

Code of Federal Regulations
Subchapter X - Procedural Rules
Subpart N - Oil Pipeline Proceedings
18 C.F.R. §§ 385.1401-1415 (1991)

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Sections 385.1401 through 385.1415 of the Federal Energy Regulatory Commission's Regulations apply exclusively to jurisdictional oil pipelines and their proceedings at this Commission.

Section 385.1401(a) states that Subpart N applies only to oil pipelines. Section 385.1401(b) must be read closely to understand the purpose of Subpart N. It states that if any provision of this subpart (Subpart N) is inconsistent with any provision of another subpart of this part, then this subpart governs and any provision of the other subpart is inapplicable to the extent of the inconsistency. This means that the rules of practice and procedure in Part 385 apply to all oil pipeline proceedings, however, Subpart N applies exclusively to oil pipeline proceedings.

Sections 385.1402 through 385.1404 provide for the preparation by a pipeline of a subscriber list and allows any person to be included on such list. The subscriber list must be notified by the pipeline of all proposed rate changes. Also, dates for the filing of protests and interventions to any pipeline tariff filing are prescribed. Finally, the procedures for the filing of petitions requesting the Commission to institute a rulemaking proceeding are established.

Sections 385.1405 through 385.1414 provide for what is termed a "Modified Procedure" for oil pipeline proceedings. Specifically, the Commission can order a proceeding to be heard under a modified procedure if it appears that substantially all important issues of fact may be resolved by means of written materials without an oral hearing.

Under the modified procedure, the rules provide for intervention; joint pleadings; the content and verification of the pleadings; when and upon whom pleadings will be filed and served; and requests for cross examination and oral hearing.

Section 385.1415 pertains to ex parte communications during oil pipeline proceedings. It provides that no party, counsel to or agent of a party in an on-the-record proceeding, shall submit any ex parte communication on the merits of the case to any members of the Commission, the Presiding Administrative Law Judge, or members of the advisory staff who can reasonably be expected to participate in the decision of the issues involved in the proceeding.

Subpart N—Oil Pipeline Proceedings**Sec.**

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Subpart N—Oil Pipeline Proceedings**[¶ 29,001]****§ 385.1401 Applicability (Rule 1401).**

(a) This subpart applies to oil pipeline proceedings.

(b) If any provision of this subpart is inconsistent with any provision of another subpart of this Part, the provision of this subpart governs and the provision of the other subpart is inapplicable to the extent of the inconsistency.

.01 48 F.R. 29477 (June 27, 1983).

.05 *Historical record*.—Section 385.1401 originated in 48 F.R. 29477 (6/27/83), effective 7/27/83.

[¶ 29,002]**§ 385.1402 Subscriber lists (Rule 1402).**

(a) Not later than December 31 of each year, an oil pipeline must request, in writing, each of its subscribers and each person who has been served under any of its tariffs during the preceding twelve months to notify the pipeline as to whether the subscriber or person wishes to be included on the subscriber list for any of the oil pipeline's integrated pipeline systems.

(b) The oil pipeline must immediately add to the specified subscriber list any subscriber or person which responds in writing within 30 days of receipt of the oil pipeline request and which indicates in that response that it wishes to be included on the specified list. (OMB Control Number 1902-0089)

.01 48 F.R. 45388 (October 5, 1983).

effective 10/5/83, as per 48 F.R. 45388

.05 *Historical record*.—Section 385.1402 originated in 48 F.R. 29477 (6/27/83), (10/5/83).

[¶ 29,003]**§ 385.1403 Dates for filing protests and interventions (Rule 1403).**

A protest or intervention to an oil pipeline tariff filing must be filed with the Commission:

(a) 12 days before the proposed effective date of the tariff filing, if the tariff filing requires a 30-day notice, or

(b) 5 days before the proposed effective date of the tariff filing, if the tariff filing requires a 10-day notice.

.01 48 F.R. 29477 (June 27, 1983).

.05 *Historical record*.—Section 385.1403 originated in 48 F.R. 29477 (6/27/83), effective 7/27/83.

[¶ 29,004]**§ 385.1404 Petitions seeking institution of rulemaking proceedings (Rule 1404).**

Any person may file a petition requesting the Commission to institute a proceeding for the purpose of issuing statements, rules, or regulations of

general applicability and significance designed to implement or interpret law, or to formulate general policy for future effect. No reply to such a petition may be filed. Whether a proceeding shall be instituted as requested is within the discretion of the Commission and the ruling on the petition will be final. In the event a rulemaking proceeding is instituted by the Commission, the procedure to be employed for the taking of evidence or the receipt of views and comments will be designated by Commission order.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1404 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

[¶ 29,005]

§ 385.1405 Modified procedure, how initiated (Rule 1405).

The Commission may, in its discretion, order that a proceeding be heard under modified procedure if it appears that substantially all important issues of material fact may be resolved by means of written materials and that the efficient disposition of the proceeding can be made without oral hearing.

(a) *Commission's initiative or by request*. Modified procedure will be ordered in a proceeding upon the Commission's initiative or upon its approval of a request filed by any party that the modified procedure shall be observed.

(b) *Order directing modified procedure*. An order directing modified procedure will list the names and addresses of the persons who at that time are parties to the proceeding, and direct that they comply with the modified procedure rules. As used in Rules 1409, 1411, and 1413 the term "complainant" shall comprehend the party having the initial duty to establish the truth of the claim or to justify the relief or authorization sought, and the term "defendant" shall comprehend the party controverting the truth of the claim or opposing the relief or authorization sought.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1405 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

[¶ 29,006]

§ 385.1406 Modified procedure; effect of order (Rule 1406).

(a) *Relief from answer rule*. Issuance of an order directing modified procedure shall relieve defendant from the obligation of answering as provided in Rule 213.

(b) *Default where failure to comply*. If within any time period provided in the modified procedure rules a party fails to file a pleading required by those rules, or otherwise fails to comply therewith, such party shall be deemed to be in default and to have waived any further hearing. Thereafter the proceeding may be disposed of without further notice to the defaulting party, and without other formal proceedings as to such party.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1406 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

¶ 29,004 § 385.1404

[¶ 29,007]

§ 385.1407 Modified procedure; intervention (Rule 1407).

Persons permitted to intervene under modified procedure shall file and serve pleadings in conformity with the provisions of Rule 1409 below.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1407 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84).

[¶ 29,008]

§ 385.1408 Modified procedure; joint pleadings (Rule 1408).

Parties having common interests, to the extent practicable, shall arrange for joint preparation of pleadings filed under modified procedure.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1408 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84).

[¶ 29,009]

§ 385.1409 Modified procedure; content of pleadings (Rule 1409).

(a) *Generally*. A statement filed under the modified procedure after that procedure has been directed shall state separately the facts and arguments and include the exhibits upon which the party relies. Only facts contained in the verified statement of facts can be used in argument. If, pursuant to Rule 1406(a), no answer has been filed, defendant's statement must admit or deny specifically and in detail each material allegation of the complaint. In addition, defendant's statement and complainant's statement in reply shall specify those statement of facts and arguments of the opposite party to which exception is taken, and include a statement of the facts and arguments in support of such exception. Complainant's statement of reply shall be confined to rebuttal of the defendant's statement.

(b) *Exhibit identification*. An exhibit which is part of any pleading filed under modified procedure shall serially be numbered and bear the notation, properly filled out, in the upper right hand corner:

“Complainant (Defendant) Exhibit
No.
Witness

(c) *Damages*. If an award of damages is sought, the paid freight bills or properly certified copies thereof should accompany the original of complainant's statement when there are not more than 10 shipments, but otherwise the documents should be retained.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1409 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84).

[¶ 29,010]

§ 385.1410 Modified procedure; verification (Rule 1410).

The facts asserted in any pleading filed under modified procedure must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses orally to substantiate the facts asserted should hearing become necessary. The original of any pleading filed under modified procedure must show the signature, capacity, and impression seal, if any, of the person administering the oath, and the date thereof.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1410 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

[¶ 29,011]

§ 385.1411 Modified procedure; when pleadings filed and served (Rule 1411).

Within 20 days from the date of service of an order requiring modified procedure, complainant shall serve upon the other parties a statement of all the evidence upon which it relies. Within 30 days thereafter defendant shall serve its statement. Within 20 days thereafter complainant shall serve its statement in reply. No further reply may be made by any party except by permission of the Commission.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1411 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

[¶ 29,012]

§ 385.1412 Modified procedure; copies of pleadings (Rule 1412).

The original and six copies of any statement made pursuant to Rule 1411 shall be filed with the Commission. Subsequent pleadings are subject to Rule 1414.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record*.—Section 385.1412 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

[¶ 29,013]

§ 385.1413 Modified procedure; hearings (Rule 1413).

(a) *Request for cross examination or other hearing*. If cross examination of any witness is desired, the name of the witness and the subject matter of the desired cross examination shall, together with any other request for oral hearing, including the basis therefor, be stated at the end of defendant's statement or complainant's statement in reply as the case may be. Unless material facts are in dispute, oral hearing will not be held for the sole purpose of cross examination.

¶ 29,010 § 385.1410

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(b) *Hearing issues limited.* The order setting the proceeding for oral hearing, if hearing is deemed necessary, will specify the matters upon which the parties are not in agreement and respecting which oral evidence is to be introduced.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record.*—Section 385.1413 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

[¶ 29,014]

§ 385.1414 Modified procedure; subsequent procedure (Rule 1414):

Procedure subsequent to that provided in the modified procedure rules shall be the same as that in proceedings not handled under modified procedure.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record.*—Section 385.1414 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

[¶ 29,015]

§ 385.1415 Rule applicable to *ex parte* communications during oil pipeline proceedings (Rule 1415).

(a) *Ex parte communications.* (1) No person who is a party to, or counsel or agent of a party, or who intercedes in, any on-the-record proceeding, shall submit any *ex parte* communication concerning the merits of the proceeding to any member of the Commission, hearing officer, or employee of the Commission participating or who may reasonably be expected to participate in the decision in such proceeding.

(2) No member of the Commission, hearing officer, or employee of the Commission participating or who may reasonably be expected to participate in the decision in such proceeding shall invite or knowingly entertain any prohibited *ex parte* communication, or make any such communication to any party to, or counsel or agent of a party, or any other person who he has reason to know may transmit such communication to a party or party's agent.

(b) The prohibitions of paragraph 1 apply from the time an on-the-record proceeding is noticed for oral hearing or the taking of evidence by modified procedure, at such time as the person responsible for the communication has knowledge that the proceeding will be so noticed, or from such earlier time as the Commission may fix by rule or order in the particular case.

(c) For the purposes hereof:

(1) "On-the-record proceeding" means a proceeding described in sections 556-557 of the Administrative Procedure Act (5 U.S.C. §§ 556-557) or a proceeding required by the Constitution, by statute, by Commission rule, or by order in the particular case, to be decided solely upon the record made in a Commission hearing.

(2) "Person who intercedes in any proceeding" means any individual outside the Commission (whether public or private life), partnership,

corporation, or association, other than a party or an agent of a party, who volunteers a communication which he may be expected to know may advance or adversely affect the interest of a particular party or any party's agent.

(3) "*Ex parte* communication concerning the merits" includes both oral and written communications, but the following classes of *ex parte* communication shall not be prohibited:

(i) Any oral or written communication which all the parties to the proceeding agree, or which the Commission or the hearing officer formally rules, may be made on an *ex parte* basis.

(ii) Any oral or written communication of facts or contentions with general significance for an industry subject to regulation if the communicator cannot reasonably be expected to know that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which he is interested.

(iii) Any communication by means of any news medium which in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publications with respect to pending on-the-record proceedings.

(iv) "Any employee of the Commission participating in the decision" includes members of the Oil Pipeline Board, Commissioners and their personal assistants, and any staff acting as a participant, as defined in Rule 385.102(b) in oil pipeline proceedings.

(d) Any member of the Commission, hearing officer, or employee of the Commission, participating or who reasonably may be expected to participate in the decision, who personally receives a written communication which he believes is prohibited at the time received, shall promptly transmit the written communication, or a written summary of the substance of an oral communication, together with a written statement of the circumstances under which the communication was made, if not apparent from the communication itself, to the Secretary of the Commission, who shall place any material so received in the correspondence section of the public docket of the proceeding. Any such person who receives a communication and who is not certain whether such communication is a prohibited *ex parte* communication may request, and shall be given promptly, a ruling on the question from the Commission's General Counsel. The Chairman of the Commission shall be notified promptly of all reports of *ex parte* communications, or requests for rulings on possible *ex parte* communications, transmitted to the Secretary or the General Counsel. He may require that any such communication be placed in the correspondence section of the docket if he concludes that the dictates of fairness require that it be made public, even if it is not prohibited communication, and he may direct the taking of such other or further action as may be appropriate under all circumstances.

(e) The Commission may censure, or suspend or revoke the privilege to practice before the agency, of any person who knowingly and willfully makes or solicits the making of a prohibited *ex parte* communication.

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(f) To the extent permitted by law, the relief or benefit sought by a party to a proceeding may be denied if the party, or an agent of the party, knowingly and willfully violates the foregoing prohibitions or requirements.

.01 49 F.R. 21701 (May 23, 1984).

.05 *Historical record.*—Section 385.1415 originated in 49 F.R. 21701 (5/23/84), effective 6/22/84.

[The next page is 22,041.]