

CATEGORY 4: SELF-EFFECTUATING TITLE VII PROVISIONS THAT ARE NOT SUBJECT TO CFTC PROPOSED TEMPORARY RELIEF RE. EFFECTIVE DATE

| Dodd-Frank Section No. | CEA Section No. ¹⁶⁴ | Provision, Obligation or Prohibition Applicable To: | Summary Description |
|------------------------|--|---|---|
| 748 | 23(g), (h), (m) and (n) | Employers of whistleblowers | <u>Commodity Whistleblower Incentives and Protection</u> Protects whistleblowers from retaliation. Provides that such right may not be waived, and whistleblowers may not be required to agree to arbitration of retaliation disputes. |
| 745(a), (b) and (c) | 5c(a)(2), 5c(c) and pre-Dodd-Frank Act Section 5c(d) | Registered entities | <u>Interpretations; Certifications and Prior Approvals</u> Provides that CFTC interpretations of Core Principles may provide the exclusive means for complying with those Core Principles. Establishes a self-certification procedure with respect to rules and products under a 10/90 day CFTC review process for new rules or rule amendments. Provides that a registered entity may seek CFTC prior approval with respect to rules or products. Repeals requirements imposed by CEA Section 5c(d) of pre-Dodd-Frank Act on filing enforcement action when CFTC determines that a registered entity is violating a Core Principle. |
| 749 | Multiple | Various | <u>Conforming Amendments</u> Conforming amendments to CEA Sections 4d (FCM Registration Requirements); 5c (Common Provisions Applicable to Registered Entities); 5e (Suspension or Revocation of Designation as a Registered Entity); 6(b) (Court Review of CFTC Orders); 12(e)(2)(B) (Cooperation with Other Agencies); and 17(r)(1) (Registered Futures Associations: Duplicative Regulation of Dual Registrants). |
| 750 | None | None | <u>Study on Oversight of Carbon Markets</u> |
| 751 | 2(a)(15) | None | <u>Energy and Environmental Markets Advisory Committee</u> |
| 752 | None | None | <u>International Harmonization</u> |
| 754 | None | None | <u>Effective Date</u> |

[FR Doc. 2011-18248 Filed 7-18-11; 8:45 am]
BILLING CODE 6351-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM10-15-001 and RM10-16-001; Order Nos. 748-A and 749-A]

Mandatory Reliability Standards for Interconnection Reliability Operating Limits; System Restoration Reliability Standards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Clarification.

SUMMARY: On March 17, 2011, the Commission issued Order Nos. 748 and 749, which approved new and revised Reliability Standards, including IRO-004-2 and EOP-001. In this order, we grant the North American Electric Reliability Corporation's (NERC) request for clarification of certain aspects of Order No. 748 including: The proper effective date language for Reliability Standard IRO-004-2; the correct version identification for the approval of EOP-

001 intended by the Commission; and the proper effective date for Reliability Standard EOP-001-2. The Commission also grants NERC's request for clarification of Order No. 749 with respect to the version EOP-001 the Commission intended to approve and its effective date.

DATES: *Effective Date:* This order on rehearing and clarification will become effective July 19, 2011.

FOR FURTHER INFORMATION CONTACT:

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- William Edwards (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502-6669.
- Terence Burke (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, (202) 502-6498.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Order on Clarification

Issued July 13, 2011

1. On March 17, 2011, the Commission issued Order Nos. 748 and 749, which approved new and revised Reliability Standards, including IRO-004-2 and EOP-001. In this order, we grant the North American Electric Reliability Corporation's (NERC) request for clarification of certain aspects of Order No. 748 including: (1) The proper effective date language for Reliability Standard IRO-004-2; (2) the correct version identification for the approval of EOP-001 intended by the Commission; and (3) the proper effective date for Reliability Standard EOP-001-2. The Commission also grants NERC's request for clarification of Order No. 749 with respect to the version EOP-001 the Commission intended to approve and its effective date.

I. Background

A. Order No. 748

2. Order No. 748¹ approved three new Interconnection Reliability Operations and Coordination (IRO) Reliability Standards and seven revised Reliability Standards related to Emergency Operations and Preparedness (EOP), IRO, and Transmission Operations (TOP). The approved IRO Reliability Standards were designed to prevent instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the interconnection by ensuring that the reliability coordinator has the data necessary to analyze and monitor Interconnection Reliability Operating Limits (IROL) within its Wide-Area.² The Final Rule also approved the addition of two new terms to the NERC Glossary of Terms, “Operational Planning Analysis” and “Real Time Assessment.”

B. Order No. 749

3. Order No. 749³ approved three EOP Reliability Standards as well as the definition of the term “Blackstart Resource.” The approved Reliability Standards require transmission operators, generation operators, and certain transmission owners and distribution providers to ensure that plans, facilities, and personnel are prepared to enable system restoration from Blackstart Resources and require reliability coordinators to establish plans and prepare personnel to enable effective coordination of the system restoration process. The Commission also approved NERC’s request to retire four effective and one pending Reliability Standards.

C. Requests for Clarification

4. On April 18, 2011, NERC submitted a request for clarification of certain aspects of Order No. 748 including: (1) The effective date of Reliability Standard IRO-004-2; (2) the version of EOP-001 approved by the Commission; and (3) the effective date of Reliability Standard EOP-001-2. On the same day, NERC submitted a request for clarification of Order No. 749 similarly

seeking clarification on the version of Reliability Standard EOP-001 approved by the Commission and its effective date.

5. With respect to Reliability Standard IRO-004-2, NERC states that the effective date provision in Reliability Standard IRO-004-2 is inconsistent with the implementation of the three new IRO standards. NERC explains that it proposed, in its petition, to retire six of the seven requirements in the IRO-004-1 standard, and designated the one remaining requirement as IRO-004-2. The Commission approved IRO-004-2 in the Final Rule, but the effective date provision in IRO-004-2 states that the entire Reliability Standard should be retired, even though one requirement remains in effect with Commission approval of revised Reliability Standard. NERC requests clarification from the Commission that the effective date language in the IRO-004-2 standard should be revised as “the latter of either April 1, 2009 or the first day of the first calendar quarter, three months after applicable regulatory approval.”

6. Second, NERC requests clarification regarding the Commission’s approval of Reliability Standard EOP-001-1. NERC notes that at the same time NERC submitted a Petition in RM10-15-000, NERC filed a petition in Docket No. RM10-16-000 seeking approval of certain EOP Reliability Standards. Each Petition contained specific proposed changes to Reliability Standard EOP-001-0. NERC states in both Petitions that it requested that the Commission approve revised Reliability Standard EOP-001-1 only if the concurrent petition is not previously (or concurrently) approved by the Commission and otherwise to approve Reliability Standard EOP-001-2, which reflected the changes in both Petitions, rather than EOP-001-1. NERC requests clarification that EOP-001-2 is the approved Reliability Standard given the concurrent issuance of the Final Rules.

7. Finally, NERC requests clarification regarding the effective date of Reliability Standard EOP-001-2. NERC states that it requested Reliability Standard EOP-001-1 to become effective “the first day of the first calendar quarter, three months after applicable regulatory approval.” However, NERC states that it also requested that if the Commission previously or concurrently approved Reliability Standard EOP-001-2, it should be made effective “twenty-four months after the first day of the first calendar quarter following applicable regulatory approval.” NERC seeks clarification that Reliability Standard EOP-001-2 be made effective in accordance with the implementation

schedule in the EOP-001-2 Reliability Standard given the concurrent issuance of the Final Rules.

II. Discussion

8. The Commission grants NERC’s request for clarification regarding Reliability Standard IRO-004-2. Consistent with our approval of IRO-004-2, the Commission clarifies that the effective date provision in IRO-004-2 should be modified as requested by NERC to reflect the one requirement in IRO-004-2 that was not retired. NERC has included the modified effective date provision for IRO-004-2 as Exhibit A to its request for clarification. This clarification should alleviate confusion implementing Reliability Standard IRO-004-2.

9. The Commission also clarifies that it approved Reliability Standard EOP-001-2. Each NERC Petition in Docket Nos. RM10-15-000 and RM10-16-000 proposed unique changes to EOP-001-0 not reflected in the other petition presenting a logistical problem with cross-references. Given the issuance of Order Nos. 748 and 749, both on March 17, 2011, Reliability Standard EOP-001-2 is the currently-operative version. Moreover, we clarify that Reliability Standard EOP-001-2 shall become effective according to the implementation schedule in that standard.

III. Document Availability

10. 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 FERC’s Home Page (<http://www.ferc.gov>) and in FERC’s Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

11. From FERC’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.

12. User assistance is available for eLibrary and the FERC’s Web site during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the

¹ Mandatory Reliability Standards for Interconnection Reliability Operating Limits, Order No. 748, 134 FERC ¶ 61,213 (2011).

² The term “Wide-Area” is defined in the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary), approved by the Commission. As defined, Wide-Area includes not only the reliability coordinators’ area, but also critical flow and status information from adjacent reliability coordinator areas as determined by detailed system studies to allow the calculation of IROLs. See NERC Glossary available at http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf.

³ System Restoration Reliability Standards, Order No. 749, 134 FERC ¶ 61,215 (2011).

Public Reference Room at
public.referenceroom@ferc.gov.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011-18066 Filed 7-18-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 511

RIN 2125-AF19

Real-Time System Management Information Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Summary of responses to request for comments.

SUMMARY: The final rule establishing the minimum parameters and requirements for States to make available and share traffic and travel conditions information via real-time information programs as required by Section 1201 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was published on November 8, 2010. In issuing the final rule, the FHWA also sought additional comments relating to the costs and benefits of the Real-Time System Management Information Program and general information about current and planned programs. Thirty-one entities provided responses to the Request for Comments and this document provides a summary of those responses.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rupert, FHWA Office of Operations, (202) 366-2194, or via e-mail at robert.rupert@dot.gov. For legal questions, please contact Ms. Lisa MacPhee, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366-1392, or via e-mail at lisa.macphee@dot.gov. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, all comments, and the final rule may be viewed on line through the Federal eRulemaking portal at: <http://www.regulations.gov>. The docket identification number is FHWA-2010-0156. The Web site is available 24 hours each day, 365 days each year. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual

submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Request for Comments

The FHWA issued the final rule establishing requirements for the Real-Time System Management Information Program on November 8, 2010, at 75 FR 68418. The final rule document also sought additional comments relating to the costs and benefits of the Real-Time System Management Information Program and general information about current and planned programs. Although the Regulatory Cost Analysis found in the docket for the rulemaking attempts to capture the scope of costs and benefits associated with this rule, the FHWA sought further information to determine a comprehensive picture of costs and benefits given the flexibility of approaches that can be used and the limitations of the current studies.

The specific questions posed in the Request for Comments were:

(1) What are the costs and benefits of each individual provision required under rule? If some provisions have net costs, would certain modifications to those provisions lead to net benefits?

(2) What are the impacts of requiring these provisions on States and Metropolitan Areas (do some States and Metropolitan Areas realize net costs instead of net benefits)? If some States and Metropolitan Areas realize net costs, would certain modifications to provisions ensure net benefits?

(3) Is there a specific, alternative approach to calculating costs and benefits that would be more appropriate than the current use of the Atlanta Navigator Study?

(4) Although information dissemination to the public is not within scope of this rule, it is important to understand how information is typically disseminated so that the technologies used to collect and monitor data are compatible with technologies used to disseminate this information. This is especially important to keep up with new technological advances and to ensure that States use the most effective, low cost methods to both collect and disseminate information.

(A) What technologies will States use to collect and monitor information under this rule?

(B) What technologies are States planning to use to disseminate this

information or what are they already using?

(C) Do the technologies States plan to use present any interoperability issues? Do they allow for use of advanced technologies that could be the most cost-effective means of collecting and disseminating this information?

(D) Are there any structural impediments to using low-cost advanced technologies in the future given the provisions and specifications contained in this rule?

(E) Given the research investment into wireless communications systems in the 5.9 GHz spectrum for Intelligent Transportation Systems applications, to what extent could systems in this spectrum also be used to fulfill the requirements of this rule and/or enable other applications?

(F) Given that there are legacy technologies in place now, and that there are new technologies on the horizon that are being adopted, how can we ensure that investments made today to comply with this rule are sustainable over the long term?

(5) This rule defines Metropolitan Areas to mean the geographic areas designated as Metropolitan Statistical Areas by the Office of Management and Budget with a population exceeding 1,000,000 inhabitants. Is this population criterion appropriate, rather than considering traffic, commuting times, or other considerations?

Summary of Responses

Fourteen of the 31 parties that provided comments responded to at least some of the questions. Other comments provided discussions regarding real-time information or presented questions on specific provisions of the regulation. Clarifications are offered below in addition to summarizing the responses to the Request for Comments.

Comments on the Final Rule

Three of the general comments to the docket posed questions related to the roadways that are included under the Real-Time System Management Information Program and travel time reporting requirements. The program includes all the roads of the Interstate System (23 CFR 511.311) and other roads in metropolitan areas deemed to be "routes of significance" by the States (23 CFR 511.313). Similar to design exceptions permitted under 23 U.S.C. 103(c)(1)(B)(ii), highways on the Interstate System in Alaska and Puerto Rico may be granted exemptions from the requirements of the Real-Time System Management Information Program upon request from the States.