

170 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 375

[Docket No. RM19-7-000; Order No. 868]

Custody and Authentication of Commission Records

(Issued January 28, 2020)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amends its regulations concerning custody and authentication of Commission records. Specifically, this final rule provides clarification that a Senior Agency Official for Records will maintain legal custody of all Commission records. This final rule also clarifies that authentication of records can be performed by staff officials through delegated authority.

DATES: This rule will become effective **[Insert _Date 30 days after date of publication in the FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION

170 FERC ¶ 61,060
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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Custody and Authentication of Commission Records Docket No. RM19-7-000

ORDER NO. 868

FINAL RULE

(Issued January 28, 2020)

I. Introduction

1. This instant final rule revises 18 CFR § 375.102(a) to establish a Senior Agency Official for Records as the legal custodian of all Commission records. This final rule also clarifies that authentication of records can be performed by staff officials through delegated authority under 18 CFR Part 375, Subpart C. The rule imposes no new obligations on the public.

II. Background

2. The Commission's existing regulations place records in the custody of both the Secretary and the Executive Director.¹ The Secretary has custody over: the Commission's seal; the minutes of all actions taken by the Commission; the transcripts,

¹ See 18 CFR 375.102.

electronic recordings, or minutes of meetings closed to public observation; the Commission's rules and regulations; and the Commission's administrative orders.² The Executive Director has custody of all other records not in the custody of the Secretary.³ The Commission's regulations also provide that all orders and other actions of the Commission shall be authenticated by the Secretary or the Secretary's designee.⁴

III. Discussion

A. Custody of Records

3. By statute, the head of each federal agency must make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency.⁵ Specifically, federal agencies are responsible for both the physical and legal custody of records.⁶

² See 18 CFR 375.102(a)(1).

³ See 18 CFR 375.102(a)(2).

⁴ See 18 CFR 375.102(b).

⁵ 44 U.S.C. 3101.

⁶ National Archives and Records Administration (NARA) defines the term custody to include care and control of records, including both physical possession (physical custody) and legal responsibility (legal custody), unless one or the other is specified. See NARA, *Strategic Directions: Custody of Federal Records of Archival Value*, (Sept. 2003), <https://www.archives.gov/records-mgmt/initiatives/custody.html>.

4. Physical custody involves the responsibility for the care of records and implementing policies governing access to records.⁷ This final rule does not change physical custody of Commission records, which will continue to remain with the individual office within the Commission that maintains the record.⁸

5. This final rule clarifies the agency official responsible for legal custody of the Commission's records. Legal custody involves the ownership and the responsibility for creating policies governing access to records regardless of their physical location.⁹

6. NARA requires that each agency designate a Senior Agency Official for Records that is responsible for the legal custody of agency records.¹⁰ While the Commission's current regulation, 18 CFR 375.102(a), provides divided legal custody between the Secretary and the Executive Director, we are amending the regulation to place legal custody in one individual, the Senior Agency Official for Records. The Secretary of the Commission is the current Senior Agency Official for Records, and thus legal custody

⁷ *Id.*

⁸ *Id.* The current regulations provide that the Secretary has custody over, for example, the Commission's seal and the minutes of all actions taken by the Commission, among other things as described above. Although this language has been deleted from the amended regulation, the Secretary will continue to have physical custody over these items.

⁹ *See Id.*

¹⁰ 36 CFR 1220.34(a).

will no longer be divided between the Secretary and the Executive Director, and will be designated with the Secretary or his/her designee.

B. Authentication of Records

7. Additionally, this final rule clarifies that authentication of records can be performed by staff officials exercising delegated authority under 18 CFR Part 375, Subpart C.¹¹ Specifically, 18 CFR Part 375, Subpart C delegates authority to certain staff officials to take certain actions, e.g., issue letter orders addressing certain categories of filings.¹²

8. The Commission's existing regulations specify that all orders and other actions of the Commission must be authenticated or signed by the Secretary or the Secretary's designee.¹³ This final rule revises 18 CFR 375.102(b) to provide that the Secretary is required to authenticate all Commission actions and orders except those actions taken pursuant to delegated authority, which will be authenticated by the issuing staff official in lieu of the Secretary. Moreover, issuances in the Commission's electronic document repository (eLibrary) on the Commission's website (<http://www.ferc.gov>) will be considered authenticated.

¹¹ *See, e.g.*, 18 CFR 375.307.

¹² 18 CFR Part 375.

¹³ *See* 18 CFR 375.102(b).

IV. Information Collection Statement

9. The Office of Management and Budget (OMB) approves certain information collection requirements imposed by agency rule.¹⁴ This instant final rule does not contain any information collection requirements. Therefore, compliance with OMB regulations is not required.

V. Environmental Analysis

10. 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.¹⁵

11. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial, or internal administrative actions.¹⁶ This rulemaking is, accordingly, exempt from the requirement to draft such documents under that provision.

¹⁴ 5 CFR 1320.12.

¹⁵ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

¹⁶ 18 CFR 380.4(a)(1).

VI. Regulatory Flexibility Act

12. The Regulatory Flexibility Act of 1980 (RFA)¹⁷ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule concerns an interpretation of current Commission regulations and practices. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is therefore not required.

VII. Document Availability

13. 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.

14. 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.

¹⁷ 5 U.S.C. 601-12.

15. User assistance is available for eLibrary and the Commission’s website 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. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VIII. Effective Date

16. The Commission is issuing this rule as a final rule without a period for public comment. Under 5 U.S.C. 553(b)(3)(A), notice and comment procedures are unnecessary for “rules of agency organization, procedure, or practice.” This rule is such a rule, and is directed at improving the efficient and effective operations of the Commission, not toward a determination of the rights or interests of affected parties. The rule will not significantly affect regulated entities or the general public.

17. These regulations are effective [**Insert Date 30 days after date of publication in the *Federal Register***].

List of subjects in 18 CFR Part 375.102

Seals and Insignia

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends Part 375, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 375 – THE COMMISSION

1. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. §§ 551-557; 15 U.S.C. §§ 717-717w, 3301-3432; 16 U.S.C. §§ 791-825r, 2601-2645; 42 U.S.C. §§ 7101-7352

2. Section 375.102 is revised to read as follows:

§ 375.102 Custody and Authentication of Commission Records.

(a) *Custody of official records.* The Senior Agency Official for Records shall have legal custody of all records of the Commission. The individual Commission office that maintains a record shall have physical custody of that record.

(b) *Authentication of action.* All orders and other actions of the Commission shall be authenticated by the Secretary or the Secretary's designee, with the exception of actions taken pursuant to delegations of authority under 18 CFR Part 375, Subpart C, which will be authenticated by the issuing official. Issuances posted on the Commission's electronic filing system on the Commission's website are authenticated.