

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–13–09 Bombardier, Inc.: Amendment 39–18573. Docket No. FAA–2015–8129; Directorate Identifier 2014–NM–197–AD.

(a) Effective Date

This AD becomes effective August 16, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes, certificated in any category, serial numbers (S/Ns) 5301 through 5665 inclusive, and 5701 through 5962 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a determination that certain maintenance tasks for the horizontal stabilizer trim actuator (HSTA) are inadequate. We are issuing this AD to detect and correct premature wear and cracking of the HSTA, which could result in failure of the HSTA and consequent loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate Task 27–42–01–109, Restoration (Overhaul) of the Horizontal Stabilizer Trim Actuator, Part No. 604–92305–7 and Subs (Vendor Part No. 8454–3 and Subs); and Task 27–42–01–111, Detailed Inspection of the Horizontal Trim Actuator (HSTA) Secondary Load Path Indicator, Part No. 604–92305–7 and Subs (Vendor Part No. 8454–3 and Subs); of the applicable document identified in paragraph (g)(1) or (g)(2) of this AD.

(1) For Model CL–600–2B16 (CL–604 Variant) airplanes, serial numbers 5301 through 5665 inclusive: Section 5–10–40, Certification Maintenance Requirements, of Part 2, Airworthiness Limitations, of the Bombardier Challenger 604 Time Limits/Maintenance Checks Manual, Revision 22, dated July 11, 2014.

(2) For Model CL–600–2B16 (CL–604 Variant) airplanes, serial numbers 5701 through 5962 inclusive: Section 5–10–40, Certification Maintenance Requirements, of Part 2, Airworthiness Limitations, of the Bombardier Challenger 605 Time Limits/Maintenance Checks Manual, Revision 10, dated July 11, 2014.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised, as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–30, dated September 5, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2015–8129.

(k) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this

paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Section 5–10–40, Certification Maintenance Requirements, of Part 2, Airworthiness Limitations, of the Bombardier Challenger 604 Time Limits/Maintenance Checks Manual, Revision 22, dated July 11, 2014.

(ii) Section 5–10–40, Certification Maintenance Requirements, of Part 2, Airworthiness Limitations, of the Bombardier Challenger 605 Time Limits/Maintenance Checks Manual, Revision 10, dated July 11, 2014.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center, toll-free telephone 1–866–538–1247, or direct dial telephone 1–514–855–2999; fax 1–514–855–7401; email ac.yul@aero.bombardier.com; Internet <http://www.bombardier.com>.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on June 21, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15354 Filed 7–11–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 39**

[Docket No. RM15–25–000; Order No. 824]

Availability of Certain North American Electric Reliability Corporation Databases to the Commission

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amends its regulations to require the North American Electric Reliability Corporation (NERC) to provide the Commission, and Commission staff, with access, on a non-public and ongoing basis, to certain databases

compiled and maintained by NERC. The amended regulation applies to the following NERC databases: The Transmission Availability Data System, the Generating Availability Data System, and the protection system misoperations database. Access to these databases, which will be limited to data regarding U.S. facilities provided to NERC on a mandatory basis, will provide the Commission with information necessary to determine the need for new or modified Reliability Standards and to better understand NERC's periodic reliability and adequacy assessments.

DATES: *Effective date:* This rule will become effective July 12, 2016.

Compliance date: The compliance date is based on issuance of the final rule in Docket No. RM16-15-000. The Commission will publish a document in the **Federal Register** announcing the compliance date.

FOR FURTHER INFORMATION CONTACT:

Raymond Orocco-John (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502-6593, *Raymond.Orocco-John@ferc.gov*.

Julie Greenisen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502-6362, *julie.greenisen@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Order No. 824

Final Rule

1. The Commission amends its regulations, pursuant to section 215 of the Federal Power Act (FPA),¹ to require the North American Electric Reliability Corporation (NERC) to provide the Commission, and Commission staff, with access, on a non-public and ongoing basis, to certain databases compiled and maintained by NERC. The amended regulation applies to the following NERC databases: (1) The Transmission Availability Data System (TADS), (2) the Generating Availability Data System (GADS), and (3) the protection system misoperations database. Access to these databases, which will be limited to data regarding U.S. facilities provided to NERC on a mandatory basis, will provide the Commission with information necessary to determine the need for new or modified Reliability Standards and to better understand NERC's periodic reliability and adequacy assessments.

I. Background

A. Section 215 and Order No. 672

2. Section 215 of the FPA requires the Commission to certify an Electric Reliability Organization (ERO), responsible for developing mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.² In addition, section 215(g) of the FPA requires the ERO to conduct periodic assessments of the reliability and adequacy of the Bulk-Power System in North America.³ Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,⁴ and subsequently certified NERC as the ERO.

3. Section 39.2(d) of the Commission's regulations requires NERC and each Regional Entity to "provide the Commission such information as is necessary to implement section 215 of the Federal Power Act."⁵ Section 39.2(d) of the Commission's regulations also requires each user, owner and operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) to provide the Commission, NERC and each applicable Regional Entity with "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."⁶

4. The Commission promulgated section 39.2(d) of its regulations in Order No. 672.⁷ The Commission explained in Order No. 672 that:

The Commission agrees . . . that, to fulfill its obligations under this Final Rule, the ERO or a Regional Entity will need access to certain data from users, owners and operators of the Bulk-Power System. Further, the Commission will need access to such information as is necessary to fulfill its oversight and enforcement roles under the statute.⁸

B. NERC Databases

5. NERC conducts ongoing, mandatory data collections from

registered entities to populate databases for transmission outages through TADS, generation outages through GADS, and protection system misoperations through NERC's protection system misoperations database. Each of these NERC databases is discussed below.

1. TADS Database

6. NERC initiated collection of TADS data on a mandatory basis in 2007 by issuing a data request pursuant to section 1600 of the NERC Rules of Procedure.⁹ The request required that, beginning in January 2008, applicable entities provide certain data for the TADS database based on a common template.¹⁰ In 2010, NERC expanded its collection of TADS data to include additional fields of information on transmission outages.¹¹

7. The TADS database compiles transmission outage data in a common format for: (1) Bulk electric system AC circuits (overhead and underground); (2) transmission transformers (except generator step-up units); (3) bulk electric system AC/DC back-to-back converters; and (4) bulk electric system DC circuits.¹² The TADS data collection template includes the following information fields: (1) Type of facilities, (2) outage start time and duration, (3) event type, (4) initiating cause code, and (5) sustained cause code (for sustained outages).¹³ "Cause codes" for common causes of transmission outages include: (1) Lightning, (2) fire, (3) vandalism, (4) failed equipment (with multiple sub-listings), (5) vegetation, and (6) "unknown."¹⁴ There were 10,787 reported TADS events between 2012 and 2014.¹⁵

⁹ See generally NERC, Summary of Phase I TADS Data Collection (November 9, 2007), http://www.nerc.com/pa/RAPA/tads/TADSTF%20Archives%20DL/TADS_Data_Request_Summary.pdf.

¹⁰ See generally NERC, Transmission Availability Data System (TADS) Data Reporting Instruction Manual (November 20, 2007), http://www.nerc.com/comm/PC/Transmission%20Availability%20Data%20System%20Working%20Group/TADSTF%20Archives/Data_Reporting_Instr_Manual_11_20_07.pdf.

¹¹ See generally NERC, Transmission Availability Data System Phase II Final Report (September 11, 2008), http://www.nerc.com/pa/RAPA/tads/TransmissionAvailabilityDataSystemRF/TADS_Phase_II_Final_Report_091108.pdf.

¹² See NERC TADS Home Page, <http://www.nerc.com/pa/RAPA/tads/Pages/default.aspx>.

¹³ See Transmission Availability Data System (TADS) Data Reporting Instruction Manual (August 1, 2014), http://www.nerc.com/pa/RAPA/tads/Documents/2015_TADS_DRI.pdf.

¹⁴ See Transmission Availability Data System Definitions (August 1, 2014), http://www.nerc.com/pa/RAPA/tads/Documents/2015_TADS_Appendix_7.pdf.

¹⁵ See, e.g., NERC, State of Reliability 2015, Appendix A (Statistical Analysis for Risk Issue

Continued

¹ 16 U.S.C. 824o.

² 16 U.S.C. 824o(e).

³ *Id.* 824o(g).

⁴ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁵ 18 CFR 39.2(d).

⁶ *Id.*

⁷ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 114.

⁸ *Id.*

8. NERC uses TADS data to develop transmission metrics to analyze outage frequency, duration, causes, and other factors related to transmission outages.¹⁶ NERC also provides individual transmission owners with TADS metrics for their facilities.¹⁷ NERC issues an annual public report based on TADS data that shows aggregate metrics for each NERC Region, with the underlying data accorded confidential treatment.¹⁸

2. GADS Database

9. NERC's collection of GADS data has been mandatory since 2012, pursuant to a data request issued in accordance with section 1600 of the NERC Rules of Procedure.¹⁹ The GADS database collects, records, and retrieves operating information on power plant availability, including event, performance, and design data.²⁰ GADS data are used to support equipment reliability and availability analyses, as well as benchmarking studies.²¹

10. Currently, GADS collects outage data pertaining to ten types of conventional generating units with capacity of 20 MW and larger, including: (1) Fossil steam including fluidized bed design; (2) nuclear; (3) gas turbines/jet engines; (4) internal combustion engines (diesel engines); (5) hydro units/pumped storage; (6) combined cycle blocks and their related components; (7) cogeneration blocks and their related components; (8) multi-boiler/multi-turbine units; (9) geothermal units; and (10) other miscellaneous conventional generating units (e.g., biomass, landfill gases).²² The GADS data collection template includes the following design, event, and performance information: (1) Design records, (2) event records, and (3) performance records.²³ Design records refer to the characteristics of each unit

such as GADS utility code,²⁴ GADS unit code,²⁵ NERC Regional Entity where the unit is located, name of the unit, commercial operating date, and type of generating unit (fossil, combined cycle, etc.).²⁶ Event records include information about when and to what extent the generating unit could not generate power.²⁷ Performance records refer to monthly generation, unit-attempted starts, actual starts, summary event outage information, and fuels.²⁸ NERC has developed "cause codes" for the identification of common causes of unit outages based on the type of generating unit.²⁹ For example, the cause codes section for fossil steam units includes codes for the boiler, steam turbine, generator, balance of plant, pollution control equipment, external, regulatory, safety and environmental, personnel errors, and performance testing.³⁰ For 2011–2013, the GADS database contains data from more than 5,000 units.³¹

11. NERC uses GADS data to measure generation reliability and publishes aggregate performance metrics for each NERC Region in publicly available annual state of reliability and reliability assessment reports.³² The underlying data are typically accorded confidential treatment.

3. Protection System Misoperations Database

12. The reporting of protection system misoperations data by transmission owners, generator owners and distribution providers has been mandatory since 2011 pursuant to Reliability Standard PRC–004.³³

²⁴ The GADS utility code is a code number referencing the utility that owns a generator.

²⁵ The GADS unit code is a code name referencing the generating unit involved. The GADS unit code may or may not contain the name of the generator owner.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ NERC, Generating Availability Data System Data Reporting Instructions (January 1, 2015), Appendix B (Index to System/Component Cause Codes) at 1, http://www.nerc.com/pa/RAPA/gads/DataReportingInstructions/Appendix_B1_Fossil_Steam_Unit_Cause_Codes.pdf. The most recent data reported by NERC for GADS events is for the period 2011–2013.

³⁰ *Id.*

³¹ State of Reliability 2015, Appendix B (Analysis of Generation Data) at 107.

³² See, e.g., *id.*, Appendix B (Analysis of Generation Data).

³³ The Commission approved Reliability Standard PRC–004–1 (Analysis and Reporting of Transmission Protection System Misoperations) in Order No. 693. *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at PP 1467–1469, order on reh'g, Order No. 693–A, 120 FERC ¶ 61,053 (2007). The Commission subsequently approved the following revisions and interpretations to Reliability Standard

Following implementation of Reliability Standard PRC–004–4, the obligation to report misoperation data will remain mandatory but will be accomplished through a data request pursuant to section 1600 of the NERC Rules of Procedure.³⁴

13. Currently, the protection system misoperations database collects more than 20 data fields for a reportable misoperation event, including: (1) Misoperation date; (2) event description; (3) protection systems/components that misoperated; (4) equipment removed from service (permanently or temporarily) as the result of the misoperation; (5) misoperation category; and (6) cause(s) of misoperation.³⁵ For 2014, the protection system misoperations database contains information on approximately 2,000 misoperation events.³⁶

14. Protection system misoperations have exacerbated the severity of most cascading power outages, having played a significant role in the August 14, 2003 Northeast blackout, for example.³⁷ NERC uses protection system misoperations data to assess protection system performance and trends in protection system performance that may negatively impact reliability.³⁸ NERC publishes aggregate misoperation

PRC–004, which was first renamed Analysis and Mitigation of Transmission and Generation Protection System Misoperations and then renamed Protection System Misoperation Identification and Correction: Reliability Standards PRC–004–1a, PRC–004–2, PRC–004–2a, PRC–004–2.1a, PRC–004–2.1(i)a, PRC–004–3, and PRC–004–4. See *North American Electric Reliability Corp.*, 136 FERC ¶ 61,208 (2011) (approving interpretation resulting in Reliability Standard PRC–004–1a and Reliability Standard PRC–004–2a); *North American Electric Reliability Corp.*, 134 FERC ¶ 61,015 (2011) (approving Reliability Standard PRC–004–2); *Generator Requirements at the Transmission Interface*, Order No. 785, 144 FERC ¶ 61,221 (2013) (approving Reliability Standard PRC–004–2.1a); *North American Electric Reliability Corp.*, 151 FERC ¶ 61,129 (2015) (approving Reliability Standard PRC–004–3); *North American Electric Reliability Corp.*, 151 FERC ¶ 61,186 (2015) (approving Reliability Standards PRC–004–2.1(i)a and PRC–004–3); *North American Electric Reliability Corp.*, Docket No. RD15–5–000 (Nov. 19, 2015) (delegated letter order) (approving Reliability Standard PRC–004–4); *North American Electric Reliability Corp.*, Docket No. RD14–14–001, et al. (Dec. 4, 2015) (delegated letter order) (approving Reliability Standard PRC–004–4(i) and PRC–004–5(i)).

³⁴ See generally NERC, Request for Data or Information Protection System Misoperation Data Collection (August 14, 2014), http://www.nerc.com/pa/RAPA/ProtectionSystemMisoperations/PRC-004-3%20Section%201600%20Data%20Request_20140729.pdf. Reliability Standard PRC–004–4 will become enforceable on July 1, 2016.

³⁵ *Id.* at 13–14; see also NERC, Protection System Misoperations Home Page, <http://www.nerc.com/pa/RAPA/ri/Pages/ProtectionSystemMisoperations.aspx>.

³⁶ State of Reliability 2015 at 47.

³⁷ See Request for Data or Information Protection System Misoperation Data Collection at 5.

³⁸ See *id.* at 14.

Identification and Transmission Outage Severity Analysis) at 86 (May 2015), <http://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/2015%20State%20of%20Reliability.pdf>. The most recent data reported by NERC for TADS events is for the period 2012–2014.

¹⁶ See NERC TADS Home Page.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See NERC, Generating Availability Data System Mandatory Reporting of Conventional Generation Performance Data at 2 (July 2011), http://www.nerc.com/pa/RAPA/gads/MandatoryGADS/Revised_Final_Draft_GADSTF_Recommendation_Report.pdf; see also NERC GADS Home Page, <http://www.nerc.com/pa/RAPA/gads/Pages/default.aspx>.

²⁰ See NERC GADS Home Page.

²¹ *Id.*

²² Generating Availability Data System Mandatory Reporting of Conventional Generation Performance Data at 15.

²³ *Id.*, Appendix V (Rules of Procedure Section 1600 Justification) at 35.

information for each NERC Region in annual public state of reliability reports, with the underlying data being accorded confidential treatment.³⁹

C. NOPR

15. On September 17, 2015, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to amend the Commission's regulations to require NERC to provide the Commission, and Commission staff, with access, on a non-public and ongoing basis, to the TADS, GADS, and protection system misoperations databases regarding U.S. facilities.⁴⁰ In response to the NOPR, the Commission received 13 sets of comments.⁴¹ We address below the issues raised in the NOPR and comments.

II. Discussion

16. Pursuant to section 215 of the FPA, we amend the Commission's regulations to require NERC to provide the Commission, and Commission staff, with access (*i.e.*, view and download data), on an ongoing and non-public basis, to the TADS, GADS, and protection system misoperations databases. As proposed in the NOPR and clarified in the language of the new regulation, the Commission's access will be limited to data regarding U.S. facilities. In addition, as discussed further below, the Commission determines that NERC is not required to provide the Commission with access to data provided to NERC on a voluntary basis.

17. As discussed below, the Commission believes that access to these three NERC databases is necessary to carry out the Commission's obligations under section 215 of the FPA. Further, as discussed in Section II.B.1 below, we believe that if access is limited to data mandatorily provided, Commission access to the TADS, GADS, and protection system misoperations databases will not result in a reduction in the level or quality of information that users, owners and operators of the Bulk-Power System share with NERC and the Regional Entities, and will not otherwise result in a so-called chilling effect on NERC's data-gathering efforts. We also discuss the following matters below: (A) Authority to require and need for Commission access to NERC

databases; (B) information voluntarily provided; (C) confidential information; (D) NERC's alternative proposal; and (E) information collection.

A. Authority To Require and Need for Commission Access to NERC Databases NOPR

18. In the NOPR, the Commission stated that its proposed access to the TADS, GADS and protection system misoperations databases regarding U.S. facilities was "necessary to carry out the Commission's statutory authority: (1) To evaluate the need to direct new or modified Reliability Standards under section 215(d) of the FPA; and (2) to better understand NERC's periodic assessments and reports . . . regarding the reliability and adequacy of the Bulk-Power System under section 215(g) of the FPA."⁴² The Commission first explained that access to the databases would inform it "more quickly, directly and comprehensively about reliability trends or reliability gaps that might require the Commission to direct the ERO to develop new or modified Reliability Standards," responsibility which falls not only to the ERO but also to the Commission under FPA section 215(d).⁴³ The Commission noted that each of the three databases could provide important information regarding the need for new or modified Reliability Standards and for assessing Bulk-Power System reliability, as NERC had itself recognized when justifying the need for mandatory reporting (to NERC) of TADS, GADS, and protection system misoperation data.⁴⁴

19. Second, the Commission explained in the NOPR that access to the data would "assist the Commission with its understanding of the reliability and adequacy assessments periodically submitted by NERC pursuant to section 215(g) of the FPA."⁴⁵ The Commission further stated that having direct access to the underlying data used in aggregate form in NERC's reliability reports would "help[] the Commission to monitor causes of outages and detect emerging reliability issues."⁴⁶

Comments

20. Four commenters generally support, or do not oppose, the Commission's proposal to access

NERC's TADS, GADS, and protection system misoperations databases.⁴⁷ Resilient Societies supports the Commission's proposed access to the NERC data "because NERC has not performed, or not disclosed data analysis when the results might not be consistent with the interest of NERC's industry members in avoiding or minimizing regulation."⁴⁸

21. All other commenters, including NERC,⁴⁹ the Trade Associations, and the Public Power Associations oppose the Commission's proposed regulation requiring NERC to provide the Commission access to NERC's TADS, GADS, and protection system misoperations databases.

22. The Trade Associations maintain that the Commission does not need access to these NERC databases to fulfill its obligations under FPA section 215, and that the Commission has multiple processes it can use to achieve its stated goals, including events analysis, reviewing patterns and trends in compliance and enforcement, coordination with NERC's technical committees, evaluating NERC's periodic and special reliability assessments, periodic review of individual standards, and discussions on emerging issues at technical conferences and workshops.⁵⁰ The Trade Associations argue that these processes are sufficient to allow the Commission to obtain information needed to perform its functions "without accessing the highly-sensitive, facility-specific raw data contained in the databases."⁵¹

The Trade Associations assert that "access to the raw data contained in the databases without NERC and industry analysis will not directly achieve the Commission's goals of identifying gaps in Reliability Standards and in understanding NERC assessments because in and of itself the raw data, without context or NERC technical analysis, does not shed light on these

⁴⁷ WIRAB supports the NOPR as a whole. Resilient Societies, David Bardin, and SGS support greater access to NERC data, including access by the Commission, but Resilient Societies and David Bardin question the need to keep the data non-public, as discussed further in Section II.B.2, *infra*.

⁴⁸ Resilient Societies Comments at 2.

⁴⁹ While NERC recognizes the Commission's objective of obtaining data needed to fulfill its oversight responsibilities, NERC asks the Commission to adopt its alternative proposal, discussed below in Section II.B.3, under which NERC would provide the Commission with access to anonymized TADS, GADS, and protection system misoperations data. The Northwest Public Power Association (NWPPA) and Western Electricity Coordinating Council (WECC) filed comments in support of NERC's comments, including NERC's proposed alternative to provide access to anonymized data.

⁵⁰ See Trade Associations Comments at 5, 6–11.

⁵¹ *Id.* at 6–7.

³⁹ See, e.g., State of Reliability 2015 at 45–48.

⁴⁰ *Availability of Certain North American Electric Reliability Corporation Databases to the Commission*, Notice of Proposed Rulemaking, 80 FR 58,405 (Sept. 29, 2015), 152 FERC ¶ 61,208 (2015) (NOPR).

⁴¹ The Appendix to this Final Rule lists the entities that filed comments in response to the NOPR.

⁴² NOPR, 152 FERC ¶ 61,208 at P 17.

⁴³ *Id.* P 18.

⁴⁴ See *id.* P 19 (quoting NERC's statements that "TADS data is intended to provide a basis for standards" and that protection system misoperations data is used to "[i]dentify trends in Protection System performance that negatively impact reliability.")

⁴⁵ *Id.* P 20.

⁴⁶ *Id.*

matters.”⁵² While the Trade Associations thus object to any new requirement that NERC provide access to these databases, the Trade Associations ask that, if the Commission decides to move forward with such a requirement, the Commission issue a modified proposal to better explain “how direct access to the raw data collected by NERC in the GADS, TADS, and misoperations databases will support [the Commission’s] needs.”⁵³

Further, the Trade Associations and several other commenters argue that the NOPR proposal is not “consistent” with the division of responsibilities between the ERO and the Commission set forth in FPA section 215.⁵⁴ The Trade Associations assert that “[t]he assessment of reliability data in these databases is squarely within the role of the ERO, which ‘conduct[s] periodic assessments of the reliability and adequacy of the bulk-power system’ ” and that “[t]here is no equivalent role for the Commission.”⁵⁵ Similarly, the Public Power Associations contend that the NOPR proposal would impinge on the ERO’s statutory authority to develop Reliability Standards, and that the FPA contemplates that the ERO should be the “principal agent for standards development and the assessment of grid reliability.”⁵⁶

23. The Public Power Associations point out that the Commission is to give due weight to the technical expertise of the ERO under FPA section 215(d)(2) and that FPA section 215(g) does not give the Commission an oversight role in performing periodic assessments of the reliability and adequacy of the Bulk-Power System, and express a general concern that the NOPR “suggests a shift in the balance of responsibilities between NERC and FERC contemplated

by FPA section 215.”⁵⁷ Similarly, NERC maintains that the proposed rule would “operate in tension” with section 215 of the FPA and would “chill industry collaboration with the ERO and undermine the regulatory framework for reliability.”⁵⁸

Commission Determination

24. We find that the Commission’s authority to require access to NERC’s TADS, GADS, and protection system databases is fully consistent with FPA section 215, and that the NOPR adequately explained why access to that data is necessary for the Commission to carry out its obligations under FPA section 215.⁵⁹

25. First, we disagree with arguments that Commission access to these databases reflects an unwarranted shift in the balance of responsibilities between NERC and the Commission under section 215 of the FPA.⁶⁰ To the contrary, we believe that NERC and other industry commenters overstate the impact of the NOPR proposal, which recognized and acknowledged the respective roles of the Commission and NERC under section 215 of the FPA.⁶¹ NERC, as the ERO, is responsible for developing reliability standards to address reliability issues, whether identified by NERC, its stakeholders, or the Commission; the Commission then reviews and determines whether to approve those standards. Nothing in the NOPR or this Final Rule proposes to change that structure.

26. Rather, as explained in the NOPR and this Final Rule, the Commission has determined that access to these databases will aid the Commission’s implementation of its statutory authority, under section 215(d)(5) of the FPA, to determine whether to require NERC to develop new or modified reliability standards. As with prior instances in which the Commission acted pursuant to this authority,⁶² NERC and its stakeholder process—not the Commission—would be responsible for the development of new or modified standards directed by the Commission. Therefore, Commission access to these

databases does not supplant the role that NERC and its stakeholder process have in the standards development process.

27. We also disagree with assertions that the requirement in section 215(d)(2) of the FPA that the Commission give “due weight to the technical expertise of the [ERO] with respect to the content of a proposed standard or modification to a reliability standard”⁶³ suggests that the Commission must limit itself to an oversight role in the standards development process, and should broadly defer to NERC and its stakeholders on matters related to standards development.⁶⁴ As a threshold matter, the Commission did not rely on FPA section 215(d)(2), which addresses the Commission’s authority to approve proposed Reliability Standards, as its statutory basis for proposing the new regulation. Instead the Commission relied on FPA section 215(d)(5), which vests the Commission with the authority, “upon its own motion or upon complaint, [to] order the [ERO] 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.”⁶⁵ Notably, while section 215(d)(2) affords “due weight” to the technical expertise of the ERO concerning the *content* of the standard, neither FPA section 215(d)(2) nor FPA section 215(d)(5) requires the Commission to afford “due weight” to the ERO’s selection of which specific matters warrant a Reliability Standard. To the contrary, section 215(d)(5) explicitly authorizes the Commission to direct the ERO to develop new or modified Reliability Standards to address a specific matter if the Commission deems it “appropriate” to carry out section 215 of the FPA.⁶⁶ We therefore see no inconsistency between affording “due weight” under section 215(d)(2) and ensuring the Commission’s ability to effectively implement its authority under section 215(d)(5).

28. Moreover, contrary to several commenters’ assertions, nothing in FPA

⁵² *Id.* at 12–13. *See also* NERC Comments at 21–22 (stating that the proposed regulation “is not tailored to support the Commission’s objective under the NOPR, because it will not enable the Commission to place relevant data in context for purposes of completing meaningful analyses of the BPS” and that “the Commission would not be able to place relevant data in context to derive useful information, which may result in incorrect or inappropriate conclusions” without engaging in a collaborative process with NERC).

⁵³ Trade Associations Comments at 12.

⁵⁴ *See e.g.*, Public Power Associations Comments at 2 (“the NOPR does not appear tailored to achieving that goal in a manner consistent with [FPA section 215’s] statutory scheme.”).

⁵⁵ Trade Associations Comments at 16 (citing 16 U.S.C. 824o(g), and quoting Commissioner LaFleur’s concurring statement to the NOPR noting that “it is important that we recognize the distinction between (the Commission’s) oversight role and NERC’s primary responsibility to monitor reliability issues and to propose standards to address them.”)

⁵⁶ Public Power Associations Comments at 7; *see also* NERC Comments at 16–20.

⁵⁷ Public Power Associations Comments at 7–8. The Public Power Associations accordingly “urge the Commission to be mindful of the inefficiencies and potential confusion that would result from a situation in which NERC and FERC perform the same analytical roles.” *Id.* at 2.

⁵⁸ NERC Comments at 6.

⁵⁹ *See* NOPR, 152 FERC ¶ 61,208 at PP 17–20.

⁶⁰ *E.g.*, Public Power Associations Comments at 6–9; Trade Associations Comments at 15–17.

⁶¹ NOPR, 152 FERC ¶ 61,208 at P 18.

⁶² *See, e.g.*, *Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166 (2014); *Reliability Standards for Geomagnetic Disturbances*, 143 FERC ¶ 61,147 (2013).

⁶³ 16 U.S.C. 824o(d)(2).

⁶⁴ *E.g.*, Public Power Associations Comments at 7–8.

⁶⁵ *Id.* 824o(d)(5).

⁶⁶ We note that a proposed Reliability Standard submitted for Commission approval in response to a directive pursuant to section 215(d)(5) would be reviewed by the Commission pursuant to section 215(d)(2) of the FPA. Therefore, the ERO’s technical expertise with respect to the content of the proposed standard would be afforded due weight.

section 215 states or suggests that the Commission's authority to direct the development or amendment of Reliability Standards is secondary to or otherwise "duplicative" of the ERO's authority to develop Reliability Standards on its own. NERC's authority to develop Reliability Standards under FPA section 215(d)(2) and the Commission's authority to direct NERC to develop Reliability Standards under FPA section 215(d)(5) are independent. Accordingly, the NOPR proposal does not represent a "shift" in responsibilities between the Commission and the ERO, and is instead part of the necessary input required by the Commission to carry out its statutory obligations to determine whether to direct the development or modification of a Reliability Standard under FPA section 215(d)(5).⁶⁷

29. With respect to how the Commission would use the data from the TADS, GADS, and protection system misoperations databases, including the Trade Associations' and others commenters' contention that access to raw data would not be useful in achieving the Commission's objectives, the Commission did not indicate in the NOPR that it would rely exclusively on such data in assessing the need for NERC to develop new or modified Reliability Standards or to better understand NERC's reliability assessments. Instead, the Commission has identified data that would assist in carrying out FPA section 215, and the Commission intends to analyze data from the NERC databases in addition to data from other existing resources (*e.g.*, Commission, NERC, and industry resources), including disturbance reporting data and event analysis information, to facilitate the Commission's oversight of Bulk-Power System reliability. With respect to the Trade Associations' position that the Commission has other mechanisms that are adequate to fulfill its oversight obligations, we do not agree that the Commission's authority is limited to those mechanisms, particularly where we find, as here, that access to the additional information included in the three NERC databases is needed to meet our statutory obligations under FPA section 215.

30. We recognize, however, that we will be able to better evaluate the

usefulness of the data in question as the Commission gains experience analyzing those data. Accordingly, we will continue to assess our need for access to these NERC databases after we gain adequate experience with this data following implementation of the new regulation.

B. Access to Voluntarily-Provided and Confidential Information

31. NERC and a number of other commenters raise concerns about the impact of the Commission's access to the TADS, GADS, and protection system misoperations databases on the overall quality of data shared with NERC, asserting that such access may negatively impact the industry's provision of voluntary data to NERC, and that it otherwise raises confidentiality concerns that may not be easily addressed. The Trade Associations and other commenters argue that these concerns should preclude the Commission's moving forward with any requirement to provide Commission access to the raw data in the TADS, GADS, and protection system misoperation databases, while NERC and other commenters suggest an alternative approach (discussed in Section II.B.3, below) that would provide the Commission with limited access to the databases while attempting to more fully protect confidential or sensitive information provided to NERC by users, owners, and operators of the Bulk-Power System.

Information Voluntarily Provided NOPR

32. In the NOPR, the Commission proposed to amend its regulations to require NERC to provide the Commission with access to the TADS, GADS and protection system misoperations databases. The Commission explained that these databases are populated with data collected through mandatory NERC data requests or Reliability Standards and that the access proposed in the NOPR would be limited to U.S. facilities.⁶⁸ While the NOPR did not explicitly address whether the Commission's access to information in these databases should exclude data voluntarily provided to NERC (other than information regarding non-U.S. facilities), the Commission's description of each database focused on the data that is *required* to be provided to NERC and the justifications NERC has offered in making reporting of that data mandatory.⁶⁹

Comments

33. NERC contends that the NOPR proposal could have a negative impact on the quality and level of data voluntarily submitted by industry to NERC (*i.e.*, data that is not currently required to be submitted to NERC under mandatory NERC data requests or Reliability Standards). NERC states that while the NOPR implies that it affects only data submitted pursuant to mandatory data reporting obligations, NERC is concerned that the proposed rule instead implicates both mandatory and voluntary data. Specifically, NERC states that TADS includes data voluntarily shared "by non-U.S. Transmission Owners and data voluntarily shared prior to 2015 on Bulk Electric System transmission elements under 200 kV."⁷⁰ NERC also states that GADS includes data "voluntarily provided from generating units with less than 20 MW of capacity, data voluntarily provided prior to 2013 from generating units with less than 50 MW of capacity, and data being voluntarily shared for certain GADS event record fields."⁷¹ NERC further states that the protection system misoperations database includes "voluntary data currently shared by non-U.S. entities and data shared with Regional Entities prior to EPA Act 2005."⁷² Ultimately, NERC is concerned that the proposed rule requiring Commission access to these databases could "return both NERC and the Commission to a state where industry only shares reliability-related data in response to mandatory data requests that provide a narrow window into the web of complex information necessary to ensure reliability."⁷³

34. The Public Power Associations and CEA agree with NERC's concerns and add that, if the Commission chooses to adopt the NOPR proposal, the Final Rule should clarify that the Commission will only use the accessed data for the purposes stated in the NOPR and not for compliance or enforcement purposes.⁷⁴ CEA also requests that, if the Commission moves forward with its proposed regulation, it should modify the language of the regulation to clarify

⁷⁰ NERC Comments at 8–9.

⁷¹ *Id.* at 9.

⁷² *Id.*

⁷³ NERC Comments at 33.

⁷⁴ Public Power Associations Comments at 11; CEA Comments at 10–11 (stating that "the establishment and administration of [the TADS, GADS, and protection system misoperations] databases have not been effectuated with FERC or other applicable governmental authorities in mind.")

⁶⁷ As stated in the NOPR and as previously explained in Order No. 672, access to relevant information, such as the information to be obtained through the new regulation, allows the Commission to fulfill its statutory obligations under section 215 of the FPA. NOPR, 152 FERC ¶ 61,208 at P 16 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 114).

⁶⁸ See NOPR, 152 FERC ¶ 61,208 at PP 5–14, 15.

⁶⁹ *Id.* PP 5–14, 19.

that the Commission's access to data is limited to data regarding U.S. facilities.

35. The Trade Associations also agree with NERC's concerns and, more broadly, argue that the NOPR proposal could "chill" industry information-sharing with NERC generally. The Trade Associations state that this chilling effect will be "more profound" if the Commission should, in the future, request access to other NERC databases that rely on voluntary information-sharing (such as NERC's Electricity Information Sharing and Analysis Center), or if the databases "are used for non-reliability purposes, such as economic policy and enforcement purposes."⁷⁵

Commission Determination

36. In the NOPR, the Commission expressly proposed to exclude from the database access requirement information concerning non-U.S. facilities, and we will maintain that exclusion in the regulation as adopted. The Commission agrees with CEA that this exclusion can be clarified through a modification to the language of the proposed regulation, and we, accordingly, add a new sentence to the end of the regulation to clarify that Commission access will be limited to data regarding U.S. facilities.

37. In addition, while the NOPR did not explicitly state that the Commission's access to data would be limited to data provided to NERC as part of a mandatory data request or other NERC requirement, the Commission believes that it can achieve its objectives as stated in the NOPR with access to mandatorily-provided data only. Adopting this approach should mitigate NERC's and other commenters' concerns regarding the impact of the proposed regulation on the level and quality of voluntary information-sharing with NERC and the Regional Entities. Because the Commission will only be accessing data that entities are *required* to provide to NERC, there should be no impact on an entity's willingness to share additional, voluntary information.

38. While NERC maintains that entities may be hesitant to provide voluntary information to NERC or the Regional Entities because the Commission could seek to access that information in the future, we do not find these arguments to be persuasive, particularly in light of the Commission's decision to exclude voluntarily-provided information from the scope of the Final Rule. Moreover, we find that these concerns do not override our need for the data contained in NERC's TADS,

GADS, and protection system misoperation databases.

39. With respect to requests to limit our use of the data accessed, the Commission's intent in seeking access to the data is as stated in the NOPR (*i.e.*, to assess the potential need for new or modified Reliability Standards and to better understand NERC's periodic reliability and adequacy assessments). We believe the data will be most useful for evaluating overall reliability trends and identifying specific reliability concerns. For example, the data could provide insight into chronic or recurring system deficiencies, provide a basis for comparison of the reliability benefits of different kinds of equipment or system configurations, or be used to assess the effectiveness of reliability efforts across NERC, Regional Entities and industry. However, the Commission is not precluded from using the accessed data for other statutory purposes.

1. Confidentiality

NOPR

40. In the NOPR, the Commission recognized that its proposal to access data in the TADS, GADS, and protection system misoperations databases "might raise confidentiality issues," and stated that if the collected data include confidential information it would "take appropriate steps, as provided for in our governing statutes and regulations, in handling such information."⁷⁶

Comments

41. NERC and industry commenters identify maintaining the confidentiality of TADS, GADS, and protection system misoperations data accessed by the Commission as a major concern with the NOPR proposal. NERC contends that treating such data as confidential is appropriate because "the detailed data implicated by the NOPR could be misused to target vulnerabilities in the [Bulk-Power System]."⁷⁷ NERC maintains that while "data implicated by the NOPR would normally be eligible for exemption from [the Freedom of Information Act (FOIA)] disclosure as commercial information or sensitive information in light of security interests, and protected as Confidential Information or [Critical Energy Infrastructure Information (CEII)] under Commission regulation, eligibility for exemption from disclosure under FOIA only partially mitigates risk to confidentiality," in part because the Commission has discretion whether to invoke such an exemption.⁷⁸ NERC also

asserts that the Commission has disclosed information in the past that was eligible for exemption from FOIA, including information treated as CEII.⁷⁹

42. Similarly, the Trade Associations maintain that the regulation, if adopted, "would create a heightened risk of improper disclosure of the GADS, TADS, and misoperations information, risking harm to the Commission's jurisdictional markets and the security of the nation's bulk-power system."⁸⁰ The Trade Associations describe the potential harm that could result from disclosure of the TADS, GADS, and misoperations data, and maintain that the heightened risk of disclosure stems not only from the potential for release through a FOIA request, but also from the unintentional release of data through security breaches.⁸¹ As examples, the Trade Associations state that data accessed by the Commission could be accidentally disseminated through "misplaced hard drives or laptops, inadvertently directed emails, or incorrectly granted information access," and assert that "the risk of information loss also increases with the number of individuals and organizations accessing and holding the data."⁸²

43. Resilient Societies, by contrast, objects to the NOPR's proposal to preserve the confidentiality of the accessed data, raising a concern that the Commission might be restricted "from analyzing the NERC data and then using conclusions developed thereby to support rulemaking or other public policy actions."⁸³ Resilient Societies accordingly requests that the Commission adopt the NOPR with "appropriate additional provisions to allow public disclosure of modeling parameters and other conclusions developed from the TADS and GADS data."⁸⁴

Commission Determination

44. It is clear from the record that maintaining the confidentiality of data included in the TADS, GADS, and protection system operations databases is a significant concern to NERC and the entities that provide information to these databases. The Commission recognizes that information contained in the TADS, GADS, and protection system misoperation databases may be sensitive, and that such information may qualify as CEII under the

⁷⁹ *Id.* at 28.

⁸⁰ Trade Associations Comments at 18–19.

⁸¹ *Id.* at 20–21.

⁸² *Id.* at 21.

⁸³ Resilient Societies Comments at 2.

⁸⁴ *Id.* at 3.

⁷⁵ Trade Associations Comments at 26.

⁷⁶ NOPR, 152 FERC ¶ 61,208 at P 22.

⁷⁷ NERC Comments at 10.

⁷⁸ *Id.* at 27–28.

Commission's regulations. As discussed below, and to address these concerns, we will defer the effectiveness of this Final Rule until the Commission issues a final rule adopting regulations to implement its recently-expanded authority to protect against the disclosure of "critical electric infrastructure information."

45. As stated in the NOPR, the Commission commits that we will take appropriate steps in handling such information, in accordance with our governing statutes and regulations. Subsequent to the issuance of the NOPR, the Commission's authority to safeguard sensitive information has been enhanced through the recent enactment of FPA section 215A.⁸⁵ FPA section 215A creates a new statutory FOIA exemption for information designated "critical electric infrastructure information" by the Commission or the Department of Energy.⁸⁶ Concurrently with the issuance of this Final Rule, the Commission is issuing a Notice of Proposed Rulemaking proposing to amend the Commission's regulations to implement the provisions of the FAST Act pertaining to the designation, protection and sharing of critical electric infrastructure information, and proposing to amend its existing regulations pertaining to CEII.⁸⁷

46. We determine that the Commission's expanded authority to safeguard sensitive information adequately addresses the concerns raised in the comments regarding confidentiality. By deferring Commission access to the databases until issuance of a final rule implementing the new "critical electric infrastructure information" protection, we will ensure that the Commission has the full authority of that law at its disposal to protect against the improper disclosure of "critical electric infrastructure information" contained in the databases.⁸⁸ We also believe that

this proposal strikes an appropriate balance between the Commission's need to access potentially sensitive information, and the need to protect that information against improper disclosure.⁸⁹

47. Moreover, whatever potential risks might remain regarding the dissemination of GADS, TADS, and protection system misoperations database data do not, in our view, outweigh the need for Commission access to carry out our statutory responsibilities under FPA section 215. Since passage of the EPAct in 2005, the Commission has generally had to rely on aggregated and summarized data in its assessments of the state of reliability and of the efficacy of current Reliability Standards. Based on that experience, the Commission has determined that such aggregated and summarized data do not allow the Commission to perform the reliability analyses necessary to accomplish the purposes of this rule.

2. NERC Alternative Proposal To Provide Anonymized Data NOPR

48. Under the Commission's proposed regulation, NERC would be required to provide the Commission access to the mandatory TADS, GADS, and protection system misoperations databases regarding U.S. facilities, on a non-public and on-going basis as soon as the proposed regulation becomes effective.

Comments

49. NERC proposes a two-phase alternative approach to avoid a number of the concerns NERC and the industry have with the NOPR proposal. In the first phase, NERC would provide anonymized data to the Commission "within 90 days of the Commission's order on the NOPR."⁹⁰ In the second phase, "NERC staff would work collaboratively with Commission staff through an Information Sharing Working Group to develop NERC-managed tools to provide Commission staff access to anonymized versions of TADS, GADS, and protection system misoperations databases."⁹¹ NERC proposes that the Commission access GADS data through NERC's existing "pc-GAR" product, which "provides

any particular information in the databases is, in fact, "critical electric infrastructure information."

⁸⁹ During the intervening period between issuance of this Final Rule and the Final Rule becoming effective, Commission staff will work with NERC to address any technical, procedural, or confidentiality issues to ensure that Commission staff can promptly access the databases upon the Final Rule becoming effective.

⁹⁰ NERC Comments at 4.

⁹¹ *Id.* at 4–5.

users with access to anonymized reliability information from the over 5,000 generating units reporting under GADS, and allows users to select from hundreds of data combinations," and provides users the ability to generate reports based on region, generator type, and fuel type.⁹² NERC proposes to give the Commission access to pc-GAR and to develop "similar tools" for TADS and protection system misoperations data.⁹³

50. Several industry commenters support NERC's alternative approach, including CEA, KCP&L, NWPPA, and WECC.⁹⁴ While the Public Power Associations also support NERC's alternative proposal, they recommend that the Commission adopt NERC's alternative approach as an intermediate step, and then revisit the effectiveness of NERC's approach after a reasonable period for testing the efficacy of using the anonymized data (e.g., after one or two years).

51. Resilient Societies opposes NERC's proposed alternative approach because it contends that "[o]nly by knowing the location of TADS and GADS events, and by cross-referencing to network configuration, will analysts at FERC be able to fully understand reasons for equipment failure, system misoperations, or grid outages."⁹⁵

Commission Determination

52. We are not persuaded that the anonymized data, in the form offered by NERC, would provide the Commission with sufficiently useable information to achieve its objectives as stated in the NOPR. Were NERC to fully anonymize the databases, it would have to mask not only fields that directly identify entities (i.e., entity name and/or NERC Compliance Registry (NCR) number), but would also have to mask every field that could contain information which could allow identification of a particular entity (e.g., where the location or characteristics of a particular facility could lead to identification of the reporting entity). While we agree that the "attributable" information in these data fields is sensitive and could be entitled to non-public treatment by the Commission (as discussed above in Section II.B.2), we believe that masking all fields which may contain such data before providing it to the Commission would severely constrain the value of

⁹² *Id.* at 11. The pc-GAR is a family of products that provides the automated personal computer (pc-) version of NERC's Generating Availability Report (GAR). See <http://www.nerc.com/pa/RAPA/gads/Pages/pc-GAR.aspx>.

⁹³ *Id.*

⁹⁴ See, e.g., CEA Comments at 15, WECC Comments at 2.

⁹⁵ Resilient Societies Comments at 2.

⁸⁵ See Fixing America's Surface Transportation (FAST Act), Public Law 114–94, 61003, 129 Stat. 1312 (2015).

⁸⁶ FPA section 215A(a)(3) defines critical electric infrastructure information as "information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the Commission or other Federal agency, other than classified national security information, that is designated as critical electric infrastructure by the Commission or the Secretary pursuant to subsection (d). Such term includes information that qualifies as critical energy infrastructure information under the Commission's regulations." *Id.*

⁸⁷ *Regulations Implementing FAST Act Section 61003—Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information*, 155 FERC ¶ 61,278 (2016).

⁸⁸ In deferring the effectiveness of this Final Rule, the Commission is not making a determination that

the Commission's access to the databases. This masking would likely preclude Commission access to information such as the affected facility names and locations, affected equipment names, which generation or transmission facilities were tripped as a result of a misoperation, the event description, and the corrective actions taken following a misoperation.

53. The masking of such information would limit the Commission's ability, *inter alia*, to identify reliability problems in specific geographic areas, or for specific failure modes or types of equipment. The accessible information would only allow the Commission to achieve a broad and generalized understanding of Bulk-Power System risks, and not the more detailed and meaningful analysis that the Commission seeks.

54. In addition, masking of information used to locate or identify outages of specific transmission or generation facilities would limit the Commission's ability to identify affected regional or sub-regional vulnerabilities, and accordingly limit its ability to make recommendations regarding the efficacy of existing regional Reliability Standards or the need for new or modified regional Reliability Standards. This aggregation or masking of information would also limit the Commission's ability to understand the causes of cascading failures where multiple outages occur in sequence and in close proximity or match the databases with other sources of information such as disturbance reporting data currently provided by NERC. For all of these reasons, we find that anonymized data taken from the databases would not allow the Commission to achieve the objectives set out in the NOPR. Accordingly, we find NERC's proposal not to be a viable alternative to the NOPR proposal.

III. Information Collection Statement

55. The following collection of information contained in this Final Rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).⁹⁶ OMB's regulations require approval of certain information collection requirements imposed by agency rules.⁹⁷ Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to this

collection of information unless the collection of information displays a valid OMB control number.

NOPR

56. In the NOPR, the Commission explained that the proposed regulation would make TADS, GADS, and protection system misoperations data regarding U.S. facilities, currently collected by NERC, available to the Commission and its staff on a non-public and ongoing basis. The Commission stated that the new regulation would not require NERC to collect new information, compile information into any kind of report, or reformulate its raw data. The Commission also stated its belief that it could be relatively straightforward for NERC to provide the Commission, and Commission staff, with access to TADS, GADS, and protection systems misoperations data, and noted that various entities currently have access to these data via an existing web interface. Accordingly, the Commission estimated that the one-time burden associated with compliance with the proposed rule would be *de minimis*, and would be limited to NERC reviewing the Commission's proposed regulation and providing the Commission and its staff with access to the existing TADS, GADS, and protection system misoperations databases.

57. The Commission solicited comments on the need for the required information, 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 respondents' burden, including the use of automated information techniques. Specifically, the Commission asked that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

Comments

58. The Trade Associations argue that the Commission's burden estimate as stated in the NOPR is deficient because it overlooks the burden on users, owner, and operators of the Bulk-Power System of providing the underlying data to NERC.⁹⁸ The Trade Associations maintain that by ignoring the burdens imposed as a result of NERC's underlying data collection, the Commission is effectively avoiding scrutiny by OMB. In addition, the Trade Associations assert that the information-

collecting activities associated with the new regulation are not covered under OMB's FERC-725 collection authorization because they do not relate to operational information collected from Regional Entities. Accordingly, the Trade Associations argue that a new OMB information collection authorization is required.

Commission Determination

59. For the reasons discussed below, the Commission adopts the Information Collection Statement included in the NOPR (*i.e.*, the Commission estimates that there will be a *de minimis* burden associated with the information collection requirements under the new regulation). Essentially, the only burden the new regulation imposes will be on NERC, and the only action required is for NERC to provide access to its existing TADS, GADS, and protection misoperation databases. While NERC may have to develop limited screens to ensure that information related to non-U.S. facilities or information voluntarily provided has been excluded, we understand that NERC currently has the capability to provide access to certain data within its databases while screening other data or data fields (similar to the access NERC provides using its pc-GAR product).

60. With respect to the Trade Associations' assertion that the NOPR's Information Collection analysis overlooks the burden imposed on registered entities by NERC's underlying reporting requirements, we do not agree that the Paperwork Reduction Act requires an examination of underlying information collection burdens that exist independent of the proposed regulation. In this case, the burden on the entities required to report data on U.S. facilities to NERC is already in place and remains mandatory and unchanged regardless of whether the Commission adopts the regulation or not.

61. Furthermore, contrary to the Trade Associations' assertions, OMB has reviewed the information collection burden associated with the underlying obligation on users, owners, and operators of the Bulk-Power System to report misoperations data to NERC. In approving earlier versions of the Reliability Standard that first imposed such a reporting obligation (*i.e.*, PRC-004), the Commission took into account the estimated burden imposed on registered entities to report the misoperations data to NERC.⁹⁹ The

⁹⁶ 44 U.S.C. 3507(d).

⁹⁷ 5 CFR 1320.11.

⁹⁸ Trade Associations Comments at 17.

⁹⁹ See NERC Reliability Standard PRC-004-2a (unchanged in Order No. 785 in RM12-16) and for PRC-004-2.1a (which replaced Reliability Standard

underlying misoperations reporting obligation was subsequently removed from Reliability Standard PRC-004-2.1 and moved into a separate data request pursuant to Section 1600 of NERC's Rules of Procedure. However, the underlying reporting burden to NERC was still reflected in the OMB burden estimate,¹⁰⁰ and is currently included in the FERC-725 information collection (OMB Control No. 1902-0255, recently approved by OMB on February 26, 2016).

62. Finally, the Trade Associations are incorrect with respect to the scope of existing FERC-725 (Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards), which covers the ERO's obligation to provide data to the Commission. FERC-725 includes information required by the Commission to implement the statutory provisions of section 215 of the FPA, and includes the burden, reporting and recordkeeping requirements associated with: (a) Self Assessment and ERO Application, (b) Reliability Assessments, (c) Reliability Standards Development, (d) Reliability Compliance, (e) Stakeholder Survey, and (f) Other Reporting.

63. As a result, this Final Rule will be submitted to OMB for review and approval as a "no material or nonsubstantive change to a currently approved collection."

Title: FERC-725, Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards.

Action: Revision of currently approved collection of information. *OMB Control No.:* 1902-0225.

Respondents for this Rulemaking: Electric Reliability Organization.

Frequency of Information: Initial implementation by the ERO to provide Commission access to TADS, GADS, and misoperations databases.

Internal review: The Commission has reviewed the proposed regulation and has determined that the proposed regulation is necessary to ensure the reliability and integrity of the nation's Bulk-Power System.

64. Interested persons may obtain information on the reporting requirements by contacting the Federal

Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

65. Comments concerning the information collections approved in this Final Rule and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-0710, fax: (202) 395-7285]. For security reasons, comments should be sent by email to OMB at the following email address: oira_submission@omb.eop.gov. Please reference the docket number of this Final Rule (Docket No. RM15-25-000) and OMB Control No. 1902-0225 in your submission.

IV. Environmental Analysis

66. 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.¹⁰¹ 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 not substantially change the effect of the regulations being amended.¹⁰² The actions here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

67. The Regulatory Flexibility Act of 1980 (RFA)¹⁰³ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) revised its size standard (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates.¹⁰⁴

68. The Commission is amending its regulations to require only the ERO (*i.e.*, NERC) to provide the Commission, and

Commission staff, with access, on a non-public and ongoing basis, to the existing TADS, GADS, and protections system misoperations databases. As discussed above, we estimate that the costs to the ERO associated with this Final Rule will be *de minimis*. Accordingly, the Commission certifies that the new regulation will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis is required.

VI. Document Availability

69. 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>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

70. 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.

71. User assistance is available for eLibrary and the Commission Web site during normal business hours from FERC 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. Email the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

72. These regulations are effective July 12, 2016. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the Final Rule to both houses of Congress and to the General Accountability Office.

By the Commission.

Issued: June 16, 2016.

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends Chapter I, Title 18,

PRC-004-2a), covered under FERC-725A (OMB Control No. 1902-0244); Reliability Standard PRC-004-2.1(i)a in Docket No. RM12-16, covered by FERC-725M (OMB Control No. 1902-0263); Reliability Standard PRC-004-3 (in Docket No. RD14-14), covered by FERC-725G1 (OMB Control No. 1902-0284); and Reliability Standard PRC-004-4 (in Docket No. RD15-3) (submitted to OMB for information only).

¹⁰⁰ See *North American Electric Reliability Corp.*, 151 FERC ¶ 61,129, at P 22 (2015).

¹⁰¹ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

¹⁰² 18 CFR 380.4(a)(2)(ii).

¹⁰³ 5 U.S.C. 601-612.

¹⁰⁴ SBA Final Rule on "Small Business Size Standards: Utilities," 78 FR 77,343 (Dec. 23, 2013).

part 39 of the *Code of Federal Regulations*, as follows:

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

■ 1. The authority citation for part 39 continues to read as follows:

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

■ 2. Amend § 39.11 to add paragraph (c) as follows:

§ 39.11 Reliability reports.

* * * * *

(c) The Electric Reliability Organization shall make available to the Commission, on a non-public and ongoing basis, access to the Transmission Availability Data System, Generator Availability Data System, and protection system misoperations databases, or any successor databases thereto. Such access will be limited to:

- (1) Data regarding U.S. facilities; and
- (2) Data that is required to be provided to the ERO.

The following appendix will not appear in the Code of Federal Regulations.

Appendix

Commenters

American Public Power Association, Large Public Power Council, and the Transmission Access Policy Study Group (collectively, Public Power Associations)
 Canadian Electricity Association (CEA)
 David Jonas Bardin (David Bardin)
 Edison Electric Institute, Electric Power Supply Association, Electricity Consumers Resource Council, and the National Rural Electric Cooperative Association (collectively, Trade Associations)
 Foundation for Resilient Societies (Resilient Societies)
 Kansas City Power & Light Company (KCP&L)
 North American Electric Reliability Corporation (NERC)
 Northwest Public Power Association (NWPPA)
 Rio Tinto Alcan Inc. (RTA)
 SGS Statistical Services (SGS)
 Tri-State Generation and Transmission Association, Inc. (Tri-State)
 Western Electric Coordinating Council (WECC)
 Western Interconnection Regional Advisory Board (WIRAB)

[FR Doc. 2016-14760 Filed 7-11-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9775]

RIN 1545-BN26

Requirement To Notify the IRS of Intent To Operate as a Section 501(c)(4) Organization; Final and Temporary Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the requirement, added by the Protecting Americans from Tax Hikes Act of 2015, that organizations must notify the IRS of their intent to operate under section 501(c)(4) of the Internal Revenue Code (Code). The regulations affect organizations described in section 501(c)(4) (section 501(c)(4) organizations) that are organized after December 18, 2015, and certain section 501(c)(4) organizations existing on that date. The text of the temporary regulations serves as the text of the proposed regulations set forth in the related notice of proposed rulemaking (REG-101689-16) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES:

Effective Date: These regulations are effective on July 8, 2016.

Applicability Date: For date of applicability, see § 1.506-1T(f).

FOR FURTHER INFORMATION CONTACT:

Chelsea Rubin at (202) 317-5800 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final and temporary regulations will be reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-2268.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This Treasury decision contains temporary regulations under section 506 of the Code. Section 405 of the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. 114-113, div. Q) (the PATH Act), enacted on December 18, 2015, added section 506 to the Code and amended sections 6033 and 6652. Because the statutory provisions were effective upon enactment and certain section 501(c)(4) organizations must notify the IRS within 60 days of formation, these temporary regulations are necessary to provide prompt guidance to enable section 501(c)(4) organizations to satisfy the new statutory notification requirement and provide appropriate transition relief.

1. Section 501(c)(4) Organizations

Section 501(a) of the Code generally provides that an organization described in section 501(c) is exempt from federal income tax. Section 501(c)(4) describes certain civic leagues or organizations operated exclusively for the promotion of social welfare and certain local associations of employees. An organization is described in section 501(c)(4) and exempt from tax under section 501(a) if it satisfies the requirements applicable to such status. Subject to certain exceptions, section 6033, in part, requires organizations exempt from taxation under section 501(a) to file annual information returns or notices, as applicable.

Although an organization may apply to the IRS for recognition that the organization qualifies for tax-exempt status under section 501(c)(4), there is no requirement to do so (except as provided in section 6033(j)(2), which requires organizations that lose tax-exempt status for failure to file required annual information returns or notices and want to regain tax-exempt status to apply to obtain reinstatement of such status). Accordingly, a section 501(c)(4) organization that files annual information returns or notices, as required under section 6033, need not seek an IRS determination of its qualification for tax-exempt status in order to be described in and operate as a section 501(c)(4) organization.