

168 FERC ¶ 61,120
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 C.F.R. Part 385

[Docket No. RM19-18-000; Order No. 862]

Formal Requirements for Filings in Proceedings Before the Commission

(Issued August 27, 2019)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission or FERC) amends its regulations concerning the process for delivering filings and submissions to the Commission. Specifically, the Commission's regulations are revised to require that filings and submissions to be delivered to the Commission, other than by the United States Postal Service (USPS), are instead to be sent to the Commission's off-site security screening facility. The regulations still permit USPS mail to be sent directly to the Commission's headquarters.

DATES: This rule will become effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION

168 FERC ¶ 61,120
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Formal Requirements for Filings in Proceedings
Before the Commission

Docket No. RM19-18-000

ORDER NO. 862

FINAL RULE

(Issued August 27, 2019)

I. Introduction

1. The Federal Energy Regulatory Commission (Commission or FERC) amends its regulations concerning the process for submitting hardcopy filings and submissions¹ to the Commission.² Specifically, this final rule revises 18 CFR 385.2001(a) to require that deliveries of filings and submissions other than by the United States Postal Service

¹ While the current version of 18 CFR 385.2001 addresses filings submitted to the Commission, the revisions herein clarify that the subsection applies to other forms of correspondence sent to the Commission.

² See 18 CFR 385.2001.

(USPS) are to be sent to an off-site facility for security screening and processing.³ The regulations still permit USPS mail to be sent directly to the Commission's headquarters.

II. Background

2. The Government Accounting Office (GAO) has issued a report indicating that, since the fall of 2001, the rate of incidents involving threats via the mail has increased “due in part to hoaxes and concerns about leakages from mail that had previously been routinely handled.”⁴ More recently, in October 2018, package bombs sent to politicians and newsrooms prompted many organizations to assess mail screening and security procedures to reduce vulnerabilities.⁵ The GAO report concluded that “[m]ail continues to be a potential venue” for threats and that “[p]reparation involves having the procedures, plans, and training in place.”⁶ Further, the U.S. Department of Homeland

³ Non-USPS carriers include, for example, FedEx, DHL, and United Parcel Service.

⁴ See U.S. Government Accountability Office, *Mail Security: Incidents at DOD Mail Facilities Exposed Problems That Require Further Actions* (Sept. 2006), at 5, <https://www.gao.gov/assets/260/251532.pdf> [GAO Report].

⁵ See Gregory Korte, John Bacon, and Jorge L. Ortiz, *Suspicious Packages Prompt Nationwide Security Response*, *USA Today* (Oct. 24, 2018), <https://www.usatoday.com/story/news/nation/2018/10/24/suspicious-packages-mail-security-response-obama-clinton-holder-soros-cnn/1751077002/> (Last visited July 17, 2019).

⁶ GAO Report at 41; see also 41 CFR 102-192.70(a) (providing that agencies should have a mail security policy that applies to their mail management programs).

Security (DHS) recommends that deliveries submitted to agencies should be “received, screened, sorted, and prepared for delivery” at an offsite facility.⁷

3. The Commission has reviewed its protocols on hardcopy/hand-delivered submissions to the agency. The Commission’s regulations currently provide that filers should send hard-copy submissions directly to the Commission’s principal office, which is located at 888 First Street, NE, Washington, DC 20426.⁸ Upon review, the Commission has determined that sending hard-copy/hand-delivered submissions to an off-site facility for security screening and processing, prior to being delivered to the Commission’s principal office, would better protect the safety of the Commission, its employees, and the public.

III. Discussion

4. The purpose of this final rule is to protect the general public and Commission employees from potential security risks related to hardcopy/hand-delivered submissions. Revising the Commission’s procedures to have hardcopy/hand-delivered submissions delivered to an off-site facility for security screening, before delivery to the Commission,

⁷ See U.S. Department of Homeland Security, Best Practices for Managing Mail Screening and Handling Processes: A Guide for the Public and Private Sectors, at 17 (Sept. 2012) <https://www.dhs.gov/sites/default/files/publications/isc-mail-handling-screening-nonfouo-sept-2012-508.pdf>. [DHS Best Practices].

⁸ See 18 CFR 385.2001(a).

acknowledges the findings in the GAO Report and comports with the recommendation from DHS.⁹

5. Accordingly, this final rule amends the Commission’s regulations to provide that members of the public are required to send hardcopy submissions, other than those sent through USPS, to an off-site facility at 12225 Wilkins Avenue, Rockville, Maryland 20852. Hand-deliveries can be provided to the off-site facility in-person (by the filing entity or its designee) during the hours of 7:00 AM to 3:30 PM.¹⁰ The off-site facility will sort, screen, and prepare the filings and submissions for delivery to the Commission. Filings and submissions sent through USPS can continue to be mailed to the Commission’s principal office in Washington, DC because USPS has existing “security, screening, and control processes” that comply with DHS best practices.¹¹

6. The revisions adopted here will not affect the public’s ability to make timely filings. As an initial matter, this final rule does not change the process for submitting electronic filings with the Commission. Unless a hardcopy filing or submission is required, the public is strongly encouraged to submit filings and submissions

⁹ See DHS Best Practices at 17.

¹⁰ The current regulations provide that all filings should be made to the Commission’s headquarters. Filings that are directed to the regional offices should continue to be submitted in accordance with current procedures or as directed.

¹¹ DHS Best Practices at 11; *see also* Alex Dobuzinskis, *Screening for Poisons, Explosives in Mail a Daily Reality After U.S. Threats*, *Reuters* (Oct. 3, 2018) (USPS “has developed a comprehensive approach to protecting the mail system by utilizing a targeted strategy of specialized technology, screening protocols and employee training.”).

electronically, through the Commission's eFiling application, at <https://www.ferc.gov/>.¹²

For deliveries and documents sent through means other than USPS, those filings and submissions will be considered "received" by the off-site facility. The off-site facility will log all deliveries when received and will provide the Commission with the log so that the documents may be stamped appropriately and recorded by the Commission as received on that date, consistent with the date and time on the log.

7. The Commission's principal office for business and its headquarters address will remain 888 First Street, NE, Washington, DC 20426.¹³ After this rule becomes effective, however, Commission staff at headquarters will no longer accept deliveries and hardcopy filings sent through carriers other than USPS. As noted above, for security reasons, deliveries to the Commission's headquarters other than by USPS will be rejected. Such filings and submissions would not be considered received until re-submitted in accordance with the revisions adopted herein.

¹² See 18 CFR 385.2001(a)(1)(iii). Other agencies have also urged the public to use electronic filing. See 17 CFR 232.14 (providing that the Securities and Exchange Commission will not accept paper filings for certain submission unless an exemption is provided).

¹³ 42 U.S.C. 7171(h) (providing that "[t]he principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held ...").

IV. Information Collection Statement

8. The Office of Management and Budget (OMB) approves certain information collection requirements imposed by agency rule.¹⁴ However, this final rule does not contain any additional information collection requirements. Therefore, compliance with OMB's regulations is not required.

V. Environmental Analysis

9. 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

10. 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 Accordingly, this rulemaking is exempt from the requirement to draft such documents under that provision.

¹⁴ 5 CFR 1320.12.

¹⁵ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897, FERC Stats. & Regs. ¶ 30,783 (Dec. 17, 1987).

¹⁶ 18 CFR 380.4(a)(1).

VI. Regulatory Flexibility Act

11. The Regulatory Flexibility Act of 1980 (RFA)¹⁷ generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. This final rule concerns a modification 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

12. 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 AM to 5:00 PM Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

13. 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.

14. 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

15. 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 rulemaking procedures are unnecessary for "rules of agency organization, procedure, or practice." This rule is therefore exempt from notice-and-comment rulemaking procedures, because it concerns the Commission's mail procedures and practices. In particular, the rule is directed at improving the safety of the Commission, its employees, and the public, not toward a determination of the rights or interests of affected parties. The rule will not significantly affect regulated entities or the general public.

16. This rule is effective [**INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

List of subjects in 18 CFR Part 385

Administrative practice and procedure
Electric power
Penalties
Pipelines
Reporting and recordkeeping requirements

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 385 – RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791a-825v, 2601-2645; 28 U.S.C. 2461; 31 U.S.C 3701, 9701; 42 U.S.C. 7101-7352, 16441, 16451-16463; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

2. In § 385.2001, the heading and subsection (a)(1) are revised to read as follows:

§ 385.2001 Filings and Other Submissions.

(a) ****

(1) ****

(i) Mailing the document through the United States Postal Service to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;

(ii) Delivering the document by any source other than United States Postal Service to the Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852; or

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