Navigating Noncompliance Resolution

AJ Smullen
Assistant Manager, Enforcement and Special Projects

Antitrust Admonition

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Notice of this meeting was posted on the Texas RE website and this meeting is being held in public. Participants should keep in mind that the listening audience may include members of the press, representatives from various governmental authorities, and industry stakeholders.

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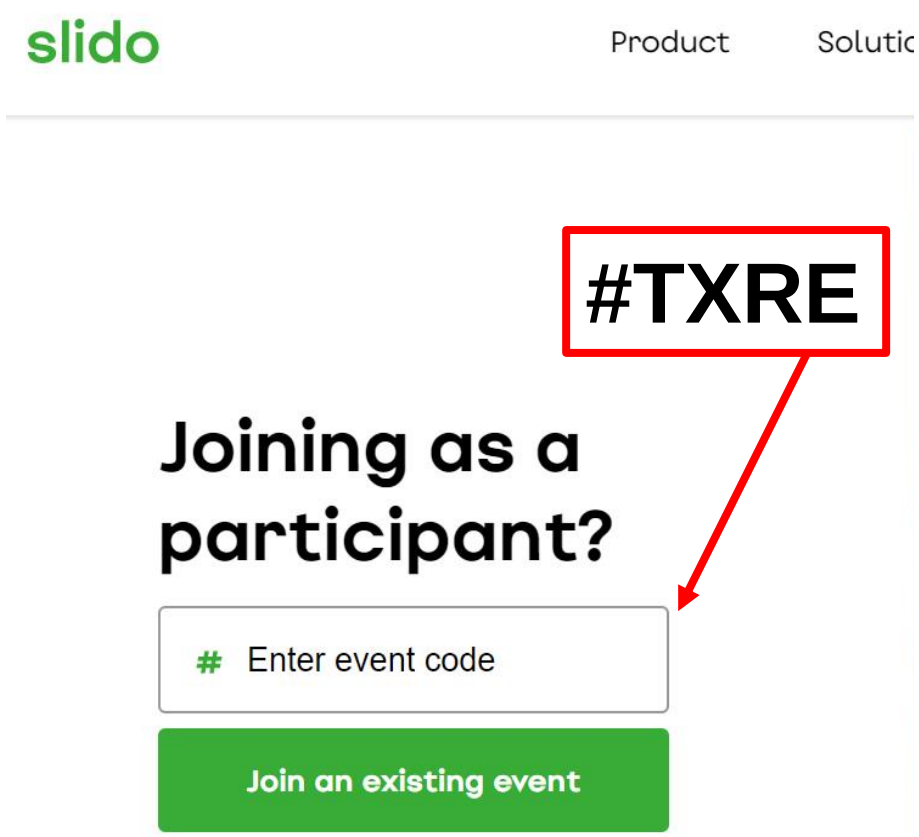


Slido Question #1

Have you ever been part of a noncompliance resolution?

Navigating Noncompliance Resolution

AJ Smullen
Assistant Manager, Enforcement and Special Projects

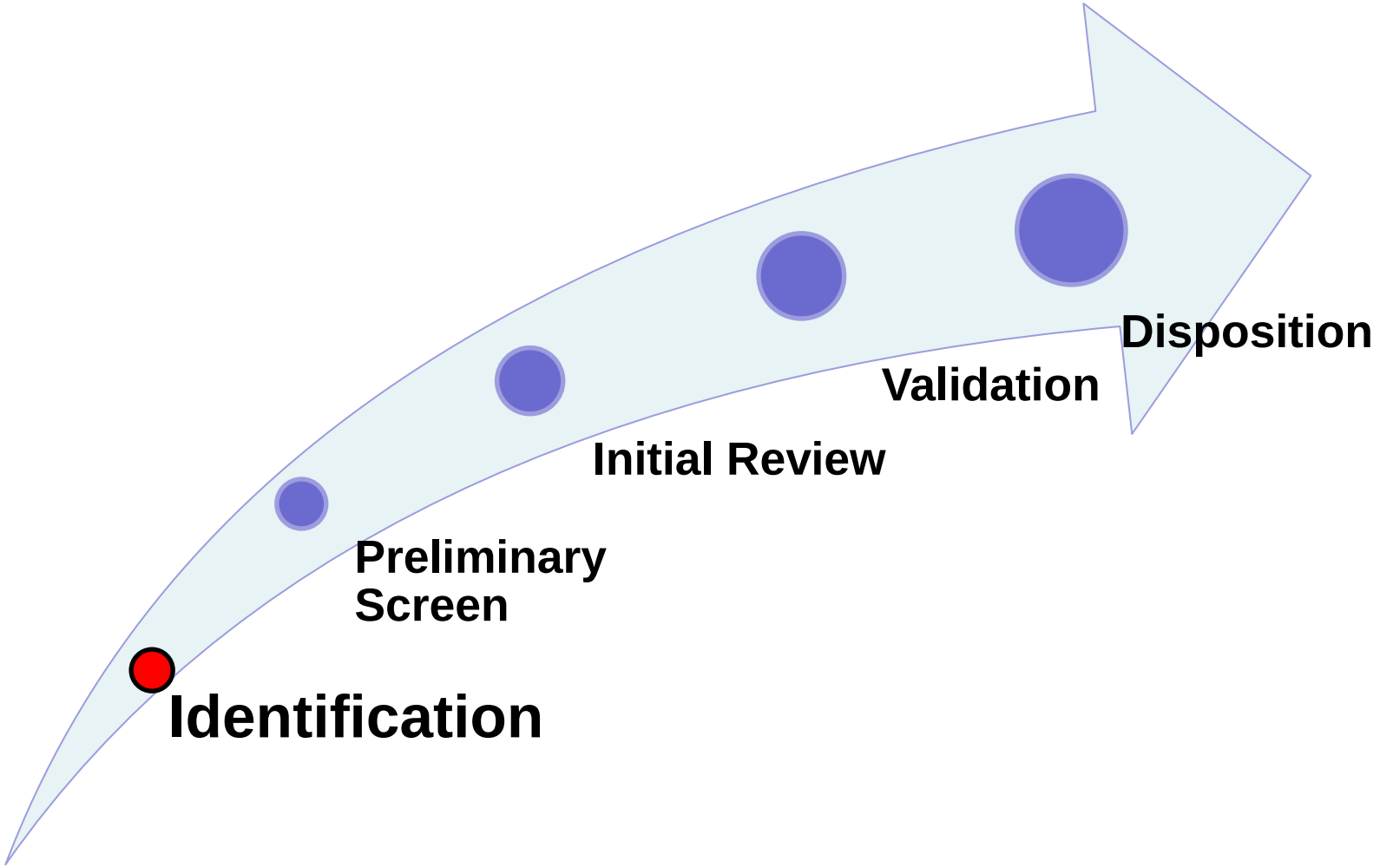
The Enforcement Department: What We Do

Evaluate Potential Noncompliance with NERC Reliability Standards

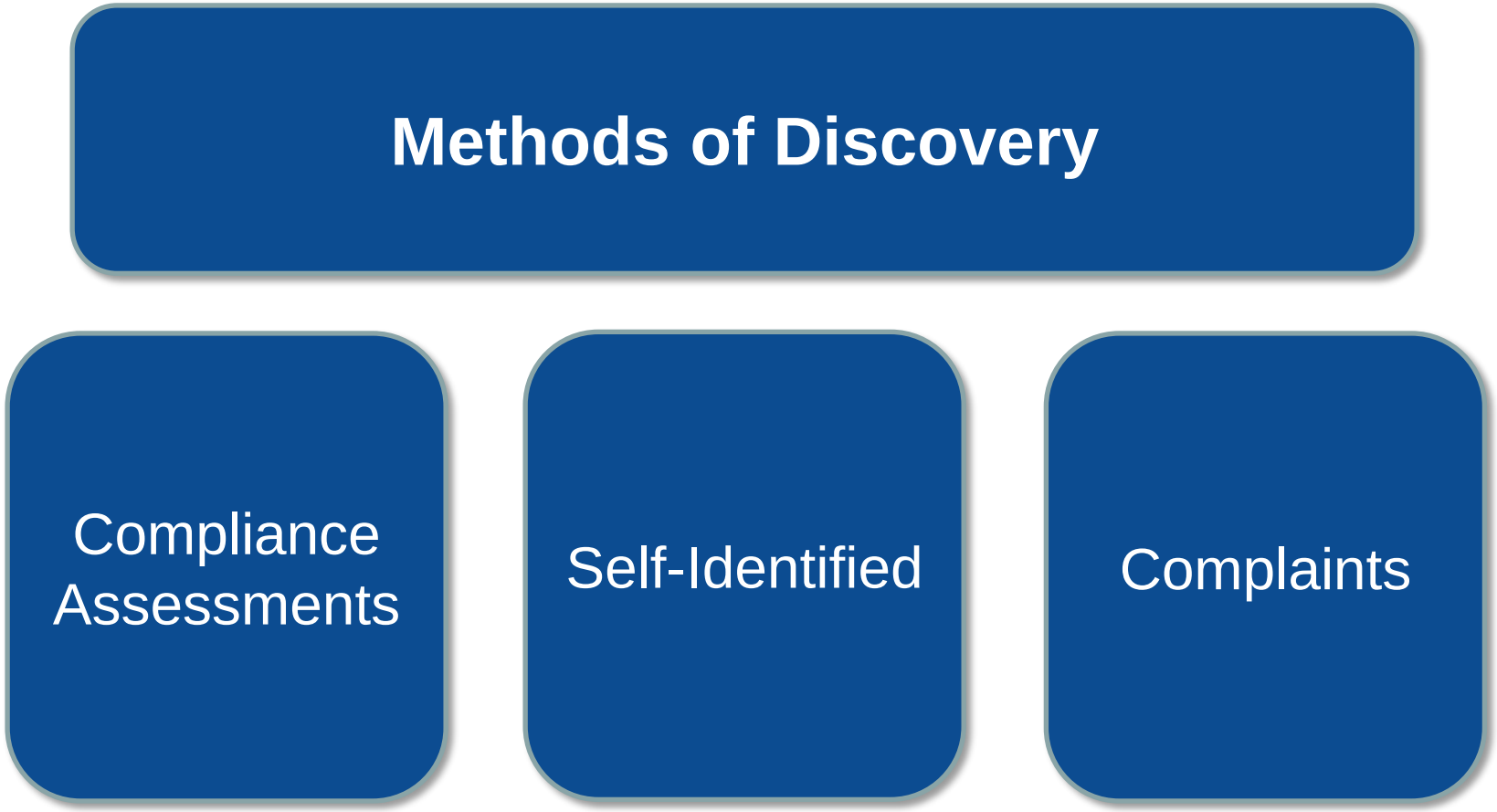
Determine the Appropriate Method of Disposition

Submit the Written Disposition to NERC and FERC

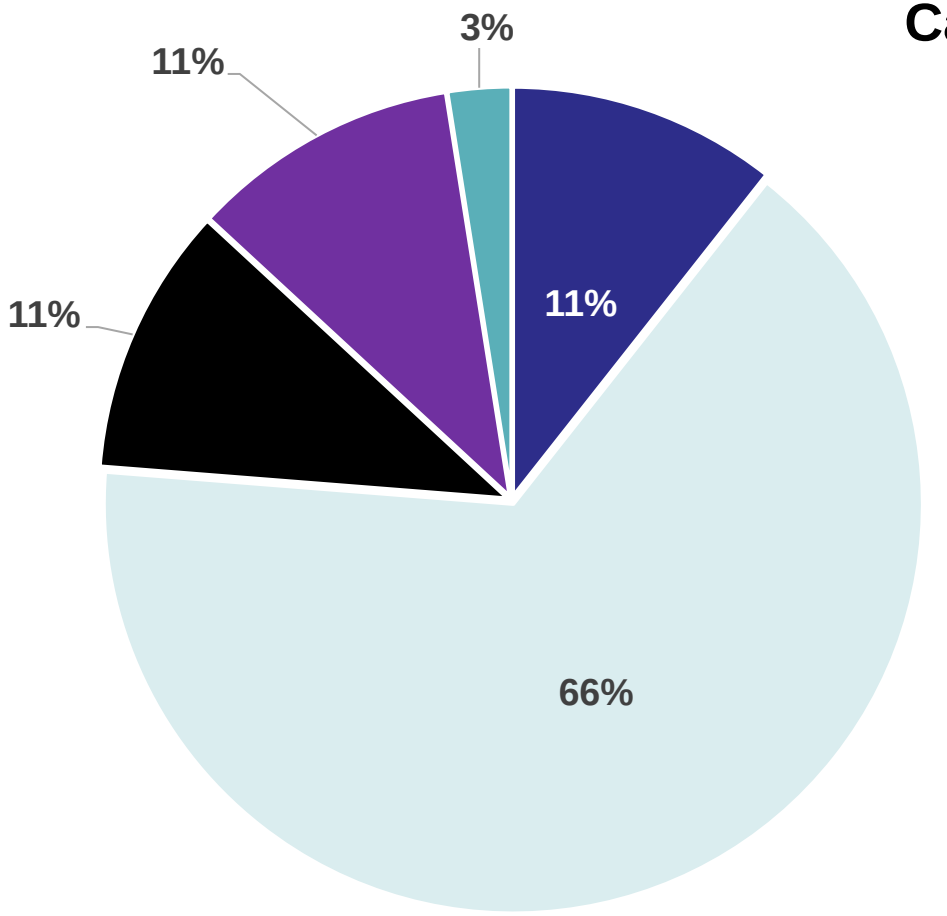
Violation Process – Identification



Identification of Potential Noncompliance



Source of Noncompliance Records

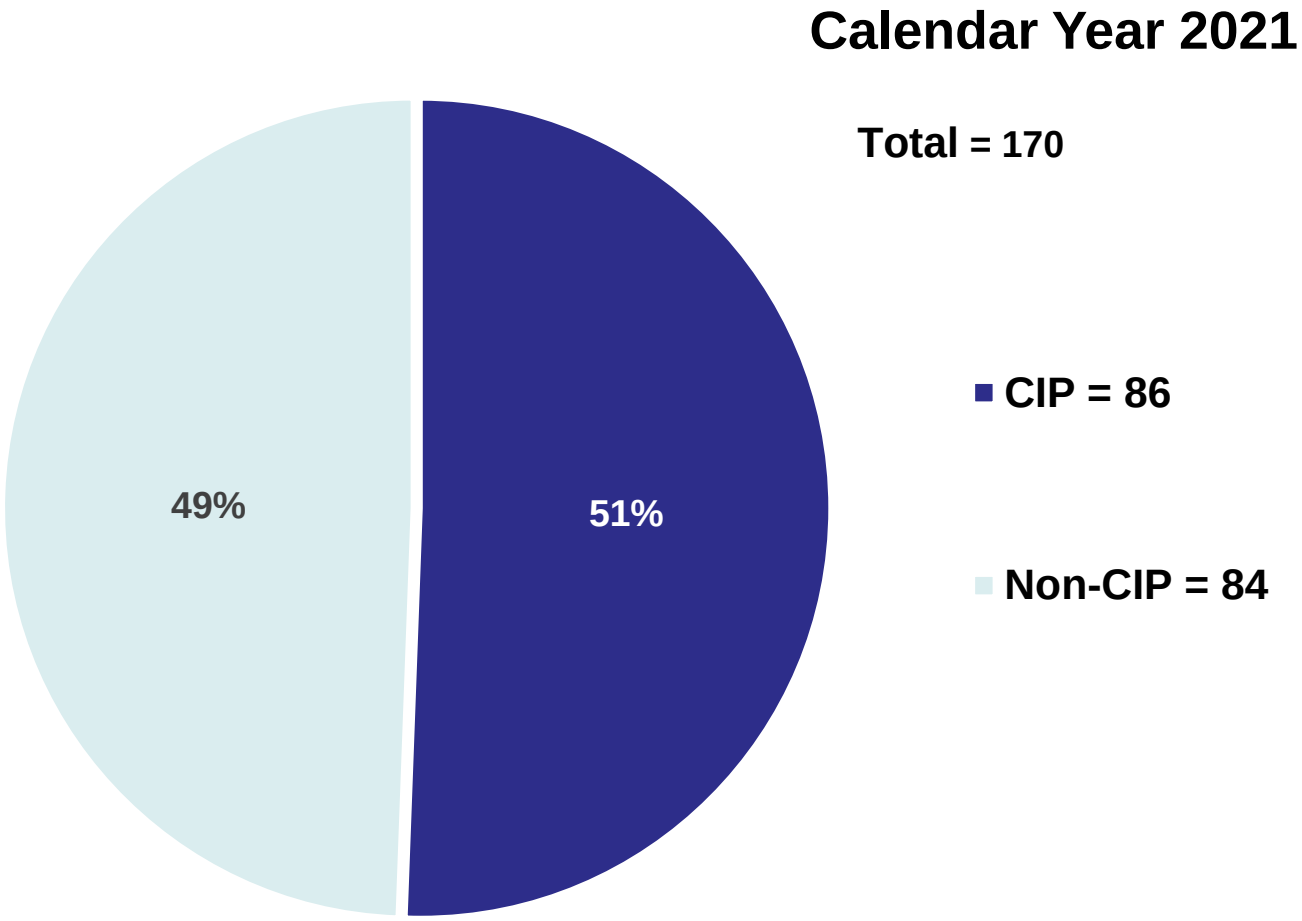


Calendar Year 2021

Total = 170

- **Self-Log = 17**
- **Self-Report = 105**
- **Audit = 27**
- **Self-Certification = 17**
- **Spot Check = 4**

Source of Noncompliance Records



Slido Question

Have you ever submitted a Self-Report or a Self-Log before?

A. Yes
B. No

Self-Report and Self-Log – Differences

Self-Report

- Any risk (minimal, moderate, serious)
- CE, FFT, SNOP or NOP
- Report at any time

Self-Log

- Minimal risk **only**
- CE **presumption**
- Logs due on recurring schedule but can be provided any time

Self-Report and Self-Log – Important Details of Noncompliance

- Discovery and Description of the Noncompliance
- Scope or Extent of the Noncompliance, if Known
- Root Cause
- Risk of Potential or Actual Impact
- Mitigation and Prevention of Recurrence

Self-Report and Self-Log – Discovery and Description of Noncompliance

Discovery and Description of the Noncompliance

- When and how was the noncompliance discovered
- Start and end dates, and basis for dates
  - The end date is when the noncompliance is corrected, which is not necessarily the mitigation completion date
- Describe the noncompliance in detail
  - What was the Requirement?
  - How was the Requirement not fulfilled?

Scope or Extent of the Noncompliance, if Known

- Results of an extent of condition review, if any, including:
  - Other affiliated entities or Facilities affected
  - Procedures, assets, Facilities, or personnel that are affected or could be affected
- Prior compliance history involving similar conduct, if known

Root Cause

- Explain what caused the noncompliance to occur
- Ask the five “why” questions
  - If human error occurred, why did the human error occur?
- The mitigation and prevention of recurrence should be directly tied to the noncompliance

Self-Report and Self-Log – Mitigating Activities

Completed or In-Progress Mitigating Activities

- Activities to:
  1. End the noncompliance
  2. Address the root cause
  3. Detect and prevent potential recurrence
- Description of each activity
- Actual or expected completion date for each activity

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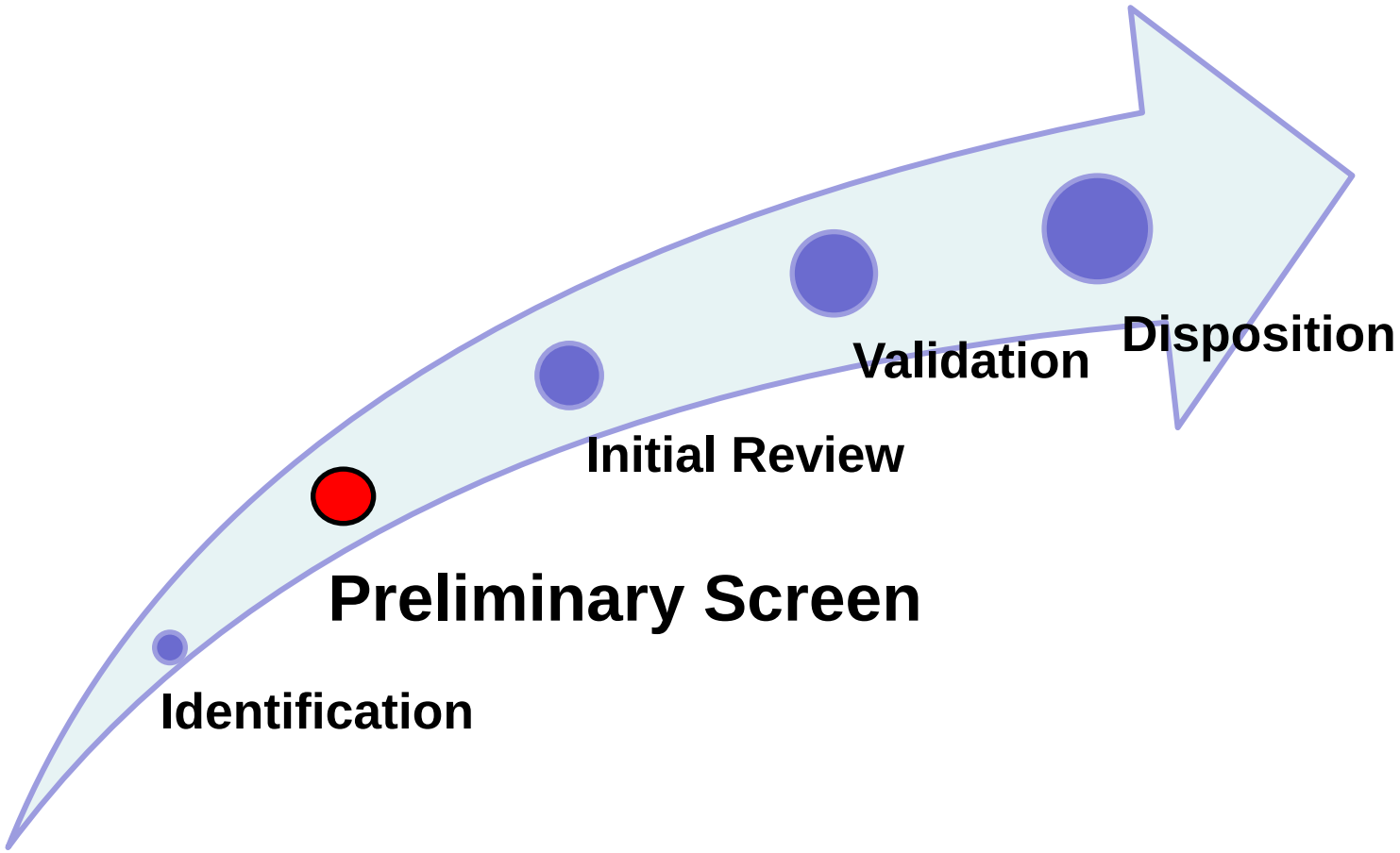
Slido Question

Have you reviewed the training materials available at https://training.nerc.net for submitting mitigation information in Align?

A. Yes
B. No

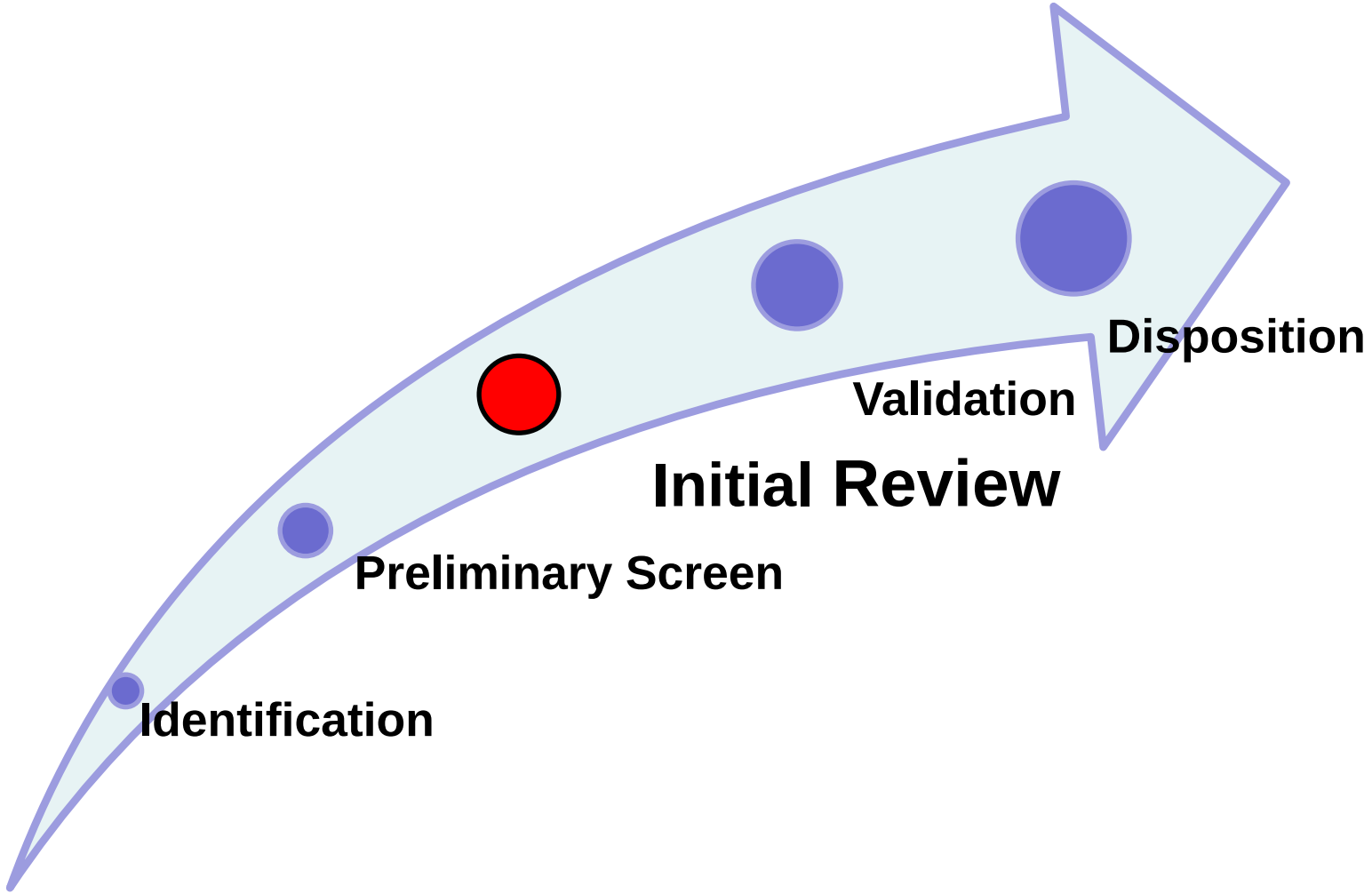
Preliminary Screen! What's That?



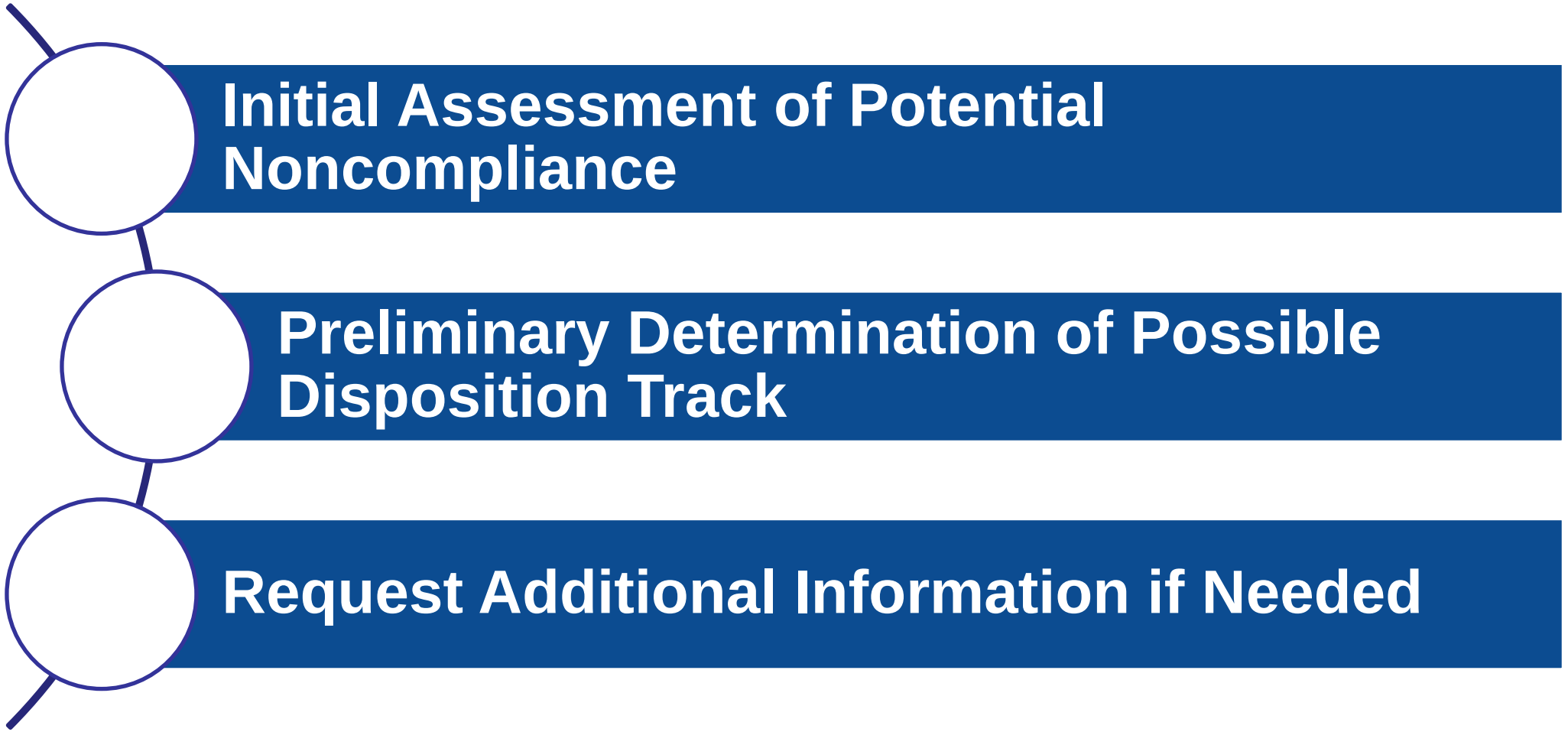
The Preliminary Screen Addresses:

- Is the Standard applicable to the registered entity?
- Is the Standard effective at the time of the potential noncompliance?
- Is there a current Open Enforcement Action?

Step Three – Initial Review



Initial Review

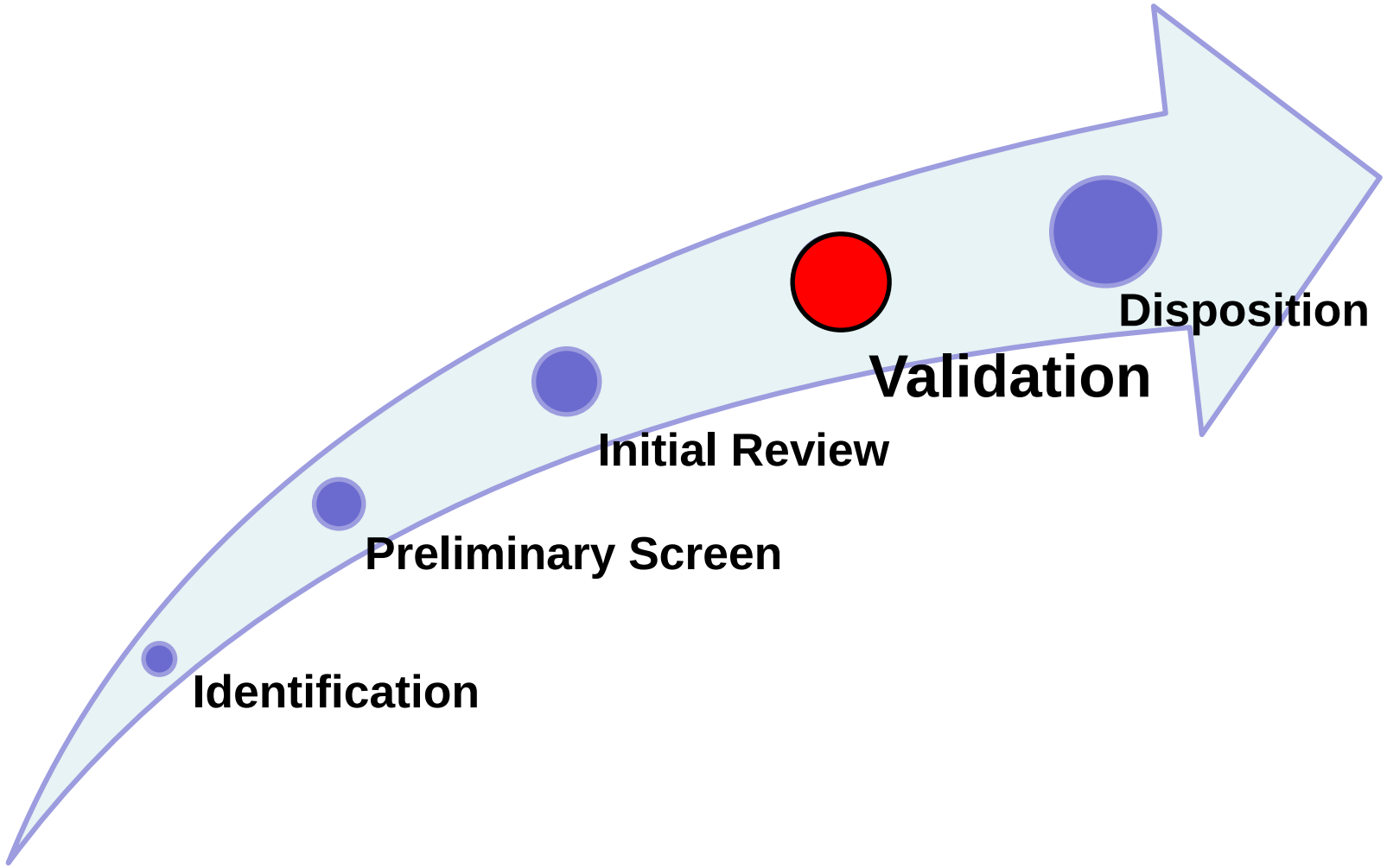


Slido Question

Have you confirmed that your ERO Portal account has the appropriate level of access to Align and the ERO Secure Evidence Locker for your role in your organization?

A. Yes
B. No

Violation Process – Validation



Documenting Enforcement Conclusions

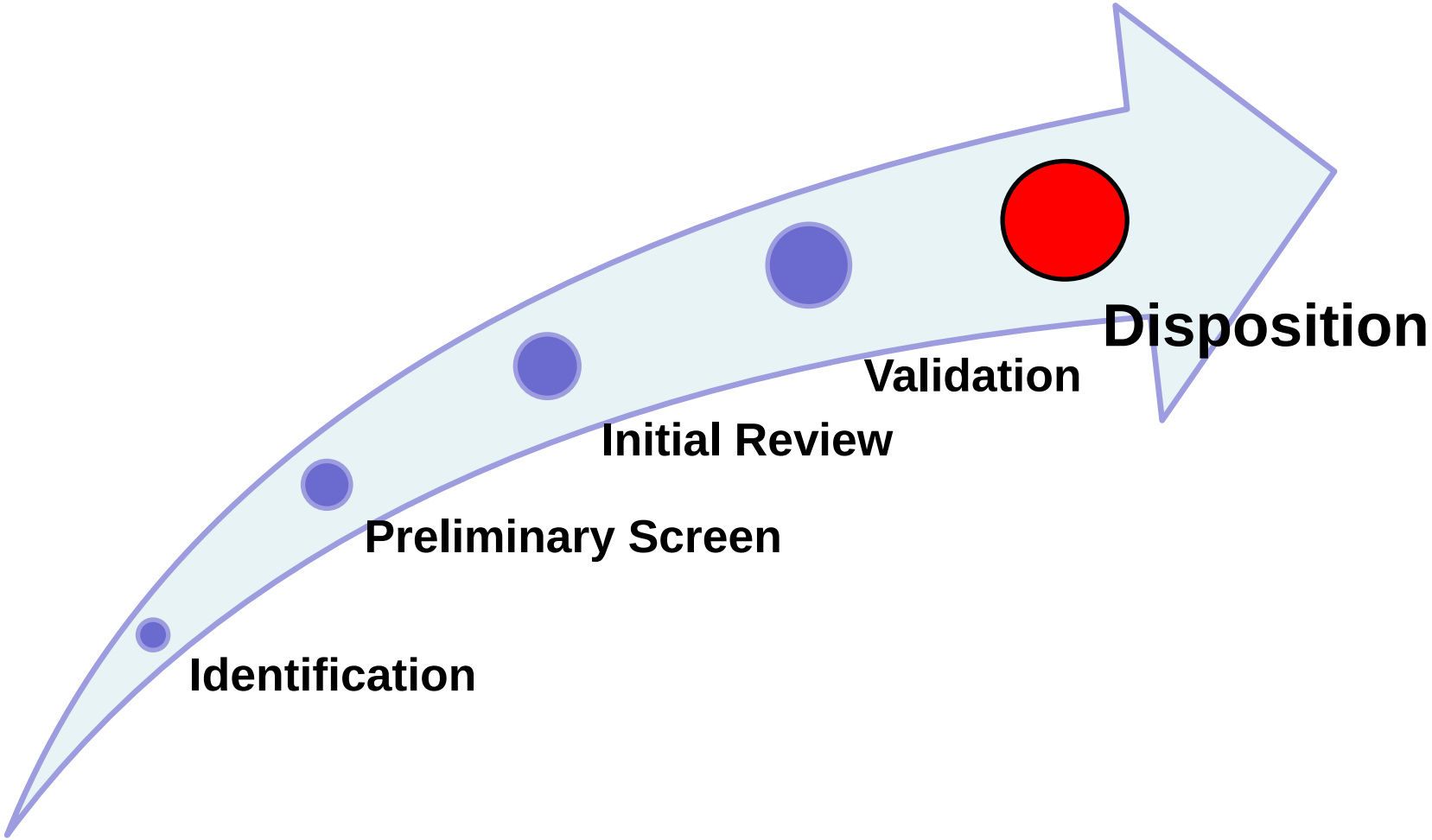
- Gathering and evaluating evidence
- Determining the root cause and risk
- Determining the disposition track
- Reviewing mitigating activities to address the root cause, remediate the issue, and prevent recurrence

Mitigation Activities vs. Mitigation Plan

In Align, all mitigation starts as mitigating activities. The Region can request that the entity resubmit the mitigation as a Mitigation Plan.

Mitigation Activities	Formal Mitigation Plan
• Must be completed within one year of the submission of the noncompliance to FERC	• Each milestone must be completed by the milestone deadline, with evidence to verify
• In some cases, may not require evidence to verify completion	• Include description of actions to reduce risk during pendency of plan

Violation Process – Disposition



Methods of Disposition

- Dismissal (LOD)
- Compliance Exception (CE)
- Find, Fix, Track, and Report (FFT)
- Spreadsheet Notice of Penalty (SNOP)
- Notice of Penalty (NOP)

Dismissal

No Finding of Noncompliance

- Additional evidence indicates compliance

Notice of Completion of Enforcement Action

- Release of any data retention directives
- Closed

CEs and FFTs – Similarities

Compliance Exception	Find, Fix, Track, and Report

- Streamlined processes with no monetary penalty
- Mitigation must be completed within 12 months of processing
- FERC 60-day review period

CEs and FFTs

Compliance Exception	Find, Fix, Track, and Report
• Minimal risk • Not directly considered as part of the entity's compliance history	• Minimal to moderate risk • Becomes part of the entity's compliance history

SNOPs and NOPs

Spreadsheet Notice of Penalty

- Minimal or moderate risk
- More streamlined penalty disposition
- Part of compliance history

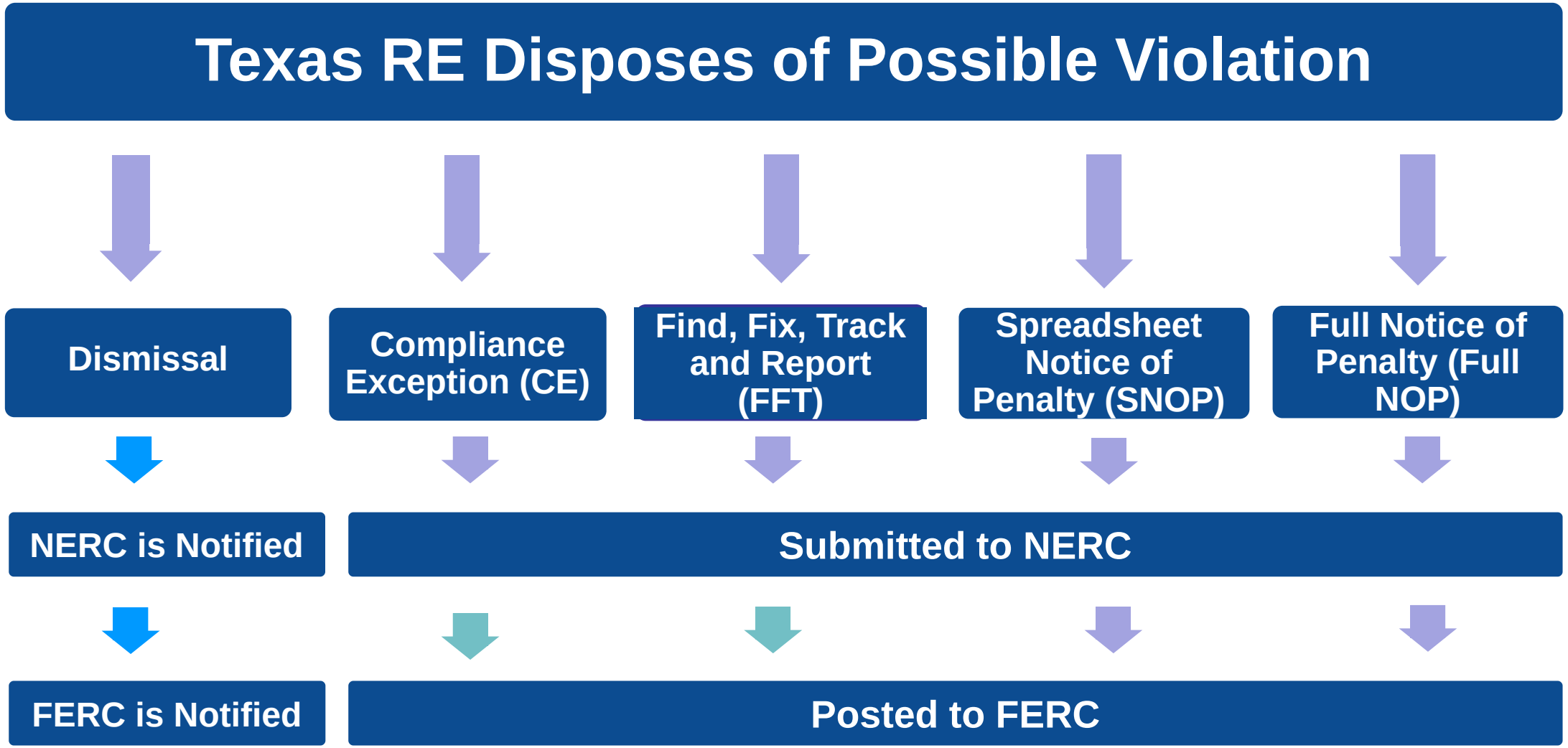
Notice of Penalty

- Serious, moderate, or minimal risk issues
- Larger penalties than SNOPs
- Part of compliance history

SNOPs and NOPs – Factors to Consider

- Was There an Event?
- What Was the Severity of the Risk?
- Was There Any Actual Harm?
- Is the Violation Mitigated?
- Size of the Entity
- Compliance History
- Amount of the Penalty

Violation Processing Tracks



Option to Request a Hearing

A registered entity can request a hearing to contest the following:

- Alleged Violation
- Proposed Penalty
- Rejected Proposed **Revised** Mitigation Plan

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Slido Question

Is there something that you would like to see covered in future presentations on the enforcement process?

Resources

NERC
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

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- One-Stop Shop (Compliance Monitoring & Enforcement Program)
- Compliance Assurance
- Compliance Guidance
- Compliance Investigations
- Compliance Analysis and Certification
- Compliance Hotline
- ERO Enterprise Program Alignment Process
- Regional Audit Reports of Registered Entities
- Risk-Based Compliance Monitoring and Enforcement Program (CMEP)
- Organization Registration and Organization Certification
- Organization Certification
- CIP V5 Implementation Information
- Enforcement and Mitigation
- CMEP and Vegetation Reports
- Reliability Standards Audit Worksheet (RSAWs)
- Centralized Organization Registration ERO System (CORES) Technology Project
- Compliance and Certification Committee (CCC)
- Consolidated Hearing Process
- CIP CMEP FAQs

Home > Program Areas & Departments > Compliance & Enforcement

Compliance & Enforcement

NERC's compliance efforts are comprised of key activities.

Compliance Monitoring is the process used to assess, investigate, evaluate, and audit in order to measure compliance with NERC Reliability Standards. Standards are developed, adopted, and approved through the Reliability Standards Development program and placed into effect pursuant to FERC orders or to applicable authorities in other North American jurisdictions. This statutory responsibility is set forth in section 215(e) of the Federal Power Act as well as 18 C.F.R. §39.7.

Compliance Enforcement is the process by which NERC issues sanctions and ensures mitigation of confirmed violations of mandatory NERC Reliability Standards. As part of these efforts, NERC can also issue directives to immediately address and deter new or further violations, irrespective of their presence or status (i.e., confirmed or alleged). Sanctioning of confirmed violations is determined pursuant to the NERC Sanction Guidelines and is based heavily upon the Violation Risk Factors and Violation Severity Levels of the standards requirements violated and the violations' duration. Entities found in violation of any standard must submit a mitigation plan for approval by NERC and, once approved, must execute this plan as submitted.

Regional Entity Compliance Monitoring and Enforcement Programs NERC relies on the Regional

Program Contacts

NERC Certification

NERC Registration

NERC Enforcement

Calendar

View Compliance Events

Standards, Compliance, and Enforcement Bulletins

- Standards, Compliance, and Enforcement Bulletin - June 21–26, 2022
  June 21, 2022
- Standards, Compliance, and Enforcement Bulletin - June 13–20, 2022
  June 13, 2022
- Standards, Compliance, and Enforcement Bulletin - June 6–12, 2022
  June 06, 2022
- Standards, Compliance, and Enforcement Bulletin - May 31–June 5, 2022
  May 31, 2022
- Standards, Compliance, and Enforcement Bulletin - May 23–31, 2022

Resources

- Compliance Assurance
- Compliance Guidance
- Compliance Investigations
- Compliance Analysis and Certification
- Compliance Hotline
- ERO Enterprise Program Alignment Process
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Enforcement and Mitigation

The Enforcement and Mitigation page provides a consolidated and sortable listing of monthly filings to the Federal and Regulatory Commission. This information is provided for informational purposes only. In the event of a conflict between information on this page and filings, the filings govern.

FERC, NERC Outline CIP Procedures in New White Paper - Published 9/23/2020

Under the *Second Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards* (Docket No. AD19-18-000), NERC will no longer publicly post redacted versions of CIP noncompliance filings and submittals.

Additional Resources

URL
Registered Entity Self-Report and Mitigation Plan User Guide
Risk-Based CMEP
Self-Logging Program User Guide
Violations Themes - CIP Violations (presentation)
Violations Themes - CIP Violations (webinar)

Templates

Type	Title	Date
	Drafting Templates for CEs, FFTs, and SNOPs	1/1/2021

Individual NERC Noncompliance Filings to FERC

Click the year for individual NERC noncompliance filings to FERC. All regulatory file documents listed are posted in descending order by filing date.

2022 | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 | 2010 | 2009 | 2008

Enforcement and Mitigation - Current Year

Type	Title	Date
⊞ Compliance Exceptions (CEs) (1)		
⊞ Find, Fix, Track, and Reports (FFTs) (1)		
⊞ Searchable Spreadsheet (1)		
⊞ Spreadsheet Notice of Penalty (SNOPs) (1)		

Enforcement and Mitigation - Previous Years

Type	Title	Date
⊞ Compliance Exceptions (CEs) (7)		
⊞ Find, Fix, Track, and Reports (FFTs) (7)		

Resources

- **NERC**
  - Rules of Procedure
    - Appendix 4C, Compliance Monitoring and Enforcement Program
    - Appendix 2A, Definitions
  - Registered Entity Self-Report and Mitigation Plan User Guide
  - Self-Logging Program User Guide
  - Instructions for using Align
- **Texas RE Enforcement**
  - Self-Reporting
  - Self-Logging Program
  - Mitigation Plan Submission

Contacts

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Send any questions to Enforcement at enforcement@texasre.org

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