the formula or method.

(b) The Electric Reliability Organization shall file with the Commission its proposed entire annual budget for statutory and any non-statutory activities, including the entire annual budget for statutory and any non-statutory activities of each Regional Entity, with supporting materials, including the ERO's and each Regional Entity's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures 130 days in advance of the beginning of each Electric Reliability Organization fiscal year. The annual Electric Reliability Organization budget shall include line item budgets for the activities of each Regional Entity that are delegated or assigned to each Regional Entity pursuant to §39.8.

(c) The Commission, after public notice and opportunity for hearing, will issue an order either accepting, rejecting, remanding or modifying the proposed Electric Reliability Organization budget and business plan no later than sixty (60) days in advance of the beginning of the Electric Reliability Organization's fiscal year.

(d) On a demonstration of unforeseen and extraordinary circumstances requiring additional funds prior to the next Electric Reliability Organization fiscal year, the Electric Reliability Organization may file with the Commission for authorization to collect a special assessment. Such filing shall include supporting materials explaining the proposed collection in sufficient detail to justify the requested funding, including any departure from the approved funding formula or method. After notice and an opportunity for hearing, the Commission will approve, disapprove, remand or modify such request.

(e) All entities within the Commission's jurisdiction as set forth in section 215(b) of the Federal Power Act shall pay any Electric Reliability Organization assessment of dues, fees and charges as approved by the Commission, in a timely manner reasonably as designated by the Electric Reliability Organization.

(f) Any person who submits an application for certification as the Electric Reliability Organization may include in the application a plan for a transitional funding mechanism that would allow such person, if certified as the Electric Reliability Organization, to continue existing operations without interruption as it transitions from one method of funding to another. Any proposed transitional funding plan should terminate no later than eighteen (18) months from the date of Electric Reliability Organization certification.

(g) The Electric Reliability Organization or a Regional Entity may not engage in any activity or receive revenues from any person that, in the judgment of the Commission represents a significant distraction from, or a conflict of interest with, its responsibilities under this part.

§ 39.5 Reliability Standards.

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- (a) The Electric Reliability Organization shall file each Reliability Standard or modification to a Reliability Standard that it proposes to be made effective under this part with the Commission. The filing shall include a concise statement of the basis and purpose of the proposed Reliability Standard, either a summary of the Reliability Standard development proceedings conducted by the Electric Reliability Organization or a summary of the Reliability Standard development proceedings conducted by a Regional Entity together with a summary of the Reliability Standard review proceedings of the Electric Reliability Organization, and a demonstration that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.
- (b) The Electric Reliability Organization shall rebuttably presume that a proposal for a Reliability Standard or a modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, not unduly discriminatory or preferential, and in the public interest, if such proposal is from a Regional Entity organized on an Interconnection-wide basis.
- (c) The Commission may approve by rule or order a proposed Reliability Standard or a proposed modification to a Reliability Standard if, after notice and opportunity for public hearing, it determines that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.
- (1) The Commission will give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed Reliability Standard or a proposed modification to a Reliability Standard,
- (2) The Commission will give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard or a proposed modification to a Reliability Standard to be applicable within that Interconnection, and
- (3) The Commission will not defer to the Electric Reliability Organization or a Regional Entity with respect to the effect of a proposed Reliability Standard or a proposed modification to a Reliability Standard on competition.
- (d) An approved Reliability Standard or modification to a Reliability Standard shall take effect as approved by the Commission.
- (e) The Commission will remand to the Electric Reliability Organization for further consideration a proposed Reliability Standard or modification to a Reliability Standard that the Commission disapproves in whole or in part.
- (f) The Commission may, upon its own motion or a complaint, order the Electric Reliability Organization to submit a proposed Reliability Standard or modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out section 215 of the Federal Power Act.
- (g) The Commission, when remanding a Reliability Standard to the Electric Reliability Organization or ordering the Electric Reliability Organization to submit to the Commission a proposed Reliability Standard or proposed modification to a Reliability Standard that addresses a specific matter may order a deadline by which the Electric Reliability Organization must submit a proposed or modified Reliability Standard.

§ 39.6 Conflict of a Reliability Standard with a Commission Order.

- (a) If a user, owner or operator of the transmission facilities of a Transmission Organization determines that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission with respect to such Transmission Organization, the Transmission Organization shall expeditiously notify the Commission, the Electric Reliability Organization and the relevant Regional Entity of the possible conflict.
- (b) After notice and opportunity for hearing, within sixty (60) days of the date that a notice was filed under paragraph (a) of this section, unless the Commission orders otherwise, the Commission will issue an order determining whether a conflict exists and, if so, resolve the conflict by directing:
- (1) The Transmission Organization to file a modification of the conflicting function, rule, order, tariff, rate schedule, or agreement pursuant to section 206 of the Federal Power Act, as appropriate, or
- (2) The Electric Reliability Organization to propose a modification to the conflicting Reliability Standard pursuant to §39.5 of the Commission's regulations.
- (c) The Transmission Organization shall continue to comply with the function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission until the Commission finds that a conflict exists, the Commission orders a change to such provision pursuant to section 206 of the Federal Power Act, and the ordered change becomes effective.

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[Order 672, 71 FR 8736, Feb. 17, 2006, as amended at 71 FR 11505, Mar. 8, 2006; Order 672–A, 71 FR 19823, Apr. 18, 2006]

§ 39.7 Enforcement of Reliability Standards.

(a) The Electric Reliability Organization and each Regional Entity shall have an audit program that provides for rigorous audits of compliance with Reliability Standards by users, owners and operators of the Bulk-Power System.

(b) The Electric Reliability Organization and each Regional Entity shall have procedures to report promptly to the Commission any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition.

(1) Any person that submits an application to the Commission for certification as an Electric Reliability Organization shall include in such application a proposal for the prompt reporting to the Commission of any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition.

(2) Any agreement for the delegation of enforcement authority to a Regional Entity shall include a provision for the prompt reporting through the Electric Reliability Organization to the Commission of any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition.

(3) Each report of a violation or alleged violation by a user, owner or operator of the Bulk-Power System shall include the user's, owner's or operator's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, and the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission.

(4) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the user, owner or operator of the Bulk-Power System violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the Bulk-Power System if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(5) The Electric Reliability Organization, and each Regional Entity through the ERO, shall file such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) The Electric Reliability Organization, or a Regional Entity, may impose, subject to section 215(e) of the Federal Power Act, a penalty on a user, owner or operator of the Bulk-Power System for a violation of a Reliability Standard approved by the Commission if, after notice and opportunity for hearing:

(1) The Electric Reliability Organization or the Regional Entity finds that the user, owner or operator has violated a Reliability Standard approved by the Commission; and

(2) The Electric Reliability Organization files a notice of penalty and the record of its or a Regional Entity's proceeding with the Commission. Simultaneously with the filing of a notice of penalty with the Commission, the Electric Reliability Organization shall serve a copy of the notice of penalty on the entity that is the subject of the penalty.

(d) A notice of penalty by the Electric Reliability Organization shall consist of:

(1) The name of the entity on whom the penalty is imposed;

(2) Identification of each Reliability Standard violated;

(3) A statement setting forth findings of fact with respect to the act or practice resulting in the violation of each Reliability Standard;

(4) A statement describing any penalty imposed;

(5) The record of the proceeding;

(6) A form of notice suitable for publication; and

(7) Other matters the Electric Reliability Organization or the Regional Entity, as appropriate, may find relevant.

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(e) A penalty imposed under this section may take effect not earlier than the thirty-first (31st) day after the Electric Reliability Organization files with the Commission the notice of penalty and the record of the proceedings.

(1) Such penalty will be subject to review by the Commission, on its own motion or upon application by the user, owner or operator of the Bulk-Power System that is the subject of the penalty filed within thirty (30) days after the date such notice is filed with Commission. In the absence of the filing of an application for review or motion or other action by the Commission, the penalty shall be affirmed by operation of law upon the expiration of the thirty (30)-day period for filing of an application for review.

(2) An applicant filing an application for review shall comply with the requirements for filings in proceedings before the Commission. An application shall contain a complete and detailed explanation of why the applicant believes that the Electric Reliability Organization or Regional Entity erred in determining that the applicant violated a Reliability Standard, or in determining the appropriate form or amount of the penalty. The applicant may support its explanation by providing information that is not included in the record submitted by the Electric Reliability Organization.

(3) Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty.

(4) Any answer, intervention or comment to an application for review of a penalty imposed under this part must be filed within twenty (20) days after the application is filed, unless otherwise ordered by the Commission.

(5) In any proceeding to review a penalty imposed under this part, the Commission, after public notice and opportunity for hearing (which hearing may consist solely of the record before the Electric Reliability Organization or Regional Entity and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), will by order affirm, set aside, or modify the penalty or may remand the determination of a violation or the form or amount of the penalty to the Electric Reliability Organization for further consideration. The Commission may establish a hearing before an administrative law judge or initiate such further procedures as it determines to be appropriate, before issuing such an order. In the case of a remand to the Electric Reliability Organization, the Electric Reliability Organization may remand the matter to a Regional Entity for further consideration and resubmittal through the Electric Reliability Organization to the Commission.

(6) The Commission will take action on an application for review of a penalty within sixty (60) days of the date the application is filed unless the Commission determines on a case-by-case basis that an alternative expedited procedure is appropriate.

(7) A proceeding for Commission review of a penalty for violation of a Reliability Standard will be public unless the Commission determines that a nonpublic proceeding is necessary and lawful, including a proceeding involving a Cybersecurity Incident. For a nonpublic proceeding, the user, owner or operator of the Bulk-Power System that is the subject of the penalty will be given timely notice and an opportunity for hearing and the public will not be notified and the public will not be allowed to participate.

(f) On its own motion or upon complaint, the Commission may order compliance with a Reliability Standard and may impose a penalty against a user, owner or operator of the Bulk-Power System, if the Commission finds, after public notice and opportunity for hearing, that the user, owner or operator of the Bulk-Power System has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a Reliability Standard.

(g) Any penalty imposed for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation and shall take into consideration efforts of such user, owner or operator of the Bulk-Power System to remedy the violation in a timely manner.

(1) The penalty imposed may be a monetary or a non-monetary penalty and may include, but is not limited to, a limitation on an activity, function, operation, or other appropriate sanction, including being added to a reliability watch list composed of major violators that is established by the Electric Reliability Organization, a Regional Entity or the Commission.

(2) The Electric Reliability Organization shall submit for Commission approval penalty guidelines that set forth a range of penalties for the violation of Reliability Standards. A penalty imposed by the Electric Reliability Organization or a Regional Entity must be within the range set forth in the penalty guidelines.

§ 39.8 Delegation to a Regional Entity.

(a) The Electric Reliability Organization may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the Electric Reliability Organization and enforcing Reliability Standards under §39.7.

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(b) After notice and opportunity for comment, the Commission may approve a delegation agreement. A delegation agreement shall not be effective until it is approved by the Commission.

(c) The Electric Reliability Organization shall file a delegation agreement. Such filing shall include a statement demonstrating that:

(1) The Regional Entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board;

(2) The Regional Entity otherwise satisfies the provisions of section 215(c) of the Federal Power Act; and

(3) The agreement promotes effective and efficient administration of Bulk-Power System reliability.

(d) The Commission may modify such delegation.

(e) The Electric Reliability Organization shall and the Commission will rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of Bulk-Power System reliability and should be approved.

(f) An entity seeking to enter into a delegation agreement that is unable to reach an agreement with the Electric Reliability Organization within 180 days after proposing a delegation agreement to the Electric Reliability Organization may apply to the Commission to assign to it the Electric Reliability Organization's authority to enforce Reliability Standards within its region. The entity must demonstrate in its application that it meets the requirements of paragraph (c) of this section and that continued negotiations with the Electric Reliability Organization would not likely result in an appropriate delegation agreement within a reasonable period of time. After notice and opportunity for hearing, the Commission may designate the entity as a Regional Entity and assign enforcement authority to it.

(g) An application pursuant to paragraph (f) of this section must state:

(1) Whether the Commission's Dispute Resolution Service, or other alternative dispute resolution procedures were used, or why these procedures were not used; and

(2) Whether the Regional Entity believes that alternative dispute resolution under the Commission's supervision could successfully resolve the disputes regarding the terms of the delegation agreement.

§ 39.9 Enforcement of Commission Rules and Orders.

(a) The Commission may take such action as is necessary and appropriate against the Electric Reliability Organization or a Regional Entity to ensure compliance with a Reliability Standard or any Commission order affecting the Electric Reliability Organization or a Regional Entity, including, but not limited to:

(1) After notice and opportunity for hearing, imposition of civil penalties under the Federal Power Act.

(2) After notice and opportunity for hearing, suspension or decertification of the Commission's certification to be the Electric Reliability Organization.

(3) After notice and opportunity for hearing, suspension or rescission of the Commission's approval of an agreement to delegate certain Electric Reliability Organization authorities to a Regional Entity.

(b) The Commission may periodically audit the Electric Reliability Organization's performance under this part.

§ 39.10 Changes to an Electric Reliability Organization Rule or Regional Entity Rule.

(a) The Electric Reliability Organization shall file with the Commission for approval any proposed Electric Reliability Organization Rule or Rule change. A Regional Entity shall submit a Regional Entity Rule or Rule change to the Electric Reliability Organization and, if approved by the Electric Reliability Organization, the Electric Reliability Organization shall file the proposed Regional Entity Rule or Rule change with the Commission for approval. Any filing by the Electric Reliability Organization shall be accompanied by an explanation of the basis and purpose for the Rule or Rule change, together with a description of the proceedings conducted by the Electric Reliability Organization or Regional Entity to develop the proposal.

(b) The Commission, upon its own motion or upon complaint, may propose a change to an Electric Reliability Organization Rule or Regional Entity Rule.

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(c) A proposed Electric Reliability Organization Rule or Rule change or Regional Entity Rule or Rule change shall take effect upon a finding by the Commission, after notice and opportunity for public comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of §39.3.

§ 39.11 Reliability reports.

(a) The Electric Reliability Organization shall conduct assessments as determined by the Commission of the reliability of the Bulk-Power System in North America and provide a report to the Commission and provide subsequent reports of the same to the Commission.

(b) The Electric Reliability Organization shall conduct assessments of the adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, each Regional Entity, and each Regional Advisory Body annually or more frequently if so ordered by the Commission.

§ 39.12 Review of state action.

(a) Nothing in this section shall be construed to preempt any authority of any state to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as such action is not inconsistent with any Reliability Standard, except that the State of New York may establish rules that result in greater reliability within that state, as long as such action does not result in lesser reliability outside the state than that provided by the Reliability Standards.

(b) Where a state takes action to ensure the safety, adequacy, or reliability of electric service, the Electric Reliability Organization, a Regional Entity or other affected person may apply to the Commission for a determination of consistency of the state action with a Reliability Standard.

(1) The application shall:

(i) Identify the state action;

(ii) Identify the Reliability Standard with which the state action is alleged to be inconsistent;

(iii) State the basis for the allegation that the state action is inconsistent with the Reliability Standard; and

(iv) Be served on the relevant state agency and the Electric Reliability Organization, concurrent with its filing with the Commission.

(2) Within ninety (90) days of the application of the Electric Reliability Organization, the Regional Entity, or other affected person, and after notice and opportunity for public comment, the Commission will issue a final order determining whether the state action is inconsistent with a Reliability Standard, taking into consideration any recommendation of the Electric Reliability Organization and the state.

(c) The Commission, after consultation with the Electric Reliability Organization and the state taking action, may stay the effectiveness of the state action, pending the Commission's issuance of a final order.

§ 39.13 Regional Advisory Bodies.

(a) The Commission will establish a Regional Advisory Body on the petition of at least two-thirds of the states within a region that have more than one-half of their electric load served within the region.

(b) A petition to establish a Regional Advisory Body shall include a statement that the Regional Advisory Body is composed of one member from each participating state in the region, appointed by the governor of each state, and may include representatives of agencies, states and provinces outside the United States.

(c) A Regional Advisory Body established by the Commission may provide advice to the Electric Reliability Organization or a Regional Entity or the Commission regarding:

(1) The governance of an existing or proposed Regional Entity within the same region;

(2) Whether a Reliability Standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest;

(3) Whether fees for all activities under this part proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

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(4) Any other responsibilities requested by the Commission.

(d) The Commission may give deference to the advice of a Regional Advisory Body established by the Commission that is organized on an Interconnection-wide basis.

Excerpted from the USCode, as it relates to FERC-725:

[TITLE 16](#) > [CHAPTER 12](#) > [SUBCHAPTER II](#) > § 824o

§ 824o. Electric reliability

(a) Definitions

For purposes of this section:

(1) The term “bulk-power system” means—

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

(2) The terms “Electric Reliability Organization” and “ERO” mean the organization certified by the Commission under subsection (c) of this section the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

(3) The term “reliability standard” means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

(4) The term “reliable operation” means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

(5) The term “Interconnection” means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

(6) The term “transmission organization” means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

(7) The term “regional entity” means an entity having enforcement authority pursuant to subsection (e)(4) of this section.

(8) The term “cybersecurity incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communication networks including hardware, software and data that are essential to the reliable operation of the bulk power system.

(b) Jurisdiction and applicability

(1) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c) of this section, any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section [824 \(f\)](#) of this title, for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after August 8, 2005.

(c) Certification

Following the issuance of a Commission rule under subsection (b)(2) of this section, any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify one such ERO if the Commission determines that such ERO—

(1) has the ability to develop and enforce, subject to subsection (e)(2) of this section, reliability standards that provide for an adequate level of reliability of the bulk-power system; and

(2) has established rules that—

(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair

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stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) of this section (including limitations on activities, functions, or operations, or other appropriate sanctions);

(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

(d) Reliability standards

(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

(2) The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

(6) The final rule adopted under subsection (b)(2) of this section shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted, approved, or ordered by the Commission until—

(A) the Commission finds a conflict exists between a reliability standard and any such provision;

(B) the Commission orders a change to such provision pursuant to section [824e](#) of this title; and

(C) the ordered change becomes effective under this subchapter.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

(e) Enforcement

(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) of this section if the ERO, after notice and an opportunity for a hearing—

(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d) of this section; and

(B) files notice and the record of the proceeding with the Commission.

(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before

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the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

(4) The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

(A) the regional entity is governed by—

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2) of this section; and

(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

(f) Changes in Electric Reliability Organization rules

The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c) of this section.

(g) Reliability reports

The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

(h) Coordination with Canada and Mexico

The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

(i) Savings provisions

(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards.

(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

(5) The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

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(j) Regional advisory bodies

The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

(k) Alaska and Hawaii

The provisions of this section do not apply to Alaska or Hawaii.

The FERC-725 reporting requirements (in 18CFR Part 39) were new during the last OMB clearance cycle. At that time the ERO, as well as the Regional Entities and Regional Advisory bodies, had not been created or approved by FERC. As a result, the full program or process had not yet been developed by the ERO. It was impossible to provide a complete or accurate estimate of the public burden, number of parties involved, and costs. The burden and cost figures provided in this supporting statement replace those earlier estimates and more accurately reflect the requirements, the related process and procedures.

The following information provides a comparison of the estimated annual burden and cost in the existing OMB approval with this request for a 3-year extension.

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FERC-725	Number of Respondents Annually (1)	Number of Responses Per Respondent (2)	Average Burden Hours Per Response (3)	Total Annual Burden Hours (1)x(2)x(3)	Annual Private Sector Costs (\$)	Annual Costs to Federal Gov't. (\$)
current clearance, approved by OMB through 06/30/2009 ¹³	1	1	1	25,800.00	0 ¹⁴	unknown at that time ¹⁵ , but listed in OMB's system as 0
this request for OMB approval through 6/30/2012	1ERO, 8 REs, & ~1,800 Registered Entities --See responses to Questions 12 and 13.			972,304.67	59,390,474	\$312,142.33
<i>Difference (this extension request minus existing OMB approval)</i>				+946,504.67	See responses to Questions 12 and 13.	See response to Question 14.

¹³ The OMB approval for clearance through 06/30/2009 (issued 06/22/2006, for Certification of Electric Reliability Organization and Procedures for Electric Reliability Standards, Order No. 672) for RM05-30-000 contained these estimates.

¹⁴ Because the requirements had not been implemented, and there had not been a selection of an applicant to become the ERO, it was considered premature to ascertain what the costs would be for complying with these requirements. However, based on input provided to the Commission, the following was the projection of the average cost for submission of the application for certification: Annualized Capital/Startup Costs: \$2,800,000 (including direct labor overhead costs to prepare the application and consultation to obtain specialized advice in responding to and implementing the certification application). With regard to Annualized Costs (Operations & maintenance), as noted above, the entities did not exist at the time, and therefore it was considered impractical to determine the annual operations and maintenance costs for the applicant selected to become the ERO.

¹⁵ Because the requirements were at the preliminary stages, an applicant had not been selected to be the ERO, and Regional Entities and Regional Advisory bodies had not yet been created, it was difficult at that stage to make a determination.