

174 FERC ¶ 61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 39

[Docket No. RM21-12-000]

Revisions to Regulations on Electric Reliability Organization Performance Assessments

(Issued January 19, 2021)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend the Commission's regulations to require the Commission-certified Electric Reliability Organization to submit assessments of its performance every three years instead of the current period of every five years. The Commission also proposes to add to the Commission's regulations a requirement for the Electric Reliability Organization to include in its performance assessment a detailed discussion of any areas of the Electric Reliability Organization's responsibilities and activities, or a Regional Entity's delegated functions, beyond those required by the Commission's regulations, that the Commission has identified at least 90 days prior to the expected performance assessment submission date. Finally, the Commission proposes formalizing the method for the Electric Reliability Organization and Regional Entities to receive and respond to recommendations by the 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.

DATES: Comments are due **INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Comments, identified by docket number, may be filed electronically at <http://www.ferc.gov> in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Hand-delivered comments must be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Leigh Anne Faugust (Legal Information)
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
Telephone: (202) 502-6396

SUPPLEMENTARY INFORMATION:

174 FERC ¶ 61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Regulations on Electric Reliability
Organization Performance Assessments

Docket No. RM21-12-000

NOTICE OF PROPOSED RULEMAKING

(Issued January 19, 2021)

1. Pursuant to section 215 of the Federal Power Act (FPA),¹ the Commission proposes to amend section 39.3(c) of the Commission's regulations to require the Commission-certified Electric Reliability Organization (ERO) to submit assessments of its performance every three years instead of the current period of every five years.² We believe that the proposed amendment will provide better continuity in our review of the ERO's operations, activities, oversight, procedures, and evaluation of the effectiveness of each Regional Entity in the performance of delegated functions. We also believe the proposed shorter performance assessment cycle will provide an opportunity to identify potential improvements with regards to ERO performance in a more timely fashion, allow for changes to be made in a more timely manner, and improve the efficiency of the overall performance assessment process.

¹ 16 U.S.C. 824o.

² 18 CFR 39.3(c).

2. Also, pursuant to section 215 of the FPA, we propose to add subsection (iv) to section 39.3(c)(1) of the Commission's regulations to require the Commission-certified ERO to include in its performance assessments a detailed discussion of any areas of the ERO's responsibilities and activities, or the Regional Entities' delegated functions, beyond those required by section 39.3(c)(1)(i), (ii), and (iii), that the Commission identifies for inclusion at least 90 days prior to the expected performance assessment submission date.

3. Finally, we propose to amend section 39.3(c)(1)(ii) of the Commission's regulations to require the ERO to solicit via a formal public comment period recommendations by the users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the ERO's operations, activities, oversight and procedures.

I. Background

A. Section 215 of the FPA

4. Section 215 of the FPA requires the Commission to issue regulations that, among other things, provide for the certification of an entity as the ERO if it meets certain criteria.³ Specifically, FPA section 215(c) establishes that an ERO candidate must have

³ 16 U.S.C. 824o; (on July 20, 2006, the Commission certified NERC as the ERO for the continental United States under FPA section 215(c)). *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on compliance*, 118 FERC ¶ 61,190, *order on reh'g*, 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

the ability to develop and enforce mandatory Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System.⁴ The statute also requires that an ERO candidate have established rules that: (1) assure independence, while assuring fair stakeholder representation and balanced decision-making; (2) equitably allocate reasonable dues, fees, and other charges; (3) provide fair and impartial procedures for enforcing Reliability Standards through imposition of penalties; (4) provide reasonable notice and opportunity for public comment, due process, and balance in developing Reliability Standards and otherwise exercising its duties; and (5) provide appropriate steps to gain recognition in Canada and Mexico.

5. FPA section 215(e)(4) provides that the ERO may delegate authority to a Regional Entity for the purpose of proposing regional Reliability Standards and enforcing Reliability Standards. Regional Entities must meet the same statutory criteria as those required for Commission certification of an ERO, except that more flexibility is allowed in the composition of a Regional Entity board of directors. The Commission must approve a delegation agreement between the ERO and a Regional Entity, and the Commission is authorized to modify such delegation.

B. Order No. 672

6. On February 3, 2006, the Commission issued Order No. 672, which amended the Commission's regulations to implement the requirements of FPA section 215.⁵ In Order

⁴ *Id.* section 824o(c).

⁵ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability*

No. 672, the Commission interpreted section 215 of the FPA to require the ERO to comply with the certification criteria in section 215(c) of the FPA on a continuous basis.⁶ Further, the Commission mandated that the ERO submit periodic assessments of its performance that “affirmatively demonstrate to the Commission that [the ERO] satisfies the statutory and regulatory criteria for an ERO and is not only maintaining but improving the quality of its activities and those of the Regional Entities to which it has delegated such activities.”⁷

7. In Order No. 672, the Commission also said that the performance assessments should employ regular and systematic measurement and reporting of the ERO’s performance. The specific requirements for the performance assessments are set out in the Commission’s regulations in section 39.3(c) and provide that the ERO file an assessment of its performance three years from the date of initial certification, and every five years thereafter. Section 39.3(c)(1) of the Commission’s regulations specify that the ERO should include in its performance assessment: (1) an explanation of how it satisfies the requirements of section 39.3 (b);⁸ (2) recommendations from stakeholders on improvement for the ERO and Regional Entities’ performance and the ERO’s and

Standards, Order No. 672, 71 FR 8662 (Feb. 17, 2006), 114 FERC ¶ 61,104, at P 186, *order on reh’g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

⁶ *Id.* PP 183, 187.

⁷ *Id.* P 186.

⁸ 18 CFR 39.3(c)(1)(i).

Regional Entities' response to those recommendations;⁹ and (3) an evaluation of the effectiveness of each Regional Entity's performance of delegated functions.¹⁰ Section 39.3(c)(2) of the Commission's regulations explain that the Commission will review the performance assessments and may require follow-up actions by the ERO to comply or improve compliance with the statutory and regulatory qualifications for the ERO if the Commission determines that the ERO has not satisfied specific criteria.¹¹

II. Discussion

8. Pursuant to section 215 of the FPA, we propose to amend section 39.3(c) of the Commission's regulations to require the Commission-certified ERO to submit assessments of its performance every three years instead of the current period of every five years.¹² We also propose to amend section 39.3(c)(1) to add a new requirement for the ERO to include in its performance assessment a detailed discussion of any areas of the EROs' responsibilities and activities, or the Regional Entity delegated functions, beyond those required by section 39.3(c)(1)(i), (ii), and (iii) that the Commission identifies at least 90 days prior to the expected performance assessment submission date. For example, a Commission-identified issue may be communicated to the ERO through a

⁹ 18 CFR 39.3(c)(1)(ii), (iii).

¹⁰ 18 CFR 39.3(c)(1)(iii).

¹¹ *Id.*

¹² 18 CFR 39.3(c).

Commission order or the Commission's delegated authority to the Director of the Office of Electric Reliability.¹³

9. While Order No. 672 established a five-year period for submitting ERO performance assessments following the initial three-year assessment, decreasing the periodicity to every three years would improve the ERO's accountability to the public, stakeholders, and the Commission. Our proposed reduction in the assessment period aligns with the ERO's own acknowledgement that it is "facing unprecedented, rapid change in the electric industry, which raises new challenges to and opportunities for the reliability and security of the Bulk Power System."¹⁴ We agree, and find that the Bulk-Power System is transitioning in myriad ways through innovation and technology at a pace unanticipated when the Commission originally established the five-year performance assessment period and identified topics for the ERO to include in those assessments.

10. The proposed three-year performance assessment cycle will enhance the Commission's oversight of the ERO and provide an opportunity to address issues arising with regard to ERO performance in a more timely fashion. We believe this will allow for

¹³ See e.g., 18 CFR 375.303 (a)(2)(v) ("The Commission authorizes the Director or the Director's designee to...[d]irect the Electric Reliability Organization, Regional Entities, or users, owners, and operators of the Bulk-Power System within the United States (not including Alaska and Hawaii) to provide such information as is necessary to implement Section 215 of the Federal Power Act. . . .").

¹⁴ *North American Electric Reliability Corp.*, Docket No. RR19-7-000, at 3 (July 22, 2019) (2019 Performance Assessment).

changes to be made in a more timely manner, and improve the efficiency of the overall performance assessment process. A three-year performance assessment aligns more closely with certain ongoing NERC activities, such as the triennial Reliability Standards and reliability guidelines reviews. Moreover, the reduced period between assessments will allow better continuity in the Commission's review of the ERO's operations, activities, oversight, procedures, and evaluation of the effectiveness of each Regional Entity in the performance of delegated functions. For example, a three-year period improves the likelihood that the NERC staff preparing the performance assessment, the Commission staff reviewing the assessment, and Commissioners would be familiar with the performance assessment process—thereby providing continuity and subject matter expertise. Three years also provides an earlier opportunity to address new and emerging areas of concern or recommendations for development identified by the Commission and stakeholders.

11. We believe that the proposed three-year performance cycle affords a reasonable amount of time between performance assessments. We note that this is the same three-year timeframe imposed in Order No. 672 on the initial performance assessment submitted by the ERO in 2010. The timing also aligns with the NERC's Rules of Procedure requirement of an independent audit of NERC's Compliance Monitoring

and Enforcement Program (CMEP) and Organization Registration and Certification Program.¹⁵

12. The ERO has existing internal processes used to assess its ongoing performance of its statutory responsibilities, and the Regional Entities' ongoing performance in their delegated activities.¹⁶ For example, NERC files itemized annual budgets for both its own activities and those of the Regional Entities, thereby tracking whether it "allocate[s] equitably reasonable dues, fees and charges among end users for all activities."¹⁷ The ERO uses a program alignment process to identify, prioritize, and resolve inconsistencies among the Regional Entities.¹⁸ The ERO also issues a stakeholder survey every other

¹⁵ See e.g., NERC, Rules of Procedure, sec. 406 ("NERC shall provide for an independent audit of its [CMEP] at least once every three years, or more frequently as determined by the Board. The audit shall be conducted by independent expert auditors as selected by the Board").

¹⁶ For example, pursuant to 18 CFR 39.3 (c)(1)(i), the ERO must include in its performance assessment an explanation of how its Reliability Standards program meet the requirements of section 39.3(b). NERC posts on its website the status of various Reliability Standards projects, and provides public access to all projects, including: Reliability Standards, Standard Authorization Requests, Periodic Reviews, and Interpretations. NERC, *Reliability Standards Under Development*, <https://www.nerc.com/pa/Stand/Pages/Standards-Under-Development.aspx>. NERC has a formal oversight program for functions it has delegated to the Regional Entities. The programs include performance metrics that NERC uses to evaluate the Regional Entity performance from year to year, (i.e., more frequently than what would be necessary for a three-year performance assessment). 2019 Performance Assessment at 10.

¹⁷ 18 CFR 39.3(b)(2)(ii).

¹⁸ NERC, *ERO Enterprise Program Alignment Process*, <https://www.nerc.com/pa/comp/Pages/EROEnterProAlign.aspx>.

year to measure the effectiveness of NERC and the Regional Entities in executing program activities.¹⁹

13. Based on the examples described above, we believe the ERO should be able to use these existing processes to provide a self-assessment to the Commission on a three-year basis rather than every five years without imposing an undue burden on the ERO. NERC could leverage the existing tracking mechanisms discussed above, as well as the findings of its required three-year independent audit, its internal audit department, ongoing quarterly and annual assessments of its CMEP and Organization Registration and Certification Program,²⁰ and the processes that lead to NERC's annual filings of the business plan and budgets (and those of the Regional Entities),²¹ all of which NERC already uses to regularly report on its and the Regional Entities' activities. For these reasons, we believe a reduction of time from a five-year cycle to a three-year cycle will not impose an undue burden for NERC, the Regional Entities, registered entities, or other interested stakeholders.

¹⁹ As required by 18 CFR 39.3(c)(1)(ii), the ERO's performance assessment must address "the effectiveness of each Regional Entity, recommendations by the [ERO], users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Regional Entity's performance of delegated functions."

²⁰ See e.g., NERC, *Compliance Monitoring and Enforcement Program Quarterly Report*, (Nov. 4, 2020), <https://www.nerc.com/pa/comp/CE/ReportsDL/Q3%202020%20Quarterly%20CMEP%20Report.pdf>.

²¹ See e.g., NERC, *2021 Business Plan and Budget Preparation Schedule*, (2020), <https://www.nerc.com/gov/bot/FINANCE/Hidden%20Documents/2021%20BPB%20Preparation%20Schedule.pdf>.

14. Next, based on the last three performance assessments NERC has submitted to the Commission as the ERO, where the Commission has directed NERC to submit additional information on further compliance, we propose to revise the Commission's regulations governing what an ERO must include in its performance assessment. Specifically, we propose to require that the Commission-certified ERO include in its performance assessments a detailed discussion of any areas of the ERO's activities and functions, or the Regional Entities' delegated functions, beyond those set forth in section 39.3(c)(1)(i), (ii), and (iii), that the Commission identifies for inclusion at least 90 days prior to the expected performance assessment submission date.²² Identifying specific areas of interest in a formal and timely manner prior to NERC's submission of the Performance Assessment may likely result in efficiencies. For example, identifying areas of interest NERC should address in the filing may reduce the need for the Commission to issue data requests or require informational filings afterwards. We believe the additional information NERC will provide in response to the identified areas of interest will enable the Commission to more efficiently review the performance of the ERO's activities and functions, as well as oversight of the Regional Entities' delegated functions. We also believe 90 days prior to the submission of each performance assessment provides NERC adequate time to address any Commission-identified topics in its performance

²² As noted above, a Commission-identified issue may be communicated to the ERO through a Commission order or the Commission's delegated authority to the Director of the Office of Electric Reliability.

assessment, but we seek comment on whether a different period of time may be more appropriate.

15. Finally, we propose to add a formal requirement for a public comment period to solicit Regional Entities, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the ERO's operations, activities, oversight and procedures. The intent of the comment period is to inform the content of the ERO's draft performance assessment. We anticipate that the ERO would meet the proposed requirement by issuing notice of a public comment period on its website specifically requesting that interested parties identify areas of improvement. We envision the solicitation of comments would be issued separately and prior to the posting of the draft performance assessment. The posting should be independent of other recurring stakeholder surveys that may have a more limited audience. The ERO would then include the submitted comments, and the ERO's responses to such comments, with its performance assessment filing.

16. We believe that the proposed amendments to our regulations will improve our oversight of the ERO. The proposal will better enable the Commission to determine that the ERO is satisfying the statutory and regulatory criteria continuously,²³ and provide the opportunity for more timely Commission and stakeholder feedback or direction to the ERO should issues arise. Further, consistent with Order No. 672, the shorter cycle for the

²³ Order No. 672 interprets the FPA to require that the ERO to comply with the certification criteria on an ongoing basis, and that a violation of a certification criterion constitutes a violation of the FPA. Order No. 672, 114 FERC ¶ 61,104 at P 184.

ERO performance assessment will provide more timely Commission oversight to assure that the ERO is “not only maintaining but improving the quality of its activities and those of the Regional Entities to which it has delegated such activities.”²⁴ We seek comments from NERC and other interested entities on this proposal, including on the burden of this proposal.

III. Information Collection Statement

17. This NOPR proposes to amend the Commission’s regulations to require the Commission-certified ERO to submit assessments of its performance every three years instead of the current period of every five years. It also proposes to require the Commission-certified ERO to include in its performance assessments a detailed discussion of any areas of the ERO’s responsibilities and activities, or the Regional Entities’ delegated functions, beyond those required by § 39.3(c)(1)(i), (ii), and (iii), that the Commission identifies for inclusion at least 90 days prior to the expected performance assessment submission date. Finally, this NOPR proposes to formalize the ERO’s solicitation of recommendations via a formal public comment period from Regional Entities, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the ERO’s operations, activities, oversight and procedures.

²⁴ Order No. 672, 114 FERC ¶ 61,104 at P 186.

18. The Paperwork Reduction Act (PRA)²⁵ requires each federal agency to seek and obtain approval by the Office of Management and Budget (OMB) before undertaking a collection of information (including reporting, record keeping, and public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations²⁶ require approval of certain information collection requirements contemplated by proposed rules (including deletion, revision, or implementation of new requirements). Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this proposed rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

19. The information collection in this NOPR is FERC-725, “Certification of Electric Reliability Organization.” The OMB Control Number is 1902-0225. As required by the PRA, the collection of information that would be revised in this proposed rule is being submitted to OMB for review under 44 U.S.C. 3507(d).

20. The Commission solicits comments on the Commission’s need for the proposed revision of the information collection, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing

²⁵ 44 U.S.C. 3501-3521.

²⁶ 5 CFR Part 1320.

respondents' burden, including the use of automated information techniques. All burden estimates are discussed in this NOPR and in the Paperwork Reduction Act supporting statement.

21. Interested persons may submit questions about this information collection by contacting Ellen Brown, Office of the Executive Director, at DataClearance@ferc.gov, or (202) 502-8663. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget [Attention: Federal Energy Regulatory Commission Desk Officer]. Due to security concerns, comments should be sent directly to www.reginfo.gov/public/do/PRAMain. Comments submitted to OMB should be sent within 60 days of publication of this notice in the Federal Register and refer to FERC-725 and OMB Control No. 1902-0225.

22. Please submit to the Commission copies of comments concerning the collection of information and the associated burden estimates (identified by Docket No. RM21-12-000) by any of the following methods:

- eFiling at Commission's Web Site: <http://www.ferc.gov/docs-filing/efiling.asp>;
- U.S. Postal Service Mail: Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; or
- Effective July 1, 2020, filings not submitted via eFiling or the U.S. Postal Service may be delivered to: Federal Energy Regulatory Commission, c/o

Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

23. The following discussion describes and analyzes the existing collection of information associated with 18 CFR 39.3(c) (FERC-725, OMB Control Number 1902-0225), as it would be modified by this proposed rule.

- *Necessity of the Information:* The information collected from the ERO or Regional Entities under the requirements of FERC-725 is used by the Commission to implement the statutory provisions of section 215 of the FPA and implemented by the Commission in accordance with 18 CFR part 39.
- *Public Reporting Burden:* The NOPR would result in program changes in the “Self-Assessment” information activities in FERC-725 due to the proposed requirement to submit self-assessments every 3 years. At present, self-assessments are required every 5 years.

24. The annualized number of responses for each self-assessment would be revised from 0.2 per year to 0.33 per year. As shown below, RM21-12-000 would result in a total of 2.31 responses for self-assessments annually. The Commission has also reduced the number of Regional Entities from seven to six.

25. The Commission calculates the average annual burden and cost²⁷ in accordance with data from the Bureau of Labor Statistics. For hourly cost (for wages and benefits),

²⁷ The hourly cost estimates are based on wage data from the Bureau of Labor Statistics for May 2019 (BLS, *Occupational Employment Statistics* (May 2019), https://www.bls.gov/oes/current/naics2_22.htm) and benefits data for September 2020

we estimate that 70 percent of the time is spent by Electrical Engineers (code 17-2071, at \$66.90/hr.), 20 percent of the time is spent by Legal (code 23-0000, at \$143.68/hr.), and 10 percent by Office and Administrative Support (code 43-0000, at \$41.34/hr.). The weighted hourly cost (for wages and benefits) is \$79.70.

A. Type of Respondent	B. Type of Response	C. No. of Respondents	D. No. of Responses Per Respondent	E. Total No. of Responses (Col. C x Col. D)	F. Average Burden Hours & Cost (\$ per Response (rounded))	G. Estimated Total Annual Burden Hrs. & Cost (\$) (rounded) (Col. E x Col. F)
Electric Reliability Organization	Self- Assessment	1	0.33	0.33	4,160 hrs.; \$331,552	1,373 hrs.; \$109,412
Regional Entities	Self- Assessment	6	0.33	1.98	4,160 hrs.; \$331,552	8,237 hrs.; \$656,473
Total Burden Hrs. and Cost		7		2.31		9,610 hrs.; \$765,885

IV. Environmental Analysis

26. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.²⁸ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do

(BLS, *Employer Costs for Employee Compensation Summary* (Dec. 17, 2020), <https://www.bls.gov/news.release/ecec.nr0.htm>).

²⁸ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

not substantially change the effect of the regulations being amended.²⁹ The actions proposed here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Certification

27. The Regulatory Flexibility Act of 1980 (RFA)³⁰ generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities.

28. By only proposing to direct NERC, the Commission-certified ERO, to increase the periodicity of its performance assessment submission and address identified topics, this NOPR will not have a significant or substantial impact on entities other than NERC. The ERO develops and files with the Commission for approval Reliability Standards affecting the Bulk-Power System, which represents: (a) a total electricity demand of 830 gigawatts (830,000 megawatts) and (b) more than \$1 trillion worth of assets. Therefore, the Commission certifies that this NOPR will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

29. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

²⁹ 18 CFR 380.4(a)(2)(ii).

³⁰ 5 U.S.C 601-612.

Comments must refer to Docket No. RM21-12-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

30. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

31. Commenters that are not able to file comments electronically must submit an original of their comments either by mail through the United States Postal Service to: the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC, 20426,³¹ or by any other method of delivery, including hand delivery, to the Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.³²

32. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

³¹ 18 CFR 385.2001(a)(1)(i).

³² 18 CFR 385.2001(a)(1)(ii).

VII. Document Availability

33. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

34. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

35. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202)-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects in 18 CFR Part 39

Administrative practice and procedure

Electric power

Penalties

Reporting and recordkeeping requirements

By direction of the Commission. Commissioners Chatterjee and Glick are concurring with a joint separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission proposes to amend part 39, chapter I, title 18, *Code of Federal Regulations*, as follows:

The authority citation for part 250 continues to read as follows:

Authority: [16 U.S.C. 824o](#).

1. Amend § 39.3 by revising paragraph (c) to read as follows.

§ 39.3 Electric Reliability Organization certification

(c) The Electric Reliability Organization shall submit an assessment of its performance three years from the date of certification by the Commission, and every three 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.

2. Amend § 39.3 by adding new paragraph (iv) is as follows.

§ 39.3 Electric Reliability Organization certification

(iv) a detailed discussion of any areas of the Electric Reliability Organizations responsibilities and activities, or the Regional Entity delegated functions, beyond those required by § 39.3(c)(1)(i), (ii), and (iii) that the Commission has identified. The Commission will inform the Electric Reliability Organization of any additional performance areas to include at least 90 days prior to the expected performance assessment submission date.

3. Amend § 39.3 by revising paragraph (c) to read as follows.

§ 39.3 Electric Reliability Organization certification

(ii) Recommendations, as solicited by the Electric Reliability Organization via a noticed public comment period, 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...

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Regulations on Electric Reliability
Organization Performance Assessments

Docket No. RM21-12-000

(Issued January 19, 2021)

CHATTERJEE, Commissioner, and GLICK, Commissioner, *concurring*:

We support this notice of proposed rulemaking (NOPR), which explores potential improvements to the existing framework for the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization (ERO), to submit assessments of its performance. Given the important and increasingly complex role the ERO plays in ensuring the reliability of the Bulk Power System, we urge interested parties to submit comments on the proposed reforms. To that end, while we encourage comments on the potential benefits of these proposed reforms, we also encourage interested parties to provide comments on the potential burdens the proposed reforms may impose on the ERO and its Regional Entities.

For these reasons, we respectfully concur.

Neil Chatterjee
Commissioner

Richard Glick
Commissioner